

The Final Report

of the

Tribunal of Inquiry

into

Certain Planning Matters and Payments

Tribunal of Inquiry into Certain Planning Matters and Payments
Binse Fiosrúcháin um Chúrsaí Pleanála agus Íocaíochtaí Áirithe

Appointed by instrument of The Minister for the Environment and Local Government dated the 4th day of November 1997 as amended by instruments dated the 15th day of July 1998, the 24th day of October 2002, the 7th day of July 2003 and the 3rd day of December 2004

Ceaptha de réir Ionstraim an Aire Comhshaoil agus Rialtais Áitiúil dar dáta an 4ú lá de Shamhain 1997 a leasaíodh de réir Ionstraimí dar dátaí an 15ú lá de Iúil 1998, an 24ú lá de Dheireadh Fómhair 2002, an 7ú lá de Iúil 2003 agus an 3ú lá de Mhí na Nollag 2004

His Honour Judge Alan P. Mahon S.C. (Chairperson)
Her Honour Judge Mary Faherty S.C.
His Honour Judge Gerald B. Keys

A Onóir an Breitheamh Alan P. Mahon S.C. (Cathaoirleach)
A hOnóir an Breitheamh Mary Faherty S.C.
A Onóir an Breitheamh Gerald B. Keys

22nd March 2012

Our Ref: PTB/5

Mr. Kieran Coughlan
Clerk of the Dail
Dail Eireann
Leinster House
Kildare Street
Dublin 2

Re: The Tribunals of Inquiry (Evidence) Act 1921, (As Amended)
The Tribunal's Final Report

Dear Mr. Coughlan

I enclose the Fifth and Final Report of this Tribunal which was established by Ministerial Order on 4 November 1997 (and amended by Instruments dated 15 July 1998, 24 October 2002, 7 July 2003 and 3 December 2004) to inquire into Certain Planning Matters and Payments, and to report its findings to the Clerk of the Dail. I have written in similar terms to An Taoiseach.

This Final Report includes detailed Recommendations in relation to existing legislation in the areas of conflicts of interest, ethics in public office, political finance, planning, local government, the investigation and prosecution of corruption, transparency of corporate bodies and the powers of tribunals.

One section of the Report (approximately 200 pages) has been withheld for legal reasons, and will be published as soon as possible.

In accordance with the precedent set by the Moriarty Tribunal in its Final Report in March 2011, and for similar reasons, this Report is immediately published in digital format. Two hard copies of the Report are also provided herewith for each House of the Oireachtas. Hard copies of the Report will become generally available within a few weeks.

I have also arranged today to provide each Member of the Oireachtas with a digital copy of the Final Report.

Yours sincerely

His Hon. Judge Alan P. Mahon S.C.
Chairman of the Tribunal

Upper Castle Yard, Dublin Castle, Dublin 2.
Clós Uachtarach an Chaisleáin, Caisleán Bhaile Átha Cliath, BÁC 2.

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Tribunal of Inquiry into Certain Planning Matters and Payments
Binse Fiosrúcháin um Chúrsaí Pleanála agus Íocaíochtaí Áirithe

Appointed by instrument of The Minister for the Environment and Local Government dated the 4th day of November 1997 as amended by instruments dated the 15th day of July 1998, the 24th day of October 2002, the 7th day of July 2003 and the 3rd day of December 2004

Ceaptha de réir Ionstraim an Aire Comhshaoil agus Rialtais Áitiúil dar dáta an 4ú lá de Shamhain 1997 a leasaíodh de réir Ionstraimí dar dátaí an 15ú lá de Iúil 1998, an 24ú lá de Dheireadh Fómhair 2002, an 7ú lá de Iúil 2003 agus an 3ú lá de Mhí na Nollag 2004

His Honour Judge Alan P. Mahon S.C. (Chairperson)
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A Onóir an Breitheamh Alan P. Mahon S.C. (Cathaoirleach)
A hOnóir an Breitheamh Mary Faherty S.C.
A Onóir an Breitheamh Gerald B. Keys

22nd March 2012

Our Ref: PTB/49

Mr. Enda Kenny T.D.
Taoiseach
Government Buildings
Upper Merrion Street
Dublin 2

Re: The Tribunals of Inquiry (Evidence) Act 1921, (As Amended)
The Tribunal's Final Report

Dear Taoiseach

I enclose the Fifth and Final Report of this Tribunal which was established by Ministerial Order on 4 November 1997 (and amended by Instruments dated 15 July 1998, 24 October 2002, 7 July 2003 and 3 December 2004) to inquire into Certain Planning Matters and Payments, and to report its findings to the Clerk of the Dail. I am writing in similar terms to the Clerk of the Dail.

This Final Report includes detailed Recommendations in relation to existing legislation in the areas of conflicts of interest, ethics in public office, political finance, planning, local government, the investigation and prosecution of corruption, transparency of corporate bodies and the powers of tribunals.

One section of the Report (approximately 200 pages) has been withheld for legal reasons, and will be published as soon as possible.

In accordance with the precedent set by the Moriarty Tribunal in its Final Report in March 2011, and for similar reasons, this Report is immediately published in digital format. One hard copy of the Report is also provided herewith. Hard copies of the Report will become generally available within a few weeks.

Yours sincerely

A P Mahon

His Hon. Judge Alan P. Mahon S.C.
Chairman of the Tribunal

Upper Castle Yard, Dublin Castle, Dublin 2.
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PREFACE

This is the fourth and final Report of this Tribunal of Inquiry. One Chapter of the Report – relating to one module of its public inquiries – has been withheld for legal reasons and will be published as soon as possible.

The preparation of this Report has proved to be an enormous and complex task because of the necessity to consider tens of thousands of pages of transcripts of evidence and documentation resulting from the sworn evidence of hundreds of witnesses.

The duration of the Inquiry (in excess of 14 years) has been significantly greater than anyone anticipated at the time of its establishment in late 1997. Several factors have contributed to its considerable length (and the consequential substantial cost), including and, in particular, wide ranging Terms of Reference which necessitated extensive and prolonged investigations by the Tribunal. The depth and scope of that investigative work necessarily required the Tribunal to hear evidence from many hundreds of witnesses, with the result that this Tribunal has become the longest Tribunal of Inquiry in the history of this State.

Other factors also contributed to the length and costs of the Tribunal's work, such as the failure on the part of some parties who were required to give evidence to the Tribunal to give truthful evidence, or indeed in some instances, to give evidence at all. By its very nature, the investigation of corruption will almost always be a slow process because of a dearth of documentation and paper trail evidence. The investigation of corruption in any sphere will always be very forensically orientated, and therefore notoriously time consuming.

The conduct of the Tribunal's inquiries (both private and public) and the preparation of this Report have been undertaken on the basis that fair procedures were paramount. The Tribunal, at all times, endeavoured to adopt and follow such procedures and to conduct its work and write its Report without fear or favour. In those instances where its procedures were successfully challenged in the Courts, the Tribunal readjusted them accordingly.

This Report was written by the Members of the Tribunal. The Report's findings were made without direction from members of its legal team, nor was any attempt made by them to influence those findings. We wish to state this categorically because of the fact that, on occasion, the contrary has been suggested in media articles relating to the Tribunal.

This Report is accompanied by Recommendations. These are made in the light of, and with regard to, information and evidence provided to the Tribunal over its lifetime, and with the benefit of exhaustive research conducted by the Tribunal over the past three years. We hope that they will be considered by the Government and the Oireachtas, as well as by interest groups and the public generally. These Recommendations have been

made with a genuine belief that their adoption will considerably enhance public service and aid the battle against corruption.

The Tribunal's work was only made possible with the assistance and dedication of its staff – both legal and non-legal (and which at its busiest period numbered in excess of 50). The nature of that work frequently required members of its staff to work excessively long hours, and at weekends. We wish to express our deepest appreciation to all who worked in the Tribunal over the years. It is not practical, or indeed necessary, to identify particular individuals for special mention. Nevertheless, and somewhat in conflict with this statement, we believe it appropriate to express, in particular, our gratitude to Mr Peter Kavanagh, the Tribunal's Registrar and its de facto office manager who has been with the Tribunal since its establishment, and to Mr John Lynn, the Tribunal's Director of ICT who was responsible for the creation and publication of the electronic version of this Final Report.

We also wish to express our gratitude to our "line" Department, the Department of the Environment (and its Ministers since 1997), which was tasked with funding the Tribunal. That Department (and, indeed the other Government Departments and agencies with which the Tribunal had contact), at all times respected the Tribunal's independence and integrity.

Alan P. Mahon Chairman and Member of the Tribunal	Mary Faherty Member of the Tribunal	Gerard B. Keys Member of the Tribunal

22nd March 2012

TERMS OF REFERENCE

Tribunal of Inquiry (Evidence) Acts 1921 and 1979

WHEREAS a resolution in the following terms was passed by Dáil Eireann on the 7th day of October, 1997.

"That Dáil Éireann resolves

A. That it is expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Act, 1921, as adapted by or under subsequent enactments and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, to inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it see fit, in relation to the following definite matters of urgent public importance:

1. The identification of the lands stated to be 726 acres in extent, referred to in the letter dated 8th June, 1989 from Mr. Michael Bailey to Mr. James Gogarty (reproduced in the schedule herewith) and the establishment of the beneficial ownership of the lands at that date and changes in the beneficial ownership of the lands since the 8th June, 1989 prior to their development;

2. The planning history of the lands including:-
   (a) their planning status in the Development Plan of the Dublin local authorities current at the 8th June, 1989;

   (b) the position with regard to the servicing of the lands for development as at the 8th June, 1989;

   (c) changes made or proposed to be made to the 8th June, 1989 planning status of the lands by way of:-

      (i) proposals put forward by Dublin local authority officials pursuant to the review of Development Plans or otherwise;

      (ii) motions by elected members of the Dublin local authorities proposing re-zoning;

      (iii) applications for planning permission (including any involving a material contravention of the Development Plan);

3. Whether the lands referred to in the letter dated 8th June, 1989 were the subject of the following:-

(a) Re-zoning resolutions;

(b) Resolutions for material contravention of the relevant Development Plans;

(c) Applications for special tax designations status pursuant to the Finance Acts;

(d) Applications for planning permission;

(e) Changes made or requested to be made with regard to the servicing of the lands for development;

(f) Applications for the granting of building by-law approval in respect of buildings constructed on the lands;

(g) Applications for fire safety certificates;

on or after the 20th day of June 1985.

And

(i) to ascertain the identity of any persons or companies (and if companies, the identity of the beneficial owners of such companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;

(ii) to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above.

(iii) to ascertain the identity of all public officials who considered, made recommendations or decisions on any such matters and to report on such considerations, recommendations and/or decisions;

(iv) to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority.

4. (a) The identity of all recipients of payments made to political parties or members of either House of the Oireachtas, past or present, or members or officials of a Dublin local authority or other public official by Mr. Gogarty or Mr. Bailey or a connected person or company within the meaning of the Ethics in Public Office Act, 1995, from 20th June 1985 to date, and the circumstances, considerations and motives relative to any such payment;

(b) whether any of the persons referred to at sub-paragraphs 3(ii) and 3(iii) above were influenced directly or indirectly by the offer or receipt of any such payments or benefits.

5. In the event that the Tribunal in the course of its inquiries is made aware of any acts associated with the planning process committed on or after the 20th June, 1985 which may in its opinion amount to corruption, or which involve attempts to influence by threats or deception or inducement or otherwise to compromise the disinterested performance of public duties, it shall report on such acts and should in particular make recommendations as to the effectiveness and improvement of existing legislation governing corruption in the light of its inquiries.

6. And the Tribunal be requested to make recommendations in relation to such amendments to Planning, Local Government, Ethics in Public Office and any other relevant legislation as the Tribunal considers appropriate having regard to its findings.

"payment" includes money and any benefit in kind and the payment to any person includes a payment to a connected person within the meaning of the Ethics in Public Office Act, 1995.

B. And that the Tribunal be requested to conduct its inquiries in the following manner, to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979:

(i) to carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to any of the matters referred to above to warrant proceeding to a full public inquiry in relation to such matters,

(ii) to inquire fully into all matters referred to above in relation to which such evidence may be found to exist, dealing in the first instance with the acknowledged monetary donation debated in Dáil Eireann on the 10th September, 1997 Dáil Debates Columns 616-638 and to report to the Clerk of the Dáil thereupon,

(iii) to seek discovery of all relevant documents, files and papers in the possession, power or procurement of said Mr. Michael Bailey, Mr. James Gogarty and Donnelly, Neary and Donnelly Solicitors,

(iv) in relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dáil and to report in such a manner as the Tribunal thinks appropriate on the steps taken by the Tribunal to determine what evidence, if any, existed and the Clerk of the Dáil shall thereupon communicate the Tribunal's report in full to the Dáil,

(v) to report on an interim basis not later than one month from the date of establishment of the Tribunal or the tenth day of any oral hearing, whichever shall first occur, to the Clerk of the Dáil on the following matters:

the numbers of parties then represented before the Tribunal;

the progress which has been made in the hearing and the work of the Tribunal;

the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings;

any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the terms of reference).

C. And that the person or persons selected to conduct the Inquiry should be informed that it is the desire of the House that –

(a) the Inquiry be completed in as economical a manner as possible and at the earliest date consistent with a fair examination of the matters referred to it, and, in respect to the matters referred to in paragraphs 1 to 4 above, if possible, not later than the 31st December, 1997, and

(b) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

D. And that the Clerk of the Dáil shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt.

Text of Schedule to Resolution passed by Dáil Eireann at its meeting on 7th October 1997.

SCHEDULE

Kilinamonan House,
The Ward,
Co. Dublin.

8th June, 1989

Dear Mr. Gogarty,

PROPOSALS FOR DISCUSSION

Re: Your lands at Finglas, Ballymun, Donabate, Balgriffin and Portmarnock, Co. Dublin.

I refer to our many discussions regarding your following six parcels of land:-

Lot 1: 100 acres (approx) at North Road, Finglas, including “Barrett’s Land”.
Lot 2: 12 acres (approx) at Jamestown Road, Finglas.
Lot 3: 100 acres (approx) at Poppintree, Ballymun.
Lot 4: 255 acres (approx) at Donabate (Turvey House and Beaverton House).
Lot 5: 250 acres (approx) at Balgriffin.
Lot 6: 9 acres (approx) at Portmarnock.

I submit the following proposals for your consideration:-

PROPOSAL NO. 1 – Purchase Proposal

Lots 1, 2 and 3	Purchase Price £4,000 per acre 10% deposit payable on the signing of the contract Completion 1 year from date of contract.
Lot 4	Purchase Price IR£1 Million Deposit 10% on contract Completion 2 years from date of contract.
Lot 5	Purchase Price IR £750,000 Deposit 10% on contract Completion 3 years from date of contract.
Lot 6:	Option to be granted for nominal consideration (£100.00) for a period of 2 years at a purchase price of £30,000.00 per acre.

PROPOSAL NO. 2 – Participation Proposal

As an alternative to the outright purchase proposal above I am prepared to deal with Lots 1 – 5 (inclusive) above on the basis that I would be given a 50% share in the ownership of the said lands in exchange for procuring Planning Permission and Building Bye Law Approval. The time span which I would require to be allowed to obtain the Permissions and Approval and my anticipated financial expenditure (apart from my time input) in respect of the different lots would be as follows:-

Lots 1, 2 and 3

A period of 2 years within which to procure a buildable Planning Permission and Building Bye Laws Approval for mixed development including housing, industrial and commercial.

My financial expenditure up to a figure of £150,000 (to include Architect's fees, Consulting Engineer's fees, Planning and Bye Law charges etc.).

Lots 4 and 5

Time requirement – 3 years.

Financial

Expenditure - up to £150,000

In considering the above proposals the following points of information should be borne in mind by all parties:-

1. From the point of view of obtaining Planning Permission the entire lands (lots 1 to 6 inclusive) have the following shortcoming:-

   NO zoning for development purposes

   NO services.

   NO proposal in current draft development plans (City and County) for the zoning of the lands or any part thereof for development purposes.

2. We face a very severe uphill battle to arrange for the availability of services and for the ultimate procurement of Planning Permission.

3. The steps to be taken on the way to procuring a buildable Planning Permission and Building Bye Laws Approval are notoriously difficult, time consuming and expensive. Material Contravention Orders must be obtained and this involves their procurement of a majority vote at 2 full Council Meetings at which 78 Council Members must be present and it also involves satisfactory compliance with extensive requirements and pre-conditions of the Planning Authority and the inevitable dealing with protracted Appeals to An Bord Pleanala.

4. It is essential that the Planning Application should be brought in the name of an active house building company which enjoys good standing and good working relationship with the Planners and the Council Members and in this regard I confirm that in the event of our reaching agreement regarding the within proposals that all Planning Applications would be made by one of my Companies which meets the said requirements.

5. In the case of all of the lands the applications will be highly sensitive and controversial and we can realistically expect strenuous opposition from private, political and planning sectors. One of my active companies will have to take the limelight in such applications and withstand the objections and protests which will inevitably confront it. Apart from the anticipated financial expenditure as outlined above it should be borne in mind that I will personally have to give extensively of my time and efforts over the entire period of the applications including the necessary preliminary negotiations in regard to services and zoning. It must be borne in mind that I will have to abandon other projects which would be open to myself and my companies in order to give proper attention to this project. If I am successful in changing your lands from their present status of agricultural lands with very limited potential even for agricultural use into highly valuable building lands I would have to be rewarded with a minimum 50% stake in the

ownership of the lands. Our advisors would have to work out the details as to how this can be effected in the most tax-efficient manner.

I look forward to hearing from you in relation to the above proposals. In the case of the first proposal which relates to the outright purchase of the lands (excluding Lot 6) I would not be adverse to a proposal which would involve the vendors retaining a participation stake of up to 20% in the purchasing company if you felt that an ongoing interest in the future development of the lands would be more acceptable to the present owners.

Yours sincerely,

_____

MICHAEL BAILEY.

Mr. Jim Gogarty,
Clontarf,
Dublin 3.

Instrument amending the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979

(No. 3) Order, 1997

WHEREAS a resolution in the following terms was passed by Dáil Eireann on the 1st day of July, 1998, and by Seanad Éireann on the 2nd day of July, 1998 ("the Resolutions"):

> "That the terms of reference contained in the resolution passed by Dáil Éireann on the 7th October, 1997 and by Seanad Éireann on the 8th of October, 1997 under the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 be amended as follows:-
>
> 1. By the deletion from paragraph A.5 of the words "committed on or after the 20th June, 1985."
>
> 2. By the addition of the following paragraphs after paragraph D:-
>
> "E The Tribunal shall, in addition to the matters referred to in paragraphs A(1) to A(5) hereof, inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it sees fit, in relation to the following definite matters of urgent public importance:-
>
> 1. Whether any substantial payments were made or benefits provided, directly or indirectly, to Mr. Raphael Burke which may, in the opinion of the Sole Member of the Tribunal, amount to corruption or involve attempts to influence or compromise the disinterested performance of public duties or were made or provided in circumstances which may give rise to a reasonable inference that the motive for making or receiving such payments was improperly connected with any public office or position held by Mr. Raphael Burke, whether as Minister, Minister of State or elected representative;
>
> 2. Whether, in return for or in connection with such payments or benefits, Mr. Raphael Burke did any act or made any decision while holding any such public office or position which was intended to confer any benefit on any person or entity making a payment or providing a benefit referred to in paragraph 1 above, or any other person or entity, or procured or directed any other person to do such an act or make such a decision.

And the Tribunal be requested to conduct its Inquiries in the following manner to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998:-

(i) To carry out such preliminary investigations in private as it thinks fit (using all the powers conferred on it under the Acts), in order to determine whether sufficient evidence exists in relation to any of the matters referred to in paragraphs E1 and E2 above to warrant proceeding to a full public inquiry in relation to such matters;

(ii) To inquire fully into all matters referred to in paragraphs E1 and E2 in relation to which such evidence may be found to exist;

(iii) In relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dáil and to report in such a manner as the Tribunal thinks appropriate on the steps taken by the Tribunal to determine what evidence, if any, existed and the Clerk of the Dáil shall thereupon communicate the Tribunal's report in full to the Dáil;

(iv) To report on an interim basis to the Clerk of the Dáil on the following matters:-

the number of parties then represented before the Tribunal;

the progress which has been made in the hearing and the work of the Tribunal;

the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings;

any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the terms of reference);

and to furnish such further interim reports as the Tribunal may consider necessary.

F. And that the Sole Member of the Tribunal should be informed that it is the desire of the House that:-

(a) the Inquiry into the matters referred to in paragraph E hereof be completed in as economical a manner as possible and at the earliest date consistent with a fair examination of the said matters, and

(b) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

G. And that the Clerk of the Dáil shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt."

WHEREAS the Tribunal established pursuant to a resolution passed by Dáil Éireann on the 7th day of October, 1997 and by Seanad Éireann on the 8th day of October, 1997 ("the Tribunal") requested under paragraph (b) of Section 1A(1) (inserted by the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998 ("the Act of 1998")) of the Tribunals of Inquiry (Evidence) Act, 1921, the amendment, specified in Article 1(a) of the following instrument, of the text of those resolutions set out in the preamble to the Tribunal of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997:

AND WHEREAS following consultation between the Tribunal and the Attorney General on behalf of the Minister for the Environment and Local Government, the Tribunal has consented under paragraph (a) of the said section 1A(1) to the amendment, specified in Article 1(b) of the following instrument, of the text aforesaid:

NOW, I Noel Dempsey, Minister for the Environment and Local Government, in pursuance of the Resolutions and in exercise of the powers conferred on me by section 1(A)1 (inserted by the Act of 1998) of the Tribunals of Inquiry (Evidence) Act, 1921, hereby order as follows:

1. The Tribunals of Inquiry (Evidence) Acts, 1921 to 1979 (No. 3) Order, 1997, is hereby amended by the insertion -
   (a) in Article 2, after "October, 1997" of ", as amended by paragraph 1 of the resolutions passed by Dáil Éireann on the 1st day of July, 1998, and by Seanad Éireann on the 2nd day of July, 1998", and
   (b) after Article 2, of the following Article:
   "2A The Tribunal shall also inquire urgently into and report and make such findings and recommendations as it sees fit to the Clerk of Dáil Éireann on the definite matters of urgent public importance set out in paragraph 2 of the resolutions passed by Dáil Eireann on the 1st day of July, 1998, and by Seanad Éireann on the 2nd day of July, 1998, amending the resolutions passed by Dáil Éireann on the 7th day of October, 1997, and by Seanad Éireann on the 8th day of October, 1997.".

GIVEN under my Official Seal,
this 15th day of July, 1998.

Noel Dempsey
Minister for the Environment
and Local Government.

WHEREAS a resolution in the following terms was passed by Dáil Éireann and by Seanad Éireann on 28th day of March, 2002 ("the Resolutions"):

"That the terms of reference contained in the Resolution passed by Dáil Eireann on the 7th October, 1997 and by Seanad Eireann on the 8th October, 1997, as amended by the Resolutions passed by Dáil Eireann on 1st July, 1998 and by Seanad Eireann on 2nd July, 1998, pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998 be amended as follows:

1. By the deletion in each case where they occur of the words "the Sole Member of".

2. In paragraph E2, by the substitution of "Tribunals of Inquiry (Evidence) Acts 1921 to 2002" for "Tribunals of Inquiry (Evidence) Acts 1921 to 1998".

3. By the addition of the following paragraphs after paragraph G:-

"H. The Tribunal shall consist of, from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002 by the Minister for the Environment and Local Government, not more than three members, one of whom shall be the Honourable Mr. Justice Feargus M. Flood who shall be the Chairperson of the Tribunal.

I The Minister for the Environment and Local Government shall also appoint, from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002, a fourth person as a reserve member."

WHEREAS the Tribunal established pursuant to a resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997 as amended by the resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998, ("the Tribunal") requested under paragraph (b) of section 1A(1) (inserted by the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998 ("the Act of 1998")) of the Tribunals of Inquiry (Evidence) Act, 1921, the amendment, specified in Article 1(b) of the following instrument, of the text of those resolutions set out in the preamble to the Tribunal of Inquiry (Evidence) Acts, 1921 and 1979 (No.3) Order, 1997, as amended by the Instrument made by the Minister for the Environment and Local Government on 15th day of July, 1998:
AND WHEREAS following consultation between the Tribunal and the Attorney General on behalf of the Minister for the Environment and Local Government, the Tribunal has consented under paragraph (a) of the said section 1A(1) to the amendment, specified in Article 1(b) of the following instrument:
Now, I, Martin Cullen, Minister for the Environment and Local Government, in pursuance of the Resolutions and in exercise of the powers conferred on me by

section 1A(1) (inserted by section 1 of the Act of 1998), of the Tribunals of Inquiry (Evidence) Act, 1921, hereby order as follows:

1. The Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997, as amended by the Instrument made by the Minister for the Environment and Local Government on 15th day of July, 1998, is hereby amended -

(a) by inserting after Article 1 the following Article:

"1A. In this Order "operative date" means the 29th day of October 2002."

and

(b) by substituting for Articles 3 and 4 the following Articles -

"3. On and from the operative date, the Tribunal shall cease to consist of a sole member and shall consist of not more than three members.

4. Of the members of the Tribunal-

(a) one shall be the Honourable Mr. Justice Feargus M. Flood (whose appointment by this Order as a member thereof is, accordingly, continued),

and

(b) two shall be the members mentioned in Article 5 of this Order,

and the said Mr. Justice M. Feargus Flood shall be the Chairperson of the Tribunal.

5. His Honour Judge Alan Mahon and Her Honour Judge Mary Faherty are, on and from the operative date, hereby appointed as members of the Tribunal.
6. His Honour Judge Gerald Keys is, on and from the operative date, hereby appointed as a reserve member of the Tribunal.
7. The Tribunals of Inquiry (Evidence) Act, 1921 (as amended by or under subsequent enactments) and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, shall apply to the Tribunal."

Given under my Official Seal,
this 24th day of October 2002

Martin Cullen
Minister for the Environment
and Local Government.

WHEREAS a resolution in the following terms was passed by Dáil Éireann on 3rd day of July 2003 and by Seanad Éireann on 4th day of July, 2003 ("the Resolution");

"That the terms of reference contained in the Resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997, as amended by the Resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998 as further amended by the Resolutions passed by Dáil Éireann and Seanad Éireann on 28th March, 2002 pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002 be amended by the substitution of the following paragraphs for paragraphs H and I:

"H. The Tribunal shall consist of not more than three Members as follows:

(a) His Honour Judge Alan Mahon and Her Honour Judge Mary Faherty who were appointed by instrument made on 24th October, 2002 by the Minister for the Environment and Local Government pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002, and

(b) His Honour Judge Gerald Keys, from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 by the Minister for the Environment, Heritage and Local Government.

I. His Honour Judge Alan Mahon shall be the Chairperson of the Tribunal from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 by the Minister for the Environment, Heritage and Local Government."

AND WHEREAS the Tribunal established pursuant to a resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997 as amended by resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998 and as further amended by resolutions passed by both Dáil Éireann and by Seanad Éireann on 28th March, 2002, requested under paragraph (b) of section 1A(1) (inserted by the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998) of the Tribunals of Inquiry (Evidence) Act, 1921, the amendment specified in the following instrument, of the text of those resolutions set out in the preamble to the Tribunal of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997, as amended by the Instrument made by the Minister for the Environment and Local Government on the 15th day of July, 1998 and as further amended by the Instrument

made by the Minister for the Environment and Local Government on the 24th day of October 2002:

Now, I, Martin Cullen, Minister for the Environment, Heritage and Local Government, in pursuance of the Resolution and in exercise of the powers conferred on me by section 1A(1) (inserted by section 1 of the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998) of the Tribunals of Inquiry (Evidence) Act, 1921, hereby order as follows:

1. The Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997, as amended by the Instrument made by the Minister for the Environment and Local Government on the 15th day of July, 1998 and as further amended by the Instrument made by the Minister for the Environment and Local Government on the 24th day of October, 2002, is hereby amended by substituting for Articles 4, 5 and 6 the following Articles:-

"4 His Honour Judge Alan Mahon shall continue as a member and is hereby appointed as Chairperson of the Tribunal.

5. His Honour Judge Gerald Keys is hereby appointed as a member of the Tribunal.

6. Her Honour Judge Mary Faherty shall continue as a member of the Tribunal."

Given under my Official Seal
this 7th day of July 2003

Martin Cullen_____
Minister for the Environment
and Local Government

WHEREAS a resolution in the following terms was passed by Dáil Éireann and by Seanad Éireann on 17th day of November, 2004 ("the Resolutions"):

"That the terms of reference contained in the Resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997, as amended by the Resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998 and further amended by the Resolutions passed by Dáil Éireann and Seanad Éireann on 28th March, 2002 and by the Resolutions passed by Dáil Éireann on 3rd July, 2003 and by Seanad Éireann on 4th July, 2003 pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2004 be amended by the addition of the following paragraphs after paragraph I:-

"J (1) The Tribunal shall, subject to the exercise of its discretion pursuant to J(6) hereunder, proceed as it sees fit to conclude its inquiries into the matters specified below (and identified in the Fourth Interim Report of this Tribunal) and to set out its findings on each of these matters in an interim report or reports or in a Final Report:

(a) The Carrickmines I Module;
(b) The Fox and Mahony Module;
(c) The St. Gerard's Bray Module;
(d) The Carrickmines II Module and Related Issues;
(e) The Arlington/Quarryvale I Module;
(f) The Quarryvale II Module;
(g) Those modules that are interlinked with the modules set out at paragraphs (a) to (f), and that are referred to in paragraph 3.04 of the Fourth Interim Report of the Tribunal.

(2) The Tribunal shall, subject to the exercise of its discretion pursuant to paragraph J(6) hereunder, by 1 May 2005 or such earlier date as the Tribunal shall decide, consider and decide upon those additional matters (being matters in addition to those set forth at J(1)(a) to (g) above and in respect of which the Tribunal has conducted or is in the course of conducting a preliminary investigation as of the date of the decision) that shall be proceeding to a public hearing and shall record that decision in writing and shall duly notify all parties affected by that decision at such time or times as the Tribunal considers appropriate.

(3) The Tribunal may in the course of investigating any additional matter under paragraph J(2) or a matter being investigated under paragraph J(1) investigate any other matter of which it becomes aware when it is satisfied that such further investigation is necessary for the Tribunal to make findings on any such additional matter or a matter referred to in paragraph J(1) above.

(4) Notwithstanding any other provision of these Terms of Reference the presentation to the Clerk of the Dáil of an interim report or reports, as the case may be, and of the Final Report on the matters identified at paragraphs J(1)(a)-(g), J(2) and, where applicable, J(3) shall constitute compliance by the Tribunal with all of its Terms of Reference, as hereby amended, and no further investigation, or report shall be required of or from the Tribunal on any other matter.

(5) Nothing in these amended Terms of Reference shall preclude the Tribunal from conducting hearings or investigations into any compliance or non-compliance by any person with the orders or directions of the Tribunal.

(6) The Tribunal may in its sole discretion - in respect of any matter within paragraphs J(1), J(2) and J(3) of these amended Terms of Reference - decide:

(I) To carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to the matter to warrant proceeding to a public hearing if deemed necessary, or

(II) Not to initiate a preliminary investigation and/or a public hearing of evidence in relation to the matter notwithstanding that the matter falls within the Tribunal`s Terms of Reference, or

(III) Having initiated a preliminary investigation in private (and whether or not same has been concluded) but prior to the commencement of any public hearing of evidence in the matter, to discontinue or otherwise terminate its investigation notwithstanding that the matter falls within the Tribunal`s Terms of Reference.

In exercising its discretion pursuant to this paragraph the Tribunal may have regard to one or more of the factors referred to below:

(i) The age and/or state of health of one or more persons who are likely to be in a position to provide useful information (including, but not confined to, oral evidence to be given privately or publicly), including the age and/or likely state of health of any such person at such date in the future when that person or persons might be expected to be called upon to give oral evidence or to otherwise cooperate with the Tribunal, and in particular the issue as to whether or not their age and/or state

of health is or is likely to be an impediment to such person being in a position to cooperate with the Tribunal or to give evidence to the Tribunal in private or in public;

(ii) The likely duration of the preliminary investigation or public hearing into any matter;

(iii) The likely cost (or other use of the resources of the Tribunal) of such investigation or any stage of the investigation into any matter;

(iv) Whether or not the investigation into the matter is likely to provide evidence to the Tribunal which would enable it to make findings of fact and conclusions and/or to make recommendations;

(v) Any other factors which in the opinion of the Tribunal would, or would be likely to, render an investigation, or the continued investigation into any matter inappropriate, unnecessary, wasteful of resources, unduly costly, unduly prolonged or which would be of limited or no probative value.

(7) Subject to paragraph J(3) any matter not brought to the attention of the Tribunal or of which it is not aware by the 16th day of December 2004 shall not be the subject of any investigation by the Tribunal.' "

AND WHEREAS the Tribunal established pursuant to a resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997 as amended by resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998 and further amended by resolutions passed by both Dáil Éireann and by Seanad Éireann on 28th March, 2002 and by the Resolutions passed by Dáil Eireann on 3rd July, 2003 and by Seanad Eireann on 4th July, 2003, following consultation between the Tribunal and the Attorney General on behalf of the Minister for the Environment, Heritage and Local Government, has consented under paragraph (a) of section 1A(1) (inserted by the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998) of the Tribunals of Inquiry (Evidence) Act 1921, to the amendment, specified in the following instrument, of the text of those resolutions set out in the preamble to the Tribunal of Inquiry (Evidence) Acts 1921 and 1979 (No. 3) Order, 1997, as amended by the Instrument made by the Minister of the Environment and Local Government on the 15th day of July, 1998, the Instrument made by the Minister of the Environment and Local Government on the 24th day of October, 2002 and the Instrument made by the Minster for the Environment, Heritage and Local Government on the 7th day of July, 2003.

Now, I, Dick Roche, Minister of the Environment, Heritage and Local Government, in pursuance of the Resolutions and in exercise of the powers conferred on me by section 1A(1) (inserted by section 1 of the Tribunals of Inquiry Act (Evidence) (Amendment) (No. 2) Act 1998) of the Tribunals of Inquiry (Evidence) Act 1921, hereby order as follows:

1. In this Order "Minister" means the Minister for the Environment, Heritage and Local Government.

2. The Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997 as amended by the Instrument made by the Minister on the 15th day of July, 1998, the Instrument made by the Minister on the 24th day of October, 2002 and the Instrument made by the Minister on the 7th day of July, 2003, is amended:-

   (a) in Article 2, by inserting, after "July, 1998", "and as further amended by the resolutions passed by Dáil Éireann and by Seanad Éireann on the 17th day of November, 2004",

   (b) in Article 2A (inserted by the Instrument made by the Minister on the 15th day of July, 1998) by deleting all of the words from "paragraph 2" down to and including "8th day of October, 1997." and substituting "the provisions that were inserted in the terms of reference set out in the said resolutions passed on the 7th and 8th days of October, 1997 by paragraph 2 of the resolutions passed by Dáil Eireann on the 1st day of July, 1998, and by Seanad Eireann on the 2nd day of July, 1998 and as amended by the resolutions passed by Dáil Eireann and by Seanad Eireann on the 17th day of November, 2004", and

   (c) by inserting the following Article after Article 2A:

   "2B. Whenever and so often as the Tribunal exercises the discretion conferred on it by paragraph J(6) of the said terms of reference, the duties imposed on the Tribunal by Article 2 or 2A (or both as appropriate) of this Order shall stand limited to the extent that is required by the said exercise of that discretion."

Given under my Official Seal
this 3rd day of December 2004

Dick Roche
Minister for the Environment,
Heritage and Local Government

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CHAPTER ONE – INTRODUCTION

1.01 This is the fifth and final report of the Tribunal of Inquiry into Certain Planning Matters and Payments which was established in order to inquire into concerns regarding corruption in the planning process from the late 1980s to the late 1990s.

1.02 It is clear from those inquiries that these concerns were well-founded. Throughout that period, corruption in Irish political life was both endemic and systemic. It affected every level of Government from some holders of top ministerial offices to some local councillors and its existence was widely known and widely tolerated. Although that corruption was occasionally the subject of investigation or adverse comment, those involved operated with a justified sense of impunity and invincibility. There was little appetite on the part of the State's political or investigative authorities to take the steps necessary to combat it effectively or to sanction those involved.

1.03 The Tribunal is aware that the corruption exposed by it, and by other Tribunals of Inquiry, has seriously undermined the public's faith in democracy and in particular, in its public officials, whether elected or appointed. This is doubtlessly attributable to both the scale of that corruption and the fact that it involved several high ranking public officials. However, the Tribunal firmly believes that the vast majority of public officials perform their functions with the utmost integrity. Those who believe that those in the public sphere are corrupt do a great disservice to these individuals. In addition, they may inadvertently contribute to corruption by both dissuading those of high integrity from entering public office and simultaneously contributing to lower standards on the part of those in public office, on the basis of a mistaken assumption that '*everyone is doing it.*'

1.04 This introductory chapter comprises four main parts. The first part essentially gives an overview of the findings made by the Tribunal on the basis of its inquiries. The second part addresses a number of matters relevant to the main body of this report, including the Tribunal's terms of reference, the conduct of its inquiry, the burden of proof, the Tribunal's findings and the structure of this Report. The third part then considers various controversial matters including: attempts to interfere with the Tribunal's independence; the length of the Tribunal's inquiry; the costs of that inquiry; and the unauthorised disclosure of information. The fourth and final part deals in the main with post publication issues, namely witness costs and documentation.

1.05 Overall, this Report is divided into 18 chapters, 13 of which cover inquiries into the following lands: Quarryvale (Chapter 2); Cherrywood (Chapter 3); Ballycullen/Beechill (Chapter 4); Pye Lands (Chapter 5); Lissenhall (Chapter 6); Cargobridge (Chapter 7); Clogran (Chapter 8); Baldoyle/Penine (Chapter 9); Fox &Mahony (Chapter 10); Walls Kinsealy (Chapter 11); Balheary (Chapter 12); St. Gerards Bray (Chapter 13); Duff Lands (Chapter 14). A further chapter dealing with inquiries into other lands has been withheld for legal reasons and will be published as soon as possible.

1.06 A further two chapters deal with individuals who were common to several of the 13 modules, namely Mr Frank Dunlop and Mr Liam Lawlor. The three remaining chapters comprise this Introduction, an Executive Summary of the Tribunal's main findings and the Tribunal's Recommendations as to how the existing measures combating corruption could be made more effective in the light of those inquiries.

PART 1

BACKGROUND

1.07 This Tribunal traces its origins to extensive public concerns regarding possible corruption in the planning system and in particular the concern that certain public officials, whether elected or appointed, were being bribed or otherwise profiting from their role in that system for their own benefit.

1.08 In the late 1980's and early 1990's Dublin County Council rezoned thousands of acres of land, repeatedly against the advice of the professional planners. There was a widespread belief that many of these rezoning decisions had been bought by developers and that some public officials, including local councillors, were for sale.

1.09 Matters came to a head in 1995, when Mr Colm Mac Eochaidh, a barrister, and Mr Michael Smith, the then Chairman of An Taisce, placed an anonymous advertisement in the Irish Times, through a firm of Newry solicitors, Donnelly, Neary & Donelly Solicitors, offering a reward of IR£10,000 for information on land rezoning corruption that would lead to a conviction.

1.10 Mr James Gogarty was among those who responded and he claimed that the former Minister, Mr Raphael (Ray) Burke, had received IR£80,000 from certain developers. Details of this allegation subsequently emerged in the newspapers and Mr Burke was forced to resign from his ministerial post.

1.11 The resulting public outcry resulted in the establishment of this Tribunal by Ministerial Order on 4 November 1997, to inquire urgently into matters of public importance set forth in its Terms of Reference and to report to the Clerk of the Dáil on its findings.

FINDINGS

1.12 The Tribunal's inquiries uncovered evidence of deep-rooted, systemic corruption in Irish public life. It has already reported on some of this evidence in its Second and Third Interim Reports.

1.13 Specifically, in its Second Interim Report, the Tribunal found that Mr Ray Burke had sought and received payments and other benefits from certain developers in return for acting in their best interests when performing his public duties. While in the case of the majority of those payments the Tribunal was unable to discover what specific actions Mr Burke had performed in return for them, it found that one substantial payment was made for the express purpose of ensuring Mr Burke's support and his influence over others in altering the planning status of lands in North Dublin. The Tribunal also concluded that Mr Burke had, while Minster for Communications, sought and received a substantial cash payment for being available to serve the interests of the promoters of Century, a private radio station and that he had exercised his public powers in their interests. In particular, Mr Burke issued a Ministerial Directive obliging RTE, Ireland's public radio and television company, to provide its facilities to Century. In addition, he proposed legislation which would have had the effect of curbing RTE's advertising, altering the format of the public radio station, 2FM, and diverting broadcasting licence fee income from RTE to independent broadcasters (including Century).

1.14 In its Third Interim Report, the Tribunal reported on the activities of Mr George Redmond, a retired Assistant City and County Manager for Dublin, in the context of his dealings with developers. In that report, the Tribunal concluded that Mr Redmond had accepted corrupt cash payments made in order to influence him in the performance of his public duties. The Tribunal also found that Mr Redmond had accepted payment for advice given in relation to certain lands which resulted in Dublin County Council levying a significantly lower service charge on those lands than would otherwise have applied. The lower service charges enabled the owner of the lands to sell them for a significantly greater sum than that which he would have otherwise received. The Tribunal concluded that the payment in respect of those advices was made in circumstances which amounted to an inducement to Mr Redmond to act unfaithfully and which were detrimental to his duties as Assistant City and County Manager. These findings are currently being challenged before the High Court.

1.15 This, the Tribunal's fifth and final Report, has largely centered on its inquiries into corruption in the review of the 1983 Dublin County Development Plan which commenced in 1987 and in relation to the making of the 1998 Dún Laoghaire-Rathdown County Development Plan. It is based on evidence heard, predominantly, between October 2002 and December 2008 in the course of 589 days of public hearing during which the Tribunal heard evidence from 427 witnesses generating approximately 60,000 pages of transcripts.

1.16 Following on from this evidence, this Tribunal is satisfied that at least for some councillors in Dublin County Council, corruption had become a regular aspect of their public role. Those councillors exercised their public powers in their own interests rather than in the interests of the public and bartered that power in exchange for cash and/or other benefits. There was apparently no shortage of persons prepared to pay for the corrupt exercise of public power and large tracts of land were ultimately rezoned because of the making and receipt of corrupt payments rather than in the interests of proper land use and development.

1.17 This corruption was, at the time it occurred, an open secret. For example, according to evidence heard by the Tribunal, in February 1993, during the course of a Dublin County Council meeting, Cllr Trevor Sargent, a member of the Green Party waved in the air a cheque for the sum of IR£100, which had been sent to him by a developer, proclaiming that it was '*part of the corruption in here*.' Following the incident, Cllr Sargent had to be escorted from the chamber for his own protection from some of his fellow councillors.

1.18 Subsequently, in May 1993, the then Minister for the Environment, Mr Michael Smith, TD in the course of a speech delivered at the Irish Planning Institute's Awards Ceremony, referred to zoning in Dublin as being '*a debased currency*.' While Mr Smith did not directly refer to corruption in this speech, he did comment on the extent to which the process for rezoning land in County Dublin had become tarnished and was being operated in a manner which ignored the needs of the community. According to Mr Smith, rezoning was at risk of becoming '*no more than the product of a mechanism for arbitrating on the claims of a limited number of landowners, potential developers and their agents.*'

1.19 After Mr Smith's speech, a deputation of Dublin county councillors came to meet him and, according to Mr Smith angrily indicated their disagreement with his views as expressed in his speech. That deputation included Cllrs Colm McGrath, G.V. Wright, and Cyril Gallagher, each of whom are the subject of findings of corruption in this report.

1.20 Corruption in the planning process was also the subject of several newspaper articles. In particular, a series of Irish Times articles in July 1993 openly discussed the payment of money by developers to elected councillors. Following on from those articles, Minister Smith requested the Commissioner of an Garda Síochána to investigate the allegations referred to in them. That investigation was conducted over a period of several months but did not result in any prosecutions.

1.21 Given the existence of such rampant public corruption, the obvious question is why it was allowed to continue unabated. The short answer to that question is that it continued because nobody was prepared to do enough to stop it. This is perhaps inevitable when corruption ceases to become an isolated event and becomes so entrenched that it is transformed into an acknowledged way of doing business. Specifically, because corruption affected every level of Irish political life, those with the power to stop it were frequently implicated in it. Moreover, the general apathy on the part of the public towards that corruption meant that there was insufficient pressure from the public to compel their representatives to take firm action to curtail or eliminate it. This apathy may in turn have been attributable to a lack of understanding regarding the corrosive and destructive nature of corruption. This situation did not change significantly, at least not until the events leading to the establishment of this Tribunal.

PART 2

1.22 This Part addresses a number of matters relevant to the main body of the report, including: the Tribunal's Terms of Reference; the conduct of its Inquiry; the standard of proof; issues relating to the Tribunal's findings; the Tribunal's approach to witness credibility; its powers to make recommendations; the executive summary; as well as a number of stylistic matters. It also gives a brief overview of planning and development law as it was applied during the period at the focus of this Report.

THE TRIBUNAL'S TERMS OF REFERENCE

1.23 The Tribunal's original Terms of Reference focused on an allegation of a payment to Mr Ray Burke. However, in 1998 the Tribunal requested the Oireachtas to amend those terms, as explained in its Second Interim Report. Following on from that request and in view of other significant developments which had taken place since the setting up of the Tribunal, the Oireachtas amended the initial Terms of Reference by Instrument of the Minister for the Environment and Local Government dated 15 July 1998. The Tribunal interpreted its Terms of Reference on 21 October 1998 (see Exhibit 2).

1.24 Subsequently, in its Fourth Interim Report, the Tribunal again requested the Oireachtas to amend its Terms of Reference. Essentially, the amendments proposed by the Tribunal were designed to better enable the Tribunal to manage its, by then, very large and expanding workload. In particular, the Tribunal sought more discretion in determining whether or not to proceed with particular lines of inquiry with a view to curtailing its work load. In response to this request, the Tribunal's Terms of Reference were again, and for the last time, amended by Resolutions passed by the Houses of the Oireachtas on 17 November 2004, and by instrument of the Minister for the Environment, Heritage and Local Government dated 3 December 2004.

CONDUCT OF THE INQUIRY

1.25 The role of a Tribunal of Inquiry is radically different from that of a court. In particular, proceedings before a Tribunal are inquisitorial rather than adversarial in nature which means that the Tribunal itself has responsibility for obtaining the information necessary to enable it to carry out its functions and to determine the witnesses to be called to give evidence.

1.26 This Tribunal's inquiry was carried out in two key stages. First, it conducted preliminary investigations during which the Tribunal focused on gathering information of potential relevance to its Terms of Reference. The purpose of these investigations was to determine whether or not the evidence gathered was in fact relevant to those terms and whether there was sufficient evidence to proceed to public hearing in relation to a particular matter. Of necessity, the Tribunal conducted this phase of its investigation in private, in order to prevent unsubstantiated or irrelevant allegations from entering the public domain thereby encroaching on the constitutional rights of those who were the subject of those allegations.

1.27 The private inquiry stage was of considerable duration and involved intensive investigations including identifying and interviewing potential witnesses and following paper trails. The Tribunal was required to approach its inquiry with an open mind and the mere fact that an allegation or event appeared bizarre or unbelievable was not necessarily a basis for excluding it from further inquiry. For example, one allegation inquired into by the Tribunal was that the late Mr Liam Lawlor had turned up, uninvited, to a meeting in London claiming to be a representative of the Irish Government. While Mr Lawlor's Counsel, described this allegation as '*crazy stuff.... off the wall*' and '*intrinsically unworthy of belief*' ultimately, having taken evidence from a number of witnesses, the Tribunal was satisfied that this allegation was in fact true.

1.28 Once the Tribunal was satisfied that a matter falling within its Terms of Reference warranted public inquiry, it then proceeded to hear evidence in public regarding that matter. In view of the multiplicity of issues and parties involved and in order to facilitate the orderly and focused examination of those issues and parties, it decided at an early date to divide its public inquiry into site specific inquiries forming individual modules. The Tribunal then proceeded to hear each module of evidence in turn, having circulated to all parties involved in the module copies of any material in the Tribunal's possession relevant to them. The Tribunal considered that this approach permitted all parties concerned to fully vindicate their rights whilst allowing the Tribunal to conduct its deliberations in a directed and efficacious manner. In particular, it better enabled witnesses and their legal representatives to prepare themselves for, on occasion, lengthy periods giving evidence, and/or cross examining other witnesses.

1.29 For the purposes of its public inquiry, the Tribunal at all times sat as a single body. While following the enactment of the Tribunals of Inquiry (Evidence)(Amendment) Act 2004, the Tribunal was empowered to sit in sub-divisions at the direction of the Chairman, it never in fact did so. This was because, by the time that Act was enacted, the Tribunal had already heard several modules of evidence some of which were so interlinked with subsequent modules that the possibility of an individual Member hearing one of those modules was neither practicable nor legally sound. The Tribunal was convinced that any attempt to exercise its power to hear evidence in sub-divisions would have almost certainly given rise to significant litigation and ultimately undermined the Tribunal's work.

1.30 At the conclusion of the public hearings of the Tribunal on 3 December 2008, all parties who faced the prospect of potential adverse findings in this Report were afforded an opportunity to submit written submissions to the Tribunal in relation to evidence relevant to them. A minority of parties chose to make such submissions which provided them with the opportunity to summarise their respective positions, and to comment on the evidence heard by the Tribunal in the course of its public hearings. The Tribunal took account of these submissions in preparing this Report.

STANDARD OF PROOF

1.31 The standard of proof adopted by this Tribunal was that of the '*balance of probabilities*.' As the conclusions in a report such as this represent no more than a reasoned and informed expression of the Tribunal's opinion in relation to matters considered by it, the Tribunal considered that the criminal standard of proof, namely '*beyond reasonable doubt*' was neither necessary nor appropriate. This was confirmed by the Supreme Court in Hazel Lawlor v Members of the

Tribunal of Inquiry into Certain Planning Matters & Payments (SC No 376 of 2008) in which it rejected a claim that the Tribunal should apply that criminal standard in considering the evidence of or relating to the late Mr Liam Lawlor. Several other Tribunals of Inquiry have also made their conclusions on the balance of probabilities.

1.32 Despite the fact that its conclusions are in no way findings of either criminal or civil liability, the Tribunal remained very conscious that those conclusions could nevertheless reflect adversely on the personal reputation of those affected by them. Consequently, while the Tribunal reached its conclusions on the balance of probability, it also took the view that the degree of probability required to establish any fact was proportionate to the nature and gravity of the issue under consideration. In this respect, the Tribunal adopted the approach suggested by Murray J in Hazel Lawlor v the Members of the Tribunal of Inquiry into Certain Planning Matters & Payments, where he stated that:

> *'The findings made must clearly be proportionate to the evidence available. Any such findings of grave wrongdoing should in principle be grounded upon cogent evidence.'*

1.33 As a consequence of this approach, the Tribunal required a higher degree of probability to establish facts relied upon to make a finding of corruption, than, for example, to make a finding of inappropriate conduct.

1.34 Evidence comes in all shapes and sizes. Tribunals, like other fact finding bodies, are provided with both oral and documentary evidence of various quality. The weight which attaches to any one piece of evidence varies depending on many factors. These include in particular the credibility of a particular witness which is discussed further below. Corroborative evidence, when available, is especially valuable. While, as mentioned the Tribunal heard evidence in modules and has also adopted that structure in this Report, it nevertheless took into account the collective weight of the evidence relating to any particular individual when reaching its conclusions.

1.35 Not all of the Tribunal's inquiries have resulted in findings. Specifically, in some instances the Tribunal did not consider that the evidence heard enabled it to make any findings regarding a particular matter. In such instances, this Report sets out the evidence heard by the Tribunal, without however, coming to any conclusions regarding that evidence.

CREDIBILITY

1.36 Over the course of its public inquiry, the Tribunal took evidence from 595 witnesses. Some times the same witnesses gave evidence in the context of several different modules on several different occasions.

1.37 In contrast to the situation in adversarial proceedings, there were no witnesses for the prosecution and no witnesses for the defence. Specifically, every witness was a witness to the Tribunal and examined by Counsel to the Tribunal. On occasion that witness was then cross-examined by their own Counsel and/or by the Counsel for other witnesses.

1.38 In the case of each witness, a key question for the Tribunal was whether that witness was a source of reliable information about a matter falling within the scope of the Tribunal's inquiry. In other words, whether that information was worthy of belief or confidence.

1.39 Assessments on credibility are not within the unique competence of judges. Each of us makes numerous assessments of credibility in any one particular day, albeit usually tacitly or subconsciously. The way in which we make those assessments frequently depends on our own experiences and assumptions. In particular, there is no mathematical formula for determining the credibility of information and any number of factors may influence that determination.

1.40 In assessing credibility, this Tribunal focused on two related questions. Firstly, whether the witness believed that he or she was giving truthful evidence and secondly, whether that information was in itself reliable. In assessing the first of these questions, key factors included the witnesses' demeanour and in particular whether he or she answered the questions put to him or her directly without attempting to evade or avoid them. The Tribunal also considered whether or not the witness had any motivation to lie.

1.41 In determining the reliability of the information provided by a witness, the Tribunal was influenced by factors including: whether the witness had direct knowledge of the events about which he or she testified; the plausibility of the witness' testimony; the consistency or inconsistency of that witness' testimony as compared with other testimony or information given either by that or another witness; and whether he or she displayed a bias, hostility or some other attitude that could affect the accuracy of their recollection.

1.42 In the case of each witness the Tribunal was of course conscious that a considerable amount of time had elapsed between the occurrence of the events into which it was inquiring and its public inquiry. The Tribunal made due

allowances for the fragility of human memory in accurately remembering events which happened a number of years ago. In particular, the Tribunal considered that a certain degree of confusion or memory lapse regarding the precise date of an event, or some of its less salient details was more or less to be expected and did not necessarily throw into doubt the entire evidence of that particular witness.

1.43 As mentioned, in assessing the reliability of information provided by a witness in evidence, the Tribunal took into consideration whether or not a witness had made an earlier statement which was either consistent or inconsistent with his or her evidence.

1.44 The weight given by the Tribunal to the content of prior statements and in particular prior inconsistent statements was the focus of much attention during the course of its public inquiries. In essence, that weight depended substantially on the type of prior statement at issue, including the circumstances in which it was made, and the nature of the inconsistency. With regard to the former, the types of prior statements considered by the Tribunal fell into a number of different categories ranging from formal written statements made by the witness himself or herself, with the assistance of his or her legal representatives to notes of conversations with the witness made by third parties. Obviously, the Tribunal attached greater evidential weight to the former than to the latter. Factors which the Tribunal took into account in determining the evidential value of statements reported by third parties included: whether the note purported to be a complete account of the event in question; the purposes for which the note was taken; whether or not the witness had had the opportunity to review the note; and whether the witness accepted as accurate the information contained in the note. In instances where a witness gave a more complete account of a matter in evidence than in a note of a conversation regarding that matter, the Tribunal also took into account the duration of the event to which the note related as compared to the duration of the witness's evidence on the same matter.

1.45 Where a witness appeared in several different modules, the Tribunal's assessment of his or her credibility in one module affected its assessments of that witness' evidence in another module. For example, where the Tribunal was satisfied that a witness had given untruthful evidence in one module, this clearly affected its perception of the reliability of that witness's evidence in a subsequent module.

1.46 One witness before the Tribunal requested and was granted immunity by the Director of Public Prosecutions. While it was argued before the Tribunal that that immunity undermined the credibility of that witnesses evidence, the Tribunal did not consider this to be the case. Specifically, the immunity granted to the

witness was conditional on that witness cooperating with the Tribunal, which necessarily included giving truthful evidence. Consequently, far from giving that witness carte blanche to lie to the Tribunal, that immunity should logically have acted as a further incentive for that witness to give truthful evidence.

ISSUES RELATING TO FINDINGS

1.47 As is clear from the above, the Tribunal's findings comprise its reasoned conclusions regarding the matters falling within its Terms of Reference. It cannot be emphasised sufficiently that these findings are not findings of either criminal or civil liability.

1.48 According to the Tribunal's Terms of Reference, it was required to report on:

> *Any acts associated with the planning process which may in its opinion amount to corruption, or which involves attempts to influence by threats or deception or inducement or otherwise to compromise the disinterested performance of public duties.*

1.49 In his ruling on 21 October 1998, the then Sole Member of the Tribunal, Mr Justice Feargus Flood, interpreted the Tribunal's Terms of Reference. He explained that for the purpose of those terms the word '*corruption*' includes:

> *destroying, hindering or perverting the integrity or fidelity of a person in the discharge of his duty, or the abuse of influence or power or duty by any person, or to bribe, or to induce another to act dishonestly or unfaithfully, or an attempt to do the same, or circumstances of control, influence or involvement with such person to the extent that it gives rise to a reasonable inference of unequal access, or favouritism, or a set of circumstances detrimental to his duties.*

1.50 He went on to explain that the Tribunal interpreted the words '*attempts to influence*':

> *As including an attempt through power or pressure or control of whatever character whether acting on fears or hopes or otherwise to induce or coerce or persuade another to act in a manner such that the free use of his judgment has been deprived.*

1.51 There is obviously a considerable overlap between the Tribunal's definition of '*corruption*' and that of '*attempts to influence*.' The difference between the two lies primarily in the fact that an attempt to influence more readily encompasses extortion or coercion, although the definition of corruption also appears sufficiently broad to include this type of behaviour.

1.52 The Tribunal has not confined its findings of impropriety to corruption or attempts to influence. Specifically, in some instances it has termed behaviour to be improper, inappropriate, unethical or to constitute a conflict of interest rather than corrupt. This was done to reflect the seriousness with which the Tribunal viewed a finding of corruption.

1.53 The Tribunal's interpretation of the term '*corruption*', in particular calls for a number of observations. Specifically, although at least until recent years the criminal law of corruption has been almost uniquely concerned with bribery, the definition of corruption used by the Tribunal extended beyond bribery to encompass other forms of corruption. Moreover, for the purpose of this Report the Tribunal considered a bribe to be an inducement improperly influencing the performance of a public function which is meant to be exercised gratuitously.[1] It was not concerned with whether the payment in question fell within the scope of the criminal bribery offences. This again reflects the fact, emphasised above, that the Tribunal's conclusions merely reflected its reasoned opinion of the matters investigated by it and were and are not in any way, shape or measure a finding of criminal or even civil liability.

1.54 Aside from bribery, the Tribunal's definition of corruption encompassed the following behaviour, or attempted behaviour: (1) destroying, hindering or perverting the integrity or fidelity of a person in the discharge of his duty; (2) the abuse of influence or power or duty by any person and; (3) inducing another to act dishonestly or unfaithfully. It also covered circumstances of control, influence or involvement with a person in the discharge of his duty to the extent that it gave rise to a reasonable inference of unequal access, or favouritism, or a set of circumstances detrimental to his duties.

1.55 For the most part, the Tribunal's inquiries focused on situations where it appeared that one or more payments may have been made to an elected or appointed public official. In circumstances where the Tribunal found that a payment had been made, it then went on to consider whether it was a corrupt payment: a) on the part of the payer; and b) on the part of the recipient. In considering these issues, the Tribunal took the view that it was possible for a payment to be corrupt, for example, on the part of the payer but inappropriately or even innocently received. Where appropriate, the Tribunal distinguishes these types of payments in its Report. In instances where the Tribunal finds a payment to be corrupt, then it means that it is corrupt on the part of both the payer and the recipient, unless otherwise stipulated.

[1] See John T. Noonan Jr., *Bribes* (New York, Macmillian Publishing Company, 1984), xi

1.56 The Tribunal considered the making of a payment to be corrupt if it was made in order to influence its recipient to either exercise his or her public functions in the payer's interests rather than those of the public or to take account of those interests when exercising those functions. The Tribunal considered a number of facts to be relevant when making this determination, including: the size of the payment; whether the payer stood to derive a benefit or suffer a loss from the recipient's exercise of his or her public functions, and the proximity of the payment to the exercise of those functions. In instances where the payment was described as a political donation, it also took into consideration the payer's overall history of making political donations and in particular whether he or she had made similar donations at times when he or she did not have a specific interest in the recipient's exercise of his or her public functions.

1.57 The Tribunal inquired into a significant number of payments made through intermediaries. In the case of such payments, it was necessary to determine both whether or not the payment was corrupt on the part of the intermediary as well as on the part of the person on behalf of whom the payment was made (the '*principal'*). In the case of the intermediary, the factors listed in the previous paragraph were again relevant. In the case of the principal, the Tribunal also took account of matters such as: the amount and timing of the payments made to the intermediary; the method of payment; whether or not the intermediary issued invoices in respect of those payments; if invoices did issue, the level of specificity with which they described the nature of the services provided in relation to those payments; and where the principal was a corporation, the attribution of the payments within its books and records.

1.58 The Tribunal did not consider it necessary that the recipient was actually influenced by the payment or even aware of the payer's intention to influence him or her for the payment to be corrupt on the part of the payer. Nor did the Tribunal view the description of the payment to be a determining factor. In particular, the Tribunal found a significant number of payments claimed to be political donations to be corrupt payments. While the Tribunal of course recognised that perfectly legitimate political donations may be directly linked to their recipient's stance on a political issue, it considered that the more a donation was linked to a specific matter, the more likely it was to be a corrupt payment. In this respect, the Tribunal drew a distinction between, for example, a payment made because the recipient was generally pro-development and a payment made so that the recipient would vote in favour of a specific land rezoning in which the payer had an interest.

1.59 The Tribunal viewed the receipt of a payment to be corrupt if the recipient linked that payment to the exercise of his or her public functions in a specific matter. It was not necessary that the payment actually changed the way in which the recipient performed those functions. Specifically, the Tribunal believed that both elected and appointed public officials were and are under a duty to perform their public functions uniquely in the interest of the public. Where the Tribunal formed the view that a recipient accepted a payment in the knowledge that it was intended to induce him or her to show partiality to the payer in the performance of those functions, it concluded that the receipt of the payment was an abuse of the recipient's power or duty. In reaching its determination on this issue, the Tribunal took into account a number of the factors mentioned above, including for example, the size of the payment; where solicited, the manner and the circumstances in which it was solicited; the payer's history of making political donations to the recipient; whether or not the payer stood to gain an advantage or suffer a loss from the recipient's exercise of his or her public functions and the recipient's awareness of this fact.

1.60 As mentioned, in certain instances the Tribunal termed either the making or receipt of a payment as improper or inappropriate rather than corrupt in order to reflect the seriousness of a corruption finding. In the case of the making of a payment, factors taken into consideration by the Tribunal included whether or not the payer acted partially or entirely under duress on the part of the recipient. In the case of the recipient, relevant considerations included in particular the size of the payment and the nature of the recipient's relationship with a payer. Specifically, in the Tribunal's view, where a recipient of a payment was aware that the payer had an interest in a matter falling, or about to fall, within the exercise of his or her public powers, he or she should in all cases either have returned that payment or disclosed it before exercising that function. Nevertheless, the Tribunal was reluctant to declare the receipt of all such payments to be corrupt. This was particularly the case where the payment in question was for a minor sum or where there were other considerations which suggested that the payment fell short of a corrupt payment. However, perhaps inevitably, the distinction between an improper/inappropriate payment and a corrupt one was a matter of degree rather than an exact science.

1.61 The Tribunal is of course aware that in making a finding of corruption or impropriety it may well be criticised for judging the behaviour of the individuals who fell within the scope of its inquiries by today's standards rather than the ones which applied at the time. The Tribunal rejects these criticisms. In particular, while the level of transparency and accountability is certainly greater now than it was during the period inquired into by the Tribunal, it does not consider that there has been any fundamental change in the concept of what is

or is not proper behaviour on the part of public officials. The Tribunal notes that in the case of certain payments into which it inquired, public officials refused donations made to them because they were conscious of the impropriety of those payments.

POWER TO MAKE RECOMMENDATIONS

1.62 As part of its Terms of Reference, this Tribunal was asked to make recommendations on how to improve existing legislation governing corruption in light of its inquiries. Indeed, in addition to making factual findings on the basis of the evidence heard, this is one of the core functions of an inquiry such as this one. The Tribunal's power to make recommendations is set out in paragraphs 5 and 6 of its amended Terms of Reference and is framed in the broadest terms:

5. *In the event that the Tribunal in the course of its inquiries is made aware of any acts associated with the planning process which may in its opinion amount to corruption, or which involve attempts to influence by threats or deception or inducement or to otherwise compromise the disinterested performance of public duties, it shall report on such acts and should in particular make recommendations as to the effectiveness and improvement of existing legislation governing corruption in the light of its inquiries.*

6. *And that the Tribunal be requested to make recommendations in relation to such amendments to Planning, Local Government, Ethics in Public Office and any other relevant legislation as the Tribunal considers appropriate having regard to its findings.*

1.63 Although the Tribunal's inquiries focused primarily on planning, as is clear from its Terms of Reference its power to make recommendations extends well beyond this area. This is attributable to the fact that in order to combat corruption effectively it is necessary to adopt a holistic approach. Specifically, combating corruption in planning would be impossible if corruption in other areas is allowed to continue unimpeded: if left unchecked, diseases like corruption tend to spread and infect every area of public life. On a related point, the Tribunal is of the opinion that the type of corruption into which it inquired was by no means unique to planning, rather that was simply the area in which it manifested itself at that time. Corruption will automatically be attracted to those areas in which controls are at their weakest and strengthening controls in one area to the exclusion of others will simply lead to its emergence in those less regulated areas.

1.64 The Tribunal's recommendations affect each of the following areas: planning; ethics in public office; political finance; lobbying; bribery; corruption in office; money laundering; asset confiscation; as well as a number of miscellaneous areas. These recommendations comprise an important component of its work and are a vital corollary to its inquiries. The Tribunal is convinced that if these recommendations are given effect they will help to prevent a recurrence of the corruption inquired into by this Tribunal and to ensure that, in the future, public power is exercised in the public's interest. The Tribunal hopes and trusts that there exists sufficient political will to prevent the future abuse of public power to ensure their full implementation. These recommendations are the Tribunal's final contribution to combating corruption in Ireland and a failure to implement them will greatly undermine the value of the work which it has accomplished.

SUMMARY OF FINDINGS

1.65 Chapter 17 of this Report includes a Summary of the Tribunal's main conclusions. The purpose of this summary is to provide the reader with a short overview of the Tribunal's more significant findings. For obvious reasons it is no substitute for a detailed reading of the report. Moreover, in cases of any discrepancies between the findings as set out in the Summary of the Tribunal's main conclusions and the Report itself, obviously those in the Report are authoritative and take precedence.

Unfortunately, it was not possible to provide a more comprehensive executive summary giving not only the Tribunal's findings but an overview of the facts and evidence considered in making those findings. This is largely because this Report deals with fourteen separate inquiries and some of the chapters dealing with those inquiries are particularly complex and lengthy. To accurately summarise these chapters would have necessitated a relatively detailed recount of their subject-matter running to several hundred pages in length, which would have defeated the purpose of the summary.

STYLISTIC MATTERS

1.66 This report comprises over two thousand pages of analysis and conclusions. In the drafting of this Report, various decisions were taken by the Tribunal in the interests of clarity and to minimise the risk of confusion on the part of the reader.

1.67 The sequence in which the various modules of inquiry pursued by the Tribunal are presented in this Report reflects the order in which Dublin County Council approached its review of the 1983 County Dublin Development Plan, commencing in 1987. The majority of the modules concerned issues directly related to that review and the making of the 1993 County Dublin Development Plan. Two modules considered issues relating to the making of the 1998 Dún Laoghaire-Rathdown County Development Plan. The lengths of these chapters vary greatly reflecting the complexities of the evidence involved and in particular the length of the public hearings on each of them.

1.68 In preparing this Report, the Tribunal considered an enormous amount of oral and documentary evidence relating to particular individuals. At times those individuals acted personally, at others, they acted through corporate entities and/or other similar bodies. For convenience, and in order to accurately represent and reflect the personal responsibility for particular events which were the subject of this Tribunal's inquiries, this Report commonly attributes actions to an individual although in strict legal terms those actions may have been carried out by an entity under that individual's direction/control. For example, in instances in which the Tribunal referred to the activities of Mr Owen O'Callaghan, Mr Tom Gilmartin, Mr Christopher Jones, and Mr Frank Dunlop, to name but a few, it often did so on a personal basis, notwithstanding the fact that, on occasion, the individual named may have been operating through a company directed or controlled by him.

1.69 As mentioned, over the course of its inquiries for the purpose of this Report, the Tribunal heard evidence which generated approximately 60,000 pages of transcripts. Where it deemed it appropriate to do so, the Tribunal quotes extracts from those transcripts in this Report. The quotes are exactly as they appear in the transcripts and have not been edited or corrected in any way.

1.70 A number of chapters include exhibits which are to be found at the end of those chapters. These were either referred to or exhibited during the Tribunal's public hearings. It is hoped that these exhibits will assist the reader to achieve a better understanding of the matters discussed in the Report and to which they relate. As the Tribunal exhibited or made available for exhibition in excess of 80,000 pages of documentation in the course of its public hearings, it was obviously not possible to include all of them in this Report. The non-reproduction of particular documents in no way reflects negatively on their relevance, importance or evidential value.

PLANNING LAW

1.71 Ireland's planning system was first introduced on 1 October 1964 when the *Local Government (Planning and Development) Act, 1963* came into effect. This Act conferred responsibility on local government to provide for the orderly planning and development of the country. It has been amended on numerous occasions and the legislation is currently consolidated in the *Planning and Development Acts 2000 – 2011.* However, this overview is focused on the planning system prior to the enactment of the *Planning and Development Act 2000*, which was in force during the period upon which this Tribunal's inquiries were concentrated. Therefore it outlines the system set out in the 1963 Act, the Local Government (Planning and Development) Acts 1976, 1982, 1983, 1990, 1992 and 1993 and the Local Government (Planning and Development) Regulations, 1994.

1.72 Under the Local Government (Planning and Development) Act 1963, as amended (the '*1963 Act*'), the planning system had three main functions: making (and varying) development plans; granting planning permission; and planning enforcement. The implementation of the physical planning system in Ireland was the responsibility of the local planning authorities, namely, county and district councils, and corporations. Functions of Local Authorities were (and are) separated into reserved (political policy) and executive (management) functions. The former were performed by the elected representatives, namely the Council/Corporation members and the latter by the relevant Local Authority Manager.

THE DEVELOPMENT PLAN

1.73 Under the 1963 Act, the Development Plan was the main instrument for regulating and controlling development, in particular it zoned land for the purpose of various uses. Land which was rezoned for development usually greatly increased in value.

1.74 Under s.19 of that Act, all Planning Authorities were required to make a development plan which consisted of a written statement and a plan indicating the development objectives of the area to which it related, and any major developments contemplated by the Planning Authority within its functional area. Under s.20(1) of the 1963 Act, once made, a development plan had to be reviewed at least once every five years for the purposes of either making a new development plan or varying the existing plan.

1.75 The development plan played a crucial role in the development and planning process. Specifically, s.22(1) of the 1963 Act required each Planning Authority '*to take such steps as may be necessary for securing the objectives which are contained in the provisions of the development plan.'* Moreover, there was a presumption in favour of adhering to the development plan, in the sense that there was a significantly increased likelihood of planning permission being granted when the proposed development was in accordance with that plan. In particular, according to s.26(3)(a) of the 1963 Act, special procedures had to be observed before planning permission could be granted for development which was in material contravention of the plan. Furthermore, a Planning Authority itself could not effect any development which materially contravened the plan. Nevertheless, there was still some flexibility in the planning process and Planning Authorities were not expected to adhere slavishly to the development plan.

1.76 While the management of the relevant Planning Authority played a role in drafting the development plan, ultimately the decision making power rested with its elected councillors. Generally, the management first prepared review working papers and reports which it then submitted to those councillors for approval. Having obtained the councillors' approval, the Manager then proceeded to draft the development plan or proposed variations of the existing plan and then again submitted it to the councillors for approval. Once approved, the Manager put the draft plan or variations on public display for three months. At the end of this period, having considered any submissions received as a result of the public consultation process, the councillors could make, vary, or amend the draft development plan or draft variation. In the case of an amendment, the procedure differed depending on whether or not the proposed amendment constituted a '*material alteration*' of the draft plan or variation. Specifically, where the proposed amendment constituted a material alteration of the plan or variation, the Manager would display the plan publicly for a further period of one month during which the public were entitled to make submissions or observations on it. Where the proposed alteration was not a material alteration, the councillors could proceed to make the plan without any further public consultation. Once the development plan was made the Manager had to so inform the public.

1.77 Both the development plan and any variations to it were adopted by a majority of the votes of the elected councillors of the Planning Authority who were present, and who voted. Moreover, members could themselves make proposals on the contents of the draft plan and/or any proposed variations. According to the Standing Orders of Dublin County Council, any such proposal had to be by way of written motion and signed both by the councillor proposing the motion and the councillor seconding it. In addition, where necessary the motion had to be accompanied by a location map. The power of the councilors to

submit motions, together with the exercise of their votes, enabled them to exercise a decisive influence on the final shape of the development plan.

PLANNING PERMISSION

1.78 The 1963 Act imposed a general obligation that (subject to specified exceptions) planning permission be obtained before any development could take place on land. Under s.26 of the Act, an application for planning permission had to be made to the planning authority within whose functional area this land was situated. That authority could then decide to grant the permission sought, with or without conditions, or refuse it. That section, provided that when dealing with applications for planning permission, the relevant planning authority was '*restricted to considering the proper planning and development of the area of the authority.'*

1.79 Under the 1963 Act, the grant of planning permission was primarily an executive function falling within the competence of the Manager. However, the elected Councillors could be involved in the decision to grant or refuse planning permission in two ways. First, as mentioned, normally planning permission had to be in accordance with the development plan: the Manager could not grant permission for a development which was in material contravention of that plan. However, under s.26(3)(a) of the 1963 Act, the Councillors could, by resolution, grant permission for such a development provided the required public consultation procedures were followed. Pursuant to an amendment introduced by s.45 of the Local Government Act 1991, the resolution had to be passed by not less than three-quarters of the total number of those Councillors. Where such a resolution was passed the Manager had to grant the planning permission while where it was defeated, the Manager was required to refuse permission.

1.80 Secondly, the elected councillors were able to direct the Manager to grant planning permission under s.4 of the City and County Management (Amendment) Act 1955. Initially, to pass such a resolution, the number of the councillors voting in favour of the resolution had to exceed one-third of the total number of the members of the relevant Council/Corporation. However, an amendment introduced by s.44 of the Local Government Act 1991 had the effect that from that time such a direction had to be passed by resolution by no less than three-quarters of the total number of the Councillors of the Council/Corporation. Moreover, if the land was situated in a single local electoral area, the notice of the intention to propose a Section 4 motion had to be signed by at least three councillors of the local authority concerned. Where the land was situated in more than one such area, the notice had to be signed by not less than three-quarters, as respects each such area, of the total number of the Councillors of the relevant

authority. Provided the resolution was valid, the Manger was required to give effect to it and could not exercise any discretion as to whether or not to obey the direction.

ENFORCEMENT

1.81 Enforcement was essentially concerned with ensuring that the planning and development system was respected. The relevant planning authority could take enforcement action where development took place without permission or where it did not comply with the conditions of a planning permission. Under the 1963 Act, the enforcement system had three essential objectives: (1) to ensure that objectionable development was discontinued; (2) to ensure compliance with planning permission; (3) to promote compliance with the requirement to obtain planning permission before the commencement of the development. As in the case of the grant of planning permission, enforcement was primarily a matter for the Local Authority Manager: councillors had no specific role to play in this area.

PART 3

1.82 Both the nature and duration of this Tribunal's inquiries have been the subject of extensive public discussion and much criticism. In some instances this criticism was inevitable. The Tribunal owes its establishment to the inability of the normal political and investigative powers of the State to uncover or otherwise control the corruption which formed the subject of its inquiries. This inability is itself attributable to the endemic nature of that corruption and the fact that it involved powerful and influential individuals. It was perhaps inevitable that some of those individuals would attempt to blacken the name of the Tribunal in order to undermine its inquiries and its ultimate findings. Had the Tribunal found favour with those individuals or in the sectors of the media supportive of them, this would have been the first indication that the Tribunal was not doing its job.

1.83 Nevertheless, not all the Tribunal's critics fall into this category. On the one hand, some of the more sustained and virulent attacks on the Tribunal went beyond what could be termed as normal unpopularity and are best viewed as attempts to compromise its integrity and independence. On the other hand, some criticisms were understandable, if not always well-founded and the Tribunal wishes to comment on three issues, in particular, which have preoccupied the press at various times. These are: the duration of the Tribunal's inquiry; the costs of that inquiry; and the leaking of information. While the Tribunal did not think it appropriate to comment on these issues while it was still conducting its inquiries, it likewise does not consider it appropriate to conclude those inquiries without doing so.

THE INTEGRITY AND INDEPENDENCE OF THE TRIBUNAL

1.84 The origin of a Tribunal of Inquiry can usually be traced to serious public disquiet regarding a matter which needs to be investigated in order to either root out the wrongdoing at the source of that disquiet, or demonstrate that there is no basis for it. They are typically only used as a last resort, when other agencies of investigation have failed to work or are unlikely to work. In order to carry out their investigative role, Tribunals must possess both political and financial independence and enjoy public trust and confidence. Attempts to illegitimately undermine that independence or erode that trust and confidence are nothing less than attempts to undermine the inquiry being undertaken by the relevant Tribunal, and in so doing frustrate the will of the Oireachtas.

1.85 In the course of its inquiries, this Tribunal experienced the independence and support necessary for it to fulfil its mandate. However, in 2007/2008 at a time when this Tribunal was inquiring into matters relating to Mr Bertie Ahern, the then Taoiseach, it came under sustained and virulent attack from a number of senior Government ministers who questioned, *inter alia* the legality of its inquiries as well as the integrity of its members.

1.86 It was entirely inappropriate for members of the Government to launch such unseemly and partisan attacks against a Tribunal of Inquiry appointed following a resolution passed by both Houses of the Oireachtas to inquire into serious concerns regarding corruption in public life. There appears little doubt but that the objective of these extraordinary and unprecedented attacks on the Tribunal was to undermine the efficient conduct of the Tribunal's inquiries, erode its independence and collapse its inquiry into that individual. They were as regrettable as they were ill-considered and unfounded.

DURATION

1.87 The inquiry conducted by this Tribunal is the longest inquiry in the history of this State, a fact which has frequently been the subject of adverse comment both by the media and in other circles.

1.88 While the Tribunal fully recognises the desirability of accomplishing inquiries as expeditiously and as cost effectively as possible, it also believes that it has fulfilled this objective. Specifically, the duration of this Tribunal's inquiries cannot be viewed in isolation from their subject matter, as specified in its Terms of References and/or other events that also impacted on their duration.

1.89 Pursuant to its Terms of Reference, this Tribunal was mandated to investigate any acts associated with the planning process which may in its opinion amount to corruption or involving attempts to influence the improper performance of public duties. Those Terms were exceptionally wide, especially when compared to those of other Tribunals of Inquiry. Moreover, because of the number of acts involved, they took an extraordinary amount of time to inquire into. The Tribunal very much doubts that it could have effectively investigated those acts in any less time than it ultimately took.

1.90 Corruption itself is a notoriously difficult matter to investigate, partially because all parties to the transaction tend to be equally implicated in it, and partially because the Tribunal had, in effect, little information before it of corruption in the planning process. Few people came forward with information and, according to evidence given by Mr Frank Dunlop, there was a common perception that the Tribunal's establishment was some sort of PR exercise and that it was going nowhere. He also stated that there were discussions among certain politicians to the effect that '*if you don't tell them anything, nothing will ever happen.*'

1.91 Ultimately, the Tribunal's progress depended on the meticulous and forensic investigations conducted by its legal team. These investigations were inevitably detailed and time-consuming. This was, as mentioned, partly because of the nature of corruption. However, the Tribunal also lacked the powers necessary to conduct those investigations more expeditiously. In particular, the Tribunal relied heavily on the voluntary co-operation of potential witnesses as it was not in a position to compel such witnesses to attend for private interview or to provide detailed written statements. Nor was the Tribunal able to obtain documents other than by way of a Discovery Order. Making such an Order was a time-consuming process which required the Tribunal to give notice of the proposed order and permit affected parties to make submissions as to whether the Order should be made and/or as to its terms. The discovery process also suffered from the disadvantage that it lacked any element of surprise and afforded parties every opportunity to conceal or dispose of documents in advance of the Order being made.

1.92 The duration of the Tribunal's inquiries was also affected by the considerable amount of litigation in which it was involved. While this litigation played a significant role in determining the contours of the fair procedures required of the Tribunal as well as other aspects of its role in circumstances where there had been little by way of judicial pronouncement in the past, it also diverted significant resources from the conduct of its inquiries. A list of the cases in which the Tribunal was a named party is included as an exhibit to this chapter.

1.93 Investigating and otherwise dealing with unauthorised disclosure of confidential information in the Tribunal's possession also diverted resources away from the Tribunal's inquiries.

COSTS

1.94 The costs of running a Tribunal of Inquiry have been a frequent matter of comment in the press. To date, this Tribunal has cost approximately €97 million, including some third party costs. However, the final costs will only become clear once the Chairman of the Tribunal has made his decision as to whether to award costs to those witnesses who apply for them. In 2007, the Chairman of the Tribunal, in response to a suggestion by a then Government minister that the likely cost of the Tribunal to the State would reach IR£1 billion estimated that the total costs would not exceed IR£300 million. The Tribunal continues to believe this to be the more realistic estimate.

1.95 The debate about the costs of the Tribunal is undoubtedly an important and legitimate one. However, the Tribunal also believes it to be important to call attention to the significant downstream gains to the Exchequer arising from its establishment and the conduct of its proceedings. In particular, the Tribunal has been instrumental in the recovery of substantial sums of money by the Revenue Commissioners. The Criminal Assets Bureau has also instituted civil forfeiture proceedings in relation to matters which were the subject of investigation by this Tribunal. In December 2008, the Comptroller and Auditor General estimated the combined amount recovered by the Revenue Commissioners and the Criminal Assets Bureau to be IR£51.2 million. It is also likely that the Tribunal's existence and the forensic nature of is public inquiries has led to a reduction in corrupt activity then might otherwise have been the case, and perhaps more importantly, a greater public awareness of this issue.

TECHNOLOGY

1.96 The Tribunal has at all times been conscious of the need, as required under its Terms of Reference to be cost effective and efficient in its work and in this regard the Tribunal has embraced technical advances in Information Technology under the supervision of the Tribunals Director of ICT in order to operate more efficiently and effectively, and reduce costs where possible. From the outset it has used document management software to manage the extensive discoveries made to the Tribunal pursuant to Orders of Discovery and Production made by the Tribunal. These systems speeded up research, investigative and preparatory work. The use of Information technology reduced the necessity for additional staff and the duration of its work. At the conclusion of the Tribunals public hearings in 2008, in excess of 1,600,000 pages of documents had been

discovered pursuant to Orders of the Tribunal in relation to the matters which were the subject of this Report.

1.97 When the Tribunal was first established in November 1997 the dates of its public sittings were notified to the general public through advertisement in the Print media. Upon the establishment of the Tribunal website www.planningtribunal.ie in March 1999 all such notices and any public communications were published on its website. In September 2002 the Tribunals Second Interim Report was published and uploaded to the website. By November 2002, in excess of 64,000 copies of this Report were downloaded.

1.98 In recognition of the the success of its website the Tribunal was anxious to extend its functionality and in this regard from the resumption of its public hearings in November 2002 it commenced to upload the daily transcript to the website thereby making it almost immediately available to witnesses and their legal representatives, and the general public. The Tribunal is grateful to Premier Captioning and Realtime who from 2002 provided the daily transcript and thus ensured its availability on the Tribunal website on a daily basis.

UNAUTHORISED DISCLOSURE

1.99 On a number of occasions in the course of its inquiries, the Tribunal was troubled by the unauthorised disclosure or leaking of information. In most instances, this involved the publication of information and/or material by newspapers in circumstances which not only damaged the reputation of individuals, but also undermined the Tribunal's reputation and hence its integrity.

1.100 On several occasions, journalists, politicians and other individuals suggested that the Tribunal itself was complicit in arranging or facilitating the leaking of information. While at times these suggestions were prompted by genuine concerns regarding the source of the leak, this was not always the case. Specifically, the Tribunal believes that at least on some occasions individuals attributed leaks to the Tribunal in an attempt to discredit it rather than from a genuine belief in the accuracy of that attribution.

1.101 In every instance where the media published leaked information, the Tribunal conducted its own inquiries into the source of that leak. The extent of that inquiry depended upon the nature of the leaked information. In particular instances, the Tribunal's inquiries were detailed and specific. Steps taken by the Tribunal in that investigative process included, variously, the conduct of its own in-house inquiries, correspondence with relevant parties, the questioning on oath of individuals; the involvement of An Garda Siochana, litigation with newspapers and the use of a documentary identification computer software system.

1.102 The Tribunal's efforts to establish the source of leaked information was successful in one instance, involving Mr Michael Bailey. In that instance, the Tribunal found that Mr Bailey himself was the source of the leaks in question. Mr Bailey had cynically used the leaks to question the integrity of the Tribunal and relied on them to delay furnishing information to the Tribunal.

1.103 On a number of occasions, individuals attributed the source of the leaks to the Tribunal itself. In particular, on 26 September 2006, the then Minister for State Mr Noel Tracy TD stated in the course of a radio interview with Newstalk that It was a well known fact that the Tribunal constantly leaked for political purposes, and that the conduit of such leaks was well known. Nevertheless the Tribunal is satisfied that the leaks did not originate within the Tribunal. In particular, those persons within the Tribunal who had access to information which was the subject of a leak also had access to other controversial or sensitive information which was not leaked. This, together with the nature of the information leaked and the timing of the various leaks is strongly indicative of the fact that it was attributable to parties outside the Tribunal. Moreover, when the Tribunal subsequently questioned Mr Tracy regarding his statements, he conceded that he had no information to support it and was unable to give any credible reasons for having made the allegation in the first place.

PART 4

POST-PUBLICATION

1.104 The Chairman of the Tribunal will in due course adjudicate on applications by parties to have all or a portion of costs incurred by them in the course of their dealings with the Tribunal paid by the Minister for Finance. It will also consider whether or not to direct a party to pay the costs incurred by another party and/or the Tribunal itself.

1.105 The Chairman is empowered to refuse all or a portion of a party's costs where it makes a finding that that party has failed to co-operate with the Tribunal or failed to assist it in the conduct of its inquiries.

1.106 After publication of this report, the Tribunal intends to contact those persons who are at risk of a finding of failure to co-operate with or assist the Tribunal and invite them to make submissions in relation thereto within a stipulated timeframe. The Tribunal will not make a finding on these issues until it has taken into consideration any submissions made within that time frame.

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5. Amendments to the Tribunal's Terms of Reference dated 3 December 2004 (5 pages)

Tribunal of Inquiry (Evidence) Acts 1921 and 1979

WHEREAS a resolution in the following terms was passed by Dáil Eireann on the 7th day of October, 1997.

"That Dáil Éireann resolves

A. That it is expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Act, 1921, as adapted by or under subsequent enactments and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, to inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it see fit, in relation to the following definite matters of urgent public importance:

1. The identification of the lands stated to be 726 acres in extent, referred to in the letter dated 8th June, 1989 from Mr. Michael Bailey to Mr. James Gogarty (reproduced in the schedule herewith) and the establishment of the beneficial ownership of the lands at that date and changes in the beneficial ownership of the lands since the 8th June, 1989 prior to their development;

2. The planning history of the lands including:-

(a) their planning status in the Development Plan of the Dublin local authorities current at the 8th June, 1989;

(b) the position with regard to the servicing of the lands for development as at the 8th June, 1989;

(c) changes made or proposed to be made to the 8th June, 1989 planning status of the lands by way of:-

(i) proposals put forward by Dublin local authority officials pursuant to the review of Development Plans or otherwise;

(ii) motions by elected members of the Dublin local authorities proposing re-zoning;

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(iii) applications for planning permission (including any involving a material contravention of the Development Plan);

3. Whether the lands referred to in the letter dated 8th June, 1989 were the subject of the following:-

(a) Re-zoning resolutions;
(b) Resolutions for material contravention of the relevant Development Plans;
(c) Applications for special tax designations status pursuant to the Finance Acts;
(d) Applications for planning permission;
(e) Changes made or requested to be made with regard to the servicing of the lands for development;
(f) Applications for the granting of building by-law approval in respect of buildings constructed on the lands;
(g) Applications for fire safety certificates;

on or after the 20th day of June 1985.

And

(i) to ascertain the identity of any persons or companies (and if companies, the identity of the beneficial owners of such companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;

(ii) to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any

person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above.

(iii) to ascertain the identity of all public officials who considered, made recommendations or decisions on any such matters and to report on such considerations, recommendations and/or decisions;

(iv) to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority.

4. (a) The identity of all recipients of payments made to political parties or members of either House of the Oireachtas, past or present, or members or officials of a Dublin local authority or other public official by Mr. Gogarty or Mr. Bailey or a connected person or company within the meaning of the Ethics in Public Office Act, 1995, from 20th June 1985 to date, and the circumstances, considerations and motives relative to any such payment;

(b) whether any of the persons referred to at sub-paragraphs 3(ii) and 3(iii) above were influenced directly or indirectly by the offer or receipt of any such payments or benefits.

5. In the event that the Tribunal in the course of its inquiries is made aware of any acts associated with the planning process committed on or after the 20th June, 1985 which may in its opinion amount to corruption, or which involve attempts to influence by threats or deception or inducement or otherwise to compromise the disinterested performance of public duties, it shall report on such acts and should in particular make recommendations as to the

effectiveness and improvement of existing legislation governing corruption in the light of its inquiries.

6. And the Tribunal be requested to make recommendations in relation to such amendments to Planning, Local Government, Ethics in Public Office and any other relevant legislation as the Tribunal considers appropriate having regard to its findings.

"payment" includes money and any benefit in kind and the payment to any person includes a payment to a connected person within the meaning of the Ethics in Public Office Act, 1995.

B. And that the Tribunal be requested to conduct its inquiries in the following manner, to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979:-

(i) to carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to any of the matters referred to above to warrant proceeding to a full public inquiry in relation to such matters,

(ii) to inquire fully into all matters referred to above in relation to which such evidence may be found to exist, dealing in the first instance with the acknowledged monetary donation debated in Dáil Eireann on the 10th September, 1997 Dáil Debates Columns 616-638 and to report to the Clerk of the Dáil thereupon,

(iii) to seek discovery of all relevant documents, files and papers in the possession, power or procurement of said Mr. Michael Bailey, Mr. James Gogarty and Donnelly, Neary and Donnelly Solicitors,

(iv) in relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dáil and to report in such a manner as the Tribunal thinks appropriate on the steps taken by the Tribunal

to determine what evidence, if any, existed and the Clerk of the Dáil shall thereupon communicate the Tribunal's report in full to the Dáil,

(v) to report on an interim basis not later than one month from the date of establishment of the Tribunal or the tenth day of any oral hearing, whichever shall first occur, to the Clerk of the Dáil on the following matters:

the numbers of parties then represented before the Tribunal;

the progress which has been made in the hearing and the work of the Tribunal;

the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings;

any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the terms of reference).

C. And that the person or persons selected to conduct the Inquiry should be informed that it is the desire of the House that –

(a) the Inquiry be completed in as economical a manner as possible and at the earliest date consistent with a fair examination of the matters referred to it, and, in respect to the matters referred to in paragraphs 1 to 4 above, if possible, not later than the 31st December, 1997, and

(b) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

D. And that the Clerk of the Dáil shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt.

Text of Schedule to Resolution passed by Dáil Eireann at its meeting on 7th October 1997.

SCHEDULE

Kilinamonan House,
The Ward,
Co. Dublin.

8th June, 1989

Dear Mr. Gogarty,

PROPOSALS FOR DISCUSSION

Re: Your lands at Finglas, Ballymun, Donabate, Balgriffin and Portmarnock, Co. Dublin.

I refer to our many discussions regarding your following six parcels of land:-

Lot 1: 100 acres (approx) at North Road, Finglas, including "Barrett's Land".

Lot 2: 12 acres (approx) at Jamestown Road, Finglas.

Lot 3: 100 acres (approx) at Poppintree, Ballymun.

Lot 4: 255 acres (approx) at Donabate (Turvey House and Beaverton House).

Lot 5: 250 acres (approx) at Balgriffin.

Lot 6: 9 acres (approx) at Portmarnock.

I submit the following proposals for your consideration:-

PROPOSAL NO. 1 – Purchase Proposal

Lots 1, 2 and 3	Purchase Price £4,000 per acre 10% deposit payable on the signing of the contract Completion 1 year from date of contract.
Lot 4	Purchase Price IR£1 Million Deposit 10% on contract Completion 2 years from date of contract.
Lot 5	Purchase Price IR £750,000 Deposit 10% on contract Completion 3 years from date of contract.
Lot 6:	Option to be granted for nominal consideration (£100.00) for a period of 2 years at a purchase price of £30,000.00 per acre.

PROPOSAL NO. 2 – Participation Proposal

As an alternative to the outright purchase proposal above I am prepared to deal with Lots 1 – 5 (inclusive) above on the basis that I would be given a 50% share in the ownership of the said lands in exchange for procuring Planning Permission and Building Bye Law Approval. The time span which I would require to be allowed to obtain the Permissions and Approval and my anticipated financial expenditure (apart from my time input) in respect of the different lots would be as follows:-

Lots 1, 2 and 3

A period of 2 years within which to procure a buildable Planning Permission and Building Bye Laws Approval for mixed development including housing, industrial and commercial.

My financial expenditure up to a figure of £150,000 (to include Architect's fees, Consulting Engineer's fees, Planning and Bye Law charges etc.).

Lots 4 and 5
Time requirement – 3 years.
Financial
Expenditure - up to £150,000

In considering the above proposals the following points of information should be borne in mind by all parties:-

1. From the point of view of obtaining Planning Permission the entire lands (lots 1 to 6 inclusive) have the following shortcoming:-

   NO zoning for development purposes

   NO services.

   NO proposal in current draft development plans (City and County) for the zoning of the lands or any part thereof for development purposes.

2. We face a very severe uphill battle to arrange for the availability of services and for the ultimate procurement of Planning Permission.

3. The steps to be taken on the way to procuring a buildable Planning Permission and Building Bye Laws Approval are notoriously difficult, time consuming and expensive. Material Contravention Orders must be obtained and this involves their procurement of a majority vote at 2 full Council Meetings at which 78 Council Members must be present and it also involves satisfactory compliance with extensive requirements and pre-conditions of the Planning Authority and the inevitable dealing with protracted Appeals to An Bord Pleanala.

4. It is essential that the Planning Application should be brought in the name of an active house building company which enjoys good standing and good working relationship with the Planners and the Council Members and in this regard I confirm that in the event of our reaching agreement regarding the within proposals that all Planning Applications would be made by one of my Companies which meets the said requirements.

5. In the case of all of the lands the applications will be highly sensitive and controversial and we can realistically expect strenuous opposition from private, political and planning sectors. One of my active companies will have to take the limelight in such applications and withstand the objections and protests which will inevitably confront it. Apart from the anticipated financial expenditure as outlined above it should be borne in mind that I will personally have to give extensively of my time and efforts over the entire period of the

applications including the necessary preliminary negotiations in regard to services and zoning. It must be borne in mind that I will have to abandon other projects which would be open to myself and my companies in order to give proper attention to this project. If I am successful in changing your lands from their present status of agricultural lands with very limited potential even for agricultural use into highly valuable building lands I would have to be rewarded with a minimum 50% stake in the ownership of the lands. Our advisors would have to work out the details as to how this can be effected in the most tax-efficient manner.

I look forward to hearing from you in relation to the above proposals. In the case of the first proposal which relates to the outright purchase of the lands (excluding Lot 6) I would not be adverse to a proposal which would involve the vendors retaining a participation stake of up to 20% in the purchasing company if you felt that an ongoing interest in the future development of the lands would be more acceptable to the present owners.

Yours sincerely,

_____

MICHAEL BAILEY.

Mr. Jim Gogarty,
Clontarf,
Dublin 3.

AND WHEREAS a resolution in even terms was, on the 8th day of October, 1997, passed by Seanad Eireann.

NOW THEREFORE, the Minister for the Environment and Local Government, in pursuant to the said Resolution, and in exercise of the powers conferred on him by section 1 (as adapted by or under subsequent enactments) of the Tribunals of Inquiry (Evidence) Act, 1921, hereby orders as follows:

1. This Order may be cited as the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979, (No.3) Order, 1997.

2. A Tribunal is hereby appointed to enquire urgently into and report and make such findings and recommendations as it sees fit to the Clerk of the Dáil on the definite matters of urgent public importance set out at parts A and B of the Resolutions passed by Dáil Éireann and Seanad Éireann on the 7th and 8th days of October, 1997.

3. The Honourable Mr. Justice Feargus Flood a Judge of the High Court, is hereby nominated to be the sole member of the Tribunal.

4. The Tribunals of Inquiry (Evidence) Act, 1921 (as adapted by or under subsequent enactments) and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, shall apply to the Tribunal.

GIVEN under the Official Seal of the Minister for the Environment and Local Government, this 4th day of November 1997

NOEL DEMPSEY

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Instrument amending the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979

(No. 3) Order, 1997

Return to report

WHEREAS a resolution in the following terms was passed by Dáil Eireann on the 1st day of July, 1998, and by Seanad Éireann on the 2nd day of July, 1998 ("the Resolutions"):

"That the terms of reference contained in the resolution passed by Dáil Éireann on the 7th October, 1997 and by Seanad Éireann on the 8th of October, 1997 under the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 be amended as follows:-

1. By the deletion from paragraph A.5 of the words "committed on or after the 20th June, 1985."

2. By the addition of the following paragraphs after paragraph D:-

"E The Tribunal shall, in addition to the matters referred to in paragraphs A(1) to A(5) hereof, inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it sees fit, in relation to the following definite matters of urgent public importance:-

1. Whether any substantial payments were made or benefits provided, directly or indirectly, to Mr. Raphael Burke which may, in the opinion of the Sole Member of the Tribunal, amount to corruption or involve attempts to influence or compromise the disinterested performance of public duties or were made or provided in circumstances which may give rise to a reasonable inference that the motive for making or receiving such payments was improperly connected with any public office or position held by Mr. Raphael Burke, whether as Minister, Minister of State or elected representative;

2. Whether, in return for or in connection with such payments or benefits, Mr. Raphael Burke did any act or made any decision while holding any such public office or position which was intended to confer any benefit on any person or entity making a payment or providing a benefit referred to in paragraph 1 above, or any other person or entity, or procured or directed any other person to do such an act or make such a decision.

And the Tribunal be requested to conduct its Inquiries in the following manner to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998:-

(i) To carry out such preliminary investigations in private as it thinks fit (using all the powers conferred on it under the Acts), in order to determine whether sufficient evidence exists in relation to any of the matters referred to in paragraphs E1 and E2 above to warrant proceeding to a full public inquiry in relation to such matters;

(ii) To inquire fully into all matters referred to in paragraphs E1 and E2 in relation to which such evidence may be found to exist;

(iii) In relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dáil and to report in such a manner as the Tribunal thinks appropriate on the steps taken by the Tribunal to determine what evidence, if any, existed and the Clerk of the Dáil shall thereupon communicate the Tribunal's report in full to the Dáil;

(iv) To report on an interim basis to the Clerk of the Dáil on the following matters:-

the number of parties then represented before the Tribunal;

the progress which has been made in the hearing and the work of the Tribunal;

the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings;

any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the terms of reference);

and to furnish such further interim reports as the Tribunal may consider necessary.

F. And that the Sole Member of the Tribunal should be informed that it is the desire of the House that:-

(a) the Inquiry into the matters referred to in paragraph E hereof be completed in as economical a manner as possible and at the earliest date consistent with a fair examination of the said matters, and

(b) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

G. And that the Clerk of the Dáil shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt."

WHEREAS the Tribunal established pursuant to a resolution passed by Dáil Éireann on the 7th day of October, 1997 and by Seanad Éireann on the 8th day of October, 1997 ("the Tribunal") requested under paragraph (b) of Section 1A(1) (inserted by the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998 ("the Act of 1998")) of the Tribunals of Inquiry (Evidence) Act, 1921, the amendment, specified in Article 1(a) of the following instrument, of the text of those resolutions set out in the preamble to the Tribunal of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997:

AND WHEREAS following consultation between the Tribunal and the Attorney General on behalf of the Minister for the Environment and Local Government, the Tribunal has consented under paragraph (a) of the said section 1A(1) to the amendment, specified in Article 1(b) of the following instrument, of the text aforesaid:

NOW, I Noel Dempsey, Minister for the Environment and Local Government, in pursuance of the Resolutions and in exercise of the powers conferred on me by section 1(A)1 (inserted by the Act of 1998) of the Tribunals of Inquiry (Evidence) Act, 1921, hereby order as follows:

1. The Tribunals of Inquiry (Evidence) Acts, 1921 to 1979 (No. 3) Order, 1997, is hereby amended by the insertion -

(a) in Article 2, after "October, 1997" of ", as amended by paragraph 1 of the resolutions passed by Dáil Éireann on the 1st day of July, 1998, and by Seanad Éireann on the 2nd day of July, 1998", and

(b) after Article 2, of the following Article:

"2A The Tribunal shall also inquire urgently into and report and make such findings and recommendations as it sees fit to the Clerk of Dáil Éireann on the definite matters of urgent public importance set out in paragraph 2 of the resolutions passed by Dáil Eireann on the 1st day of July, 1998, and by Seanad Éireann on the 2nd day of July, 1998, amending the resolutions passed by Dáil Éireann on the 7th day of October, 1997, and by Seanad Éireann on the 8th day of October, 1997.".

GIVEN under my Official Seal,
this 15th day of July, 1998.

Noel Dempsey
Minister for the Environment
and Local Government.

WHEREAS a resolution in the following terms was passed by Dáil Éireann and by Seanad Éireann on 28th day of March, 2002 ("the Resolutions"):

"That the terms of reference contained in the Resolution passed by Dáil Eireann on the 7th October, 1997 and by Seanad Eireann on the 8th October, 1997, as amended by the Resolutions passed by Dáil Eireann on 1st July, 1998 and by Seanad Eireann on 2nd July, 1998, pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998 be amended as follows:

1. By the deletion in each case where they occur of the words "the Sole Member of".

2. In paragraph E2, by the substitution of "Tribunals of Inquiry (Evidence) Acts 1921 to 2002" for "Tribunals of Inquiry (Evidence) Acts 1921 to 1998".

3. By the addition of the following paragraphs after paragraph G:-

"H. The Tribunal shall consist of, from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002 by the Minister for the Environment and Local Government, not more than three members, one of whom shall be the Honourable Mr. Justice Feargus M. Flood who shall be the Chairperson of the Tribunal.

I The Minister for the Environment and Local Government shall also appoint, from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002, a fourth person as a reserve member."

WHEREAS the Tribunal established pursuant to a resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997 as amended by the resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998, ("the Tribunal") requested under paragraph (b) of section 1A(1) (inserted by the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998 ("the Act of 1998")) of the Tribunals of Inquiry (Evidence) Act, 1921, the amendment, specified in Article 1(b) of the following instrument, of the text of those resolutions set out in the preamble to the Tribunal of Inquiry (Evidence) Acts, 1921 and 1979 (No.3) Order, 1997, as amended by the Instrument made by the Minister for the Environment and Local Government on 15th day of July, 1998:

AND WHEREAS following consultation between the Tribunal and the Attorney General on behalf of the Minister for the Environment and Local Government, the Tribunal has consented under paragraph (a) of the said section 1A(1) to the amendment, specified in Article 1(b) of the following instrument:

Now, I, Martin Cullen, Minister for the Environment and Local Government, in pursuance of the Resolutions and in exercise of the powers conferred on me by section 1A(1) (inserted by section 1 of the Act of 1998), of the Tribunals of Inquiry (Evidence) Act, 1921, hereby order as follows:

1. The Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997, as amended by the Instrument made by the Minister for the Environment and Local Government on 15th day of July, 1998, is hereby amended -

(a) by inserting after Article 1 the following Article:

"1A. In this Order "operative date" means the 29th day of October 2002."

and

(b) by substituting for Articles 3 and 4 the following Articles -

"3. On and from the operative date, the Tribunal shall cease to consist of a sole member and shall consist of not more than three members.

4. Of the members of the Tribunal-

(a) one shall be the Honourable Mr. Justice Feargus M. Flood (whose appointment by this Order as a member thereof is, accordingly, continued),

and

(b) two shall be the members mentioned in Article 5 of this Order,

and the said Mr. Justice M. Feargus Flood shall be the Chairperson of the Tribunal.

5. His Honour Judge Alan Mahon and Her Honour Judge Mary Faherty are, on and from the operative date, hereby appointed as members of the Tribunal.

6. His Honour Judge Gerald Keys is, on and from the operative date, hereby appointed as a reserve member of the Tribunal.

7. The Tribunals of Inquiry (Evidence) Act, 1921 (as amended by or under subsequent enactments) and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, shall apply to the Tribunal."

Given under my Official Seal,
this 24th day of October 2002

Martin Cullen
Minister for the Environment
and Local Government.

WHEREAS a resolution in the following terms was passed by Dáil Éireann on 3rd day of July 2003 and by Seanad Éireann on 4th day of July, 2003 ("the Resolution");

"That the terms of reference contained in the Resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997, as amended by the Resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998 as further amended by the Resolutions passed by Dáil Éireann and Seanad Éireann on 28th March, 2002 pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002 be amended by the substitution of the following paragraphs for paragraphs H and I:

"H. The Tribunal shall consist of not more than three Members as follows:

(a) His Honour Judge Alan Mahon and Her Honour Judge Mary Faherty who were appointed by instrument made on 24th October, 2002 by the Minister for the Environment and Local Government pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002, and

(b) His Honour Judge Gerald Keys, from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 by the Minister for the Environment, Heritage and Local Government.

I. His Honour Judge Alan Mahon shall be the Chairperson of the Tribunal from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 by the Minister for the Environment, Heritage and Local Government."

AND WHEREAS the Tribunal established pursuant to a resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997 as amended by resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998 and as further amended by resolutions passed by both Dáil Éireann and by Seanad Éireann on 28th March, 2002, requested under paragraph (b) of section 1A(1) (inserted by the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998) of the Tribunals of Inquiry (Evidence) Act, 1921, the amendment specified in the following instrument, of the text of those resolutions set out in the preamble to the Tribunal of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997, as amended by the Instrument made by the Minister for the

Environment and Local Government on the 15th day of July, 1998 and as further amended by the Instrument made by the Minister for the Environment and Local Government on the 24th day of October 2002:

Now, I, Martin Cullen, Minister for the Environment, Heritage and Local Government, in pursuance of the Resolution and in exercise of the powers conferred on me by section 1A(1) (inserted by section 1 of the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998) of the Tribunals of Inquiry (Evidence) Act, 1921, hereby order as follows:

1. The Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997, as amended by the Instrument made by the Minister for the Environment and Local Government on the 15th day of July, 1998 and as further amended by the Instrument made by the Minister for the Environment and Local Government on the 24th day of October, 2002, is hereby amended by substituting for Articles 4, 5 and 6 the following Articles:-

"4 His Honour Judge Alan Mahon shall continue as a member and is hereby appointed as Chairperson of the Tribunal.

5. His Honour Judge Gerald Keys is hereby appointed as a member of the Tribunal.

6. Her Honour Judge Mary Faherty shall continue as a member of the Tribunal."

Given under my Official Seal
this 7th day of July 2003

Martin Cullen
Minister for the Environment
and Local Government

WHEREAS a resolution in the following terms was passed by Dáil Éireann and by Seanad Éireann on 17th day of November, 2004 ("the Resolutions"):

"That the terms of reference contained in the Resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997, as amended by the Resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998 and further amended by the Resolutions passed by Dáil Éireann and Seanad Éireann on 28th March, 2002 and by the Resolutions passed by Dáil Éireann on 3rd July, 2003 and by Seanad Éireann on 4th July, 2003 pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2004 be amended by the addition of the following paragraphs after paragraph I:-

"J (1) The Tribunal shall, subject to the exercise of its discretion pursuant to J(6) hereunder, proceed as it sees fit to conclude its inquiries into the matters specified below (and identified in the Fourth Interim Report of this Tribunal) and to set out its findings on each of these matters in an interim report or reports or in a Final Report:

(a) The Carrickmines I Module;
(b) The Fox and Mahony Module;
(c) The St. Gerard's Bray Module;
(d) The Carrickmines II Module and Related Issues;
(e) The Arlington/Quarryvale I Module;
(f) The Quarryvale II Module;
(g) Those modules that are interlinked with the modules set out at paragraphs (a) to (f), and that are referred to in paragraph 3.04 of the Fourth Interim Report of the Tribunal.

(2) The Tribunal shall, subject to the exercise of its discretion pursuant to paragraph J(6) hereunder, by 1 May 2005 or such earlier date as the Tribunal shall decide, consider and decide upon those additional matters (being matters in addition to those set forth at J(1)(a) to (g) above and in respect of which the Tribunal has conducted or is in the course of conducting a preliminary investigation as of the date of the decision) that shall be proceeding to a public hearing and shall record that decision in writing and shall duly notify all parties affected by that decision at such time or times as the Tribunal considers appropriate.

(3) The Tribunal may in the course of investigating any additional matter under paragraph J(2) or a matter being investigated under paragraph J(1) investigate any other matter of which it becomes aware when it is satisfied that such further investigation is necessary for the Tribunal to make findings on any such additional matter or a matter referred to in paragraph J(1) above.

(4) Notwithstanding any other provision of these Terms of Reference the presentation to the Clerk of the Dáil of an interim report or reports, as the case may be, and of the Final Report on the matters identified at paragraphs J(1)(a)-(g), J(2) and, where applicable, J(3) shall constitute compliance by the Tribunal with all of its Terms of Reference, as hereby amended, and no further investigation, or report shall be required of or from the Tribunal on any other matter.

(5) Nothing in these amended Terms of Reference shall preclude the Tribunal from conducting hearings or investigations into any compliance or non-compliance by any person with the orders or directions of the Tribunal.

(6) The Tribunal may in its sole discretion - in respect of any matter within paragraphs J(1), J(2) and J(3) of these amended Terms of Reference - decide:

(I) To carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to the matter to warrant proceeding to a public hearing if deemed necessary, or

(II) Not to initiate a preliminary investigation and/or a public hearing of evidence in relation to the matter notwithstanding that the matter falls within the Tribunal's Terms of Reference, or

(III) Having initiated a preliminary investigation in private (and whether or not same has been concluded) but prior to the commencement of any public hearing of evidence in the matter, to discontinue or otherwise terminate its investigation

notwithstanding that the matter falls within the Tribunal's Terms of Reference.

In exercising its discretion pursuant to this paragraph the Tribunal may have regard to one or more of the factors referred to below:

(i) The age and/or state of health of one or more persons who are likely to be in a position to provide useful information (including, but not confined to, oral evidence to be given privately or publicly), including the age and/or likely state of health of any such person at such date in the future when that person or persons might be expected to be called upon to give oral evidence or to otherwise cooperate with the Tribunal, and in particular the issue as to whether or not their age and/or state of health is or is likely to be an impediment to such person being in a position to cooperate with the Tribunal or to give evidence to the Tribunal in private or in public;

(ii) The likely duration of the preliminary investigation or public hearing into any matter;

(iii) The likely cost (or other use of the resources of the Tribunal) of such investigation or any stage of the investigation into any matter;

(iv) Whether or not the investigation into the matter is likely to provide evidence to the Tribunal which would enable it to make findings of fact and conclusions and/or to make recommendations;

(v) Any other factors which in the opinion of the Tribunal would, or would be likely to, render an investigation, or the continued investigation into any matter inappropriate, unnecessary, wasteful of resources, unduly costly, unduly prolonged or which would be of limited or no probative value.

(7) Subject to paragraph J(3) any matter not brought to the attention of the Tribunal or of which it is not aware by the 16th day of December 2004 shall not be the subject of any investigation by the Tribunal.' "

AND WHEREAS the Tribunal established pursuant to a resolution passed by Dáil Éireann on 7th October, 1997 and by Seanad Éireann on 8th October, 1997 as amended by resolutions passed by Dáil Éireann on 1st July, 1998 and by Seanad Éireann on 2nd July, 1998 and further amended by resolutions passed by both Dáil Éireann and by Seanad Éireann on 28th March, 2002 and by the Resolutions passed by Dáil Eireann on 3rd July, 2003 and by Seanad Eireann on 4th July, 2003, following consultation between the Tribunal and the Attorney General on behalf of the Minister for the Environment, Heritage and Local Government, has consented under paragraph (a) of section 1A(1) (inserted by the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998) of the Tribunals of Inquiry (Evidence) Act 1921, to the amendment, specified in the following instrument, of the text of those resolutions set out in the preamble to the Tribunal of Inquiry (Evidence) Acts 1921 and 1979 (No. 3) Order, 1997, as amended by the Instrument made by the Minister of the Environment and Local Government on the 15th day of July, 1998, the Instrument made by the Minister of the Environment and Local Government on the 24th day of October, 2002 and the Instrument made by the Minster for the Environment, Heritage and Local Government on the 7th day of July, 2003.

Now, I, Dick Roche, Minister of the Environment, Heritage and Local Government, in pursuance of the Resolutions and in exercise of the powers conferred on me by section 1A(1) (inserted by section 1 of the Tribunals of Inquiry Act (Evidence) (Amendment) (No. 2) Act 1998) of the Tribunals of Inquiry (Evidence) Act 1921, hereby order as follows:

1. In this Order "Minister" means the Minister for the Environment, Heritage and Local Government.

2. The Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 3) Order, 1997 as amended by the Instrument made by the Minister on the 15th day of July, 1998, the Instrument made by the Minister on the 24th day of October, 2002 and the Instrument made by the Minister on the 7th day of July, 2003, is amended:-

   (a) in Article 2, by inserting, after "July, 1998", "and as further amended by the resolutions passed by Dáil Éireann and by Seanad Éireann on the 17th day of November, 2004",

   (b) in Article 2A (inserted by the Instrument made by the Minister on the 15th day of July, 1998) by deleting all of the words from "paragraph 2" down to and including "8th day of October, 1997." and substituting "the provisions that were inserted in the terms of reference set out in the said resolutions passed on the

7th and 8th days of October, 1997 by paragraph 2 of the resolutions passed by Dáil Eireann on the 1st day of July, 1998, and by Seanad Eireann on the 2nd day of July, 1998 and as amended by the resolutions passed by Dáil Eireann and by Seanad Eireann on the 17th day of November, 2004", and

(c) by inserting the following Article after Article 2A:

"2B. Whenever and so often as the Tribunal exercises the discretion conferred on it by paragraph J(6) of the said terms of reference, the duties imposed on the Tribunal by Article 2 or 2A (or both as appropriate) of this Order shall stand limited to the extent that is required by the said exercise of that discretion."

Given under my Official Seal
this 3rd day of December 2004

Dick Roche
Minister for the Environment, Heritage
and Local Government

Return to report

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

(Appointed by Instrument of The Minister for the Environment and Local Government dated the 4th day of November 1997 and as amended by Instrument dated the 15th day of July 1998)

SOLE MEMBER OF THE TRIBUNAL:
The Honourable Mr. Justice Feargus M. Flood

Interpretation of the Terms of Reference as Amended

Wednesday 21st October, 1998 at 9 a.m.

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Interpretation

1. The Supreme Court in its recent decisions in the case of Haughey and Others v. Mr. Justice Moriarty and Others delivered on the 28th July 1998 has provided careful guidance to tribunals of inquiry in relation to both the time and the manner in which a tribunal of inquiry should interpret its terms of reference. In the course of its judgment at page 69 it held

> *"... the Court is satisfied that it is not the function of the High Court or this Court to interpret the Terms of Reference of the Tribunal at this stage. The interpretation of the Terms of Reference of the Tribunal is at this stage entirely a matter for the Tribunal itself."*

2. The Chief Justice, speaking for the Court, adopted as a correct statement of the law and practice of tribunals of inquiry in Ireland the terms of paragraph 79 of the Report of the Royal Commission on Tribunals of Inquiry (November, 1966 Cmnd. 3121), and known as the Salmon Report, which states:

> 79. The Tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the Tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged.

3. The explanation of the terms of reference, today, by this tribunal may be expanded or revised in the light of other facts which may emerge during the course of this inquiry.

4. It should be clearly understood by any person or entity that has an interest in the work of this tribunal that they are entitled to make any submission to the tribunal relevant to their particular interest in relation to the interpretation of these terms of reference. The tribunal would request that, in the first instance, any submission made by an interested party should be in writing and should be received by the tribunal not later than fourteen days from the date of this public sitting. The tribunal does not require an immediate response from any interested party at this public sitting as to any possible difficulty they may perceive in relation to this interpretation.

5. The terms of reference of this Tribunal are set out in the Instrument of the Minister for the Environment and Local Government of the 4th November 1997 as amended and extended by a further Instrument of the same Minister of the 15th July 1998 made pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 1998.

6. These terms of reference are to be read in conjunction and, for convenience, the Tribunal has made publicly available to any interested person a consolidated text.

7. This public sitting is not confined to an explanation of the terms of reference of this tribunal. The tribunal is also making a

public statement on the related question of the extent to which this inquiry is likely to be pursued, and providing general guidance in relation to certain aspects of the Tribunal's procedure.

8. The tribunal is presently investigating definite matters in the course of its confidential preliminary investigation in private. The central purpose of this preliminary investigation is to identify what evidence is available to the Tribunal, and to determine whether that evidence is relevant to the matters into which this tribunal is required to inquire.

9. It is regrettable that this preliminary investigation is being delayed to an extent by persons and entities that have been less than whole-hearted in their co-operation with the tribunal. This situation will not divert the tribunal from discharging its task but it does have a bearing on the tribunal's view, at this time, as to the extent to which this inquiry is likely to be pursued.

10. The tribunal has had considerable success in assembling evidence in relation to particular matters into which it is required by its terms of reference to inquire. The tribunal has not, as yet, exhausted its endeavours in seeking to establish the existence of evidence that may be relevant to certain other matters pertinent to this inquiry.

11. The tribunal intends to make a further public statement in relation to the extent to which aspects of this inquiry are likely to be pursued at a future public sitting.

12. The Tribunal in approaching the task of interpretation has, in general, sought to apply the ordinary and natural meaning of words to the wording of the terms of reference. In certain instances particular words may have a special or technical meaning attributed to them, or particular words may have a specific statutory meaning. Where these instances of special, technical or specific statutory meanings occur the Tribunal has outlined its interpretation of those words.

13. **The wording of the terms of reference is, in the view of the Tribunal, reasonably clear. I am satisfied that on a plain reading of the terms of reference they, in the main, convey a proper interpretation of the wording concerned. In certain instances** specific words in the terms of reference may, in particular circumstances, have a statutory or technical meaning.

14. On any occasion where the Tribunal is interpreting specific words in the terms of reference in a particular way it will duly notify any interested person, where their interests are concerned, of that interpretation and the context in which it arises. At the same time the Tribunal intends to avoid a situation where any interested person seeks to impose a particular interpretation of the terms of reference with a view to limiting inappropriately, or delaying, this inquiry.

15. I now propose to outline in public specific aspects of the terms of reference that, in my view, require explanation by the Tribunal. It should be clearly understood that while the Tribunal

welcomes any submission by an interested person in relation to an aspect of the interpretation of the terms of reference relevant to their particular interest, it is for the Tribunal to interpret its terms of reference.

16. It should be noted that where an explanation makes reference to a specific law, statute or regulation that reference should be taken as including, where appropriate, any relevant amendment of such provision.

Paragraph A

17. Paragraph A is divided into six distinct sub-paragraphs that detail specific matters to be inquired into by the Tribunal. I propose to deal with each sub-paragraph in turn.

Sub-paragraph A.1

18. This sub-paragraph requires the Tribunal to identify the lands listed in a letter dated the 8th June 1989 from Michael Bailey to James Gogarty. The terms of that letter are reproduced in the Schedule to the terms of reference of the Tribunal.

19. The meaning of the word "**identification**" in this sub-paragraph is interpreted by the Tribunal to include the exact boundaries and location of those lands, their ownership, and all their appropriate conveyancing particulars from the 8th June 1989

to a date prior to the commencement of the development of those lands.

20. The meaning of the word "**development**" in this sub-paragraph is interpreted by the Tribunal to include development within the meaning of Section 3 of the Local Government (Planning and Development) Act 1963.

21. The meaning of the words "**beneficial ownership**" in this sub-paragraph are interpreted by the Tribunal as including any legal or equitable right, entitlement, or interest existing in any natural or legal person, whether directly or indirectly, in relation to the lands concerned. These words are, in particular, interpreted as including any natural or legal person who, in fact, exercised any control or influence, whether directly or indirectly, in relation to the lands concerned.

Sub-paragraph A.2

22. The "**lands**" referred to in this sub-paragraph are the same as those mentioned in sub-paragraph A.1.

23. The words "**planning history**" in this sub-paragraph are clearly intended to be given a broad interpretation and are interpreted by the Tribunal as referring to any factual, legal or statutory matter which touches on, or concerns, any development or planning in relation to the lands concerned.

24. The words "**Development Plan**" in this sub-paragraph are interpreted by the Tribunal as including a development plan made pursuant to Section 19 of the Local Government (Planning and Development) Act 1963 or any draft development plan.

25. The words "**Dublin local authorities**" in this sub-paragraph are interpreted by the Tribunal as including any borough corporation created by royal charter as recognised and confirmed by the Municipal Corporations (Ireland) Act 1840, any county council or urban district council designated a statutory corporation by the Local Government (Application of Enactments) Order 1898, and any town commissioners designated by Section 65 of the Local Government Act 1955 whose administrative area is within, whether wholly or partly, the boundaries of Dublin County or where appropriate An Bord Pleanala.

26. The words "**the servicing of the lands**" in this sub-paragraph are interpreted by the Tribunal as including the drainage, electricity, footpath, gas, lanes, lighting, roads, sewers, telephone and water services to the lands concerned, and to what extent, where appropriate, any of those services had been taken in charge by a local authority.

27. The word "**development**" in this sub-paragraph is interpreted by the Tribunal in the same manner as outlined in sub-paragraph A.1.

28. The word "**proposal**" in this sub-paragraph is interpreted by the Tribunal as including any draft, plan, project, proposition,

recommendation, scheme, statement or suggestion in relation to the Development Plans concerned.

29. The word "**officials**" in this sub-paragraph is interpreted by the Tribunal as including any person who was an officer or employee of a Dublin local authority or An Bord Pleanala or a Government Department or any other public body, or any servant or agent of such persons.

30. The word "**motions**" in this sub-paragraph is interpreted by the Tribunal as including any motion proposed, or intended to be proposed, by an elected member of a Dublin local authority at a duly constituted meeting of such authority.

31. The word "**re-zoning**" in this sub-paragraph is interpreted by the Tribunal as including any change by a Dublin local authority to the designation in its development plan of the permitted uses of the lands concerned.

32. The words "**applications for planning permission**" in this sub-paragraph are interpreted by the Tribunal as including any application to a Dublin local authority in accordance with permission regulations for the development of land pursuant to the Local Government (Planning and Development) Act 1963, or for an approval required by those regulations.

33. The words "**a material contravention of the Development Plan**" in this sub-paragraph are interpreted by the Tribunal as including any planning permission application which required a

resolution of a Dublin local authority pursuant to Section 26 (3) of the Local Government (Planning and Development) Act 1963.

Sub-paragraph A.3

34. The "**lands**" referred to in this sub-paragraph are the same as those mentioned in sub-paragraph A.1.

35. The words "**re-zoning resolutions**" in this sub-paragraph are interpreted by the Tribunal as including any motion proposed, or intended to be proposed, by an elected member of a Dublin local authority at a duly constituted meeting of such authority to "re-zone" as interpreted at sub-paragraph A.2.

36. The words "**Resolutions for material contravention of the relevant Development Plans**" in this sub-paragraph are interpreted by the Tribunal as including any motion proposed, or intended to be proposed, by an elected member of a Dublin local authority at a duly constituted meeting of such authority to effect a material contravention of the Development Plan of such authority pursuant to Section 26(3) of the Local Government (Planning and Development) Act 1963.

37. The words "**special tax designation status pursuant to the Finance Acts**" in this sub-paragraph are interpreted by the Tribunal as including any tax incentive regime established by the Finance Acts.

38. The words "**Applications for planning permission**" in this sub-paragraph are interpreted by the Tribunal in the same manner as outlined in sub-paragraph A.2.

39. The words "**servicing of the lands**" in this sub-paragraph are interpreted by the Tribunal in the same manner as outlined in sub-paragraph A.2.

40. The word "**development**" in this sub-paragraph is interpreted by the Tribunal in the same manner as outlined in sub-paragraph A.1.

41. **The words "building bye-law approval" in this sub-paragraph are interpreted by the Tribunal as including any approval or disapproval made pursuant to Section 42 of the Public Health (Ireland) Act 1878.**

42. The words "**fire safety certificates**" in this sub-paragraph are interpreted by the Tribunal as including a certificate issued pursuant to The Building Control Act 1990 and the Regulations made thereunder.

43. The word "**persons**" in this sub-paragraph is interpreted by the Tribunal as including any natural or legal person or unincorporated association or trust.

44. The word "**companies**" in this sub-paragraph is interpreted by the Tribunal as including but not limited to any company formed and registered under the Companies Act 1963 in this State and

any company formed and registered under the laws of any other State.

45. The words "**beneficial owners of such companies**" in this sub-paragraph are interpreted by the Tribunal as including any natural or legal person, or trust having any legal or equitable right, entitlement, or interest in such company or a shadow director within the meaning of Section 27 of the Companies Act 1990.

46. The words "**material interest**" in this sub-paragraph are interpreted by the Tribunal as including any legal or equitable claim, right or entitlement, or any title, advantage, duty or liability whether present or future, ascertained or potential which in the view of the Tribunal is material.

47. The words "**material involvement**" in this sub-paragraph are interpreted by the Tribunal as including any activity, association, complicity, entanglement, participation or partnership which in the view of the Tribunal is material.

48. The words "**members of the Oireachtas**" in this sub-paragraph are interpreted by the Tribunal as including any member of Dail Eireann or Seanad Eireann.

49. The words "**relevant local authorities**" in this sub-paragraph are interpreted by the Tribunal in the same manner as Dublin local authorities in sub-paragraph A.2.

50. The words "**planning authority**" and "**the authority**" in this sub-paragraph are interpreted by the Tribunal in the same manner as Dublin local authorities in sub-paragraph A.2.

51. The words "**public officials**" in this sub-paragraph are interpreted by the Tribunal in the same manner as the word "**officials**" in sub-paragraph A.2.

Sub-paragraph A.4

52. **The words "connected person or company" in this sub-paragraph are interpreted by the Tribunal as including the meaning specified in Section 2(2) of the Ethics in Public Office Act 1995. That statutory definition provides as follows:**

(a) Any question whether a person is connected with another shall be determined in accordance with the following provisions of this paragraph (any provision that one person is connected with another person being taken to mean also that that other person is connected with the first-mentioned person);

(i) a person is connected with an individual if that person is a relative of the individual,

(ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust,

(iii) a person is connected to any person with whom he or she is in partnership,

(iv) a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it,

(v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(b) in paragraph (a) **"control"** has the meaning assigned to it by Section 157 of the Corporation Tax Act 1976, and any cognate words shall be construed accordingly.

53. The statutory definition of "**control**" in Section 157(8) of the Corporation Tax Act 1976 provides:

"**control**" shall be construed in accordance with Section 102 (meaning of "associated company" and "control"),

54. Section 102(2) of the Corporation Tax Act 1976 defines "**control**" in the following manner:

For the purposes of this Part a person shall be taken to have control of a company if he exercises, or is able to exercise

or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire-

(a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or

(b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or

(c) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.

55. Section 102 (3),(4),(5) and (6) of the Corporation Tax Act 1976 additionally provide as follows:

(3) Where two or more persons together satisfy any of the conditions of sub-section (2), they shall be taken to have control of the company.

(4) For the purposes of sub-section (2) a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.

(5) For the purposes of sub-sections (2) and (3), there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(6) For the purposes of sub-sections (2) and (3), there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under sub-section (5), but not those attributed to an associate under this sub-section; and such attributions shall be made under this sub-section as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

56. The word "**payment**" in this sub-paragraph is interpreted by the Tribunal in the same manner as outlined in sub-paragraph A.6.

57. The word "**benefit**" in this sub-paragraph is interpreted by the Tribunal as including the meaning specified in Section 2 of the Ethics in Public Office Act 1995 which provides:

"benefit" includes-

(a) a right, privilege, office or dignity and any forbearance to demand money or money's worth or a valuable thing,

(b) any aid, vote, consent or influence or pretended aid, vote consent or influence,

(c) any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of, any gift, loan, fee, reward or other thing aforesaid,

or other advantage and the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage.

Sub-paragraph A.5

58. The word "**corruption**" in this sub-paragraph is interpreted by the Tribunal as including destroying, hindering or perverting the integrity or fidelity of a person in the discharge of his duty, or the abuse of influence or power or duty by any person, or to bribe, or to induce another to act dishonestly or unfaithfully, or an attempt to do the same, or circumstances of control, influence or involvement with such person to the extent that it gives rise to a reasonable inference of unequal access, or favouritism, or a set of circumstances detrimental to his duties.

59. The words "**attempts to influence**" in this sub-paragraph are interpreted by the Tribunal as including an attempt through power or pressure or control of whatever character whether acting on fears or hopes or otherwise to induce or coerce or persuade another to act in a manner such that the free use of his judgment has been deprived.

60. The words "**corruption**" and "**attempts to influence**" are both words which, where relevant to this inquiry, plainly depend on their factual context. There is no single set of circumstances that constitute "**corruption**" or "**attempts to influence**".

Paragraph E

Sub-paragraph E.1

61. The words "**substantial payments**" in this sub-paragraph are interpreted by the Tribunal as including any monetary amounts, benefits, enrichment, gain, advantage or some other consideration, or payment in kind, or services rendered, or the transfer of property, or a set-off or release or discharge of an obligation, or pecuniary or other reward which in the opinion of the Tribunal is substantial. In interpreting the word "**substantial**" the Tribunal will have regard, inter alia, to the size of any payment, the time at which it was made, the question as to whether that payment is reasonably related to any other payment, the resources of the person or entity making any payment and the resources of the person or entity receiving any payment.

62. The words "**improperly connected**" in this sub-paragraph are interpreted by the Tribunal as including a connection which reasonable judgment would not condone, or a connection not likely to promote the proper exercise of the duties relating to that public office or position.

63. The word "**person**" in this sub-paragraph is interpreted by the Tribunal in the same manner as the word "**persons**" as outlined in sub-paragraph A.3.

64. The word "**entity**" in this sub-paragraph is interpreted by the Tribunal as including the interpretation of the word "**companies**" as outlined in sub-paragraph A.3, or undertaking, regulator or authority, organisation or society, whether incorporated or not.

PROCEDURE

65. The Tribunals of Inquiry (Evidence) Acts 1921 to 1998 does not establish any detailed model of procedure to be adopted by a tribunal of inquiry in carrying out its function. This is a sensible policy having regard to the wide variety of circumstances and subject-matter in respect of which the Oireachtas has on previous occasions established tribunals of inquiry.

66. The result is that once established it is for a tribunal itself to model its own rules of procedure.

67. The starting point for any tribunal, in this State, in relation to the model of procedure to be adopted is the Constitution. A tribunal must at all times fully respect the constitutional rights of all persons whose interests may be affected by the course of the inquiry work.

68. In addition, in appropriate circumstances, the tribunal must also have regard to the statutory and other legal rights of any person where they may be affected by the work of an inquiry.

69. The Supreme Court in a number of decisions, including the recent decisions in the cases of Haughey & Others v Mr. Justice Moriarty and Others and Bailey & Others v Mr. Justice Flood & Another both delivered on the 28th July 1998. has provided considerable guidance to tribunals of inquiry as

to the legal and constitutional parameters in which the work of an inquiry is to be carried out. It is the intention of this tribunal to fully implement the guidance outlined in those decisions.

70. A tribunal of inquiry is established as a matter of last resort where the ordinary processes of inquiry, or civil or criminal litigation, are considered by the Oireachtas to be inappropriate to attempt to establish the true facts giving rise to the establishment of such tribunal. Tribunals of Inquiry are, not infrequently, in this country and elsewhere established in circumstances where there has been an apparent loss of confidence in some aspect of public administration.

71. It is important to keep in mind that the terms of reference of this tribunal of inquiry expressly require this inquiry to be carried out "urgently". The matters to be inquired into are described as "definite matters of urgent public importance". The specific mandate of the tribunal is to undertake an inquiry with a view to reporting to the Clerk of Dail Eireann any "findings" and to make any appropriate "recommendations".

72. The essence of a tribunal of inquiry has been recently encapsulated by the Chief Justice in the recent Haughey decision where he stated at page 64 of the judgment of Supreme Court:

"... the principal function of such tribunals has been to restore public confidence in the democratic institutions of the State by having the most rigorous possible inquiry consistent with the rights of the citizens into the circumstances which gave rise to the public disquiet."

73. The Chief Justice also describes, at page 121 of that judgment, the procedural phases of a tribunal of inquiry as follows:

"1. A preliminary investigation of the evidence available;
2. The determination by the Tribunal of what it considers to be evidence relevant to the matters into which it is obliged to inquire;
3. The service of such evidence on persons likely to be effected thereby;
4. The public hearing of witnesses in regard to such evidence, and the cross-examination of such witnesses by or on behalf of persons effected thereby;
5. The preparation of a report and the making of recommendations based on facts established at such public hearing."

74. This Tribunal is presently carrying out a confidentia preliminary investigation in private. The purpose of this phase of the inquiry is to establish what evidence is available to the Tribunal, and to determine whether that evidence is relevant to the subject-matter of this inquiry. In carrying ou this confidential work the Tribunal has relied on the voluntar

co-operation of persons who the Tribunal are satisfied may have documentation or information relevant to this inquiry.

75. In certain instances, for a variety of legal reasons, it has been necessary to invoke the compulsory statutory powers available to a tribunal of inquiry in an effort to discover the extent of any relevant documentation or information. In those cases the Tribunal will adopt the guidance of the Supreme Court in relation to the manner in which those compulsory powers are to be exercised.

76. The matters being investigated by this Tribunal are very serious and it is becoming apparent that a small number of persons and entities may be seeking to avoid or delay the disclosure of what the Tribunal considers to be relevant documentation and information.

77. The concern of the Tribunal that such person may seek to avoid or delay the inquiry work of this Tribunal does not have the effect of negating their constitutional, legal or statutory rights. These rights are enjoyed by all persons in the State irrespective of any preliminary, or other views, that the Tribunal may form.

78. The Tribunal has an overriding duty to discharge its urgent mandate from the Oireachtas to the extent possible. The Oireachtas has, in the terms of reference, anticipated the possibility that certain individuals may fail to co-operate fully and expeditiously with this inquiry. In the event that the

Tribunal were to conclude that a given individual or entity did in fact fail to co-operate fully and expeditiously the Tribunal will report that "finding" to the Oireachtas.

79. For the avoidance of doubt the Tribunal should indicate that it has not, to date, made a finding against any person or entity that they have failed to co-operate fully and expeditiously. In addition the Tribunal would necessarily take all reasonable steps to respect the constitutional, legal and statutory rights of any such person before considering making a finding of this type.

CHAPTER ONE – INTRODUCTION

LIST OF CASES IN WHICH THE TRIBUNAL WAS INVOLVED

1. Michael Bailey and Others (Applicants) -v- Mr. Justice Flood, High Court Record No. 1998/119 JR.

2. George Redmond (Plaintiff) -v- Mr. Justice Feargus M. Flood, the Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Defendant), High Court Record No. 1998/507 JR.

3. Mr. Joseph Murphy Snr (Applicant) -v- The Honourable Mr. Feargus Flood, Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondent), The High Court, [1999] IEHC 228.

4. Michael Fachtna Murphy, Chief Bureau Officer, Criminal Assets Bureau (Applicant) -v- Mr. Justice Feargus M. Flood, Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondent) and the Attorney General acting in the public interest and George Redmond (Notice Parties), High Court Record No. 1999/163 JR.

5. Liam Lawlor (Applicant) -v- Mr. Justice Feargus Flood, the Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondent), High Court Record No. 1999/197 JR.

6. Denis O'Brien (Plaintiff) -v- Mirror Newspaper Group & Others (Defendants), The High Court, 1999.

7. The Irish Times Limited, Christine Newman, Radio Telefis Eireann, Carol Coleman, Independent Newspapers (Ireland) Ltd, Stephen McGrath and Examiner Publications Limited t/a The Cork Examiner (Applicants) -v- Mr. Justice Flood, The Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondent), High Court Record No. 1999/371 JR.

8. The Honourable Justice Feargus M. Flood, the Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments -v- George Redmond, High Court Record No. 1999/238 SP.

9. Sean Sherwin (Plaintiff) & Independent Newspapers (Ireland) Limited (Defendants), High Court Record No.1999/2161 P.

10. Thomas Bailey, Caroline Bailey, Bovale Developments Limited (Applicants) -v- Mr. Justice Feargus M. Flood, Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondent), High Court Record No. 2000/47 JR.

11. Stephen Miley (Applicant) -v- Mr. Justice Feargus Flood (Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments) (Respondent) and the Law Society of Ireland (Notice Party), High Court Record No. 2000/310 JR.

12. The Honourable Mr. Justice Feargus M. Flood, Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Plaintiff) -v- Mr. Liam Lawlor (Defendant), High Court Record No. 2000/553 SP.

13. Attachment and Committal Proceedings between The Honourable Mr. Justice Feargus Flood, Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Plaintiff) -v- Mr. Liam Lawlor (Defendant), High Court Record No. 2000/553 SP.

14. John Finnegan (Applicant) -v- Mr. Justice Feargus Flood, Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondent), High Court Record No. 2001/453 JR.

15. The Honourable Mr. Justice Feargus M. Flood, Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Plaintiff) -v- John Caldwell (Defendant), High Court Record No. 2001/429 SP.

16. IN THE ROYAL COURT OF GUERNSEY (ORDINARY DIVISION) Between - John J. Finnegan (Applicant) and Credit Suisse Trust Limited (Respondent), 2001.

17. Doyle Court Reporters Limited (Plaintiffs) -v- Feargus M. Flood, the Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments (Defendant), High Court, Record No. 2002/9679 P.

18. His Honour Judge Alan P. Mahon, Her Honour Judge Mary Faherty and His Honour Judge Gerald B. Keys – Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Plaintiffs) -v- Noel Lawlor, administrator *ad litem* of the estate of Liam Lawlor, deceased, and Hazel Lawlor (Defendants), High Court Record No. 2003/131 SP.

19. Raphael P. Burke (Plaintiff) -v- Feargus M. Flood, Tribunal of Inquiry into Certain Planning Matters and Payments, the Minister for the Environment and Local Government, Ireland and the Attorney General (Defendants), High Court Record No. 2003/10861 P.

20. Owen O'Callaghan (Applicant) -v- Judge Alan Mahon, Judge Mary Faherty and Judge Gerald B. Keys, Members of the Tribunal of Inquiry into Certain Planning Matters and payments (Respondents) and Tom Gilmartin (Notice Party), High Court Record No. 2004/324 JR.

21. John Caldwell (Applicant) -v- Judge Alan Mahon, Judge Mary Faherty and Judge Gerald Keys, Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondents), High Court Record No. 2004/1131 JR.

22. Joseph Murphy, Frank Reynolds, Joseph Murphy Structural Engineers Limited (Plaintiffs) -v- Mr. Justice Feargus Flood (The Former Sole Members of the Tribunal of Inquiry into Certain Planning Matters and Payments), Mr. Justice Alan Mahon, Mr. Justice Mary Faherty and Mr. Justice Gerald B. Keys (The Members of the Tribunal of Inquiry into Certain Planning Matters & Payments), Ireland and The Attorney General (Defendants), High Court Record No. 2004/4910 P.

23. Thomas F. Brennan and Joseph B. McGowan (Plaintiffs) -v- Feargus M. Flood (The Former Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments), Alan P. Mahon, Mary Faherty and Gerald B. Keys (Members of the Tribunal of Inquiry into Certain Planning Matters and Payments), Ireland and the Attorney General (Defendants), High Court Record No. 2004/17195 P.

24. His Honour Judge Alan P. Mahon, Her Honour Judge Mary Faherty and His Honour Judge Gerald B. Keys, Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Plaintiffs) -v- Post Publications Limited, T/A The Sunday Business Post (Defendants), High Court Record No. 2004/19832 P.

25. Fitzwilton Limited, Goulding Limited and Rennicks Sign Manufacturing (Applicants) -v- Judge Alan Mahon, Judge Mary Faherty and Judge Gerald Keys, Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondents), High Court Record No. 2005/1018 JR.

26. Owen O'Callaghan, John Deane, Riga Limited and Barkhill Limited (Applicants) -v-Judge Alan Mahon, Judge Mary Faherty and Judge Gerald Keys, Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondents) and Tom Gilmartin (Notice Party), High Court Record No. 2005/1289 JR.

27. George Redmond (Plaintiff) -v- Mr. Justice Feargus Flood (The Former Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments) His Honour Alan Mahon, Her Honour Mary Faherty and His Honour Judge Gerald Keys (The Members of the Tribunal of Inquiry into Certain Planning Matters and Payments), Ireland and the Attorney General (Defendants), High Court Record No. 2005/1367 P.

28. His Honour Judge Alan P. Mahon, Her Honour Judge Mary Faherty and His Honour Judge Gerald B. Keys, Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Plaintiffs) -v- Colm Keena and Geraldine Kennedy (Defendants), High Court Record No. 2006/125 SP.

29. Hazel Lawlor (Applicant) -v- The Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondents) and Ireland and the Attorney General (Notice Parties), High Court Record No. 2007/80 JR.

30. Bertie Ahern (Applicant) -v- His Honour Judge Alan P. Mahon, Her Honour Judge Mary Faherty and His Honour Judge Gerald Keys, Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondents), High Court Record No. 2008/150 JR.

31. Owen O'Callaghan, John Deane, Riga Limited and Barkhill Limited, Aidan Lucey, Claire Cowhig and CHK Partnership (Applicants) -v- Judge Alan Mahon S.C., Judge Mary Faherty S.C. and Gerald B. Keys, Members of the Tribunal of Inquiry into Certain Planning Matters and Payments (Respondents), High Court Record No. 2009/49 JR.

32. Oliver Barry (Applicant) -v- His Honour Judge Alan Mahon, Her Honour Judge Mary Faherty and His Honour Judge Gerald Keys (The Members of the Tribunal of Inquiry into Certain Planning Matters and Payments) (Respondents), High Court Record No. 2011/5073 P and 2011/605 JR.

CHAPTER TWO - QUARRYVALE MODULE

PART 1 - INTRODUCTION

A DESCRIPTION OF THE LANDS

1.01 The lands which lent their name to this module comprise approximately 180 acres and lie to the west of Dublin City, and are bordered by the M50 motorway to the east, the Dublin/Galway/Sligo road to the north, the Fonthill Road to the west and the Coldcut Road to the south. The lands are now home to the Liffey Valley Shopping Centre and retail park. The 'Neilstown lands' which in the context of this inquiry were closely associated with the Quarryvale lands, are located in north Clondalkin, County Dublin, approximately one mile to the south of the Quarryvale lands. The Tribunal's inquiries concerning these lands related to their purchase, development and rezoning in the late 1980s, and throughout the 1990s.

THE OWNERSHIP OF THE QUARRYVALE AND NEILSTOWN LANDS

1.02 The Quarryvale lands which ultimately comprised the Quarryvale development site, were originally in the ownership of a number of landowners, including Dublin County Council and Dublin Corporation, until they were gradually acquired in the late 1980s by Mr Tom Gilmartin, a United Kingdom based property developer who, together with Arlington Securities Ltd (Arlington), had been involved in the proposed development of the Bachelors Walk site in Dublin City also in the late 1980s.

1.03 Although Mr Gilmartin commenced his acquisition of this site in 1988, the 180 acre site itself was not fully assembled until the early 1990s. Mr Gilmartin financed the purchase of the earlier acquired lands from his own resources. However, by late 1989 he had a requirement for the injection of substantial finance to complete the site assembly. On 19 February 1990, Allied Irish Banks (AIB) advanced IR£8m to Barkhill Ltd (Barkhill) a company owned by Mr Gilmartin and his wife Mrs Vera Gilmartin and into which he had transferred those sites already acquired by him. It was intended that this advance from AIB would be utilised to complete the assembly of the site, and that the sum advanced, together with interest would be repaid to AIB by the end of August of that year. At the date of advance of this facility by AIB, Mr Gilmartin believed that the site would be granted designated status (under the Urban Renewal Act, 1986) by the Government in the forthcoming Budget.

1.04 Although situated in west County Dublin, the Neilstown lands were originally owned by Dublin Corporation, and were part of the Ronanstown lands which were zoned for Town Centre use in the 1972 and 1983 Development Plans. In 1988, Merrygrove Ltd (Merrygrove) (a company then under the control of Mr Albert Gubay, a property developer) entered into an Agreement with Dublin Corporation for the purchase (subject to conditions) of these lands for IR£3m. Under the terms of this agreement, Merrygrove would pay a deposit of IR£0.3m to the Corporation and apply within a stipulated timeframe for planning permission to develop the site as a town centre.

1.05 Following negotiations, Mr Gubay agreed to sell his interest in Merrygrove to Mr Owen O'Callaghan, a property developer from Cork, for a consideration of IR£0.8m (which included the IR£0.3m deposit payable to the Corporation). In February 1989, Mr Gubay's interest in Merrygrove was transferred to O'Callaghan Properties Ltd.

1.06 Mr O'Callaghan in turn entered into an agreement on 31 January 1989 with Mr Gilmartin whereby he was granted an option to acquire the Merrygrove contract with Dublin Corporation for IR£3.5m. It was agreed that he would pay a deposit of IR£0.8m on execution of the agreement, and the balance of IR£2.7m in two tranches of IR£1.35m each. The date of payment of both these tranches, and in particular the second, was the subject of much conflict between the parties, both at the time, and in the course of the Tribunal's public hearings.

1.07 Mr Gilmartin paid the deposit of IR£0.8m on 31 January 1989, and the first tranche of IR£1.35m on 21 February 1990 with funds from the sale of his 20% interest in the Bachelors Walk Development with Arlington.

1.08 By September 1991, Barkhill was indebted to AIB in respect of their facility of February 1990 (which it had not been in a position to repay by the end of August 1990), and Mr Gilmartin was himself being pursued by Mr O'Callaghan for the second tranche of IR£1.35m.

1.09 In September 1991, an agreement was entered into between the parties, whereby Mr and Mrs Gilmartin transferred 40% of their shareholding in Barkhill to Riga Ltd (Riga), a company owned jointly by Mr O'Callaghan and his solicitor and business partner, Mr Deane. They transferred a further 20% to AIB. In return, O'Callaghan Properties Ltd transferred Merrygrove Ltd to Barkhill, and abandoned its claim to the outstanding IR£1.35m. In addition, Riga advanced a loan of IR£1m to Barkhill and guaranteed a loan from AIB of a further IR£1m. AIB, for their part, sanctioned a further facility to Barkhill to enable it complete the site acquisition. The Gilmartins retained a 40% interest in Barkhill until it was

finally acquired from them in March 1996, when Grosvenor Estates Ltd, a large property development company from the United Kingdom, bought into Barkhill.

THE 1983 DEVELOPMENT PLAN

1.10 The 180 acres approximately which would ultimately constitute the fully assembled Quarryvale site were zoned as follows in the 1983 Dublin County Development Plan:

(i) Objective '*E*' – '*to provide for industrial and related uses*',

(ii) Objective '*F*' – '*to preserve and provide for open space and recreational amenities*', and,

(iii) Objective '*A1*' – '*to provide for new residential communities in accordance with approved action area plans*'.

1.11 The Neilstown Lands (also referred to as Ronanstown or Balgaddy)[1] were zoned Objective 'D' – 'to provide for major town centre activities' for the Lucan/Clondalkin area. The 1983 Development Plan zonings of the Quarryvale and Neilstown lands were outlined in Maps 12 and 13 of the said Development Plan.

THE REVIEW OF THE 1983 DEVELOPMENT PLAN

1.12 The Lucan/Clondalkin lands were the subject of discussion at a special meeting of the County Council on 16 February 1990. Mr Willie Murray, Deputy Dublin Planning Officer, outlined the development proposals for the area, and, following a discussion it was agreed that a report on the general policy for this area would be submitted to the next special meeting of the County Council dealing with the Development Plan review. Subject to a further report on certain proposals, the Draft Written statement and maps 16 and 17 were noted. The following changes on map 16 related to the Quarryvale lands:

(i) Change number 9: An area to the west previously zoned 'F' (open space) to be zoned A1 (for the development of a residential community)

(ii) Change number 10: An area to the east previously zoned 'F' – (open space) to be zoned 'E'(industry)

The substantive part of the site would remain zoned 'E' (industry) as it was in the 1983 Plan.

[1] A central position in the new development area was chosen for each of the three new town sites of Blanchardstown, Clondalkin/Lucan and Tallaght. In the case of Tallaght and Blanchardstown the name of the existing village was taken as the name of the new town site but because the third town was to be based on two existing villages (Clondalkin/Lucan) it was considered that a name associated with neither might be used and therefore Ronanstown, a townland located in the centre of the development area was the name selected at an early stage to describe the greater development area that included Lucan, Clondalkin and the area in between.

1.13 At a special meeting of the County Council held on 8 March 1990, a report entitled '*Report on Development Options for Lucan/Clondalkin (Ronanstown)'* by the Dublin Planning Officer was circulated to, and then debated by the Councillors. This report outlined the planning policy up to that time for the proposed three western towns, Blanchardstown, Clondalkin/Lucan and Tallaght, namely that each town should ultimately be served by a major town centre which would provide higher order shopping and a range of employment, civic, recreational and other uses. Further, each town centre would be conveniently located at the hub of the transportation network (both public and private transport) serving the new town area. In relation to Ronanstown, the Report set out two possible options, namely:

(i) To abandon the Ronanstown *'New Town'* concept as expressed in the 1972 and 1983 Development Plans and concentrate on Lucan and Clondalkin as lower order centres; or

(ii) To leave the zoning of the area under consideration largely intact and either re-enforce the existing new town centre concept in its present position, re-locate it as a major town elsewhere or split it to associate part with Lucan and part with Clondalkin.

1.14 Having explained in detail the different options, the Manager recommended *'that the Council continue to implement and re-enforce the 1972 and 1983 Development Plan policies for the completion of the new town of Ronanstown and that it should adopt the following objectives in order to secure the achievement of these aims:*

(i) Continue pressure for the construction of the Fonthill road.

(ii) Continue pressure for Tax Incentives in the Town Centre area.

(iii) Continue positive marketing of local authority lands for private housing.

(iv) Implement a landscaping programme for local authority lands adjoining the Fonthill road.

(v) Re-zone the area between the railway and the canal to residential use to support the Town Centre and Rail proposals.

(vi) Oppose major commercial development in Lucan and Clondalkin villages until the Town Centre is underway.

(vii) Resist additional zoning of areas West of Lucan as this would remove the impetus for development of both housing and the Town Centre from the area between Lucan and Clondalkin and should not be considered until the central area has been developed.

(viii) Pursue the construction of the road link between the Town Centre lands and the Motorway.'

1.15 Following discussion, a motion in the names of Cllrs Fitzgerald, Rabbitte, Cass, Lawlor, McGrath, Hand, Laing, Owen, McGennis, Flood, Maher, McMahon and Ridge which provided *'that the Managers Report of 8th March 1990 on the development of Lucan/Clondalkin be rejected and that new maps be prepared for the separate development of the greater Lucan area and the greater Clondalkin area'* was passed unanimously.

1.16 At a special meeting of the County Council on 7 September 1990, a report by the Manager entitled *'Report providing for the Separate Development of the Greater Lucan Area and the Greater Clondalkin Area',* was presented to the Councillors. The Manager considered *'that the original concept of an integrated 'new town' with its own higher order town centre is the preferred model for the development of the area. However, if it is to be abandoned, then a sub-division of the area into three districts in the manner outlined could be recommended as the best alternative arrangement'.* In other words, if the town centre at Ronanstown was to be abandoned, the next alternative would be to divide the area into three districts served by three separate district centres, Lucan Village, Clondalkin Village and a reduced centre on the former town centre site at Neilstown.

1.17 A decision on the Manager's Report was deferred to the next special meeting of the County Council which was held on 14 September 1990, when it was agreed that Maps 16, 17 and 18 as presented to the Council in February 1990 would be adopted. These Maps showed the site of the Town Centre designated in the original position at Neilstown.

1.18 It was a condition of the purchase agreement between Dublin Corporation and Merrygrove of 21 November 1988, that Merrygrove would make an application for planning permission for a town centre development on the Neilstown lands within two months. Later, this time limit was extended by agreement to 31 December 1989. On 22 December 1989, a planning permission application was made by the Ambrose Kelly Partnership on behalf of Merrygrove for a town centre development of 24,678 square metres on the Neilstown lands. On 28 September 1990, Dublin County Council decided to grant planning permission for the proposed development subject to 34 conditions. On 13 November 1990, Merrygrove appealed to An Bord Pleanála against the said decision. On 21 May 1991 (shortly after the Special Meeting of Dublin County Council of 16 May 1991 detailed below) Merrygrove withdrew the planning application, and on 28 May 1991, An Bord Pleanala declared that as *'the said application has been withdrawn, it is no longer before the Board for determination and that there is, therefore, now no appeal in relation to the application before the Board.'*

1.19 In January 1991, the members were afforded an opportunity to submit motions for insertion on a 'wrap-up' agenda for consideration by the County Council prior to putting a draft development plan on display. By letter of 18 January 1991, the members were advised that motions had to be submitted not later than Friday 8 February 1991, a deadline later extended to 15 February 1991. Among the 160 motions received was one signed by Cllr McGrath, which was ultimately scheduled for consideration at a special meeting of the County Council on 16 May 1991, and which was drafted in the following terms:

> *'Dublin County Council hereby resolves that the lands at Palmerstown, Quarryvale comprising of approximately 180 acres as outlined on the attached map, adjacent to the Western Parkway intersection with the Galway Road be rezoned to D and E in the draft revision of the County Dublin Development Plan to provide a major town centre, business and industrial park.'*

THE SPECIAL MEETING OF 16 MAY 1991

1.20 On 16 May 1991, it was proposed by Cllr McGrath and seconded by Cllr Hand, that this motion be amended by inclusion of the following:

> '*That a statement be included in the Development Plan to indicate that the total area of commercial development in the area zoned 'D' shall not exceed the total area of commercial development which would be appropriate to the Lucan/Clondalkin Town Centre site designated in the County Development Plan.'*

1.21 This amendment was signed by Cllrs McGrath, Hand and Hanrahan. The motion, as amended, was then passed by 29 votes in favour to 13 votes against. The practical effect of this successful motion was to transfer the Town Centre zoning from Neilstown to Quarryvale with a cap of approximately 500,000 sq feet on its size. Map 16 of the 1991 Draft Development Plan, which went on public display between 2 September and 3 December 1991, therefore showed the greater part of the Quarryvale lands as zoned 'D' (to provide for major town centre activities) with smaller parts of the lands as zoned 'E' (to provide for industrial and related uses). The Neilstown lands carried an 'E' industrial zoning. The draft written statement reflected the terms of this successful motion at paragraph 5.4.9, under the heading '*Town Centre*', as follows:

> '5.4.9(i) *It is proposed to relocate the Town Centre at Quarryvale. The zoning of the original town centre will change from 'D' to 'E' industrial.*
>
> 5.4.9(ii) *The Council has resolved that the total area of commercial development in the area zoned 'D' should not exceed the total area of commercial development which would be appropriate to the*

Lucan/Clondalkin Town Centre site designated in the County Development Plan'.

1.22 During the period of public display between 2 September and 3 December 1991, 23,866 objections and representations were received, and 487 requests for oral hearings facilitated. 16,826 objections and representations were received in relation to the Quarryvale proposals, some 16,600 of which consisted of standard form submissions. Of these, 6,000 objected, and 10,600 supported the 1991 Draft Development Plan provisions in respect of the Quarryvale site.

THE SPECIAL MEETING OF 17 DECEMBER 1992

1.23 On 19 October 1992, Dublin County Council received an application from The Ambrose Kelly Group on behalf of Merrygrove seeking planning permission for a stadium/arena on 13.3 hectares (32.8 acres) at Neilstown. This planning application was pending when Maps 16, 17 and 18 were considered by the Councillors at a special meeting of the County Council on 17 December 1992.

1.24 The Planning Officer's report as presented to that special meeting of 17 December 1992, considered the planning strategy for Lucan/Clondalkin, and stated that the town centre designated land had been left without adequate road access, and that it was relatively remote (except for the north-east and east) from existing development. The completion of the Fonthill road would provide access only to the east of the town centre lands, and its development potential in the short term, in the absence of major growth and infrastructural provision in the area, was called into question. The report went on to state that the proposed relocation of the Town Centre to Quarryvale, where it was proposed to be bounded to the north and east by major through roads, and with access through two proposed industrial/business park areas (it was in excess of 600m from the Fonthill road) would leave it remote from most of the population of Lucan/Clondalkin. The report said that:

'*It would be unlikely to function in any way as a central place, a transportation hub and a focus for civic, commercial, social and recreational life for the people of Lucan and Clondalkin. It could also if of a certain size adversely affect shopping provision in Blanchardstown and the City Centre. It would appear however, that the site is viable in the short term for commercial development and such development could be advantageous in that timescale, for the area.'*

1.25 The report went on to state that the full achievement of a sizeable town centre on the Neilstown lands could take many years and that,

> *'nevertheless for reasons of consistency and continuity, because of the signs of a resurgence of development referred to above, and because of possible compensation implications it is recommended that the policy contained in the 1983 Plan be continued for a further period.'*

1.26 The Councillors were advised that the planning decision to be made by them was whether to continue with the 1972 and 1983 strategy (which was recommended), or to modify that strategy so as to envisage the development of three distinct communities, instead of one. The Councillors were informed that if it was decided by them that the process of achieving the integration of Lucan and Clondalkin into a new urban entity was to be spread over an unacceptably long timeframe in social and community terms, then a modified approach could be suggested for consideration by the County Council. In that event, it was recommended that the Quarryvale lands (approximately 180 acres) should be jointly zoned '*C*' ('*to protect, provide for and/or improve Town/District Centre facilities*') and '*E*' ('*to provide for industrial and related uses*'). The area should also be the subject of a specific objective to foster the creation of employment opportunities in this area, and to facilitate the provision of a district centre to serve the larger community. It was also recommended that the lands at Neilstown should retain the '*D*' zoning ('*to provide for major town centre activities*'), as in the 1983 Development Plan, but with the specific objective *'to encourage the development of specialised commercial, recreational, industrial and residential uses in this area.'*

1.27 There were twelve motions relating to the Quarryvale site on the agenda of the County Council for this meeting, and a number of them, if successful, would have had the effect of transferring back the town centre zoning to the Neilstown lands, thus leaving the Quarryvale lands with only an industrial zoning. One of the motions, in the names of Cllrs O'Halloran, McGrath, Ridge and Tyndall, which was received by the County Council on the 9 December, 1992, proposed that the Manager's Report relating to Lucan/Clondalkin overall planning strategy be adopted. This report recommended the approval of the 'C' and 'E' zoning on the Quarryvale lands so as to ensure the provision of a suitable centre to meet the overall needs of the area.

1.28 Motions proposing that the Quarryvale lands be zoned 'E' were considered by the County Council, but were voted against by a majority of Councillors. As a consequence, a number of similar motions also fell. An amendment to the O'Halloran/McGrath/Ridge/Tyndall motion proposing *'C1 zoning with a cap of 100,000 sq. ft. on the Quarryvale site',* was defeated by 32 votes to 37. An

amendment to the O'Halloran/McGrath/Ridge/Tyndall motion in the names of Cllrs Devitt, McGrath, Tyndall and O'Halloran was proposed by Cllr Devitt and seconded by Cllr McGrath. This proposed *'to restrict the retail shopping to 250,000 sq. ft.', and* was passed by 39 votes in favour and 28 votes against, with two abstentions.

1.29 Finally, a further amendment in the names of Cllrs O'Halloran, McGrath, Ridge and Tyndall, proposed by Cllr O'Halloran and seconded by Cllr McGrath, sought to amend the motion by the addition of the following paragraph:

> *'To approve the Manager's recommendation that the lands at Neilstown zoned for town centre uses in the 1983 Development Plan should be zoned 'D'* ' *(to provide for major town centre activities) with the Specific Objective, 'It is an objective of the Council to encourage the development of specialized commercial, recreational, industrial and residential uses in this area.'*

This proposal was passed by 39 votes in favour, and 28 votes against, with two abstentions. This motion, as further amended, was then passed unanimously. As a consequence, a number of other motions relating to Quarryvale were either withdrawn, or were not put to the meeting.

1.30 On 27 April 1993, the County Council received a motion signed by Cllrs O'Halloran, Ridge, McGrath and Tyndall proposing the following changes to the Draft Written Statement:

> '*Dublin County Council hereby resolves to delete paragraph 5.4.9 of the Draft Written Statement and to substitute the following:*
>
> *It is an objective of the Council to foster the creation of employment opportunities in the Quarryvale area and to facilitate the provision of a district town centre to service the larger community. It is proposed to designate a district town centre site at Quarryvale. This district town centre shall be in the order of 250,000 sq. ft. retail floor space. The original town centre site retains its 'D' ('to provide for major town centre activities') zoning with the following objective –'to encourage the development of specialised commercial, recreational, industrial and residential uses in the area.'*

1.31 This motion was considered at Special Meetings of Dublin County Council on 3 and 4 June, 1993. At the Special Meeting of 4 June 1993, it was proposed by Cllr Gilbride and seconded by Cllr Tyndall that the above motion be amended by:

'(a) Deleting the words 'district town' in lines 6, 7 and 8 and substituting the words 'District /Town'.

(b) Deleting the words 'retail floor space' in line 9, and substituting the words 'of retail shopping'.

(c) Adding the words 'but not exceeding' after the words 'in the order of' in line 9'.'

1.32 This amendment was passed unanimously. The substantive amended motion was then put to the Councillors and was also passed unanimously.

1.33 The Dublin County Development Plan 1993 amendments to the 1991 Draft Development Plan went on public display between 1 July and 4 August, 1993. The effect of the successful motion of 17 December 1992 was to amend the proposed zoning of the Quarryvale lands to 'C' and 'E', subject to a cap of 250,000 sq. ft. on its retail shopping element. It also had the effect that the original town centre site at Neilstown would remain zoned 'D' to provide for major town centre activities but with the additional specific objective to encourage the development of specialised commercial, recreational, industrial and residential uses in this area.

1.34 These proposed amendments were confirmed at a Special Meeting of Dublin County Council on 19 October 1993, in accordance with the Manager's recommendations. The Manager also recommended the adoption of the proposed amendments to the Written Statement and these were confirmed at a Special Meeting of the Council on 16 November 1993. Finally, on 10 December, 1993, the Councillors adopted the 1993 Dublin County Development Plan, which contained the aforementioned changes in relation to the Quarryvale and Neilstown lands.

THE REVIEW OF THE 1993 DEVELOPMENT PLAN BY SOUTH DUBLIN COUNTY COUNCIL

1.35 On 1 January 1994, Dublin County Council was divided into three newly established Local Authorities, namely South Dublin County Council, Dún Laoghaire/Rathdown County Council and Fingal County Council. The Quarryvale and Neilstown lands were situated within the functional area of the new South Dublin County Council.

1.36 In May 1997, position papers prepared as a part of South Dublin County Council review of the 1993 Dublin County Development Plan recognised Quarryvale as a District Centre, which it defined as a centre ranging from 3,000 to 20,000 square metres in size and serving a district catchment of a 2 to 3 mile radius. Members were advised that the Quarryvale district centre proposal

included 23,500 square metres of shopping. There was no recommendation in these position papers for or against lifting the cap on retail space for Quarryvale.

1.37 There was no mention of Quarryvale in a presentation made on 2 December 1997, to the Councillors, of a report which included a list of agreed amendments for incorporation into the Draft Plan. A Motion to display the Draft Plan was passed by the Councillors at this meeting, and it was placed on public display on the 9 February 1998 for the statutory three month period, ending 11 May 1998. The Draft Plan did not contain any specific objectives restricting the quantum of retail shopping space permissible on the Quarryvale lands. This omission reflected the view of senior management within South Dublin County Council, that the imposition of a cap on retail space was inappropriate. The absence of such a restriction on retail space meant that if the 1998 Draft Development Plan for South County Dublin was ultimately adopted without further change, the cap imposed in the Dublin County Development Plan 1993 would be permanently removed.

1.38 The County Manager provided a comprehensive report to the Councillors on 13 August 1998, on the representation/objections lodged in relation to the Draft Plan. Representations objecting to the removal of the retail cap at Quarryvale were made by Leixlip Town Commissioners, the Retail, Grocery, Dairy, the Allied Trades Association, The Square (Tallaght) Management Committee and the Mid East Regional Authority. In the report the County Council officials outlined in summary form the objections to the lifting of the cap at Quarryvale, and the zoning history of the land up to that time. The report recommended to the Councillors that the removal of the cap on retail floor space be confirmed.

1.39 On 1 September 1998, the County Council received a motion signed by Cllr Gus O'Connell dated 31 August 1998, which, in essence, sought to reverse the changes proposed in respect of the Quarryvale and Balgaddy town/district centres, and to reintroduce the cap as outlined in the 1993 Dublin County Development Plan. At a Special meeting of the County Council on 24 September 1998, this Motion was considered by the Councillors, having been proposed by Cllr O'Connell, and seconded by Cllr Muldoon. In his report to this meeting, the Manager stated that the imposition of a special restriction on the size of the retail shopping element of the Quarryvale/Liffey Valley Shopping Centre was unique in County Dublin. He indicated that in the context of the present day development in retail shopping a restriction on the size of such developments was considered inappropriate. Following discussion, the O'Connell/Muldoon motion was defeated, with 4 councillors voting in favour and 18 against, thus ensuring that the cap on the size of retail development at Quarryvale would not be re-imposed.

1.40 At a meeting of the members of South Dublin County Council held on 1 October 1998, it was resolved that material amendments to the 1998 Draft South Dublin Development Plan as agreed in the course of special meetings, including the meeting of 24 September 1998, be placed on public display for one month. There were no material amendments relating to Quarryvale. At a Special meeting of South Dublin County Council held on 15 December 1998, the Draft Development Plan for South Dublin County Council was adopted, with the Quarryvale lands carrying a Specific Local Objective *'that within the lands at Quarryvale and Balgaddy designated as zoning objective DC on the Development Plan No 1, the use, classes and categories as set out in table 3.7, Section 3 Development Control, will apply when assessing the acceptability or otherwise of development proposals'.* This had the effect of providing that while the Quarryvale and Balgaddy lands retained district centre zoning, the use of the lands would be permitted to include the use and classes relating to town centre facilities.

THE PUBLIC HEARINGS IN THE QUARRYVALE MODULE

1.41 The Quarryvale Module was divided into two parts, because of its size and the large number of witnesses scheduled to give evidence. The first part of the module was the subject of inquiry in the public hearings held between 3 March 2004 and 29 July 2004. The second part of the module was the subject of public hearings held between 29 November, 2005 and 1 December 2005, and between 28 May 2007 and 29 October 2008. In total, 202 witnesses gave sworn evidence to the Tribunal in the course of the module.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 2 – THE DEVELOPERS IN QUARRYVALE – MR TOM GILMARTIN AND MR OWEN O'CALLAGHAN

INTRODUCTION

1.01 The three most prominent personalities who featured in the Tribunal's public inquiry in its largest module, Quarryvale, were Mr Tom Gilmartin, Mr Owen O'Callaghan and Mr Frank Dunlop. Mr Gilmartin and Mr O'Callaghan (with their companies) were the individuals who were primarily involved with the promotion of the Quarryvale project (to have Quarryvale rezoned and prepared for development), with Mr Gilmartin's involvement pre-dating that of Mr O'Callaghan. Mr Dunlop's involvement was as a lobbyist for the project, having been retained for that task by Mr O'Callaghan.

1.02 In this part of the Report the Tribunal considered particular issues, relating to, separately, Mr Gilmartin and Mr O'Callaghan, as well as aspects of their often volatile relationship, in the context of their shared ambitions for Quarryvale. It should therefore be read and considered with due regard to the Tribunal's detailed consideration of the evidence heard by it in the Quarryvale module.

1.03 The matters considered in the following pages are:

(i) Mr Owen O'Callaghan and Mr Tom Gilmartin - their relationship.
(ii) The immunity granted to Mr Tom Gilmartin.
(iii) Mr Tom Gilmartin's prior statements to the Tribunal.
(iv) Mr Owen O'Callaghan's prior statements to the Tribunal.
(v) Mr Gilmartin's allegations that he received information from Mr Owen O'Callaghan, and other anonymous sources, of substantial payments to senior politicians.

MR GILMARTIN & MR OWEN O'CALLAGHAN: THEIR RELATIONSHIP

1.04 Mr Gilmartin was, perhaps, the witness most closely associated with the Quarryvale module in the mind of the public. Mr Gilmartin's[1] 58 days of evidence in public far exceeded the total days of evidence given in the module by other lengthy witnesses, such as Mr Frank Dunlop[1] (31 days) and Mr Owen O'Callaghan[1] (38 days).

[1] All three witnesses gave evidence on many of these days for half days only, following medical advice provided to the Tribunal on behalf of each of them.

1.05 That being so, it was in fact the case that a large amount of the evidence heard in public in the course of the Quarryvale module related to matters in which Mr Gilmartin was not directly involved.

1.06 The Quarryvale module examined Mr Gilmartin's involvement in, to a limited extent, the Bachelor's Walk, Dublin development in which Mr Gilmartin represented the interests of a UK property development company, Arlington Securities Plc, and, to a greater extent, the Quarryvale project, and, primarily, the rezoning of 180 acres of land at Quarryvale in west County Dublin in order to facilitate its development as a major shopping centre/retail park between 1987 and 1997. The Quarryvale lands, when developed, became Liffey Valley Shopping Centre and Retail Park. Mr O'Callaghan had no involvement with the Bachelor's Walk development.

1.07 Much of the information which fuelled the extensive private inquiry in relation to Quarryvale originally emanated from Mr Gilmartin. Included in the information provided by Mr Gilmartin to the Tribunal were allegations of wrong doing and corruption, some of which were based on his personal knowledge, but many of which stemmed from information which Mr Gilmartin claimed had been provided to him by Mr O'Callaghan and by others. These allegations were repeated by him to the Tribunal in the course of its private inquiry into Quarryvale, and later in his sworn evidence.

1.08 The Tribunal's private and public inquiry was not conducted merely as an inquiry into the allegations (both the allegations based on his own knowledge and those of wrong doing revealed to him by others), of Mr Gilmartin, although many of those allegations were in fact inquired into. The purpose of conducting the extensive Quarryvale inquiry in public was to comprehensively examine the process whereby the Quarryvale lands were rezoned by Dublin County Council in the early 1990s for the purposes of identifying any acts of corruption associated with the zoning/planning process. The inquiry involved a detailed examination of many issues, and only some of which were allegations sourced to Mr Gilmartin.

1.09 Nevertheless, Mr Gilmartin was a central character in the Quarryvale story, his evidence was frequently controversial and often subject to challenge from the Tribunal itself and from parties directly affected by it.

1.10 Arguably, of all the witnesses called by the Tribunal to give evidence in the course of the Quarryvale module it was Mr Gilmartin's credibility (together with that of Mr Frank Dunlop) that was subjected to the most sustained attack. Mr Gilmartin was invariably accused of lying, embellishing, exaggerating, misleading the Tribunal, and more.

1.11 The role and activities of Mr O'Callaghan and Mr Gilmartin were examined in considerable detail by the Tribunal as was their relationship with each other and with others linked to both of them. The focus of the Tribunal's inquiries was to examine the process by which the lands at Quarryvale, Co Dublin (consisting of approximately 180 acres), were rezoned for development and the linked planning issues that arose in the course of, and subsequent to, that process, and to ascertain if that process involved acts of wrongdoing or corruption involving elected public representatives and/or public officials or others.

1.12 The level of inquiry required to enable the Tribunal reach conclusions on the matters referred to, in general terms, in the preceding paragraph inevitably and necessarily involved some degree of collateral inquiry into the commercial relationship between Mr O'Callaghan and Mr Gilmartin (as well as the companies and individuals linked to both men).

1.13 It is important to emphasise that the Tribunal's only purpose in conducting any aspect of its inquiry into that commercial relationship was to aid its substantive inquiry into the rezoning of the Quarryvale lands. It was not a function of the Tribunal to make determinations or judgments in respect of that commercial relationship, and insofar as it has done so or appears to have done so, it has been done only for the purposes of placing itself in a position to enable it make findings of fact appropriate to its inquiry into substantive matters or issues.

1.14 The commercial relationship between Mr O'Callaghan and Mr Gilmartin began, somewhat informally, in or around December 1988 when both men first met in a Dublin hotel. On this occasion Mr O'Callaghan suggested to Mr Gilmartin that he, Mr O'Callaghan, should become a participant in Mr Gilmartin's project to develop the Quarryvale lands, which necessarily involved the rezoning of the lands by Dublin County Council. Their commercial relationship was primarily formalised on two separate events,[2] the first being the occasion when the 'Merrygrove Option agreement' was signed (31 January 1989), and the second being the occasion when the first shareholders agreement relating to Quarryvale was signed (13 September 1991).

1.15 There was in addition to the commercial relationship between Mr O'Callaghan and Mr Gilmartin, a commercial relationship between both men and AIB Bank, in its capacity as banker/lender to the Quarryvale project, from February 1990, and in its capacity as co-shareholder in Barkhill Ltd from September 1991.

[2]The Merrygrove option deal was agreed after Mr Gilmartin had rejected Mr O'Callaghan's suggestion of a joint venture agreement in relation to Quarryvale.

1.16 The commercial relationship between Mr O'Callaghan and Mr Gilmartin concluded in May 1996 when Mr O'Callaghan effectively bought Mr Gilmartin out of the Quarryvale lands, and Mr Gilmartin and his wife relinquished their shareholding in Barkhill Ltd, for a consideration of IR£8.7m (IR£7.6m net).

1.17 Central to its determination of a number of issues arising in the course of evidence heard by the Tribunal, was that of the credibility of Mr O'Callaghan and Mr Gilmartin. In some instances that credibility issue was capable of determination by the mere process of preferring the evidence of one as against the other. In other instances a consideration of evidence from other witnesses or from documentation enabled the Tribunal to reach conclusions on credibility issues relating to both individuals. It was not possible for the Tribunal to determine every issue of contention between Mr Gilmartin and Mr O'Callaghan.

THEIR CONTRASTING WITNESS STYLES

1.18 Mr O'Callaghan and Mr Gilmartin presented as greatly contrasting witnesses, with each exhibiting quite distinctive evidential styles.

1.19 Mr O'Callaghan was a calm and generally confident witness. He tended to listen with great care to questions put to him in the course of cross-examination, and was careful and precise in his responses. He sought a clarification of questions when in doubt as to their true meaning or intent. He was unfailingly polite and non-confrontational.

1.20 Mr O'Callaghan frequently displayed and vocalised a deep-rooted dislike of Mr Gilmartin and at times indeed, visible anger at what he perceived to have been a long-running attempt by Mr Gilmartin to smear his reputation with false allegations against him, and his business.

1.21 Mr Gilmartin, on the other hand, often exhibited a sense of bitterness, frustration and anger in the manner in which he responded to questions put to him as a witness. He sometimes failed to fully listen to or comprehend questions put to him, requiring repeated questioning on the same topic, and many interventions by the Tribunal Members or by examining Counsel for the purposes of prompting him to answer particular questions. He regularly displayed poor memory, particularly in recalling dates or the detail of particular events, and occasionally conflated those events.

1.22 Mr Gilmartin's attitude towards Mr O'Callaghan was one of intense dislike and deep contempt, clouded by a rarely concealed bitterness. He believed that Mr O'Callaghan (aided and abetted by AIB Bank) was primarily responsible for frustrating his efforts to successfully manage and complete the project to rezone

and develop the Quarryvale lands. From Mr Gilmartin's perspective, Mr O'Callaghan, together with others, destroyed his commercial ambition to develop the Quarryvale lands and engaged in corrupt activity to achieve that end, including the orchestration of his personal bankruptcy in the UK. Serious allegations of corrupt activity on Mr O'Callaghan's part were made by Mr Gilmartin to the Tribunal both prior to and in the course of his sworn evidence.

1.23 In many instances, Mr Gilmartin's allegations concerning Mr O'Callaghan were based on his recollections of what he had been told by Mr O'Callaghan, and by others, rather than personal knowledge on his part.

THE GRANT OF IMMUNITY TO MR TOM GILMARTIN

2.01 Mr Gilmartin was formally granted immunity from criminal prosecution in respect of certain matters which were the subject of investigation by the Tribunal in the course of the Quarryvale module, on 1 October 1998, by the (then) Director of Public Prosecution.[3] The following facts were pertinent to the grant of that immunity:

i. The grant of immunity from prosecution was that of the (then) Director of Public Prosecutions, and not that of the Tribunal. The grant of immunity was made following a request for same from the then Sole Member of the Tribunal.

ii. The grant of immunity was stated by the DPP to have been given *'in the public interest'* and was conditional.

iii. The conditions upon which it was granted were, that Mr Tom Gilmartin would cooperate fully[4] with the Tribunal in its investigations and hearings, and that he would immediately give truthful evidence on Affidavit to the Tribunal in relation to the matters which he had already described to Counsel for the Tribunal.

THE CIRCUMSTANCES IN WHICH THE GRANT OF IMMUNITY WAS AGREED

2.02 Mr Tom Gilmartin met members of the Tribunal's legal team in Luton near London on 30 September 1998. This was the second occasion on which he met with the members of the Tribunal's legal team, and was the meeting which immediately preceded the request by the Tribunal to the Director of Public Prosecutions to grant immunity to Mr Gilmartin.

[3] A copy of the immunity letter is exhibited at the end of Chapter Two – Part 2.
[4] 'Cooperating fully' includes giving truthful evidence to the Tribunal. See comment of the Chairman of the Tribunal on Day 759 pg. 3 of the transcript.

2.03 In the course of his evidence to the Tribunal, Mr Gilmartin was adamant that the request for a grant of immunity was made as a result of advice given to him by his then solicitor, Mr Noel Smyth. Mr Smyth confirmed in his evidence to the Tribunal that he did in fact give such advice to Mr Gilmartin, in addition to advice to seek an undertaking in relation to costs from the Tribunal before proceeding to cooperate with them in their inquiries. Such an undertaking in relation to costs from the Tribunal was not provided.

2.04 Mr Gilmartin told the Tribunal that he did not himself want immunity, or believe that he needed immunity, as he was strongly of the view that he had done nothing wrong.

2.05 A note prepared by Senior Counsel to the Tribunal, Mr Pat Hanratty SC relating to the discussion he had with Mr Tom Gilmartin on 30 September 1998 near Luton Airport stated the following:

> *He* (Mr Tom Gilmartin*) left us to Luton railway station. After John and Desmond (*members of the Tribunal's legal team*) had got out of the car he turned to me* (Mr Hanratty S.C.) *in the back of the car and said 'don't forget that matter we talked about.' I asked him which matter and he said 'immunity.' I said that we did not think that he needed immunity but that if he wanted it we would get it.*

2.06 In the course of the opening statement to Quarryvale I made to the Tribunal by Mr John Gallagher SC on Day 455, the following was stated in relation to the immunity granted to Mr Gilmartin:

> *'In 1998, Mr Gilmartin was resident in Luton and could not be compelled to assist or attend to give evidence before the Tribunal. At that time he stated that whilst he did not believe that he required immunity, as he had done nothing wrong, he had been advised not to cooperate with the Tribunal until he received a letter of immunity from the DPP. In those circumstances, the then Director of Public Prosecutions at the request of the then Sole Member, Mr Justice Flood, decided that it was in the public interest that he should grant Mr Gilmartin immunity from prosecution subject to Mr Gilmartin cooperating fully and giving truthful evidence to the Tribunal.'*

2.07 In the course of his evidence, Mr Gilmartin was asked to explain why he had denied seeking immunity in circumstances where the documentary evidence indicated that in fact he had done so. Mr Gilmartin's explanation was (as had been stated in the opening statement), that the decision to seek immunity was not his own decision, but merely represented his adoption of advice provided to him by his then solicitor Mr Noel Smyth.

2.08 When asked, on Day 758 (18 September 2007), to explain the note prepared by Mr Hanratty SC, at the conclusion of the meeting between members of the Tribunal's legal team and Mr Gilmartin near Luton Airport on 30 September 1998, Mr Gilmartin responded as follows:

> *'The only thing I remember is that since it was mentioned here as well, that at the station in Luton I reminded the people of the Tribunal what Mr Smyth had asked me to say. I reminded him to remember that subject we discussed, which was immunity.'*

2.09 Also on the same date in the course of being cross-examined, Mr Gilmartin was asked the following question: *'Mr Gilmartin, I am putting it to you that twice in each of these references, twice you lied on oath to this Tribunal.'*

2.10 This question referred to two occasions on which Mr Gilmartin had denied requesting immunity in discussions with the Tribunal's legal team.

2.11 Mr Gilmartin answered the question in the following terms: *'No, I did not. I did not knowingly lie to the Tribunal. I made the statement quite clearly, I would never have asked for immunity because I did not need immunity.'*

2.12 Mr Gilmartin, and indeed the Tribunal itself, were challenged by the legal representatives of a small number of witnesses in relation to the grant of immunity to Mr Gilmartin. A central theme to much of the criticism of Mr Gilmartin receiving a grant of immunity, was that it provided him with a degree of protection in his dealings with the Tribunal and placed him in a different position to that of other witnesses, *vis-a-vis* giving evidence to the Tribunal.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE GRANT OF IMMUNITY

2.13 The Tribunal was satisfied that the request for immunity from prosecution was made by Mr Gilmartin on the advice of his then solicitor Mr Noel Smyth.

2.14 The Tribunal had a duty to take reasonable steps, within the law, to ensure that persons who had (or appeared to have) significant and important information of obvious or apparent relevance to matters being investigated pursuant to the Tribunal's Terms of Reference, provided such information, and if requested to do so, had to make themselves available to give evidence in the course of the Tribunal's public hearings. It was within this context that the Tribunal considered the request for immunity for Mr Gilmartin, and sought same from the Director of Public Prosecutions. The Tribunal was concerned to ensure as far as possible and practicable that Mr Gilmartin, as an individual who was

then living outside the jurisdiction, might be persuaded to assist the Tribunal in its work.

2.15 Mr Gilmartin was the only individual to whom immunity was granted in connection with the work of this Tribunal. No other individual made a similar request to the Tribunal or, to the Tribunal's knowledge, to the Director of Public Prosecutions. Nothing in the Tribunal's Terms of Reference, and nothing stated by the Tribunal at any time, prohibited any party from requesting a similar grant of immunity to that granted to Mr Gilmartin.

2.16 The Tribunal rejected any suggestion that the grant of immunity to Mr Gilmartin in any of itself facilitated Mr Gilmartin in lying to, or misleading the Tribunal, or failing to cooperate with the Tribunal in any way. The grant of immunity was conditional upon Mr Gilmartin's cooperation with the Tribunal and this requirement necessarily included giving truthful evidence to the Tribunal. In the event that Mr Gilmartin lied to or otherwise misled the Tribunal, such would have rendered his grant of immunity useless.

2.17 The Tribunal was satisfied that Mr Gilmartin gave evidence to it in the honest belief that such evidence was true and accurate. The Tribunal was satisfied that the conditions, under which the grant of immunity was made to Mr Gilmartin, were met, and has duly informed the Director of Public Prosecutions.

MR GILMARTIN'S PRIOR STATEMENTS TO THE TRIBUNAL[5]

3.01 Mr Gilmartin gave sworn evidence to the Tribunal on 58 days of public hearings between 3 March 2004 and 24 October 2007. He was examined by Counsel for the Tribunal on approximately 24 days, and was cross-examined by a number of his co-witnesses, or their legal representatives, on approximately 34 days. The most extensive cross-examinations of Mr Gilmartin were conducted by Counsel representing respectively, Mr O'Callaghan, Mr Bertie Ahern and AIB Bank.

3.02 Prior to the commencement of Mr Gilmartin's sworn evidence to the Tribunal, and indeed prior to the commencement of public hearings in the Quarryvale module, information was provided to the Tribunal, by Mr Gilmartin on occasion, either directly or through solicitors instructed by him.

[5] Mr Gilmartin's prior statements are reproduced (with limited redactions) at Appendix 1 in Book 4.

3.03 On many occasions, in the course of Mr Gilmartin's sworn evidence to the Tribunal, his credibility was challenged. This challenge concentrated largely on identifying inconsistencies between Mr Gilmartin's sworn evidence and his prior statements to the Tribunal, as well as inconsistencies between those prior statements themselves. On occasions Mr Gilmartin's credibility was also challenged on the basis that a particular matter referred to by him, in his sworn evidence to the Tribunal, had not been referred to at all in his prior statements to the Tribunal.

3.04 Those parties who perceived themselves as potentially most exposed to adverse findings being made by the Tribunal as a consequence of Mr Gilmartin's allegations, in the event of Mr Gilmartin's evidence being accepted as true and accurate by the Tribunal, understandably went to considerable lengths to challenge and undermine Mr Gilmartin's credibility. They sought to establish Mr Gilmartin to have been a lying, malevolent and malicious individual determined to destroy their reputations, and to have been motivated by bitterness and revenge towards those whom he blamed for his own commercial failure in relation to, in particular, the Quarryvale project.

3.05 All such challenges were considered and assessed by the Tribunal in the preparation of this Report. However, the Tribunal deemed it unnecessary to address in the Report each and every occasion on which Mr Gilmartin's credibility was challenged, as to have done so would have been not only impractical, but in many instances impossible. Some of the challenges to Mr Gilmartin's evidence were based on what appeared to be serious inconsistencies, and were canvassed in evidence with Mr Gilmartin and other witnesses in considerable detail, and on occasions over prolonged periods. Other inconsistencies were of a relatively minor nature, and were inconsequential from an evidential or probative viewpoint, and were therefore not the subject of specific analysis in the Report.

3.06 Where questions of inconsistencies in Mr Gilmartin's information or evidence provided to the Tribunal were canvassed or raised by Counsel for the Tribunal, or by other lawyers (or witnesses), the Tribunal, subject to its approach as indicated in the immediately preceding paragraph, endeavoured to adequately probe and evaluate them, and in so doing assess Mr Gilmartin's credibility as a witness. The Tribunal was strongly urged by a number of witnesses (or their lawyers) directly affected by allegations (both direct and based on hearsay) made or repeated by Mr Gilmartin, to reject Mr Gilmartin's evidence as unreliable, unbelievable, inaccurate, knowingly untruthful and misleading.

3.07 Serious allegations were on occasion made by witnesses or their lawyers to the effect that the Tribunal itself sought to support or shore up Mr Gilmartin and his credibility, in order to protect its *'star'* witness, and that this was done at the cost of the truth. The Tribunal absolutely rejects any such accusation. As an inquisitorial fact finding body, the Tribunal had no interest or motivation to act in such a manner in relation to Mr Gilmartin, or indeed any other witness. The Tribunal's mandate, and its sole focus was to identify the truth without fear or favour, and it could only have done that in circumstances where it was prepared to (as indeed it did) critically examine relevant evidence in its search for the truth, irrespective of its source.

3.08 The Tribunal was at all times quite prepared to declare Mr Gilmartin to be an unreliable witness, or a witness whose evidence was misleading and/or untruthful, if such was found to have been the case.

3.09 In its efforts to determine the credibility of Mr Gilmartin's evidence, and indeed that of the evidence of other witnesses, it was necessary and appropriate that the Tribunal not simply make that determination on the basis of one or more inconsistencies, albeit of a significant nature, being established. Having taken sworn evidence from Mr Gilmartin over a period of 58 days, in the course of which many matters were closely canvassed with him, the Tribunal had an ample and prolonged opportunity to consider and evaluate those inconsistencies (both of a minor and of a significant nature) which were suggested, alleged and/or established on his part. The Tribunal also had an ample and prolonged opportunity to assess the demeanour, style and attitude of Mr Gilmartin as a witness. As has been stated elsewhere in this Report, Mr Gilmartin was, from the Tribunal's perspective, a difficult and often fractious witness.

3.10 The Tribunal's task of identifying and evaluating inconsistencies, be they apparent or actual, minor or significant, and in so doing determining not only the truthfulness or otherwise of evidence, but also the credibility of the witness, required that it pose itself the following questions to establish the motivation, cause or reason for those inconsistencies.

3.11 These were:

i. Was there a deliberate intention to lie and/or mislead?

ii. Was there a lack of care, or a cavalier approach, in relation to the accuracy of the information or evidence?

iii. Was there a desire to inflict reputational damage, or otherwise undermine the evidence of another witness?

iv. Was there a desire to mislead, obstruct and frustrate the Tribunal in its investigative work?

v. Was there an inability to accurately communicate historical facts on the part of the witness?

vi. Was there a tendency to display an inability to distinguish or identify the sources of different pieces of information because of the passage of time and/or the nature and similarity of certain information?

vii. Was there a tendency to exaggerate or embellish information which nevertheless had a truthful or accurate basis?

viii. Did the witness portray a poor recollection for detail?

ix. Where inconsistencies were found to exist, were they of a significant or minor nature? If the former, did they undermine the evidence to which they related, and if so, to what extent?

x. Were the inconsistencies found of a nature and/or so frequent in number as to require that the witnesses' evidence, either in relation to specific issues, or generally, should be repudiated in its entirety?

3.12 It does not necessarily follow that there is a wilful or intentional or deliberate decision to state untruths or mislead the Tribunal on the part of a witness, where such information or evidence is subsequently established as being untrue or inaccurate. Sworn evidence or information provided in prior statements, may be inaccurate, but nevertheless given or provided in the honest belief by a witness of its truthfulness and/or accuracy. On the other hand such information may be provided in the full knowledge that it is untrue and/or inaccurate, and with the intention to mislead.

THE DIFFERENT CATEGORIES OF MR GILMARTIN'S PRIOR STATEMENTS

4.01 The evidential and probative value of the prior statement of any witness provided to any agency conducting an inquiry (including the Courts and Tribunals) will vary depending on the nature/category of that prior statement, and the circumstances in which it was made and/or recorded. In most instances, the prior statement will consist of a verbatim record of what was stated by the statement maker, on occasion prepared by the statement maker with assistance and advice from his or her solicitor, and on occasion electronically or

stenographically recorded, and almost always, considered and (if in written format) signed by the statement maker upon its completion. This category of *'considered'* prior statement unquestionably carries a very strong, if not almost certain presumption that it accurately represents the words and thoughts of the statement maker. Where the prior statement is in a question and answer format (such as for example the private interviews conducted with a number of Tribunal witnesses by Counsel for the Tribunal prior to those witnesses giving sworn evidence or as in Mr Gilmartin's case, a taped conversation between his then solicitor and himself), the context in which information is provided by the interviewee is usually clear, although with the caveat that in some instances (as occurred with the Tribunal private interviews and Mr Gilmartin's taped discussion with his solicitor), the completed record of the discussion is not formally *'signed off'* or approved by the interviewee.

4.02 Somewhat uniquely, in Mr Gilmartin's case, a substantial body of information was provided to the Tribunal in the course of unrecorded telephone conversations and face to face meetings between Mr Gilmartin and Senior Counsel representing the Tribunal, and in respect of which Tribunal Counsel prepared a series of notes either in the course of the relevant discussions or shortly thereafter. While undoubtedly the experienced Counsel who prepared these notes did so with care to ensure that the information provided by Mr Gilmartin was accurately noted, it was quite apparent that they did not necessarily note every word uttered by Mr Gilmartin, or always indicate the precise context in which particular discussions took place. Mr Gilmartin was not provided with the opportunity to read, or to otherwise consider the accuracy and content of these notes, a fact which, while it cannot take from their status as a prior statement, leaves them open to challenge by Mr Gilmartin himself as to their detail, and explanation as to their context.

4.03 In relation to Mr Gilmartin's prior statements, the Tribunal considered them with particular regard to the following:

i. The category of prior statement in question.

ii. The extent to which the subject matter was detailed or canvassed or discussed in the prior statement in question (or as the case may be, omitted from the prior statement in question).

iii. The extent to which detailed and forensic examination of any issue in the course of evidence given at public hearings did, as occurred in a number of instances, provide far greater and more detailed information that was found or might have been expected to have been found in prior statements.

iv. The extent to which a detailed and forensic examination of an issue in the course of evidence given at public hearings provided a witness with the opportunity to expand, elaborate, exaggerate or embellish information provided in prior statements. The expansion and/or elaboration of such information while giving sworn evidence is legitimate and appropriate and on occasions a necessary and helpful event in the assimilation of evidence. On the other hand, the exaggeration and/or embellishment of such information while giving sworn evidence is distinctly unhelpful and can amount to untruthful and misleading evidence.

4.04 The totality of the information, other than his sworn evidence, provided by Mr Gilmartin to the Tribunal (hereinafter referred to as his prior statements) consisted of the following:

[A] Narrative statements from Mr Gilmartin and correspondence from his solicitors providing information based on Mr Gilmartin's instructions to them, including:

- A narrative statement dated 17 May 2001 consisting of 86 paragraphs and signed by Mr Gilmartin on 25 May 2001.
- A letter dated 2 March 2004 from A&L Goodbody Solicitors on behalf of Mr Gilmartin, with linked correspondence.
- A narrative statement dated 10 March 2004 consisting of two pages, and signed by Mr Gilmartin.
- A narrative statement dated 26 May 2004 consisting of two pages, and signed by Mr Gilmartin.
- A narrative statement dated 28 October 2005 consisting of one page, and signed by Mr Gilmartin with linked correspondence.
- Correspondence from solicitors representing Mr Gilmartin, addressed to the Tribunal, with linked correspondence from the Tribunal, in which information, based on instructions from Mr Gilmartin, was provided to the Tribunal.

[B] Notes of face to face meetings and telephone conversations between Mr Gilmartin and members of the Tribunal's legal team between 5 February 1998 and 3 October 2002. These notes were prepared by members of the Tribunal's legal team.

[C] The transcript of a taped recording of Mr Gilmartin in discussion with his then solicitor, Mr Noel Smyth on 20 May 1998 at a London address. This discussion was tape-recorded by Mr Smyth with Mr Gilmartin's knowledge.

[D] An Affidavit sworn by Mr Gilmartin on 2 October 1998 at the request of the Tribunal, together with a '*final draft*' of that Affidavit with handwritten amendments, also dated 2 October 1998, and Affidavits of Discovery sworn by Mr Gilmartin.

[E] A short letter dated 15 February 1999 written by Mr Gilmartin personally to the Tribunal.

4.05 The foregoing five categories of prior statements provided the Tribunal and interested parties with a considerable body of information, and more importantly from an evidential perspective, a valuable insight into the nature and quality of the information provided by Mr Gilmartin to the Tribunal prior (for the most part) to his sworn evidence to the Tribunal. It is appropriate and necessary that the Tribunal should, in the clearest possible terms, indicate, in general, its attitude and approach to these different categories of prior statements. It endeavours to do so in the following pages.

[A] NARRATIVE STATEMENTS SIGNED BY MR GILMARTIN AND INFORMATION PROVIDED TO THE TRIBUNAL IN CORRESPONDENCE FROM MR GILMARTIN'S SOLICITORS.

4.06 Unless otherwise indicated and established in the course of sworn evidence, the Tribunal assumed that the information provided by Mr Gilmartin either himself directly, in the form of a narrative statement, or indirectly through his solicitors, was information carefully considered by Mr Gilmartin and agreed by him as accurate prior to it being provided to the Tribunal. The information in this category of prior statement was drafted professionally and with access to legal advice.

[B] NOTES OF FACE TO FACE MEETINGS AND TELEPHONE CONVERSATIONS BETWEEN MR GILMARTIN AND MEMBERS OF THE TRIBUNAL'S LEGAL TEAM BETWEEN 5 FEBRUARY 1998 AND 3 OCTOBER 2002

BACKGROUND TO THE TELEPHONE DISCUSSIONS AND FACE TO FACE MEETINGS

4.07 Between 5 February 1998 and 3 October 2002, Mr Gilmartin (then a resident in Luton, UK) and Counsel for the Tribunal communicated by telephone on 34 separate occasions. These telephone calls were not stenographically or electronically recorded. Counsel for the Tribunal (usually Mr Patrick Hanratty SC) noted a series of occasionally disjointed pieces of information conveyed to the Tribunal by Mr Gilmartin in the course of these telephone discussions, either

during the telephone discussions or shortly after their conclusion. The final two telephone discussions with Mr Gilmartin were conducted with Mr Hanratty, after Mr Hanratty ceased to be a member of the Tribunal's legal team and had returned to private practice. In these instances Mr Hanratty passed on to the Tribunal notes made by him relating to those telephone conversations.

4.08 These telephone calls and Counsel's notes relating to them took place in the course of the Tribunal's private inquiries relating to, in particular, the rezoning of Quarryvale. Their purpose was to elicit information from Mr Gilmartin in order to assist the Tribunal in those inquiries. These notes were, prior to March 2005 considered by the Tribunal to be confidential, and were not released to any third party. These notes were not provided to Mr Gilmartin at the time they were prepared, or indeed at any time prior to 2005. Accordingly Mr Gilmartin was not afforded the opportunity to consider the content of the notes, or the opportunity to confirm that they accurately represented the information provided by him to the Tribunal. In 2005, Mr O'Callaghan successfully judicially reviewed the Tribunal's policy decision not to release all Mr Gilmartin's prior statements. The High Court (and on appeal, the Supreme Court) held that Mr O'Callaghan was entitled to all Mr Gilmartin's prior statements, including the notes relating to his telephone conversations with Counsel for the Tribunal, for the purposes of testing the credibility of Mr Gilmartin.

THE EVIDENTIAL OR PROBATIVE VALUE OF COUNSEL'S NOTES OF THE TELEPHONE AND FACE TO FACE DISCUSSIONS

4.09 Although Counsel's notes of information provided by Mr Gilmartin over a five year period provided, as was their purpose, information to the Tribunal which was both potentially relevant and material to its private inquiries then underway, they did not always constitute a verbatim account of the information provided by Mr Gilmartin, or indeed indicate the precise context in which specific information was provided. It was apparent for example, from a perusal of the notes, that frequently, questions put to Mr Gilmartin which resulted in him providing certain information, were not recorded, or made the subject of any note.

4.10 The Tribunal was satisfied however that the Counsel who conducted these telephone conversations with Mr Gilmartin were experienced Counsel and doubtlessly competent note-takers, and would not have approached their task of noting information given to them by Mr Gilmartin in the course of the Tribunal's private inquiries in the absence of due care and diligence.

4.11 The Tribunal accordingly undertook both its private and public inquiries on the assumption and basis that, unless established as a matter of probability to be otherwise, by reference to other documentation or sworn evidence, the information noted by Tribunal Counsel as having been provided by Mr Gilmartin in this series of telephone calls reasonably and accurately represented information provided by Mr Gilmartin at the time.

4.12 While the preceding paragraphs refer specifically to the telephone discussions between Mr Gilmartin and Counsel for the Tribunal, the observations expressed by the Tribunal apply equally to the four face to face meetings which occurred between Mr Gilmartin and Counsel for the Tribunal, and which were the subject of note-taking by Counsel for the Tribunal. As was the case with the telephone discussions, the face to face meetings were conducted in the absence of stenographic or other recording.

4.13 In order to ensure that the notes of the said telephone and face to face discussions between Mr Gilmartin and Counsel for the Tribunal were considered in their proper context, the Tribunal was cognisant of the following:

- The notes made by Counsel did not constitute verbatim accounts of everything stated by Mr Gilmartin.

- The notes did not, on their face, constitute considered narrative statements, such as Mr Gilmartin's statements of 17 May 2001 and 10 March 2005.[6]

- Mr Gilmartin was not provided with an opportunity to confirm or reject the accuracy of the notes taken by Tribunal Counsel, at or shortly after their preparation.

- The context in which some of the noted information was provided by Mr Gilmartin was not always clear from the notes themselves.

- The notes did not always fully reflect or record the entire of the discussions between Mr Gilmartin and Counsel for the Tribunal, as was evident from the following:

[6] The variation in the quality and evidential value of different categories of prior statements appeared to have been acknowledged by cross-examining Counsel when on Day 780, he asked the following question of Mr Gilmartin (referring to Mr Gilmartin's written narrative statement of 10 March 2004):

'It wasn't a statement that you made just off the top of your head, it was one I suggest that was made after detailed and measured consideration by you, isn't that right?'

i. A telephone discussion on 16 June 1998 was stated by Mr Hanratty SC (Counsel for the Tribunal) to have lasted just ten minutes short of two hours. Yet, Mr Hanratty's notes cover less than four pages, or if measured in time, approximately ten to fifteen minutes of conversation.

ii. A meeting between Mr Hanratty and his colleague Mr John Gallagher SC with Mr Gilmartin in the Strathmore Hotel, Luton, on 2 October 1998 commenced at 11.15pm and was intended to last for one hour. Yet, the notes of that meeting comprise less than two pages, or if measured in time, approximately five minutes of conversation.

iii. A telephone discussion on 30 October 1998 was stated to Mr Hanratty SC to have continued for '*approximately two hours.'* Yet, only five pages of notes were prepared, or if measured in time probably in the region of twenty to thirty minutes of conversation.

iv. A telephone discussion on 4 June 1999 between Mr Hanratty SC and Mr Gilmartin was described by Mr Hanratty as '*two long telephone conversations today…'* Yet, the notes relating to the two telephone conversations consist of, in total, two pages.

v. A meeting held on 8 July 1999 between Mr Hanratty and Mr Gilmartin and two solicitors from Mr Gilmartin's then firm of solicitors, Eugene F. Collins, at a hotel in Luton, UK, was stated to have lasted for four and a half hours. Yet, Mr Hanratty's notes relating to this lengthy meeting comprise just twelve pages.

[C] THE TRANSCRIPT OF A TAPED RECORDING OF MR GILMARTIN BY HIS (THEN) SOLICITOR MR NOEL SMYTH ON 20 MAY 1998 AT AN ADDRESS IN LONDON

4.14 Between 5 February and 20 May 1998, Mr Gilmartin had been in contact with members of the Tribunal's legal team on five separate occasions, consisting of one face to face meeting and four telephone discussions.

4.15 On 20 May 1998, Mr Gilmartin and his (then) solicitor Mr Noel Smyth met by arrangement at an address in London for the purposes of Mr Smyth receiving instructions from Mr Gilmartin in relation to matters then associated with the Tribunal's inquiries, which were at the time at an early stage.

4.16 In the course of this meeting with Mr Smyth on 20 May 1998, which lasted four or five hours, their discussions were taped using Mr Smyth's dictaphone. A subsequent stenographical transcript of the tapes of these discussions exceeded 100 pages. The taped discussions recorded lengthy statements of information from Mr Gilmartin, intermittently preceded or prompted by questions from Mr Smyth. The taped discussion was in fact conducted in the style of an interview with Mr Gilmartin by Mr Smyth.

4.17 In his evidence to the Tribunal, the following matters were highlighted by Mr Gilmartin in relation to the taped discussion, and the circumstances in which it was conducted:

- The decision to tape the interview was that of Mr Smyth, and not that of Mr Gilmartin. Mr Gilmartin was aware that his discussions with Mr Smyth were being taped and he raised no objection to it.

- The tapes (or their transcript) were never intended to constitute a statement to the Tribunal.

- Subsequent to the taped interview (and prior to its delivery to the Tribunal) Mr Gilmartin did not confirm, check or '*proof read'* its content.

Mr Gilmartin stated the following, referring to his taped discussion with Mr Smyth: *'I was talking into a microphone so I – for a very short space of time, so I just went through in general what I knew about what was going on.'*

4.18 He also stated:

'... it was not my statement for the Tribunal. It was never intended to be my statement. It had never been proof read, checked, anything, it was just a conversation, talking into - and there was just, general broad brush questions from Mr Smyth, which I gave an answer to in my own way, so it was never intended to be a statement to the Tribunal.'

4.19 Mr Gilmartin also said:

'Noel Smyth asked me to just, to run through, to run through, it was not a statement, it was not intended to be a statement, and I was sitting at a table in London with no back-up evidence, no back-up papers whatsoever, and just talking about events that took place over a period of the best part of ten years, and so I just gave a brief flavour of what went on.'

4.20 Mr Smyth told the Tribunal that the content of his taped discussion with Mr Gilmartin was '*more conversational as opposed to instructive'* and: '*It was more as a briefing note… I never anticipated that it was going to be a piece of evidence to the Tribunal.'*

4.21 Mr Smyth also stated: '*…I didn't view the material as being material as I said I thought it was like a briefing note to me as a solicitor as opposed to being, if I call it affidavit quality instructions.'*

4.22 Mr Smyth also stated:

> *'…Tom Gilmartin at the point in time is now living in Luton, he solved his issues as far as Barkhill and the bank were concerned. He has been asked by a Tribunal to facilitate and help them. He is not quite sure which way he is going to go. He has met Members of the Tribunal, he is impressed by the fact that they have come to see him and he is impressed by the fact that they are looking for his help. But he is not convinced at this point in time how far that is going* (to) *go. So you know, at this point, what I said to you earlier, this document was never intended to see the light of day. So, therefore, Tom Gilmartin would have seen the informality in which we were dealing with it, it was a tape, it wasn't bringing him before a Commissioner for Oaths, it wasn't being sworn. I am not saying that the document itself is wrong, but I am saying that it wasn't, I wasn't being precise, if you look at the way I asked some of the questions, the way he interrupted and he's gone off on a, I won't say ramble, but gone off into various tangents which if you were trying to deal with issues in the normal course of event you'd stop. You'd exhaust the point, and then make a note and say, is that correct.'*

4.23 Mr Smyth told the Tribunal that on the occasion of his taped discussion with Mr Gilmartin, he told Mr Gilmartin that he would provide him with a transcript of the tape to enable him use it as a basis for making a statement to the Tribunal. In fact, Mr Smyth provided Mr Gilmartin with a transcript of the tape approximately one month after providing the Tribunal with a copy.

4.24 In subsequent discussions between Mr Gilmartin and Counsel for the Tribunal, Mr Gilmartin informed the Tribunal of the existence of his taped discussion with Mr Smyth, and he, Mr Gilmartin, apparently instructed Mr Smyth to furnish it to the Tribunal.[7]

[7] Mr Lawlor told the Tribunal that Mr Smyth advised him of the content of the taped discussion between Mr Smyth and Mr Gilmartin, although Mr Smyth was then acting as Mr Gilmartin's Solicitor. Mr Smyth however vehemently denied ever doing so.

4.25 In terms of its evidential value, the taped discussion between Mr Smyth and Mr Gilmartin at least enabled the Tribunal to fully appreciate exactly what was said by Mr Gilmartin to Mr Smyth on 20 May 1998 and, equally, if not more importantly, the precise questions put by Mr Smyth to Mr Gilmartin, which elicited the information then provided by Mr Gilmartin. To this important extent the evidential value of the taped discussion was greater than that of the notes of Mr Gilmartin's telephone conversation with Counsel for the Tribunal.

[D] THE DRAFT AFFIDAVIT AND AFFIDAVIT PREPARED AND SWORN RESPECTIVELY ON 2 OCTOBER 1998

4.26 The draft affidavit was prepared in advance of the meeting between Mr Gilmartin and Counsel for the Tribunal in London on 2 October 1998. The finalised affidavit was duly sworn by Mr Gilmartin on that day. The sworn affidavit was provided to the Tribunal at its request, and at a time when the Tribunal was concerned that Mr Gilmartin might not be available to give sworn evidence to the Tribunal at its public hearings, as he was residing outside the Irish jurisdiction and could not be compelled to attend.

4.27 The sworn affidavit represented, in the Tribunal's view, a considered narrative statement made by Mr Gilmartin to the Tribunal.

[E] A SHORT LETTER DATED 15 FEBRUARY 1999 WRITTEN BY MR GILMARTIN PERSONALLY

4.28 This short letter sent to the Tribunal by Mr Gilmartin constituted a considered written statement by Mr Gilmartin.

THE TRIBUNAL'S GENERAL CONCLUSIONS IN RELATION TO MR GILMARTIN'S CREDIBILITY *VIS-A-VIS* INCONSISTENCIES APPARENT IN HIS PRIOR STATEMENTS AND/OR SWORN EVIDENCE TO THE TRIBUNAL

i. The Tribunal did not accept as accurate all of the information and evidence given to it by Mr Gilmartin. Some of it was mistaken and erroneous. In those instances where Mr Gilmartin's information/evidence was found to have been mistaken, inaccurate, erroneous, unreliable and/or significantly inconsistent or otherwise deficient, and where the Tribunal conducted a sufficiently comprehensive inquiry such as enabled it to make determinations in relation to that information or evidence, it did so.

ii. As has been stated elsewhere in this Report, the Tribunal was satisfied that Mr Gilmartin was an honest witness, and that he gave information and evidence to the Tribunal in the honest belief that it was true and accurate, even though it was not always so.

iii. The Tribunal was satisfied that Mr Gilmartin both in his prior statements to the Tribunal and in his sworn evidence, did not deliberately lie and/or mislead the Tribunal or seek to obstruct and frustrate its work.

iv. The Tribunal was satisfied that Mr Gilmartin in his prior statements to the Tribunal and in his sworn evidence to the Tribunal did not deliberately or maliciously seek to inflict reputational damage on, or undermine the evidence of, other witnesses, or in any way deliberately exaggerate or embellish information or evidence.

v. Because of Mr Gilmartin's admitted and often exhibited poor recollection for detail, and a tendency, on occasion, to conflate or confuse information which had been provided to him by others (including Mr O'Callaghan), the Tribunal took particular care when making findings based partly or entirely on Mr Gilmartin's evidence relating to such information, so as to satisfy itself to the greatest possible extent as to what information (if any) had been in fact provided to Mr Gilmartin.

4.29 Because of the unusual nature of many of Mr Gilmartin's prior statements (in that they consisted of notes prepared by Counsel for the Tribunal following telephone discussions or face to face meetings with Mr Gilmartin), and having regard to the extent to which Mr Gilmartin's credibility was challenged in relation to those prior statements, the Tribunal has included Mr Gilmartin's prior statements to the Tribunal in this section of the Report (Appendix 2 – Book 4). These have been subjected to some limited redaction for the purpose of excluding references to information which was not canvassed in the course of the Tribunal's public hearings, or references of a particularly personal nature.

4.30 Appendix 1 also includes a memorandum of information which was said to have been provided to Mr Sean Haughey and Mr Frank Feely by Mr Gilmartin on 23 February 1989, and which is the subject of review elsewhere in this Chapter.

MR OWEN O'CALLAGHAN'S PRIOR STATEMENTS TO THE TRIBUNAL[8]

THE TRIBUNAL'S EARLY CONTACT WITH MR O'CALLAGHAN

5.01 The Tribunal initially sought information from Mr O'Callaghan in relation to its then private inquiry into Quarryvale in letters to Mr O'Callaghan's companies, Barkhill and Riga Ltd on 15 October 1998. Shortly thereafter, Messrs Ronan Daly Jermyn Solicitors came on record on behalf of Mr O'Callaghan (and his companies). On 20 November 1998, Mr O'Callaghan's solicitors wrote to AIB, Deloitte & Touche, and to Mr Dunlop's solicitors directing them not to release any documents relating to their client's affairs to the Tribunal in response to the Tribunal's request to those entities for same. Mr O'Callaghan effectively withdrew that direction in 1999.

5.02 In December 1998, and again in January 1999, following the Tribunal's indication to Mr O'Callaghan solicitors of its intention to make certain Discovery Orders against Mr O'Callaghan and his companies, submissions were made to the Tribunal by Mr O'Callaghan's legal representatives in relation to this issue.

5.03 Eleven Discovery Orders were subsequently made against Mr O'Callaghan and his companies in the period 2000 – 2007.

5.04 The orders of 12 February 1999 directed Barkhill Ltd, Riga Ltd and Mr O'Callaghan to discover on oath records relating to their dealings with Shefran Ltd, Mr Frank Dunlop, Frank Dunlop & Associates Ltd, Barkhill Ltd, Riga Ltd and Mr O'Callaghan, as well as their financial records and records of any payments made to any elected representative or local authority official for the period 1 September 1991 to 1 September 1993. Discovery Orders of 17 May 2000 extended the period from 1 January 1994 to the date of the Orders.

MR O'CALLAGHAN'S WRITTEN NARRATIVE STATEMENTS TO THE TRIBUNAL

5.05 Mr O'Callaghan made a number of written statements to the Tribunal, both in the course of its private inquiry in relation to Quarryvale, and thereafter. Mr O'Callaghan gave sworn evidence to the Tribunal on 38 days between 2004 and 2008.

[8] Mr O'Callaghan's prior statements to the Tribunal, together with those of his business partner Mr John Deane, are reproduced (subject to limited redaction) at Appendix 2 – Book 4.

5.06 The Tribunal initially sought a written statement from Mr O'Callaghan on 17 December 1999, in relation to any payments made by him (or by companies associated with him) to elected councillors or other public representatives. On 6 January 2000, Mr O'Callaghan agreed to make the requested statement. On 16 March 2000, the Tribunal reminded Mr O'Callaghan to provide the promised statement. On 30 March 2000, Mr O'Callaghan's solicitors assured the Tribunal that the promised statement would be made available to it within the following week. Ultimately, Mr O'Callaghan provided his first written statement to the Tribunal on 12 April 2000 (the day following Mr Dunlop's first public appearance at the Tribunal), some four months after it having been requested by the Tribunal. Subsequently, Mr O'Callaghan furnished the Tribunal with a number of further written statements.

5.07 Written statements were provided by Mr O'Callaghan (in addition to information provided through his solicitors in correspondence with the Tribunal) on the following dates:

- 12 April 2000
- 3 May 2000
- 16 May 2003
- 24 November 2003
- 1 March 2004
- 4 November 2005
- 25 April 2007
- 11 July 2007
- 9 November 2007
- 9 November 2007
- 3 December 2007
- 22 February 2008

5.08 Mr O'Callaghan's business partner, Mr John Deane, made a written statement to the Tribunal on 3 May 2000.

5.09 It was evident from subsequent information provided by Mr O'Callaghan and from evidence given to the Tribunal, that Mr O'Callaghan, in his April and May 2000 statements understated the payments to both Mr Lawlor and Cllr Colm McGrath. In relation to Mr Lawlor, Mr O'Callaghan incorrectly indicated that the only payment to him within the approximately three year period up to 31 December 1993 was IR£5,000 (in November 1991), whereas in fact it was subsequently established to have been IR£10,000 in September 1991. In the case of Cllr McGrath, Mr O'Callaghan understated the payments to him by IR£10,700. In his two statements in 2000, he disclosed that Cllr McGrath had received two payments of IR£10,000 and IR£20,000, but he failed to refer to a

payment of IR£10,700 paid on 21 May 1992 on behalf of Cllr McGrath, following a request for assistance from Cllr McGrath. Mr O'Callaghan first disclosed this payment to the Tribunal in a written statement on 16 May 2003.

MR O'CALLAGHAN'S PRIVATE INTERVIEW WITH THE TRIBUNAL

5.10 Mr O'Callaghan was privately interviewed by Counsel for the Tribunal on one occasion, on 11 October 2000. That private interview dealt solely with the Denis *'Starry'* O'Brien issue.[9]

5.11 In October 1998, Mr O'Callaghan, through his Counsel, Michael McDowell SC, offered to make himself available to the Tribunal for private interview. This offer was not at that time taken up. In the Judicial Review proceedings taken by Mr O'Callaghan against the Tribunal in November 2005, Mr O'Callaghan and his co-plaintiffs (unsuccessfully) claimed that the refusal on the part of the Tribunal to take up their offer of a meeting in private at that time was evidence of bias on the part of the Tribunal in its dealings with them in relation to its inquiries. This allegation was rejected by the Tribunal in its Affidavit sworn in the course of these proceedings, wherein it gave its reason for not seeking to privately interview Mr O'Callaghan at that time:

> *'Statements and documents provided to the Tribunal by the Applicant were comprehensive on the issues which the Tribunal had determined merited public hearing and the Tribunal did not pursue the intended course for arranging for an interview with the Applicant thereafter.'*

5.12 Subsequently, on 1 September 1999 the Tribunal wrote to Mr O'Callaghan's solicitors indicating that it now wished to take up the opportunity to privately interview Mr O'Callaghan. The Tribunal was advised on 15 September 1999 by Mr O'Callaghan's solicitors, that Mr O'Callaghan was agreeable to the proposed private interview, but was anxious first, to find a replacement for his Senior Counsel who had been appointed Attorney General. In any event, the above mentioned private interview never took place. Mr O'Callaghan commenced his oral evidence to the Tribunal on 7 July 2004.

5.13 Mr O'Callaghan gave sworn evidence to the Tribunal on 38 days between 2004 and 2008. On 16 June 2008, the Tribunal acceded to Mr O'Callaghan's request, based on medical advice, to restrict his sworn evidence to half days.

[9] In 2000, it was reported in a Sunday newspaper that a Cork businessman, Mr Denis 'Starry' O'Brien had paid IR£50,000 cash to Mr Bertie Ahern in the late 1980s, on behalf of Mr O'Callaghan. Mr Ahern instituted libel proceedings in the Circuit Court, and was awarded damages and his costs.

MR TOM GILMARTIN'S ALLEGATIONS OF REQUESTS TO HIM FOR SUBSTANTIAL PAYMENTS AND THAT HE RECEIVED INFORMATION FROM MR OWEN O'CALLAGHAN AND OTHER SOURCES OF SUBSTANTIAL PAYMENTS TO SENIOR POLITICIANS

6.01 Both in his sworn evidence, and in other information provided to the Tribunal, Mr Gilmartin referred to information which he alleged had been provided to him by third parties, to the effect that substantial payments were made by Mr O'Callaghan to politicians, including Mr Bertie Ahern, Mr Ray MacSharry and Mr Albert Reynolds. These payments, if in fact they had been made, and were made for the reasons which Mr Gilmartin alleged were indicated to him by his sources, would have almost certainly constituted corrupt payments. Mr Gilmartin however emphasised to the Tribunal that this information was provided to him by others, and that he himself was not claiming that any such payments had in fact been made, nor was he in a position to provide any proof of such payments.

6.02 Mr Gilmartin did however make specific allegations of requests made to him for payments of a corrupt nature by politicians. One of the allegations concerned a request for IR£100,000 by Mr Lawlor (in addition to a similar amount for Mr George Redmond) while attending a meeting in Mr Redmond's office in 1988. Another allegation concerned a request for IR£100,000 by Cllr Finbarr Hanrahan in the course of a meeting in Buswells Hotel, Dublin in early 1989.

6.03 Mr Gilmartin also alleged that a demand for IR£5m was made of him immediately following a meeting with Government Ministers and the then Taoiseach, Mr Charles J. Haughey at Leinster House. Mr Gilmartin was unable to identify the individual in question.

6.04 No money was paid by Mr Gilmartin on foot of any of these requests for money.

6.05 Mr Gilmartin also maintained that, separately, Mr Padraig Flynn and Mr Bertie Ahern, both then Government Ministers, solicited donations from him for the Fianna Fail Party, and that in response to Mr Flynn's request he paid a sum of IR£50,000 to Mr Flynn for the Fianna Fail Party (but which Mr Flynn claimed was a donation intended for him personally). In addition, Mr Gilmartin maintained that Mr Sean Sherwin, a senior Fianna Fail official also solicited a donation to the Party from him.

6.06 All of the above matters are considered in greater detail elsewhere in this chapter.

6.07 Mr Gilmartin told the Tribunal that the sources of the information provided to him in relation to substantial payments made by Mr O'Callaghan to senior politicians, included not only Mr O'Callaghan himself, but other, anonymous sources. As the Tribunal's inquiries concerning Mr Gilmartin and Mr O'Callaghan related only to matters relevant to Quarryvale, the Tribunal restricted its focus, wherever possible, to matters associated with the project to rezone and develop the Quarryvale lands, and, more particularly, information or evidence which indicated or identified the possibility that payments of money might have been made to politicians or public officials in the course of, or arising from, that project. It was neither practicable nor appropriate that all allegations relating to possible payments of money to senior political figures, but which related to matters unconnected to Quarryvale, should be the subject of inquiry, and especially of detailed inquiry by the Tribunal.

6.08 Nevertheless, a number of allegations made by Mr Gilmartin which, on their face, indicated or suggested improper or corrupt payments of money by Mr O'Callaghan to senior political figures featured in the course of the Tribunal's public hearings. While some of these were referred to in passing or briefly, others were the subject of closer examination by Counsel to the Tribunal and/or cross-examination by Counsel representing Mr O'Callaghan, Mr Ahern and others.

6.09 Because these allegations were not all the subject of detailed inquiry by the Tribunal, the Tribunal has not made determinations in relation to all of them. It is important to emphasise that the mere fact of the recounting of allegations and the limited extent to which some were the subject of examination and cross-examination in the course of the Tribunal's public hearings cannot and does not in any way whatsoever establish wrongdoing on the part of the individuals referred to therein.

6.10 Mr Gilmartin told the Tribunal that certain information was provided to him relating to payments to senior politicians. He attributed the source of this information to three people in particular. They were Mr O'Callaghan, an unidentified individual who provided information to him over the telephone and who had been referred to him by a personal friend living in Co Cork, Mr Peter Kearns (now deceased), and another also unidentified individual who Mr Gilmartin said contacted him by telephone on two occasions, one or two weeks apart, in 2002 in or about the time of the publication of the Tribunal's Second Interim Report (September 2002). This latter individual was believed by Mr Gilmartin to have been a UK based banker, because of the fact that, following one of the telephone calls to him from this individual, Mr Gilmartin telephoned the caller's telephone number (which appeared on the screen of his own

telephone), whereupon the call was answered by a person who was identified as an employee of a bank in Jersey.

6.11 In the course of his sworn evidence to the Tribunal, Mr Gilmartin was the subject of very detailed examination and cross-examination in relation to certain information provided by him to the Tribunal prior to his sworn evidence to the Tribunal. This was understandable as the thrust of Mr Gilmartin's allegations in relation to these matters was potentially very damaging to the reputations of Mr O'Callaghan, Mr Ahern, and others.

6.12 Listed in the Tables below is a summary[10] of the majority of the items of information passed to the Tribunal by Mr Gilmartin concerning alleged payments to politicians and which, he alleged had been told to him by third parties (including Mr O'Callaghan), rather than information in respect of which he had personal or direct knowledge. Some of the matters referred to are dealt with comprehensively elsewhere in the Report.

[10] For a more detailed account of the information provided to the Tribunal (other than sworn evidence) by Mr Gilmartin see the reproduction (with limited redactions) of Mr Gilmartin's prior statements to the Tribunal. (Appendix 1 – Book 4)

TABLE A

THE INFORMATION MR GILMARTIN CLAIMED WAS GIVEN TO HIM BY MR O'CALLAGHAN

1.	Mr Gilmartin claimed that he was informed Mr O'Callaghan and others met with Mr Bertie Ahern, then Minister for Finance, prior to the fall of the FF Government on 14 December 1994, in a Dublin hotel for the purposes of, essentially, arranging the granting of tax designation status to the Golden Island Development in Athlone (with which Mr O'Callaghan was associated) and other locations.
2.	Mr Gilmartin told the Tribunal that Mr O'Callaghan told him that at a dinner in his house in Cork in March 1994, he paid IR£150,000 ('*over IR£100,000, IR£150,000 or something*') to Mr Reynolds at 3am in a bedroom prior to Mr Reynolds flying from Cork by helicopter, before travelling to the US for St Patrick's Day.
3.	Mr Gilmartin alleged that Mr O'Callaghan told him that Cllrs Sean Gilbride, Colm McGrath and Mr Liam Lawlor were on his '*payroll.'* Mr Gilmartin said that in the course of a taxi journey to Dublin Airport with Mr O'Callaghan, Mr O'Callaghan showed him a cheque which he was going to give to Cllr Colm McGrath. Mr Gilmartin said that Mr O'Callaghan told him that at a meeting in Mr Dunlop's offices, Mr Lawlor had demanded a payment of IR£100,000, and that he had paid Mr Lawlor a total of IR£50,000.[i]
4.	Mr Gilmartin alleged that in excess of IR£100,000 was paid by Mr O'Callaghan to Mr Ahern. In evidence Mr Gilmartin broke down this figure as including IR£30,000 paid to Mr Ahern in relation to the Blanchardstown tax designation issue, IR£50,000 paid to Mr Ahern in 1989 or 1990 at a football match in relation to the purchase of the Irishtown lands, and a sum paid in relation to Golden Island.
5.	Mr Gilmartin claimed that Mr O'Callaghan boasted about making substantial payments to Mr Ahern and Mr Reynolds in relation to Golden Island.

6. Mr Gilmartin alleged that Mr O'Callaghan advised him that Cllr Sean Gilbride was on his '*payroll'* and was paid a retainer of '*some thousands a month.'*
7. Mr Gilmartin alleged that Mr O'Callaghan showed him a cheque for a substantial amount which he, Mr O'Callaghan, intended to give to Cllr Colm McGrath.
8. Mr Gilmartin stated that Mr O'Callaghan had told him that he paid a five figure[11] sum to the Cork Fianna Fail TD Mr Micheál Martin.
9. Mr Gilmartin claimed that Mr O'Callaghan told him, when they first met in December 1988, that he had paid IR£50,000 to Mr Ray McSharry, and that Mr McSharry had travelled to Cork to collect the money.
10. Mr Gilmartin alleged that Mr O'Callaghan had told him that Mr Ahern had to receive '*his cut'* from the IR£150,000 paid to Mr Reynolds.
11. Mr Gilmartin said that Mr O'Callaghan told him that Mr Reynolds and Mr Ahern were on his '*payroll.'*
12. Mr Gilmartin alleged that Mr O'Callaghan told him that he, Mr O'Callaghan, had paid politicians.
13. Mr Gilmartin alleged that Mr O'Callaghan told him that he spent around IR£150,000 on politicians, in 1989.

[11] Prior to his sworn evidence on this issue, Mr Gilmartin referred to a five figure sum. In his sworn evidence, Mr Gilmartin erroneously referred to the five figure sum as a six figure sum.

TABLE B

THE INFORMATION MR GILMARTIN CLAIMED WAS GIVEN TO HIM BY AN ANONYMOUS SOURCE

1. Mr Gilmartin alleged that he was told by an anonymous source that Mr O'Callaghan paid IR£40,000 to Mr Albert Reynolds in connection with Golden Island, Athlone.
2. Mr Gilmartin claimed that an anonymous source advised him that Mr O'Callaghan had paid money to Mr Bertie Ahern in connection with Golden Island.
3. Mr Gilmartin claimed that an anonymous source had told him that the then Taoiseach Mr Reynolds had to intervene to persuade or ensure that Mr Ahern took the necessary steps to grant tax designation status to Golden Island a night or two prior to the fall of the Fianna Fail Government in December 1994.
4. Mr Gilmartin said he was told by an anonymous source that Shefran Ltd (Mr Dunlop's company) was being used for money laundering purposes.
5. (i) Mr Gilmartin alleged that an anonymous source warned him to *'stay clear of Starry O'Brien'* because an attempt was being made to have Mr Gilmartin backup Mr O'Brien's *'cock and bull story.'* (ii) Mr Gilmartin also claimed that an anonymous source told him that Mr 'Starry' O'Brien and Mr O'Callaghan had been business partners or associates. (iii) Mr Gilmartin also claimed that his anonymous source alleged that Mr O'Callaghan had paid Mr O'Brien's debts.
6. Mr Gilmartin alleged that his anonymous source told him that Mr O'Callaghan paid circa IR£150,000 to senior politicians in 1989, and circa IR£250,000 to senior politicians in relation to Quarryvale. In his evidence, Mr Gilmartin also alleged that this information came from Mr O'Callaghan.

THE TRIBUNAL'S GENERAL CONCLUSIONS CONCERNING MR GILMARTINS ALLEGATIONS THAT HE HAD BEEN PROVIDED WITH INFORMATION BY OTHERS

7.01 While the Tribunal was satisfied that Mr Gilmartin endeavoured to provide information and evidence to the Tribunal accurately, he was not always successful in these endeavours. The Tribunal was however satisfied that on all the occasions when he advised the Tribunal of information which he alleged had been provided to him by Mr O'Callaghan or by other sources, Mr Gilmartin honestly believed that his attribution of the source thereof was accurate and correct. Nevertheless it was apparent to the Tribunal both from his prior statements to the Tribunal, and in his subsequent sworn evidence to it, that Mr Gilmartin occasionally conflated different pieces of information provided to him by different sources (including Mr O'Callaghan). This had the unfortunate consequence that Mr Gilmartin's identification of sources to the Tribunal was not always accurate, nor always consistent. Consequently, it was at times impossible for the Tribunal to determine not only the precise information provided to Mr Gilmartin by his different sources, but also the identity of the source responsible for a particular piece of information. Furthermore, the Tribunal was satisfied that while Mr Gilmartin received information from Mr O'Callaghan directly, and from the two anonymous sources indicated by him to the Tribunal, he also received information from journalists and others.

7.02 As already stated, the Tribunal did not seek to establish the truth or accuracy or otherwise of every piece of information which Mr Gilmartin claimed he learned from Mr O'Callaghan or from other sources. To have done so, would have resulted in enormously prolonged inquiries which undoubtedly, in many instances, would have yielded no definite result. Furthermore, the Tribunal was anxious to avoid extending its inquiries in the Quarryvale module, to matters which appeared to it to have little or no association with Quarryvale, and more particularly risk extending its inquiries beyond its Terms of Reference.

7.03 Much of the information provided to the Tribunal by Mr Gilmartin which he claimed was given to him by Mr O'Callaghan or by an anonymous source, was imprecise, vague as to detail, and difficult or impossible to verify (and certainly impossible to do so other than by engaging in a prolonged and expensive inquiry process). Much of the information passed to the Tribunal by Mr Gilmartin was provided (initially, at least) in response to requests by the Tribunal to provide every possible piece of information that might be, even remotely of interest or relevance to it, including information which might reasonably be categorised as third party and/or hearsay. Mr Gilmartin always maintained that he provided this '*third party*' or '*hearsay*' information on the basis that he was unable to verify its truth and accuracy.

7.04 Thus, this category of information provided by Mr Gilmartin to the Tribunal, while obviously potentially of value to an inquisitorial body (such as this Tribunal) charged with the task of identifying suitable and appropriate matters for inquiry, particularly in its private inquiry phase, was often of poor evidential or probative value in its public inquiry phase. This category of information often provided the Tribunal with little assistance in its task to determine facts in the course of its investigation into the Quarryvale project. Nevertheless the information which was provided by Mr Gilmartin to the Tribunal was always relevant to the issue of witness credibility, and in particular the credibility of Mr Gilmartin.

7.05 An unfortunate consequence of any wide-ranging public inquiry (or indeed, a court case) is that allegations of, what in reality amount to wrong-doing, because of the impossibility (for practical, legal or other reasons) on the part of the inquiry body to conduct a full and comprehensive investigation, may result in severe reputational damage to individuals. It was important therefore that the Tribunal should clearly state, as it now does, that in these instances where the Tribunal for whatever reason did not comprehensively inquire into, not only the allegations by Mr Gilmartin that he was provided with certain information, but also the truth or otherwise of the information conveyed by Mr Gilmartin or by others, such allegations remain unproven and do not in any way impugn the character of those linked to or associated with them.

[i] In a subsequent statement to the Tribunal, Mr Gilmartin alleged that this money was paid to Mr Lawlor by Mr Dunlop.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 2 – THE DEVELOPERS IN QUARRYVALE – MR TOM GILMARTIN AND MR OWEN O'CALLAGHAN

EXHIBITS

1. Tom Gilmartin Immunity Letter Dated 1 October 1998…… 127

2. Prior Statements of Tom Gilmartin……(Please see Appendix 1, Book 4)

3. Prior Statements of Owen O'Callaghan……(Please see Appendix 2, Book 4)

Stiúrthóir Ionchúiseamh Poiblí

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AN STIÚRTHÓIR
EAMONN M. BARNES
THE DIRECTOR

TEL: (01) 678 9222. FAX: (01) 661 8116. GTN: 7129-0.

1 October, 1998

Mr. Thomas Gilmartin

Re: Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sir,

I hereby confirm that at the request of the Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments, the Honourable Mr. Feargus M. Flood, and as a result of information conveyed verbally to me today by Counsel to the Tribunal, John Gallagher SC and Desmond O'Neill BL, I have decided that, subject to the conditions set out below, it is in the public interest that I should grant you immunity from criminal prosecution in respect of all evidence relating to matters set out in the draft affidavit attached hereto and matters immediately germane thereto, all of which are being investigated by the Tribunal and in respect of which oral evidence may be tendered to the Tribunal at its proceedings and on affidavit.

The conditions referred to above are as follows:-

1. That the Sole Member certifies that you have co-operated fully with the Tribunal in its investigations and hearings.

2. That you immediately give truthful evidence on affidavit to the Tribunal in relation to the matters which you have already described to Counsel for the Tribunal.

Yours faithfully,

Eamonn M Barnes

2/10/98
3.45pm

EAMONN M. BARNES
DIRECTOR OF PUBLIC PROSECUTIONS

I acknowledge receipt of the original of this document.
Signed: T.G. Gilmartin.
Witness: M. REGAN

Return to report

CHAPTER TWO – THE QUARRYVALE MODULE

PART 3 - MR TOM GILMARTIN'S INVOLVEMENT WITH ARLINGTON / THE BACHELOR'S WALK DEVELOPMENT, AND HIS EARLY INVOLVEMENT IN THE QUARRYVALE PROJECT

INTRODUCTION

1.01 Mr Tom Gilmartin was born in Sligo and emmigrated to England in 1957 where he settled. In England, Mr Gilmartin worked in the mechanical engineering and property business, in which he achieved a significant degree of success. He was involved, *inter alia*, in property development in Milton Keynes in England, and in Bangor, Northern Ireland. Mr Gilmartin returned to Ireland in 2001.

1.02 In 1986, Mr Gilmartin began his association with Dublin property development in the Bachelor's Walk area of the city. He told the Tribunal that a motivating factor in his decision to bring investment into Ireland was the spectacle in the early 1980s of thousands of unemployed Irish people in England without prospects.

1.03 Having acquired a number of properties in the Bachelor's Walk area from his own resources, Mr Gilmartin said that a number of UK-based property investors expressed an interest in becoming involved with him in the proposed Bachelor's Walk development. One of these, Arlington, ultimately reached an agreement with him in 1987 to take over the site assembly and development of Bachelor's Walk. According to this agreement, Mr Gilmartin was to assist Arlington with the Bachelor's Walk project, and in particular: to assist Arlington in the coordination and negotiation of the acquisition of the properties; to assist in drawing up schemes for planning and other necessary consents for the Development; and to effect introductions to national and local government officials. For his part, Mr Gilmartin was to receive IR£250,000, reimbursement of his expenses, and a percentage of the profits generated in the project. In early 1990 by which time he had begun his involvement with the Quarryvale project, Mr Gilmartin's (and Arlington's) involvement in Bachelor's Walk drew to a close and he was paid IR£1.3m.

BACKGROUND TO MR GILMARTIN'S INVOLVEMENT WITH THE QUARRYVALE LANDS

2.01 According to Mr Gilmartin, his initial introduction to the Quarryvale lands arose in the course of a conversation he had with Mr Seán Davin, an auctioneer, in 1986 or 1987 (or earlier) when the latter inquired of Mr Gilmartin whether he might be interested in developing lands adjacent to the Dublin–Galway road in west Co. Dublin. Although he appreciated the potential of the lands, Mr Gilmartin

did not pursue the matter at that time because he learned that portions of the lands were subject to compulsory purchase orders by Dublin County Council and/or Dublin Corporation. In the following year (i.e. early 1988) senior Council officials, Mr Paddy Morrissey and Mr Seán Haughey[1], asked Mr Gilmartin if he was interested in developing any of the proposed western towns—namely Blanchardstown, Tallaght or Neilstown/Clondalkin (Neilstown).

2.02 Mr Gilmartin told the Tribunal that for a variety of reasons he did not consider getting involved in either Blanchardstown or Tallaght, but in early 1988 he walked the Neilstown lands in the company of Mr Michael McLoone (chief valuer to Dublin Corporation and County Council) and Mr Richard Forman (an advisor). Because of problems with location and road access, Mr Gilmartin did not consider the Neilstown site to be viable for development. Mr Gilmartin told the Tribunal that by the time he visited the Neilstown site he had become aware of the proposed M50 motorway and the consequential potential of the nearby Quarryvale lands for retail development. He returned to his home in England and arranged for Creighton's, a graphic design company, to produce a brochure for him. He retained Nathaniel Lichfield & Co to carry out a feasibility study for retail development on the Quarryvale lands.

2.03 By April 1988, Taggarts Architects and Engineers (then acting on behalf of Marks & Spencer), had informed Nathaniel Lichfield & Co that Marks & Spencer had an interest in becoming involved in a retail enterprise on the Quarryvale site.

2.04 In early 1988, Mr Gilmartin set about the task of ascertaining the identity of the owners of the Quarryvale lands, with a view to assembling a site suitable for development.

MR GILMARTIN'S FIRST MEETING WITH MR LIAM LAWLOR TD (FF)

3.01 Mr Gilmartin and Mr Liam Lawlor, who was at the time both a councillor representing the Lucan area and a Fianna Fáil TD for West Dublin, met for the first time in early May 1988 in the Deadman's Inn public house at Palmerstown, Co. Dublin.

3.02 Mr Gilmartin had earlier asked Mr Paul Sheeran, his then Bank Manager[2] and a personal friend, for advice as to how he might go about identifying the owners of different land banks within the Quarryvale site. Mr Sheeran introduced Mr Gilmartin to a bank customer, Mr Brendan Fassnidge, who telephoned Mr Lawlor and arranged for the meeting in the Deadman's Inn that evening. Mr

[1] A brother of the then Taoiseach, Mr Charles J. Haughey.
[2] Mr Sheeran was manager of the Blanchardstown branch of Bank of Ireland

Sheeran believed that he drove Mr Gilmartin to the meeting at the Deadman's Inn where Mr Fassnidge introduced Mr Gilmartin to Mr Lawlor.

3.03 Mr Gilmartin told the Tribunal that while his purpose in meeting Mr Lawlor was to seek assistance in identifying the Quarryvale land owners, Mr Lawlor seemed intent on focusing their discussion on the proposed Arlington development at Bachelor's Walk in Dublin City. According to Mr Gilmartin, Mr Lawlor stated that Bachelor's Walk was '*on his patch',* and that he had been appointed by the Government *'to take care of it'.* Despite Mr Gilmartin's efforts to switch the discussion back to the issue of land ownership, Mr Lawlor persisted with queries relating to the proposed Bachelor's Walk development and requested a meeting with Arlington. Mr Gilmartin told Mr Lawlor that he was meeting with Arlington at its London head office on the following Thursday, and that he would pass on Mr Lawlor's request on that occasion.

3.04 According to Mr Gilmartin, at the conclusion of the meeting in the Deadman's Inn, Mr Lawlor told him that he would obtain a copy of a map of the Quarryvale area identifying the ownership of the different pieces of land within it. No arrangements were made for a further meeting.

3.05 Mr Gilmartin also gave evidence regarding his first meeting with Mr Lawlor in the course of defamation proceedings brought by Mr Sherwin against Independent Newpapers. In the context of that evidence, Mr Gilmartin stated that, at that meeting, he had not explained very well his plans regarding Quarryvale to Mr Lawlor as he was keeping it quiet until he assembled the site. He also claimed that Mr Lawlor was not interested in Quarryvale at that time, but wished to discuss Bachelor's Walk.

3.06 In his evidence to the Tribunal, Mr Lawlor acknowledged that a meeting did take place at the Deadman's Inn public house between himself and Mr Gilmartin in May 1988. However, he contended that this meeting was of short duration and that a second meeting was arranged between himself and Mr Gilmartin which took place the following day at his clinic in his home in Lucan.

3.07 According to Mr Lawlor, on the Saturday morning when Mr Gilmartin attended his clinic he had advised Mr Lawlor of the investment of hundreds of millions of pounds being brought to the Bachelor's Walk development and he mentioned his intention to acquire lands in Quarryvale/Clondalkin for development. Mr Lawlor told the Tribunal that he had told Mr Gilmartin that he would arrange for him to meet the appropriate local authority official in relation to Quarryvale.

3.08 Mr Gilmartin disputed Mr Lawlor's claim that, immediately after their meeting in the Dead Man's Inn he met Mr Lawlor in the latter's clinic. Mr Gilmartin claimed to have visited that clinic on only one occasion subsequent to his initial meeting with Mr Lawlor and when he was accompanied by Mr Forman.

3.09 The Tribunal believed Mr Gilmartin's account of his first meeting with Mr Lawlor to have been accurate and the Tribunal accepted that it took place in its entirety in the Deadman's Inn, and not, as claimed by Mr Lawlor, partially in the latter's clinic. The Tribunal accepted Mr Gilmartin's evidence that it was Mr Lawlor who introduced the topic of Bachelor's Walk and Arlington at the meeting in the Deadman's Inn. The Tribunal also accepted Mr Gilmartin's evidence that Mr Lawlor claimed to be a representative of the Irish Government, and, also, that he told Mr Gilmartin that Bachelor's Walk was '*on his patch'.* Mr Gilmartin was consistent in his account of the meeting in question. In particular, the Tribunal took cognisance of the note taken by Chief Superintendent Hugh Sreenan[3] of a conversation he had with Mr Gilmartin on 9 March 1989, some ten months after the latter's meeting with Mr Lawlor. Chief Superintendent Sreenan noted the words then being ascribed to Mr Lawlor by Mr Gilmartin, as follows: *'Gilmartin, Gilmartin, you are the man who has set up the deal in Bachelor's Walk. The Government has instructed me to take care of you and get that deal into Dublin.'*

3.10 Further, the Tribunal did not consider there to have been any significant inconsistency between Mr Gilmartin's account of his initial meeting with Mr Lawlor given in the Sherwin trial,[4] and that given by him in his evidence to the Tribunal, as suggested in cross-examination of Mr Gilmartin by Mr Conor Maguire, SC (Counsel for Mr Bertie Ahern).

THE LONDON ARLINGTON MEETING

4.01 Mr Gilmartin told the Tribunal that within days of his meeting with Mr Lawlor, he attended his scheduled meeting with executives of Arlington Securities Plc at its head office at Brewer's Green, London. Mr Gilmartin said that shortly after the meeting commenced Mr Lawlor arrived at the Arlington offices and claimed to have been invited to the meeting. Mr Gilmartin said that although he had told Mr Lawlor in the Deadman's Inn of his then forthcoming meeting with Arlington, he had not invited him to attend. Mr Gilmartin said he told the Arlington executives at the meeting that his business with Mr Lawlor did not concern the Bachelor's Walk development.

[3] Chief Superintendent Sreenan was promoted to the rank of Assistant Commissioner in 1989 but had retired by the time he gave evidence to this Tribunal. In this section, Mr Sreenan is referred to as Chief Superintendent on all occasions, for convenience.

[4] Seán Sherwin v. Independent Newspapers (Irl) Ltd (High Court 2001). Mr Sherwin instituted proceedings seeking damages for defamation. Mr Gilmartin was called as a witness in the proceedings.

4.02 Mr Gilmartin described Mr Lawlor's arrival in the meeting room as follows:

'So he walks into the meeting and he pulls up a chair, sits in at the table, and he said that he was a—that he had been invited by me. I was sitting there. He was lying right straight in front of my face, and I was never so embarrassed in my life. I had just told the meeting that I had not invited Mr Lawlor, but he contradicted me. So here I was in a situation where there's two Paddies in the room, going to start an argument, so I decided to bite my tongue. So anyway, he proceeded to say that he was appointed by the Government and that he was a member of the parliament, that Bachelor's Walk was in his patch, as he put it, and that he was appointed by the Government to take care of it and having him on board would make the difference between it gets off the ground and not.'

4.03 Following upon Mr Lawlor's arrival at the meeting a decision was taken by the Arlington executives to speak with him in Mr Gilmartin's absence. Mr Gilmartin and Mr Ted Dadley (Chairman of Arlington Retail Developments, a subsidiary of Arlington Securities) walked to a nearby hotel.

4.04 Approximately half an hour after Mr Gilmartin left the meeting, he was joined in the hotel by Mr Lawlor who told him that Arlington had taken him on board as a consultant in relation to the Bachelor's Walk development. Mr Lawlor told Mr Gilmartin that Arlington had requested that Mr Gilmartin give Mr Lawlor one half of his 20 per cent share in the development. This suggestion was rejected out of hand by Mr Gilmartin. Mr Gilmartin said he remonstrated with Mr Lawlor about the embarrassment he had caused by arriving at the meeting unannounced and uninvited, and he said that Mr Lawlor dismissed Mr Gilmartin's concerns, saying: '*...forget about it now, Arlington has taken me on and I know the wrinkles and I know the road blocks and I will see that it gets taken care of.'*

4.05 Mr Gilmartin told the Tribunal that Mr Lawlor informed him that Arlington had engaged him as a consultant at an agreed fee of IR£3,500 per month. Mr Dadley also advised him of the agreement for the monthly fee to Mr Lawlor. Mr Gilmartin was to make these payments to Mr Lawlor and then be reimbursed by Arlington. Mr Gilmartin also said that Mr Dadley had told him that, at the meeting, Mr Lawlor had demanded IR£100,000 and a 20 per cent shareholding in the Bachelor's Walk project and that both demands had been rejected. Mr Gilmartin said that Mr Lawlor's demands were also recounted to him by Mr Raymond Mould (an Arlington director) sometime later.

4.06 In the course of his evidence to the Tribunal, Mr Dadley confirmed that Mr Lawlor had said at a meeting in their London offices that he was representing the Government. He said that Mr Lawlor had indicated that he *'could help us through the corridors of power'.* Mr Dadley, while he could not be specific as to the sum claimed, confirmed that Mr Lawlor had sought payment from Arlington and he confirmed that Mr Lawlor had sought a percentage of Mr Gilmartin's share of the Bachelor's Walk development.

4.07 According to Mr Mould, he first met Mr Lawlor in the Arlington Offices in Brewers Green. He was at a meeting discussing the project in Dublin, Bacherlor's Walk when the receptionist rang through to say that Mr Liam Lawlor was in reception and would like to see them. Mr Mould recalled that Mr Gilmartin was quite annoyed when Mr Lawlor turned up at the meeting. Mr Mould remembered the gist of the meeting as being that as a TD, Mr Lawlor claimed he could be helpful to Arlington in seeing its way through the corridors of power in Dublin.

4.08 Both Mr Dadley and Mr Mould, in evidence, agreed that on the occasion in question Arlington concluded an agreement with Mr Lawlor whereby the latter was to be paid IR£3,500 per month, and that a request was made of Mr Gilmartin that he make the payments to Mr Lawlor and in turn be reimbursed by Arlington.

4.09 In the course of his evidence to the Tribunal, Mr Lawlor denied attending at the Arlington offices in London in the manner described by Mr Gilmartin. Mr Lawlor claimed that he had been to Arlington's offices in London on two occasions, and that he had been invited on each occasion by Arlington. He said he did not ever meet Mr Gilmartin at the Arlington offices. Mr Lawlor denied ever holding himself out to be a representative of the Irish Government and suggested that any such representation would have been futile, having regard to the fact that the Arlington executives had, by May 1988, met with a number of Government ministers. Mr Lawlor told the Tribunal that the payments made to him by Arlington were made pursuant to an agreement reached between himself and Arlington whereby the latter agreed to support Mr Lawlor politically.

4.10 The Tribunal noted that Mr Lawlor's attendance at the Arlington meeting in May 1988 was referred to by Mr Gilmartin in the course of complaints he made some ten months later (in February/March 1989) to Mr Frank Feely, Dublin City and County Manager and to Mr Seán Haughey, Assistant City and County Manager.[5] Furthermore, the Tribunal was satisfied, from the evidence of Chief Superintendent Sreenan[6] that on 6 March 1989 when he met with Mr

[5] These complaints are considered in detail elsewhere in this Chapter.
[6] The Garda investigation into Mr Gilmartin's complaints is considered elsewhere in this Chapter.

Haughey, Mr Haughey conveyed this information to him as being one of the complaints made by Mr Gilmartin to Mr Haughey and Mr Feely on 24 February 1989.

4.11 The Tribunal was also satisfied that in Chief Superintendent Sreenan's manuscript note of 9 March 1989 (which detailed a telephone conversation with Mr Gilmartin) the following reference to Mr Lawlor was made:

> *There is money being paid to one fellow who threatened that if the investment was to get off the ground he is getting £3,500 per month, blackmail money. Arlington got scared and I opposed and refused and told the Government he was a gangster. He walked into Arlington and put a proposition on the table a year ago and since June of 1988 has been getting his payoff.*

4.12 Although Mr Lawlor's name was not mentioned specifically in the note, Chief Superintendent Sreenan told the Tribunal that as of 6 March 1989 he was aware from his conversation with Mr Feely and Mr Seán Haughey that Mr Lawlor was the subject of this particular complaint by Mr Gilmartin.

4.13 Superintendent Thomas B. Burns'[7] note, made on 6 March 1989, of the interview conducted with Mr Seán Haughey and Mr Feely contained Mr Haughey's description of what Mr Gilmartin had told him about the Arlington meeting in London and Mr Lawlor. Superindendent Burns noted as follows:

> *In connection with the Bachelor's Walk project Mr Gilmartin told Mr Haughey that he, Gilmartin, attended a board meeting of Arlington Investment the developers, in London and to his surprise Liam Lawlor, TD, was present. Mr Lawlor offered his services as a Consultant and in any event Mr Gilmartin was instructed to pay Lawlor £3,500 per month. This he has continued to do and on one occasion made out a cheque for £3,500 (sought urgently by Lawlor) and payable to Mr Lawlor personally. Mr Gilmartin said he had been reimbursed by Arlington.*

4.14 The Tribunal was satisfied to accept Mr Sheeran's evidence that, within a short time after the Arlington meeting in London, he learned of the payments to Mr Lawlor. Likewise, the Tribunal accepted that in 1990 Mr Colm Scallon (a property consultant), was told of the events of that day by Mr Gilmartin, namely that Mr Lawlor had *'invaded'* a meeting and had been retained as a consultant against Mr Gilmartin's wishes. Similarly, Mr Seán Sherwin, National Organiser for Fianna Fáil in 1990, told the Tribunal in evidence that when he met Mr Gilmartin

[7] Superintendent Burns was promoted to Chief Superintendent in 1991 but had retired by the time he gave evidence to this Tribunal. In this section of the report, Mr Burns is referred to as Superintendent Burns on all occasions, for convenience.

in October 1990, see further below, one of the matters complained of by Mr Gilmartin was that Mr Lawlor had gate-crashed the Arlington meeting and that Arlington had taken him on as a consultant, against Mr Gilmartin's wishes.

4.15 The Tribunal was satisfied that the account of the meeting in Arlington's London offices in or about May 1988 as recounted by Mr Gilmartin, and as corroborated to a significant degree by Mr Dadley and Mr Mould, accurately represented the correct detail of that meeting. The Tribunal rejected in its entirety the evidence of Mr Lawlor in relation to that meeting.

4.16 The Tribunal was satisfied that Mr Lawlor: arrived at the London offices of Arlington uninvited; purported to represent the Irish Government in relation to the proposed Bachelor's Walk development; used and promoted his position as a TD to persuade Arlington to pay him a monthly retainer (through Mr Gilmartin); and, unsuccessfully, sought a more substantial payment of a percentage take in the Bachelor's Walk development from both Arlington and Mr Gilmartin.

4.17 The Tribunal was satisfied that Mr Lawlor was being untruthful when he denied attending the Arlington meeting uninvited and purporting to represent the Irish Government at that meeting.

PAYMENTS TO MR LAWLOR FROM ARLINGTON

5.01 According to Mr Gilmartin he objected to any involvement on Mr Lawlor's part in the Bachelor's Walk project, but felt he had little choice but to accede to the direction of Arlington that Mr Lawlor be paid IR£3,500 per month as a type of consultancy fee, that the payments be initially discharged by him, and that he would be reimbursed later by Arlington. Mr Gilmartin gave evidence that this was the process of payment and reimbursement generally adopted in practice as between himself and Arlington at that time.

5.02 Documentation and sworn evidence provided to the Tribunal established the following course of events:

1) 28 June 1988: following confirmation to Mr Gilmartin from Arlington that Mr Lawlor was to be paid IR£3,500 per month, and that Arlington would reimburse him for these payments, Mr Gilmartin provided a cheque for IR£3,500 to Mr Lawlor. Mr Gilmartin left the payee section of the cheque blank at Mr Lawlor's request. Documents furnished to the Tribunal showed that the cheque was duly made payable to Advance Proteins Ltd (a company owned by Mr Lawlor) and that it was lodged to an account in that name at Bank of Ireland, Lucan on 28 June.

2) 15 July 1988: Mr Gilmartin provided Mr Lawlor with a cheque for IR£3,500. The payee section of the cheque was left blank, again at Mr Lawlor's request. The copy cheque made available to the Tribunal showed the payee as 'APL' (Advanced Proteins Ltd). The cheque was duly lodged to an account of Advanced Proteins Ltd on 18 July 1988.

3) 6 September 1988: Mr Gilmartin wrote a cheque for IR£7,500. Mr Gilmartin recalled an occasion when a request was made by Mr Lawlor for a double payment as he was short of money. Mr Gilmartin recalled writing a cheque for IR£7,500 instead of IR£7,000 in response to this request. There was no indication to the Tribunal that this cheque was ever debited to Mr Gilmartin's account.

4) 7 September 1988: Mr Sheeran wrote a cheque for IR£7,700 drawn on Mr Gilmartin's account at Bank of Ireland, Blanchardstown. Mr Sheeran gave evidence that he had authorisation from Mr Gilmartin to write such cheques on Mr Gilmartin's account and retained a series of chequebooks for that purpose. Mr Lawlor's brother-in-law, Mr Noel Gilsen, appeared to have been named as payee on the cheque and to have endorsed it although he denied doing so or knowing anything about it. The Tribunal was satisfied that this was a cheque given to Mr Lawlor pursuant to his arrangement with Arlington. While there was no evidence of this cheque being lodged to any account associated with Mr Lawlor, the Tribunal was satisfied that the proceeds of this cheque found their way into Mr Lawlor's hands. This cheque was duly debited to Mr Gilmartin's account on 13 September 1988.

5) 5 October 1988: Mr Lawlor was provided with a cheque for IR£3,500 signed by Mr Gilmartin and again attributed to '*Arlington*' in his cheque stub. The copy cheque furnished to the Tribunal revealed the payee to have been Mr Noel Gilsen and once again the cheque appeared to have been endorsed by Mr Gilsen. (Mr Gilsen denied endorsing the cheque and suggested that his signature had been forged). This cheque was lodged to the account of Advance Proteins Ltd on 5 October and was debited from Mr Gilmartin's account on 7 October.

6) 14 October 1988: Mr Gilmartin provided a cheque to Mr Lawlor in the sum of IR£7,000. It was credited to the account of Advance Proteins on the same day, 14 October 1988.

7) November 1988: Mr Gilmartin provided Mr Lawlor with a cheque for Stg£3,500 at Mr Lawlor's request. Mr Lawlor had requested that this payment be provided to him while he was awaiting a connection to Iraq at London's Heathrow Airport.

8) 11 January 1989: Mr Sheeran signed a cheque for IR£7,000, drawn on Mr Gilmartin's Bank of Ireland account and made payable to Mr Lawlor. The Tribunal is satisfied that this cheque was issued from the chequebook retained by Mr Sheeran on foot of his authorisation from Mr Gilmartin to make payments. The cheque was debited to Mr Gilmartin's account on 17 January.

5.03 The Tribunal was satisfied that, between June 1988 and January 1989, excluding the 6 September 1988 cheque for IR£7,500 which was not debited to Mr Gilmartin's account, Mr Lawlor was the recipient of approximately IR£32,200 plus Stg£3,500 by way of periodic payments through Mr Gilmartin, on foot of the arrangement entered into by Mr Lawlor and Arlington.

THE DEMAND FOR IR£10,000 BY MR LAWLOR

6.01 Mr Sheeran gave evidence to the Tribunal of a particular incident which occurred on a date in March 1989, when he was approached by Mr Lawlor who asked him to pay him a sum of IR£10,000 from Mr Gilmartin's bank account. Mr Lawlor intimated to Mr Sheeran that Mr Gilmartin had sanctioned the payment. When Mr Sheeran telephoned Mr Gilmartin, he told him that no such sanction had been given and that there was no arrangement for any such payment to Mr Lawlor.

6.02 In his evidence to the Tribunal, Mr Lawlor denied that any such incident occurred. He accused Mr Sheeran of lying.

6.03 Mr Gilmartin told the Tribunal that this incident prompted him to stop making any further payments to Mr Lawlor. There was no evidence that any further payments were made to Mr Lawlor by Arlington via Mr Gilmartin.

6.04 The Tribunal was satisfied that the request by Mr Lawlor for IR£10,000 was made by him, that it was refused in the circumstances outlined by Mr Gilmartin and Mr Sheeran, and that Mr Sheeran had not lied to the Tribunal.

PAYMENT OF STG£33,000 BY ARLINGTON SECURITIES TO ECONOMIC REPORTS LTD

7.01 On 24 April 1989, the sum of IR£39,099.52 was credited to the account of Economic Reports Ltd. This sum was the proceeds of a cheque for Stg£33,000 dated 19 April 1989 which was drawn on the account of Arlington Securities and payable to Economic Reports Ltd[8] (*'Economic Reports'*). Although Mr Mould of Arlington confirmed that the cheque had been drawn on the account

[8] An entity owned by Mr Lawlor and occasionally used by him to receive funds.

of Arlington Securities Plc and paid as indicated, he claimed to have no knowledge of the circumstances in which the payment arose or the reasons for it. He was certain that it would not have been paid in the absence of an invoice, although no invoice was provided to the Tribunal.

7.02 Mr Lawlor told the Tribunal that the Stg£33,000 payment was a political contribution. According to Mr Lawlor, it had been paid to him following a telephone call to him from Mr Dadley of Arlington, in which Mr Dadley informed him that the Bachelor's Walk development project was going to be terminated, and that Arlington was keen to make a further political contribution to Mr Lawlor in appreciation for his help. Mr Lawlor believed that he requested the cheque to be made out to Economic Reports, and that no invoice had been furnished to Arlington in relation to it. The payment, according to Mr Lawlor, was *'a complete surprise'* as he believed that Arlington, in making the payments through Mr Gilmartin, had honoured their commitment to support him politically.

7.03 In his evidence to the Tribunal, Mr Dadley said he had no recollection of making any telephone call to Mr Lawlor and he claimed that he had no recollection of the circumstances in which the payment of Stg£33,000 was made to him.

7.04 Mr Lawlor maintained that all payments received from Mr Gilmartin and/or Arlington were political contributions. Both Mr Dadley and Mr Mould believed that the payments were consultancy fees paid in respect of assistance provided and advice given by Mr Lawlor.

7.05 The Tribunal was satisfied that none of the payments made to Mr Lawlor by Arlington Securities, whether through Mr Gilmartin or otherwise, were political donations. The true purpose of the payments and the motivation for making them was, as described by Mr Mould, so that Mr Lawlor would help Arlington '*through the corridors of power*' in relation to the Bachelor's Walk development.

7.06 While Mr Gilmartin was probably aware of the true nature of the payments, he was not party to the decision to make such payments or to any discussion that led to the agreement that the payments be made and opposed the making of those payments.

7.07 The Tribunal rejected the claim by Mr Dadley and Mr Mould that they had no recollection of the reasons for the payment of Stg£33,000 to Mr Lawlor in April 1989, or the circumstances surrounding the payment. The Tribunal was satisfied that the two men were the individuals within Arlington who interacted with Mr Lawlor at all relevant times and the Tribunal was of the firm view that

either Mr Dadley or Mr Mould, or both, must have been involved in organising the April 1989 payment to Mr Lawlor. The Tribunal accepted Mr Gilmartin's evidence that he was apprised at an early stage by Mr Dadley that Mr Lawlor had sought an upfront payment of IR£100,000 from Arlington. The Tribunal believed that it may well have been the case that the payment of Stg£33,000, together with the payments made through Mr Gilmartin, was intended to satisfy, to some extent, Mr Lawlor's demands.

7.08 The Tribunal was satisfied that, on the basis of Mr Lawlor's representations, Arlington believed that Mr Lawlor was so close to the Government and the authorities in Dublin that a failure on their part to make significant payments to him might result in a lack of support by the Government and those authorities for the proposed development at Bachelor's Walk, rendering the aims of that project more difficult to achieve. The Tribunal believes that this is what prompted Arlington to expend almost IR£75,000 in payments to Mr Lawlor over an eleven month period. Having regard to the fact that he was an elected councillor and TD, Mr Lawlor's demands for payments and his acceptance of money in these circumstances was entirely inappropriate and corrupt.

7.09 The Tribunal was satisfied that Mr Lawlor failed to give a truthful account to the Tribunal as to the circumstances in which he was paid money directly and indirectly by Arlington, and in particular the circumstances in which he was paid Stg£33,000 in April 1989.

MR GILMARTIN'S MEETING WITH MR GEORGE REDMOND AND MR LAWLOR

8.01 Following Mr Gilmartin's initial meeting with Mr Lawlor in the Deadman's Inn public house in Palmerstown, Co. Dublin in May 1988, Mr Lawlor took Mr Gilmartin to meet with Mr George Redmond, Assistant City and County Manager. The Tribunal believed that this meeting is likely to have occurred in late May 1988 or June 1988.

8.02 According to Mr Gilmartin, Mr Lawlor collected him from Dublin Airport and drove him to the offices of Dublin County Council on O'Connell Street, Dublin. Mr Gilmartin said that in the course of that drive, Mr Lawlor informed him that he was taking him to meet Mr Redmond, as Mr Redmond *'had something'* for him (Mr Gilmartin).

8.03 Mr Gilmartin's description of the meeting with Mr Redmond in the presence of Mr Lawlor suggests that it was relatively short. Mr Gilmartin did not disclose, either to Mr Redmond or to Mr Lawlor, the purpose for which he wanted to purchase the Quarryvale lands, although he suspected that Mr Lawlor and Mr Redmond guessed the purpose. According to Mr Gilmartin, he explained to Mr Redmond that he intended buying some land along the Dublin–Galway road and that, for that purpose, he wished to ascertain the identities of the owners of the lands in question. Mr Redmond then opened a drawer in his desk and produced a map, which he duly gave to Mr Gilmartin.

8.04 Mr Gilmartin described the map as being approximately 24 to 30 by 24 inches, more or less square. It was colour coded and had ownership details for the entire Quarryvale area, including the identities of the owners and the quantities of land held by each owner. Mr Gilmartin described the map as a type of Ordinance Survey map which had been coloured. Mr Gilmartin placed the map in his briefcase.

8.05 Mr Gilmartin told the Tribunal that at this point, Mr Redmond stood up from his desk and appeared to take a telephone call at another desk. Mr Gilmartin believed that the telephone call was a pretence and that in fact Mr Redmond was not in contact with anyone. According to Mr Gilmartin, while Mr Redmond was engaged in the pretence of taking a telephone call, Mr Lawlor said to Mr Gilmartin that he would have to pay him IR£100,000 and that he would also have to pay money to Mr Redmond.[9]

8.06 Mr Gilmartin stated that he responded to Mr Lawlor's request by way of some non-committal comment. As they left the office Mr Lawlor repeated his demands with words to the effect: '. . . *if you're going to go anywhere, you have to pay George, you have to take care of George*' and '*you have to have me on board.*'

8.07 Mr Gilmartin told the Tribunal that he understood from the meeting and his exchange with Mr Lawlor that he was facing a demand from Mr Lawlor of IR£100,000 for himself and IR£100,000 for Mr Redmond.

8.08 Mr Lawlor and Mr Redmond vehemently denied that any request had been made to Mr Gilmartin for a sum of money for either or both of them. Both denied that Mr Gilmartin was provided with any map at that meeting.

[9] Mr Gilmartin was questioned on a number of occasions in relation to what Mr Lawlor said to him about a payment of money to Mr Redmond. While his responses were not on all occasions identical, the Tribunal was satisfied that the thrust of Mr Gilmartin's evidence was that Mr Lawlor had sought IR£100,000 for both himself and Mr Redmond (a total of IR£200,000). Indeed he confirmed this to have been the case in a response to Mr Sreenan SC (Mr O'Callaghan's Counsel) on Day 465.

8.09 Both Mr Redmond and Mr Lawlor agreed in evidence that a meeting with Mr Gilmartin had taken place. They told the Tribunal that they had met together with Mr Gilmartin on one occasion only and that it was their belief that that meeting had taken place on 28 June 1988, and not on a date in May 1988, as suggested by Mr Gilmartin. Mr Redmond's diary included a reference to a meeting with Mr Gilmartin on that date.

8.10 Mr Redmond and Mr Lawlor both informed the Tribunal that the meeting with Mr Gilmartin related to his proposals regarding the building of an industrial/business park on the Quarryvale lands and the provision of service station motorway facilities to service the planned M50. Mr Redmond put to Mr Gilmartin that what he was saying was an *'incredible story'*. Mr Lawlor suggested to Mr Gilmartin that he was *'lying through his teeth.'*

8.11 According to Mr Redmond and Mr Lawlor, Mr Redmond gave short shrift to the proposals which they alleged Mr Gilmartin made on the day of the meeting in relation to motorway facilities and/or an industrial park and they maintained that Mr Redmond's response was evidenced by the contents of a letter written to Mr Gilmartin by Mr Michael Hartnett, a county council official, on 28 July 1988.

8.12 Moreover, Mr Redmond and Mr Lawlor maintained that Mr Hartnett's reference to '*Deputy Liam Lawlor*' in his letter to Mr Gilmartin of 28 July 1988 referred to the one and only meeting Mr Redmond and Mr Lawlor had with Mr Gilmartin.

8.13 Mr Hartnett's letter did not refer to Mr Redmond specifically. It was addressed to Mr Gilmartin and stated:

> *"I am directed to acknowledge receipt of your letter dated 6th July 1988, and in reply I wish to reiterate the council's position as stated to you and at the recent meeting with yourself and Deputy Liam Lawlor who organised the meeting. At the present time there are no motorways in Dublin, it is a fact that two sections of the Dublin ring motorway are under construction and it is expected that both sections should be opened to traffic, open for traffic within about two and a half years from now. It is accepted that as the motorway system in County Dublin is developed, there will be a need to consider the provision of service facilities. However this matter is being considered by the technical staff at Dublin County Council in the Department of the Environment. And it is the considered view that it would be premature to make decisions now with respect to any particular area until an overall policy for the motorway ring has been determined. This is the official position and this applies to all elements of the motorway, including slip ways. You should*

bare the foregoing in mind in relation to any plans or projects you have in mind or land in areas contiguous to the motorway."

8.14 Mr Redmond's diary for 28 June 1988 showed an entry which appeared to state as follows: *'(Deputy L Lawlor) Tom Gilmartin from UK re: Palmerstown*).'

8.15 According to Mr Redmond this diary entry, which he claimed was likely to have been made by his secretary on the morning of the meeting, related to the one and only meeting he had with Mr Gilmartin in the presence of Mr Lawlor. A reference to Mr Gilmartin in Mr Redmond's diary for 28 July 1988, was, according to Mr Redmond, an *aide memoire* relating to a letter to be sent to Mr Gilmartin, and not a reference to a meeting. Moreover, Mr Redmond stated that the purpose of the 28 June 1988 meeting was clearly evidenced by the contents of a letter written by Mr Gilmartin to Mr Redmond on 6 July 1988 which stated as follows:

Dear Mr Redmond,

Re: Motorway facilities

I was very pleased to have the opportunity of meeting you and I would like to thank you for your advice and assistance.

I have instructed the consulting engineers to liaise with the U.K. Road Engineering experts that I have retained for advice regarding the provision of motorway facilities with particular emphasis on complying with safety and international road engineering standards.

We are compiling a selection of aerial and photographic views to outline specific examples of the appropriate entrance and exit designs. The construction engineers will prepare a sketch layout showing our suggestion for consideration by yourself and your Road Engineering colleagues in the Council to further the exploratory discussions.

We fully accept and note the point raised, that your Council acts as an agent for the Department of the Environment, Roads Division, on overseeing the construction of the Motorway and National Primary Road schemes.

We believe if agreement can be reached, that our proposal for a business park and motorway service at the Palmerstown/Rowlagh location would bring much needed investment to the area.

We hope to be in a position to seek a further meeting with yourself and your colleagues in the Roads Department, to discuss our proposal further.

I will contact your secretary in due course to arrange a date and time suitable to your itinerary.

Yours sincerely,

Tom Gilmartin

8.16 According to Mr Redmond (and indeed Mr Lawlor), the contents of that letter to Mr Redmond identified the sole subject matter discussed on the single occasion when Mr Redmond and Mr Lawlor together met with Mr Gilmartin.

8.17 Mr Gilmartin, in his evidence, did not dispute either the fact of his having written to Mr Redmond on 6 July 1988 or the contents of the letter. However, Mr Gilmartin said that the meeting he referred to in his letter of 6 July 1988 to Mr Redmond was a reference to a different meeting he had had, together with his advisors, with Mr Redmond[10] which, as evidenced by the contents of the letter, related to motorway facilities and the proposal to locate a service station on the Quarryvale lands contiguous with the M50.

8.18 Mr Gilmartin maintained that the meeting referred to in the letter of 6 July 1988 was not the same meeting at which Mr Redmond produced the land ownership map and Mr Lawlor made the demand for money for himself and for Mr Redmond.

8.19 Mr Gilmartin's belief was that the *'map meeting'* had occurred a relatively short time after his encounter with Mr Lawlor at Arlington's London offices in May 1988 but before any meeting he had had with Mr Redmond about the provision of an industrial park and/or motorway facilities serving the proposed M50.

THE MAP

9.01 Mr Gilmartin told the Tribunal that he subsequently provided the map given to him by Mr Redmond to representatives of AIB. He believed that this had occurred in 1991.

9.02 Mr Eddie Kay of AIB told the Tribunal that he recollected receiving a large map from Mr Gilmartin in January 1990. It was coloured blue and detailed the ownership of the Quarryvale lands. According to Mr Kay, Mr Gilmartin had such a map in his possession in his early meetings with the bank. AIB's concern in 1990 (at a time when it was contemplating funding Mr Gilmartin's land acquisitions) was to ascertain the ownership of the lands in which Mr Gilmartin was interested. Mr Jim Donagh, of AIB, agreed that in January and February 1990 AIB was in possession of a number of maps associated with the Quarryvale lands, and it was his belief that two of these maps had come to the bank either directly or indirectly from Mr Gilmartin.

[10] Initially, Mr Gilmartin stated that the reference was to his first meeting with Mr Redmond (in Mr Lawlor's company) but in later evidence stated that this was incorrect, and that the meeting referred to in the letter was a different meeting.

9.03 Mr Neville O'Byrne of William Fry, solicitors for AIB, gave evidence relating to two maps located in the files of William Fry relating to AIB and Mr Gilmartin, in or about February 1990.

9.04 Mr O'Byrne identified Map 'A'— the 'Lisney map'— as the map which was attached to a report furnished to AIB by Lisney Auctioneers on 21 February 1990. Mr Nick Molloy of Lisneys confirmed this to be the case. According to Mr Molloy, Map A had not been prepared by his firm and he indicated that it was possible that it had come to Lisneys from Irish Intercontinental Bank,[11] the entity which had first commissioned the report sent by Lisneys to AIB in February 1990.

9.05 According to Mr O'Byrne, Map 'B', also found on the files of William Fry, had been handed over to his firm sometime prior to 29 January 1990. The Tribunal was satisfied that this map was in all probability provided to William Fry by Mr Kay or another AIB representative at some stage after AIB first became involved with Mr Gilmartin, and before 29 January 1990 and that, as a matter of probability, this map was provided to AIB by Mr Gilmartin.

9.06 Map B was referred to in Mr O'Byrne's report furnished to AIB on 29 January 1990. While that report was primarily concerned with five parcels of lands which Mr Gilmartin, via Barkhill, was in the process of purchasing, the report contained a reference to a map, not apparently directly referable to any of the individual land parcels referred to in the report, which Mr Gilmartin had furnished to AIB. In the report the map is referred to as follows: '*The map attached to the tender documents shows a much smaller area than that coloured in blue on the map originally furnished to you by Mr Gilmartin.*'

9.07 Mr Gilmartin identified Map B as identical to the map he had received from Mr Redmond in May of 1988. However, in subsequent evidence, Mr Gilmartin expressed his belief that Map A was more akin to the map he had received from Mr Redmond; this map had references to the provision for residential housing on some of the Quarryvale lands, a feature he recalled was represented on Mr Redmond's map.

9.08 Notwithstanding Mr Gilmartin's identification of Map A as likely to have been the one he received from Mr Redmond, the Tribunal considered that either Map A or Map B may have been the Redmond map, given: 1) their similarity; 2) the fact that both maps denoted Quarryvale land ownership; and 3) the fact that both maps were in existence by January 1990 (indeed Map A, the Lisney map, was extant at least on 1 December 1989); and 4) the likelihood that both maps were in Mr Gilmartin's possession prior to the aforesaid dates.

[11] Irish Intercontinental Bank had dealings with Mr Gilmartin prior to his application to AIB for a loan facility.

9.09 In order to ascertain whether one or other map (or both) might have had its origins within the county council the Tribunal heard evidence from a number of council officials.

9.10 The Tribunal was satisfied, on the basis of evidence given by a Dublin County Council official, Mr Niall Hayden, that the base map from which both Map A and Map B were constructed was of a type that was available in the offices of Dublin County Council in 1988. Mr Hayden told the Tribunal that such base maps were commonly used in the county council and were held by the Roads Forward Planning section. Moreover, he said that, on occasion he prepared maps similar to Maps A and B for Mr Redmond, in his capacity as a technical draftsman employed within the county council. With specific reference to Maps A and B, Mr Hayden could not state categorically whether either or both originated within the county council, having regard to the fact that neither map bore a signature or a date. However, Mr Hayden confirmed that it was not unusual for such maps not to carry a title block, or the identity of the individual who prepared them, given that they were usually prepared as informal maps for in-house consideration. Mr Hayden told the Tribunal that within the council it was usual to maintain maps with details of land ownership to assist council personnel in relation to matters such as compulsory purchase orders.

9.11 Mr Leo Bolton, a County Council official in the Roads Planning Control department of Dublin County Council during the relevant period, confirmed to the Tribunal that a copy map found on one of his files was a reduced photocopy of Map B. While Mr Bolton had no recollection of preparing the original Map B he did recall having been requested to provide a copy of this map.

9.12 The Tribunal found it noteworthy that Mr Bolton's county council file contained a photocopy of Map B, albeit in reduced format. The Tribunal was satisfied, therefore, that at some point Dublin County Council had in its possession Map B, being one of the maps identified by AIB representatives as furnished to them by Mr Gilmartin.

9.13 The Tribunal was satisfied, in light of the evidence provided by Mr Hayden and Mr Bolton, and having regard to the evidence of Mr Kay, Mr Donagh and Mr O'Byrne, that Mr Gilmartin's account of receiving a map from Mr Redmond in May 1988 was entirely credible, and that therefore either Map A or Map B (or a similar map) was likely to have been the map produced by Mr Redmond from his drawer and given to Mr Gilmartin at their first meeting.

THE TRIBUNAL'S CONCLUSIONS RELATING TO THE DEMANDS FOR PAYMENTS BY MR LAWLOR

10.01 The Tribunal was satisfied that Mr Lawlor facilitated a meeting with Mr Redmond for Mr Gilmartin, prior to the scheduled meeting between the three men, as referred to in Mr Redmond's diary. To this end the Tribunal did not accept Mr Lawlor's or Mr Redmond's evidence that all three met on one occasion only. The Tribunal believed it more likely that at some point between his meeting with Mr Gilmartin in the Deadman's Inn and bringing Mr Gilmartin to meet Mr Redmond, Mr Lawlor apprised Mr Redmond of Mr Gilmartin's request for details of ownership of the Quarryvale lands and arranged with Mr Redmond that the latter would meet with Mr Gilmartin in this regard.

10.02 The Tribunal accepted Mr Gilmartin's evidence that in May 1988 Mr Redmond gave him a map detailing ownership of the entire Quarryvale site. Moreover, the Tribunal accepted Mr Gilmartin's evidence that Mr Lawlor requested IR£100,000 for himself and a similar amount for Mr Redmond.

10.03 In preferring Mr Gilmartin's evidence regarding the meeting to that of either Mr Redmond or Mr Lawlor, the Tribunal took cognisance of the evidence given by a number of other witnesses, and in particular the fact that Mr Gilmartin told others about that meeting within a relatively short time thereafter.

10.04 The Tribunal accepted Mr Sheeran's evidence that a short time after Mr Gilmartin's meeting with Mr Redmond, as facilitated by Mr Lawlor, Mr Gilmartin told him of Mr Lawlor's demand for IR£100,000 for himself and a similar amount for Mr Redmond. Mr Sheeran initially told the Tribunal that he did not recollect any reference to a map, but, having reflected on the matter, he recollected Mr Gilmartin advising him that he had been provided with a land ownership map by Mr Redmond. Under cross-examination by Mr Redmond, Mr Sheeran stated to the Tribunal that *'the only thing that sank'* into his brain in 1988 was Mr Gilmartin's telling him of Mr Lawlor's demand for money.

10.05 Mr McLoone's evidence was that in or about 1989, at the time Mr Gilmartin made a number of complaints to Mr Seán Haughey and Mr Feely, Mr Gilmartin had relayed to him a demand Mr Lawlor had made of him for IR£100,000 for himself and a similar amount for Mr Redmond. Mr McLoone said that Mr Gilmartin had also advised him that an unnamed councillor also requested IR£100,000 from him.

10.06 Mr Feely, (to whom Mr Gilmartin made complaints about a number of issues on 24 February 1989), could not recollect Mr Gilmartin telling him that he had received a map from Mr Redmond, and also could not recollect Mr Gilmartin making any allegation that Mr Lawlor had, in a specific setting, asked for IR£100,000 for himself and another IR£100,000 for Mr Redmond. However, the Tribunal was satisfied that by 3 March 1989 the Gardaí had been informed, through a Department of Justice memorandum, about complaints of this nature then being made by Mr Gilmartin.

10.07 On 3 March 1989 the Minister for the Environment, Mr Pádraig Flynn met the Minister for Justice, Mr Gerard Collins, and advised him of certain complaints being made by Mr Gilmartin. Mr Flynn's source for such complaints was a meeting he had on 28 February 1989 with Mr Feely and Mr Seán Haughey, who in turn had received their information from Mr Gilmartin some four days earlier.[12]

10.08 A memorandum ('*Alleged planning permission irregularities, note 2*') (apparently prepared by Mr Des Matthews, Secretary of the Department of Justice) which Chief Superintendent Sreenan acknowledged was in the possession of the Gardaí by 3 March 1989, prior to any communication by him with Mr Gilmartin, contained, *inter alia,* the following:

> *Mr Flynn said that he had come into possession of some further information that was related to the Gardaí investigation. At 1:15pm on Tuesday the 28th February, he had met at their request, Mr Frank Feely, the City and County Manager and Mr S. Haughey, Asst. City and County Manager, who told him the following.*
>
> *On the previous Thursday or Friday (23 or 24 Feb),—the Minister was not sure which day—a Mr T. P. Gilmartin had come to see them (this is the same Mr Gilmartin mentioned at the meeting on 2 March with the Taoiseach). Mr Gilmartin told them that he was interested in property development in Dublin, but that irregular propositions had been put to him in connection with certain planning procedures that he had to go through. Large sums of money 'upfront' were requested as a consideration for giving him whatever approval he needed. Gilmartin named two people who were alleged to be involved in these transactions—Mr George Redmond, Asst. Manager with responsibility for Co. Council matters and Deputy Liam Lawlor. He also said that certain other Co. Councillors were involved and Councillor Finbar Hanrahan was named as one. Gilmartin said that the amounts of money requested were vast. There was a mention of payment of £5 million and also a reference to '£100,000 per man'. Gilmartin was 'frightened' by the extent of the*

[12] Mr Gilmartin's meeting with Mr Feely and Mr Haughey and their actions on foot of this meeting is considered elsewhere in this Chapter.

corruption he was confronting and decided to tell his story to the authorities [Minister Flynn said that Gilmartin was a tough-principled man . . .]

10.09 The Tribunal also noted that an *aide memoire* compiled by Chief Superintendent Sreenan before he telephoned Mr Gilmartin on 4 March 1989 contained, *inter alia,* the following information about Mr Gilmartin:

He was interested in developing property in Ireland but he was worried about irregularities. He was told by somebody there would have to be money put upfront to people. 1. George Redmond Assistant County Manager. 2. Liam Lawlor T.D. 3. A No. of other County Councillors 1 named Finbarr Hanrahan, a FF Conc. for Lucan'.

10.10 The Tribunal was satisfied that by 3 March 1989 Mr Gilmartin had identified both Mr Lawlor and Mr Redmond to persons in authority in the context of demands being made of him for money. The Tribunal accepted that Mr Gilmartin was likely to have told Mr Feely and Mr Seán Haughey that Mr Lawlor made, *inter alia,* a demand of him for money for himself and for Mr Redmond. This was subsequently related by them to Mr Flynn who in turn apprised Mr Matthews and the Minister for Justice.

10.11 The Tribunal accepted that Chief Superintendent Sreenan's memorandum of his telephone conversation with Mr Gilmartin of 4 March 1989 did not identify specifically either Mr Lawlor or Mr Redmond in relation to any matter and that there was no specific reference to the demands made by Mr Lawlor for IR£100,000 for himself and for Mr Redmond. Nonetheless, it was satisfied that (as conceded by Chief Superintendent Sreenan) certain references in that memorandum identified Mr Redmond and were, on 4 March 1989, understood by Chief Superintendent Sreenan to be references to Mr Redmond.

10.12 The Tribunal rejected Mr Redmond's and Mr Lawlor's account as to what took place in the course of their meeting with Mr Gilmartin.

10.13 The Tribunal was satisfied that Mr Gilmartin gave a true and accurate account of his meeting in late May 1988 with Mr Lawlor and Mr Redmond. The Tribunal accepted Mr Gilmartin's evidence that while Mr Redmond pretended to take a telephone call in his office, Mr Lawlor requested a payment of IR£100,000 for himself and a similar amount for Mr Redmond. It also accepted that Mr Lawlor either expressly or by implication made it clear to Mr Gilmartin that he would not realise his ambition to purchase and develop the lands at Quarryvale unless the substantial payments were made as demanded.

10.14 The Tribunal was satisfied that while Mr Redmond did not himself make any demand for payment from Mr Gilmartin on this or on any other occasion, he was aware of the demand being made of Mr Gilmartin by Mr Lawlor on his behalf and was, indirectly, party to that demand.

10.15 The said demand was corrupt.

THE TRUST HOUSE FORTE MEETING

11.01 The Tribunal heard evidence that a meeting took place in November 1988 at the Trust House Forte Hotel at Dublin Airport which was attended by Mr Gilmartin and a number of his professional advisors, including his architect and a quantity surveyor.

11.02 According to Mr Gilmartin, in the course of that meeting Mr Lawlor arrived uninvited and proceeded to join Mr Gilmartin and his group. Mr Lawlor informed Mr Gilmartin that Mr Gilmartin's son had told him of the meeting when he attempted to contact Mr Gilmartin at his home earlier.

11.03 According to Mr Gilmartin, Mr Lawlor then proceeded to tell him that if he was going to progress his Quarryvale proposals he was *'going to have to deal with Mr* [Owen] *O'Callaghan whether* [Mr Gilmartin] *liked it or not'* because Mr O'Callaghan had *'the Neilstown site'.* Mr Lawlor proceeded to inform Mr Gilmartin that Mr O'Callaghan's architects, Ambrose Kelly & Co, had prepared plans for the development of the Neilstown site, and that Mr O'Callaghan was applying for planning permission for retail development on that site. Challenged by Mr Gilmartin, who expressed the view that no-one would build a shopping centre on the Neilstown site because of various problems with it, Mr Lawlor replied as follows: '*It doesn't matter. You'll go nowhere because Mr O'Callaghan, all he has to do is to threaten to build it and you'll be there forever.*'

11.04 Mr Gilmartin told the Tribunal that, conscious of the reality of what Mr Lawlor had stated, he agreed to Mr Lawlor's suggestion that a meeting between himself and Mr O'Callaghan should be arranged.

11.05 According to Mr Gilmartin, some days following the Trust House Forte meeting, Mr Lawlor contacted him in relation to arranging a meeting between himself and Mr O'Callaghan in Dublin. Following contact between Mr Gilmartin and Mr O'Callaghan, they met at the Royal Dublin Hotel on 7 December 1988. At this meeting they reached an agreement in principle whereby Mr Gilmartin would purchase Mr O'Callaghan's interest in the Neilstown lands. This agreement was subsequently signed at the end of January 1989.

11.06 Mr Lawlor told the Tribunal that he did not attend any meeting with Mr Gilmartin at the Trust House Forte Hotel, although he acknowledged that he may have advised Mr Gilmartin to come to an arrangement with Mr O'Callaghan in the interests of developing the Quarryvale lands.

11.07 The Tribunal was satisfied that by the autumn of 1988, if not sooner, Mr Lawlor had been well apprised of Mr Gilmartin's plans for Quarryvale. The extent of his knowledge was evidenced by a letter he drafted for Mr Gilmartin, to be sent to the Minister for the Environment, Mr Flynn, which he faxed to Mr Gilmartin's advisor, Mr Forman, on 7 September 1988.

11.08 The Tribunal accepted Mr Gilmartin's evidence of his encounter with Mr Lawlor at the Trust House Forte Hotel and the accuracy of his recollection as to what Mr Lawlor had said to him.

11.09 The Tribunal was also satisfied that Mr Lawlor's encounter with Mr Gilmartin at the Trust House Forte Hotel occured after a meeting between Mr O'Callaghan and Mr Lawlor in November 1988. A memorandum compiled by Mr O'Callaghan dated 4 November 1988 and described as: '*Notes on meetings with: - Liam Lawlor, Robin Cherry and Finbarr Hanrahan', inter alia* stated:

> *I met with Liam Lawlor on Wednesday last. Lawlor told me that Flynn and McSharry asked him to look after Gilmartin and would have preferred if nothing happened on the Clondalkin[13] site and was under the impression, like everybody else, that the site was going nowhere. Lawlor is quite confident that Gilmartin will get his permission but that we are in the driving seat for the time being. He also feels that the provision of the road is essential to our scheme and suggested that we write to Paddy Morrissey or George Redmond immediately to establish the situation with the road. I am not sure whether Lawlor is trying to be helpful to us or just looking for information. Lawlor suggested that a meeting be arranged between Gilmartin and myself.*

11.10 The Tribunal was satisfied that the reference to Mr O'Callaghan being in *'the driving seat for the time being'* is consistent with the tenor of Mr Gilmartin's description of what Mr Lawlor had relayed to him in the Trust House Forte Hotel.

11.11 The Tribunal was satisfied that Mr Lawlor's evidence relating to the meeting with Mr Gilmartin was untruthful.

[13] The Clondalkin site referred to in this memo is the Neilstown site.

THE OPTION AGREEMENT OF THE 31 JANUARY 1989

12.01 On 31 January 1989, Mr Gilmartin and Mr O'Callaghan entered into an agreement for the sale to Mr Gilmartin of Mr O'Callaghan's option to purchase the Neilstown lands from Dublin Corporation for the sum of IR£3.5m. The agreement was made in the offices of Mr Gilmartin's then solicitor, Mr Seamus Maguire. Also present on that occasion were Mr Maguire and Mr John Deane, Mr O'Callaghan's solicitor and business partner. Mr Gilmartin's purpose in purchasing the Option from Mr O'Callaghan was to clear the way for his proposed Quarryvale development.[14]

12.02 Mr Gilmartin told the Tribunal that the agreement provided that he would pay Mr O'Callaghan IR£800,000 upfront, followed by a payment of IR£1.35m on the anniversary of the signing of the contract and a further payment of IR£1.35m when the Quarryvale lands were rezoned. Mr Gilmartin had wanted the final payment to be made subject to planning permission for the development of Quarryvale, but Mr O'Callaghan would not agree to this proposal. In his written statement to the Tribunal, Mr Gilmartin maintained that the final payment of IR£1.35m was to be paid when zoning had been achieved in respect of the Quarryvale lands.

12.03 Mr John Deane told the Tribunal that he prepared a draft of the agreement which was signed by the parties on 31 January 1989. He said that he brought that draft agreement to Mr Seamus Maguire's (Mr Gilmartin's Solicitor) office on that date, and that it had been prepared in accordance with the verbal agreement reached between Mr Gilmartin and Mr O'Callaghan at their meeting in the previous month. The draft of the agreement which Mr Deane brought to Mr Maguire's offices on 31 January 1989 was in fact a redraft of an earlier draft of the agreement prepared by Mr Deane and furnished by him to Mr Maguire on 19 January 1989 and was in fact the fourth draft of the agreement. Sometime subsequent to the verbal agreement between Mr Gilmartin and Mr O' Callaghan being reached, Mr O' Callaghan advised Mr Deane that instead of a straight forward agreement Mr O' Callaghan's interest was going to proceed by way of an option being granted to Mr Gilmartin. This first draft was identified as Draft A in the Quarryvale One Module which was forwarded to Mr Maguire on 19 of January 1989. Thereafter there were at least three different subsequent versions of the draft agreement, none of which were forwarded to Mr Maguire. Those drafts were identified as drafts B, C and D, in the Quarryvale One Module. Draft E was a

[14] The Merrygrove contract required that a planning application be lodged within two months of the agreement or such extended period as might be agreed. Merrygrove sued O'Callaghan Properties Ltd in early February 1989 for breach of agreement arising from their failure to lodge the necessary planning application. These proceedings were compromised later that month with the transfer of Mr Gubay's shareholding in Merrygrove to O'Callaghan Properties Ltd.

further draft option agreement which was the document that Mr Deane brought to the offices of Mr Maguire in Blanchardstown at about 10:30 the morning of 31 January 1989.

12.04 The evidence to the Tribunal established that in the course of the meeting in Mr Maguire's office on 31 January 1989, certain amendments were made to Mr Deane's draft document, and a further redraft was prepared by Mr Maguire following discussion with Mr Gilmartin. A final version of the document was then typed in Mr Maguire's office, and signed by Messrs O'Callaghan and Gilmartin in the presence of their respective Solicitors, Messrs Deane and Maguire.

12.05 Mr Deane recalled Mr Maguire advising Mr Gilmartin not to sign the agreement unless the final payment (of IR£1.35m) was made subject to the Quarryvale lands being given planning permission for development, but Mr Gilmartin rejected this advice.

12.06 In the course of his evidence to the Tribunal, Mr Gilmartin alleged that the agreement document which was presented to him in the course of his evidence, and which had been provided to the Tribunal on the basis that it was the agreement dated 31 January 1989 entered into by Mr Gilmartin and Mr O'Callaghan, was not in fact the document which he had agreed to, and had signed on that date. Mr Gilmartin stated: '*This document I am reading here is not the document I signed, to the best of my recollection. This document bears no relationship to the document I signed.'* Mr Gilmartin acknowledged that the signature on the document was his.

12.07 In the following exchange, between Tribunal Counsel and Mr Gilmartin, Mr Gilmartin explained the basis for his belief that the executed agreement did not represent the agreed terms as between himself and Mr O'Callaghan:

> 'Q. 362 *Why did you not put in something to the effect that it was subject to getting zoning on the land?*
>
> *A. It was put in. [...]*
>
> *Q. 367 I just want to put the remaining paragraph of Mr. O'Callaghan's statement to you. He says: 'Seamus Maguire later advised at the same meeting that in his opinion Tom Gilmartin would be unwise to sign any agreement which was not subject to planning permission. My solicitor, John Deane, indicated that the obtaining of planning permission by Tom Gilmartin for his Quarryvale site was not a term of the agreement and Tom Gilmartin agreed with this. Tom Gilmartin subsequently signed the option agreement unconditionally and handed over a cheque for 800,000 pounds.*

A. Yes, that has a truthful ring to it because they did object to the planning, to it being subject to planning. I don't see anything wrong with that statement by Mr. Deane because it was -- they objected to the idea of it being subject to planning. They were not in control of what we were going to plan for the site. [...]

Q. 369 Do you accept that Mr. Maguire advised you that you shouldn't sign it unless it was subject to obtaining planning permission?

A. He may have done. He may have advised me because of the risk I was taking that it should be subject to planning, but I agreed with what Mr. O'Callaghan had suggested because at that stage I had bought him and paid him for the Neilstown site and he had no control over what we were going to plan for that site. So I relented on that point.

Q. 370 So do you say that the agreement that you signed was one which provided for the payment of the 800,000 pounds there and then, which you paid over the sum of 1.35 million to be paid on the anniversary of the signing of this agreement, which we know was 31st January 1989, and a further 1.35 million to be paid when the lands were rezoned?

A. Zoning on the anniversary, our zoning, whichever were the earlier.

Q. 371 That is a change from what had been agreed, you say, on 7th December of 19—

A. Yes, it was altered at the meeting.

Q. 372 I see. So the third issue, the third condition or provision, was that a final sum of 1.35 million pounds would be paid on the obtaining of planning permission -- sorry, on the zoning or on the anniversary of the -- the second anniversary of the date of signing of agreement, whichever came first?

A. That's correct.

Q. 373 Is that correct?

A. That's correct.'

12.08 In his evidence, Mr O'Callaghan testified as to the terms of his agreement with Mr Gilmartin, as follows:

'I produced my plan of Balgaddy and said that, Tom said, well can we come to an arrangement and I said that we actually had a projected profit figure of 7 million pounds on that development, on Balgaddy if we proceeded with it. That's where Tom has got his figure of 7 million pounds. I told him that we were prepared to walk away from the deal and sell our interest in Balgaddy to him for 3 million pounds plus the half a million pounds that we had to give to Albert Gubay to buy out his contract. Tom agreed immediately and we shook hands on the deal. It lasted not too long. That was almost at the end of the meeting. That was based on an unconditional contract, Tom would buy Balgaddy from us,

buy our interest in Balgaddy from us. In other words he was stepping into my shoes and take over the Dublin Corporation contract…Tom rang me back within a matter of days, to ask me could we change the unconditional agreement to an option agreement.'

12.09 In the course of his evidence, Mr O'Callaghan said, referring to Mr Gilmartin's claim that the written agreement did not represent what had in fact been agreed between himself and Mr Gilmartin, the following: *'As I said to you… he has his dates and everything else mixed up like that. The question of zoning and planning was never, never mentioned. It was an unconditional contract, it was then an unconditional option agreement.'*

12.10 Mr O'Callaghan denied that the agreement had been altered by himself or Mr Deane, following its execution.

12.11 Undoubtedly, Mr Gilmartin was unhappy with the terms of the agreement and he expressed his dissatisfaction with those terms long before the establishment of the Tribunal, although not on the basis that the agreement had been altered after its execution. For example, in a letter dated 4 February 1991, Mr R. Edmund McMullan of Sentinel Investments (a Cayman Islands company which was then engaged in the process of locating an investor for the Quarryvale project), advised Mr Kay (of AIB) that:

We are advised by Mr. Gilmartin… that Mr. O'Callaghan and he have an agreement, which was omitted in error from their executed agreement…which stated in fact that final payment would not be due until the approval of the planning.

This letter was copied to, *inter alia*, Mr Gilmartin and Mr Seamus Maguire. Mr Gilmartin also told Mr Kay that the executed agreement did not represent what had been agreed between himself and Mr O'Callaghan in December 1988, and had blamed Mr Maguire for changes (which he claimed) had been made to the original verbal agreement.

12.12 In early 1996, when Mr Gilmartin was instructing his then solicitor Mr Noel Smyth in relation to certain litigation which Mr Gilmartin was contemplating at that time, Mr Smyth noted that Mr Gilmartin informed him that Mr Maguire had made an error in failing to include conditions relating to planning permission[15] in the Option Agreement of 31 January 1989. Mr Gilmartin did not instruct Mr Smyth that the 31 January 1989 agreement had been altered in any fashion subsequent to his signing the document.

[15] Mr Gilmartin, when giving evidence to the Tribunal, stated that he had intended to specify '*zoning'*, rather than '*planning permission.'*

12.13 Mr Deane told the Tribunal that at the conclusion of the meeting on 31 January 1989, he took possession of the original copy of the signed agreement, and that this was one and the same document as that which was subsequently provided to the Tribunal. Mr Deane, Mr O'Callaghan and Mr Maguire were all steadfast in their denial that the agreement, as executed by Mr Gilmartin and Mr O'Callaghan in Mr Maguire's office on 31 January 1989, had been subsequently altered or interfered with in any way.

12.14 Conclusions of the Tribunal in relation to the Option Agreement.

(i) The Tribunal did not hear evidence which in any way supported Mr Gilmartin's allegation that the Option Agreement of 31 January 1989 had been altered or interfered with following its signing on that date. The Tribunal was satisfied that Mr Gilmartin signed the said agreement in spite of advice from his solicitor Mr Maguire that the agreement did not make the payment of the final sum of IR£1.35m conditional on planning permission being granted for the Quarryvale lands.

(ii) The Tribunal was satisfied that, although Mr Gilmartin was clearly unhappy with aspects of the agreement signed by him on 31 January 1989, his allegation that the document had been interfered with following its signature by him was completely without foundation.

THE BUSWELLS HOTEL MEETING WITH CLLR FINBARR HANRAHAN (FF)

13.01 Mr Gilmartin told the Tribunal that he attended at Buswells Hotel in Dublin for a prearranged meeting with Cllr Hanrahan in order to lobby him to support the Quarryvale project. Mr Gilmartin had been advised by Mr Lawlor in early December 1988 that he should ensure that he had a number of identified councillors *'on board'* if the rezoning of Quarryvale was to become a reality. One of the names provided to Mr Gilmartin by Mr Lawlor was that of Cllr Hanrahan, a councillor in the Lucan area. Following telephone contact with Cllr Hanrahan, a meeting was arranged for Buswells Hotel.

13.02 While Mr Gilmartin believed that the meeting occurred around Christmas time, and probably on the afternoon of 28 December 1988, this date was disputed by Cllr Hanrahan. It was also disputed by Mr O'Callaghan and Mr John Deane, Mr O'Callaghan's business partner, both of whom witnessed (but did not participate in) the meeting with Cllr Hanrahan. All three believed that the meeting took place in late January or early February 1989.

13.03 According to Mr Gilmartin as he entered the bar area where the meeting took place, he observed Mr O'Callaghan, Mr Deane, Mr Ambrose Kelly, (Mr O'Callaghan's architect), Mr Lawlor and *'another gentleman'* at the end of the bar area.

13.04 Mr Gilmartin said that as he approached the group, Mr Lawlor disappeared from view and the man who had been with the group moved away to a corner of the bar. At this point, Mr O'Callaghan nodded towards where the man who had been with the group was now sitting, an action interpreted by Mr Gilmartin as an indication to him that this man was Cllr Hanrahan.

13.05 Mr Gilmartin told the Tribunal that prior to his arrival at Buswells Hotel he had not informed anyone, including Mr O'Callaghan, of his scheduled meeting with Cllr Hanrahan, although Mr Gilmartin had met with Mr O'Callaghan earlier that day. Mr Gilmartin proceeded to describe his encounter with Cllr Hanrahan as follows:

> '*Well, I introduced myself and I had a—I talked about the scheme we were proposing. At that time I had a little brochure and I showed it to him and I indicated that we could provide the scheme and bring the jobs et cetera, and after a general chit-chat about the scheme, he said to me, 'Well, this is going to damage quite a few of my friends in Lucan and there's little people there who was taking care of me over a number of years and if I am to support your scheme, I expect to get something for it', so I says, 'Yeah'. So he said,'Yeah, I want £100,000 for my support because those people have taken care of me for a number of years and they're all going to be damaged by this scheme.' So then he said, 'I've met people like you', or words to that effect, 'Before who when they got what they wanted they didn't pay up, so I want 50,000 up front'. And I said, 'Yeah', so I exchanged just a few words and walked out.'*

13.06 Mr Gilmartin told the Tribunal that as he left the bar at Buswells, Mr O'Callaghan asked him *'Did he* [Cllr Hanrahan] *tap you?'* to which Mr Gilmartin had replied, '*What do you think?'*

13.07 According to Mr Gilmartin, those were the only words he uttered to Mr O'Callaghan relating to the demand at the time. However, he said that on a subsequent date, towards the end of January 1989, he had specifically told Mr O'Callaghan that Cllr Hanrahan had made a demand for IR£100,000.

13.08 Mr Gilmartin said that he then left the hotel and travelled to Dublin Airport and caught a flight home to Luton.

13.09 Cllr Hanrahan disputed Mr Gilmartin's claim that the meeting took place on 28 December 1988, stating that on that date he was on holiday in Co Kerry.

13.10 Cllr Hanrahan totally rejected Mr Gilmartin's allegation that he demanded IR£100,000 in return for his support for Quarryvale and described it as an

'*outrageous lie*'. He had, he claimed, agreed to meet Mr Gilmartin in Buswells Hotel as a result of Mr Gilmartin's aggressive pursuit of his support for Quarryvale through telephone calls. He met with Mr Gilmartin in order to advise him that he did not support Quarryvale and that he intended to support the designated Neilstown/Clondalkin Town Centre project.[16] Cllr Hanrahan said that his meeting with Mr Gilmartin was brief and that the only mention of money came from Mr Gilmartin when he advised Cllr Hanrahan that he had made IR£200,000 profit selling sites at Bachelor's Walk in Dublin.

13.11 Cllr Hanrahan told the Tribunal that, when he made it clear to Mr Gilmartin that his Quarryvale proposal was *'far-fetched'* and that he would not be supporting it, Mr Gilmartin became incensed, threatening and abusive, and that they parted on bad terms. Cllr Hanrahan said that Mr Gilmartin told him that he '*would be sorry'* for not supporting the project. Cllr Hanrahan's belief was that Mr Gilmartin probably told Mr O'Callaghan of an alleged claim by him for IR£100,000 because Mr Gilmartin was '*vindictive'* towards him. Furthermore, Cllr Hanrahan maintained that he had not seen either Mr O'Callaghan or Mr Deane at Buswells Hotel on the day he met with Mr Gilmartin.

13.12 In their evidence to the Tribunal, Mr O'Callaghan and Mr Deane agreed that Mr Gilmartin met with Cllr Hanrahan in Buswells Hotel, and agreed that they were present in the hotel bar on the occasion in question.

13.13 According to Mr O'Callaghan, Mr Gilmartin asked him to introduce him to Cllr Hanrahan. Although Mr O'Callaghan did not claim to have set up the meeting, both he and Mr Deane maintained that, having met with Mr Gilmartin earlier in the day at Mr Gilmartin's offices, they had then accompanied him to Buswells Hotel, for the purpose of introducing him to Cllr Hanrahan. Upon entering the hotel bar Mr O'Callaghan pointed out Cllr Hanrahan to Mr Gilmartin.

13.14 Both Mr O'Callaghan and Mr Deane denied that either Mr Lawlor or Mr Kelly were in attendance in Buswells Hotel on the day. Mr Lawlor and Mr Kelly also denied being present.

13.15 There was a stark conflict between the evidence of Mr Gilmartin on the one hand and the evidence of Mr O'Callaghan and Mr Deane on the other hand, as to what occurred in the immediate aftermath of Mr Gilmartin's meeting with Cllr Hanrahan. This conflict extended to Mr Gilmartin's claim that although he told Mr O'Callaghan of the demand for IR£100,000 from Cllr Hanrahan, he did not do so until some weeks later.

[16] However, Cllr Hanrahan would go on to give support to the Quarryvale rezoning in May 1991. By December 1992 he was no longer supportive of the project.

13.16 According to Mr O'Callaghan, Mr Gilmartin did not get a taxi to Dublin Airport following his exit from Buswells Hotel, but rather he and Mr Gilmartin had walked to the Shelbourne Hotel and dined together. Also, Mr O'Callaghan specifically disputed Mr Gilmartin's version of what occurred between them immediately after Mr Gilmartin's encounter with Cllr Hanrahan. According to Mr O'Callaghan, some fifteen minutes or so after Mr Gilmartin had gone to speak with Cllr Hanrahan, he, Mr O'Callaghan, had seen Mr Gilmartin exit the hotel '*in a bit of a huff*'. He followed him out on to the street where Mr Gilmartin '*was looking ruffled*', and was clearly upset. There and then according to Mr O'Callaghan, Mr Gilmartin told him of Cllr Hanrahan's demand for IR£100,000. Mr O'Callaghan denied that he uttered the words '*did he tap you?*' to Mr Gilmartin, eliciting the response from Mr Gilmartin '*what do you think?*'

13.17 Mr Deane recollected having been informed by Mr O'Callaghan on the street outside Buswells Hotel that Mr Gilmartin had told him that Cllr Hanrahan had sought IR£100,000. While Mr Deane had not spoken to Mr Gilmartin it was clear to him that Mr Gilmartin was *'annoyed'*. Mr Deane said he was *'shocked'* at what Mr O'Callaghan had told him in relation to a demand for money.

13.18 Mr O'Callaghan was challenged in the course of cross-examination about his claim that he disbelieved Mr Gilmartin's allegation that Cllr Hanrahan had sought IR£100,000 from him.

13.19 In response to a series of questions on the topic put to him by Mr Donal O'Donnell SC, Counsel for Mr Gilmartin, Mr O'Callaghan said he found it difficult to decide if it was his belief that Mr Gilmartin's allegation on this issue was untrue or exaggerated. When asked by Mr O'Donnell to elicit which of these descriptions represented his view, Mr O'Callaghan responded: '*Difficult to call that. Exaggerated I would say.'* Mr O'Callaghan also commented '*I did not believe him totally when he said it to me.'*

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE BUSWELLS HOTEL MEETING

14.01 In seeking to determine the circumstances of the Buswells Hotel meeting, and in particular, what was said as between Mr Gilmartin and Cllr Hanrahan, the Tribunal identified the following issues for particular consideration:

1) The likely date of the meeting.

2) The likely explanation for Mr O'Callaghan's and Mr Deane's presence in Buswells Hotel on the day in question.

3) Whether Mr Lawlor and Mr Kelly were present in the hotel at the time of Mr Gilmartin's arrival.

4) Whether, Cllr Hanrahan demanded IR£100,000 from Mr Gilmartin.

5) If such a demand was in fact made, what, if anything, did Mr Gilmartin tell Mr O'Callaghan about that demand immediately after it was made.

THE LIKELY DATE OF THE MEETING

14.02 The Tribunal believed that the meeting between Mr Gilmartin and Cllr Hanrahan took place towards the end of January 1989, or early February 1989, rather than on 28 December 1988, as claimed by Mr Gilmartin. It may well have been the case that it was on 28 December 1988 in Buswells Hotel that Mr Gilmartin obtained the names of a number of councillors including that of Cllr Hanrahan from Mr Lawlor and that Mr Gilmartin confused the date of that encounter and the date of the Hanrahan meeting.

THE LIKELY EXPLANATION FOR THE PRESENCE IN BUSWELLS HOTEL OF MR O'CALLAGHAN AND MR DEANE

14.03 The Tribunal did not accept Mr O'Callaghan's explanation that his attendance in Buswells was because he had been asked by Mr Gilmartin to introduce him to Cllr Hanrahan. Had such a request been made, the Tribunal believed that, rather than the casual *'introduction'* to Cllr Hanrahan by Mr O'Callaghan, he would in all probability have brought Mr Gilmartin over to Cllr Hanrahan and effected a formal introduction. The Tribunal believed it likely that Mr O'Callaghan was present in Buswells on that day of his own volition.

MR GILMARTIN'S CLAIM THAT MR LAWLOR AND MR AMBROSE KELLY WERE IN ATTENDANCE

14.04 The Tribunal believed that Mr Lawlor was in attendance in Buswells Hotel on the day in question, at least fleetingly. The Tribunal saw no reason to disbelieve Mr Gilmartin's evidence on this issue, and was in any event aware of Mr Lawlor's propensity to turn up at meetings Mr Gilmartin scheduled with third parties. Similarly, the Tribunal believed that Mr Kelly was in attendance and in the company of Messrs O'Callaghan and Deane on the occasion in question. In arriving at such a conclusion the Tribunal noted Mr O'Callaghan's evidence that on the day of the meeting, he was, in all probability, in Dublin to inform Mr Kelly that his Neilstown/Clondalkin project, in respect of which he had retained Mr Kelly's architectural services, would not proceed because of the agreement that he had concluded with Mr Gilmartin in relation to the option to purchase the Neilstown lands.

DID CLLR HANRAHAN, AS ALLEGED, DEMAND IR£100,000 FROM MR GILMARTIN?

14.05 The Tribunal was satisfied that, in the course of the meeting that took place between Mr Gilmartin and Cllr Hanrahan in Buswells Hotel, Cllr Hanrahan demanded IR£100,000 in return for his support for Quarryvale and that he sought IR£50,000 of this *'up front'*. This demand was undoubtedly corrupt.

14.06 The Tribunal rejected Cllr Hanrahan's account of the meeting and the events leading up to it almost in its entirety. Furthermore, the Tribunal rejected Cllr Hanrahan's contention that the claim being made by Mr Gilmartin was as a result of Mr Gilmartin's vindictiveness because Cllr Hanrahan had declined to support the Quarryvale project. The Tribunal preferred the account provided to it by Mr Gilmartin as to what was said between the two men, to that provided by Cllr Hanrahan.

14.07 Evidence given by a number of witnesses assisted the Tribunal in arriving at its determination that Mr Gilmartin was credible in relation to the claim he made regarding Cllr Hanrahan. In particular:

1) Mr O'Callaghan told the Tribunal that, almost immediately following Mr Gilmartin's short encounter with Cllr Hanrahan, he was made aware of Cllr Hanrahan's IR£100,000 demand by an upset and angry Mr Gilmartin, whose agitated demeanour was also noted by Mr Deane. Furthermore, the Tribunal was satisfied that within a relatively short period following the Buswells Hotel meeting, Mr Gilmartin relayed to a number of individuals, both formally and informally, the fact of a demand for IR£100,000 having been made to him by Cllr Hanrahan.

2) The Tribunal accepted Mr Sheeran's evidence that he was informed by Mr Gilmartin of Cllr Hanrahan's demand for IR£100,000, fairly soon after its occurrence. Likewise, the Tribunal was satisfied that this information was conveyed to Mr McLoone by Mr Gilmartin, probably around the time Mr Gilmartin was in contact with Mr Haughey and Mr Feely. While Mr McLoone, in evidence, was loath to name Cllr Hanrahan as the person about whom the allegation was made as he said that he could not specifically recall the name given to him by Mr Gilmartin in 1989, the Tribunal was satisfied that it was Cllr Hanrahan's name that was, with others, identified to Mr McLoone by Mr Gilmartin in 1989.

3) The memorandum dated 28 February 1989 compiled by Mr Feely and Mr Haughey, following Mr Gilmartin's complaints on 24 February 1989 (at most some three and a half weeks or so after the meeting in Buswells) recorded the following: '*Cllr H. asked for £100,000 in a brown paper*

bag—notes—no cheques'. Mr Feely told the Tribunal that when he met with Mr Gilmartin on 24 February 1989, he understood Mr Gilmartin to have made the aforementioned complaint against Cllr Hanrahan.

4) On 3 March 1989, Mr Pádraig Flynn apprised the Minister for Justice (as per the memorandum of 3 March 1989 prepared by Mr Matthews) of the nature of Mr Gilmartin's then complaints, as relayed to him by Mr Seán Haughey and Mr Feely on 28 February 1989, some four days following their meeting with Mr Gilmartin.

5) The Tribunal was equally satisfied, having regard to Chief Superintendent Sreenan's handwritten note prepared prior to his telephone call of 4 March 1989, to Mr Gilmartin, and having regard to the evidence of Superintendent Burns, that by 4 March 1989 the Gardaí had been apprised, via Mr Matthews' memorandum, that Cllr Hanrahan had been identified by Mr Gilmartin in the context of county councillors who had sought money from him.

6) Mr Seán Sherwin recalled in evidence being told by Mr Gilmartin in or about October/November 1990, of Cllr Hanrahan's demand for IR£100,000, in return for the latter's support for Quarryvale, and of Mr Gilmartin's refusal to pay. Mr Sherwin told the Tribunal that he was initially informed by Mr Colm Scallon that Mr Gilmartin was experiencing difficulties with his development project and might not proceed with it.

7) According to Mr Gilmartin, he told Mr Scallon of this, and other matters, and that it had been Mr Scallon who had brought Mr Gilmartin to Mr Sherwin. Notwithstanding Mr Scallon's lack of recollection of having been told by Mr Gilmartin about Cllr Hanrahan's demand, the Tribunal was satisfied, as a matter of probability, that Mr Scallon was made aware in a general way of this, and other complaints, by Mr Gilmartin in 1990, and that these matters most likely prompted Mr Scallon to arrange the meeting with Mr Sherwin.

THE MANNER IN WHICH CLLR HANRAHAN'S DEMAND WAS RELAYED BY MR GILMARTIN TO MR O'CALLAGHAN?

14.08 The Tribunal was satisfied that either as Mr Gilmartin left the bar area of the hotel, or immediately thereafter on the street outside the hotel, Mr O'Callaghan asked him if Cllr Hanrahan had sought money from him. Mr O'Callaghan may or may not have used the precise words '*did he tap you*'.

14.09 The Tribunal was further satisfied that at some stage during their discussions, either in the hotel bar, on the street outside or later that evening, Mr Gilmartin informed Mr O'Callaghan of the precise demand made by Cllr Hanrahan.

MR O'CALLAGHAN'S ACTIONS SUBSEQUENT TO THE BUSWELLS MEETING

14.10 Mr O'Callaghan told the Tribunal that he did not, when questioned in the course of the subsequent Garda Corruption Inquiry, inform Superintendent Burns of Mr Gilmartin's allegation. This was notwithstanding the facts that: he was present in Buswells Hotel on the day Mr Gilmartin met Cllr Hanrahan: he acknowledged that Mr Gilmartin was visibly upset and angry immediately following that meeting; and that Mr Gilmartin told him there and then of Cllr Hanrahan's demand for IR£100,000. According to Mr O'Callaghan he did relay to Superintendent Burns allegations made to him by Mr Gilmartin concerning Mr Lawlor and Mr Redmond.

14.11 Mr O'Callaghan's explanation to the Tribunal for this non-disclosure to the Gardaí of Mr Gilmartin's allegation against Cllr Hanrahan (information which, according to Superintendent Burns, in evidence, would have been of assistance to the inquiry given Mr O'Callaghan's proximity to the alleged events) was that he did not *'fully believe'* Mr Gilmartin and thus did not wish to promote rumour and scandal.

14.12 The Tribunal found this explanation by Mr O'Callaghan to lack credibility having regard to the fact that Mr O'Callaghan experienced no such reluctance in imparting to Superintendent Burns complaints Mr Gilmartin had made to him regarding Mr Lawlor and Mr Redmond. In each case, Mr Gilmartin had made allegations of corrupt demands for substantial money relating to Quarryvale involving elected politicians and a senior county council official. It appeared to the Tribunal that the most credible reason for Mr O'Callaghan's reluctance to inform the Gardai of Mr Gilmartin's complaints regarding Cllr Hanrahan was a conscious decision on his part to protect Cllr Hanrahan. In particular, Cllr Hanrahan was well-known to Mr O'Callaghan at the time of the Buswells demand.

14.13 The Tribunal was satisfied that, on being informed by Mr Gilmartin of Cllr Hanrahan's demand of him for IR£100,000, Mr O'Callaghan believed and accepted the allegation as being true. In the circumstances, the Tribunal saw no reason why Mr O'Callaghan would have believed otherwise.

MR O'CALLAGHAN'S RELATIONSHIP WITH CLLR FINBARR HANRAHAN PRIOR TO 1989

15.01 The Tribunal was satisfied that by the end of 1988, and prior to Mr Gilmartin ever having met with Cllr Hanrahan, Mr O'Callaghan and Cllr Hanrahan were well known to each other. In May 1988, Cllr Hanrahan was approached, in his capacity as a county councillor for West Dublin, for the purposes of obtaining his signature to a Section 4 motion in respect of the lands at Cooldrinagh, Lucan, where Mr O'Callaghan was proposing to develop a shopping centre. Cllr Hanrahan duly signed the motion, together with two other county councillors. The Tribunal was satisfied that at that time and for that purpose, a direct approach was made to Cllr Hanrahan by Mr O'Callaghan and/or an agent acting on his behalf. That Section 4 application was withdrawn in June of 1988. However, it was clear to the Tribunal, from a perusal of the memorandum dated 4 November 1988, compiled by Mr O'Callaghan, that Mr O'Callaghan and Cllr Hanrahan also had a shared interest in other matters ongoing in Dublin at that time.

15.02 It was common case that by early November 1988, Mr O'Callaghan had acquired the Neilstown/Balgaddy lands — the site of the designated town centre for West Dublin as proposed by the county council and planners. According to Cllr Hanrahan it was this site that he told Mr Gilmartin he was supporting in preference to Mr Gilmartin's Quarryvale site, when approached by Mr Gilmartin in Buswells Hotel. Yet it was not primarily Mr O'Callaghan's plan for the Neilstown/Balgaddy site which was the subject of discussion between Mr O'Callaghan and Cllr Hanrahan in November 1988, as detailed by Mr O'Callaghan's memorandum of 4 November 1988. Rather, it was Mr Gilmartin's acquisition of the Sharpe lands (part of the Quarryvale site), and the efforts then underway to secure an entrance from those lands on to the Galway road[17] which were the subject of discussion between the two men on 2 November 1988. Mr O'Callaghan's memorandum, *inter alia*, recorded as follows:

> *I spoke to Finbarr Hanrahan this morning in Cork. Finbarr was our main supporter in Lucan and it was he who told me about the Gilmartin site some three months ago. As you know Gilmartin has an option on this site which is owned by Paul Sharpe. The land was zoned industrial and is now zoned residential. Dublin County Councillors put a section 4 through instructing Dublin County Council officials to give Gilmartin an entrance onto the Galway road. The County Manager refused to carry out this instruction and the High Court ruled against him some months ago. The case is now with the Supreme Court and a decision will be made on Tuesday next 8th November. Hanrahan is confident the decision will be in*

[17] This issue was the subject of challenge in the Superior Courts at this time.

favour of Gilmartin and the Councillors. All Gilmartin has then to do is get a change of use to retail. This site is obviously a better location than Clondalkin.

15.03 The Tribunal considered Mr O'Callaghan's memorandum to be evidence of ongoing communication and of close contact with Cllr Hanrahan in relation to a number of matters, including Mr Gilmartin's plans for Quarryvale. It was evident that at this time, Mr O'Callaghan perceived Cllr Hanrahan as a close confidant and an important contact, in his capacity as an elected county councillor in West County Dublin.

MR LAWLOR'S DEMAND FOR AN INTEREST IN QUARRYVALE

16.01 In the course of his evidence to the Tribunal, Mr Gilmartin alleged that Mr Lawlor, on two occasions, made demands for an interest or share in Mr Gilmartin's Quarryvale project. Mr Gilmartin said that Mr Lawlor had requested a 20 per cent interest in Quarryvale in the autumn of 1988, while the two men were walking the Quarryvale lands. Mr Gilmartin regarded Mr Lawlor's claim as '*grossly exorbitant*.' When making the demand Mr Lawlor was already the recipient of a monthly payment of IR£3,500, on foot of the arrangement he had entered into with Arlington Securities Plc regarding his 'consultancy' work in relation to the Bachelor's Walk proposal.

16.02 Mr Gilmartin told the Tribunal that the second such request by Mr Lawlor was made in the course of a meeting he had with Mr Lawlor at the latter's home, on which occasion Mr Gilmartin had been accompanied by his advisor, Mr Forman. Mr Forman, in evidence, confirmed having attended a meeting with Mr Lawlor at the latter's home and his recollection that this meeting had occurred sometime in 1988, but in any event at a relatively early stage of the Quarryvale project. It was the recollection of both Mr Gilmartin and Mr Forman that at this meeting Mr Lawlor had impressed upon them his knowledge of land in West County Dublin, and the importance of his, Mr Lawlor's, role in advancing any plans Mr Gilmartin might have for such lands.

16.03 Mr Gilmartin told the Tribunal that as he and Mr Forman prepared to leave the meeting, Mr Lawlor called him aside to have a private word with him. Mr Forman agreed that this had occurred. According to Mr Gilmartin, Mr Lawlor stated that *'he had to have a 20 per cent stake in it* [Quarryvale] *otherwise I* [Mr Gilmartin] *wasn't going anywhere.'* Mr Gilmartin described his response to Mr Lawlor as *'unrepeatable*'. Mr Lawlor was told in no uncertain terms that he was not getting any such interest. Mr Forman told the Tribunal that although Mr Gilmartin had not confided in him at the time, he was made aware of Mr Lawlor's demand by Mr Gilmartin at a later stage, probably in the early 1990s.

16.04 Mr Gilmartin subsequently went on to inform Mr Sheeran and Mr McLoone of Mr Lawlor's demand for a stake in the Quarryvale project. Both men confirmed in the course of their evidence having been told by Mr Gilmartin of Mr Lawlor's demands.

16.05 Mr Lawlor denied ever making a request or a demand for a stake in Quarryvale from Mr Gilmartin.

16.06 The Tribunal was satisfied that Mr Lawlor did, as claimed by Mr Gilmartin, seek a 20 per cent stake of the Quarryvale project from him on two separate occasions. Such demands were corrupt, having regard to Mr Lawlor's position as an elected public representative.

16.07 Such requests by Mr Lawlor were consistent with his demand for a payment of IR£100,000 for himself and something for Mr Redmond in the course of the meeting in May or June 1988 with Mr Gilmartin and Mr Redmond, and with his demands of Mr Gilmartin and of Arlington Securities in relation to the Bachelor's Walk project.

THE LEINSTER HOUSE MEETING

17.01 Mr Gilmartin told the Tribunal that on a date in early February 1989, probably 1 February or possibly 2 February, he attended a meeting with a number of Government ministers and the then Taoiseach, Mr Charles J. Haughey in Leinster House.

17.02 Mr Gilmartin said that some short time prior to this meeting, at the end of January 1989, he received a telephone call from Mr Lawlor who informed him that '*his boss*' (a reference to the Taoiseach) wished to meet him. Mr Gilmartin wrote the following references into his notebook for Wednesday 1 February 1989: '*5:30 meeting with Ministers. At Dáil Eireann in (Leinster House)*' and '*Meet Mr L. Lawlor at Buswells Hotel.*'

17.03 Having regard to the aforesaid diary/notebook entries, Mr Gilmartin believed the meeting to have taken place on 1 February 1989. He was not, however, categoric as to the date but he was adamant that it took place in the early days of February 1989.

17.04 Mr Gilmartin said he arranged to meet Mr Lawlor in Buswells Hotel on the day of the meeting. Arriving some 20 minutes late, Mr Lawlor beckoned to Mr Gilmartin, whereupon Mr Gilmartin followed Mr Lawlor through the open gates of Leinster House, and into the Dáil lobby.

17.05 Mr Gilmartin said that he then accompanied Mr Lawlor down a *'long hallway'* towards a lift where they encountered Mr Ray Burke, the then Minister for Industry and Commerce, and the Minister for Communications. Mr Lawlor cursorily introduced Mr Gilmartin to Mr Burke who, while he acknowledged Mr Gilmartin, did not speak to him. Mr Lawlor and Mr Burke engaged in conversation in the lift. Exiting the lift on an upper floor, Mr Lawlor and Mr Gilmartin turned right and travelled along a gangway past partitioned offices on either side towards a lobby area. Mr Gilmartin described being ushered by Mr Lawlor into a room through dark oak double doors. Mr Lawlor remained outside as Mr Gilmartin entered the room.

17.06 Mr Gilmartin then proceeded to describe the actual meeting with a number of Government personnel. He stated that in the room there was a large rectangular table and that Mr Pádraig Flynn, Minister for the Environment, sat at the top left hand corner of the table. Beside Mr Flynn was Mr Albert Reynolds, Minister for Finance. Beside Mr Reynolds was a man whom Mr Gilmartin believed might have been Mr Gerard Collins, Minister for Justice. Seated at the right hand side of the table were Mr Bertie Ahern, Minister for Labour, Mr Brian Lenihan, Tánaiste and Minister for Foreign Affairs and Mr Seamus Brennan, Minister of State at the Department of Industry and Commerce. Standing behind Mr Brennan was a man whom Mr Gilmartin did not recognise and to whom he was not introduced. According to Mr Gilmartin, Mr Ahern, Mr Brennan and Mr Lenihan greeted him on his arrival into the room.

17.07 Mr Gilmartin then described how Mr Burke (whom he had met earlier in the lift with Mr Lawlor) entered the room through a door located in the middle of the room, followed by the Taoiseach, Mr Haughey. Mr Haughey proceeded to walk around the table to where Mr Gilmartin stood and after Mr Flynn's introduction Mr Haughey's first words to Mr Gilmartin were *'I know you, you're Gilmartin from Lislary.'*[18] Mr Haughey chatted to Mr Gilmartin about his two schemes (Bachelor's Walk and Quarryvale) and complimented him for bringing such schemes to Ireland at a time when jobs were desperately needed. Mr Gilmartin was given assurances by Mr Haughey that there would be no obstacles to his plans.

17.08 In the course of the conversation, Mr Gilmartin mentioned to Mr Haughey that he knew Mr Seán Haughey (the senior official with Dublin County Council). Mr Haughey had taken this be a reference to his son, Mr Seán Haughey, rather than to his brother, and had proceeded to tell Mr Gilmartin that his son was, or was about to become, Lord Mayor of Dublin, and encouraged Mr Gilmartin to call

[18] A townland in Co. Sligo.

to the Mansion House. Mr Haughey ended his conversation with Mr Gilmartin by enquiring *'if Liam was taking good care of me'* (a reference to Mr Lawlor).

17.09 Mr Gilmartin also told the Tribunal that, at some point while he was in the room another Government minister, Mrs Mary O'Rourke (then Minister for Education) entered through the same door as had been used by Mr Burke and Mr Haughey. Mr Flynn proceeded to introduce her to Mr Gilmartin at whom she nodded before exiting the room.

17.10 Mr Gilmartin recalled being ushered out of the room by, he believed, the unidentified man who had been standing behind Mr Brennan.

17.11 Mr Gilmartin described the meeting as having been informal, and relatively brief.

THE IR£5 MILLION DEMAND

18.01 Mr Gilmartin said that as he left the meeting room and entered into a lobby area, he observed Mr Lawlor and another man in conversation to his left. Yet another unidentified man then approached him from his right-hand side. Mr Gilmartin alleged that this unidentified individual demanded that, in return for the assistance that Mr Gilmartin was going to receive in relation to his Bachelor's Walk and Quarryvale projects, he was to deposit IR£5m into a bank account in the Isle of Man. Mr Gilmartin described the man as shorter in stature than himself with '*salt and pepper'* short cropped hair. He was well groomed and well spoken and was wearing a Magee-type tweed jacket.

18.02 Mr Gilmartin graphically described the encounter between himself and this unidentified man in the following terms:

> '*Well, he approached me, I looked around, and he approached me and he said 'Do you realise that you're going to get every assistance to get these two projects off the ground' and I says, 'Well, I am bringing in—it's a major investment that I'm bringing into Ireland, so I would expect that they would be happy to see it under the current economy', and he says to me, 'You also—we're all aware that you are going to make hundreds of millions out of these two projects, and I says, 'Well not me. Whoever invests in it. It won't be me that will make the hundreds of millions', and he said to me, 'Well, we think that you should give us some of that money upfront' so I says 'Yeah', and he says, 'Yes, we would like you to deposit 5 million pound before you start', and I says 'What do you mean?' and he says, 'Well, we want you to deposit 5 million pounds and we want it deposited into an Isle of Man account' and I says, 'Oh, yeah, that's not*

much', or some words to that effect, you know, 'That's not a lot', and with that he had his hand in his jacket pocket and he took out this piece of paper about that long [indicates] *a striped piece of paper and it was about an inch and a half wide, and he says,''I want you to deposit the money into that account', so he seemed to think that I was already au fait with what he was saying to me, and when I looked at the paper and all that, I turned to him and I told him 'You people make the so and so Mafia look like monks'. I said, 'You're not serious are you?', and I walked away . . . He sort of tapped me on the hand but actually he grabbed me by the hand, and I think he was attempting to get the piece of paper, because I held onto the piece of paper, and I think—he may have been, and he says 'You so and so could wind up in the Liffey for that statement', so I told him to so and so off and walked on.'*

18.03 Mr Gilmartin stated that although Mr Lawlor had been in the lobby when he was approached by the said unidentified man, by the time Mr Gilmartin and this person had concluded their conversation, Mr Lawlor was no longer present in the lobby. Mr Gilmartin next observed Mr Lawlor in the downstairs area of the Dáil as Mr Gilmartin was leaving the building. Mr Lawlor did not acknowledge Mr Gilmartin at this time. Some days later, Mr Gilmartin said that he raised the incident with Mr Lawlor, and asked him to identify the individual who had approached him in the lobby area and demanded IR£5m from him. Mr Lawlor, according to Mr Gilmartin, claimed not to have seen any such individual, and claimed that he had no recollection of anyone approaching Mr Gilmartin in his presence.

18.04 Mr Gilmartin told the Tribunal that he assumed that the approach to him with the demand for IR£5m was in some way connected to Mr Lawlor and Mr Charles J. Haughey.

18.05 Mr Gilmartin's further evidence to the Tribunal on this issue stated that as he prepared to leave the lobby area and proceed towards the lift, following his encounter with the unidentified man and the IR£5m demand, Mr Seán Walsh[19] approached him and took him to his office where he warned him about Mr Lawlor, claiming that Mr Gilmartin was being *'set up'* by Mr Lawlor. Mr Walsh also named other councillors (including Cllr Finbarr Hanrahan) and the Dublin Assistant City and County Manager, Mr Redmond, in the context, as understood by Mr Gilmartin, of warning him about individuals, as Mr Walsh suggested, he '*needed to watch out for*.'

[19] The late Mr Seán Walsh was a TD for Dublin South West.

18.06 Mr Gilmartin said that Mr Walsh said to him: '*Remember, you are being shafted, you are being set up'* and '*you must watch your back.'*

THE RESPONSES OF THOSE IDENTIFIED BY MR GILMARTIN AS BEING IN ATTENDANCE AT THE LEINSTER HOUSE MEETING

19.01 All of the persons whom Mr Gilmartin had identified as being present at the Leinster House meeting (save for Mr Haughey and Mr Lenihan), gave evidence to the Tribunal. With the exception of Mrs O'Rourke, all claimed to have no recollection of attending such a meeting, as described by Mr Gilmartin, and some maintained that no such meeting had in fact occurred.

19.02 Mr Ahern, in the course of his evidence, accepted that, as a general principle, an informal meeting (or in Mr Ahern's words a *'chit chat'* meeting), as described by Mr Gilmartin, could have taken place, but he claimed to have no recollection of being present at such a meeting and that it was his *'firm belief'* that he had not attended any such meeting. Mr Ahern queried, in particular, Mr Gilmartin's description of the location of the meeting. Mr Ahern believed that while informal meetings regularly took place on the first floor ministerial corridor of Leinster House, the then Taoiseach, Mr Haughey did not have an office on that floor in 1989.

19.03 An entry in Mr Ahern's diary for 5pm on 1 February 1989, placed him at a certificate presentation ceremony in Glasnevin, therefore suggesting that it was impossible for him to have been in Leinster House at the time identified by Mr Gilmartin. Mr Ahern's diary for 2 February 1989, placed him in Leinster House at a 3pm meeting with Dublin Corporation and County Council officials in relation to urban renewal, a meeting also attended by the Taoiseach and other ministers. A 5.25pm entry in his diary on that date referred to the expected arrival at Dublin Airport of a UK minister, Mr John Cope, although Mr Ahern could not say if he attended at Dublin Airport to greet him.

19.04 Mr Burke had no recollection of being in attendance at the meeting, as described by Mr Gilmartin, on either 1 or 2 February 1989. Mr Burke agreed that delegations regularly met ministers on the first floor ministerial corridor in Leinster House and he was of the belief that Mr Haughey may have had an office on that floor in 1989. Mr Burke said that his ministerial diary indicated that he was not in Leinster House '*at the times that are being spoken about'* on either date.

19.05 Mr Brennan stated that he was satisfied he did not attend a meeting such as that described by Mr Gilmartin. As a junior minister at the time he had no reason to meet with Mr Gilmartin. Mr Brennan's belief was that he first met Mr Gilmartin in September 1989. Mr Brennan was in the vicinity of Leinster House on 1 and 2 February 1989.

19.06 Mr Reynolds said he had no recollection of attending any meeting when Mr Haughey and a group of ministers met with Mr Gilmartin. Mr Reynolds did agree that informal meetings between ministers and third parties regularly took place on the first floor ministerial corridor. He was in the precincts of Leinster House on 1 and 2 February 1989.

19.07 Mr Collins was of the belief that he did not attend a meeting such as that described by Mr Gilmartin, and he was satisfied that he had never met Mr Gilmartin. Mr Collins told the Tribunal that if such a meeting took place, it was likely to have been on the first floor ministerial corridor and he was of the belief that in 1989, Mr Haughey had a temporary office connected by a corridor to this area.

19.08 Mr Flynn maintained that he had no recollection of being in attendance at the meeting described by Mr Gilmartin, and he maintained that the meeting did not happen, having regard to Mr Gilmartin's description of the location of the meeting and his description of his access to it.

19.09 Mrs O'Rourke, however, told the Tribunal that she had a clear recollection of a brief meeting with Mr Gilmartin, such as that described by him. She recalled that the meeting was attended by the then Taoiseach, Mr Charles J. Haughey and a number of other ministers including Mr Flynn, Mr Burke, Mr Lenihan and Mr Ahern. She believed that the meeting took place on some date between the beginning of February and 18 March 1989.

19.10 Mrs O'Rourke provided a detailed description to the Tribunal of being in her office on the first floor ministerial corridor at Leinster House, when Mr Flynn invited her to accompany him to meet Mr Gilmartin. Mrs O'Rourke had a particular recollection of this and it was *'etched in her mind'*, because Mr Flynn had mentioned that Mr Gilmartin was originally from Sligo and in that context made a kind remark about Mrs O'Rourke's then recently deceased mother, who was also from Sligo. Mrs O'Rourke's sojourn in the room was brief, and her introduction to Mr Gilmartin perfunctory. Nevertheless, according to Mrs O'Rourke, because of Mr Flynn's *'larger than life'* persona, she was able to recall the declamatory tone in which he had introduced her to Mr Gilmartin.

19.11 Mr Lawlor denied arranging the meeting or bringing Mr Gilmartin to the meeting at Leinster House. He said that Mr Charles J. Haughey did not request him to arrange such a meeting and that he had not met Mr Gilmartin in Buswells Hotel on the day in question, although he accepted that he did occasionally meet with him at that location. Mr Lawlor suggested that it may well have been the case that, on an occasion when Mr Gilmartin was meeting with Mr Flynn in Leinster House they may have encountered Mr Haughey and other ministers in an informal way on the first floor ministerial corridor. Mr Lawlor also denied any knowledge of the demand for IR£5m. Mr Lawlor accused Mr Gilmartin of making *'wild, wicked allegations.'*

19.12 Mr Gilmartin was subjected to lengthy and on occasion, distinctly aggressive, cross-examination by a number of parties in relation to the informal meeting at Leinster House described by him. Indeed, Mr Ahern's Senior Counsel suggested to Mr Gilmartin that his evidence about the Leinster House meeting was an '*utter invention*' on his part.

19.13 Moreover, Mr Gilmartin was challenged about the marked inconsistencies between his sworn testimony, stating that an unidentified man had made the demand for IR£5m, and the information recalled by some of the individuals to whom Mr Gilmartin relayed allegations of demands for money made of him.

19.14 On 28 February 1989, following an interview with Mr Gilmartin (on 24 February 1989), Mr Feely, Dublin City and County Manager, recorded the following note:

> [Mr Gilmartin] *also said that LL* [a reference to Mr Lawlor] *asked for £5m to be paid into a bank account in the Isle of Man, in respect of his support for a development which* [Mr Gilmartin] *proposed at Irishtown, which would represent a material contravention of the County Plan.*

19.15 Mr Feely told the Tribunal that he understood Mr Gilmartin to have alleged to him that Mr Lawlor himself had made the IR£5m demand.

19.16 Chief Superintendent Sreenan told the Tribunal that, in the course of a telephone conversation with Mr Gilmartin on 9 March 1989, he understood Mr Gilmartin to complain, *inter alia*, that Mr Lawlor had sought IR£5m from him to be paid into an offshore account. Chief Superintendent Sreenan claimed that his rough notes of that meeting, as later transposed into a more readable format in 2004, recorded:

> *There is money being paid to one fellow who threatened that if the investment was to get off the ground he is getting three and a half grand per month, blackmail money. Arlington got scared and I opposed and refused and told the Government he was a gangster. He walked into*

Arlington and put a proposition on the table a year ago and since June 1988 has been getting his payoff. He wanted 5 million in an offshore account, then a 10% stake in Bachelor's Walk deal or it might not get off the ground, and he was supposed to be speaking on behalf of the Government. He came to us on the basis that the Government had instructed him to help get the deal done. I only met him about a year ago.

19.17 Mr Gilmartin vehemently denied that he had ever stated to anyone that it was Mr Lawlor who had made the demand for the IR£5m. He strongly asserted that it was not Mr Lawlor who had made such a demand, nor was it Mr Lawlor who had threatened that Mr Gilmartin could '*wind up in the Liffey*'. It was Mr Gilmartin's contention that both Mr Feely and Chief Superintendent Sreenan had misunderstood the information he had relayed to them concerning the IR£5m demand in that they erroneously believed that Mr Gilmartin had identified Mr Lawlor as the individual who had demanded £5m.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE LEINSTER HOUSE MEETING AND THE IR£5M DEMAND

20.01 The Tribunal was satisfied that Mr Gilmartin did, as he claimed, meet the then Taoiseach and a number of Government ministers in Leinster House, and that this meeting took place in the early days of February 1989.

20.02 The Tribunal rejected as untruthful Mr Lawlor's evidence to the effect that the Leinster House meeting did not take place, and that Mr Gilmartin had made up his evidence in relation to it. It also rejected the allegation made by Mr Ahern, through his Counsel, that Mr Gilmartin had invented the meeting. The Tribunal was satisfied that: the said meeting at Leinster House was organised by Mr Lawlor; Mr Lawlor brought Mr Gilmartin into Leinster House and to the room where the meeting took place; and Mr Lawlor waited outside the room during the course of the meeting. The Tribunal was satisfied that the meeting was brief and informal.

20.03 The Tribunal concluded that those whom Mr Gilmartin met at the meeting in question included Mr Haughey, Mr Ahern, Mr Reynolds, Mr Flynn, Mr Lenihan, Mr Burke, Mr Brennan, Mrs O'Rourke and Mr Collins.

20.04 Assisted by information given by Mr Burke, Mr Collins and Mrs O'Rourke as to the layout of the first floor ministerial corridor in or about February 1989, the Tribunal was reasonably satisfied that the meeting room where Mr Gilmartin met with Mr Haughey and the ministers was located on the first floor of Leinster House.

20.05 The Tribunal in particular noted, and accepted, the clear recollection Mrs O'Rourke had of the meeting and, in particular, her vivid memory of Mr Flynn having invited her to join the meeting and the manner in which he effected his albeit perfunctory introduction to her of Mr Gilmartin. The Tribunal was satisfied that Mrs O'Rourke's evidence in relation to the meeting was entirely truthful.

20.06 The Tribunal accepted as truthful and accurate Mr Gilmartin's evidence as to what had occurred in the lobby area immediately outside the meeting room shortly after the conclusion of the meeting. In particular, the Tribunal accepted that Mr Gilmartin was approached by an unidentified individual and was requested to pay a sum of IR£5m into an offshore account. This demand was undeniably corrupt. The Tribunal was satisfied that at the beginning of this encounter, Mr Gilmartin did see Mr Lawlor standing nearby and that Mr Lawlor had left the lobby area by the time the encounter had concluded.

20.07 Notwithstanding the fact that several of the persons Mr Gilmartin told of the demand for IR£5 million understood that Mr Lawlor himself made the demand, the Tribunal was satisfied that Mr Gilmartin gave truthful evidence when he stated that he was asked for IR£5m by a man unknown to him rather than by Mr Lawlor. In particular, there was no apparent reason for Mr Gilmartin to claim that the demand had been made by someone other than Mr Lawlor if this was not the case. In addition, Mr Gilmartin had no hesitation in making complaints about Mr Lawlor as evidenced by the myriad of other complaints made by him. The Tribunal also noted that Mr Gilmartin's evidence was consistent with what he told Mr Sheeran shortly after the meeting, as set out below.

20.09 The Tribunal believed it altogether possible that the persons to whom Mr Gilmartin recounted the story of the demand may either have assumed that Mr Lawlor made the demand, given his role in arranging the meeting and his presence in the lobby around the time the demand was made, or misunderstood what Mr Gilmartin was in fact saying, possibly due to a lack of clarity on Mr Gilmartin's part.

20.09 In the course of his sworn testimony to the Tribunal, Mr Gilmartin described how, in 1989, he had assumed that there was a connection between the unidentified man and Mr Lawlor. Mr Gilmartin's evidence in this regard was stated in the following terms:

> *'I was invited by Mr Lawlor to meet the Taoiseach. I went to meet the Taoiseach. I went into the Dáil. I met the majority of the Ministers who were sitting around the table, and on my way out, just at the door, a gentleman asked me—told me because of the amount of money I was*

going to make out of all the help they were going to give me, et cetera, et cetera, these two projects, that I should give them 5 million pounds' . . . 'So all in all I could only come to only one conclusion, that the place was totally corrupt.'

20.10 The Tribunal believed it likely that in 1989, when Mr Gilmartin related to Mr Feely and to Chief Superintendent Sreenan the fact that a demand for IR£5m was made of him by an unknown man, Mr Gilmartin also advised them of his belief that there was a connection between that individual and Mr Lawlor. In addition, the Tribunal believed that the detail regarding the unidentified man provided by Mr Gilmartin may well have escaped either or both Mr Feely and Chief Superintendent Sreenan, given that Mr Gilmartin recounted to them multiple allegations regarding demands for money (and for an interest in Mr Gilmartin's projects) involving Mr Lawlor.

20.11 The Tribunal accepted the evidence of both Mr Sheeran and Mr McLoone that within a relatively short time following the Leinster House meeting, they were informed by Mr Gilmartin of his meeting with Mr Haughey and the Government ministers, and that they were told by Mr Gilmartin about the IR£5m demand following that meeting. Mr Sheeran, in particular, recalled that he had been told this story by Mr Gilmartin on numerous occasions over the years. Mr Sheeran said that *'Absolutely unquestionably',* he had heard about it in or about 1989;

'...almost immediately. When I say immediately, on the first occasion on which myself and Mr. Gilmartin would have met or being discussing what was happening with his business, I would have heard that. It was an important event.'

20.12 Mr Sheeran also stated that he had been apprised by Mr Gilmartin that the latter had been given a piece of paper with an account number on it which, Mr Sheeran believed, related to an account in Bank of Ireland, Isle of Man, although he had no recollection of what details he would have received from Mr Gilmartin or what inquiries he himself had made of Mr Gilmartin in this regard. In response to questions in cross-examination by Counsel for Mr O'Callaghan, Mr Sheeran stated: *'My memory seems to tell me now that Mr. Gilmartin advised me it was a Bank of Ireland account, or thought it was a Bank of Ireland account.'*

20.11 In the course of that cross-examination, Mr Sheeran was questioned about his understanding (as a result of his conversation with Mr Gilmartin), as to why the IR£5m demand was being made of Mr Gilmartin, in response to which Mr Sheeran stated:

'I would have to say that somebody somewhere was looking for money for their assistance, I would have to agree to the comments Mr. Gallagher

made. I am not aware that Mr. Gilmartin suggested that anybody, that the Government as a group certainly were looking for five million, I don't think that was ever suggested by him at all, I think it was some individual that was looking for money and he approached him for it.There was a lot of demands being made on him for money.'

20.12 Asked what Mr Gilmartin had given him to believe he would get for the IR£5m, if he was to pay it, Mr Sheeran stated:

'I think he was told what he wouldn't get if he didn't pay it....That he wouldn't get planning for Quarryvale, it would go nowhere.'

20.13 Mr Sheeran's description of Mr Gilmartin's reaction to the demand was as follows:

'He certainly was perturbed about it, there was no doubt about it. It was yet another very unusually event. He was met with demands that he had never, as I said earlier on this morning, bribery and corruption never, never entered the language of this man, until these projects in Ireland started. In all my lifetime, and indeed I might say since either, no word of bribery or corruption has ever been mentioned by Mr Gilmartin, except in connection with these two projects.'

20.14 Mr Sheeran was subjected to vigorous cross-examination by Mr Lawlor as to why, as a Bank of Ireland Manager, he had not pursued the information he had been given by Mr Gilmartin concerning the IR£5m demand and, in particular, why he had not sought to ascertain the identity of the holder of the account in Bank of Ireland, Isle of Man.

20.15 On Day 484 the following exchange took place between Mr Lawlor and Mr Sheeran:

Q. '.....Mr. Gilmartin told you about this five million pounds claim, and he told you he had an account number in a Bank of Ireland branch, of all coincidences, but did it never occur to you to pick up the phone and ask who was the numbered account in the Isle of Man so you could have established for the Tribunal, on a phone call, who was asking monies to be put into what account. You were the single man in the position to wrap this whole thing up in a phone call and you seem to A not report it to your seniors, B not pursue it and – we have a little statue in the members bar in the Dail, the three brass moneys, see nothing, hear nothing and say nothing. Would you agree that's what you seem to have done?

A. I think that particular terminology would be more appropriately applied to you than to me. If I may deal –

Q. You deal with the matter. You are the man in responsible position, deal with the question.

Chairman: Mr. Lawlor just give him a chance.

A. I am dealing with the question, I am just rather amused when you give me the title of senior executive of the Bank of Ireland, I wouldn't have minded being a senior executive of the Bank of Ireland I never achieve that had exalted position. I am not quite sure what question you are asking me on it.

You have asked me about three or four or five different questions. It's hard to know if they are questions or not. As regards the particular demand Mr. Gilmartin has made it perfectly clear to me, insofar as I can recollect, that you were not a party to it. When I came into possession of the information in respect of the numbered account or otherwise I cannot tell you, I was trying to think about it over the weekend. I should imagine I knew reasonably soon after it, but to suggest to me, I don't know if Mr. Gilmartin was actively dealing with the Bank of Ireland at that particular moment of time, in a big way, so it would not, if he wasn't there was no reason why he should have rung my head office in that matter, and a lot of these things, as you so rightly say were floating around. I couldn't ring my Head Office – you referred to as Superintendent Sreenan's

Q. Assistant Commissioner Sreenan?

A. Assistant Commissioner Sreenan, I think he mentioned somewhere or Mr. Feeley mentioned somewhere, or something along the line that doors were closed when he asked certain questions and at the tail end of his investigation, I think he wound up with the line that, I cant I cant say it refers to you or to who, that this gentleman emerged with his good name and reputation intact. So I am not able to comment, the police or the Gardai at that stage did not have access to documentation and you can just imagine if I picked up the phone and said a customer of mine has been touched for five million, outside the door in Dail Eireann, or an office of Dail Eireann, on which six or seven Ministers and Mr. Haughey were standing, I would – I think it would be treated with contempt and disdain, with due respects to you.

Now Mr. Gilmartin has made perfectly clear to a number of senior ministers, to Mr. Feeley and to a large variety of persons of that demand and from that information supplied a Garda inquiry arose. So I had very little to add to what has already happened. And we all know the results of that Garda inquiry.'

20.16 Mr Sheeran was further cross-examined by Mr Lawlor, as follows:

Q. 'But we know it was the first or second of February that the meeting supposedly took place. So we assume within a week, a month after that, so you were put in possession of the knowledge within a month of the 2nd of February at the latest, and you went on at a later stage to advance monies to the tune of 800,000 pounds. Now I am not suggesting, other than you should have made the inquiry for Mr. Gilmartin, because here his project was going to be frustrated by some Machiavellian involvement of effing monks and Mafias or whatever his words were, you seem to let all that pass by, none of that have is your concern, yet as I have already pointed out to you five or six months later you are writing him a cheque for 800,000 pounds and you are oblivious to this potential crisis, if it's true his project was doomed if he hadn't responded to such an outrageous demand.

The Tribunal is going to have to try and conclude did it ever happen, you could have found out if it did and who held the account in the Isle of Man, that's all you had to find out, you didn't have to go beyond that and report to Mr. Gilmartin that's it's X person holds that account. But you didn't do anything. Yet you went on and you did business, associated in the knowledge of that serious allegation.

A. Mr. Lawlor, you are making a large number of assumptions there which with due respect to you are very unfair to me. Now, I don't know and cannot know, I am not in a position to deny that I was aware of the demand and that I heard about the number and I possibly heard the name of the official. I just am not in a position to deny that, but neither am I in a position to say to you that I heard it the following day, the following week or the following month. And my dealings with the bank and in relation to Mr. Gilmartin were purely and totally above board. And there was no, nothing wrong with that and even if I had, you know, who in the name of God would have believed how could I substantiate any of that in any shape, fashion or form.

Q. You didn't have to. You just had to make inquiries to who the account holder was.

A. That's assuming.

Q. Nothing else, nothing else just find out who the account holder was?

A. Sorry. That's fine. That's assuming that I knew the number and name and I didn't and I never saw the document, so I have no idea.

Q. Do you think –

A. To this day.

Q. Do you think it actually happened Mr. Sheeran?

A. Yes. 100 per cent.

Q. So Mr. Gilmartin told you in detail and told you he had a number of an account in Bank of Ireland Isle of Man, is that right, is that your evidence?

A. Sorry excuse me, I think I said it was Bank of Ireland, my recollection seems to tell me it was the Bank of Ireland.

Q. I think Mr. Gilmartin's evidence –

A. Sorry I am reasonably satisfied to that thing. I am satisfied Mr. Gilmartin told me and he gave me the name of the official and the number, but I cannot tell you when I became, came into receipt of that information.'

20.17 Mr Willie Farrell, who was known to Mr Gilmartin since childhood, gave evidence to the Tribunal of a number of meetings he had with Mr Gilmartin. At that time Mr Farrell was a Fianna Fáil Senator and had met Mr Gilmartin in Leinster House. Although Mr Farrell did not recollect being told by Mr Gilmartin about a demand for IR£5m, he confirmed that Mr Gilmartin had told him of demands made to him for money and that he said to the person or persons looking for money that they *'made the mafia look like monks.'*

20.18 The Leinster House log book recorded Mr Gilmartin meeting Senator Farrell on 15 February 1989.

20.19 Mr Johnny Fortune[20] gave evidence that in 1989 he had met with an *'ashen faced'* Mr Gilmartin who told him that a demand for *'a seven figure sum'* had been made of him in relation to his business interests in Quarryvale. Mr Fortune had been left with the impression that it was Mr Lawlor who had asked Mr Gilmartin for this money. While the Tribunal cannot state conclusively that what Mr Gilmartin told Mr Fortune related to the demand for IR£5m made of Mr Gilmartin in the confines of Leinster House, it may well have been the case that the information concerning the seven figure sum demand was in fact linked to what had occurred in Leinster House in early February 1989. While not claiming that the demand was made by Mr Lawlor, Mr Gilmartin may well have mentioned Mr Lawlor's name in the context of the Leinster House incident.

20.20 The Tribunal accepted Mr Gilmartin's evidence that in the course of his encounter with the unidentified man in Leinster House, he was provided with details of an Isle of Man bank account into which the IR£5m was to be paid. The Tribunal accepted Mr Gilmartin's evidence that he had, for a period of time, retained the piece of paper on which the bank details had been written and which, Mr Gilmartin maintained, had been provided to him by the unidentified man. The Tribunal also accepted Mr Gilmartin's evidence that the piece of paper was subsequently destroyed by his son, in circumstances outlined by Mr

[20] Mr Fortune was known to Mr Gilmartin in his (Mr Fortune's) capacity as a Director of Corporate Finance in Investment Bank of Ireland (IBI) when Mr Gilmartin had contact with IBI in connection with the Bachelor's Walk development.

Gilmartin, although the Tribunal regarded it as unfortunate that this information was not retained by him.

20.21 The detail of Mr Gilmartin's recollection of the conversation between himself and the unidentified man was accepted by the Tribunal as being accurate. In particular, the Tribunal was satisfied that Mr Gilmartin was indeed threatened in the manner described by him in his evidence.

THE CATALYST FOR MR GILMARTIN'S COMPLAINTS TO A NUMBER OF THIRD PARTIES OF CORRUPT DEMANDS BEING MADE OF HIM.

21.01 In 1988, as part of Mr Gilmartin's plan to establish a land bank at Quarryvale, he sought to acquire two parcels of land owned by Dublin Corporation and Dublin County Council respectively. Dublin Corporation owned 68 acres of land, known as *'the Irishtown lands'* while Dublin County Council owned 12 acres of lands referred to as *'the Wood Farm lands'*. Both parcels of land were located in the functional area of Dublin County Council.

21.02 In his efforts to acquire the local authority lands, Mr Gilmartin had discussions with Mr Michael McLoone, Chief Valuer to both Dublin Corporation and Dublin County Council. In November 1988, Mr McLoone was instructed by Dublin Corporation to enter into negotiations with Mr Gilmartin for the sale of the Irishtown lands. At about the same time, negotiations began between Mr McLoone and Mr Gilmartin for the sale to Mr Gilmartin of the Wood Farm lands.

21.03 Correspondence between Mr McLoone and Mr Gilmartin in December 1988, indicated that Mr McLoone was prepared to recommend the disposal of both parcels of land to Mr Gilmartin at a price of IR£2.74m for the Irishtown lands, and IR£481,600 for the Wood Farm lands, a price equivalent to approximately IR£40,000 per acre. This was similar to the price agreed between Mr Gilmartin and other land owners in Quarryvale.

21.04 In January 1989, Mr Gilmartin agreed to purchase the lands at the prices suggested by Mr McLoone, subject to contract.

21.05 On 30 January 1989, Mr McLoone recommended to Dublin County Council to proceed with the sale of the Wood Farm lands to Mr Gilmartin for IR£481,600, and on 2 February 1989, Mr McLoone made a similar recommendation to Dublin Corporation in relation to the sale to Mr Gilmartin of the Irishtown lands for a sum of IR£2.74m.

21.06 The proposed sale of both parcels of lands to Mr Gilmartin required the sanction of the members of Dublin County Council in respect of the Wood Farm lands and of the members of Dublin City Council in respect of the Irishtown lands. Mr McLoone was, however, satisfied that, subject to the necessary sanction from both local authorities, Mr Gilmartin had a deal to purchase the lands at IR£40,000 per acre.

MR GILMARTIN'S COMPLAINTS

21.07 Mr Gilmartin believed that the proposed sale of the Dublin Corporation lands at Irishtown to him was being frustrated and interfered with by, in particular, Mr Redmond. Mr Gilmartin told the Tribunal that he was informed by Mr McLoone that Mr Redmond had alerted Mr John Corcoran of Green Property Ltd, the owners of the nearby Blanchardstown development lands, of Mr Gilmartin's proposed purchase of the Irishtown lands, and that Mr Redmond had, in effect, encouraged Mr Corcoran to bid for the same lands. Mr Gilmartin also told the Tribunal that Mr McLoone had informed him that Mr Redmond, who was due to retire from his position as Assistant City and County Manager in June 1989, was then going to work for Mr Corcoran and Green Property Ltd (Green Property). Furthermore, Mr McLoone had advised him that both Mr Redmond and Mr Lawlor, in the course of a Dublin County Council meeting, had referred to *'cosy deals'* that Mr Gilmartin had entered into with the Corporation in respect of the Irishtown lands. Mr Gilmartin claimed to have been told by Mr McLoone that because of these allegations of *'cosy deals',* the Corporation was preparing to withdraw from the agreement it had reached with Mr Gilmartin in relation to the Irishtown lands and this withdrawal duly occurred.

21.08 Mr Gilmartin's evidence to the Tribunal of interference by Mr Redmond was to a considerable extent confirmed by Mr McLoone's evidence. Specifically, Mr McLoone confirmed having told Mr Gilmartin that there was interference by Mr Redmond and that Mr Redmond had advised Mr Corcoran to take steps to stop Mr Gilmartin acquiring the Irishtown lands. Mr McLoone agreed that he had told Mr Gilmartin that Mr Redmond intended to work for Green Property following his imminent retirement from Dublin County Council. Mr McLoone told the Tribunal that there was either a rumour to this effect within Dublin Corporation in the spring of 1989, or that Mr Redmond himself had told him. Although Mr McLoone did not specifically recollect doing so, it was possible that he had relayed to Mr Gilmartin an allegation made by Mr Redmond that Mr McLoone was engaged in *'cosy deals'* with Mr Gilmartin. Mr Paddy Morrissey, a Senior Official of Dublin Corporation, also told the Tribunal that he became aware that Mr Redmond alerted Green Property of the fact that the Corporation proposed selling its Quarryvale lands to Mr Gilmartin.

21.09 Mr Gilmartin's concern about the aforementioned matters was the subject, *inter alia*, of complaints he made to Mr Haughey and Mr Feely on 24 February 1989. Mr Feely's memorandum of that meeting included the following reference:

> [Mr Gilmartin][21] *said GR was opposing his development at Irishtown for the wrong reasons…* [Mr Gilmartin] *said a recent announcement by J.C. that*
>
> *the Blanchardstown Centre was going ahead was to stymie* [him]. *He felt G.R. advised J.C. who he believed was going to employ G.R. when he retired shortly. He also felt G.R. had informed P.M. to go back on an agreement concerning price for Corp. Lands at Irishtown . . .*

21.10 On 4 March 1989 Mr Gilmartin advised Chief Superintendent Sreenan as follows:

> *'A meeting was called and there was an announcement to the Managers that O'Callaghan and I were getting together so the conflict was gone. The development to go ahead was to be mine. One of the managers came out—he had taken mine all along as a joke and he realised now it was a goer. He rang some people with vested interests and informed them of the possibility of making money. They, in turn, started pulling strokes. It was delicate because of the deal with O'Callaghan. The land was not worth more than ten grand per acre but I paid over forty grand an acre. There was a great risk to me because I already owned some of the land the worst I felt I could do was to get my money back. This Manager started putting out rumours that I was doing a cosy deal and the Corporation were forced to withdraw land. I was not aware at the time why this was happening. Completely apart from that fellows were trying to hold me to ransom. I lost the land vital to the whole thing. I had the land which I had bought from Bruton, Sharpe and others but I could not get in or out of there…'*

21.11 In a subsequent telephone conversation with Chief Superintendent Sreenan on 9 March 1989, Mr Gilmartin was recorded as having stated the following: *'The valuer announced that the deal was not on and thought I was going to hit him. The valuer was embarrassed.'*

21.12 A note taken by Chief Superintendent Sreenan and Superintendent Burns of a meeting between themselves and Mr Feely on 6 March 1989, recorded the concern then being expressed by Mr Feely after receiving, on the same date, a letter dated 2 March 1989 from Mr Corcoran of Green Property indicating an

[21] Mr Gilmartin was given the initials '*TK*' in Mr Feely's memorandum.

interest in purchasing the Irishtown lands, the same lands which were the subject of Mr Gilmartin's agreement with the Corporation. In the course of his evidence to the Tribunal, Mr Feely stated that he had considered the receipt of such a letter significant and implied it to be a corroboration of the information that Mr Gilmartin had conveyed to him on 24 February 1989.

21.13 Sometime between the end of March and mid-April 1989, Dublin Corporation made a decision to advertise the Irishtown lands for sale by way of tender. The lands were duly advertised on 21 April 1989. By the closing date for receipt of tenders on 19 May 1989, two tenders had been received, one from Mr Gilmartin and the other from Windar Ltd — a subsidiary of Green Property. Mr Gilmartin's tender of IR£5.1m (or approximately IR£70,000 per acre) was the higher tender and was recommended for acceptance to Dublin City Council. The decision to sell the Irishtown lands to Mr Gilmartin was made by the Council on 12 June 1989, and Mr Gilmartin was duly informed of this by letter on 19 June, 1989.

21.14 In his evidence to the Tribunal, Mr Redmond acknowledged that he had had contact with Mr Corcoran of Green Property concerning the sale of the Irishtown lands but claimed that this contact had been initiated by Mr Corcoran and not by himself. According to Mr Redmond, Mr Corcoran had telephoned him and queried him about Mr Gilmartin's proposed retail shopping centre scheme for Quarryvale and Mr Corcoran had asked him whether the lands were available for acquisition by his company for use as an industrial park. Mr Redmond said he informed Mr Corcoran of Mr Gilmartin's negotiations with Dublin Corporation regarding the Irishtown lands (being mostly industrial zoned lands) and of the agreed price of IR£40,000 per acre. Mr Redmond claimed that he only became aware that Mr Corcoran had lodged a bid for these lands having read about it subsequently in the newspapers.

21.15 Mr Redmond rejected the assertion that Mr Corcoran's professed interest in the Irishtown lands was for any purpose other than acquiring them for use as an industrial park and more particularly to thwart Mr Gilmartin's plans for Quarryvale.

21.16 Mr Redmond further claimed that he was not in favour of selling the local authority lands and that his views in this regard were known to Mr Morrissey. While Mr Redmond himself had formed the view that the agreed price of IR£40,000 per acre for both the Wood Farm and the Irishtown lands, negotiated between Mr Gilmartin and Mr McLoone was too low, he claimed not to have informed anyone of his views in this regard. Moreover, while he was aware that this was the price that had been negotiated by Mr McLoone, Mr Redmond

claimed that, in his capacity as the individual with responsibility for the County Council's Wood Farm lands, the agreement reached between Mr McLoone and Mr Gilmartin regarding these lands had never been formally brought to his attention.

21.17 Mr Lawlor denied in his evidence that he had interfered in any way with Mr Gilmartin's purchase of the Irishtown lands.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE INVOLVEMENT OF MR REDMOND IN THE SALE OF THE IRISHTOWN LANDS.

22.01 The Tribunal was satisfied that the decision of Dublin Corporation not to proceed with the proposed sale of its lands to Mr Gilmartin for a sum of approximately IR£40,000 per acre was precipitated by actions on Mr Redmond's part and that these actions included a tip-off by Mr Redmond to Mr Corcoran of Green Property of the proposed sale of the lands to Mr Gilmartin.

22.02 The Tribunal rejected Mr Redmond's assertions that his actions in relation to the Irishtown lands were motivated by a desire on his part to ensure that the best possible price was achieved for both the Irishtown and Wood Farm lands and in the best interests of both local authorities. The Tribunal found Mr Redmond's evidence to be evasive, contradictory and on occasions blatantly untruthful.

22.03 Mr Redmond's evidence that he had an issue regarding the price achieved between Mr Gilmartin and Mr McLoone for both parcels of lands was not credible. There was no suggestion at any point that Mr Redmond had taken issue with the price negotiated with Mr Gilmartin and the Tribunal was satisfied that at all relevant times prior to the introduction of Mr Corcoran into the matter, a price of IR£40,000 per acre was regarded within both Dublin County Council and Dublin Corporation as a fair and reasonable price for the lands in question. Furthermore, the Tribunal rejected any suggestion made by Mr Redmond that the initial non-tendering for the lands by either the Corporation or the Council was in any way unusual. The Tribunal took particular note of the fact that in November 1988, Mr Redmond himself, in his capacity as Assistant Manager responsible for the disposal of Dublin County Council lands, authorised Mr McLoone to enter into negotiations with Mr Gilmartin in relation to the sale of the Wood Farm lands, in the absence of any tendering process.

22.04 In any event, the tendering process belatedly undertaken in respect of both the Wood Farm and Irishtown lands, as a consequence of what can reasonably be described as Mr Redmond's mischievously motivated contact with Mr Corcoran, resulted in a substantially increased price being paid by Mr

Gilmartin to the local authority, compared to that originally agreed with Mr McLoone (IR£70,000 per acre as against IR£40,000 per acre).

22.05 Mr Corcoran told the Tribunal that his primary objective in his attempt to purchase the Irishtown lands was to stop the development of Quarryvale.[22] The Tribunal was satisfied that Mr Corcoran's actions were motivated by commercial considerations. Mr Corcoran acknowledged that he told Mr Morrissey and Mr Seán Haughey that he wanted to develop an industrial park on the Irishtown lands.

22.06 The Tribunal did not accept that it was Mr Corcoran who telephoned Mr Redmond concerning Mr Gilmartin and the Irishtown lands.

22.07 Mr Corcoran was aware in February 1989 of Mr Gilmartin's plans for Quarryvale. Mr Corcoran himself knew that Mr Gilmartin was planning a retail shopping centre for Quarryvale. He therefore had no need to telephone Mr Redmond to ascertain this fact.

22.08 The Tribunal believed it likely that Mr Redmond telephoned Mr Corcoran following his attendance, in his capacity as Dublin Assistant City and County Manager, at a meeting regarding urban renewal which took place on 2 February 1989, between Dublin City and County officials, the then Taoiseach, Mr Haughey and a number of ministers, The Tribunal was satisfied that Mr Redmond understood from statements made at that meeting by Mr Pádraig Flynn, that Mr Gilmartin had acquired Mr O'Callaghan's interest in the Neilstown lands. The Tribunal was satisfied that it became clear to Mr Redmond at that point that, having obtained control of the Neilstown/Balgaddy site, Mr Gilmartin was in a strong position to advance the case for a retail shopping centre on the Quarryvale lands. The Tribunal believed this information propelled Mr Redmond to contact Mr Corcoran and urge him to interest himself in the Irishtown lands.

22.09 The Tribunal believed that the actions of Mr Redmond in February 1989 *vis-à-vis* Mr Gilmartin and the Irishtown lands related back to the meeting in Mr Redmond's office in May 1988, when it became clear that Mr Gilmartin was not amenable to the demands for money then made of Mr Gilmartin by Mr Lawlor on behalf of both himself and Mr Redmond.

22.10 Mr Redmond may also have been motivated to thwart Mr Gilmartin's plans for Quarryvale by his resentment at the circumstances surrounding an

[22] Mr Corcoran told the Tribunal that if he could not prevent the development of Quarryvale, he wished to be *'part of it'*.

aborted meeting between himself and Mr Gilmartin on 22 February 1989, and Mr Gilmartin's involvement of Mr Seán Haughey in that matter (see below).

22.11 The Tribunal was satisfied that Mr Redmond's actions were also associated with his plan to take up employment with Green Property following his then expected retirement.

22.12 It was common case that in 1985, Mr Redmond had applied to, and had been offered, employment with Green Property, in anticipation of his then expected retirement. Mr Redmond did not then take up the position because he did not retire at that time. However, in February 1989, Mr Redmond was within two to three months of retiring from his position as Assistant Manager of Dublin County. The Tribunal is satisfied that Mr Redmond was cognisant of the possibility that he would take up an employment opportunity with Green Property, following his retirement. The Tribunal accepted the evidence of Mr McLoone that, in or around February 1989, there was a rumour within the county council that Mr Redmond was preparing to take up employment with Green Property on his retirement from the County Council.

THE ABORTED MEETING OF 22 FEBRUARY 1989

23.01 Independently of the process of acquiring the Irishtown and Wood Farm lands from Dublin Corporation and Dublin County Council, Mr Gilmartin had meetings with Mr Redmond in the spring of 1989, in the latter's capacity as the individual within Dublin County Council with responsibility for road planning. One such meeting took place on 15 February 1989, when Mr Gilmartin and his professional team met with Mr Redmond to, in Mr Gilmartin's words, *'lay the ground work'* for a meeting which was scheduled to take place shortly thereafter between Mr Gilmartin and his professional team and the county council's roads engineers. On 21 February 1989, Mr Gilmartin's professional team duly met with members of Dublin County Council's Planning Department to discuss the proposed Quarryvale project.

23.02 According to Mr Gilmartin, the next proposed meeting with the county council's road engineers, was scheduled for 10am on 22 February 1989, in Mr Redmond's office.

23.03 Prior to the meeting, Mr Gilmartin and his professional team assembled in the Gresham Hotel across the road from the Dublin County Council offices. When Mr Gilmartin telephoned Mr Redmond to announce his imminent arrival at Mr Redmond's offices, Mr Redmond denied that any meeting had been scheduled and terminated the telephone call. Mr Gilmartin then telephoned Mr Redmond's office and was informed by Mr Redmond's secretary that a number of roads

engineers had in fact been awaiting Mr Gilmartin in Mr Redmond's office but had left when Mr Gilmartin failed to arrive.

23.04 On hearing this, Mr Gilmartin proceeded to attend at Mr Redmond's office where he confronted Mr Redmond. A heated exchange ensued between the two men in relation to the earlier cancelled meeting, whereupon Mr Redmond ordered Mr Gilmartin (accompanied by his architect) to leave his office.

23.05 Following Mr Redmond's refusal to meet with Mr Gilmartin and his professional team on the morning of 22 February 1989, Mr Gilmartin contacted Mr Seán Haughey, Assistant City and County Manager whom he regarded as '*a very straightforward honest man'*. Following Mr Haughey's intervention, a second meeting was scheduled for later that day, 22 February 1989. That meeting took place in Mr Redmond's office, and involved Mr Redmond, a number of local authority roads engineers, Mr Gilmartin and his professional team.

23.06 Mr Gilmartin told the Tribunal that when, on the afternoon of 22 February 1989, he and his professional team returned to the County Council office for the rescheduled meeting they encountered Mr Seán Haughey in an upset state. Mr Haughey expressed the view to Mr Gilmartin that *'there are so many games going on here, somebody has to do something.'*

23.07 Mr Gilmartin stated that, shortly before the rescheduled meeting commenced, he witnessed an altercation between Mr Haughey and Mr Redmond, which he described in the following terms:

> *'Mr Haughey went in* [to Mr Redmond's office] *and he asked Mr Redmond 'what's your game' in a bit stronger language, 'what's going on?' and Redmond's answer was 'Ask your brother'* [a reference to the Taoiseach Mr Charles J. Haughey] *and Mr Seán Haughey's response was, 'I'm not my so and so brother's keeper, and George, your game is going to stop, I can assure you.'*

23.08 The rescheduled meeting achieved little, according to Mr Gilmartin. He said that Mr Redmond was '*acting the clown*' and '*making wise cracks*'.

23.09 Mr Gilmartin's evidence was substantially corroborated by that of Mr Forman who stated in evidence that he specifically recollected Mr Seán Haughey uttering the words *'I'm not my brother's keeper'.* In his statement to the Tribunal, Mr Forman described Mr Redmond in the course of that rescheduled meeting as being '*off-hand'* and *'rude'* and observed that an extraordinarily negative atmosphere pervaded the meeting.

23.10 Mr Redmond told the Tribunal that he could not recollect avoiding or cancelling a scheduled meeting with Mr Gilmartin on 22 February 1989, although he acknowledged that the meeting in the afternoon of 22 February 1989, did in fact occur. He suggested that there had been some '*confusion*' about the timing of the meeting.

23.11 Mr Redmond could not account to the Tribunal for a reference in a statement furnished by him on 20 January 2004, wherein he had stated that '*as far as* I [Mr Redmond] *was concerned there were cogent reasons for endeavoring to avoid the meeting*'. In the course of his evidence to the Tribunal, Mr Redmond on occasion denied that he had attempted to avoid the meeting with Mr Gilmartin, but on other occasions, in response to questions put to him in cross-examination, Mr Redmond appeared to tacitly accept that he had aborted the scheduled meeting.

23.12 Mr Redmond told the Tribunal that he believed Mr Sean Haughey's presence at the meeting was *'political',* as Mr Haughey had no official function in relation to the matters then under discussion. Mr Redmond claimed not to have any recollection of the exchange which Mr Gilmartin described as having taken place between Mr Haughey and Mr Redmond, or of Mr Redmond remarking to Mr Haughey *'ask your brother.'*

23.13 The Tribunal was satisfied that a meeting scheduled for the morning of 22 February 1989, between Mr Redmond, county council officials, Mr Gilmartin and a number of his professional team was aborted and cancelled by Mr Redmond in the circumstances detailed by Mr Gilmartin in his evidence.

23.14 The Tribunal was satisfied that, following a complaint to Mr Seán Haughey by Mr Gilmartin, the meeting with Mr Redmond and his officials was rescheduled and that Mr Haughey attended the meeting.

23.15 The Tribunal accepted as true and accurate Mr Gilmartin's evidence that the exchange of words between Mr Haughey and Mr Redmond which culminated in Mr Redmond's stating *'ask your brother'* and Mr Haughey responding *'I am not my so-and-so brother's keeper'* did indeed take place.

23.16 The Tribunal was satisfied that the actions of Mr Redmond on 22 February 1989, were prompted by Mr Redmond's desire to thwart the progress of Mr Gilmartin's Quarryvale scheme.

23.17 The Tribunal was also satisfied that Mr Redmond falsely claimed to have had no memory of aborting or cancelling the meeting with Mr Gilmartin on 22 February 1989, and that, on the contrary, he had a full recollection of the event, including the rescheduled meeting and his altercation with his colleague Mr Seán Haughey.

23.18 The Tribunal was satisfied that Mr Gilmartin relayed the events of 22 February 1989 to Mr Sheeran and Mr McLoone. Moreover, Mr Sherwin in evidence recollected that when he met Mr Gilmartin in October/November 1990, one of the matters complained of by Mr Gilmartin was Mr Redmond's behaviour on 22 February 1989.

23.19 In the course of Mr Redmond's cross-examination of Mr Sheeran, Mr Sheeran was questioned about Mr Gilmartin's attitude to Mr Redmond. Mr Sheeran responded thus:

> '*Mr Gilmartin, in fairness to him, is a man that normally does not bear grudges and he really is a very decent man. You are correct in saying that, he certainly felt that you were not helping him. He felt that you were as I have already stated and I don't like stating it again, but he felt that through Mr Lawlor that there was a demand made for money on your behalf I am not saying you made, I am just saying it was made on your behalf. He would say yes that generally speaking you were unhelpful and he, there would seem to be reasonable grounds for that in respect of a meeting that he arranged with engineers. That he always felt that you deliberately cancelled or postponed or set aside or something and he had to intervene with another City Manager or County Manager, Assistant Manager Mr Haughey to get it to reset. So you know, he would have felt those things.'*

MR GILMARTIN'S COMPLAINTS TO MR FRANK FEELY AND MR SEÁN HAUGHEY

24.01 On 23 February 1989, in the aftermath of Mr Seán Haughey's intervention with Mr Redmond on 22 February 1989, Mr Gilmartin met with Mr Seán Haughey and informed him of a number of matters, including allegations of demands for money which had been made of him. Mr Seán Haughey duly arranged for Mr Gilmartin to meet with Mr Feely, the then Dublin City and County Manager, and a meeting duly took place on 24 February 1989, which Mr Seán Haughey, Mr Herbert Niall,[23] Mr Feely and Mr Gilmartin attended.

[23] Mr Herbert Niall was then Personnel officer in Dublin Corporation.

24.02 A handwritten memorandum note of the issues discussed at the meeting was made by Mr Feely, and initialled by Mr Seán Haughey on 28 February 1989. This memorandum identified a number of complaints by Mr Gilmartin as against Mr Lawlor as follows:

- That he had told Mr Gilmartin that he was commissioned by the Government to look after the Arlington site.
- That he had asked for a 5 per cent interest stake.
- That Mr Gilmartin had responded by calling Mr Lawlor a gangster.
- That Mr Lawlor had said that, 'men had ended up in the Liffey for less.'
- That Mr Lawlor had walked into a meeting of Arlington in London and that he had again repeated his assertion that he had been commissioned by the Government and had asked to be compensated.
- That Arlington, against Mr Gilmartin's advice, had told Mr Gilmartin to pay Mr Lawlor IR£3,500 per month which he had done.
- That the cheques for the payments to Mr Lawlor had been made payable to him, save in one instance when the cheque had been issued by Mr Sheeran, a bank manager/friend.
- That Mr Lawlor had asked for IR£5m to be paid into a bank account in the Isle of Man in return for his support for Mr Gilmartin's proposed development at Irishtown.
- That Mr Lawlor had bought a Mercedes car from a Mr Brady in Lucan but had left the vendor short IR£20,000, saying that such sum was due to him for services rendered in relation to a planning permission that had been obtained for access for a garage onto a new road.
- That Mr Lawlor had received a payment in respect of a permission for a McDonald's at Palmerstown, Co. Dublin.

24.03 The handwritten memorandum also noted the following complaints/allegations made by Mr Gilmartin as against Mr George Redmond:

- That Mr Redmond was opposing Mr Gilmartin's development at Irishtown for the wrong reasons.
- That within an hour of the meeting of managers with Government ministers, Mr Redmond had told Mr Sharkey, a land owner that Mr Gilmartin had bought out Mr O'Callaghan.
- That Mr Redmond was advising Mr John Corcoran whom Mr Gilmartin believed was going to employ Mr Redmond following on the latter's retirement in relation to how Mr Corcoran could 'stymie' Mr Gilmartin.
- That Mr Redmond had told Mr Morrissey to go back on an agreement concerning the price of Dublin Corporation lands at Irishtown.
- That Mr Redmond had received a payment in respect of the McDonald's permission.

- That a Mr Brady had linked Mr Redmond to the Lawlor/Brady car issue by saying that Mr Redmond had been paid by Mr Brady.
- That Mr Redmond made concessions in relation to roads at Blanchardstown which the council would not normally make.
- That Mr Gilmartin said he met Mr Redmond and told him he "*would see him all right if the permission went through"* and that Mr Redmond had said there was "*no need for that."*

24.04 The memorandum also recorded Mr Gilmartin's complaints as against Cllr Finbarr Hanrahan as follows:

- That Cllr Hanrahan had asked Mr Gilmartin for £100,000 *'in a brown paper bag—notes—no cheques*.'

24.05 According to Mr Feely's memorandum, Mr Gilmartin mentioned Cllr Hanrahan's name in the context of describing how Mr Seán Walsh TD, '*who was innocent of any wrongdoing*', had given Mr Gilmartin the names of eight councillors, four of whom, including Cllr Hanrahan, he had met. Mr Feely noted that Mr Gilmartin alleged that three other unnamed councillors whom he met took '*a similar line*' to Cllr Hanrahan.

24.06 Mr Feely recorded Mr Gilmartin as stating that Mr Seán Haughey, Mr Paddy Morrissey and Mr John Prendergast (all senior Corporation/County Council officials) and Mr Feely, the County Manager, were '*absolutely honest*' and that Mr Gilmartin had told this to the Minister. (In Mr Feely's memorandum these four individuals were identified by their initials, SH, PM, JP and CM).

24.07 In the course of his evidence to the Tribunal, Mr Gilmartin, while he agreed with much of what had been noted by Mr Feely, took issue with a number of matters recorded in Mr Feely's handwritten memorandum (which was initialled by Mr Seán Haughey) as follows:

> 1) Mr Gilmartin vehemently denied that he had, on 24 February 1989 alleged to Mr Feely that it was Mr Lawlor who had demanded IR£5m to be deposited in an Isle of Man bank account. Mr Gilmartin claimed that he told Mr Feely about his meeting in early February 1989 in Leinster House, and of the demand which had been made of him by an unidentified man in the corridor of Leinster House, with Mr Lawlor in the vicinity. Mr Gilmartin was also certain that he had never suggested that it was Mr Lawlor who had threatened him that '*men had ended up in the Liffey for less*'.
>
> 2) Mr Gilmartin also vehemently denied telling Mr Feely at the meeting on 24 February 1989 that he had stated to Mr Redmond that he, Mr Gilmartin, *'would see him all right if the permission went through'*, or that

he had told Mr Feely that Mr Redmond had said there was *'no need for that'*.

3) In relation to references to Mr Seán Walsh TD giving Mr Gilmartin the names of eight councillors, Mr Gilmartin stated that he had not told Mr Feely that Mr Walsh had given him the names in the context of *'a material contravention vote'*, rather, Mr Walsh had provided the names in the context of people Mr Gilmartin should 'watch out for.'

24.08 Mr Feely told the Tribunal that he believed that he had accurately recorded the information provided to him by Mr Gilmartin on 24 February 1989. Mr Feely said that he had taken rough notes in the course of that meeting, (which were not available to the Tribunal), and that these notes were written up by him (as the memorandum initialled by Mr Seán Haughey) within 24 hours of the meeting. Mr Gilmartin disputed that Mr Feely had in fact taken notes during the course of their meeting.

24.09 The Tribunal was satisfied that, as suggested by Mr Gilmartin, Mr Feely's handwritten memorandum dated 28 February 1989, did in some respects, inaccurately record information provided by Mr Gilmartin to him.

24.10 In particular, the Tribunal was satisfied that Mr Gilmartin did not tell Mr Feely and Mr Seán Haughey that he had informed Mr Redmond that he, Mr Gilmartin, would see Mr Redmond *'all right'*, or that Mr Redmond had responded that there was *'no need for that'*. It appeared inconceivable to the Tribunal that Mr Gilmartin, whose meeting with Mr Feely and Mr Haughey was triggered by Mr Redmond's conduct two days earlier and who, as evidenced by Mr Feeley's memorandum, made a litany of complaints against Mr Redmond, would have had an exchange of that nature with Mr Redmond. More importantly, the Tribunal was satisfied that Mr Matthews' note of 3 March 1989 entitled '*Alleged planning permission irregularities note 2',* was a more accurate record of what Mr Gilmartin advised Mr Feely and Mr Haughey concerning Mr Redmond, on 24 February 1989. Mr Matthews' note, wherein he recorded what Mr Flynn told the Minister for Justice on 3 March 1989, regarding Mr Flynn's meeting with Mr Feely and Mr Seán Haughey on 28 February 1989, *inter alia*, included the following:

> *. . . large sums of money 'up front' were requested as a consideration for giving him whatever approval he needed. Gilmartin named two people who were alleged to be involved in these transactions—Mr George Redmond, Asst. Manager with responsibility for Co. Council matters and Deputy Liam Lawlor. He also said that certain other Co. Councillors were involved and Cllr Finbarr Hanrahan was named as one. Gilmartin said that the amounts of money requested were vast. There was a mention of*

payment of £5 million and also a reference to '£100,000 per man'. Gilmartin was 'frightened' by the extent of the corruption he was confronting and decided to tell his story to the authorities.

24.11 At all times during the course of his evidence, Mr Gilmartin maintained that Mr Redmond never made any direct demand for money from him. Mr Gilmartin maintained that the demand for IR£100,000 (which he believed was being made on behalf of Mr Redmond and with Mr Redmond's knowledge) was made by Mr Lawlor. The Tribunal believes that it was in this context that Mr Feeley noted (correctly) the following: *'GR never demanded money and never made any improper suggestion to him.'*

24.12 The Tribunal did not attribute any bad faith to Mr Feely in the manner of his recording. It was satisfied that Mr Feely had endeavoured to accurately note a myriad of complaints made by Mr Gilmartin over the course of a lengthy three-hour meeting on 24 February 1989,

24.13 Further, the Tribunal was not entirely satisfied that Mr Feely's handwritten memorandum was compiled within 24 hours (i.e. by 25 February) of his and Mr Seán Haughey's 24 February 1989 meeting with Mr Gilmartin, as claimed by Mr Feely. Mr Feely's report of 6 March 1989[24], which was compiled following a meeting with Mr Flynn on 3 March 1989, was strongly suggestive that Mr Feely's handwritten memorandum had been in fact compiled on the same day it was dated, namely, 28 February 1989, following a meeting Mr Feely had with Mr Flynn earlier that day. Mr Feely gave his handwritten memorandum note to Mr Flynn on 3 March 1989. The lapse of some days between Mr Feely's meeting with Mr Gilmartin and Mr Feely's preparation of his memorandum of information provided to him by Mr Gilmartin at that meeting probably resulted in some of that information being recorded inaccurately.

24.14 It appeared to the Tribunal that there was no immediately contemporaneous note available to it of Mr Feely's meeting with Mr Flynn. The Tribunal was satisfied, however, that whatever was conveyed to Mr Flynn by Mr Feely and Mr Seán Haughey on 28 February 1989, was sufficient to propel Mr Flynn to speak with the then Taoiseach, Mr Charles J. Haughey, between then and 2 March 1989, and request that Mr Gilmartin's complaints be added to a Garda investigation into similar but unrelated matters, which had begun in early February 1989, on Mr Flynn's initiative.

[24] Mr Gilmartin was again giventhe initials '*TK'* in Mr Feeley's Report.

24.15 A memorandum prepared by Mr Matthews on 3 March 1989, entitled *'Allegations of Irregularities in the Planning Permission area note 1'* following a meeting on 2 March 1989, between An Taoiseach, Mr Charles J. Haughey, the Minister for Justice, Mr Gerard Collins and the Attorney General recorded the direction by the Taoiseach that An Garda Síochána investigate the complaints made by Mr Gilmartin. As already indicated a further meeting took place on 3 March 1989, between Mr Pádraig Flynn and the Minister for Justice, when Mr Gilmartin's complaints were again discussed.

24.16 At this meeting Mr Flynn recounted what he had been told by Mr Seán Haughey and Mr Feely on 28 February 1989. This meeting was documented by Mr Matthews under the heading '*Alleged planning permission irregularities note 2.'*

24.17 Mr Gerard Collins told the Tribunal that he had no recollection of the events which had triggered a Garda investigation, which commenced on 7 February 1989, into allegations of planning irregularities (unconnected to Mr Gilmartin's complaints), or of the events which led to Mr Gilmartin's complaints being encompassed in that Garda investigation. Mr Collins stated that the contemporaneous documentation which recorded his involvement did, to some extent, assist him in recalling a meeting with the then Taoiseach, Mr Haughey. Mr Collins did not dispute the contents of the manuscript notes compiled by Mr Matthews in March 1989. Mr Collins stated however, that in 1989, he was unaware that a Government back-bencher (Mr Lawlor) was central to Mr Gilmartin's complaints at that time, and said that he was unaware at that time of Mr Gilmartin's claim of substantial money being demanded of him. Mr Collins acknowledged that as Minister for Justice, he met the Garda Commissioner in 1989 to ascertain the progress of the Garda investigation.[25]

THE 1989/90 GARDA INQUIRY

25.01 The Garda investigation into Mr Gilmartin's complaints commenced on 3 March 1989. It concluded on 2 May 1990, when a final report was passed by the investigating Gardaí to the Garda Commissioner, who in turn furnished it to the Department of Justice. In the course of the inquiry the Department of Justice was kept apprised of developments by way of interim reports.

25.02 When the inquiry began on 3 March 1989, the Gardaí received a briefing from the Department of Justice on the nature of the complaints being made by Mr Gilmartin. It was clear from a comparison of an *aide memoire* compiled by

[25] A memorandum compiled by Mr Matthews on 27 June 1989, documented Mr Collins emphasising to the Commissioner the necessity for a very thorough high priority investigation.

Chief Superintendent Sreenan in advance of his first telephone contact with Mr Gilmartin, with the note compiled by Mr Matthews, Secretary General of the Department of Justice, on 3 March 1989, that the Gardaí were apprised of the information that Mr Flynn had relayed to the Minister for Justice on 3 March 1989, concerning Mr Gilmartin.

25.03 In essence, Mr Gilmartin's complaints, as known in general terms by the investigating Gardaí on 3 March 1989, were:

- He was a property developer who had been told that before he could develop in Ireland money would have to be paid '*up front*' to people.
- He had named three individuals in this context, namely Mr Liam Lawlor TD, Mr George Redmond, Assistant City and County Manager, and Cllr Finbarr Hanrahan, Cllr Hanrahan being but one of a number of councillors who, Mr Gilmartin had alleged, made demands for money.
- He was '*frightened*' by the magnitude of the demands.
- A figure of IR£5m had been mentioned.
- A figure of IR£100,000 '*for each man*' had been demanded of him.

25.04 The principal personnel involved in the Garda investigation were Chief Superintendent Hugh Sreenan and Superintendent Thomas B. Burns, the latter being the '*operational*' head of the inquiry.[26]

25.05 As far as the Tribunal could ascertain, the investigation into Mr Gilmartin's complaints, underway from 3 March 1989 to 24 May 1990, appeared to have comprised the following:

1) Three telephone conversations between Chief Superintendent Sreenan and Mr Gilmartin at the latter's home in Luton, England on 4, 9 and 20 March 1989.
2) An interview conducted by Chief Superintendent Sreenan and Superintendent Burns on 6 March 1989, with Mr Feely and Mr Haughey.
3) An interview with Mr Owen O'Callaghan in Cork on 5 April 1989, carried out by Superintendent Burns accompanied by another investigating Garda.
4) An interview carried out with Mr Gerard Brady, the proprietor of a car dealership in Castleknock, on 5 June 1989, by Superintendent Burns and another investigating Garda. The interview with Mr Brady arose on foot of information supplied to the Gardaí by Mr Feely and Mr Haughey on 6 March 1989, the occasion of their own Garda interview and the occasion on which they relayed to the investigating Gardaí certain information which Mr Gilmartin in turn had relayed to them on 24 February.

[26] See footnotes 3 and 7 above

5) On 7 November 1989, Chief Superintendent Sreenan and Superintendent Burns interviewed two Arlington executives in London, namely Mr Dadley and Mr Mould.

25.06 Following the submission of the final report to the Department of Justice in May 1990[27], no further steps or other action appear to have been taken in relation to the complaints made by Mr Gilmartin approximately one year previously.

TELEPHONE CONTACT BETWEEN CHIEF SUPERINTENDENT SREENAN AND MR GILMARTIN IN MARCH 1989

26.01 In the course of correspondence with the Tribunal, Chief Superintendent Sreenan provided to the Tribunal handwritten notes which he had made of his three telephone conversations with Mr Gilmartin, on 4, 9 and 20 March 1989[28]. The Tribunal was also furnished with more detailed typed notes of the telephone conversations of 4 and 20 March 1989 with Mr Gilmartin. According to Chief Superintendent Sreenan's evidence, these were typed by him almost immediately following the cessation of the telephone conversations from the rough notes he had taken in the course of those telephone calls. These typed notes ultimately formed part of the Garda final report, and it appeared that the typed note of the 4 March 1989 telephone contact also formed part of an interim report made to the Department on 6 March 1989.

26.02 No reference or replication of any typed note Chief Superintendent Sreenan might have made regarding his telephone conversation with Mr Gilmartin on 9 March 1989, appeared in an interim report or in the final Garda report. Chief Superintendent Sreenan believed that he had compiled such a typed note at the time, and could not explain its omission from the final report. (Chief Superintendent Sreenan was not directly involved in the preparation of the final report).

26.03 On 14 December 2003, Chief Superintendent Sreenan prepared notes from his contemporaneous rough notes and furnished to the Tribunal '*a slightly more expanded'* version of the conversation he said he had with Mr Gilmartin on 9 March 1989.

26.04 Of the three contemporaneous records of his contact with Mr Gilmartin in 1989 retained by Chief Superintendent Sreenan, only those of 9 March 1989

[27] Mr Ray Burke, the Minister for Justice in 1990, recalled that a summary of the final report had been brought to his attention.

[28] 4/3/1989 telephone conversation – see Exhibit 10.11
9/3/1989 telephone conversation –see Exhibit 21.11

contained a reference to Mr Gilmartin's allegation that a demand for IR£5m had been made of him while he was engaged in business in Dublin. While the Garda final report ultimately furnished to the Department of Justice in May 1990 recited many of Mr Gilmartin's complaints, in various guises, the report contained no reference to Mr Gilmartin's allegation that a sum of IR£5m had been demanded of him.

THE GARDA TELEPHONE CONVERSATION WITH MR GILMARTIN OF 4 MARCH 1989

27.01 Chief Superintendent Sreenan recorded[29] that in the course of a telephone conversation with Mr Gilmartin, which he stated lasted some 45 minutes or so, Mr Gilmartin recounted a myriad of matters, including complaints of a serious nature. However, the notes of that conversation did not identify any particular person in connection with the complaints being made by Mr Gilmartin. In evidence, Chief Superintendent Sreenan agreed that his typed notes of 4 March 1989, were significantly more expansive than the rough scribbled notes he had made while speaking to Mr Gilmartin. Chief Superintendent Sreenan explained that, while on the telephone, it was not possible for him to write down everything that Mr Gilmartin said. The expanded typed version those notes was prepared by him within an hour of the telephone call terminating.

27.02 Chief Superintendent Sreenan acknowledged that in the course of his contact with him, Mr Gilmartin had made complaints, of an extremely serious nature, some of which related to issues of bribery and corruption and interference with Mr Gilmartin's Dublin projects by third parties. Chief Superintendent Sreenan described Mr Gilmartin as having been reluctant to name names on the telephone.[30] However, a particular description given by Mr Gilmartin, enabled him to identify that Mr Gilmartin was speaking about Mr George Redmond. Chief Superintendent Sreenan gleaned this from the prior briefing the Gardaí had received from the Department of Justice.

27.03 In general, there was substantial agreement between Mr Gilmartin and Chief Superintendent Sreenan on the contents of the latter's recorded note of 4 March 1989, with Mr Gilmartin describing the contents as '*generally accurate*'.

[29] See Exhibit. (Handwritten notes of 4 March & Final Report & Interim Report & Explanatory note)

[30] In a later telephone conversation on 20 March 1989, Mr Gilmartin indicated that reluctance was because of his concern about libel.

THE GARDA INTERVIEW OF MR FRANK FEELY AND MR SEÁN HAUGHEY ON 6 MARCH 1989

28.01 Some two days following Chief Superintendent Sreenan's first telephone contact with Mr Gilmartin, Mr Feely and Mr Haughey were interviewed by Chief Superintendent Sreenan and Superintendent Burns. The content of that interview was described in Chief Superintendent Sreenan's notes and the final Garda report.

28.02 On 6 March 1989, Mr Haughey conveyed to the Gardaí, *inter alia*, the following information concerning Mr Gilmartin and his complaints:

- That Mr Redmond was not taking Mr Gilmartin seriously in relation to his dealings with him.
- That Mr Gilmartin had difficulty in acquiring land for his Quarryvale project.
- That Mr Gilmartin had come into contact with Mr Liam Lawlor and that Mr Lawlor had put him in touch with eight councillors, four of whom Mr Gilmartin had met in Buswells, and that each of the four he met had demanded IR£100,000 from him for their support of Quarryvale.
- That as a result of these demands for money Mr Gilmartin had discontinued efforts to make contact with the remaining four councillors.
- That Mr Lawlor had been paid IR£3,500 per month by Arlington through Mr Gilmartin.

28.03 The Gardai were advised by Mr Feely who, according to Chief Superintendent Sreenan read from notes, that:

- Mr Redmond was about to retire on age grounds in June 1989 and, according to Mr Gilmartin, was going to work for Mr John Corcoran of Green Properties.
- Mr Feely considered the receipt by him on 6 March 1989, (the day of the interview), of a letter from Mr John Corcoran expressing interest in lands then being acquired by Mr Gilmartin as '*very significant'.*
- Mr Feely had expressed concern about this.

28.04 Mr Haughey told the Gardaí that Mr Gilmartin had told him that Mr Lawlor had undertaken to obtain planning permission for a development in Blanchardstown concerning a Mr Fassnidge in return for a 5 per cent stake in the development.

28.05 Both Mr Haughey and Mr Feely advised the Gardaí of information conveyed to them by Mr Gilmartin which involved the purchase by Mr Lawlor of a Mercedes car at an agreed price of IR£40,000 from Mr Gerard Brady. According

to that information Mr Lawlor had paid Mr Brady only IR£20,000 for the car and that Mr Lawlor had refused to discharge the balance of the purchase price on the basis that Mr Brady '*owed*' Mr Lawlor for a planning approval.

28.06 In relation to the reference to Mr Lawlor having been in receipt of IR£3,500 per month, Chief Superintendent Sreenan, in evidence, agreed that at the time he interviewed Mr Haughey and Mr Feely, he understood them to relay Mr Gilmartin's specific complaint that Mr Lawlor was in receipt of monies from Arlington and that Mr Gilmartin was unhappy about this.

28.07 Chief Superintendent Sreenan accepted that the record of his interview with Mr Haughey and Mr Feely indicated that it was Mr Lawlor whom Mr Gilmartin had identified as the person who had put Mr Gilmartin in touch with eight councillors, four of whom Mr Gilmartin had met and who, he alleged, had each asked for IR£100,000.

28.08 Chief Superintendent Sreenan believed that this recital in the Garda report was correct, notwithstanding the reference in Messrs Feely and Haughey's memorandum of 28 February 1989, to the effect that Mr Seán Walsh TD was the individual who had given Mr Gilmartin the names of the eight councillors.[31]

28.09 In the course of his evidence to the Tribunal, Mr Feely stated that he believed that a copy of the notes he read from during his interview with the Gardaí on 6 March, was given to them, but neither Chief Superintendent Sreenan nor Superintendent Burns recollected this being done.

28.10 It appeared from Messrs Feely and Haughey's memorandum of their interview with Mr Gilmartin of 24 February 1989, and the description in the final Garda report of the interview with Messrs Feely and Haughey that not all of the matters which Mr Gilmartin complained of to Messrs Feely and Haughey were either recorded in Messrs Feely and Haughey's memorandum, or were advised to the Gardaí on 6 March 1989.

28.11 The Tribunal noted the following:

- While there was a reference in the Garda report to Mr Lawlor having sought a 5 per cent stake in the business interests of a Mr Fassnidge, there was no reference to this matter in Messrs Feely and Haughey's note

[31] Mr Gilmartin in evidence rejected this suggestion that it was Mr Walsh who had given him the names. He stated that insofar as Mr Walsh had given him the names of individuals he had done so only in a specific context when he encountered Mr Gilmartin in Leinster House. Mr Feely was certain, however, that his note of Mr Walsh being the individual who gave Mr Gilmartin the councillors' names reflected what he had been informed.

of their interview with Mr Gilmartin. Mr Feely, however, acknowledged that Mr Gilmartin met Mr Haughey on occasions when he was not present.

- Messrs Feely and Haughey's notes recorded Mr Gilmartin advising them on 24 February of a demand for IR£5m (albeit attributed to Mr Lawlor) yet there was no written record of Chief Superintendent Sreenan and Superintendent Burns being advised of this IR£5m demand by Messrs Haughey and Feely on 6 March 1989. Chief Superintendent Sreenan claimed that he had no recollection of this matter being told to him on 6 March 1989. Superintendent Burns said he was confident that Chief Superintendent Sreenan's note was accurate. However by 6 March 1989, Chief Superintendent Sreenan at least was aware of an allegation of a demand for IR£5m, as was clear from the aide memoire prepared by him following the briefing of Gardaí by the Department of Justice on 3 March 1989.

28.12 Mr Feely told the Tribunal that he believed he had given the Gardaí all the information in his possession concerning Mr Gilmartin's complaints and he maintained that all his notes had been handed over to them.

THE GARDA TELEPHONE CONVERSATION WITH MR GILMARTIN ON 9 MARCH 1989

29.01 The only extant contemporaneous note of this telephone conversation were Chief Superintendent Sreenan's rough notes made on the day of the call. Those notes were elaborated by him over fourteen and a half years later in a document which he provided to the Tribunal in December 2003.

29.02 Similar to the notes made by Chief Superintendent Sreenan of 4 March 1989 telephone conversation with Mr Gilmartin, the 9 March 1989 note was replete with complaints made by Mr Gilmartin, in a general way, of corrupt demands encountered by him as he went about his business in Dublin. Mr Gilmartin took issue with the note in some material respects.

29.03 Chief Superintendent Sreenan had recorded Mr Gilmartin as stating the following:

> '*There is money being paid to one fellow who threatened that if the investment was to get off the ground he is getting £3,500 per month, blackmail money. Arlington got scared and I opposed and refused and told the Government he was a gangster. He walked into Arlington and put a proposition on the table a year ago and since June 1988 had been getting his pay off. He wanted £5 million in an offshore account, then a 10% stake in Bachelor's Walk deal or it might not get off the ground, and he was supposed to be speaking on behalf of the Government. He came*

to us on the basis the Government had instructed him to help get the deal done. I only met him about a year ago.'

29.04 Mr Gilmartin agreed that he would have relayed such information to Chief Superintendent Sreenan without naming names.

29.05 Mr Gilmartin did not dispute that he had made a reference to '*one fellow'* getting *'£3,500 per month blackmail money*'. Chief Superintendent Sreenan, in evidence, stated that from information already available to him as a result of his interview with Messrs Feely and Haughey on 6 March 1989, he was aware that Mr Lawlor was the person being spoken about by Mr Gilmartin as having received these monies.

29.06 With regard to the phrase '*he wanted £5 million in an offshore account',* Mr Gilmartin vehemently disputed that he had ever attributed the IR£5m demand to Mr Lawlor.

29.07 According to Chief Superintendent Sreenan's evidence, he had understood the reference made by Mr Gilmartin in the context of the IR£5 million demand to have been to Mr Lawlor. However he said that he was uncertain as to the exact context in which Mr Gilmartin had asserted that Mr Lawlor sought IR£5m to be paid into an offshore account.

29.08 Chief Superintendent Sreenan agreed that a logical reading of his note, as taken on 9 March 1989, suggested that Mr Gilmartin had asserted that someone (understood by Chief Superintendent Sreenan to be Mr Lawlor) had made such a demand in connection with the Arlington/Bachelor's Walk development. However, in evidence, Mr Gilmartin maintained that the demand for IR£5m was made in the context of both Bachelor's Walk and Quarryvale. Furthermore, no connection was made between the IR£5m demand and the Arlington/Bachelor's Walk development in the memorandum compiled by Mr Feely and initialled by Haughey on 28 February 1989 (in relation to the meeting with Mr Gilmartin on 24 February 1989). That memorandum, however, recited Mr Gilmartin as having told them that a demand was made in relation to the '*Irishtown'* (Quarryvale) development. However, this memorandum did attribute the IR£5m demand as having been made by Mr Lawlor.

29.09 Chief Superintendent Sreenan confirmed that on 9 March 1989, Mr Gilmartin did not mention Mr Lawlor's name to him but that he had made the connection to Mr Lawlor and the IR£5m by himself.

29.10 The Tribunal was satisfied that Mr Gilmartin did not, in his conversation with Chief Superintendent Sreenan on 9 March 1989, attribute the demand for IR£5m made of him to Mr Lawlor. Mr Gilmartin was at all times, both prior to and

in the course of his sworn evidence to the Tribunal, adamant that he was asked for IR£5m by an unidentified man.

29.11 Mr Gilmartin also took issue with the manner in which Chief Superintendent Sreenan recorded a meeting Mr Gilmartin had with Mr Seán Walsh TD. The 9 March 1989 note recorded the following:

> *I had to meet the Belgard committee on material contravention. I had to meet with Seán Walsh, Chairman. Met Seán Walsh in the Dáil—he felt it was fantastic. He is fair. Seán Walsh gave me a list of names of elected members that would have to be filled in and be aware of what it is about.*

Mr Gilmartin said he did not provide this information and in fact never met the Belgard Committee.

29.12 Chief Superintendent Sreenan said that he did not know Mr Walsh, and intimated that the information recorded by him could only have come from Mr Gilmartin in the circumstances.

29.13 Mr Gilmartin maintained that he had spoken to Mr Walsh only in specific circumstances and not as recorded by Chief Superintendent Sreenan.

29.14 The Tribunal believed that Chief Superintendent Sreenan's reference to Mr Walsh was not correct. It may well have been a conflation of different pieces of information given to him by Mr Gilmartin at about the same time.

29.15 Chief Superintendent Sreenan conceded, in the course of his evidence, that both his rough and expanded notes of his 9 March 1989 telephone conversation with Mr Gilmartin, were '*bitty*' and '*disjointed*'. It was clear to the Tribunal that in December 2003, when he complied his expanded note, it was difficult for Chief Superintendent Sreenan to recreate from those rough notes the detail of a conversation he had had over fourteen and a half years earlier. Understandably, his expanded note was less than one hundred per cent accurate.

THE GARDA TELEPHONE CONVERSATION WITH MR GILMARTIN ON 20 MARCH 1989

30.01 Chief Superintendent Sreenan's typed note of this telephone call recorded that he was advised by Mr Gilmartin that he did not intend to cooperate further with the Garda inquiry, and was thinking of '*pulling out altogether*'. Mr Gilmartin did not dispute that he had so informed Chief Superintendent Sreenan.

30.02 No written statement of complaint was ever provided by Mr Gilmartin to the Gardaí. According to Chief Superintendent Sreenan, it was a fear of libel that dissuaded Mr Gilmartin from cooperating with the Garda investigation.

THE 'GARDA BURNS' TELEPHONE CALL TO MR GILMARTIN

31.01 Mr Gilmartin told the Tribunal that within a day or two of his telephone conversation of 4 March 1989 with Chief Superintendent Sreenan, he received a telephone call from a man who introduced himself as 'Garda Burns'. According to Mr Gilmartin, the caller had sufficient information to lead him to believe that this individual had knowledge of the matters relayed by him to Chief Superintendent Sreenan on 4 March 1989. Mr Gilmartin said he was advised by this individual that the complaints he was making were not welcome and that the best thing he, Mr Gilmartin, could do was go back to where he had come from.

31.02 No complaint of having received such a call was made by Mr Gilmartin to the Gardaí.

31.03 Mr Gilmartin stated that he did not know the true identity of the individual calling himself 'Garda Burns'. Mr Gilmartin emphasised that he had no reason to suspect that this call was in fact from Superintendent Burns, or anyone directly associated with the Garda investigation. As far as Mr Gilmartin was aware he had had no contact with Superintendent Burns.

31.04 Superintendent Burns stated that he had never spoken to, or had any contact with, Mr Gilmartin.

31.05 The Tribunal was satisfied that Mr Gilmartin did receive a telephone call from an individual who introduced himself as '*Garda Burns*', and that he was effectively warned away from the path that he had by then embarked on, namely dialogue with the Gardaí regarding allegations of corrupt practices and demands for money. It was common case that Mr Gilmartin's liaison with the Gardaí ended on 20 March 1989. The Tribunal was satisfied that the purpose of the telephone call (and, indeed its effect) was to, discourage, intimidate or warn Mr Gilmartin to desist from any further cooperation with the Garda inquiry. The Tribunal was also satisfied that, prior to the '*Garda Burns*' telephone call, Mr Gilmartin had cooperated with the Garda inquiry and had provided them with information which he believed was true and accurate.

31.06 The Gardaí did not interview Messrs Lawlor or Redmond or Cllr Hanrahan in the course of their investigation. This was despite the fact that that investigation commenced with the Gardaí being briefed, albeit in general terms, by the Department of Justice about what were, on their face, serious allegations

made by Mr Gilmartin of demands for money and other corrupt practices encountered by him and that those individuals were mentioned in that context. Insofar as Mr Redmond (already identified to the Gardaí by third parties, in connection with planning irregularities, prior to Mr Gilmartin's complaints) was interviewed by the Gardaí in 1989, it appeared he was not interviewed in connection with Mr Gilmartin's complaints.

31.07 The Tribunal found that the failure to interview these individuals was puzzling, having regard to the fact that, subsequent to 20 March 1989, the Garda inquiry into Mr Gilmartin's claims continued for a number of months, up to November 1989.

31.08 While Chief Superintendent Sreenan rejected any suggestion that decisions to interview or not to interview particular individuals were the subject of discrimination, he nevertheless revealed in the course of his evidence to the Tribunal, that the fact that Mr Lawlor was a TD may have been a factor in the decision not to interview him. Superintendent Burns, however, vehemently rejected any suggestion that Mr Lawlor's position as a TD was the reason that he was not interviewed. The Tribunal, however, believed it likely that Mr Lawlor's position as a TD was indeed a factor in the decision taken by the investigating Gardaí not to interview him.

31.09 Within this period the Gardaí interviewed Mr Owen O'Callaghan on 5 April 1989, Mr Brady on 5 June 1989, and the two Arlington executives, Mr Dadley and Mr Mould, on 7 November 1989, in London.

THE GARDA INTERVIEW WITH MR OWEN O'CALLAGHAN

32.01 Mr O'Callaghan was interviewed in Cork by Superintendent Burns on 5 April 1989. According to the latter, the decision to interview Mr O'Callaghan followed on from the Gardaí learning from their contact with Messrs Feely and Haughey that Mr O'Callaghan and Mr Gilmartin had entered into an arrangement regarding their respective business dealings in Dublin.

32.02 Superintendent Burns told the Tribunal that he did not allude to the names of Mr Lawlor, Mr Redmond, and Cllr Hanrahan in the course of his interview with Mr O'Callaghan. Instead, he had outlined, in a general way, Mr Gilmartin's complaints of having been obstructed in the course of his business dealings in Dublin by people looking for money in return for support. Mr O'Callaghan indicated that he was aware of Mr Gilmartin's problems and complaints. According to Superintendent Burns he told Mr O'Callaghan of Mr Gilmartin's reluctance to continue his involvement with the Garda investigation and Mr O'Callaghan had undertaken to speak to Mr Gilmartin, with a view to

persuading him to meet senior Garda officers to discuss his complaints and difficulties. A Garda interim report in April 1989, recorded Mr O'Callaghan as having telephoned Superintendent Burns on 18 April 1989, to inform him that Mr Gilmartin was not prepared to discuss the matter further with the Gardaí. Mr Gilmartin denied that Mr O'Callaghan had asked him to co-operate with the Gardaí inquiry. On the contrary, according to Mr Gilmartin Mr O'Callaghan told him that he was shooting himself in the foot by going to the Gardaí, and that this was not the way business was done in Ireland. Mr O'Callaghan denied this assertion.

32.03 In the final Garda report of 24 May 1990, Superintendent Burns set out his understanding of what Mr O'Callaghan had told him regarding his and Mr Gilmartin's respective projects in Dublin as follows:

> *According to Mr O'Callaghan, the two projects, i.e. O'Callaghan's and Mr Gilmartin's could not go ahead together. According to Mr O'Callaghan, Government Ministers were anxious that Mr Gilmartin's project went ahead and states that Mr Padraig Flynn, T.D., Minister for the Environment asked him to step aside and let Gilmartin's project go ahead. As a result of this, he (O'Callaghan) came to an agreement with Mr Gilmartin that the latter's project went ahead. They agreed to work together. This decision was communicated to Dublin County Council.*

32.04 In the course of his evidence, Mr O'Callaghan strongly rejected the suggestion that he had ever told Superintendent Burns that he had been asked by Mr Pádraig Flynn to step aside and to let Mr Gilmartin's project go ahead, or that he and Mr Gilmartin had agreed to work together. Mr O'Callaghan's evidence was that he had told Superintendent Burns merely what Mr Gilmartin had told him, i.e., that Mr Flynn and his colleagues were encouraging Mr Gilmartin in his endeavours. Mr O'Callaghan told the Tribunal he had had no dealings either with Mr Flynn or Government Ministers in relation to these matters. Mr O'Callaghan said he believed that he told Superintendent Burns that government ministers were anxious that Mr Gilmartin's project should proceed and in doing so was repeating what he himself had been told by Mr Gilmartin.

32.05 Mr O'Callaghan was aware that Gardaí were investigating Mr Gilmartin's complaints concerning Mr Lawlor and Mr Redmond, when he was interviewed by Superintendent Burns. Mr O'Callaghan advised Superintendent Burns of information that Mr Gilmartin had told him concerning Mr Lawlor and Mr Redmond.

32.06 Mr O'Callaghan told the Tribunal that his recollection of Mr Gilmartin's complaints relating to Mr Lawlor, was that the latter was '*muscling in'* on Mr Gilmartin's Quarryvale and Bachelor's Walk developments. However Mr

O'Callaghan maintained that he had not heard Mr Gilmartin specifically mention demands for money (other than in relation to Cllr Hanrahan). Mr O'Callaghan recalled that Mr Gilmartin's complaints regarding Mr Redmond merely related to the issue of Mr Redmond's role in the selling of local authority public lands.

32.07 The Tribunal believed it was unlikely that Mr Gilmartin failed to include in his complaints about Mr Lawlor to Mr O'Callaghan a complaint relating to a demand for money and a demand for a stake in Mr Gilmartin's development projects. As previously set out, the Tribunal believed that Mr O Callaghan's failure to mention Cllr Hanrahan's demand for IR£100,000 was attributable to his relationship with Cllr Hanrahan.

32.08 As to the accuracy of Superintendent Burns' record of what Mr O'Callaghan had stated to him regarding Mr Flynn, the Tribunal was satisfied that Superintendent Burns' record was correct. In arriving at this conclusion, the Tribunal took cognisance of the content of the note of an interview Mr O'Callaghan had with Mr Sean Haughey and Mr Morrissey on 8 March 1989. According to that note, Mr O'Callaghan informed Mr Haughey that he had approached Mr Gilmartin with a view to arriving at some arrangement with him with regard to their respective developments, following discussions which Mr O'Callaghan had with Mr Flynn.

THE GARDA INTERVIEW WITH MR GERARD BRADY

33.01 Notwithstanding Mr Gilmartin's declared intention by 20 March 1989 not to make a statement to the Gardaí, the Garda investigation into Mr Gilmartin's complaints continued, with an interview on 5 June 1989 with Mr Gerard Brady, the proprietor of a car dealership located on the Navan Road, Castleknock. Details of this interview were furnished by Superintendent Burns to the Assistant Commissioner on 26 June 1989, in the following terms:

> *With regard to the verbal allegations of Thomas Gilmartin of Luton, that Liam Lawlor, T.D. had obtained a Mercedes car from a Mr Brady, and that Mr Lawlor had subsequently refused to pay £20,000 (balance of payment for car) on the basis that Brady owed him this for Planning Approval. On 5th June, 1989, I interviewed Mr Jerry Brady, of Messrs. Brady's, Blanchardstown, Co. Dublin.*
>
> *This firm is a main Mercedes dealer. I asked him if any prominent person had refused to pay the balance on a new Mercedes car. He replied no. I then asked him if he was involved in any planning application and he said that his firm had planning permission for new premises on the forthcoming Blanchardstown Bye-Pass.*

33.02 In his evidence, Superintendent Burns conceded that notwithstanding the reference to a prominent '*person'* in the interim report, it was likely he queried Mr Brady as to whether a prominent '*politician'* had purchased a car from him and had refused to pay the balance due. Superintendent Burns had not, in the query he made of Mr Brady, identified Mr Lawlor by name.

33.03 Mr Brady, in his evidence, recalled his interview with Superintendent Burns, but could not recollect what had been asked of him on that occasion, save that he had been asked if a prominent politician had purchased a car from him. Mr Brady said he had assumed that reference to be to Mr Lawlor. Mr Brady was unable to recall if he had been asked by Superintendent Burns if money was outstanding on the transaction. He told the Tribunal that he did not tell Superintendent Burns that, as of 5 June 1989, that money was in fact outstanding on a new Mercedes car he had sold to Mr Lawlor in January of 1989.

33.04 In an unsworn Affidavit furnished to the Tribunal by Mr Lawlor in the course of Discovery, the following reference is attributed to Mr Brady:

> *A number of years ago a senior garda officer came to my premises and asked for a private discussion with me. He (the garda) stated that he had knowledge that a well-known politician had obtained a car from me and asked me bluntly if the car had been paid for. I responded to him that the transaction had been carried out in a normal fashion and that there was most certainly nothing incorrect about it. My recollection is that I showed the garda my records in relation to this transaction and he was happy about it. I was not contacted again by the guards or anybody else until the Tribunal made contact with me.*

33.05 Mr Brady, in response to a question, stated that he had advised Mr Lawlor in 1999, that he had provided this information to the Gardaí. Mr Brady accepted that the information in the unsworn Affidavit was information he had had in 1999. Mr Brady intimated that the Affidavit may have been drafted by a firm of solicitors in Castleknock to whom he had been taken by Mr Lawlor in 1999.

THE GARDA INTERVIEW WITH THE ARLINGTON EXECUTIVES IN NOVEMBER 1989

34.01 In an attempt to ascertain whether Mr Lawlor was in receipt of sums of IR£3,500 per month from Arlington and if so, for what purpose, Chief Superintendent Sreenan and Superintendent Burns interviewed two Arlington executives, Mr Dadley and Mr Mould, on 7 November 1989, in London.

34.02 The final Garda report summarised the interview with the Arlington executives in the following terms:

We outlined the nature of our enquiries in so far as they were concerned and that we were making enquiries into the activities of an Irish Politician who had been mentioned in the context of their Dublin Enterprise. We did not name the politician. Both Mr Dadley and Mr Mould then said they assumed we were enquiring about Mr Liam Lawlor and we agreed. They stated that Mr Lawlor had indeed visited their Head Office in connection with the Bachelors' Walk Project and that he had suggested they put a bowling alley in the basement. They did not take him seriously. He was treated courteously. There was no offer by Mr Lawlor to act as a Consultant and no fee, money, or any benefit was given him, nor was same suggested by either side.

34.03 Later in the report, the following observation was made by Superintendent Burns:

I would also point out that the interview by Gardaí of Edward A. Dadley, Chairman of Arlington Retail Developments Ltd., and Raymond Mould, Deputy Chairman and Chief Executive of Arlington Securities P.L.C. concerning Mr Lawlor's presence at Arlington's Offices in London differs substantially from Thomas Gilmartin's account.

34.04 In their interview with the Gardaí, neither Mr Dadley nor Mr Mould disclosed the fact that substantial sums of money had in fact been paid, directly and indirectly, to Mr Lawlor by Arlington. Had they done so, the Gardaí would have learned that between June 1988 and early 1989, Mr Lawlor received in total a sum of IR£32,500 and Stg£3,500 from Arlington, albeit paid, by and large, in monthly instalments by Mr Gilmartin, and, further, that on 19 April 1989, Arlington Securities Plc had paid a cheque in the sum of Stg£33,000 to Mr Lawlor, through Economic Reports Ltd.

34.05 The following exchange took place on Day 493 between Tribunal Counsel and Chief Superintendent Sreenan:

Q. 395 *'Did you have any reason to suspect at that time when you met Mr Dadley and Mr Mould that they were being less than frank with you?'*

A. *'Well one had their own opinion of whether or not they were in receipt of information that they were not giving to us. It was difficult to be sure but I would agree with what you have said, what you are suggesting there.'*

34.06 Mr Dadley, giving evidence on Day 466, told the Tribunal that he could not recall the exact conversation, or any detail of the interview that had taken place with the Gardaí in November 1989. He sought to explain the information provided to the Gardaí on 7 November 1989, to the effect that Mr Lawlor had not

been paid consultancy fees by Arlington, on the basis that such fees had been paid by Mr Gilmartin and not Arlington.

34.07 The Tribunal did not accept this explanation in the light of Mr Dadley and Mr Mould's own admission in the course of their evidence to the Tribunal that Mr Gilmartin had paid Mr Lawlor in 1988/9 on behalf of Arlington. Furthermore, at the time of that interview in November 1989, it must have been fresh in their minds that an Arlington cheque for Stg£33,000 had issued only some seven months previously to Economic Reports Ltd (a payment then unknown to Mr Gilmartin).

34.08 The Tribunal was satisfied that Messrs Dadley and Mould deliberately concealed from the Gardaí the true factual position regarding payments made to Mr Lawlor by Arlington. The Tribunal believed that Messrs Dadley and Mould's reluctance to apprise the Gardaí of the true position was probably because of a concern that any such admission of payments to Mr Lawlor would embroil them, and their company, in the Garda investigation, and that Arlington's payments to Mr Lawlor to assist them *'through the corridors of power',* would become a matter of public controversy.

THE GARDA INTERVIEW WITH MR GEORGE REDMOND

35.01 Superintendent Burns told the Tribunal that he interviewed Mr Redmond sometime after the latter's retirement on 26 June 1989, in relation to an issue concerning a way leave at Ballyogan, Dublin.[32] However, apparently Mr Redmond was not interviewed regarding Mr Gilmartin's allegations.

35.02 Superintendent Burns, in evidence, agreed that prior to Mr Redmond retiring on 26 June 1989, he was telephoned by Mr Feely in relation to Mr Redmond, and in connection with the latter's pension. Superintendent Burns told the Tribunal that notwithstanding that the Garda inquiry was ongoing, he was apparently satisfied to give Mr Feely a '*clean bill of health'* for Mr Redmond. Superintendent Burns explained his decision to do so on the basis that the issue of Mr Redmond's entitlement to his pension could be revisited at a later stage if subsequent events merited it.

35.03 Superintendent Burns told the Tribunal that when he interviewed Mr Redmond, he did not question him about Mr Gilmartin's allegations. He had not contemplated the use of the Bankers Books Evidence Act, (as amended), in

[32] A matter unconnected to Mr Gilmartin: From 10 February 1989 Mr Redmond's name had been connected to a number of matters under investigation by the Gardaí. Mr Gilmartin's complaint regarding Mr Redmond became known to the Gardaí on 3 March 1989.

connection with his inquiries regarding Mr Redmond, despite the fact that this procedure had been utilised in relation to other aspects of the corruption inquiry.

THE OUTCOME OF THE GARDA INQUIRY

36.01 In the final Garda report of 24 May 1990, the following statement appeared, concerning Mr Redmond:

> *The allegations made against former Dublin Assistant City and County Manager, George W. Redmond by Thomas Gilmartin and others have been thoroughly investigated. There is no evidence to suggest that this man has committed any crime. In the case of the granting of way leave across Dublin County Council lands I consider this a matter which might be brought to the notice of the Auditor, Department of the Environment, for the reasons already set out herein.*

36.02 With regard to Mr Lawlor, in the final Garda report, Superintendent Burns stated:

> *No evidence of criminal conduct by Mr Liam Lawlor T.D. has emerged in this investigation. Where verbal allegations have been made, they have been found wanting and Mr Lawlor emerges, as far as I am concerned, with his good reputation unscathed. Mr Lawlor is an associate of James kennedy, Auctioneer and Land Developer who in turn is a friend of George W. Redmond, former Assistant City and County Manager.*

36.03 The following further observation regarding Mr Lawlor and Mr Redmond was also made:

> *Gossip and rumour abound in Ireland and many an innocent, defenceless person has had his good name tarnished as a result. Therefore, it was an important part of this enquiry to delve fully into the allegations made by Thomas Gilmartin and others concerning Mr Liam Lawlor, T.D. and Mr George W. Redmond, former Assistant City and County Manager. Mr Liam Lawlor T.D. emerges from this enquiry with his good reputation unscathed.*

THE TRIBUNAL'S CONCLUSIONS RELATING TO THE GARDA INQUIRY[33]

37.01 The Tribunal was satisfied that the conclusions set out in the Final Garda Report of 29 May 1990 were unwarranted having regard to the nature and extent of that inquiry. Contrary to what was stated in the preceding paragraph,

[33] While Chief Superintendent Sreenan was involved in the Garda investigation in the earlier stages, he did not appear to have had an involvement in its final stages or in the preparation of the final report.

the Tribunal was satisfied that the complaints made by Mr Gilmartin concerning Mr Redmond, and Mr Lawlor (and indeed Cllr Hanrahan), were not thoroughly investigated by the investigating Gardaí.

37.02 The Tribunal was satisfied that Mr Gilmartin's decision to discontinue contact with the Gardaí after 20 March 1989 arose directly as a consequence of the intimidatory telephone call from 'Garda Burns', which the Tribunal accepted was received by Mr Gilmartin.

37.03 The Garda inquiry would almost certainly have benefited from further contact with Mr Gilmartin after 20 March 1989. Nevertheless, by this time Chief Superintendent Sreenan had spoken to him by telephone on three occasions and the Gardaí had sufficient information to have conducted a thorough inquiry had they then proceeded to interview a number of individuals. However, they neither made nor attempted to make contact with those individuals

37.04 Nothwithstanding Superintendent Burns' evidence to the contrary, the Tribunal, believed it likely that Mr Lawlor's position as a TD was a factor in the decision taken by the investigating Gardaí not to interview him.

37.05 The Tribunal was puzzled as to why the final Garda report went to such lengths to exonerate Mr Lawlor and Mr Redmond in the absence of a more comprehensive inquiry into complaints of corruption involving those two individuals.

MR GILMARTIN'S CONTACT WITH MR AHERN RELATING TO HIS ATTEMPTS TO PURCHASE THE IRISHTOWN LANDS.

38.01 On 19 May 1989, Mr Gilmartin formally tendered to Dublin Corporation for the purchase of its Irishtown lands at Quarryvale, although it was his belief that he had previously effectively concluded a deal for the purchase of the lands with the Corporation, through its Chief Valuer, Mr Michael McLoone. The value of the tender was IR£5.1m, and the tender document was accompanied by a bank draft for IR£255,000 by way of deposit.

38.02 On 24 May 1989, Mr Gilmartin's tender for IR£5.1m was accepted by a senior official of Dublin Corporation, subject to formal City Council approval. Mr Gilmartin's tender was for a significantly greater sum than the only other tender submitted, from a subsidiary company of Green Property Plc.

38.03 On 26 May 1989, the Planning and Development Committee of the Corporation recommended approval of Mr Gilmartin's tender to the City Council. On 12 June 1989, the tender was finally approved by the City Council, and some

days later, on 19 June 1989, Dublin Corporation's law agent formally advised Mr Gilmartin that his tender had been accepted and requested the payment of IR£255,000, being the balance of the deposit, which was duly paid by Mr Gilmartin. The sale of the Irishtown lands to Barkhill Ltd was finally completed in February 1990.

38.04 Mr Gilmartin told the Tribunal of a discussion he had with Mr Bertie Ahern, the then Minister for Labour, in May 1989, in relation to the purchase of the Irishtown lands, at the time when Mr Gilmartin's tender bid was being processed in Dublin Corporation. Mr Gilmartin said that discussions he had with Mr McLoone at this time heightened his concerns that, notwithstanding his previous complaints, there was ongoing interference by Mr Redmond and Mr Lawlor with his bid to acquire the Irishtown lands. Mr McLoone acknowledged to the Tribunal that he may have advised Mr Gilmartin that he was being '*shafted*' by Mr Redmond, but he said he was unaware of interference by Mr Lawlor. Prompted by a query from Mr McLoone as to whether there was anyone he could trust to assist him, Mr Gilmartin thought of Mr Ahern, and duly telephoned him and outlined the complaints and concerns he had regarding Mr Redmond and Mr Lawlor. Mr Ahern's response was to state that he would see what he could do. Mr Ahern told the Tribunal that he had no recollection of Mr Gilmartin's telephone call or of complaints about Mr Redmond and/or Mr Lawlor.

MR GILMARTIN'S MEETINGS WITH CLLR JOE BURKE (FF)

39.01 According to Mr Gilmartin, some days after his conversation with Mr Ahern, Cllr Joe Burke, a political associate and friend of Mr Ahern and a member of Dublin Corporation Planning and Development Committee, arrived into Mr Gilmartin's office in St Stephen's Green. He proceeded to advise Mr Gilmartin that he had been sent by Mr Ahern to see what might be done to assist him. Mr Gilmartin said that he relayed the history of the events relating to the Irishtown lands to Cllr Burke who then agreed to look into the matter.

39.02 Mr Gilmartin told the Tribunal that, a few days later (13 June 1989), Cllr Burke telephoned and advised him that Dublin Corporation had approved his tender (approved by the Council on 12 June 1989), and indicated to him that he would have no further problems. Mr Gilmartin told the Tribunal that following Cllr Burke's telephone call to him to advise him of the success of his tender, Cllr Burke called the following day to Mr Gilmartin's office and also on another occasion when Mr Sheeran was present. Mr Gilmatin was formally advised by Dublin Corporation of the approval of his tender by letter dated 19 June 1989.

39.03 Mr Gilmartin's recollection of the number of meetings between himself and Cllr Burke was confusing and somewhat inconsistent. In his January 1999 telephone conversation with Counsel for the Tribunal, Mr Gilmartin suggested that there had been two meetings with Cllr Burke. The note taken of that telephone conversation by Counsel for the Tribunal stated:

> *In the case of the Corporation Quarryvale lands, Mr Gilmartin said that he went to Bertie Ahern to complain about what was going on. He said that the first time he spoke to Mr Ahern about this, Mr Ahern suggested that he make a donation to the Fianna Fáil Party. In any event Mr Ahern said that he would send in someone to sort out the problem. He sent in Joe Burke who was from Donegal but who was on the Corporation. Joe Burke came to see Mr Gilmartin and asked him what was going on. Mr Gilmartin told him that Redmond and Lalor* (sic) *were pulling a stroke. Mr Gilmartin told Mr Burke said that he was fed up with the corruption that was going on and might do something about it. Mr Gilmartin said that he believed that Bertie Ahern sent Burke in as damaged limitation exercise for Fianna Fail and for the purpose of protecting the Party. In any event Mr Burke went in and did something. Mr Gilmartin says that the Corporation has details of the Burke intervention. Mr Gilmartin did not know precisely what Bertie Ahern did. However, at the second meeting a week later, the tender was approved.*
>
> *About a week after that, Burke arrived to Gilmartin's office. He himmed and hawed and while he did not overtly refer to money, Mr Gilmartin got the distinct impression that he was looking for a donation of money. Mr Gilmartin said that he did not 'take the bait' and then Mr Burke said that Bertie Ahern would like to meet him. Mr Gilmartin said that he was going out to Dublin Airport to catch a flight to England. Mr Burke said that he would give him a lift and they could call to see Bertie on the way out to the airport. Mr Burke gave Mr Gilmartin a lift in a truck and they stopped at a pub in Drumcondra. Mr Burke asked Mr Gilmartin to wait in the truck and went into the pub. He was in there for about twenty minutes. He came out after twenty minutes and said that Bertie was not in there. He then drove to another pub somewhere off Griffith Avenue or somewhere like that which he said was Bertie Ahern's own local. He again asked Mr Gilmartin to wait in the truck and went into the pub. After a few minutes, he came out and said that Bertie was not there yet. Mr Gilmartin said that he had to go and Mr Burke drove him to the airport.*

39.04 In the course of a meeting between Mr Gilmartin, his own solicitors, and members of the Tribunal's legal team in London on 8 July 1999, Cllr Burke's involvement was again discussed. A note as to what had been discussed with Mr

Gilmartin, which was prepared by Tribunal Counsel and dated 12 July 1999, stated:

> *We then turned to discuss the date of Mr Gilmartin's meetings with Mr Joe Burke. Mr Gilmartin says that he had previously overlooked the fact that he had had a third meeting with Mr Burke. There were three meetings in total. The first meeting came about after Mr Gilmartin had been told by Paddy Morrissey and Martin McCloone that George Redmond and Liam Lawlor were doing everything in their power to block his purchase. Mr Gilmartin already knew that George Redmond had tipped off Green Properties and that it was as a result of this that the matter was put out to tender. Martin McCloone asked Mr Gilmartin did he know anybody and strongly suggested that if he did, he'd better do something or his tender might be defeated. Tom Gilmartin said that Paddy Morrissey was sick and tired of Lawlor and Redmond's antics.*

And

> *… he telephoned Bertie Ahern who said that he would send somebody down to see him. He sent down Joe Burke. This was Mr Gilmartin's first meeting with Joe Burke. The second meeting with Joe Burke was the occasion when Mr Burke drove Mr Gilmartin to the Airport in a pick-up truck, stopping at two public houses on the way looking for Bertie Ahern. This was after the Gilmartin tender had been approved on the 12th June, 1989. The third meeting with Mr Burke which was also attended by Mr Paul Sheerin, occurred later in June, 1989. Mr Gilmartin said that all three meetings with Mr Burke occurred within the space of one month.'*

39.05 Mr Gilmartin made a formal written narrative statement to the Tribunal dated 17 May 2001. In his statement, Mr Gilmartin described how he telephoned Mr Bertie Ahern and informed him about the difficulties which he was experiencing in relation to the purchase of the Irishtown and Wood Farm lands. Mr Gilmartin went on:

> *He told me that he would see what he could do. I was contacted a few days later by Joe Burke who arranged to meet me at my office at 25 St. Stephen's Green in the middle of June 1989. He told me that he had been instructed by Mr Ahern to look into my complaints and I told him about the problems that I was encountering. A few days later the final approval was given for the sale of the Irishtown and Wood Farm lands. Mr Burke informed me of this news in a subsequent telephone conversation and also told me that I would have no further problems. Mr Burke met me in my office afterwards and suggested I should meet with Mr Ahern later that evening. However, Mr Burke was unsuccessful in locating Mr Ahern. On the 20th June 1989 I telephoned Mr Ahern to thank him for his*

intervention. During the course of that conversation he asked me whether I had given a donation to the Fianna Fáil Party. I informed him that I had given 'IR£50,000' to Mr Flynn and Mr Ahern made no further reference to the matter.

39.06 Finally, in Mr Gilmartin's sworn evidence to the Tribunal, Mr Gilmartin said that he believed there was a fourth meeting with Cllr Burke.

39.07 In the course of his sworn evidence, Mr Gilmartin was questioned on different days in the course of public hearings about his contact with Cllr Burke. While continuing to insist that he had had four meetings with Cllr Burke, Mr Gilmartin was clearly confused as to when they had occurred and the precise sequence of those meetings. Mr Gilmartin's recollection was that two of the four meetings involved Cllr Burke casually calling to his office. Mr Gilmartin was, however, consistent in his evidence that on one occasion he was given a lift to Dublin airport by Cllr Burke.

39.08 It was in any event clear that Cllr Burke met Mr Gilmartin in his office on more than one occasion and probably on three or four occasions.

THE IR£500,000 ALLEGATION

40.01 Mr Gilmartin alleged that in the course of a conversation between himself and Cllr Burke during their fourth and last encounter, when Mr Burke had called to his office unexpectedly, he understood that Cllr Burke in a roundabout or indirect fashion, had sought IR£500,000 from him. Mr Gilmartin said that in the course of '*chit chat' and* when he was somewhat distracted by a telephone call, he heard Cllr Burke mention '*half a million pounds'.* Mr Gilmartin had initially interpreted this as a reference to the full deposit of IR£510,000 that he had by then expended on the acquisition of the Irishtown lands.

40.02 Mr Gilmartin was questioned regarding this discussion with Cllr Burke. Following upon a question put to him by Counsel for the Tribunal based on an assumption that Mr Gilmartin had, in effect, suggested that Mr Burke had made a demand for a payment of IR£500,000, the following exchange took place:

'A.*It wasn't a demand it was talking about 500,000 pounds. Whether I would pay it. It wasn't a demand. It wasn't a question, like being Lawlor hand me, you know, £100,000. This wasn't a demand like that. It was what I call a typical Donegal fashion, talking in circles. Talking around and around a half a million.' 'I understood it to mean just that*

Q. *He asked me would I be prepared to pay half a million pounds because I knew that Bertie Ahern was looking after him?*

A.*That was after I made the reference 'I'd pay a f***ing half a million pounds to get out of here, if I got my money back'' . . ..And he said would you*

Q.*There's no ambiguity about that statement, Mr Gilmartin, is there, in fairness. It says he asked me would I not be prepared to pay half a million pounds because I knew that Bertie Ahern was looking after me?*

A.*Yeah.*

Q.*There's no ambiguity about that.*

A.*That's the only figure that was mentioned, half a million pounds.*

Q.*Yes*

A.*But it was talked around in circles for the best part of ten, fifteen minutes.*

Q.*Yes. And then the phone rang and Mr?*

A.*To start with and then I began to realise he was looking for money*

Q.*Yes?*

A. *And the only figure mentioned was the half a million pounds.*

Q.*The conversation, Mr Gilmartin, as you describe it appears to fallen into two. There was a conversation chit chat as you described it about a half million pounds. The phone rings. You answer the phone, you have your conversation with Mr Boland. And then the conversation resumes. And it's in the resumed conversation, if I understand you correctly that Mr Burke said to you would you not be prepared to pay half a million pounds because you knew that Bertie Ahern was looking after you?*

A. *It was after I made the statement I'd pay a half a million pounds to get out of here if I got my money back.*

Q *Yes. Who were you to give the half a million pounds to, Mr Gilmartin?*

A.*I don't know.*

Q.*Was there any discussion . . .*

A.*I assumed that since he brought me to meet Mr Ahern and went from . . . in a ride in the pick up to two different pubs to meet Mr Ahern. At the end of the day, I thought it was Mr Ahern who he was asking on behalf of.'*

Q.'*Yes. Well he had already said that. He said would I not be prepared to pay half a million pounds because I knew that Bertie Ahern was looking after me?*

A.*Yeah.*

Q. *And you went along with this . . .*

A.*It was after I made the statement.*

Q.*Yes?*

A.*That I'd pay half a million pounds if I got me money back to get out of here.*

Q.*What did you think you were going to get for your half a million pounds Mr Gilmartin?' . . . 'What did you believe you were going to receive?*

A.*Didn't think anything. It was an off the cuff remark. If I could get me money back at that time I would be happy to take a plane back to England and . . . for . . .*

Q.*What did you think Mr Burke could deliver or indeed Mr Ahern could deliver for half a million pounds?*

A.*I don't know. I was looking for nothing. I categorically refused to pay any corrupt payments to anybody. At all times I have. I refused Lawlor. I refused Redmond. I refused Hanrahan. I would not be involved in any corruption or buying a favour from anybody.'*

40.03 Mr Gilmartin told the Tribunal that he never equated the words uttered by Cllr Burke with a straightforward demand for money, unlike demands made of him by Mr Lawlor. Variously, Mr Gilmartin described Cllr Burke as talking in '*reels'*, talking '*around'* IR£500,000 and asking for money in a '*roundabout'* fashion. In the course of his testimony, Mr Gilmartin steadfastly maintained that he had understood from Cllr Burke that there was a price payable for the assistance rendered by Mr Ahern. Mr Gilmartin emphasised to the Tribunal that he was not alleging that Mr Burke's demand had been made with Mr Ahern's knowledge.

40.04 Mr Gilmartin's first formal narrative statement dealing specifically with this issue was provided to the Tribunal on 10 March 2004. It stated as follows:

'I remember that Joe Burke came to meet me at my Arlington office located on St. Stephen's Green, some time in September, 1990... During the course of some chitchat with Mr Burke, he mentioned half a million pounds. Before I could respond to him, my telephone rang. It was Barry Boland, Arlington's representative in Dublin, who was telephoning to ask me to turn off the lights in the office, when I left.

Picking up again on my conversation with Mr Burke, I said to him that I was not concerned about recovering the half a million pounds which was approximately the amount which I had submitted with my tender for the Dublin Corporation lands. I had thought that Mr Burke was referring to that transaction, when he had made a reference to half a million pounds earlier. I told him that even if my tender was refused, I was confident that I would recover that half a million.

I remember that Mr Burke followed up by saying he was not talking about the Dublin Corporation transaction, but asked me would I not be prepared to pay half a million pounds because I knew that Bertie Ahern was looking after me.

... Mr Burke then asked me whether or not I could meet with Bertie Ahern... Mr Burke offered to take me to the airport, and on the way, he said he would take me to meet Mr Ahern.

We then made arrangements to leave the office and Mr Burke gave me assistance to take from the office, the model of the Quarryvale Development which I was bringing back to England.

Mr Burke then drove to the Deadman's Inn Public House… I recall that Mr Burke was in the pub for about 20 minutes. When he came out he told me that Mr Ahern was not inside but he thought he might be in another pub.

I recall Mr Burke then driving me to another pub located in the vicinity of Beaumont Hospital. Again, I remember Mr Burke going inside and being in the pub for about 10 minutes, while I waited outside in his car. When Mr Burke came out he told me that Mr Ahern would be there shortly. However, I was very anxious at that stage that I would miss my flight back to Luton.

I told Mr Burke that I had a commitment to attend a meeting the following morning which I could not miss and I had to insist that he drive me immediately to the airport. Mr Burke tried to persuade me to wait for Mr Ahern's arrival but when I refused to do so, Mr Burke got very upset'.

40.05 In his subsequent statement to the Tribunal dated 26 May 2004 (and stated to be supplemental to his statement of 10 March 2004), Mr Gilmartin stated that the reference in his earlier statement to Cllr Burke's '*car*' should have been a reference to a '*pick-up truck*' and he stated that the reference to the '*Deadman's Inn Public House'* should have been a reference to '*Fagan's Public House*'.

40.06 In his supplemental statement Mr Gilmartin also stated:

This figure (£500,000) was mentioned on several occasions by Mr Burke during that conversation and I initially believed that the reference to £500,000 was to the deposit which I had paid for the tender of the Dublin Corporation lands. As the conversation developed, I became aware that Mr Burke seemed, in a roundabout fashion, to be asking for £500,000. I did not let on to Mr Burke that I had formed that impression and the chitchat continued.

40.07 Later in that supplemental statement, Mr Gilmartin alleged that Cllr Burke asked him '*would you pay?'*, and that Mr Gilmartin understood this to mean would he pay IR£500,000. Mr Gilmartin on that occasion went on to state that Cllr Burke then said to him '*you know you can trust Bertie'* and '*you know that Bertie is looking after you.'*

40.08 On 20 May 1998, in the course of a taped conversation with his then solicitor, Mr Noel Smyth, Mr Gilmartin briefly referred to Cllr Burke in the context of his seeking money. In that conversation, Mr Gilmartin said he was visited by Cllr Burke and he believed that Cllr Burke had come to let him know that there was a cost arising from his (Cllr Burke's) involvement but that he, Mr Gilmartin, did not give Cllr Burke the opportunity (to look for money) and that no request for money was made.

40.09 The taped conversation recorded Mr Gilmartin stating that he had been given the impression by Cllr Burke that '*a favour was due'* and '*I believe he came to let me know there was a cost attached to it'* and '*He never specifically asked for anything.'*

40.10 In Mr Gilmartin's affidavit sworn on 2 October 1998, reference was made to Mr Burke by Mr Gilmartin, but there was no reference to him seeking the payment of money or other favour.

40.11 In the course of his sworn evidence to the Tribunal, Mr Gilmartin said that he believed that he had mentioned what he understood to be a demand for money by Cllr Burke in the course of his discussions with Counsel for the Tribunal prior to the affidavit being drafted and therefore suggested that such a reference should have been included in the affidavit sworn by him.

40.12 The Tribunal noted that on 26 January 1999, Counsel for the Tribunal recorded Mr Gilmartin having stated, in the course of a telephone conversation, when making reference to Cllr Burke and while relaying an encounter he had had with him, that he had got the '*distinct impression'* that Cllr Burke was looking for *'a donation of money*'. There was reference in that memorandum to Mr Gilmartin having advised Counsel for the Tribunal of Cllr Burke driving him to the airport and stopping off en route at two public houses in search of Mr Ahern.

40.13 In the course of his sworn testimony, Mr Gilmartin emphasised to the Tribunal that no direct demand was made of him by Cllr Burke for money. In response to the suggestion that it had been his evidence that a demand for money had in fact been made of him by Cllr Burke, Mr Gilmartin stated the following: '*I never said that a demand was made of me for any particular sum of money. The conversation circled around half a million pounds that he thought the help I was given was worth something*' and '*I wasn't asked for £500,000 directly. It was talked around and around and the reference made to the amount of money that would be made on Quarryvale. That is complete, that is an accurate as far as I remember, a description of what took place.'*

40.14 In his 26 May 2004 statement, Mr Gilmartin said:

Mr Burke then asked if I would meet Bertie Ahern and said that we could meet him on the way to the airport. Therefore, while Mr Burke did not specifically ask me to pay £500,000, this is what I understood to be the gist of the conversation.

And

I believed that the money was being sought on behalf of Bertie Ahern. However, I wanted to confirm whether it was actually Mr Ahern or Mr Burke himself who was seeking the £500,000, and therefore, I agreed to go with Mr Burke when he offered to take me to Mr Ahern on the way to the airport.

40.15 In his first formal statement to the Tribunal on 17 May 2001, Mr Gilmartin specifically referred to Cllr Burke assisting him in relation to problems encountered in the purchase of the local authority lands and Cllr Burke subsequently suggesting to him that he should meet Mr Ahern. However, Mr Gilmartin did not, in that statement, make any reference to Cllr Burke, directly or indirectly, seeking money from him.

40.16 In that statement, Mr Gilmartin said:

'I was subsequently informed by Mr McLoone in a telephone conversation in June 1985[34] that Mr Redmond was responsible for what had happened (i.e. that the lands had been put out to tender), that 'there was a game going on' and that I was being 'shafted'. It was suggested that if I knew someone in Government I could trust I should contact them. I subsequently decided to contact Bertie Ahern T.D. who was then a Minister in the Government, as I had previously spoken with him on a number of occasions and found him approachable and very supportive of the development plans for Bachelor's Walk. I had met Mr Ahern on two prior occasions. To the best of recollection the first meeting took place in autumn 1987 in Mr Ahern's office in the Department of Labour building in Mespil Road. At this meeting we discussed the plans for the Bachelor's Walk development. Mr Ahern was affable and approachable and he was very supportive of my plans. The next meeting I had with Mr Ahern was in October 1988. To the best of my recollection that meeting took place on Monday 10 October, 1988 in Mr Ahern's constituency office located above Fagan's Public House in Drumcondra. I do not recall anything of significance from that meeting other than the fact that I informed Mr Ahern of the plans for Quarryvale as well as updating him on the progress

[34] In a subsequent letter from his solicitor, Mr Gilmartin corrected this date to May 1989.

of the Bachelors Walk development. Mr Ahern was again supportive about both of these developments. Following my conversation with Mr McLoone I telephoned Mr Ahern and informed him about the difficulties which I was experiencing in relation to the purchase of the Irishtown and Wood Farm lands. He told me that he would see what he could do. I was contacted a few days later by Joe Burke who arranged to meet me at my office at 25 St. Stephen's Green in the middle of June 1989. He told me that he had been instructed by Mr Ahern to look into my complaints and I told him about the problems that I was encountering. A few days later the final approval was given for the sale of the Irishtown and Wood Farm lands. Mr Burke informed me of this news in a subsequent telephone conversation and also told me that I would have no further problems. Mr Burke met me in my office afterwards and suggested I should meet with Mr Ahern later that evening. However Mr Burke was unsuccessful in locating Mr Ahern. On 20 June 1989 I telephoned Mr Ahern to thank him for his intervention. During the course of that conversation he asked me whether I had given a donation to the Fianna Fáil party. I informed him that I had given IR£50,000 to Mr Flynn and Mr Ahern made no further reference to the matter.'

40.17 Mr Gilmartin was questioned both by Counsel for the Tribunal and Counsel for Cllr Burke as to the reason for the omission in his statement of 17 May 2001, of a reference to Cllr Burke seeking money from him. In response, Mr Gilmartin stated that he could not account for why the issue (namely his belief that he had been asked for half a million pounds by Cllr Burke) was omitted from his detailed statement.

THE TRIP TO THE AIRPORT

41.01 Mr Gilmartin claimed that in the course of this meeting he agreed to accept an offer from Cllr Burke to drive him to Dublin airport to catch his flight home to Luton. Mr Gilmartin told the Tribunal that as he was curious to ascertain if Cllr Burke was indeed seeking money for Mr Ahern, he agreed to Cllr Burke's suggestion that while en route to the airport they locate Mr Ahern. Cllr Burke then drove Mr Gilmartin in his '*pick-up truck*' firstly to Fagan's public house (in Drumcondra), and subsequently, to another public house near Beaumont Hospital, in search of Mr Ahern. Mr Gilmartin said that he spent twenty minutes in Cllr Burke's pick-up vehicle while Cllr Burke entered into Fagan's public house in search of Mr Ahern. An additional ten minutes were spent waiting for Cllr Burke while he searched for Mr Ahern in the public house near Beaumont Hospital. These efforts to locate Mr Ahern proved unsuccessful. Despite being pressed by Cllr Burke to await Mr Ahern, Mr Gilmartin said he insisted on being driven to the airport to catch his flight.

41.02 Cllr Burke then drove Mr Gilmartin to the airport. Mr Gilmartin told the Tribunal that following this encounter, he did not meet Cllr Burke again. Mr Gilmartin also stated that he had never raised this matter with Mr Ahern.

THE RESPONSES OF CLLR BURKE AND MR AHERN TO MR GILMARTIN'S ALLEGATION

42.01 Neither Cllr Burke nor Mr Ahern disputed the fact that in or about May/June 1989, Cllr Burke met with Mr Gilmartin, at the behest of Mr Ahern. Cllr Burke however did not recall a second or any subsequent meeting with Mr Gilmartin, or any meeting with Mr Sheeran present. Mr Sheeran confirmed that he met Cllr Burke briefly in Mr Gilmartin's office on one occasion, but did not indicate when such a meeting might have taken place. Mr Ahern in his evidence to the Tribunal stated that he had been reminded by Cllr Burke's statement and Mr Gilmartin's evidence that Cllr Burke had gone to see Mr Gilmartin in relation to an issue concerning Quarryvale rather than the issue of the Arlington/Bachelor's Walk project, as first suggested by Mr Ahern in his statement to the Tribunal on 10 December 2003.

42.02 The extent of actual assistance, if any, provided by Cllr Burke, other than meeting Mr Gilmartin, clarifying details of his perceived problems, and monitoring the sale of the Corporation lands, was unclear. However, Cllr Burke and Mr Ahern generally agreed with the reason suggested by Mr Gilmartin for contacting Mr Ahern (his difficulty in finalising the purchase of the Irishtown lands), and of Cllr Burke's involvement.

42.03 In his statement to the Tribunal, through his solicitors, on 11 March 2004, Cllr Burke stated:

> *At no time did I mention or solicit any sum from Mr Gilmartin. I have never solicited money on behalf of Mr Bertie Ahern, nor has he ever asked me to. I deny categorically Mr Gilmartin's evidence regarding mention of a sum of ½ million pounds or any sum being sought by me from him on any occasion.*

42.04 Cllr Burke strongly rejected Mr Gilmartin's allegation that he had sought, directly or indirectly, IR£500,000 (or any sum) from Mr Gilmartin, either for himself or Mr Ahern.

42.05 Mr Ahern also denied that Cllr Burke had ever sought money from Mr Gilmartin on his behalf.

42.06 Neither Mr Ahern nor Cllr Burke had any recollection of the complaint that had been relayed to them by Mr Gilmartin in May/June 1989, but Mr Ahern accepted that Mr Gilmartin must have advised him of some difficulty in order for

him to have sent Cllr Burke to see him. Cllr Burke had no recollection of what he and Mr Gilmartin had discussed at their meeting in May/June 1989, although his belief was that Mr Gilmartin's problem related to the purchase of the Irishtown lands. Cllr Burke professed to have no recollection of any subsequent meetings with Mr Gilmartin, or of meeting Mr Sheeran in Mr Gilmartin's office.

42.07 Cllr Burke accepted that, although he had no recollection of doing so, it was '*possible'* that he had driven Mr Gilmartin to the airport. However, Cllr Burke vehemently rejected any suggestion that he might have stopped at two public houses in search of Mr Ahern. He told the Tribunal that he had Mr Ahern's mobile telephone number and could easily have contacted him without having to call to public houses in search of him.

42.08 Cllr Burke stated that he believed that he would not have driven Mr Gilmartin in a truck or pick-up truck as described by Mr Gilmartin, but would have made any such journey in his car. Cllr Burke acknowledged that he did own a '*truck'* (but not a '*pickup truck'),* that he occasionally drove it himself, but would not have used it for a trip to the airport or to pick up Mr Gilmartin.

THE DATE OF THE MEETINGS WITH MR BURKE IN THE COURSE OF WHICH THE ISSUE RELATING TO IR£500,000 AROSE.

43.01 Mr Gilmartin gave conflicting information and evidence to the Tribunal as to when the alleged meeting took place with Cllr Burke, during which Mr Gilmartin understood Cllr Burke to have requested IR£500,000 from him. Mr Gilmartin's first apparent reference to this meeting was in the course of a telephone conversation with Mr Pat Hanratty SC (Counsel for the Tribunal) in January 1999, when Mr Hanratty noted that Mr Gilmartin referred to a '*second*' meeting with Mr Burke, one week after the approval of the tender (the tender was approved on 12 June 1989). Subsequently, at a meeting between Tribunal Counsel and Mr Gilmartin in London on 8 July 1999, Mr Gilmartin again referred to a second meeting with Cllr Burke '*after*' the approval of the tender.

43.02 In the taped conversation between Mr Gilmartin and Mr Smyth on 20 May 1998, there was also an apparent reference to this meeting as having taken place after the Corporation's ratification of the sale of the Irishtown lands to him. That reference would place the meeting in late June, or possibly in July 1989.

43.03 Mr Gilmartin's narrative statement on 17 May 2001 appeared to suggest that the meeting in question took place a few days after the Corporation approval of the sale of the lands to him, again in late June 1989.

43.04 Mr Gilmartin's March 2004 statement suggested that the meeting occurred in September 1990.

43.05 Mr Gilmartin gave sworn evidence to the Tribunal about this meeting with Cllr Burke on at least six different occasions, in the period May to October 2007. On day 726 (29 May 2007), Mr Gilmartin dated the meeting as having occurred in autumn 1989, or '*around*' September 1989, and identified it as the fourth meeting between himself and Cllr Burke. In the course of his evidence on that day, Mr Gilmartin also suggested that the meeting had occurred four months after Cllr Burke's intervention, thus dating it in September/October 1989, and he also suggested that the meeting had definitely occurred on a date after the meeting on 28 September 1989 between himself and Mr Ahern, in the company of Mr Dadley of Arlington Securities Plc. In the course of his evidence on that occasion, Mr Gilmartin told the Tribunal that he was not good at recalling dates, and that he was not sure of the year in question.

43.06 Subsequently, on Days 736 (28 June 2007), 737 (29 June 2007), and 764 (26 September 2007), Mr Gilmartin dated the meeting to September 1990 or the autumn of 1990. On Day 778 (19 October 2007), Mr Gilmartin suggested that the meeting took place in late 1990, and on Day 780 (24 October 2007), he suggested 1990, or a year or more after Mr Burke was sent to him by Mr Ahern (i.e. on or after late June 1990).

THE TRIBUNAL'S CONCLUSIONS CONCERNING MR GILMARTIN'S CONTACT WITH MR BURKE.

44.01 The Tribunal found Mr Gilmartin's account of a meeting with Cllr Burke during which Cllr Burke allegedly made reference to IR£500,000, to be confused and unreliable as to detail (including the likely date of the meeting). However, the Tribunal accepted that Mr Gilmartin had more than one meeting with Cllr Burke and that he had an encounter with him in 1990, at a time when he had paid over the balance of his full deposit for the Irishtown lands (the total deposit was IR£510,000).

44.02 The Tribunal was satisfied, insofar as in 2004, Mr Gilmartin alleged a demand by Cllr Burke for IR£500,000 and that this allegation was not a '*new*' allegation. The Tribunal was satisfied that Mr Gilmartin alluded to what he understood was a request for money by Cllr Burke in the course of his taped conversation on 20 May 1998 with Mr Smyth, and again in a telephone conversation with Tribunal Counsel on 26 January 1999.

44.03 The Tribunal accepted that Mr Gilmartin was driven by Cllr Burke to the airport, and that en route, Cllr Burke visited two public houses on the city's north side in search of Mr Ahern. The Tribunal was unable to determine the reason for Cllr Burke's anxiety to have Mr Gilmartin meet Mr Ahern on that occasion, and there was no evidence to support any suggestion that the search for Mr Ahern was to facilitate a request to Mr Gilmartin for the payment of money.

44.04 Notwithstanding the Tribunal's reference to the confused and unreliable nature of Mr Gilmartin's account of a discussion with Cllr Burke immediately prior to the trip to the airport, the Tribunal was satisfied that a discussion did take place in the course of which Mr Gilmartin understood that Cllr Burke was, in a roundabout fashion, seeking money for himself, or for Mr Ahern. The Tribunal also believed that Mr Gilmartin's suspicion that he was being asked for money on Mr Ahern's behalf was fuelled by Cllr Burke's efforts to locate Mr Ahern in the course of his journey with Mr Gilmartin to Dublin Airport.

44.05 The Tribunal had insufficient evidence to make a finding as to whether Cllr Burke, directly or indirectly, sought money from Mr Gilmartin, either for himself or for Mr Ahern. There was no evidence that Mr Ahern was aware of Cllr Burke's discussion with Mr Gilmartin or of Cllr Burke's attempts to locate him while en route to Dublin Airport with Mr Gilmartin.

THE PAYMENT OF IR£50,000 TO MR PÁDRAIG FLYNN TD (FF) BY MR GILMARTIN

45.01 In late May or early June 1989, Mr Gilmartin handed a cheque for IR£50,000 drawn on his personal bank account to Mr Flynn, then Minister for the Environment, at a brief meeting in Mr Flynn's office.

45.02 Both prior to and during his evidence to the Tribunal, Mr Gilmartin maintained that the IR£50,000 cheque had been given to Mr Flynn as a political donation for the Fianna Fáil Party. Mr Gilmartin maintained that he made this donation in specific circumstances and subsequent to a request which Mr Flynn had made for a substantial donation for Fianna Fáil.

45.03 Mr Flynn's evidence to the Tribunal was that while he received IR£50,000 from Mr Gilmartin, this was given as an unsolicited personal political donation and was never intended by Mr Gilmartin for the Fianna Fáil Party. Mr Flynn further denied that he had previously sought a donation from Mr Gilmartin.

45.04 The Tribunal examined in considerable detail the relationship between Mr Gilmartin and Mr Flynn, particularly in the period leading up to the payment of the said cheque in late May or early June 1989, as well as the circumstances

surrounding the payment, and the manner in which Mr Flynn dealt with it after its receipt. In particular, the Tribunal attempted to ascertain the purpose of the payment, its intended beneficiary, and the manner in which it was expended by Mr Flynn.

THE BACHELOR'S WALK/ARLINGTON RELATED CONTACT WITH MR FLYNN

45.05 For approximately three years commencing in October 1987, there was considerable contact between Mr Gilmartin and Mr Flynn, in Mr Flynn's capacity as Minister for the Environment. The initial contact was most likely a meeting between Mr Gilmartin, accompanied by his professional advisor Mr Forman, and Mr Flynn on 4 November 1987. This followed a letter sent by Mr Gilmartin to the Department of the Environment dated 21 October 1987, requesting a meeting relating to the then proposed Arlington development at Bachelor's Walk in Dublin. Mr Gilmartin's and Arlington's primiary focus in meeting Mr Flynn at that time was to lobby Mr Flynn, and by extension the Irish Government, to extend tax designation status pursuant to the Urban Renewal Scheme, to that portion of the Bachelor's Walk development site which had not already been designated under the - Scheme.[35] That purpose was achieved by early 1988, by which time the Government had extended the designated area to include the entire of the Bachelor's Walk development site.

45.06 The Tribunal was satisfied that between 1987 and January 1990, Mr Gilmartin, in his capacity as a joint venture partner and/or consultant with Arlington Plc, continued to have many dealings with Mr Flynn in relation to the proposed Bachelor's Walk development, including a number of meetings. Such meetings were on some occasions held on a one-to-one basis, while on other occasions Mr Gilmartin met Mr Flynn in the company of Arlington executives and their advisors.

THE QUARRYVALE-RELATED CONTACT WITH MR FLYNN

46.01 There was considerable divergence between the evidence provided to the Tribunal by Mr Gilmartin and that given by Mr Flynn as to the extent to which Mr Gilmartin discussed his proposed plans for Quarryvale with Mr Flynn.

46.02 The Tribunal was satisfied that Mr Flynn learned of Mr Gilmartin's plan to develop a major retail shopping centre on the Quarryvale site, and was, from an early stage, kept informed by Mr Gilmartin on an ongoing basis of the progress of those plans. In particular, the Tribunal was satisfied that much of Mr Flynn's

[35] Urban Renewal Act 1986.

knowledge about the Quarryvale project came from his discussions with Mr Gilmartin.

46.03 However, the Tribunal was additionally satisfied, having regard to the contents of Mr Owen O'Callaghan's memorandum of 4 November 1988, that Mr Flynn was also receiving information about Mr Gilmartin's plans from Mr Lawlor. It was noteworthy that as of December 1988, there was a passing reference to Mr Gilmartin's plans for Quarryvale within Mr Flynn's own department in a document prepared for him which dealt with tax designation and referred to the proposed Neilstown/Clondalkin Town Centre, and Mr O'Callaghan's plans for the proposed development. Furthermore, Mr George Redmond's recollection was that Mr Flynn was aware of Mr Gilmartin's plans for Quarryvale as early as September 1988.

46.04 By early February 1989, Mr Flynn certainly appeared to be aware of Mr Gilmartin's purchase of Mr O'Callaghan's interest in Merrygrove[36]. This purchase cleared the way for Mr Gilmartin to promote the development of a retail shopping centre on the Quarryvale site without fear of competition from the Neilstown lands (a designated town centre site under the 1983 Development Plan). Mr Redmond told the Tribunal that at the second Urban Renewal Task Force meeting, organized by the then Taoiseach, Mr Charles J. Haughey, with Government ministers and officials of the County Council (held on 2 February 1989), Mr Flynn advised the meeting that Mr Gilmartin had '*taken out*' Mr O'Callaghan in relation to the Neilstown/Quarryvale site.

46.05 By early 1989, with the threat of the development of the Neilstown site apparently out of the way, Mr Gilmartin's quest to promote the development of Quarryvale as a retail shopping centre began in earnest. Mr Gilmartin agreed that part of the then strategy for Quarryvale included the pursuit of urban renewal tax designation and/or enterprise zoning status for the site. While he maintained in his evidence that Quarryvale did not need tax designation for its success, and that any development that required tax designation was not worth being built, Mr Gilmartin nevertheless conceded that tax designation, if granted, would have been '*tremendous*' and *'a huge bonus'* for Quarryvale. It was also apparent that when, in late 1989/early 1990, Mr Gilmartin approached AIB for a loan facility for Barkhill, he conveyed to the bank his belief that Quarryvale was to receive tax designation status.

46.06 Mr Gilmartin told the Tribunal that in the course of his meetings with Mr Flynn as Minister for the Environment the issue of tax designation and/or enterprise zoning status for Quarryvale was discussed between them throughout

[36] The company which held the option interest in the Neilstown lands.

1989 and into 1990. He claimed that Mr Flynn gave him assurances that Quarryvale would be granted tax designation as, indeed, did a number of other ministers, including Mr Bertie Ahern and Mr Brian Lenihan Snr.

46.07 However, Mr Flynn denied that he had ever discussed the issue of tax designation or enterprise zoning status for Quarryvale with Mr Gilmartin. According to Mr Flynn, his focus in the course of his meetings with Mr Gilmartin had been at all times on the proposed Arlington development at Bachelor's Walk. Mr Flynn suggested that, insofar as the issue of Quarryvale was raised, Mr Gilmartin had raised it in order to keep Mr Flynn informed of the progress of land acquisition relating to that site.

46.08 The Tribunal rejected Mr Flynn's evidence that he had not discussed either tax designation or enterprise zoning status for Quarryvale with Mr Gilmartin. Even in the absence of Mr Gilmartin's sworn testimony, which the Tribunal accepted, there was documentary evidence which indicated clearly the extent to which tax designation and enterprise zoning had been discussed between Mr Gilmartin and Mr Flynn from mid-1989 until mid-1990.

46.09 A note contained in Mr Gilmartin's diary/notebook for 16 May 1989, clearly related to Mr Gilmartin's intention to telephone Mr Flynn about Quarryvale. That note recorded that topics for discussion were to be the degree of Government support for Quarryvale, the method of application for planning permission for the site, and the possibility of designating the site for tax incentives. On Mr Flynn's own admission, he had a meeting with Mr Gilmartin on 23 May 1989, although he maintained that this was a short meeting during which he received a donation of IR£50,000 from Mr Gilmartin for his political campaigns. Mr Gilmartin, in evidence, agreed that this meeting took place and maintained that Quarryvale was the topic of discussion. Mr Gilmartin denied that it was at this meeting that he gave Mr Flynn the IR£50,000 cheque. He believed that he had done so at another later meeting, held in the first week of June 1989.

46.10 By mid to late 1989, Mr Gilmartin had informed a number of third parties about his meetings with Mr Flynn regarding Quarryvale.

46.11 A memorandum of a telephone call by Mr Gilmartin to Irish Intercontinental Bank on 28 September 1989, referred to Mr Gilmartin having informed the bank as follows:

> *Following from earlier contact I spoke with Tom Gilmartin of the above for an update. Tom is in the process of acquiring a 178-acre site at the junction of the New Western Parkway and Galway roads in the*

Palmerstown area of Dublin. The site is currently zoned commercial/industrial and, inter alia, he plans a major shopping centre. However, critical to Tom's plans is obtaining designated status for the site and in this regard Tom advised that he was meeting with the government minister responsible today to further his claim. He is absolutely confident that designation will be forthcoming giving the prominence of this site and its location—assurances already received.

46.12 Mr Flynn's diaries for 1989 recorded three further meetings with Mr Gilmartin, on 25 October, 8 November and 21 November, 1989.

46.13 On 7 November 1989, Mr Kiaran O'Malley, Mr Gilmartin's Planner, wrote to Mr Gilmartin in the following terms:-

Dear Tom,

Herewith copy of the Urban Renewal Act, 1986, which regulates the Custom House Docks Development. Under this Act the Custom House Docks Development Authority (CHDDA) consulted with the Planning Authority in preparing a development scheme which was then sent to the Minister for the Environment for his approval, and off they went , i.e. no planning application was required. I don't quite see how the same thing could be done in our case. Could the Minister set up another authority for your area, to do more or less what the CHDDA did in the docks? or what? If not, planning will still be required!!!

46.14 This letter was clearly intended to assist Mr Gilmartin in formulating submissions to be made to Mr Flynn. On 16 November 1989, Mr O'Malley followed up that letter by faxing to Mr Gilmartin a document which contained information relating to the CHDDA. The portion of the document highlighted by Mr O'Malley for Mr Gilmartin's attention read as follows:

In accordance with its statutory obligation under the Urban Renewal Acts the Authority published its planning scheme on June 4th, 1987. This Scheme has an important Planning Control function. Following approval of the Planning Scheme by the Minister for the Environment, the carrying out of any development in the area which is consistent with this Planning Scheme and which is so certified by the Authority does not require any further Planning Permission. Bye law Approval must be sought from Dublin Corporation in the normal manner for all phases of the construction.

46.15 The Tribunal believed it likely that at one or other of his meetings with Mr Flynn on 8 and 21 November 1989, Mr Gilmartin raised the prospect of the Quarryvale site being granted enterprise zoning status analogous to the CHDDA.

46.16 On 30 November 1989, approximately nine days after Mr Gilmartin met Mr Flynn, documentation prepared by the Bank of Ireland (from whom Mr Gilmartin was then seeking funding for Quarryvale) recorded that Mr Gilmartin advised the bank as follows: '*On the issue of planning, he states that he has assurance from within the Government (Taoiseach) that the site will be granted 'Enterprise Status' by early spring which will obviate the need to go through the regular planning process. He has however, nothing in writing to this effect.'*

46.17 On 12 December 1989, an Irish Intercontinental Bank credit application document relating to Mr Gilmartin noted that '*Gilmartin is confident at having the site designated as an incentive area under the terms of the Urban Renewal Act, 1986. We regard this as prime real estate with undoubted potential even without designation.'*

46.18 The Tribunal was satisfied that tax designation and/or enterprise zoning status for Quarryvale was discussed with Mr Flynn in 1989 and that Mr Gilmartin had reason to believe that tax incentives for Quarryvale would be forthcoming. This fact was quite evident from AIB bank documentation relating to the internal bank loan facility application for Barkhill Ltd in early 1990, and the evidence of Mr Eddie Kay of AIB.

46.19 It was noteworthy that, while Mr Flynn admitted to meeting Mr Gilmartin on numerous occasions throughout 1989 and 1990, the Department of the Environment did not appear to have any record of such meetings. This was because, as acknowledged by Mr Flynn, no civil servant was present at any of the meetings where Mr Flynn met Mr Gilmartin on a one-to-one basis and Mr Flynn himself did not prepare notes or memoranda in relation to such meetings.

46.20 Mr Kay's note of a discussion he had with Mr Gilmartin in early December 1989, included the following:

> *Tom Gilmartin told me that he is going ahead with the Palmerstown development and is also involved with Arlington and the Batchelors Walk Project and holds 20% of it. He requires a short-term facility of 6 million (8 million)*[37] *to get to the project to the planning stage. He has a number of funds interested in coming in with him but he wishes to wait for the site to obtain designated status before entering into detailed negotiations with the funds. He also has held detailed discussions with the government and he expects to be able to short circuit the planning process by getting a similar planning status to the Custom House Docks, i.e. once the design of the project is accepted by the Government, there would be no planning objections entertained.*

[37] The figure '6 million' was amended to '8 million' by handwritten note on the document.

46.21 By 19 January 1990, the Credit Committee of AIB, which was recommending the provision of a loan of IR£8.5m to Mr Gilmartin observed:

> '*Tom Gilmartin is extremely confident that the Palmerstown site will receive designated status as part of the 1990 budget proposals and also be declared an enterprise zone, with significant planning benefits.'*

46.22 The same document under the heading *'Commercial Risks'* observed the following:

> *Designation: Designation of the site would generally enhance the value of the site and would make it very attractive for development with purchasers/lessors of units obtaining the same tax incentives as the Custom House Docks and Tallaght designated areas.*
>
> *This week the Government Press Office issued statement by junior minister stating additional designated areas for the Dublin region would be announced as part of the Budget in two weeks time. Only credible new retail development centres would be Palmerstown, Clondalkin (O'Callaghan properties) and Blanchardstown (Green Properties). Deal already agreed with O'Callaghan on Clondalkin and Palmerstown in a far superior site to Blanchardstown site.*
>
> *Minister of Environment to telephone us to confirm designated status will be obtained for Palmerstown site in the Budget 1990.*

46.23 Mr Gilmartin believed that he had not arranged with AIB for Mr Flynn to telephone the bank to confirm designation for Quarryvale. Likewise, Mr Flynn denied that he had ever had contact with AIB in relation to this matter. Mr Kay told the Tribunal that AIB did not contact Mr Flynn, nor did Mr Flynn contact AIB.

46.24 In a further memorandum of 2 March 1990, detailing his contacts with Mr Gilmartin, Mr Kay noted:

> *Phone conversation with Tom Gilmartin on 2/3/90.*
>
> *He told me that he is expecting a call from Minister Flynn to travel to the West to discuss the position with him. He now believes that the Government may take a decision on the designation on the week commencing 25th March but it is unlikely to be announced until the following week.*

46.25 While Mr Gilmartin disputed that he ever had an arrangement to meet with Mr Flynn in the West of Ireland, as suggested by the aforesaid note, he accepted that at that time there were ongoing discussions regarding tax designation between himself and Mr Flynn.

46.26 In advance of the April 1990 Budget, Mr Flynn was actively involved in his capacity as Minister for the Environment in the consideration of an extension of the Urban Renewal Scheme for certain areas in and outside Dublin. As was clear from a Department of Finance document dated 13 March 1990, Mr Flynn at that time was promoting four areas within the Dublin area for tax designation. Mr Flynn's proposals did not include Quarryvale or Blanchardstown. When the Government decision on the extension of the Urban Renewal Scheme was made on 26 April 1990, and announced by Mr Flynn on 1 May 1990, neither Quarryvale nor Blanchardstown was included.

46.27 There was no evidence before the Tribunal that the question of tax designation status for Quarryvale was ever seriously considered by the Department of the Environment, or the Department of Finance, in the lead-up to the April 1990 Budget. However, it was recognised within the Department of the Environment that in the, admittedly unlikely, event that either Blanchardstown or Quarryvale were to receive tax designation, it would follow that the other should also receive designation. In evidence, this was referred to as parity of treatment for the two developments.

46.28 It appeared to the Tribunal that by April 1990, Mr Gilmartin was effectively being weaned off any expectation of tax designation or enterprise zoning status for Quarryvale, at least in the short term. Mr Kay made the following note of a telephone conversation he had with Mr Gilmartin:

> *Phone conversation with Tom Gilmartin on 11/4/90.*
>
> *Tom Gilmartin told me that he met Padraig Flynn on 11th and discussed the up to date position in relation to the Palmerstown site. Flynn was generally positive and stated that Gilmartin would be 'pleasantly surprised within the next three weeks.' He apparently would not elaborate on this and it appears not to mean designation. Flynn was adamant that Gilmartin proceed as soon as possible to apply for outline planning permission and to get the proposed development generally known. It appears that the Government believe that this is vital before they can make any move to be seen to assist the project as of now, no public perception of the potential is around and in addition, there is the situation whereby it contravenes existing zoning on the site. . . .*

46.29 Mr Flynn told the Tribunal that he was unable to recollect the topic discussed with Mr Gilmartin on 10 April 1990,[38] but denied (notwithstanding his

[38] In his statement to the Tribunal of 26 October 1998, Mr Flynn recalled that he and Mr Gilmartin met on 10 April 1990. In the course of his evidence, Mr Flynn agreed that when compiling his statement he had the benefit of his 1990 diary (which he stated was subsequently mislaid and thus was not available to the Tribunal).

lack of recollection) that the subject matter referred to in Mr Kay's memorandum was discussed.

46.30 In a memorandum prepared by Mr Gilmartin's Auditors, Deloitte & Touche, in relation to a meeting they had with him on 11 April 1990, the following was noted: *'Tom has now to go to the County Council for planning permission before the government will designate his land.'*

46.31 In a letter dated 12 April 1990, from Camargue Communications (Mr Gilmartin's PR Advisors) to Mr Forman, the status of Quarryvale (therein referred to as West Park) was referred to in the following terms:

> *Plans were discussed up to a year ago with the Minister of the Environment and continue to this day. The development has strong political connotations. Initially there was a very positive response and it seemed the scheme would gain designated area of status fairly easily. DAS* [Designated Area Status] *endows a development scheme with the following benefits:*
> *100% capital allowances*
> *Double rent allowance*
> *Rate free holiday and other grants*
> *Far less planning restrictions.*
> *In the last weeks though, the Government's position has become more cautious. The site's scale, location and magnitude in terms of the overall Irish economy will have a strong political impact and those in a position to take decisions in its favour are probably more cognisant of this fact than they were a year ago. The high profile of any decisions taken and the effect of sustained lobbying have both created an atmosphere of caution.*
> *Avoiding the planning process via achieved Designated Area Status is therefore now unlikely.*
> *Another problem is that if West Park is given Designated Area Status the government will be obliged to grant Green Property's site the same. One school of thought is that the government is holding back from granting West Park DAS because it does not want to provide Green Property's with a similar advantage until West Park is more advanced . . .*

46.32 Under the heading *'West Park current objectives'* Camargue stated as follows:

> *On the advice of the Minister of the Environment, the current objective is to go public, to get a planning application in for the revised master plan and to undertake all the activities necessary to facilitate planning approval.*

It is anticipated that the application will then go to appeal stage (there is an independent Appeals Board in Ireland) and that the Government may then step in and give the site designated area status.
Submitting the initial planning application allows the government to test public reaction . . .

46.33 It was clear from these documents that by 12 April 1990, three entities associated with Mr Gilmartin's Quarryvale project, namely, his Bankers, his Auditors, and his Public Relations Advisors, had been informed by Mr Gilmartin of the outcome of recent discussions with Mr Flynn. The Tribunal had no reason to suspect that Mr Gilmartin was relying on anything other than what he was being told by Mr Flynn in April 1990, in relation to the tax designation issue.

46.34 In his evidence, Mr Flynn distanced himself from any hint or suggestion that in his dealings with Mr Gilmartin the issue of tax designation or enterprise zoning status for Quarryvale had arisen.

46.35 The Tribunal was satisfied that the extent to which Mr Flynn sought to deny such discussions was prompted by his desire to dismiss or reject any suggestion or inference that his receipt of a claimed personal donation of IR£50,000 from Mr Gilmartin might be linked in any way to discussions between himself and Mr Gilmartin on the issue of tax designation for Quarryvale.

46.36 Although Mr Gilmartin was adamant that tax designation and enterprise zoning status for Quarryvale featured in some of his discussions with Mr Flynn, he vehemently disputed any suggestion that the donation of IR£50,000 made by him in May/June 1989 to Mr Flynn, for the benefit of the Fianna Fáil Party was in any way associated with the issue of tax designation or other incentives for Quarryvale, or that it was a bribe. Mr Gilmartin contended that the IR£50,000 was a political donation intended for the Fianna Fáil Party.

46.37 On Day 726, Mr Gilmartin was asked the following question:

'Q. *Did you leave that cheque with Mr Flynn in the belief that by making that payment your path for zoning or tax incentives for this site would be smoothed or relieved in some way, Mr Gilmartin?*
A. *No, I didn't believe that at all. What I wanted smoothed was the interference from certain elements that was demanding money of me and who I would not pay.'*

46.38 Mr Paul Sheeran, Mr Gilmartin's Bank Manager and friend, told the Tribunal that Mr Gilmartin spoke to him about the payment shortly after making it. Mr Sheeran also explained his understanding of Mr Gilmartin's attitude to the question of tax designation for Quarryvale. He said:

'... he had a very basic philosophy that if the development did not stand up without a tax designation that it really wasn't much good in the first place and he wouldn't have been that mad about it. He saw no reason, and I think the reason I mentioned tax designation there, I think the reason Mr Gilmartin mentioned it, I think Mr Monahan at the time was lobbying very hard or may have achieved tax designation for Tallaght. I think Green Properties at that time were also lobbying for tax designation for their shopping centre. I don't know if they got it or not. And he saw no reason why he shouldn't get tax designation or try to get tax designation, he recognised the fact that it would be added value for Quarryvale, that was the context in which the matter was discussed.'

46.39 Mr Sheeran said that he did not recollect Mr Gilmartin conveying to him his belief or hope that a donation to the Fianna Fáil Party would ease or smooth his path in relation to tax incentives or zoning. Mr Sheeran told the Tribunal of his understanding as to the reason for the payment, having spoken to Mr Gilmartin shortly after the payment. He said, referring to Mr Gilmartin:

'*His primary object in making a donation to Fianna Fáil was to try and ensure that the people that were putting obstacles in his way for whatever reason, because they weren't being paid money or were looking for money, would be admonished or disciplined or eliminated by the Fianna Fáil party.'*

46.40 Later in his evidence, Mr Sheeran, again referring to his discussion with Mr Gilmartin shortly after the payment was made, stated:

' . . . he was meeting opposition, he was being asked for bribes, it was as simple as that. There were certain people standing in his way and he had formed a view, I feel from some senior politicians in Fianna Fáil, that if a donation was made to the party that they would deal, or was hoping that they would deal with these people to stop them interfering or seeking money, and this is what he wanted.'

46.41 Mr Gilmartin told the Tribunal that he had been promised that the '*three sites'* (a reference to Quarryvale, Blanchardstown and Tallaght) would get tax designation. He said he had absolute assurances from '*several ministers*'. He named the ministers who provided this assurance to him as Mr Lenihan (Snr.), Mr MacSharry, Mr Ahern and Mr Flynn. He said he was also told by Dublin Corporation that the '*three towns*' would get tax designation. Mr Gilmartin said this view was also held by Mr Liam Lawlor. Mr Gilmartin reiterated over and over again that it was his view at the time that Quarryvale did not need tax designation in order to make it a success, but that if granted, it would have been a bonus.

THE PROVISION OF THE IR£50,000 CHEQUE TO MR FLYNN

47.01 Mr Gilmartin outlined the circumstances which led him, in late May or early June of 1989, to hand Mr Flynn a cheque for IR£50,000, which he maintained was intended for the Fianna Fáil Party and was given in response to an earlier request made by Mr Flynn for a substantial donation to the Fianna Fáil Party.

47.02 According to Mr Gilmartin, in the period from February to June 1989, he had a number of meetings with Mr Flynn in the course of which he informed Mr Flynn of problems he was encountering in respect of his Quarryvale project. On the evening of 22 February 1989, the day of the aborted meeting with Redmond, or possibly the following day, Mr Gilmartin met Mr Flynn and advised him of the efforts by Mr Redmond and Mr Lawlor to, as he believed, frustrate the Quarryvale project. He also told Mr Flynn of demands for money being made of him by Mr Lawlor, Cllr Hanrahan and Mr Redmond.

47.03 While Mr Gilmartin was uncertain as to whether or not he had told Mr Flynn on that occasion of the demand for IR£5m that had been made within the confines of Leinster House at the beginning of February 1989, Mr Gilmartin's evidence was that on 22 February 1989, he had said to Mr Flynn words to the effect that had he succumbed to the demands then being made of him for money, it would have cost him IR£7m before he even commenced the project.

47.04 On 19 April 1989, in the course of a scheduled meeting between Mr Flynn, Mr Gilmartin and Mr Dadley for the purpose of discussing the Arlington/Bachelor's Walk project, Mr Gilmartin again informed Mr Flynn of the '*road block*s', obstacles and interference being put in his way in relation to the Quarryvale project, and, in particular, Mr Redmond's interference and the '*game*s *that he was playing*'. According to Mr Gilmartin, he had no compunction in speaking to Mr Flynn about such matters in the presence of Mr Dadley, as Mr Gilmartin had informed Mr Dadley of what was then happening relating to his Quarryvale project. Mr Flynn's response to Mr Gilmartin was to let the Gardaí deal with such issues.[39] Mr Flynn's only other response, according to Mr Gilmartin, was to suggest that a substantial contribution to Fianna Fáil from Mr Gilmartin '*might help curb*' such activities.

47.05 On Day 460, Mr Gilmartin was questioned by Tribunal Counsel about Mr Flynn's request for a substantial contribution for Fianna Fáil, as follows:

[39] By 19 April 1989, the Garda investigation into Mr Gilmartin's complaints had been underway for approximately six weeks.

'Q. 82 *In your statement you say that you referred to the demands for money which you had received and the trouble which Mr Redmond had been causing.*

A. *Yes, I opened up. I was quite incensed at the fact that I had been to the Gardaí—the thing went to the Gardaí. It was Mr Haughey that took it to the Gardaí—Mr* [Seán] *Haughey* (Snr) *and Mr Feely, and nothing had happened and there was no effort by anybody in Leinster House to do anything about what was going on.*

Q. 83 *What did Mr Flynn say in response?*

A: *Pardon?*

Q. 84 *What did Mr Flynn say in response?*

A. *Well, he said that it was a Garda matter and I had—you know, they had to leave it to them and that was all, so then he said—I think he aimed it at both of us, I don't know what Mr Dadley's recollection of that is, but he aimed it at both of us that they expected a substantial donation to the party. The party was—it was in deep problems financially, a figure of IR£3m or something in debt was mentioned, and they expected a substantial donation.'*

47.06 Mr Gilmartin told the Tribunal that, although Mr Flynn's request for a donation had been made in the presence of both himself and Mr Dadley, it was his belief that the request was intended for him, because Mr Flynn had stated that a substantial donation *'could help to curb these activities'*. Mr Gilmartin stated that he believed that he was being asked for money in order to get '*a level playing field*' in relation to his Quarryvale project.

47.07 Mr Gilmartin also told the Tribunal that the issue of Mr Flynn's request for a substantial contribution was discussed between himself and Mr Dadley, with the latter stating *'everybody's looking for money, déjà vu.'*

47.08 Mr Flynn denied that he requested or suggested to Mr Gilmartin that he make a substantial donation or that he raised any such issue with Mr Gilmartin.

47.09 Mr Dadley told the Tribunal that while he could not *'swear'* to the fact that Mr Flynn had requested a substantial donation in his presence at the meeting on 19 April 1989, it was, he said, nonetheless *'quite likely'* that such a request had been made. Mr Dadley told the Tribunal that he knew *'requests were made to Mr Gilmartin for donations'* and that *'suggestions were put forward that donations would be gratefully received.'*

47.10 The Tribunal was satisfied that Mr Flynn requested that Mr Gilmartin make a substantial donation, most probably at their meeting on 19 April 1989,

and that the request was made on the understanding that steps would be taken to ease or remove obstacles and difficulties then being faced by Mr Gilmartin in relation to the Quarryvale project, which Mr Gilmartin perceived to be improper or unlawful.

47.11 Mr Gilmartin told the Tribunal that in the immediate aftermath of the 19 April 1989 meeting and Mr Flynn's request for a donation, he had decided against making any donation, although he said it was likely that he had responded to Mr Flynn's request by stating that he would consider doing so. Later, however, Mr Gilmartin changed his mind about making a donation. This change of mind was prompted, according to Mr Gilmartin, by his ongoing concern about improper interference with his attempts to acquire the Dublin Corporation Irishtown lands. Mr Gilmartin said that he was made aware, in the course of his dealings with the Corporation officials during the tendering process for the lands which was ongoing from mid-April 1989, of continued interference in that process and of the possibility that the sale of the lands might be withdrawn by the Corporation.

47.12 Mr Gilmartin told the Tribunal that, on, he believed, the evening of 2 June 1989, in the course of his discussion of these matters with Mr McLoone, the Corporation's Chief Valuer, he informed Mr McLoone of the various demands for money that had been made of him by a number of parties, and told him about the suggestion that had been made to him by Mr Flynn—to wit, that if Mr Gilmartin gave a donation to Fianna Fáil, it might help *'smooth out'* the problems he was encountering. On being informed that Mr Gilmartin was then considering making such a donation, Mr McLoone, according to Mr Gilmartin, had exclaimed *'they'll take your f------ money and they'll still do nothing for you.'*

47.13 In his evidence, Mr McLoone recalled being told on a number of occasions by Mr Gilmartin that he had been asked to make a substantial donation to Fianna Fáil and that he was considering doing so. Mr McLoone confirmed to the Tribunal that he cautioned Mr Gilmartin against making such a donation.

47.14 Mr McLoone told the Tribunal that, at the time Mr Gilmartin was considering making such a donation, he, Mr McLoone, was aware that Mr Redmond was interfering in the sale of the Dublin Corporation lands to Mr Gilmartin. He was also aware that this and other matters had been the subject of complaint by Mr Gilmartin to Messrs Seán Haughey and Frank Feely and that such complaints were the subject of a Garda inquiry. Moreover, Mr Gilmartin had told him that he was not cooperating with the Garda inquiry because he feared that if he did there would be twice as many obstacles placed in his way. By this

time, Mr Gilmartin had also told Mr McLoone about the demand for IR£5m made of him in Leinster House some months earlier.

47.15 Throughout his discussion with Mr Gilmartin, Mr McLoone understood that Mr Gilmartin's intention was to make a donation to the Fianna Fáil Party in anticipation that obstacles to the Quarryvale project would be removed as a consequence.

47.16 Mr Gilmartin told the Tribunal that on resolving to make a donation to the Fianna Fáil Party, he telephoned Mr Gerry Rice, Mr Flynn's private secretary, to see if Mr Flynn was available for a meeting. According to Mr Gilmartin, he subsequently met Mr Flynn in his office in the Custom House. Mr Gilmartin believed that this meeting probably took place on either 1 or 2 June 1989, or at the very latest within the early days of June 1989. The meeting was brief, as Mr Flynn appeared to be in a hurry. Mr Gilmartin said he told Mr Flynn of his decision to make a donation to the Fianna Fáil Party, and wrote the cheque. He asked Mr Flynn to whom should he make the cheque payable, to which Mr Flynn replied *'leave it, leave it on the desk'*. Mr Gilmartin left the payee blank and left the cheque on Mr Flynn's desk. This cheque was not one of his standard cheques, as on the occasion in question, he had no cheque book with him and so had arranged with Mr Sheeran to collect a Bank of Ireland cheque on the bank's College Green branch. The cheque in question was, however, processed through Mr Gilmartin's personal account, and its value (being IR£50,000) was subsequently debited to that account.

47.17 Mr Gilmartin was adamant that he handed the IR£50,000 cheque to Mr Flynn in his capacity as a Treasurer of Fianna Fáil and in response to the earlier request made of him by Mr Flynn for a *'substantial contribution'* to the Fianna Fáil Party. Mr Gilmartin assumed that Mr Flynn would in due course pass on the cheque to the Fianna Fáil Party.

47.18 Mr Gilmartin explained his reason for acceding to Mr Flynn's request for a donation to the Fianna Fáil Party in the following terms:

> *'All I wanted was to give some chance to the scheme getting off the ground because, after all, it was creating 20,000 jobs; after all I risked everything to put it there, including my name. And it had been suggested to me by a Government official that I had to pay to get justice, so I felt that I had no option but to do that.'*

47.19 Commenting on the microfiche copy of the cheque made available to the Tribunal, Mr Gilmartin stated that the word '*cash*' on the cheque was not written by him, and he reasserted his claim that the payee section of the cheque had

been left blank at Mr Flynn's direction. Mr Gilmartin denied Mr Flynn's assertion to the Tribunal that, when handing over the cheque, Mr Flynn asked if the cheque was intended for Fianna Fáil or for himself, or that he, Mr Gilmartin, had stated to Mr Flynn that the cheque was intended for use by Mr Flynn in his political campaigns.

47.20 No receipt or acknowledgement was sought by Mr Gilmartin or sent to him, either by Mr Flynn or by the Fianna Fáil Party.

47.21 Mr Paul Sheeran told the Tribunal that shortly after the event he was informed by Mr Gilmartin that he had given IR£50,000 to Mr Flynn for the Fianna Fáil Party. At no time did Mr Gilmartin state to him that the payment had been made to Mr Flynn personally. Mr Sheeran's understanding, based on information provided to him by Mr Gilmartin, was that the payment was made by Mr Gilmartin *'to smooth his path through tax incentives and zoning etc.'*, and to motivate senior Government members to remove and eliminate problems being placed in the way of the Quarryvale project. According to Mr Sheeran, Mr Gilmartin was under the impression that if he paid the IR£50,000 to the Fianna Fáil Party, *'corrupt demands'* then being made of him would cease.

47.22 Mr Sheeran told the Tribunal that his understanding of why Mr Gilmartin had made a donation of IR£50,000 to Fianna Fáil was:

> *'. . . that somewhere along the line he was led to believe that if he made a donation to Fianna Fáil it would smooth the path for him. More in a sense that he wanted to—it was in connection with the difficulties he was having with the councillors and the people that were looking for money from him, and he was hoping that this was going to stop by making a payment to Fianna Fáil, he was led to believe that this, these demands for money would cease. That was my primary understanding of it.'*

47.23 Mr Sheeran's statement of 10 February 2004 to the Tribunal referred to payment of the IR£50,000 cheque in the following terms:

> *In respect of the payment of £50k to Mr Padraig Flynn, I was made aware of this payment to Fianna Fáil. It was made known to me almost immediately the cheque was issued. In what ever way, it had been made clear to Mr Gilmartin that a donation to Fianna Fáil party funds could possibly ease or smooth his path re: Tax Incentives/ Zoning etc.*
>
> *My understanding at the time and since, is that Mr P. Flynn advised Mr Gilmartin that there was no guarantee or promise on the zoning/planning issues. It was simply a contribution to Fianna Fáil with no strings attached and no promises or obligations by the Fianna Fáil party or individual*

members. This is the best recollection as told to me by Mr Gilmartin at the time of the donation.

47.24 In response to questioning by Counsel on behalf of Mr Flynn, Mr Sheeran described his February 2004 statement as:

*'..badly worded by me..(*Mr Gilmartin) *was meeting opposition, he was being asked for bribes, it was as simple as that. There were certain people standing in his way and he had formed a view, I feel from some senior politicians in Fianna Fáil, that if a donation was made to the party that they would deal, or was hoping they would deal with these people to stop them interfering or seeking money, and this is what he wanted'.*

47.25 Mr Sheeran also stated that it was his understanding that *'There was nothing promised by way of tax incentives, zoning, planning or anything else on behalf of Mr Flynn or on behalf of the government, absolutely not'.* He also stated:

'...there was no such payment made for the purpose of obtaining favours.....Other than to eliminate the obstacles by people seeking corrupt payments from him, on a variety of fronts'.

47.26 In response to questions put in cross-examination by Counsel for Mr O'Callaghan, and refuting the suggestion that Mr Gilmartin's purpose in giving the IR£50,000 was to have certain obstacles removed from the planning process, Mr Sheeran stated:

'..Mr. Gilmartin was not seeking to have obstacles removed in the planning process, Mr. Gilmartin was seeking to have the people who were creating artificial obstacles or otherwise, people who were looking for bribes, corruption or otherwise, he wanted that stopped. That was the primary purpose and nothing else.'

47.27 Again, responding to questioning by Mr Redmond, Mr Sheeran clarified that Mr Gilmartin's purpose in making the donation was not to eliminate people who were '*making objections'* to his proposals but to '*..eliminate people who were looking for money to assist in planning.'*

47.28 Challenged by Mr Lawlor in the course of his cross-examination that he had sought to change the content of his February 2004 statement, claiming that it had been made clear by Mr Gilmartin to him that the payment of IR£50,000 to Fianna Fáil '*..could possibly ease or smooth his path re Tax Incentives/Zoning etc.'*

Mr Sheeran again stated that Mr Gilmartin:

'*..was hoping to get the cooperation of senior Fianna Fail people to either eliminate, control or discipline or do something with the members of*

Dublin County Council who were looking for substantial amounts of funds, to assist him in getting planning permissions'.

Mr Sheeran also stated:

'It was my impression and would have, in passing, that if you didn't pay these people to cooperate with you then they were not going to cooperate with you, and in fact would actively oppose anything that you were doing, but you either paid and got the cooperation, or you didn't pay and you didn't get the cooperation. So he was hoping that the government, the ruling party or the government shall we say the major, I don't know what the state of the parties were at that stage in any event, shall we say the government party, primarily Fianna Fail, would be able to curtail these activities'.

47.29 Asked by Mr Lawlor if Mr Gilmartin had used the words *'tax incentive'* and *'zoning'* when explaining to him why he had made the IR£50,000 contribution, Mr Sheeran replied:

'It is not a yes or no answer. I certainly have no recollection of Mr. Gilmartin saying to me that he gave it to get tax incentives or zoning but I don't, if you want me to give you a point blank denial, I will give it to you, but I don't know precisely the terminology that he used, my overall impression, the purpose for the for the donation, the Fianna Fail was exactly as I have stated to this Tribunal. It was to curtail the activities of Dublin County Councillors who were seeking money to aid and abet him in getting planning for a shopping centre. I don't think I can make it any clearer than that'.

47.30 On Day 475, Mr Gilmartin himself addressed this issue in the course of his cross-examination by Mr Lawlor:

Q. 'Did you utter the words to Mr. Sheeran that you paid the 50,000 pounds to smooth the way for zoning?'

A. 'No I made a lot more statement than that to him about the crooked…'

Q. 'No' –

CHAIRMAN: 'No but Mr. Gilmartin did you say those words?'

A. 'I possibly did.'

CHAIRMAN: *'Or something close to those words?'*

A. 'I possibly did. That they would, that it would smooth the way, smooth my path through the quagmire of corruption and the zoning etcetera'.

47.31 Mr McLoone stated that he recalled Mr Gilmartin discussing the IR£50,000 payment with him on a number of occasions and it was his recollection that he tried to dissuade Mr Gilmartin from making the payment.

47.32 Mr Flynn told the Tribunal of his belief that the meeting with Mr Gilmartin at which the cheque was handed over took place on 23 May 1989, in Leinster House. Mr Flynn's diary for that date recorded a meeting with Mr Gilmartin without reference to any specific location and Leinster House records confirmed that Mr Gilmartin visited on that date at 3.00pm to see Mr Flynn. According to Mr Flynn, Mr Gilmartin arrived at the meeting with a cheque, which he then handed to Mr Flynn. When he looked at the cheque, Mr Flynn said he initially thought it was for a sum of IR£5,000, and said to Mr Gilmartin *'there was no need for that'*. When he again looked at the cheque he realised it was for IR£50,000, and he remarked to Mr Gilmartin that *'there was absolutely no need for that'.*

47.33 Mr Flynn further stated, in the course of his evidence:

> *'And I asked him—I specifically asked him, is this for the Party and he said no it's for you, for your political campaigns and I said well you know I said that I have done nothing for you and I can't do anything for you and there can be no strings attached to any political contribution you make. He agreed wholeheartedly, he said he understood all that. But he thanked me and that was it.'*

47.34 According to Mr Flynn, the cheque which was handed to him by Mr Gilmartin had already been made payable to *'cash'*, and Mr Gilmartin had not left the payee space blank, as he alleged. Mr Flynn told the Tribunal that, although the cheque was for an amount of IR£50,000 (a sum approximately equal to the annual salary of a government minister), he was not concerned about accepting such a cheque, or about the fact that, according to Mr Flynn, it was made payable to '*cash.*'

47.35 Mr Flynn said that he did not inform anyone in the Fianna Fáil Party of his receipt of the IR£50,000 cheque, nor did he formally record or acknowledge its receipt.

47.36 Mr Flynn confirmed that the dealings he had with Mr Gilmartin were undertaken by him in his capacity as the Minister for the Environment. He accepted that had he not held this position he probably would never have encountered Mr Gilmartin, and that other than these dealings, no political or business relationship, friendship or connection had ever existed between them.

47.37 Mr Flynn acknowledged that at the time the cheque for IR£50,000 was handed to him by Mr Gilmartin he, Mr Flynn, was aware, both from Mr Gilmartin and from third parties (Mr Seán Haughey, Mr Feely and the Garda Siochána), that Mr Gilmartin had made allegations of corrupt demands for money against

members of the Fianna Fáil Party (namely Mr Lawlor and Cllr Hanrahan) and of the wrongful receipt of monies against Mr Lawlor.

47.38 Mr Flynn also accepted that, irrespective of what Mr Gilmartin himself told Mr Flynn either on 22 February 1989, or the day after, by the time he accepted the cheque for IR£50,000 he had had sight of Mr Seán Haughey's and Mr Feely's memorandum of their meeting with Mr Gilmartin on 24 February 1989. That memorandum noted complaints then being made by Mr Gilmartin regarding the demand for IR£5m and the fact that Mr Lawlor was in receipt of IR£3,500 per month from Arlington. Mr Flynn told the Tribunal that, notwithstanding knowledge of these matters, he had no concern in accepting the cheque for IR£50,000 from Mr Gilmartin.

47.39 Mr Gilmartin told the Tribunal that his decision to donate IR£50,000 to the Fianna Fáil Party was made in the hope that the on-going difficulties and obstacles he was encountering in mid-1989 in relation to the Quarryvale project, would cease. Mr Gilmartin rejected any suggestion that these difficulties involved the failure, to that point in time, to achieve tax designation for the site, and he vehemently rejected a suggestion that his payment of IR£50,000, was a *'bribe'.* Mr Gilmartin maintained that in early June 1989, the difficulty which he needed to have addressed was the continued interference with his efforts to acquire the Irishtown lands from Dublin Corporation, and his concern that Mr Redmond or Mr Lawlor, or both, might take some action which would prevent his tender being accepted.

47.40 Mr Gilmartin, in reply to questions put to him in cross-examination stated:

> '*I gave the donation to the party out of desperation at the time because of the games that was going on*'. Mr Gilmartin described as absolutely *'despicable'* the fact that, as he saw it, he had to pay money to get justice, and to get *'a level playing field.'*

47.41 Mr Gilmartin, in the course of cross-examination by Mr Paul Sreenan SC (for Mr O'Callaghan), explained what he meant by the term *'a level playing field'*, as appeared from the following exchange:

> 'Q. *When you paid the cheque in the hope of getting a level playing field, did you specifically want something done in relation to Mr Lawlor's activities?*
>
> A. *The least I expected was the government of this country to control their members and not be soldiers of fortune instead of soldiers of destiny.'*

THE TRIBUNAL'S CONCLUSIONS AS TO THE STATUS OF THE IR£50,000 PAYMENT

48.01 The Tribunal was satisfied that:

1) Mr Flynn did not truthfully account to the Tribunal as to the circumstances in which Mr Gilmartin provided him with the IR£50,000 cheque.

2) Mr Gilmartin was advised by Mr Flynn that the making of the substantial donation to the Fianna Fáil Party would help curb the activities in respect of which Mr Gilmartin had complained to, among others, Mr Flynn.

3) Mr Gilmartin duly made his donation to Fianna Fáil, via Mr Flynn, on this basis.

4) Mr Gilmartin intended that his cheque for IR£50,000 would be paid to the Fianna Fáil Party, and not to Mr Flynn personally, and he assumed at the time that this would be arranged by Mr Flynn.

5) Mr Gilmartin gave the cheque to Mr Flynn with the payee section blank at Mr Flynn's request, and the word '*cash'* was written in subsequently by Mr Flynn (or a person on his behalf).

6) Mr Flynn was aware at the time when the cheque was handed to him that Mr Gilmartin intended it to be paid to the Fianna Fáil Party, and not to him personally.

7) Mr Gilmartin's motivation in making the payment of IR£50,000 to (as he intended) the Fianna Fáil Party was his hope and expectation that difficulties that had arisen, or were perceived by him as having arisen, in relation to his ambition to develop the Quarryvale lands would be solved, curbed or otherwise cease. These included;
   - problems he encountered in relation to the purchase of the Irishtown lands from Dublin Corporation, which he associated with Mr Redmond (and Mr Lawlor);
   - demands for money by (or on behalf of) Mr Lawlor, Mr Redmond, and Cllr Hanrahan, and the demand for IR£5m made in Leinster House;
   - the intimidating telephone call from *'Garda Burns'* which ended his cooperation with the Garda corruption inquiry.

8) Mr Gilmartin believed himself to have had little choice but to make a substantial donation to the political party then in power, having regard to, in particular, to the following;

- the politicians who had requested money from him were all prominent members of Fianna Fáil, namely Mr Flynn himself, Mr Lawlor and Cllr Hanrahan;
- a demand for IR£5m had been made of him immediately following a meeting he had with Government ministers and the Taoiseach, all of whom were members of the Fianna Fáil Government.[40]

9) Mr Gilmartin genuinely believed that he had exhausted all avenues of complaint in an effort to curb activities which he believed to be improper or unlawful, that were designed to undermine the Quarryvale project, and in particular he had;
   - provided detailed complaints and information to Mr Flynn, Mr Seán Haughey, Mr Feely, Mr McLoone, and others;
   - cooperated with a Garda corruption inquiry until he received an intimidating telephone call from a *'Garda Burns'*.

10) Mr Gilmartin, having initially rejected any notion of making a donation to the Fianna Fáil Party following Mr Flynn's request, ultimately relented and decided to make a substantial donation, and he did so with great reluctance, and to a significant degree under duress and pressure to do so.

11) Mr Flynn wrongfully and, in the circumstances, corruptly sought a donation from Mr Gilmartin for the Fianna Fáil Party.

12) Mr Flynn, having been paid IR£50,000 by Mr Gilmartin for the Fianna Fail party, proceeded wrongfully to use the money for his own personal benefit (see below).

48.02 With regard to the specific circumstances in which Mr Gilmartin came to make the donation, it was clear that as of 28 February 1989, Mr Flynn was privy, via Mr Gilmartin and Messrs Seán Haughey and Frank Feely, to a number of serious allegations made by Mr Gilmartin involving corrupt demands for money by a number of individuals. Mr Gilmartin went to Mr Flynn immediately following the meeting aborted by Mr Redmond, which event triggered the series of complaints Mr Gilmartin made thereafter. By 3 March 1989, Mr Flynn had received Mr Feely's written account (which was initialled by Mr Seán Haughey) of Mr Gilmartin's complaints, including complaints concerning Mr Lawlor.

48.03 Among the complaints against Mr Lawlor were the following:

[40] There was no evidence linking any person in attendance at the meeting with the IR£5m demand made of Mr Gilmartin by an unidentified man as Mr Gilmartin left the meeting.

- He had made himself out to be a representative of the Irish Government at an Arlington meeting in London and had claimed that he had been commissioned by the Irish Government to *'look after'* the Arlington site.
- He had requested to be compensated for that assistance and was paid a sum of IR£3,500 per month.
- He had asked Mr Gilmartin to pay IR£5m into a bank account in the Isle of Man *'in respect of his support for a development which TK proposed at Irishtown, which development would represent a material contravention of the County Plan.'*

48.04 Irrespective of the issue of the accuracy as to the identity of the requester of the IR£5m, this information was provided to Mr Flynn on 3 March 1989 by two senior local authority officials.[41]

48.05 In their document, Mr Feely and Mr Seán Haughey had also recorded Mr Gilmartin as alleging that, Cllr H[anrahan], sought *'£100,000 in a brown paper bag—notes—no cheques'* in return for his support for a material contravention vote for the Irishtown lands.

48.06 Moreover, Mr Matthews' note ('*Alleged planning permission irregularities note 2*', already referred to) of the meeting on 3 March 1989, between Mr Flynn and Mr Gerard Collins, Minister for Justice, recorded that Mr Flynn himself recounted to Mr Collins, in graphic terms, what he, Mr Flynn, had been told regarding Mr Gilmartin on 28 February 1989 by Mr Feely and Mr Seán Haughey.

48.07 The Tribunal was satisfied, therefore, that by early March 1989, Mr Flynn had knowledge of a number of very serious complaints made by Mr Gilmartin against three individuals, Mr Lawlor, Cllr Hanrahan and Mr Redmond, which were apparently sufficiently grave in his view to prompt him to speak with the Taoiseach, Mr Haughey, and to request that Mr Gilmartin's complaints be included in a Garda investigation into corruption matters unconnected to Mr Gilmartin or Quarryvale, which had begun on 2 February 1989.

48.08 The Tribunal accepted Mr Gilmartin's evidence that it was at a meeting with Mr Flynn on 19 April 1989 (when he once again informed Mr Flynn of the demands for money that had been made of him as well as the obstacles and '*roadblocks*' that had been put in his way), that Mr Flynn solicited a donation for

[41] Mr Gilmartin's evidence was that he may not have told Mr Flynn, when he met him on 22 February, about the IR£5m demand because of the fact that the demand had been made of him in the confines of Leinster House and in the immediate aftermath of a meeting he had had with the then Taoiseach, Mr Haughey and Government ministers.

the Fianna Fáil Party on the basis that its payment would help '*curb'* the activities complained of.

48.09 In the course of his evidence, and particularly in the course of his cross-examination, Mr Gilmartin strongly rejected the suggestion that the payment constituted an act of corruption or bribery on his part.

48.10 The decision on the part of Mr Gilmartin to make a payment to Fianna Fáil through Mr Flynn was misconceived and entirely inappropriate. However, he did so in circumstances involving an element of duress or coercion, where he believed he had no choice but to act accordingly in order to avoid the obstructive and improper behaviour of elected public representatives and of a senior public servant, and (to use Mr Gilmartin's own words) to create '*a level playing field.'*

48.11 In arriving at this conclusion, the Tribunal was mindful of the fact that by May/June 1989, Mr Gilmartin had steadfastly resisted efforts by public representatives (Mr Lawlor and Councillor Hanrahan) to corruptly extract money from him and had also rejected Mr Lawlor's attempt to extract money on behalf of Mr Redmond. He had, moreover, rejected a demand for IR£5m from an individual whom he, Mr Gilmartin, associated with politicians, and had formally made complaints of what he perceived as corruption to Government ministers, senior local Government officials and to the Gardai. Yet, as he perceived it, his difficulties in relation to Quarryvale were continuing.

48.12 The Tribunal concluded that the IR£50,000 payment, was not, in the circumstances, a *bona fide* political donation.

48.13 The Tribunal rejected the suggestion that Mr Gilmartin's motivation in making the payment was to promote or secure a Government decision to grant tax designation status to the Quarryvale lands (which was not in any event granted). In particular, there was no evidence to suggest that Mr Gilmartin, subsequent to the payment of the IR£50,000, complained that Mr Flynn had broken an agreement or understanding that in return for the payment, Quarryvale would receive tax designation status.

MR FLYNN'S TREATMENT OF THE IR£50,000 PAID BY MR GILMARTIN

49.01 On 7 June 1989, the cheque for IR£50,000 which Mr Gilmartin had given to Mr Flynn was lodged to a bank account in the names of Mrs Dorothy and Mr Pádraig Flynn at AIB, Castlebar, Co. Mayo.

THE NON-RESIDENT AIB ACCOUNT NO. 10000-022

49.02 AIB account no. 10000-022, into which the IR£50,000 was lodged, was an account in the names of Mrs Dorothy and Mr Pádraig Flynn, whose address on the account was stated to be 34 Northumberland Road, Chiswick, London. Mr Flynn told the Tribunal that, after he handed the cheque to his wife, he was unaware of how the cheque was handled by her or into what account it was lodged. However, the Tribunal found this evidence of Mr Flynn to be incredible and rejected it as untrue.

49.03 This bank account was opened by Mrs Flynn in or about February 1986. AIB bank statements produced to the Tribunal described the account thus: *'Dorothy Flynn and Pádraig Flynn external account UK deposit.'*

49.04 The account was operational from 12 February 1986 until 4 May 1993.

49.05 Mr Flynn, in evidence, claimed to have no knowledge of the opening or existence of this account, or indeed of two other similar non-resident accounts also held in his and his wife's name, until some time in the early 1990s. According to Mr Flynn, on learning of the existence of account no 10000-022, he asked Mrs Flynn to close it.

49.06 Although Mrs Dorothy Flynn acknowledged that it was her signature on the document which opened the account, she maintained that she had never seen that document, and claimed to have no knowledge of the fact that, not one, but three external deposit accounts were opened in the names of herself and her husband in AIB in Castlebar in the 1980s.

49.07 The Tribunal regarded the evidence tendered by Mr and Mrs Flynn in this regard to be astounding, incredible and untrue. The Tribunal was satisfied that at all relevant times both Mr and Mrs Flynn were aware that they had opened and maintained non-resident accounts in the period 1985–93, with a London address with which they had no apparent connection.

THE FORM 'F' DECLARATION

49.08 In relation to account no 10000-022, both Mr and Mrs Flynn signed a form 'F' declaration, which individuals opening a non-resident account had to be completed for Revenue purposes. In doing so Mr and Mrs Flynn declared that the persons beneficially entitled to the interest payable or credited to money held in the account were not resident in the Republic of Ireland throughout the relevant year and were not so resident at the date of the document's execution, and that

interest payable on the account was not required to be included in any return to the Revenue Commissioners.

49.09 The Tribunal was satisfied that, when Mr and Mrs Flynn signed the form 'F' declaration, they intended that they themselves be the persons beneficially entitled to bank interest accruing to the account.

49.10 Although the form 'F', as signed by Mr and Mrs Flynn, was not dated, and while no particular year was specified in the body of the form, the Tribunal was nonetheless satisfied, based on information provided by AIB, that, as a matter of probability, the declaration was made on a date between 6 April 1989 and 5 April 1990. According to AIB, between 12 February 1986 and 5 April 1989 the account, while described as an external UK deposit account, did not have the status of a non-resident account and DIRT was deducted from the account. However, beginning on 5 April 1990, interest on the account was paid gross (without deduction of tax) in accordance with ordinary non-resident bank rules.

49.11 It was acknowledged that at all times up to 4 January 1993, when Mr Flynn was appointed an EU Commissioner (based in Brussels), he and Mrs Flynn were ordinarily resident in Ireland. Between March 1987 and January 1993, save for the period between 8 November 1991 and 11 February 1992, Mr Flynn was a Government minister.

49.12 The credit balance of Mr and Mrs Flynn's AIB account no 10000-022 (into which Mr Gilmartin's IR£50,000 was lodged on 7 June 1989) stood at approximately IR£6 prior to the said lodgement. However, records indicated that in the two-and-a-half year period between February 1987 and 23 June 1989, some IR£94,230 (including the 7 June 1989 lodgement which contained Mr Gilmartin's cheque) was lodged into this account.

THE OTHER TWO NON-RESIDENT ACCOUNTS

49.13 AIB account no 09620-053, also in the names of Mr and Mrs Flynn, was opened on 14 August 1985, with their address stated to be 34 Northumberland Road, Chiswick, London. This account was closed in 1989.

49.14 AIB account no 09998-046 was opened in the names of Mr and Mrs Flynn on 5 October 1989 and was described as an external deposit account associated with an address at Northumberland Road, Chiswick, England. Subsequently, in or about March 1993, the address on this account was changed from Chiswick, London, to an address at 17 Avenue Jules César, Brussels, 171150, Belgium, presumably to reflect the reality of Mr Flynn's then

residence in Brussels, pursuant to his appointment as EU Commissioner in January 1993.

LODGEMENTS TO THE NON-RESIDENT ACCOUNTS

49.15 In the period 1987–93, lodgements made to the three aforementioned non-resident accounts totalled IR£155,278. This figure included the sum of IR£94,230 lodged to external deposit UK account no 10000-022 between February 1987 and June 1989, and approximately IR£58,000 lodged to account no 09998-046 between October 1989 and January 1993. None of the lodgements to the aforesaid accounts appeared to relate to salary or income earned by Mr Flynn due to his position as a TD or minister. Mrs Flynn did not herself have an income at this time.

49.16 When questioned as to the source of the lodgements to account no 10000-022, Mr Flynn could only identify Mr Gilmartin's IR£50,000, and not the additional IR£3,920 lodged with it. The source of the following lodgements also remained unexplained by either Mr or Mrs Flynn:

10 February 1987: IR£3,345
20 February 1987: IR£9,780
20 October 1987: IR£1,000
9 August 1988: IR£10,000
13 June 1989: IR£10,090
15 June 1989: IR£1,050
15 June 1989: IR£3,320
26 June 1989: IR£2,775

49.17 In relation to account no 09998-046, Mr and Mrs Flynn could only identify the source of three lodgements, namely: a lodgement of IR£16,226.61 made on 5 October 1989 (being money received from the sale of sites); a lodgement of IR£1,000 on 18 February 1989 (being the proceeds of the sale of shares); and a lodgement of IR£8,000 on 5 January 1993 (being monies paid by National Toll Roads (NTR) and described as a political contribution). Mr Flynn adverted to the possibility that Davy Stockbrokers was the source of one of the remaining lodgements to account no 09998-046. Davy Stockbrokers confirmed that they had paid IR£3,000 to Mr Flynn in November 1992 as a political donation.

49.18 Mr Flynn only recollected that NTR was the source of a payment of IR£8,000 after NTR wrote to him on 8 January 2001, reminding him of the payment. Prior to that correspondence, Mr Flynn claimed he was unable to assist the Tribunal as to the source of this IR£8,000 lodgement.

49.19 Mr Flynn failed to explain the source of the following lodgements to external deposit account no 09998-046:

25 February 1991: IR£2,700
1 May 1991: IR£4,000
3 December 1991: IR£6,000
6 January 1992: IR£1,000
19 January 1992: IR£9,280
23 November 1992: IR£2,300
24 November 1992: IR£3,250
7 December 1992: IR£4,000

49.20 In correspondence with the Tribunal in July 2000, Mr Flynn, through his solicitors, advised the Tribunal that the unidentified lodgements to the aforesaid accounts were probably the accumulation of political contributions.

49.21 However, on 8 November 2000, Mr Flynn's solicitors wrote to the Tribunal stating that the information previously furnished by them regarding the likely source of the lodgements in question was erroneous. Mr Flynn now maintained that the said lodgements consisted partially rather than solely of election contributions.

49.22 This latter position was maintained by Mr Flynn in his evidence to the Tribunal when he reiterated that, save for the few lodgements to the external deposit accounts that were identified (one of these being Mr Gilmartin's IR£50,000), he was unable to identify the source of any of the other lodgements queried by the Tribunal. Mr Flynn maintained that during the period in question he kept no records of the receipt by him of political donations.

MOVEMENTS ON THE AIB NON-RESIDENT ACCOUNT NUMBER 10000-022 SUBSEQUENT TO THE LODGEMENT OF MR GILMARTIN'S CHEQUE.

49.23 It appeared therefore to the Tribunal that the source of some IR£77,000 out of a total of IR£155,000 (approximately) lodged to two of the three external deposit accounts operated by Mr and Mrs Flynn between 1985/6 and 1993 remained unaccounted for. The Tribunal was satisfied that all of the monies lodged to these accounts were monies obtained by Mr Flynn, as the evidence of both Mr and Mrs Flynn was that Mrs Flynn was not in receipt of income independent of that of Mr Flynn during the period in question (save for an inheritance which was accounted for).

49.24 On 3 October and 20 November 1989 respectively, two substantial cash withdrawals of IR£25,000 were made from account no 10000-022. In response to queries posed by the Tribunal in 1999, Mr Flynn, by letter of 4 June 1999, sought to account for the expenditure of these monies in the following manner: *'the purpose of the withdrawals was, inter alia, to defray and reimburse expenditure and to fund investment.'*

49.25 Both in correspondence and in his evidence to the Tribunal, Mr Flynn maintained that he had reimbursed himself from these withdrawals to the extent of IR£13,000 in respect of monies spent on the June 1989 General Election. No documentary evidence of such expenditure was provided by Mr Flynn, save one cheque paid on 26 July 1989 to Carr Communications to the value of IR£1,945.95.

49.26 Between July and October 1989, prior to the cash withdrawal of the two aforementioned sums of IR£25,000, approximately IR£14,500 (in total) was withdrawn from account no 10000-022, in amounts ranging from IR£500 to almost IR£6,000. It was likely that these sums were withdrawn to defray election expenses.

49.27 The first of the IR£25,000 cash withdrawals was made on 3 October 1989. According to Mr Flynn the cash was placed in a safe in his home, and used to pay election expenses. Mr Flynn had no records or receipts relating to any such expenses, but identified in very general terms the type of expenditure that occurred at election time, such as advertising, printing, office, and subsistence costs.

49.28 While the polling date of the election referred to by Mr Flynn was 15 June 1989, nearly four months prior to the withdrawal of the IR£25,000. Mr Flynn suggested that it was normal *'for some'* to discharge election expenses three or four months after an election.

THE FOREIGN INVESTMENTS

49.29 Of the two IR£25,000 sums withdrawn in cash, on 3 October and 20 November 1989 respectively, the evidence suggested that the latter withdrawal was used by Mr Flynn to purchase unit trust investments through National Irish Bank (NIB). This purchase was organised on behalf of Mr and Mrs Flynn by their daughter, Ms Beverly Cooper Flynn, then an employee of NIB.

49.30 The Tribunal was satisfied that the IR£25,000 cash withdrawn on 20 November 1989 was provided to Ms Cooper Flynn for that investment purpose, sometime between 20 November and 22 November 1989. This sum of

IR£25,000 was lodged overnight with National Irish Investment Bank on 22 November 1989, and on that date Mr and Mrs Flynn and Ms Cooper Flynn signed exchange control documentation in relation to the proposed unit trust funds investments.

49.31 On 23 November 1989, following an investment report prepared by Ms Cooper Flynn, which had been provided to her father on 17 October 1989, Ms Cooper Flynn (on behalf of her parents) invested the IR£25,000 in cash in the following unit trust funds:

IR£15,000: MIM Britannia European Performance[42]

IR£5,000: MIM Britannia Nippon Warrant

IR£5,000: Fleming Flagship Eastern Opportunities.

49.32 Neither Mr and Mrs Flynn nor Ms Cooper Flynn could definitively recollect how the IR£25,000 was actually taken to National Irish Investment Bank. Mr Flynn thought that he may have bought a bank draft.

49.33 The three investments listed above were held jointly in the names of Mr and Mrs Flynn and Ms Cooper Flynn. The Tribunal was satisfied that Mr Flynn was at all times anxious to ensure that the existence of such investments remained as secret as possible, hence the direction, as noted on NIB documentation, to wit, *'no correspondence to Padraig or Dorothy Flynn as per Bev.'* The Tribunal was also satisfied that Mr and Mrs Flynn were the beneficiaries of these funds, and of the investment.

49.34 The Tribunal was also satisfied that in July 1990, a further sum of IR£10,000 in cash was provided to Ms Cooper Flynn by Mr Flynn for the purpose of making a further investment into the Fleming Flagship Eastern Opportunities fund. Ms Cooper Flynn professed to have no recollection of receiving this money from her father.

49.35 Mr Flynn told the Tribunal of his habit of keeping large sums of cash in his safe in Castlebar at that time. The Tribunal believed that all, or a substantial portion of the IR£10,000 used to top up the Fleming Flagship Eastern Opportunities fund came from the first IR£25,000 cash withdrawal made from account no 10000-022 on 3 October 1989.

49.36 The Tribunal was satisfied that Mr and Mrs Flynn's investments (to the extent of IR£35,000 as outlined above) in the three funds were financed to a significant extent (if not exclusively) from lodgements to account no 10000-022,

[42]These funds were switched in May 1991 to the Asia Tiger Fund, but for ease of reference in the Report they will be referred to as the European Performance Fund.

including Mr Gilmartin's cheque for IR£50,000, which he gave to Mr Flynn in May/June 1989.

49.37 In February 1993 and December 1994 respectively, two of the three investments which Mr and Mrs Flynn had made in November 1989 (the Fleming Flagship Eastern Opportunities and the MIM Britannia European Performance) were encashed, producing funds in excess of IR£44,000.

THE OPENING OF THE NIB MONAGHAN *'NON-RESIDENT ACCOUNT'*

49.38 On 2 March 1993, a sum of IR£20,227.99 (being the proceeds of the Fleming Flagship Fund investment encashed on 10 February 1993) was lodged to a 'non-resident account' in the names of Mr and Mrs Flynn at NIB Monaghan, which had been opened for them at the request of Ms Cooper Flynn. The address provided for the purposes of this account was Avenue Jules César 17, Brussels. Mr Flynn was an EU Commissioner in Brussels from January 1993.

49.39 On 25 January 1995, a sum of IR£24,017.57, representing the net proceeds of the European Performance Fund investment[43] was lodged to the NIB Monaghan *'non-resident account'*, at the direction of Ms Cooper Flynn.

49.40 By early 1995 therefore, Mr and Mrs Flynn had some IR£46,514.00 inclusive of interest standing to their credit in this *'non-resident account'* in NIB Monaghan.

49.41 On 30 May 1995, an additional sum of IR£10,923.92 was lodged to the same NIB account. This sum represented the proceeds of a BES investment. As of November 1996, therefore, some IR£62,388.66 was standing to the credit of Mr and Mrs Flynn in their NIB *'non-resident'* account.

49.42 The Tribunal was satisfied that during the currency of the NIB Monaghan *'non-resident'* account of Mr and Mrs Flynn, its proceeds, save for the sum of IR£10,923.92 (being the proceeds of the BES investment) had as its source (entirely or to a substantial extent) lodgments to account no. 10000-022, including the cheque for IR£50,000 given by Mr Gilmartin to Mr Flynn for Fianna Fáil.

[43] Encashed on 14 December 1994.

THE WITHDRAWALS FROM THE NIB MONAGHAN *'NON-RESIDENT'* ACCOUNT NO 93062406

49.43 On 20 February 1997, IR£25,000 in cash was withdrawn from the NIB Monaghan account. The Tribunal was satisfied, notwithstanding Ms Cooper Flynn's failure of recollection in this regard, that this withdrawal was likely to have been made by her on behalf of her parents.

49.44 Mr Flynn told the Tribunal that he spent the IR£25,000 cash on a number of projects and items, namely the repair of a road, holidays, presents for his family, part payment on a car and house furnishings. Mr Flynn provided those details in a letter to his accountant in January 2000, but erroneously referred in that letter to the withdrawal of the IR£25,000 cash as having occurred in February 1996 rather than February 1997.

49.45 Likewise, a withdrawal (by way of bank draft) from the NIB Monaghan account on 27 March 1997 of a sum of IR£37,553.74 was erroneously stated by Mr Flynn in the letter to his accountant to have occurred in 1996 rather than in 1997.

49.46 It appeared to the Tribunal from both documentary and oral evidence that, following the withdrawal of IR£37,553.74 (which effectively closed the account), this money was, in the first instance, transferred to a joint account of Mr and Mrs Flynn at AIB Castlebar and subsequently transferred to an account in Mrs Flynn's name at AIB Castlebar.

49.47 The sum transferred to Mrs Flynn's sole account was subsequently used by her to purchase a farm at Cloonanass, Co. Mayo, (the purchase price for the 100-acre farm was approximately IR£45,000).

THE CLOONANASS FARM AND ITS GRANT BENEFITS

49.48 Although Mrs Flynn did not visit the farm prior to purchasing it or at any time engage in farming activities, she availed of a Department of Marine and Natural Resources grant scheme for the planting of trees on the farm. This grant was payable by the department in addition to an annual premium to the landowner. In order to avail of this annual farmer's premium, it was necessary for Mrs Flynn to show that 25 per cent of her annual income came from farming. Mrs Flynn appeared to have satisfied the authorities that she met this criterion. Mr Flynn's accountant's note of Mr Flynn's instructions includes the following:

- *North Mayo—all planted.*
- *Premium IR£7,000 p.a. for life contingent on being a farmer,*
- *farm profile due 1997/1998*

- *>25% of total income from farming*
- *Needs to show c £1,100 'sold hay'*
- *Date of signing the contract for planting.*

49.49 Mrs Flynn confirmed to the Tribunal that since the purchase of the farm she had been and remained the recipient of a yearly premium of IR£7,064.35 payable over 20 years by the Department of Marine and Natural Resources (the first two payments made to Mrs Flynn by the Department were apparently paid to contractors who planted the land on her behalf). Mrs Flynn acknowledged that at the time of her successful application to the Department for the relevant grant she was not a farmer, nor was 25 per cent of her income (or indeed any of her income) derived from farming, and that this position had not changed in the intervening years.

49.50 Mrs Flynn acknowledged that the benefit accruing to her over a 20-year period from the premiums would be in the region of IR£140,000.

49.51 Both Mr and Mrs Flynn disputed Tribunal Counsel's suggestion that the acquisition of the farm at Cloonanass had been entirely or substantially funded by Mr Gilmartin's payment of IR£50,000. Mr Flynn, in particular, maintained that little, if any, of Mr Gilmartin's IR£50,000 was used directly or indirectly in buying the farm at Cloonanass.

49.52 The Tribunal was satisfied, however, that the contrary was the case, and that the proceeds of lodgments to account no. 1000-022, including the IR£50,000 cheque given to Mr Flynn by Mr Gilmartin in late May/early June 1989, ultimately funded most or all of the purchase of the farm at Cloonanass in Co. Mayo. The Tribunal was also satisfied that only a small amount, if any of that £50,000 was used by Mr Flynn for political purposes.

49.53 The Tribunal was also satisfied that Mr Flynn went to considerable lengths to conceal the receipt of the IR£50,000, including having it lodged in the first instance to an external, bogus non-resident account.

49.54 The Tribunal noted the manner in which Ms Cooper Flynn, most probably at the direction of Mr Flynn, sought to ensure that the investment in 1989 of a portion of Mr Gilmartin's money in the three funds remained as confidential as possible. When two of these three fund investments were cashed in February 1993 and December 1994 respectively, Mr Flynn, then residing in Brussels, availed of the opportunity to open a *bona fide* non-resident account.

49.55 Mr and Mrs Flynn and Ms Cooper Flynn frequently exhibited a lack of recollection as to the circumstances relating to the movement of funds from the receipt of IR£50,000 by Mr Flynn in late May/early June 1989 and the eventual purchase of the farm at Cloonanass in Co. Mayo. The Tribunal was not convinced that their evidence in this regard was entirely truthful.

FIANNA FÁIL'S KNOWLEDGE OF THE IR£50,000 PAYMENT

CONTACT BETWEEN MR GILMARTIN AND MR BERTIE AHERN IN JUNE 1989

50.01 Mr Gilmartin claimed that he informed Mr Ahern (then a Government minister) on 20 June 1989 that he had made a donation of IR£50,000 to Mr Flynn on behalf of the Fianna Fáil Party. Mr Gilmartin said that on that date he telephoned Mr Ahern to thank him for the assistance rendered in relation to his bid to purchase the Irishtown lands (Mr Gilmartin's tender had just been approved by Dublin Corporation and Mr Gilmartin had been notified of this by a letter from Dublin Corporation to his solicitor on 19 June 1989). Mr Gilmartin claimed that in the course of their telephone conversation, Mr Ahern adverted to a forthcoming fundraising event by Fianna Fáil scheduled to be held in the Reform Club in London in November 1989. Mr Ahern stated that the Fianna Fáil finances were *'in a bit of a state'* and asked Mr Gilmartin if he could see his way to making a donation to the party. Mr Gilmartin responded by informing Mr Ahern that he had already donated IR£50,000 to Fianna Fáil. When asked to whom the donation had been given, Mr Gilmartin told Mr Ahern that it had been given to Mr Flynn.

50.02 In his evidence to the Tribunal, Mr Ahern stated that he had no recollection of any such telephone call from Mr Gilmartin. Mr Ahern denied that he requested a donation from Mr Gilmartin for Fianna Fáil and proclaimed that in 27 years of political life he had never personally sought a donation on behalf of Fianna Fáil, or for himself. At the same time, Mr Ahern firmly stated his belief that there was nothing improper, or indeed uncommon, in making a request for a donation in such circumstances. Mr Ahern told the Tribunal that had he been told by Mr Gilmartin of a IR£50,000 donation to Mr Flynn intended for Fianna Fáil, it would not have aroused any suspicion in his mind as Mr Flynn was at that time a joint treasurer of the Fianna Fáil Party and might have been expected to have received donations on behalf of the party.

50.03 Mr Ahern did, however, state that if Mr Gilmartin had referred to the question of a contribution in the course of the telephone conversation on 20 June 1989, he, Mr Ahern, '*might have asked him did he give a contribution.'*

50.04 When asked whether, if an individual speaking to him on the telephone raised the subject of a donation, he might say that the party could do with a donation, Mr Ahern responded: '*No, I doubt that. I doubt that. I very much doubt I would do that.*'

50.05 Mr Ahern also rejected Mr Gilmartin's evidence that in the course of the telephone call on 20 June 1989, he, Mr Ahern, might have intimated that he would be attending a fundraising event in London, and hoped to see him there (Mr Ahern did attend such an event in London in November 1989).

50.06 The Tribunal is satisfied that Mr Ahern's telephone conversation with Mr Gilmartin on 20 June 1989 took place and accepted Mr Gilmartin's recollection of that conversation. It was satisfied that Mr Ahern suggested, or requested, that Mr Gilmartin make a contribution to the Fianna Fáil Party.

50.07 The Tribunal was further satisfied that in the course of his conversation with Mr Ahern on 20 June 1989, Mr Gilmartin informed Mr Ahern of his then very recent payment to Mr Flynn of IR£50,000 intended for the Fianna Fáil Party.

50.08 The Tribunal believed that Mr Gilmartin's memory of his telephone discussion with Mr Ahern on 20 June 1989, particularly in relation to the issue of Mr Ahern requesting a donation to the Fianna Fáil Party, was more likely than not to remain in his memory, if for no other reason than that it was close in time to his payment of IR£50,000 to Mr Flynn intended for the Fianna Fáil Party.

MR GILMARTIN'S MEETING WITH MR SEÁN SHERWIN

50.09 In or about October/November 1990, Mr Gilmartin was brought by Mr Colm Scallon (a property consultant) to the Mount Street offices of Fianna Fáil to meet Mr Seán Sherwin, then National Organiser for Fianna Fáil. Mr Gilmartin had relayed a number of complaints to Mr Scallon about difficulties he was encountering and had encountered relating to both the Bachelor's Walk and the Quarryvale projects. Mr Scallon confirmed to the Tribunal that he was told by Mr Gilmartin of corrupt demands being made by people who ought to have been providing him with assistance, and, according to Mr Scallon, the import of what Mr Gilmartin had told him was that Mr Gilmartin *'was being shafted all over the place'*. Mr Scallon recalled, in particular, having been told by Mr Gilmartin of demands for money being made by Mr Lawlor, and by other councillors, who were not identified by Mr Gilmartin, and of how Mr Lawlor '*invaded the board meeting in London.*' Mr Scallon, however, did not recollect Mr Gilmartin specifically mentioning Cllr Hanrahan or the demand for IR£100,000. Mr Scallon

agreed that the allegations made by Mr Gilmartin amounted to '*a horrendous scene*', and a '*disgraceful scene.*'

50.10 Mr Sherwin acknowledged that he met Mr Gilmartin in 1990, and he accepted that most of the complaints which Mr Gilmartin claimed he made were indeed relayed to him by Mr Gilmartin.

50.11 There was no significant dispute between Mr Gilmartin and Mr Sherwin as to what complaints were relayed by Mr Gilmartin, save that Mr Sherwin did not believe that Mr Gilmartin told him of Mr Lawlor's demand for a 20 per cent equity stake in his development.[44] Mr Gilmartin's complaints about Mr Lawlor, according to Mr Sherwin, centred largely on the manner in which Mr Lawlor had orchestrated a consultancy arrangement with Arlington Securities Plc, a matter which appeared to him to have been of concern to Mr Gilmartin.

50.12 After his meeting with Mr Gilmartin and Mr Scallon, Mr Sherwin discussed Mr Gilmartin's complaints with Mr Paul Kavanagh (a businessman and voluntary chief fundraiser for Fianna Fáil). Mr Sherwin told the Tribunal that he did not pass on any complaint concerning Mr Lawlor to Mr Kavanagh, as he, Mr Sherwin, had not understood Mr Gilmartin to have made any complaint of improper conduct on Mr Lawlor's part.

50.13 Mr Sherwin also conceded that Mr Gilmartin raised Mr Redmond's name in relation to efforts to frustrate his Quarryvale development, although he claimed that Mr Gilmartin's specific complaint at the meeting was in relation to a meeting with county council officials which Mr Redmond had cut short. Mr Sherwin's evidence was that the complaint Mr Gilmartin made in this context did not, in his view, merit being notified to Mr Kavanagh.

50.14 Mr Sherwin accepted that Mr Gilmartin, in the course of the meeting, made a serious allegation against Cllr Hanrahan, namely that the latter, at a meeting in Buswells Hotel, had demanded IR£100,000 from Mr Gilmartin in return for his support for the rezoning of Quarryvale, information which, Mr Sherwin told the Tribunal, *'astounded'* and *'shocked'* him. Mr Gilmartin had told Mr Sherwin that he had refused to accede to Cllr Hanrahan's demands.

50.15 Mr Sherwin acknowledged to the Tribunal that Mr Gilmartin had informed him about the IR£50,000 donation to Mr Flynn stating: *'he indicated to me that he had made a contribution of £50,000 to Padraig Flynn, as I understood on behalf of Fianna Fail.'*

[44] However, Mr Scallon told the Tribunal that the issue of Mr Lawlor seeking an equity stake in Mr Gilmartin's project was mentioned to Mr Sherwin by Mr Gilmartin at the meeting.

50.16 Mr Gilmartin told the Tribunal that he informed Mr Sherwin at this meeting of the IR£50,000 given to Mr Flynn/Fianna Fáil, some 18 months earlier. Mr Gilmartin said that he told him when Mr Sherwin had raised with him the issue of a donation to the Fianna Fáil Party. Mr Gilmartin's specific evidence in relation to this request was as follows:

> 'Q. 168 *And you have said that Mr Sherwin suggested you make a political donation to Fianna Fáil?*
>
> A. *No, he was talking about the demands for money and he was aware that there was a Garda investigation.*
>
> Q. 169 *Mr Sherwin was aware?*
>
> A. *Yeah. So then he said to me, he said if there is any money going the party could do with it and he made some reference to them being IR£3m in debt and that the party could do with it.'*

50.17 Mr Sherwin contradicted Mr Gilmartin's evidence in this regard. Mr Sherwin stated on Day 477:

> *'....First of all I did not ask him for a donation. It would have been, I think you perhaps would agree, it would be an extraordinary thing if this man was here in my office telling me about his difficulties and problems and that I would make his difficulties and problems even more difficult by asking him for a contribution to Fianna Fail, the last thought in my mind would have been that. So I didn't ask him for any contribution I certainly did not ask him, as you recited there, how much did I, did he give to Padraig Flynn. He offered the information to me. He simply said I have given 50,000 pounds to Padraig Flynn. I assumed frankly that he was saying I gave 50,000 pounds to Padraig Flynn on behalf of Fianna Fail.'*

50.18 He also denied Mr Gilmartin's assertion that in the course of their conversation, he absented himself from the meeting for a short period of time, returned, and informed Mr Gilmartin that the Fianna Fáil Party had not received the IR£50,000 donated through Mr Flynn. However, Mr Sherwin agreed that he did, within a short time after the meeting took place, establish from Mr Kavanagh that Fianna Fáil had not received a donation from Mr Gilmartin. Mr Sherwin said that it did not occur to him to revert to Mr Gilmartin with this news. Mr Sherwin described the IR£50,000 as '*a very very significant, very much unusual amount of money and any contributions that the party would have gotten around that time would have been much more in the range of, 1,000 to, 2,000 or, 5,000 whatever.'*

MR SHERWIN'S INQUIRIES

50.19 Mr Sherwin stated that following his meeting with Mr Gilmartin, he resolved to bring two matters to the attention of Mr Kavanagh: Mr Gilmartin's allegation that Cllr Hanrahan had sought IR£100,000, and Mr Gilmartin's claim to have paid IR£50,000 to Fianna Fáil through Mr Flynn. In relation to the Cllr Hanrahan issue, Mr Sherwin believed that Mr Kavanagh would, by way of *'due diligence',* bring this allegation to the attention of the then Taoiseach, Mr Charles Haughey, and therefore he himself did not pursue it further.

50.20 In relation to the IR£50,000 donation to Fianna Fáil, Mr Sherwin believed that Mr Kavanagh, in his capacity as chief fundraiser within Fianna Fáil, was the most suitable person to ascertain whether Mr Gilmartin had in fact donated IR£50,000 to Fianna Fáil, and Mr Sherwin believed that Mr Kavanagh would similarly bring this issue to the attention of the Taoiseach, Mr Haughey.

50.21 Mr Sherwin testified that some days after he informed Mr Kavanagh of the IR£50,000 donation, the latter informed him that there was no evidence of any donation from Mr Gilmartin. On Day 477 the following exchange took place between Tribunal Counsel and Mr Sherwin:

> *'Q. And were you shocked when you were told that 50,000 pounds had been given to Mr. Padraig Flynn and when you learned that that had not been, that found it's way into the coffers of the party?*
>
> *A. I was in disbelief to be truthful.*
>
> *Q. Were you shocked?*
>
> *A. I was yeah and in disbelief.*
>
> *Q. Why what was the disbelief or what was the reason for your disbelief?*
>
> *A. I couldn't make out whether Tom Gilmartin was giving me this information in a truthful way, I just couldn't make up my mind, and when I found through Paul Kavanagh that the money did not find it's way into Fianna Fail, I was then in more disbelief, I was quite certain it didn't happen.*
>
> *Q. That it didn't happen.*
>
> *A. Yes.*
>
> *Q. At that stage Mr. Flynn was the party treasurer or one of the joint treasurers of the party?*
>
> *A. Yes joint honorary treasurer.*
>
> *Q. He was a Minister in government?*
>
> *A. Yes.*
>
> *Q. Why did you not go to Mr. Flynn at that stage, if you did not believe that he had received 50,000 pounds, and say to him 'Mr. Gilmartin has alleged that he gave you 50,000 pounds for the Fianna Fail party, it*

hasn't gone to the Fianna Fail party and I am satisfied that I believe that it's a grossly defamatory statement of you, its untrue and I am prepared to give evidence on your behalf if you seek to take an action against Mr. Gilmartin?'

A. Well to start with, I wasn't in a position of belief, I was in disbelief and may I – my first opportunity I raised it with who I considered to be the appropriate person, Paul Kavanagh who was head of fundraising, I felt that it would be his job and he would have the ability to find out whether or not it came to Fianna Fail, as alleged by Tom Gilmartin.

Q. But Mr. Kavanagh told you, according to your statement that there was no record in the Fianna Fail party of the payment, isn't that right?

A. Thats right, yes, some days later. Sorry, I met him some days later and then it took him a further period to find out.

Q. Within, whether it was on the day or within a few days?

A. Yes, yes.

Q. Certainly in or about October of 1990 you knew that any monies is Thomas Gilmartin had paid, if any, to Mr. Flynn had not found their way into the Fianna Fail coffers?

A. That's right.

Q. And if Mr. Gilmartin is truthful and accurate in his, what he told you, he had given 50,000 pounds to Mr. Flynn?

A. Yes.

Q. And you did nothing further about that at that time, either by going to Mr. Flynn or by telling Mr. Gilmartin he should go to the Gardai or by writing to anyody in your organisation, telling your superior about this outrageous grossly defamatory claim that was being made, if untrue, isn't that right?

A. Well that's true. I didn't go to anyone else for two reasons. One I had gone to Paul Kavanagh who was the appropriate person and secondly, for I to spread, if it turned out to be not just untrue but scandalous, I wasn't going to be found guilty of spreading scandal to persons. I certainly felt that Paul Kavanagh was the appropriate person and that's who I spoke to.

Q. Did you inquire from him as to whether or not he had spoken to anybody else in the organisation, who was the ultimate senior party official or officer at that time?

A. No the auditors wouldn't have anything to do with it.

Q. Officer sorry?

A. Well as you said, the joint honorary treasurer, or one of them, was Padraig Flynn. Paul Kavanagh came back to me days later and told me that it did not, directly or indirectly, that's to say from Padraig Flynn, directly or indirectly it did not come to Fianna Fail. I was frankly relieved

because I couldn't believe that it had gone to Padraig Flynn personally, I then as I said inquiried whether or not it had come to Fianna Fail itself and I was relieved when it hadn't, so I was probably convinced more in my own believe that this never happened.'

50.22 Mr Sherwin told the Tribunal that he did not ask Mr Kavanagh if Mr Gilmartin's claim about the IR£50,000 had been brought to the attention of Mr Haughey.

50.23 Mr Kavanagh acknowledged to the Tribunal that he was briefed by Mr Sherwin about Mr Gilmartin's claim to have paid IR£50,000 to Mr Flynn for the benefit of Fianna Fáil, but he had no recollection of being told by Mr Sherwin of the Cllr Hanrahan allegation. Mr Kavanagh said that at the time Cllr Hanrahan was unknown to him. However, the Tribunal believed it likely that Mr Kavanagh was so informed.

50.24 Mr Kavanagh told the Tribunal that he had instructed Mr Seán Fleming[45] to conduct an examination of Fianna Fáil's records to determine if there was any record of a donation from Mr Gilmartin, and that none was found. Mr Kavanagh said that he did not *'believe the whole Gilmartin thing'* and stated that the information which had been relayed to him about Mr Gilmartin and the IR£50,000 simply related to Mr Gilmartin seeking a receipt for his donation (whereas, Mr Gilmartin denied that he had sought a receipt).

50.25 Neither Mr Sherwin nor Mr Kavanagh asked Mr Flynn whether he had received any donation from Mr Gilmartin. The Tribunal found this failure to inquire of Mr Flynn remarkable, having regard to the fact that over a year previously, in June 1989, having being informed from a reliable source that Mr Ray Burke (then a Government Minister), had received a substantial donation intended for Fianna Fáil. Mr Kavanagh had telephoned Mr Burke to ascertain the truth of that information and had also raised the matter with the then Taoiseach, Mr Haughey.

50.26 In the course of Mr Flynn's cross-examination, Counsel for Mr Gilmartin, Mr Hugh O'Neill, SC, asked Mr Flynn: '*At any stage up until 1998, did anyone in Fianna Fáil approach you and ask you is there any truth in what Mr Gilmartin says that he gave you £50,000 for Fianna Fáil and that it hasn't arrived in the Fianna Fáil coffers?'* Mr Flynn answered in the negative.

[45] Mr Fleming was then engaged by Fianna Fáil as its financial controller. Subsequently, Mr Fleming was elected as a Fianna Fáil TD for the Laois/Offaly constituency.

50.27 The Tribunal was satisfied that in the course of their meeting in October 1990 Mr Gilmartin informed Mr Sherwin that he provided a IR£50,000 cheque to Mr Flynn for the Fianna Fail Party, information which Mr Sherwin duly relayed to Mr Kavanagh for the purposes of his checking party records.

50.28 The Tribunal did not accept Mr Sherwin's contention that he disbelieved Mr Gilmartin's claim that he had given the IR£50,000 to Mr Flynn with the intention that he pay it over to the Fianna Fáil Party.

50.29 It appeared to the Tribunal that in the absence of any inquiry made by Mr Kavanagh of Mr Flynn, and without Mr Sherwin himself asking Mr Flynn whether or not he had received IR£50,000, neither Mr Sherwin nor Mr Kavanagh could logically or reasonably conclude in October 1990, as they claim they did, that Mr Gilmartin had misled them in relation to the issue. Moreover, it also appeared to the Tribunal that Mr Sherwin did not believe Mr Gilmartin had misled him in 1990. The Tribunal regarded a number of Mr Sherwin's answers to questions posed to him in cross-examination as particularly instructive as to his likely state of mind.

50.30 On Day 478, the following exchange occurred between Mr Donal O'Donnell SC, Counsel for Mr Gilmartin, and Mr Sherwin:

> 'Q. 574 *And you wanted to believe in Pádraig Flynn, you wanted to have faith in him and whatever Mr Kavanagh told you confirmed your faith in him, is that right?*
>
> A. *No, Paul Kavanagh confirmed that the money did not come to Fianna Fáil. That does not answer any question or thought about whether Tom Gilmartin was truthful in saying that he had given this money to Pádraig Flynn.*
>
> Q. 575 *Because it left open the possibility that both Mr Gilmartin and Mr Kavanagh were right, that Mr Gilmartin had paid the money to Mr Flynn and Mr Flynn had kept it, is that right? That was simple, simple logic?*
>
> A. *We all know that now.*
>
> Q. *576 But it was, you knew it then?*
>
> A. *I didn't know—*
>
> Q. 577 *It was unavoidable consequence of the piece of information you had?*
>
> A. *There were two things, either Tom Gilmartin was not telling me the fact.*
>
> Q. 578 *Or Pádraig Flynn had received the money?*
>
> A. *Or that Fianna Fáil had gotten the money. I established that Fianna Fáil had not been given the money. I wasn't prepared to believe that Pádraig Flynn received the money.*
>
> Q.579 *So as far as you were concerned, what Mr Gilmartin was telling you wasn't true and that there was no truth—*

A. *I was much happier believing that Tom Gilmartin was not telling me the truth.'*

50.31 The Tribunal was satisfied that for a considerable period following his encounter with Mr Gilmartin, Mr Sherwin remained alive to the possibility, or indeed the probability, that Mr Flynn had in fact received IR£50,000 from Mr Gilmartin for the Fianna Fáil Party. As already indicated, Mr Sherwin when giving evidence put it thus: '*I was much happier believing that Tom Gilmartin was not telling me the truth.'*

50.32 In February 1992, Mr Sherwin brought to the attention of the then incoming Taoiseach, Mr Albert Reynolds, who was then in the process of appointing his cabinet, what Mr Gilmartin had told him in relation to the payment to Mr Flynn of IR£50,000 for Fianna Fáil. This information, according to Mr Sherwin, was relayed to Mr Reynolds in the latter's home, following a telephone call from Mr Sherwin to Mr Reynolds seeking an appointment with him. Mr Sherwin said he informed Mr Reynolds of the claim out of a sense of duty to him as the incoming Taoiseach and because he believed that *'any minister should be above any suspicion.'*

50.33 Mr Reynolds told the Tribunal that Mr Sherwin had never contacted him as claimed. Mr Reynolds confirmed that Mr Flynn was reappointed by him as Minister for the Environment in February 1992. According to Mr Reynolds, Mr Flynn did not disclose to him that he had received IR£50,000 from Mr Gilmartin, or that he had lodged it into an off-shore account.

50.34 Mr Flynn told the Tribunal that prior to 1998 (when the issue became the subject of media comment), no one in Fianna Fáil, including Mr Sherwin, Mr Kavanagh or Mr Reynolds, had ever approached him in relation to the Gilmartin IR£50,000 payment.

50.35 The Tribunal accepted Mr Sherwin's evidence that he advised Mr Reynolds in February 1992, at a meeting in Mr Reynolds' home, of the payment of IR£50,000 to Mr Flynn. The fact that Mr Sherwin elected to inform Mr Reynolds of Mr Gilmartin's claim to have paid Mr Flynn IR£50,000 for the Fianna Fáil Party established, in the Tribunal's view that Mr Sherwin had not entirely disbelieved Mr Gilmartin's claim to have paid the IR£50,000 to Mr Flynn for the benefit of the Fianna Fáil Party.

THE 1998/9 INQUIRY BELATEDLY MADE BY FIANNA FÁIL OF MR FLYNN IN RELATION TO THE IR£50,000 DONATION

50.36 On 6 October 1998, the General Secretary of the Fianna Fáil Party wrote to Mr Flynn at his Brussels address and made certain inquiries of him in the context of media reports which referred to Mr Gilmartin having made an allegation to the Tribunal that he had given a sum of IR£50,000 to Mr Flynn for the Fianna Fáil Party. This letter to Mr Flynn was sent on the direction of the then Taoiseach, Mr Bertie Ahern.

50.37 Mr Flynn was informed in the course of that letter that as a result of the allegation being made by Mr Gilmartin, the trustees of the Fianna Fáil Party wished Mr Flynn to answer the following questions:

> *1) Did you or anyone on your behalf receive IR£50,000 or any other sum of money from Tom Gilmartin?*
> *2) If so was this money given to you or anyone on your behalf intended for the Fianna Fáil Party?*
> *3) Was the money passed on to the Fianna Fáil party?*
> *4) If so to whom in Fianna Fáil was the money given and when was it so given?*
> *5) Was any receipt issued for same by Fianna Fáil?*

50.38 Furthermore, Mr Flynn was asked to provide any documentation in his possession relating to the said monies.

50.39 Mr Ahern told the Tribunal that no response to the letter was received from Mr Flynn.

50.40 On 11 February 1999, Mr Ahern personally wrote to Mr Flynn and brought to his attention the passing of a Dáil motion on 10 February 1999 which called upon Mr Flynn *'to make a full, immediate statement clarifying his position in relation to allegations that he received IR£50,000 while Minister for the Environment in 1989.'*

50.41 Mr Flynn responded on 24 February 1999 to Mr Ahern's request, stating that because of ongoing correspondence with the Tribunal in relation to the matter, he felt it *'inappropriate'* to make a public comment on the matter.

50.42 The Tribunal considered it noteworthy that Mr Ahern's decision to contact Mr Flynn in 1998/1999 in relation to Mr Gilmartin's allegation that he had paid him £50,000 for Fianna Fail, followed media speculation relating to that payment. When in October/November 1990 (and indeed in 1992), senior

personnel within Fianna Fail had essentially the same information, (effectively from *'the horse's mouth*'), the matter was not raised with Mr Flynn at that time.

TELEPHONE CONTACT BETWEEN MR FLYNN AND MR GILMARTIN IN 1998

50.43 On 20 September 1998, the *Sunday Independent* newspaper published an article with the heading *'Another ex-FF Minister kept £50,000 donation'.*

50.44 It was common case that this article triggered a series of telephone calls made to Mr Gilmartin by Mr Flynn between 20 September and 1 October 1998.

50.45 The Tribunal was satisfied that it was this public ventilation of the alleged receipt and retention by a *'former Fianna Fáil Minister'* of a IR£50,000 donation from a building contractor intended for the Fianna Fáil Party, as well as the Tribunal's interest in the matter (as indicated in the article), that prompted Mr Flynn to contact Mr Gilmartin. Although neither Mr Flynn nor Mr Gilmartin was named in the newspaper in connection to the IR£50,000, Mr Flynn, by his own admission, made the connection between what was reported in the newspaper and the money he had received from Mr Gilmartin in 1989. Subsequently however, on the following Sunday, both men were named in a newspaper article in connection with the payment.

50.46 Mr Flynn made a series of notes which, he told the Tribunal, represented some of the details of the discussion that took place between himself and Mr Gilmartin in the course of these telephone conversations.

50.47 Mr Flynn's explanation for this contact with Mr Gilmartin was that he wished to obtain confirmation from him that the IR£50,000 donation in 1989 was intended for him personally and was not intended for the Fianna Fáil Party.

50.48 Mr Flynn claimed to have received such confirmation from Mr Gilmartin in the course of the series of telephone conversations. Mr Flynn said he documented that confirmation, together with other matters, in the notes he made.

50.49 Mr Gilmartin acknowledged that Mr Flynn contacted him by telephone on a number of occasions in September/October 1998. However, Mr Gilmartin strenuously contested the accuracy of some of the notes penned by Mr Flynn, and of Mr Flynn's recollection of some of the important details of what was discussed between them. Mr Gilmartin maintained that Mr Flynn, in the course of these telephone conversations, put pressure on him to inform the Tribunal that

Mr Flynn had returned the IR£50,000 donation to him and that when Mr Gilmartin refused to accede to this request Mr Flynn had proceeded to request Mr Gilmartin to inform the Tribunal that the IR£50,000 donation was intended for Mr Flynn personally and not for the Fianna Fáil Party. Mr Gilmartin said that he also refused to accede to this request. Mr Gilmartin told the Tribunal that he advised Mr Flynn in the course of these conversations that he, Mr Gilmartin, did not intend to co-operate with the Tribunal.

50.50 Mr Flynn's notes relating to the telephone conversation with Mr Gilmartin on 20 September 1998 (which lasted two hours) documented a vast store of information allegedly given to him by Mr Gilmartin, much of which referred to Mr Gilmartin's experiences in Dublin in the period from 1988 to 1996 and also to contact between Mr Gilmartin and the Tribunal in 1998.

50.51 Among the notes made by Mr Flynn were the following statements, attributed to Mr Gilmartin:

'Press on all week that I gave £ I said I gave donation to party'

'Tribunal demanded my account in Bank of Ireland also asking permission to investigate'

'I'm asked to cooperate'

'Sherwin said no £ went into party funds'

'I gave a donation to Fianna Fáil party'

'I said I had no complaint against you'

'I told them Flynn was straight'

'Sherwin asked for a substantial donation maybe problem could be solved'

'I told him I gave it to PF'

'PF only one I could talk to'

'I said there was a hung parliament and I gave a donation to PF. for his election'

50.52 Mr Flynn told the Tribunal that he interpreted this latter statement *'I said there was a hung parliament and I gave a donation to PF for his election'* to be confirmation by Mr Gilmartin of his, Mr Flynn's, own stance regarding the true intended recipient of the IR£50,000 cheque. Mr Gilmartin denied that he said this or conveyed this information to Mr Flynn. Mr Gilmartin commented that this was a note of what Mr Flynn wanted him, Mr Gilmartin, to state. Mr Flynn also acknowledged that he did not question Mr Gilmartin about the latter's prior reference, as also noted by Mr Flynn, to wit, '*I gave a donation to Fianna Fáil party'*.

50.53 Telephone records produced to the Tribunal reveal that Mr Flynn made contact with Mr Gilmartin's home on 24 September, although no record of what, if any, conversation ensued between the two was provided by Mr Flynn to the Tribunal.

50.54 Prior to the 24 September 1998 telephone call to Mr Gilmartin, Mr Flynn received from the *Sunday Independent* newspaper a number of queries relating to the alleged receipt by Mr Flynn of IR£50,000 from Mr Gilmartin.

50.55 Mr Flynn's next noted telephone conversation with Mr Gilmartin was on 26 September 1998. In Mr Flynn's notes arising from this telephone call were the following statements concerning the IR£50,000, attributed by Mr Flynn to Mr Gilmartin:

> *'I told them I made donation to Fianna Fáil through PF'*
> *'I gave donation to PF'*
> *'What for?—for campaigns'*
> *'I gave it to Flynn'*
> *'It must be a bribe then'*
> *'What was the bribe for?'—TG 'I got no designation'*

50.56 Mr Flynn claimed that the following note represented accurately the dialogue that ensued between himself and Mr Gilmartin in the course of the 26 September 1998 telephone discussion:

> PF '*I'm saying you gave me a personal contribution for my political campaigns. I didn't ask and you didn't ask for anything—no strings attached.'*
> TG '*That's right—I'll settle it with Tribunal crowd on Wednesday you had nothing to do with anything.'*
> PF '*I take it Tom that it's agreed and understood that that's what happened and it's the truth.'*
> TG '*That's right, I'll sort it out.'*

50.57 Mr Gilmartin denied any allegation, as suggested in Mr Flynn's note, that he had assured Mr Flynn that he would tell the Tribunal that the IR£50,000 had been given to him as a personal donation for his campaigns, or, as also claimed by Mr Flynn in evidence, that he had told Mr Flynn that Tribunal Counsel had suggested to Mr Gilmartin that he should say that the money was intended for the Fianna Fáil Party, otherwise it could be interpreted as a bribe.

50.58 Mr Gilmartin's evidence was that he had told Mr Flynn quite openly that the Tribunal was investigating him, Mr Gilmartin, in the context of payments

made to Mr Lawlor, and in the context of the IR£50,000 he paid to Fianna Fáil through Mr Flynn.

50.59 Mr Gilmartin disputed the accuracy of Mr Flynn's note of their dialogue, and stated that the words recorded were not his but those of Mr Flynn. Mr Gilmartin said he did not state to Mr Flynn that he would tell the Tribunal that the IR£50,000 had been given to Mr Flynn for his personal campaigns. Mr Gilmartin claimed to have told Mr Flynn that he, Mr Flynn, *'could tell the Tribunal what he liked.'*

50.60 Mr Flynn made two telephone calls to Mr Gilmartin's home on Sunday 27 September 1998 (the date on which a number of newspapers gave extensive space to the IR£50,000 story and Mr Flynn was identified in the *Sunday Independent* as the conduit for Mr Gilmartin's donation to Fianna Fáil). On that date also, the *Sunday Independent* quoted from Mr Flynn's responses to the series of questions posed to him by the newspaper some days earlier.

50.61 The full text of the questions posed by the *Sunday Independent* and Mr Flynn's responses thereto, as published in that newspaper on 4 October 1998, was as follows:

> [Q.] *1. Has the Flood Tribunal, which has been investigating certain planning matters in Ireland, been in touch with you?*
>
> [A.] *In common, I believe, with all T.Ds, Senators and Ministers, present and former, I received a general letter from the Tribunal at the outset asking if I had any information or documentation relevant to the Tribunal. I responded saying NO. I have had no subsequent request, invitation, correspondence from the Tribunal.*
>
> [Q.] *2. Are you aware that certain allegations have been made to the Tribunal in which your name figures?*
>
> [A.] *NO. Only rumours and speculation reported in the newspapers. I understood Tribunal investigations to be confidential.*
>
> [Q.] *3. Have you ever had any dealings with Mr Thomas Gilmartin in relation to funds?*
>
> [A.] *See answer 4.*
>
> *[Q.] 4. Were you the recipient of a cheque for IR£50,000—intended as a contribution to Fianna Fáil—from Mr Gilmartin.*
>
> [A.] *NO.*
>
> [Q.] *5. Are you aware that the payee of that cheque was left blank?*
>
> [A.] *See answer 4.*
>
> [Q.] *6. Was that at your request?*
>
> [A.] *See answer 4.*

[Q.] *7. Did you pass the cheque on Fianna Fáil as it was intended? If not, what did not (you) do with it?*

[A.] *See answer 4.*

[Q.] *8. Were any favours asked for or given in return for the contribution?*

[A.] *See answer 4.'*

50.62 It was noteworthy that, notwithstanding Mr Flynn's claim to have received confirmation from Mr Gilmartin on 20 September 1998 that the IR£50,000 was intended for him, and not for Fianna Fáil, no such confirmation or hint of same was evident in Mr Flynn's responses to the questions posed by the Sunday Independent.

50.63 Mr Flynn did not produce any contemporaneous note of the first of two telephone conversations with Mr Gilmartin on 27 September 1998, although it was evident from phone records that their duration was for a period of 15 minutes.

50.64 Among the statements attributed by Mr Flynn to Mr Gilmartin in the course of the second telephone call he made to Mr Gilmartin on the evening of 27 September 1998 were the following:

'They knew I had given you a donation'

'T.G. Nothing asked—nothing given by you'

'They knew I had given you a donation'

'No problem to say a donation for his pol campaigns'

'The size a matter for me'

'I liked him and wished him well'

'I'll tell Tribunal on Wednesday'

'It's the facts'

'I told Tribunal that Flynn did nothing wrong'

'I'll tell Tribunal'

'I will do it'

50.65 A further documented call made by Mr Flynn to Mr Gilmartin on 29 September 1998 made no reference to the IR£50,000 donation.

50.66 Mr Flynn's note of his discussion with Mr Gilmartin on 27 September 1998 indicated that Mr Gilmartin confirmed to him that he had given the IR£50,000 donation to Mr Flynn personally, and that Mr Gilmartin would tell the Tribunal this '*on Wednesday*'. A meeting took place between members of the Tribunal's legal team and Mr Gilmartin in Luton on Wednesday 30 September 1998. Notes taken by a member of the Tribunal's legal team as to what was

discussed with Mr Gilmartin in the course of that meeting did not suggest that any reference was made by Mr Gilmartin to the IR£50,000 on that occasion.

50.67 The first telephone conversation between Mr Flynn and Mr Gilmartin on 1 October 1998 (the fifth such conversation) prompted Mr Flynn to make a note of what he maintained to the Tribunal was the following statement made by Mr Gilmartin to him: *'Told Tribunal yesterday that contribution was for Flynn's own campaigns because he liked him and was supportive.'*

50.68 On 1 October 1998, Mr Flynn made two telephone calls to Mr Gilmartin. The second of these (effectively Mr Flynn's sixth recorded conversation with Mr Gilmartin) contained the following statement, attributed by Mr Flynn to Mr Gilmartin: *'I handed that thing to you for your political purposes.'*

50.69 On 2 October 1998, just one day following Mr Flynn's note of what he claimed was Mr Gilmartin's assertion that he had clarified to the Tribunal that the IR£50,000 was a personal donation for Mr Flynn, Mr Gilmartin swore an affidavit wherein he averred as follows:

> *. . . later Pádraig Flynn (and others) asked me for a donation to the Fianna Fáil party and said that this could help to resolve the problems I was having. This was sometime before an election in 1989, probably in late Spring of that year. The impression I got was that if I paid a donation some of these 'games' would stop.*
>
> [. . .] *In about June, 1989, I decided to give a cheque for IR£50,000 to the Fianna Fáil party. I wrote the cheque out in Mr Flynn's presence and signed it. I asked 'who do I make it payable to' and he told me to 'leave it' meaning that I should leave it blank. I now know that the name of the payee was inserted by someone as 'CASH'. The sum of IR£50,000 was debited to my account in Bank of Ireland in Blanchardstown. Sometime later, Colm Scallan took me to meet Seán Sherwin who asked me for a donation to Fianna Fáil. I told him that I had already paid IR£50,000 as a donation to the party. He said 'if you did we never got it.*

50.70 Mr Flynn, in evidence, described Mr Gilmartin's affidavit as *'a litany of inaccuracies and untruths'.*

50.71 The Tribunal believed it extremely unlikely that, in or about the same time as Mr Gilmartin was prepared to swear on oath (as he did) that his payment of IR£50,000 was intended for the Fianna Fáil Party, he assured Mr Flynn that the payment was intended for Mr Flynn personally.

50.72 The Tribunal was satisfied that in his sworn affidavit of 2 October 1998, and in the course of his testimony to the Tribunal, Mr Gilmartin gave truthful and accurate evidence when he stated that in 1989 the IR£50,000 cheque handed to Mr Flynn was intended for the Fianna Fáil Party.

50.73 The Tribunal was satisfied that Mr Flynn's notes did not accurately reflect the telephone conversations between himself and Mr Gilmartin and probably recorded what Mr Flynn wished Mr Gilmartin to say rather than what Mr Gilmartin actually said.

50.74 Mr Flynn sought to explain the apparent contradictions between what he had noted Mr Gilmartin as having stated in relation to the IR£50,000 donation and the information provided to the Tribunal by Mr Gilmartin in 1998. He did so by suggesting that in the course of Mr Gilmartin's dealings with the Tribunal in 1998 it had been urged upon him by Tribunal Counsel to state that the Fianna Fáil Party was the intended recipient of the IR£50,000 rather than Mr Flynn, because if Mr Gilmartin were to adhere to the claim that he had given a political donation to Mr Flynn, it might be construed by the Tribunal as a bribe.

50.75 The Tribunal rejected Mr Flynn's evidence on this matter, and to the extent that, in his notes of his telephone conversations with Mr Gilmartin, Mr Flynn purported to record as much, the Tribunal believed he did so in an effort to create an escape from the situation in which he found himself in 1998.

50.76 The Tribunal was satisfied that in October/November 1990, long before the establishment of the Tribunal, Mr Gilmartin informed Mr Sherwin of a donation made by him to the Fianna Fáil Party through Mr Flynn.

50.77 The Tribunal also noted Mr Gilmartin's instructions to his then solicitors, Noel Smyth & Co in 1996, as set out in Mr Smyth's brief to Counsel[46] dated 22 February 1996, wherein the following was asserted:

> *The Querist will state that in the intervening period, immense pressure was brought upon him to take on O'Callaghan as his partner as he was the bank's preferred option for the development of the property in question. During this time, the Querist will also say that while the rezoning was postponed on several occasions, he was under duress to pay contributions to TDs, councillors, and members of the then Fianna Fáil government and was openly threatened that in the event of his failing to do so, then his rezoning would not take place. In most instances he resisted these claims but on a number of occasions, believing that it*

[46] This communication arose in the context of litigation then being contemplated by Mr Gilmartin.

would significantly help the process, agreed to make financial contributions to the party which, in one case (a sum of IR£50,000), it was retained by the individual minister himself.

50.78 Mr Gilmartin was cross-examined in relation to the reference in the foregoing extract to *'in most instances'.* It was put to him that these words suggested that in some instances he had succumbed to requests for the payments of bribes, including the payment of IR£50,000. Mr Gilmartin denied that he had ever bribed anyone and maintained that he could not be held accountable for the phrasing of Mr Smyth's document.

50.79 As the Tribunal was satisfied that the IR£50,000 cheque given by Mr Gilmartin to Mr Flynn in 1989 was a donation intended for the Fianna Fáil Party, it was therefore satisfied that Mr Flynn's contacts with Mr Gilmartin between 20 September and 1 October 1998 were undertaken by Mr Flynn solely for the purpose of urging Mr Gilmartin to change his story to accord with that of Mr Flynn.

50.80 The penultimate telephone contact between Mr Flynn and Mr Gilmartin took place on 3 October 1998 at 6.15pm. This call was initiated by Mr Flynn. The final call at about 7pm on the same evening was initiated by Mr Gilmartin and appeared to have been short in duration. In the course of the final telephone contact between Mr Flynn and Mr Gilmartin, Mr Gilmartin informed Mr Flynn that he could not meet with him on the following day, 4 October 1998, as had been arranged earlier at Mr Flynn's suggestion.

50.81 In the course of his evidence to the Tribunal, Mr Flynn produced a piece of paper to the Tribunal on which he had noted the content of the discussion between Mr Gilmartin and himself on 3 October 1998. On the reverse side of this note, there appeared the following handwritten note: '*You will <u>NOT</u> give it to FF let him do his own messages!!! give it to a mediator If Tom G won't accept then have it donated to charity.'*

50.82 Mr Flynn was questioned as to who was the author of this note, and its purpose and meaning. The following exchange took place between Counsel for the Tribunal and Mr Flynn:

'Q. *Who made that note?*

A. *I don't know.*

Q. *In what circumstances can you recollect was there any discussion about Mr Gilmartin and doing his own messages or giving something to Fianna Fáil?*

A. *No.*

Q. *Do you know anything about this document?*

A. *No.*

Q. *Do you know how it comes to be among your documents?*

A. *Obviously it was on the back of what I was taking as my message of the telephone conversation.*

Q. *Is it your belief, Mr Flynn, that when you came to make the notation in relation to Mr Gilmartin on the 3rd October 1998, this advice or note was already on the other side of the page?*

A. *I don't know*

Q. *So can you tell me in terms of date order which note*[. . .] *was created first?*

A. *I cannot.*

Q. *Can you assist the Tribunal at all in relation to the material that is contained on the reverse of the page dealing with Fianna Fáil and Mr Gilmartin and a mediator?*

A. *No, I didn't write it.*

Q. *Was there ever a suggestion made, Mr Flynn, or floated at any stage that you would dispose of the IR£50,000 by returning it to Fianna Fáil or by returning it to Mr Gilmartin?*

A. *No.*

Q. *Was there ever any suggestion that a mediator would be appointed and if Mr Gilmartin wouldn't accept that, then have it donated to charity?*

A. *No.*

Q. *Do you agree that it's likely that the subject matter of this discussion or note is the IR£50,000 that Mr Gilmartin . . .*

A. *I don't know.*

Q. *You don't know?*

A. *No.*

Q. *But do you not agree that it's likely? Because do you agree first of all, that part of the subject matter of this must be about money?*

A. *Obviously.*

Q. *Because what is being discussed there is having something donated to charity, isn't that right?*

A. *Yes, that's right.*

Q. *And the only thing that you, business you had with Mr Gilmartin involving money related to the £50,000, isn't that right?*

A. *That's right.*

Q. *And isn't it likely that what this is, is a note or advice by somebody to you as to what you should do with the IR£50,000 in the light of the publication of all the material in the newspapers?*

A. *I can't say.*

Q. *Isn't it likely, Mr Flynn?*

A. *I can't speculate.'*

50.83 Mr Flynn was then asked if he recognised the handwriting in the note. Mr Flynn responded: '*It's not mine. It may be my wife's. I cannot say yes or no to that'.* And Mr Flynn added: '*But it's certainly not mine. That's not my style.'*

50.84 Mr Flynn was also asked, later in his evidence, did he recognise the handwriting as that of his wife, to which he responded: *'I think it might be, yes',* and added: *'I can't say for sure.'*

50.85 Mr Flynn then said that he doubted that his wife would have been in a position to assist the Tribunal in relation to the document, but was unable to say why she could not assist.

50.86 This note, on its face, appeared to corroborate Mr Gilmartin's assertion that at some point between 20 September and 1 October 1998, Mr Flynn had suggested to Mr Gilmartin that he take back the IR£50,000 and that Mr Gilmartin had declined to do so.

50.87 The Tribunal did not accept Mr Flynn's evidence that he had no knowledge of this note and that he could not definitively identify its author. The Tribunal believed that Mr Flynn knew perfecly well the identity of the author of this note.

THE LONDON FUNDRAISER

51.01 On 23 November 1989, a Fianna Fáil fundraising event took place in the Reform Club in London, attended by, amongst others, Mr Flynn and Mr Bertie Ahern, both Government ministers.

51.02 Prior to the event, Mr Flynn had telephoned Mr Gilmartin and they met by arrangement on the evening of the fundraiser.

51.03 Mr Dadley of Arlington Plc told the Tribunal that he attended the fundraising event at the Reform Club at Mr Flynn's request. Mr Dadley spoke at the event in support of investing in Ireland. It was his understanding that the event was designed to promote investment in Ireland, and he was unaware that it was in fact a fundraising event for the Fianna Fáil Party.

51.04 Mr Dadley told the Tribunal that in the course of the event, Mr Flynn asked him for a donation to the Fianna Fáil Party. More specifically, he asked Mr Dadley for a donation '*for the boys*' in reference to the Fianna Fáil Party. Mr Dadley said he was offended by this request and, following a brief discussion

with his colleagues and fellow Arlington executive Mr Mould, rejected the request.

51.05 Mr Flynn acknowledged that he requested a donation for the Fianna Fáil Party from Mr Dadley. He believed that this was the first occasion in his political life, save church gate-type collections, that he had requested a political donation for the Fianna Fáil Party from an individual. He acknowledged also that he may have used the words '*for the boys*' when making the request of Mr Dadley.

51.06 On day 466, Mr Donal O'Donnell SC, Counsel for Mr Gilmartin, put the following suggestion to Mr Dadley: *'Mr Dadley, whatever the precise sequence of events, was it your impression that the warmth of the welcome somewhat dimmed after Arlington had been unwilling to respond to Mr Flynn's request?'* To this Mr Dadley responded: '*Dimmed, I would not use. Terminated would probably be better.'*

CHAPTER TWO – THE QUARRYVALE MODULE – PART 3

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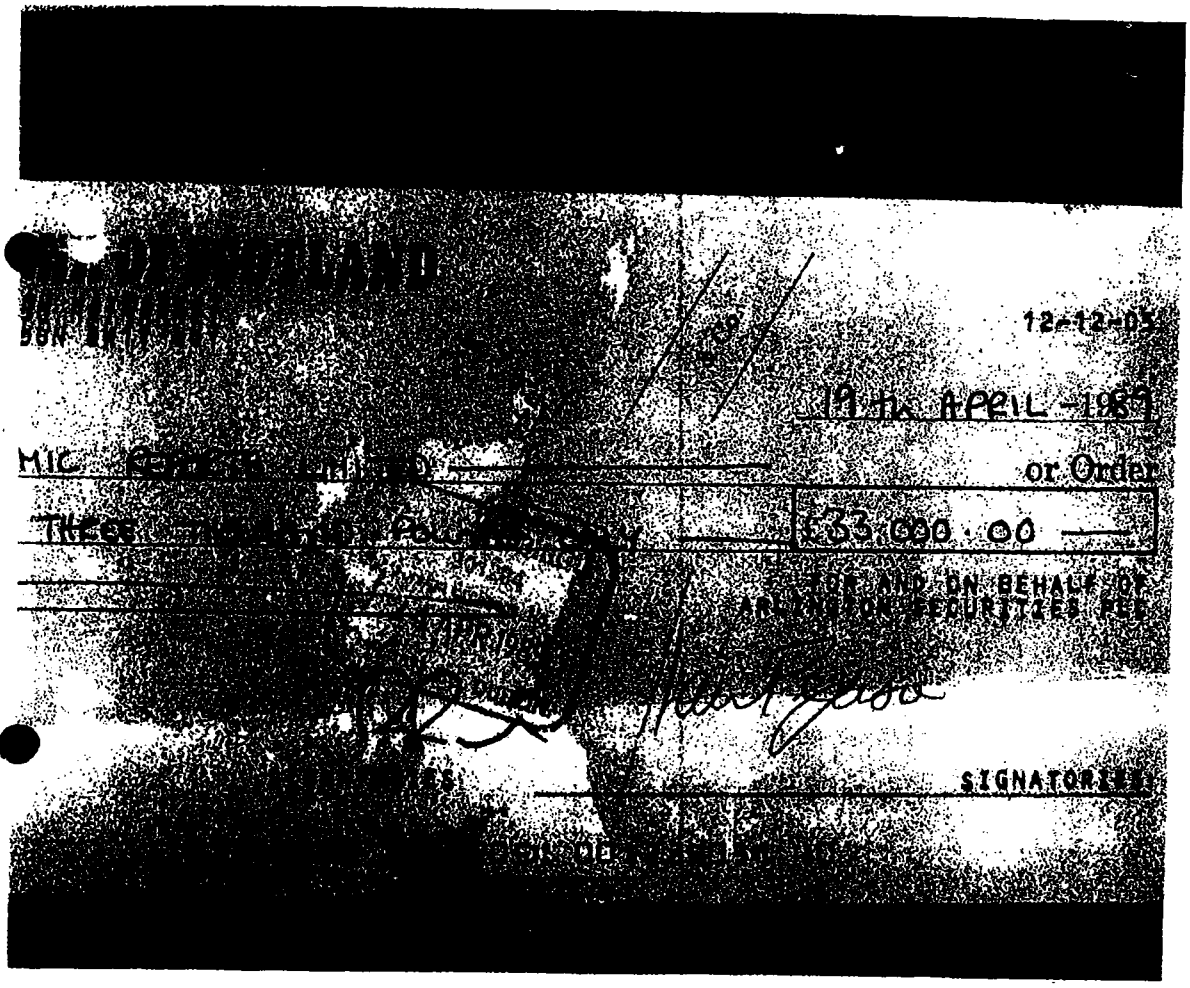
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TC 10.2-4

20 WHITEHILL AVENUE
LUTON
BEDFORDSHIRE LU1 3SP
ENGLAND

6th July 1988

G. Redmond, Esq.
Assistant City & County Manager
Dublin County Council
P.O. Box 174
46/49 Upper O'Connell Street
Dublin 1

Dear Mr. Redmond,

Ref: Motorway Facilities.

I was very pleased to have the opportunity of meeting you and I would like to thank you for your advice and assistance.

I have instructed the consulting engineers to liaise with the UK Road Engineering experts that I have retained for advice regarding the provision of motorway facilities with particular emphasis on complying with safety and international road engineering standards.

We are compiling a selection of aerial and photographic views to outline specific examples of the appropriate entrance and exit designs. The construction engineers will prepare a sketch layout showing our suggestion for consideration by yourself and your Road Engineering colleagues in the Council to further the exploratory discussions.

We fully accept and note the point raised, that your Council acts as an agent for the Department of the Environment, Roads Division, in overseeing the construction of the Motorway and National Primary Road schemes.

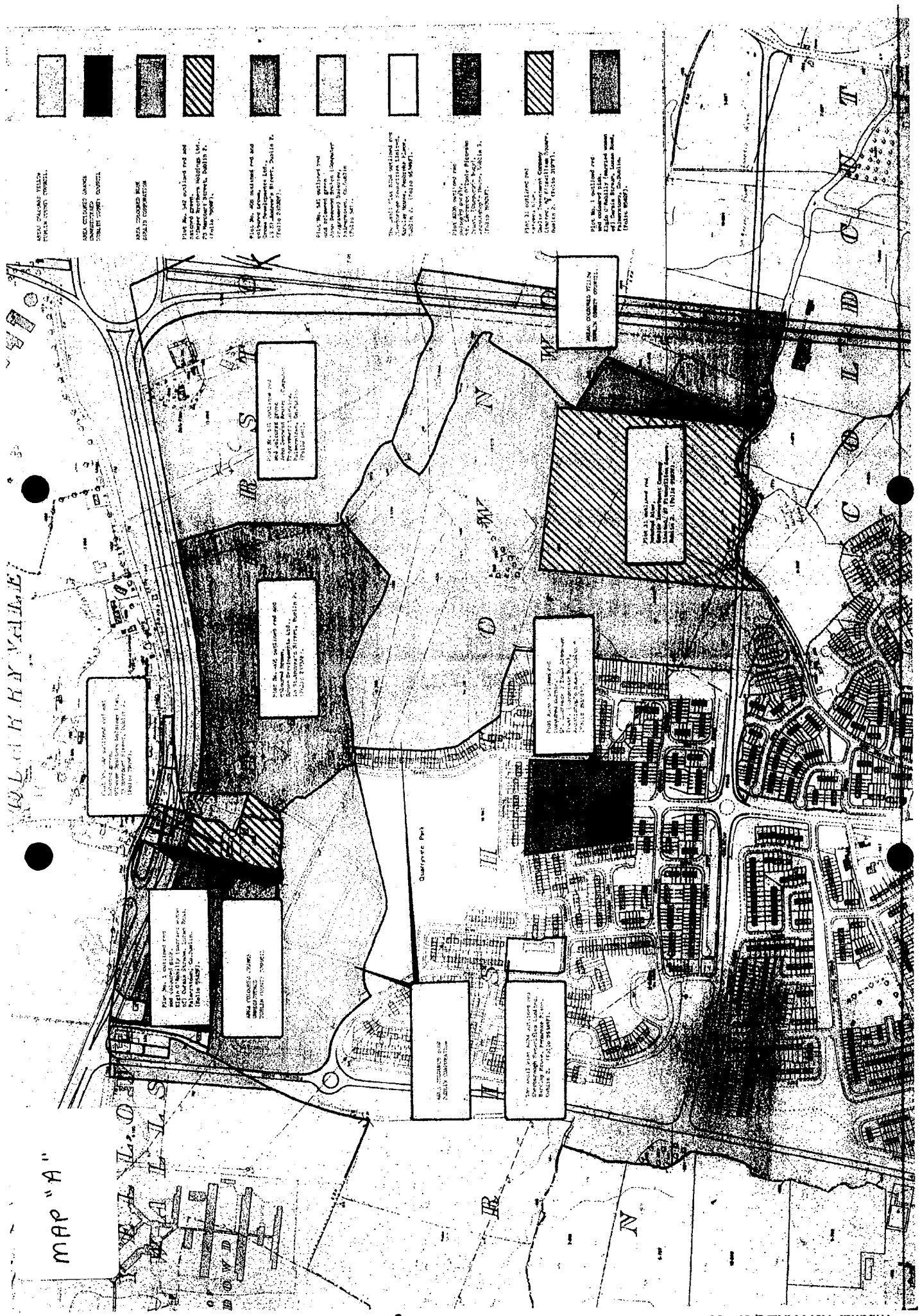
We believe if agreement can be reached, that our proposal for a business park and motorway service at the Palmerstown/Rowlagh location would bring much needed investment to the area.

We hope to be in a position to seek a further meeting with yourself and your colleagues in the Roads Department to discuss our proposals further. I will contact your secretary in due course to arrange a date and time suitable to your itinerary.

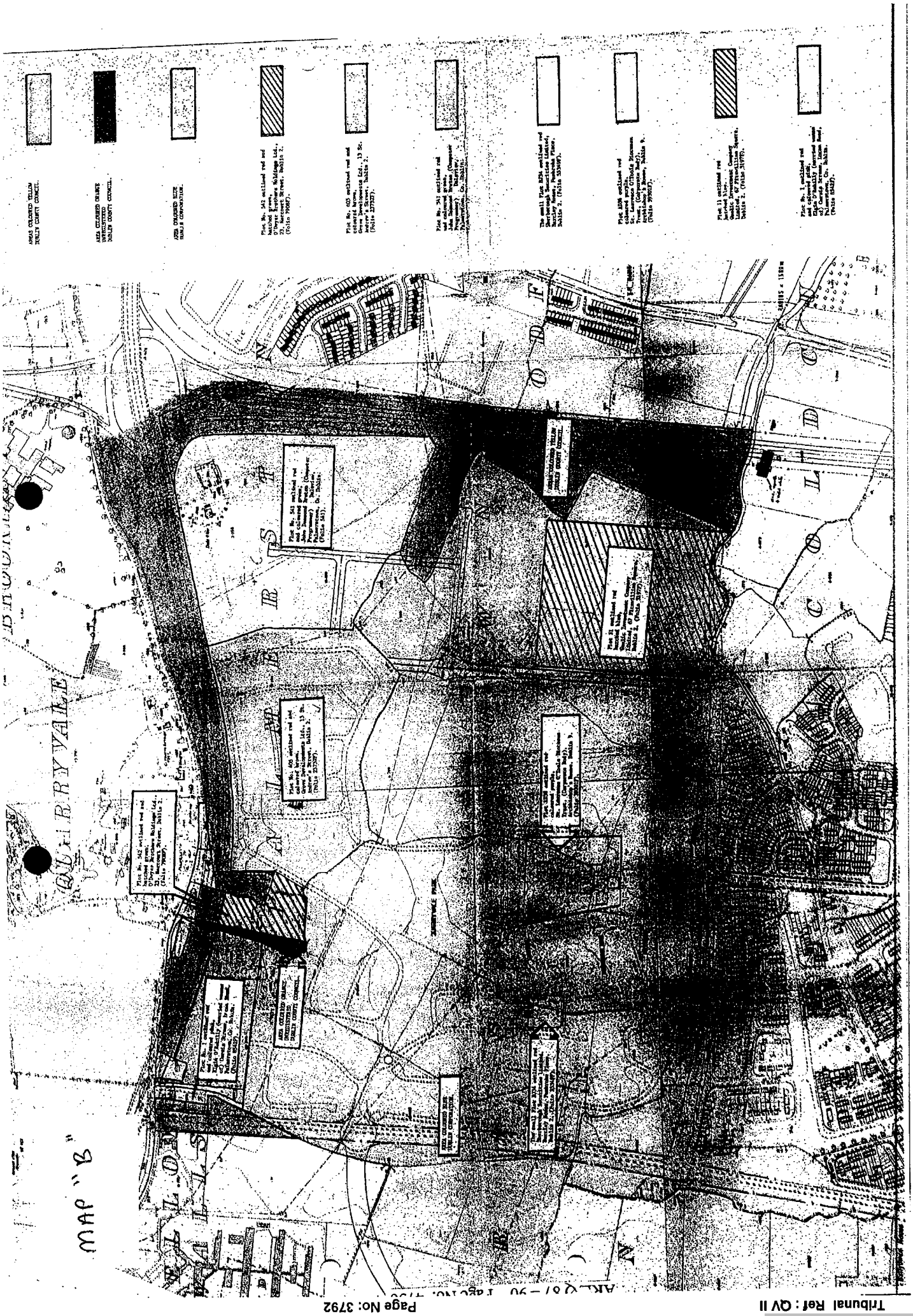
Yours sincerely,

Tom Gilmartin

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DJ.1-14

Alleged Planning Permission irregularities
Note 2

At 2.30 pm on Friday 3 March, 1989 the Minister asked me to join him in his office where the Minister for the Environment, Mr. P. Flynn was already present and had been shown Garda report dated 27 February.

Mr. Flynn said that he had come into possession of some further information that was related to the Garda investigation. At. 1.15 pm on Tuesday 28 February he had met at their request, Mr. Frank Feely, the City and County Manager and Mr. S. Haughey, Asst. City and County Manager, who told him the following.

On the previous Thursday or Friday (23 or 24 Feb) - the Minister was not sure which day - a Mr T.P. Gilmartin had come to see them (this is the same Mr. Gilmartin mentioned at the meeting on 2 March with the Taoiseach). Mr. Gilmartin told them that he was interested in property development in Dublin but that irregular propositions has been put to him in connection with certain planning procedures that he had to go through. Large sums of money "up front" were requested as a consideration for giving him whatever approval he needed. Gilmartin named two people who were alleged to be involved in these transactions - Mr. George Redmond, Asst. Manager with responsibility for Co. Council matters and Deputy Liam Lawlor. He also said that certain other Co. Councillors were involved and Councillor Finbar Hanrahan was named as one. Gilmartin said that the amounts of money requested were vast. There was a mention of payment of £5 million and also a reference to "£100,000 per man". Gilmartin was "frightened" by the extent to the corruption he was confronting and decided to tell his story to the authorities [Minister Flynn said that Gilmartin was a tough principled man - as a wealthy Irishman living in England he had been pressurised by the PIRA to contribute to their funds and he had resolutely refused].

Minister Flynn was concerned about what he should say to Mr. Feely who was, in turn anxious about what action (if any) he should take in relation to Mr. Redmond. He was advised that the whole affair required thorough investigation that this could be done only by the Gardai, that the Garda investigation was already underway and that the additional information he had provided would be immediately conveyed to the Gardai. There was danger that any premature confrontation with Mr. Redmond or any of the other persons named would be contrary to the interest of the Garda investigation. Minister Flynn said that he could get the address and phone number of Mr. Gilmartin - this would help the Garda enquiry [T.P. Gilmartin, 28 White Hill Avenue, Luton, Phone ~~0582-258481~~].

The Garda Commissioner called to my office at 4 pm approx., at my request, and I gave him all information referred to above. He appreciated the importance of proceeding quickly with the investigation and undertook to keep me informed of all significant developments. He was very definitive in his view that any approach to Mr. Redmond at this stage would frustrate Garda enquiries and I confirmed with the

DJ.1-15

Minister that Minister Flynn's advice to Mr. Feely had been not to have any confrontation with Mr. Redmond, for the present at any rate.

3 March, 1989.

T.P Gilmartin
20 Whitehill Avenue
Luton
Tel. 0582 – 25846

WHITEHILL AVENUE

His story to Feely and Sean Haughey, Assistant City Manager – 23 or 24 February. He was interested in developing property in Ireland but he was worried about irregularities. He was told by somebody there would have to be money put up front to people.

1. George Redmond, Assistant County Manager;
2. Liam Lawlor, T.D;
3. No. of other Councillors – one named – Finbar Hanrahan, Fianna Fail Councillor for Lucan.

He was frightened by the magnitude of the demands – figure of £5 million mentioned, also £100,000 for each man. Do not know how many men. They felt he was a tough man in the millionaire bracket. Said he had been approached by I.R.A for money but told (them) to f ------ off.

Tell him that this refers to a meeting with Mr. Feely and Mr. Haughey. Mentioned plans for developing in Ireland. Told money had to be put up front. Matter now in the hands of the Gardai and interview (sought).

Complaint about and investigation in regard to planning

Ringing concerning a meeting (which he had) with Mr. Feely and Mr. Haughey last month for the purpose of carrying out some developments here in Ireland. Mention of having to put money up front in order to succeed – to certain people. Because of concern matter was now in the hands of the Gardai and (I was) anxious to hear from him urgently about this.

(1)

Y. P. Gilmartin
20 Whitehill Avenue, WHITE HILL AVE.
Luton
Tel 0582 - 25846

Asst Cty Mgr

Mr Story is Cty Solr Hounslow 23rd 24th Feb. He was
not in developing property in Ireland but knows
many chief executives in UK both Cty Councils
Their Lands have to language port appointed 3 p capita
1 Geo Redmond, Asst Cty Solr
v Liam (Carlow T.)
Mo of New Connections - 1 named - Finbarr
Hanrahan, Sol Cons. for Cork.
Brightness & engineering of Clonmore Tiffy Ltd
mentioned, also Limerick for rail con. Do
not know if he has any more
Mr Felix Lewis a Leigh man in Millwall trades
Card. Luton has approached by DEA for many
Mr Laing is Mr.

Will be appt Con Mgr with Mr J. W. Hamilton plc
to develop in Ireland. Joe may have the
power of Atty Mr Hamilton is Chmn of
Littlewoods.

Complimentary Copy of MS in Regional Planning (1)

Regarding Conference a meeting with Mr Tony Mr Mungo
last month for purpose of company and town development here in Dr
Conference about being important many MP's Mrs in order to increase
& certain People. Because of Common Market Law in Land v S.

Note of responses made by Mr. T. P. Gilmartin, 20 White Hill Avenue, Luton (Tel. 0582 25846) in course of conversation on telephone with Chief Superintendent Hugh Sreenan on Saturday, 4th March, 1989.

Saturday, 4th March, 1989 - 3.12 p.m.

Chief Superintendent Sreenan telephoned Mr. Gilmartin and explained purpose of his call.

Mr. Gilmartin.

" I don't know if I want to get involved in that. A number of things have gone on. A lot of things have happened. I won't be over there until sometime later on. Obviously I did not want to really get involved in what was going on. As I saw it I could go away without doing anything. I was involved in something and if I failed after going in with my eyes open then that was my fault but if I had to fail because of dubious tricks being pulled, then I felt I should do something about it. I would not really want to get involved in things that have been going on for years.

They are not as naive over there as not to realise at this point in time what is going on. If you go out to the west side of Dublin that is where you will get to know all about it. I don't know that I want to become involved. I do not know that I could help in terms of providing any evidence. I am pretty well tied up all next week here even if you were to come over. I have meetings in London all of Tuesday and Wednesday and other things to attend to.

There are a number of people around Dublin complaining bitterly about things that are going on. Why are they not doing something about it ? No way was I going to walk away and lose myself a substantial sum of money without saying what was going on.

It was because of the current so called boom in Dublin that I got involved. I got in on the Bachelor's Walk project. I formed a joint venture with Arlington Securities in this project. Then came the question of a development on the west side of Dublin and I was asked to have a look at it. I began to run up against problems motivated by greed or worse than that in a contract involving the City and Council. Land disappeared. We had agreed a contract on a substantial chunk of land and it was withdrawn. They would not deal. There were some dirty tricks being pulled. There were people I was not prepared to talk to. People in authority were trying to put the screws on for money.

I have resolved the land problem for the moment. Proving anything would be

over .....

Return to report

(2)

would be .....
very difficult for me except that I lined up meetings and taped what was happening. One guy is more subtle than all the rest - saying one thing to my face and something else behind my back.

There was no point in walking away losing a lot of money due to dirty tricks. I'm not complaining because of opposition, genuine opposition. If I'm in I deal straight and will not bribe or corrupt.

I was involved on the west side of Dublin and in Dublin City. Things are going on absolutely on a very wide scale. I'm an emigrant myself, arrived here in the 1950's and took the opportunities. I'm from Lissadell in north Sligo and I go back there to visit my sister. There are thousands of young people still coming over here and they won't go back because they say there is no hope there. I felt the time was ripe with the so called property boom in Dublin. I risked a hell of a lot of money in Bachelor's Walk. Arlington Securities only wanted to come in when I had got it going. There is a one hundred and fifty million pound investment there and when that was under way the other development, in the middle of Clondalkin/Palmerstown, came up. This will lift that area for all time. There is a hell of a risk there but I knew that. I was prepared to ride along with it until they began to take the feet from under me without a chance. I was told 'if this goes you are making a lot and pay up or else we will make it f - ing difficult'. To prove that land disappeared would be difficult but that was what happened to me.

I avoid publicity like the plague and do not want to be involved in anything which would bring me into it.

There is one particular gentleman. One or two others in positions of power told me to keep quiet. I decided that before I would disappear I would do something about it.

The site in Clondalkin was zoned for retail to build someting here. I had a look at it and there were major road problems. I told them it was in the wrong place and could not work. It would be a slum. I thought, if I were to do anything there , where would I do it. I moved to another spot, about 500 yards away and near the west link road, and decided that's where it should be. I set about seeing if I could make it work. I got a terrific response from major international traders. The Clondalkin site had in the meantime been sold to Cubay and he would not go in on it either. O'Callaghan from Cork was then trying to do one in Lucan but he ran up against my problems. His architect and agent persuaded him to gat involved in Clondalkin and then he heard of my one. I was told by the Ministers that the Goverment would want my scheme. The other one was zoned for retail. It was suggested that

over.....

(3)

It was suggested that .....
I and O'Callaghan should get together. We met and he agreed that his was a mistake. He had paid a deposit and there was no way that he could make it work and he did not know what to do. We agreed to work together and if mine was a success I would see he would be reimbursed and and if mine failed he could go ahead with his own then. A meeting was called and there was an announcement to the Managers that O'Callaghan and I were getting together so the conflict was gone. The development to go ahead was to be mine. One of the Managers came out - he had taken mine all along as a joke and he realised now it was a goer. He rang some people with vested interests and informed them of the possibility of making money. They, in turn, started pulling strokes. It was delicate because of the deal with O'Callaghan. The land was not worth more than ten grand an acre but I paid over forty grand an acre. There was a great risk to me but because I already owned some of the land the worst I felt I could do was to get my money back. This Manager started putting out rumours that I was doing a cosy deal and the Corporation were forced to withdraw land. I was not aware at the time why this was happening. Completely apart from that fellows were trying to hold me to ransom. I lost tha land vital to the whole thing. I had land which I had bought from Bruton, Sharpe and others but I could not get in or out of there.

This was going to be a major retail, such as D I Y warehousing, with a major business park and a liesure development. It would create 10,000 jobs. It would cover 180 acres. Nothing like it has been seen before in Ireland. It would solve the problems of the area for ever. It rattled me that this should happen. I was told long before the Corporation pulled out that it was going to happen. O'Callaghan was told by some of the boys that the Manager had 'phoned people. He is the Co. Council Manager. He has been involved in lots of things.

I had no problem at all of that kind in Bachelor's Walk. The only one thing was a press report which put up the price of some of the properties which we had not finalised at the time. Arlington Securities are not street wise as far as deals in Dublin are concerned. I was dealing with Paddy Morrissey, Sean Haughey and others and they have assisted and so have the Ministers, who were anxious to get investment in. Many others, Abbey and so on, were pulling out at the time I decided to go in.

I must say that in one way I'm happy with your call. I took a risk and was not sure about what I was doing but it reassures me that the people I decided to trust are genuine and are anxious to have things done right. I was beginning to wonder where it might end.

That gentleman is at this for years but it will be very difficult to pin

(4)

know it and say .....

nothing. He is retiring in June. He is one of the king-pins but the circle extends to a lot of elected members. I called one gentleman a gangster and said that the mafia paled by comparison with them. He told me that was dangerous talk and that a person could find himself in the Liffey for saying something like that. I took that to be a threat.

I will be in Dublin probably on Tuesday week. There are people whom I would like to see - the people I have already talked to there - and I would like to think this whole thing over, but I will contact you. If it came to a Court case it would be difficult to prove and I don't know that I want to get involved. There are things going on over there in the news at the moment about a certain representative but I bet they will all come out whiter than white. I can tell you that they are not even the tip of the iceberg as far as that person is concerned.

I'm in a delicate situation. From one point of view it could be seen to be in my interest to expose all and to be only an act on my part to get what I am looking for. From the other point of view the thing is only beginning and if I go ahead it can only get worse. I am not concerned with genuine objections to my plans. I know, for instance, that the Planning Manager, Mr. Prendergast, is entirely opposed to my development but I also know that this is a genuine belief on his part as it is contrary to the overall plan already adopted for the area and it is up to me to prove that my proposals have merit if I am to succeed.

I believe in the country and would like to do what I can. I'm in the business of trying to make money but apart from that I would like to do something to help stem the flow of young people. I visited my sister in the village of Dromahair the week before last and heard that three hundred young people have left the area. Soon all that will be left will be old people and children. To have this continue will only ruin the country.

I have you telephone No. and I will contact you the week after next."

Certified to be an accurate account of telephone conversation with Mr. Gilmartin on 4th March, 1989.

J. J. Sheenan Chief Superintendent.

(H. J. Sheenan.)

'88-09-07 09:10 A P L 353 1 282693 A-01 P.1

FAX MESSAGE FAX MESSAGE

DATE: September 07.1988 PAGE 1 OF 2

TO: Mr. Richard Foreman
For : Mr. Tom Gilmartin
AT:

FAX NO: 03-0908-607077
TELEPHONE NO:

FROM: LIAM A LAWLOR
AT :

FAX NO: 241842 TLX NO: 91268
TELEPHONE NO: (01)280507
Sender of this Fax is:

MESSAGE:

It would be much appreciated if you could telephone Mr. Tom Gilmartin and inform him that the fax from Liam Lawlor is awaiting him.

Regards,

Liam A Lawlor

IF ALL PAGES ARE NOT RECEIVED CLEARLY, PLEASE CALL US ON 280507 IMMEDIATELY

THANK YOU!

'88-09-07 09:10 A P L 353 1 282693 F1-02 P.2

Draft Letter

Mr. Padraig Flynn T.D.,
Minister for the Environment,
Department of the Environment,
Custom House,
Dublin 1.

Re: Neilstown/Rowlagh Area Outside Clondalkin

Dear Minister,

I am writing to inform you of a very major project I have been progressing for the above area, as shown on the enclosed drawing. The Neilstown/Rowlagh area has in excess of 5,000 mainly Local Authority (Dublin Corporation) houses and very little other facilities. The project I am proposing incorporates a major retail participation and the bulk of the land ownership is held by Dublin Corporation and Dublin County Council. We have had preliminary discussions with the appropriate personnel in the relevant departments, at administration, technical and land acquisition levels.

We are preparing a brochure on the project and would welcome the opportunity of meeting with you week commencing 25th September to outline in detail our proposals.

- Total Estimated Capital Investment in the West Centre would be £X
- Providing during construction X Jobs
- When Centre is fully operational X Jobs

There would also be substantial job creation spin-off from manufacturers and suppliers to the various outlets in the project's new centre.

I will contact your private secretary to arrange a meeting and look forward to the opportunity of outlining in detail the proposed project.

Yours etc

Return to report

353 21 275626 4 O'CALLAGHAN PROP.LTD.CORK 353 21 275626 04.11. 88 15:06

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial & Commercial Developers

21/24 LAVITT'S QUAY, CORK.
Telephone: (021) 275008 / 274323
Telefax: (021) 275826

M E M O R A N D U M

To: Mr. Edward Lyons ..... Date 4th November, 1988.

From: Owen O'Callaghan ..... Ref. Clondalkin .....

Subject: Notes on meetings with:- Liam Lawlor; Robin Cherry and Finbarr Hanrahan

Liam Lawlor

I met with Liam Lawlor on Wednesday last. Lawlor told me that Flynn and MacSharry asked him to look after Gilmartin and would have preferred if nothing happened on the Clondalkin site and was under the impression, like everybody else, that the site was going nowhere. Lawlor is quite confident that Gilmartin will get his permission but that we are in the driving seat for the time being. He also feels that the provision of the road is essential to our scheme and suggested that we write to Paddy Morrissey or George Redmond immediately to establish the situation with the road. I am not sure whether Lawlor is trying to be helpful to us or just looking for information. Lawlor suggested that a meeting be arranged between Gilmartin and myself.

Robin Cherry

I met Robin Cherry in Limerick yesterday and discussed Clondalkin with him. He confirmed that Quinnsworth have an option on the best located unit in Tallaght and had already paid quite an amount of money to Monaghan and were not going to progress any further with Monaghan until he had a second anchor in place. He felt this would be difficult as Quinnsworth had tied up the best location.

353 21 275626 5 O'CALLAGHAN PROP.LTD.CORK 353 21 275626 04.11. 88 15:07

(Continued 1)

On Blanchardstown - he felt that the scheme was too large and too costly and will never get off the ground. However, he felt that with regard to Clondalkin, Quinnsworth would sit on the fence and wait. His own feeling was that Clondalkin was a good scheme because it was basically a practical scheme but he emphasised that the provision of the road was essential.

Finbarr Hanrahan (Dublin County Councillor)

I spoke to Finbarr Hanrahan this morning in Cork. Finbarr was our main supporter in Lucan and it was he who told me about the Gilmartin site some three months ago. As you know Gilmartin has an option on this site which is owned by Paul Sharpe. The land was zoned industrial and is now zoned residential. Dublin County Councillors put a section 4 through instructing Dublin County Council officials to give Gilmartin an entrance onto the Galway road. The County Manager refused to carry out this instruction and the High Court ruled against him some months ago. The case is now with the Supreme Court and a decision will be made on Tuesday next 8th November. Hanrahan is confident the decision will be in favour of Gilm[illegible] and the Councillors. All Gilmartin has then to do is get a change of use to retail. This site is obviously a better location than Clondalkin.

Sharky's Accountant, Jerry McEvoy, rang me this morning to know if I was prepared to have a meeting with Sharky.

I feel it is essential that Ambrose and yourself, and myself if necessary, open initial discussions with Redmond and Morrissey on:

(a) the road
(b) the Gilmartin situation.

Please ring me when you get this fax.

c.c. Mr. Ambrose Kelly
Mr. John Deane

TOTAL P.03

OC.STAT 2 - 25

THIS OPTION AGREEMENT made the 31st day of January One Thousand Nine Hundred and eighty nine BETWEEN O'CALLAGHAN (PROPERTIES) LIMITED, having their registered office at 81 South Mall, in the City of Cork, (hereinafter called "the vendor" which expression shall where the context admits or requires, shall include it's successors and assigns of the one part and THOMAS GILMARTIN (hereinafter called "the purchaser which expression where the context so admits or requires shall include his successors and assigns) of the other part.

WHEREAS:

1. By agreement for Sale dated the day of One thousand nine hundred and eighty eight (hereinafter called "the said Agreement for sale") and made between Merrygrove Estates Limited, O'Callaghan Properties Limited, Owen O'Callaghan and Jack O'Callaghan, (a copy of which is annexed hereto), Merrygrove Estates Limited agreed to sell to the Vendor the hereditaments and premises therein more particularly described subject to the conditions therein contained.

2. By Option Deed dated the day of One Thousand Nine hundred and eight eight (hereinafter called "the said Option Deed") and made between Celtic Nominees Limited and Buckfast Limited of the First Part and the Vendor of the Other Part (a copy of which is annexed hereto) the Vendor granted to Celtic Nominees Limited and Buckfast Limited the Option therein contained subject to the covenants and conditions therein specified.

3. For the consideration of Eight Hundred Thousand pounds the Vendor has agreed with the Purchaser for the grant to him of an option to purchase its interest in the said Agreement for Sale and the said Option Deed subject to the terms and conditions herein contained.

NOW THIS AGREEMENT WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of Eight Hundred Thousand Pounds (IR£800,000.) paid to the Vendor on the execution hereof (the receipt whereof the Vendor doth hereby acknowledge) it is hereby agreed as follows:-

Return to report

OC.STAT 2 - 26

5. In the event of the Purchaser not exercising the option herein granted in the manner herein provided then the Purchaser shall procure that the owners of the land for the proposed West Park Shopping Centre at Palmerstown, County Dublin (hereinafter called "The Gilmartin Lands") enter into a Deed of Covenant prohibiting the use of the Gilmartin Lands for retail purposes which covenant shall be for the benefit of the lands referred to in the said Agreement for Sale. Provided always that that said covenant shall cease in the event of the failure of the Vendor to erect a retail development on the lands referred to in the said Agreement for Sale within a period of five years from the date hereof.

6. The Vendor will use its best endeavours to assist the Purchaser in connection with the obtaining of planning permission for the Gilmartin Lands when called upon by the Purchaser to do so.

IN WITNESS whereof the Vendor has caused its common seal to be hereunto affixed and the Purchaser has set his hand and affixed his seal, the day and year first herein written.

SIGNED for and on behalf of
O' CALLAGHAN (PROPERTIES) LIMITED
by Owen O'Callaghan
in the presence of:

OC.STAT 2 - 27

SIGNED SEALED AND DELIVERED
by the said THOMAS GILMARTIN
in the presence of:

OC.STAT 2 - 28

Dated the 31st day of January 1989

O'CALLAGHAN (PROPERTIES) LIMITED

One Part

THOMAS GILMARTIN

Other Part

OPTION AGREEMENT

DEANE & CO.
SOLICITORS,
81 SOUTH MALL,
CORK.

Return to report

23 February 1989: T.K made allegations to S.H. in the course of an interview, concerning LL, Cllr. H & G.R..
S.H informed C/M/ who asked him to arrange interview with T.K.

24 February 1989: C/M interviewed T.K with S.H + H.N.

T.K alleged that L.L said he was commissioned by the Government to look after the 'Arlington' site. He asked for a 5% interest. T.K responded by calling LL a gangster. L.L said men had ended up in the Liffey for less. Shortly after to T.K's surprise, LL walked into a meeting of Arlington in London. T.K had mentioned the meeting in his earlier conversation with L.L.. At the London meeting LL again said he was commissioned by the Govt. + asked to be compensated. Arlington, against T.Ks advice told T.K to pay LL £3,500 p. month. He did so, the cheques not being made payable to LL except in one case, when the cheque was issued by Mr. S, a bank manager friend.

T.K also said that LL had asked for £5 mill to be paid into a bank account in the Isle of Man, in respect of his support for a development which TK proposed at Irishtown, which development would represent a material contravention of the County Plan.

T.K also said LL had bought a Mercedes car from a Mr. B in Lucan, but had left the vendor short by £20,000 saying this was due in respect of services rendered in relation to a permission obtained giving access for a garage to the new road.

TK said LL got a payment in respect of a permission for a 'Mc Donalds' at Palmerstown.

T.K said that S.W who was innocent of any wrongdoing, gave him the names of 8 members of C.C. who would be involved in any material contravention vote for the Irishtown lands. He (T.K) met four of them. Cllr. H asked for £100,000 in a brown paper bag – notes – no cheques. The other three, whose names he did not recall took a similar line. He did not meet the other four, feeling he might he expected to pay such money to 40 members.

TK said G.R was opposing his development at Irishtown for the wrong reasons. Within one hour of a meeting of Managers with Government Ministers. [We did not confirm whether there had been such a meeting] Mr G.R had told Mr Sha that the Minister had said that Mr K had bought out Mr. OC. [Mr. Sha owns land adjacent to Mr OCs]. Mr K said Mr. R was a friend of Mr Sha.

T.K said a recent announcement by J.C that the Blanchardstown Centre was going ahead was to stymie T.K. He felt G.R advised J.C, who he believed was going to employ G.R when he retired shortly. He also felt G.R had informed PM. to go back on an agreement concerning price for Corp Lands at Irishtown.

T.K. said G.R had received payment in respect of a permission for a Mc Donalds in Palmerstown. In the Mr B case mentioned earlier Mr K said when LL said he was holding back money in respect of the car, Mr B responded that he had already paid

Return to report

Mr. G.R. He T.K also alleged that concessions were made in relation to roads at Blanchardstown, by G.R, which the Council would not normally make.

The allegations against G.R were not substantiated in any way by reference to source or otherwise [except in the case of the alleged passing of information to Mr Sha., in which case TK mentioned the name of a person ' phoned by Mr. Sha] although C/M asked TK for sources.

T.K said he met G.R + told him he 'would see him all right if the permission went through. G.R said there was 'no need for that'. T.K said he wanted to stress that G.R never demanded money and never made any improper suggestion to him. He also said that S.H, P.M whom he had met were absolutely honest as were J.P and C/M whom he had not met but he knew this from all he had heard. He had told this to the Min.

T.K said he had give much if not all of the information given to SH + C/M to the Minister recently

C/M told T.K. they could not tolerate any improper conduct of which they had notice in dealings on property or permissions and advised T.K. that if at any time he felt he was being improperly dealt with, he should come to C/M about it.

On the afternoon of Fri. 24th C/M appraised J.P of the allegations + asked him to examine the files concerned.

(initials)
(initials)

28 February 1989

Original in Safe

23 February 1989 T.K made allegations to S.H., in the course of an interview, concerning LL, Alc/H & G.R.
S.H informed C/M, who asked him to arrange interviews with T.K.

24 February 1989 C/M interviewed T.K with S.H & H.N.

T.K alleged that L.L said he was commissioned by the Government to look after the 'Arlington' site. He asked for a 5% interest. TK responded by calling LL a gangster. L.L said men had ended up in the liffey for less. Shortly after T.K's surprise, L.L walked into a meeting of Arlington in London. T.K had mentioned the meeting in his earlier conversation with L.L. At the London meeting LL again said he was commissioned by the Govt. & asked to be compensated. Arlington, against T.K's advice told TK to pay LL £3500 p.month. He did so, the cheques not being made payable to LL except in one case, when the cheque was issued by M/R S, a bank manager friend.

T.K also said that LL had asked for £5 mill to be paid into a bank account in the Isle of Man, in respect of his support for a development which T.K proposed at Grisliston, which development would represent a material contravention of the County Plan

T.K also said LL had bought a Mercedes car from a M/R B in Lucan, but had left the vendor short by £20,000, saying this was due in respect of services rendered in relation to a permission obtained giving access for a garage to the new road.

T.K said LL got a payment in respect of a permission for a 'McDonalds' at Palmerstown

T.K said that S.W, who was innocent of any wrongdoing, gave him the names of 8 members of C.C. who would be involved in any material contravention vote for the Grisliston lands. He (T.K) met

2.

four of them. Cllr H asked for £100,000 in a brown paper bag - notes - no cheques. The other three, whose names he did not recall took a similar line. He did not meet the other four, feeling he might be expected to pay such money to 40 members.

T.K said G.R was opposing the development at Blackrock for the wrong reasons. Within one hour of a meeting of Planners with Government Ministers [We did not confirm whether there had been such a meeting] Mr G.R. had told Mr Shea. that the Minister had said that Mr K had bought out Mr O C. [Mr Shea. owns land adjacent to Mr O Cs]. Mr K said Mr R was a friend of Mr Shea.

T.K said a recent announcement by J.C that the Blackrock Centre was going ahead was to stymie T.K. He felt G.R advised J.C, who he believed was going to employ G.R when he retired shortly. He also felt G.R had influenced P.M. to go back on an agreement concerning price for Corr lands at Irishtown.

T.K said G.R had received payment in respect of a permission for a McDonalds in Palmerstown. On the Mr B case mentioned earlier. Mr K said when LL said he was holding back money in respect of the case, Mr B responded that he had already paid Mr G.R. The T.K also alleged that concessions were made in relation to roads at Blackrock town by G.R, which the Council would not normally make.

The allegations against G.R were not substantiated in any way by reference to source of or otherwise [except in the case of the alleged passing of information to Mr Shea., in which case T.K mentioned the name of a person. Denied by Mr Shea] Cllr C/M asked T.K for sources.

3

T.K said he met L.R + told him he would see him all right if the possession went through. L.R said there was no need for that'. T.K said he wanted to stress that L.R never demanded money and never made any improper suggestion to him. He also said that S.H, P.M whom he had met were absolutely honest as were J.P + C/M whom he had not met but he knew this from all he had heard. He then left this to the Tribunal.

T.K said he had given much if not all of the information given to SH + C/M to the Tribunal recently

C/M told T K they could not tolerate any improper conduct of which they had notice in dealings on property or possessions and advised T.K. that if at any time he felt he was being improperly dealt with, he should come to C/M about it

On the afternoon of Fri 24th C/M appraised J. P of the allegations + asked him to examine the files concerned.

L.

T.K.

28 February 1989

Return to report

Note of telephone conversation with Mr. TP Gilmartin on 9th of March 1989 at 10.20 am.

I am probably responsible for the current boom in Dublin. I went in when everyone pulled out. I did not plan on running into this problem. Did not expect to get involved in this. I'm to go over there next week. Some cover their tracks very well. Nothing tangible. Have to be taped in order to do something with them. People walk away from investing. Does not rub off too good. Enough problems as Irish here can get institutions downed due to bad propaganda. You are scuttled with this.

I have arranged for a meeting with certain political people next week who obviously want to encourage me to keep going. Also encouraged to keep my mouth shut in certain political quarters. They don't want a scandal and wouldn't want to distance themselves. Only a few people involved. Only a few people involved playing games, but would not know. Quite frankly there is a need for a couple of undercover people to do a job.

I have a deal tied up. There was a hell of a risk. Something extraordinary for the west side of Dublin and it is a winner. Could be looked at that I am doing this for selfish reasons. If this is to be done there is a question of fair play and not for it to be stopped because of gangsters. Talk of the General. These fellows make him look like a monk. I am sitting here and I do what I have been doing for the past 30 years. No high profile. I deal straight, I am not motivated by money. My hesitancy is not that I don't want "effers" put where they belong. Went for a drive around the area with Bank Manager, Blanchardstown. Started off from social rather than financial view. Bachelors - in a shambles. The bank manager said "you have got to be mad, touch nothing in there". I asked him to stop the car. He told me I was mad. I said "I

Return to report

would build the whole area - one block if not two". He told his wife that time he felt that I was gone crackers. I came back a week later with money and he knew that I was serious. Then Arlington came in on it. They took the risk out for me and we done a deal to build it.

There is money being paid to one fellow who threatened that if the investment was to get off the ground he is getting three and a half grand per month, blackmail money. Arlington got scared and I opposed and refused and told the government he was a gangster. He walked into Arlington and put a proposition on the table a year ago and since June 1988 has been getting his payoff. He wanted 5 million in an offshore account, then a 10% stake in Bachelors Walk deal or it might not get off the ground, and he was supposed to be speaking on behalf of the government. He came to us on the basis the government had instructed him to help get the deal done. I only met him about a year ago.

When offered the Clondalkin site by the Corporation I went out with the chief valuer and he showed me the site and told me the price of the site. I said "I would not touch it". I worked out the figures to see if it was commercial. I checked around and came back, could not make it work. The development was in the wrong place. I said I would not do a development here as it was only a slum, and would add and not take from it. I decided to have a look around to see where I would pick. I decided on a site in Palmerstown. It would have to be something big and special, and I put out feelers in London and internationally and was amazed at the response. I spoke to Paul Sheeran, Bank Manager from Blanchardstown, a friend rather than a business relationship, and I asked who owned the land along the Galway Road. Fassnidge a customer, had got planning permission at that time. He had a word with Fassnidge. He knew of Bruton & Company, Sharpe who had

planning permission for homes but had problems - the guy that knew was a TD for the area, said "I will have a word with him". Asked to meet this gent in Deadman's Inn at 6 pm. We went out to meet him. I told him of my interest. Five minutes after he said "Gilmartin, Gilmartin you are the man who has set up the deal in Bachelors Walk. The government has instructed me to take care of you and get that deal into Dublin." He only wanted to know of the deal in Bachelors Walk. Said he was chairman of various groups, said "I want to meet you tomorrow". I decided then to find out myself and I went to Des Bruton - he has land at the corner of the Western Parkway on the Galway Road. He was not interested in selling his home place. I contacted him again and he had a chat with his wife in the meantime. They were interested in a stud farm but not at present in a position to buy it. I agreed a deal subject to planning permission and the stud farm coming on the market. That and another, Keane and Conways came on the market and I bought Conway's from him and got the land. Sharpe was in trouble over two houses - was under pressure from the bank. He agreed a deal and I bought his 60 acres. I started to assemble the site. The chance of planning was a risk. Alan Goubay then bought the Clondalkin site from the Corporation. Goubay realised he could not make it work. He was pulling out and O'Callaghan of Cork came in and he had plenty of problems with that too.

I gave the TD back the deal and told him that Arlington were going to do a deal and had a meeting lined up. I met him the following day and he put the bite on. I had told him of the Arlington meeting the following week to report progress. Then he put the bite on. He mentioned massive figures if the thing was to get off the ground. He might get it off in two years or earlier if we complied. I refused. I asked him if the government knew. He said "you can F-ing tell them if you like". I did not want to start bringing it up at the Arlington meeting. Out of the blue he had walked in and said I had asked him to come.

He then turned and pleaded with the meeting. He began to talk possibilities and then put the squeeze on them. He blatantly told lies in front of me. I was amazed. The managing director and retail director of Arlington, and when he went off they asked what is all this about? I said "money". Raymond Moulder said "we are in for millions can he stop us?" After I left to think about it, and the friend was waiting outside. He suggested a cup of coffee I said that I don't know what does Arlington think of this and think of me. He said "don't mind, take me on board and I'll steer through this and that and if not they may never get on". I left and the next I knew was that he wanted 5% and so much in the Isle of Man and eventually there was an agreed retainer of 3 ½ grand per month. That's paid through me, treating it as a consultancy. They said "you have a joint venture with us and already being paid on a consultancy, and for an easy life give him a consultancy fee to keep him quiet". I said "I'm sorry I did not know anything like this". The demand in my deal is 20% or else, and he is not getting it.

I had to meet the Belgard committee on material contravention. I had to meet with Sean Walsh, Chairman. Met Sean Walsh in the Dail - he felt it was fantastic. He is fair. Sean Walsh gave me a list of names of elected members that would have to be filled in and be aware of what it is about. Warning that because of Clondalkin site being sold to Goubay I would have a fair fight on my hands but should see it through because of the scale. Suggested I should talk to Mr. Goubay. Mr. O'Callaghan had then come in. He had an awful struggle. He approached me saying I am in for so much. I said there is enough for us if it comes off the ground. O'Callaghan to come in joint but the scale frightened him. We came to an agreement. I would underwrite his cost in the site on Clondalkin. The site is dead at the moment. Once that happened alarm bells went up with the crooks. The Taoiseach called a meeting and the Minister for the Environment announced that the Clondalkin

deal was not going ahead and they wanted mine given every chance. One of the County managers came out and contacted persons who had vested interests. The other gent was always there organising meetings with people and with Ministers. One might ask what had he got to do? Told no real involvement. Told me to distance myself from that gent. Told he is not speaking on behalf of the government. Told his attention was peculiar. The Minister said "I can well imagine what is happening here". Sean Walsh said he would like to see it work. Marked out names to fill in and explained what it was all about and if I had a brochure. I organised meetings and probably met twelve out of seventy eight. Met two or three and it was "bingo" every time. Brown paper bag with £100,000 each time. Did not meet the rest. I rang some and said sorry I could not make their meeting. I told this to the Minister and he said if it goes on the deal was not worth doing. I did not mention names as it became an embarrassment for the government. When during stroke pulling a week ago. I could put the whole thing together. Did lose my rag, said there was nothing here but a shower of gangsters. I don't have to do this. The valuer announced that the deal was not on and thought I was going to hit him. The valuer was embarrassed. I knew already, having got a ring from Cork. I knew what I was going to hear. I decided that day - having the whole load of consultants, designers for various meetings - one man from the county council set me up to look stupid. Getting planning permission in Blanchardstown - don't want to go for material contravention as the deal is not worth that. Told yesterday in London by professional people, architects, that the screws were put in for £100,000. That I will give you if I can prove it is correct. Quantity surveyors if they are going to get the deal off the ground. The guy involved - I would like to know more of him if he is gilding the lily or making a true statement. The deal is off in England have shut base in Ireland".

Hugh Sreenan, 14 December, 2003.

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Note of telephone Conversation with Mr. T. P. Gilmartin on 9th March, 1989 at 10.20 am.

I am probably responsible for the current boom in Dublin. I went in when everyone pulled out. I still not plan on running into this problem - did not expect to get involved in this. Am to go over there next week. Some cover there tracks very well. Nothing tangible. Have to be keyed in order to do something with them. People will walk away from investing. Does not rub off too good.
Enough problems as Irish have. Can get visitations down there is just propaganda. You are entitled with this.

Have arranged for a meeting with certain political people next week who obviously want to encourage me to keep going. Also encouraged to keep my mouth shut in certain political quarters. They don't want a scandal and would not want to distance themselves. Only a few people involved Only a few people involved playing games but wanes not Know. Quite frankly there is a need for a couple of undercover people to do a job

I have a deal tied up - there was a hell of a mess - something ~~extraordinary~~ extraordinary for the west side of Dublin and it is a winner. Cannot be looked at that I am doing this for a selfish reason. If this to be be done there is a question of fair play and not for it to be stopped because of gangsters. Think of the General - those fellows make him look like a monk. I am sitting here and I do what I have been doing for the past thirty years. NO high profile. Deal straight. Am not motivated by money. My hesitancy is not that I don't want "offers" But where they belong. Went for a drive around the area with bank manager - Blanchardstown - started off from a social reality then financial view Bachelors - in a shambles. The bank

(2)

Manager said "You have got to be mad - touch nothing in there". I asked him to stop the car. He told me that I was mad. I said "I will build the whole area - one block if not two". He told his wife that time. He felt that I was gone crackers. I came back a week later with money and then he knew that I was serious. Then Arlington came in on it. They took the risk out for me and we done a deal to build it.

There is no money being paid to one fellow who threatened that if the investment was to get off the ground. He is getting three and a half grand per month blackmail money. Arlington got scared and I opposed and refused and told the Government he was a gangster. He walked into Arlington and put a proposition on the table a year ago and since June, 1988 has been getting his pay-off. He wanted £5 million in an off-shore account - then a 10% stake in Batchelors Walk deal or it might not get off the ground and he was supposed to be speaking on behalf of the Government. He came to us on the basis that the Government had instructed him to help to get the deal done. I only met him about a year ago.

When offered the Clondalkin site by the Corporation I went out with the Lord Mayor and he showed me the site and told me the parts of the site. I said "I would not touch it". I worked out the figures to see if it was commercial. I checked around and came back. Cones not work it won't. The development was in the wrong place. I said I would not do a development here as it was only a show and wanted out and not take from it. I decided to have a look around to see where I would park. I decided on a site in Palmerstown. It would have to be something big and special and I put out feelers in London and internationally and I was amazed at the response. I spoke to Paul Sheeran, Bank manager in Blanchardstown, a friend rather than a business relationship and I asked who owned the land along the Galway road. Fassnidge, a customer had got planning

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[redacted] at that time. He had a word with Fassnidge. He knew of Bruton and Co. — Sharpe who had planning permission for houses but had problems — the guy that knew was a T.D. for the area. Said he'd have a word with him. Asked to meet that night in the Shelbourne Hotel at 6pm. We went out to meet him. Told him of my interest. This man's wife he said Gilmartin, Gilmartin, you are the man who has set up the deal on Bachelors Walk. The Government has instructed me to take care of you and get that deal into Dublin. He only wanted to know of the deal in Bachelors Walk. Said he was Chairman of various Groups — said "I want to meet you tomorrow", I decided then to have out myself and I went to Des Bruton — has land at the corner of the Western Parkway and the Galway road. He was not interested in selling his home place. I Contacted him again and he had a chat with his wife in the meantime. They were interested in a third from but were not present in a position to buy it. I agreed a deal subject to planning permission and the third farm coming on the market. That and another, Kees and Conways came on the market and I bought Conways from him and got the land. Sharpe was in trouble over two houses — was under pressure from the bank. He agreed a deal and I bought his 60 acres. I started to assemble the site. The chance of planning was a risk. Allan Gurney then bought the Glendalough site from the Corporation. Gurney realised he could not make it work. He was pulling out and O'Callaghan of Cork came in and he had plenty of problems with that too.

Saw the T.D. heard the deal and told him that Arlington were going to do a deal and had a meeting lined up. Met him the following day and he put the bits on. I had told him of the Arlington meeting the following week to report progress. Then he put the bits on. He mentioned massive figures of the thing was to get off the ground. We might get it off in two years or earlier if we complied. I refused. I asked him if the Government knew. He said "you can f—ing tell them if you like". I did

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[illegible] want to stand bringing it up at the Arlington meeting. Only the time he had walked in and said that I had asked him to come. He then turned and pleaded with the meeting. He began to talk possibilities and then put the squeeze on them. He blatantly told me in front of me. I was amazed. The Managing Director and Retail Director of Arlington and when he went off they asked what is all this about. I said "money". Raymond Moulder said "we are in for millions, can he step us". After I left to think about it and found was waiting outside. He suggested a cup of coffee. I said that I don't know what does Arlington think of this and think of me. He said "don't mind take me on board and I'll steer through this and that and if not they may never get on". I left and the next I know he wanted 5% and so much to the Date of loan and eventually there was an agreed retainer of £3K grand per month. That's paid through me, treating it as a [redacted] 1st Consultancy. They said "you have a joint venture with us and already being paid on a consultancy and for an easy life give him a consultancy fee to keep him quiet. I said "I'm sorry I did not know anything like this." The demand on my deal is 20% or [illegible] and he is not getting it. [redacted] I had to meet the Bilgard Committee on material contamination. I had to meet Mike Sean Walsh, Chairman. I met Sean Walsh in the Sail - he felt it was fantastic. He is fair. Sean Walsh gave me a list of names from elected members that would have to be filled in and be aware of what it was about warning that because of the Blandelle Site being sold to Subway I would have a fair fight on my hands but should see it through because of the scale. Suggested I should take to Subway. Mr O'Callaghan have then come in. He has an unfair struggle. He approached me saying "I am for so much. I said that he is enough for me if it comes off the ground. O'Callaghan to come in joint but the scale frightened him. We came to an agreement I would

5.

Undermine he cat on the site in Clondalkin. The site is dead at the moment. Once that happened alarm bells went up with the crooks. The Taoiseach called a meeting and the minister for the Environment announced that the Clondalkin deal was not going ahead and they wanted more given away. One of the County managers came out and contacted persons who had voted against. The other gent was always there, organising meetings with people and with ministers. One night ask what had he got to do. Told no real involvement. Told me to distance myself from that gent. Told he is not speaking on behalf of the Government. Told him attention was peculiar. The minister said 'dear will enquire what is happening here. dear Walsh said he would like to see it work. handed me names to fill in and explain what it was all about and if I had a brochure. I organised meetings and probably met twelve and of seventy eight. met two or three and it was 'bingo' every time. Brown paper bag with £100,000 each time. Did not need the rest. I rang some and said sorry that I could not make their meeting. Heard this is the minister and some that if it goes on the dial was not work doing. I did not mention names as it became an embarrassment for the Government. When during stroke pulling a week ago I could put the whole thing together. Did lose my rag - said that is nothing less but a shower of gangsters. I don't have to do this. The valuer announced that the deal was not on and thought I was going to hit him. The valuer was embarrassed. I knew already, having got a ring from Cork. I knew what I was going to hear. I decided that day - having a whole load of consultants, designers, for various meetings. - One man from the Co. Council set me up to look stupid. Getting planning Permission in Blackrock - don't want to go for material Contravention as the deal is not worth that.

Ian

over.

Told yesterday in London by Professional people - architects - that the screens were put in for £100,000. Not I will give you if I can prove it is correct. Quantity Surveyors - if they are going to get the deal off the ground. The guy involved - I wanted like to know more of this - if he is gilding the lily or making a true statement. The deal is off in England - have shut here in Ireland.

Hugh Sheeran

14th December 2003.

DJ.1-80

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ACCOUNT OF MEETINGS WITH MR. SEAN HAUGHEY, ASSISTANT DUBLIN CITY MANAGER AND MR. FRANK FEELEY, DUBLIN CITY AND COUNTY MANAGER ON THE 6TH MARCH, 1985.

At 3p.m. Monday the 6th March 1989 with Detective Superintendent Thomas B. Burns I interviewed Mr. Sean Haughey, Assistant Dublin City Manager at his office in Exchange Buildings, Exchange St., Dublin. We told Mr. Haughey that we were investigating allegations of bribery concerning Local Authority Officials and Polititians in their dealings with property developers and in particular allegations made by a Mr. Thomas Gilmartin a property developer based at Luton, England. I outlined some details of a telephone conversation with Mr. Gilmartin and then asked Mr. Haughey if he could help with our enquiries.

Mr. Haughey said he knew and had met Mr. Gilmartin. He first gave us details of functions of senior local government officials in Dublin City and County. At the top was the Dublin City and County Manager Mr. Frank Feeley who had under him six Assistant Managers with delegated responsibility for specific functions. Mr. Haughey was one of these Assistant Managers with responsibility for Dublin City and other functions such as Fire Service in both City and County.

Return to report

DJ.1-81

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Mr. George Redmond, Assistant Manager, was responsible for the Dublin County Council area.

Sean Haughey said he had a telephone conversation with Thomas Gilmartin on February the 22nd 1989 during which Mr. Gilmartin complained he was being obstructed in connection with the development of a "Town Centre" Building Project at Irishtown, Clondalki Co. Dublin. Because of what Mr. Gilmartin said he asked Gilmartin to call to his office. On 23rd February 1989 Mr. Haughey met Mr. Gilmartin, AND later that day a meeting took place between Mr. Gilmartin, Mr. Haughey, Mr. Frank Feely and the Personnel Officer of Dublin Corporation. The meeting lasted three hours. Mr. Feely and Mr. Haughey took notes of what Gilmartin said.

Mr. Haughey informed us that Thomas Gilmartin had been involved initially with the development of a project at Bachelors Walk, Dublin, in conjunction with an English consortium Arlington Investments. During this time Gilmartin looked at a Clondalkin site and was not in favour of the planned location for a major Town Centre Project. He indicated his preference for another site in the area for the Project and commenced to investigate the possibility of developing his preferred site at Irishtown, Clondalkin.

DJ.1-82

-3-

During this time a Comapany controlled by Albert Gubay arranged to purchase the original site shown to Gilmartin and paid the deposit. This Company later decided against development and a Company controlled by a Mr. Owen O'Callaghan, Property Developer, of Cork bought out Gubay's interest. Subsequent to this Gilmartin and O'Callaghan came to an arrangement regarding the development of Gilmartin's site and the latter arranged to buy out O'Callaghan's interest in the original site.

Mr. Gilmartin said he had dealings with George Redmond, Asistant County Manager regarding the County development but said that Redmond did not appear to take him serious Mr. Gilmartin said that when he started to develop this site he began to have difficulties in regard to planning and acquiring land and came in contact with Liam Lawlor, T.D. To get planning permission or consent for the alternative Town Centre site a vote of the majority of members of Dublin County Council was necessary. Mr. Lawlor told him that he needed the consent of eight members of Dublin County Council with direct interest in the area in question. Mr. Lawlor put him in touch with eight members of Dublin County Council. He met four fo them in Buswells Hotel, Dublin and each demanded £100,000 for support.

DJ.1-83

-4-

Mr. Gilmartin then discontinued the effort.

In connection with the Bachelors Walk Project Mr. Gilmartin told Mr. Haughey that he, Gilmartin, attend a Board Meeting of Arlington Investments the Developers, in London to his surprise Liam Lawlor, T.D., was present, Mr. Lawlor offered his services as a Consultant and in any event Mr. Gilmartin was instructed to pay Lawlor £3,500 per month. This he has continued to do and on one occasion made out a cheque for £3,500 (sought urgently by Lawlor)and payable to Mr. Lawlor personally. Mr. Gilmartin said he had been reimbursed by Arlington.

A general conversation concerning the affair then took place and at 4.30p.m. Mr. Haughey introduced us to Mr. Frank Feely Dublin City and County Manager. Again the entire affair was discussed and Mr. Feely read extracts from the notes he had taken at the meeting on the 23rd February 1989.

Mr. Feely said George Redmond was due to retire on age grounds, i.e. 65 years of age in June 1989 and was at present on holidays, he Mr. Feely was going to the U.S.A. on Thursday the 9th March 1989.

DJ.1-84

-5-

Mr. Feely further stated that Gilmartin had told him of the fact that George Redmond, on his retirement, would be going into employment with a Mr. Corcoran, Principal of Green Properties who were developing in Blanchardstown. Mr. Feely showed us a letter which he had received on that day the 6th March, indicating the interest of this Company in purchasing the lands which Gilmartin is interested in developing at Clondalkin. Mr. Feely thought the timing of the letter to be very significant and was very concerned about it.

Both Mr. Haughey and Mr. Feely recounted an incident told by Gilmartin relating to the purchase of a Mercedes car by Liam Lawlor, T.D., from a Mr. Brady. The agreed price was £40,000. Lawlor sent a man to collect the car who was given £20,000 for Brady. When Brady subsequently asked Lawlor for the balance of £20,000 Lawlor response was that Brady owed him that for a planning approval. Mr. Gilmartin stated that Mr. Brady was very annoyed and had made arrangements to repossess the car when a suitable opportunity would arise.

Mr. Haughey told us that Gilmartin said that in connecti with a development concerning a Mr. Fassnidge in the Blanchardstown area Mr. Lawlor had undertaken to get the necessary planning permission in return for a 5% stake in the development.

Return to report

GREEN 01 - 22

OF FINE ART, ANTIQUE FURNITURE, [illegible]
CARPETS, PAINTINGS, ETC.
from two Titled Estates and other clients.
AT OUR AUCTION GALLERIES, CHATSWORTH STREET, CASTLECOMER
ON TUESDAY & WEDNESDAY, MAY 2nd and 3rd, 1989 AT 10.30 a.m. SHARP EACH DAY

The sale will include a very important collection of Georgian and Victorian crested Silver (approx 200 Lots). Fine quality Georgian and Victorian Furniture, including a wide variety of earlier Oak Pieces. Jewellery, Objets d'Art, some Scientific and Surgical Instruments, Clocks, Collection of Antique Rosaries. Fine Paintings and Prints, large Irish Carpets, including rare Abbeyleix and Donegal Carpets, Rugs, etc. Antique Glass, Oriental, European and English Ceramics, Chandeliers and other Light Fittings, Bechstein Baby Grand Piano, Copper, Brass and Silver Plateware and many other items.



'Dublin circa 1820, 192 ozs.'

Approx 1,000 Lots.
VIEWING: Saturday, April 29th, 12.00-5.30 p.m.
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Catalogue: £7 (approx 150 illustrations).

[redacted]

Fine Art & Rare Book Auctioneers
Chatsworth St., Castlecomer, Co. Kilkenny, Ireland.
Telephone: 056-41229/41413

at Mount Butler [illegible]
on Wednesday May 3rd commencing at 10.30 a.m sharp

OVER 500 LOTS

Property of Mrs. Emer Burke, Gortlands, Nenagh, Co. Tipperary, Interesting and rare collection of Porcelain including Figures and Plaques in Meissen, Dresden, Sevres, Derby, Worcester, Masons, Wemyss, Canton, Imari, Nanking etc. Paintings, Watercolours and Old Prints, Sheffield Plate, Bronze, Geo. and Victorian Furniture, Bijouterie etc.
Preview Monday and Tuesday 1st & 2nd May, 10 a.m. to 6 p.m.

VICTOR MITCHELL, M.I.A.V.I.
Auctioneer and Estate Agent,
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Phone (0505) 21396

Joe Mullen & Associate, Hackettstown Hall, Shankill, Co. Dublin

Auction, Monday next 24th, at 7pm,
On View Sunday 23rd 3-6 pm
Monday 24th 10-6.30 pm

The sale will include: fine Vic. mah. double door bookcase, Geo. mah. secretaire bookcase, fine mah. Chipp. style sideboard, Vic. mah. breakfront wardrobe, Edw. mah. 6 drawer tallboy, Vic. walnut fold-over card table, fine set 6 mah. lnl. drawing-room chairs (4 x 2), Burmese carved occ. table on pod, Vic. mah. duchess dressing table, fine Edw. mah. lnl combination wardrobe, mah. leather top pedestal desk, Vic. mah. pod table, Vic. mah. chest of drawers, mah. Chipp. style hall table, fine carved camphor wood chest, 4 pcs. Wicker suite, yew-wood spinning wheel, Vic. brass, copper, china, glass paintings, jewellery, and many other artifacts.
Telephone: 826107 / 825868



LANDS FOR SALE BY PUBLIC TENDER PALMERSTON, CO. DUBLIN C. 69 ACRES

Tender closing date: 19th May 1989 at 12 noon.
Details from: Principal Officer, Development Dept., Fishamble St., Dublin 8. Tel: Dublin 796111 Ext. 2712 or 2330.
Fax: Dublin 796463.

Dublin Corporation

IMPORTANT SALE OF PAINTINGS ON JUNE 8th

Artists already represented include:
Frank McKelvey, William Leech, Aloysius O'Kelly, Gerard Dillon, Mildred Anne Butler, William Sadler, Evie Hone, Ernest Hayes, Alfred Grey, Rowland Hill, Tony O'Malley, Cecily Brennan etc.

John de Vere White/John Taylor are available by appointment to advise on auction values of suitable works for this sale.
Pictures can be brought into the Taylor Gallery on Saturday mornings between 11-12.30 without appointment for advice on auction values.

Taylor de Veres
ART AUCTIONS
16 Molesworth Street, Dublin 2. Tel: 797423

ANTIQUES FINE ART

BRAY ANTIQUES specialists in the Unusual — offer to the People in Need Appeal 50% off all today's (Fri. 21st) takings and we ask all our customers and friends to give their generous support at 37 Main St., Bray. Tel: 862525.

ANTIQUE Chippendale chairs—8 + 2 carvers. Ph. 373238 after 6 p.m.

ANTIQUE FAIR '89, Royal Hotel, Bray. Sunday, 30th April, 11 a.m.-6 p.m. Admission £1. In aid of the Polio Fellowship of Ireland.

"AUCTION Your Antiques". Expert valuation prompt payment. Herman & Wilkinson MIAVI. Rathmines 972245.

EXHIBITION — Paintings by Irish artists. Continuous show of landscapes. — Cambridge Fine Art, 24 Suffolk St. Phone: 774652.

GEORGIAN chest of drawers, side table, William IV sofa table, Vict. pair card tables, large pod table, bureau bookcase, open bookcase. Many other items. Tel. 883667. 11 a.m.-6 p.m.

HEPPLEWHITE, 6 chairs + 2 carvers, beautiful condition. Offers over £3,500. 643125.

OLD Oriental Carpets wanted for cash. Ring or send photo: Peter Linden, Main St., Blackrock, Co Dublin. 885875.

TUDOR GALLERIES, Traditional and Antique Furniture, 30 Sandycove Rd. Open Mon.-Sat. Ph: 803427.

LICENSED PREMISES

CO. LAOIS — Residential licenced premises with restaurant licence and function room. Situated in a country setting and within easy reach of county town. Full details from Clegg & Peavoy Auctioneers Ltd., MIAVI, 41 Grattan St., Portlaoise 0502-22655/21857.

BUSINESSES FOR SALE

BEAUTY SALON — Exclusive [illegible] side location, 9.30 a.m. to 8 p.m.

BRAY — Shoe shop as going concern superbly fitted; further potential. Other uses considered. Tel. Agents (after 6 p.m.)

COLLINS AVENUE, Whitehall — Lock-up fruit and veg business. C.T.O. £2,500. Rent £5,515 p.a. £25,000. Gunne 686588

HANDS ON Investment. High margin business with excellent potential. Existing financial facilities would be available to suitable investor. Apply in first instance to Hamil-Spence & Co., Certified Accountants, 78 Upper St. George's St., Dun Laoghaire.

"BOOKAY HENRYS" Nightclub, Powerscourt Townhouse, D.2. As a going concern. Superbly fitted. Further potential restaurant/bar trade. Tender April 26th. Druker Fanning 763022.

BUSINESS OPPORTUNITIES

PREMS FOR WOMEN — [illegible] natural product relieves pre-menstrual tension. We are offering sole marketing rights in the following areas: Dublin City and County, rest of Leinster, Munster, Connacht and three Counties of Ulster. Your outlets: Supermarkets, grocers, hairdressers, ladies clothes shops, etc. Ph. Newry 08760/31825 10 a.m.-3 p.m. Mon./Fri.; after 6.30 p.m. phone 04240182 any evening.

BUSINESS OPPORTUNITY — Person to buy carpet, furniture, electrical and bathroom showroom. Willing to invest some capital. Ph 728042.

LONG ESTABLISHED manufacturing and construction group based in south east seeks individual partner with capital and management experience to take active role in development of growing business. Reply in confidence to Noel Moran & Co., 2 Herbert St., D.2.

INDUSTRIAL PREMISES

BLUEBELL INDUSTRIAL ESTATE — A prime N.C.I. Road area. Modern industrial buildings, incorporating attractive offices. Warehouse 6,694 sq. ft., offices 1,850 sq. ft. (total 8,533 sq. ft.). Exceptional site of approx. 1 acre for outside storage or extension. Item £35,000 p.a. Sherry FitzGerald Commercial 6[illegible]98

DOCKLANDS AREA c. 4,750 sq. ft. to rent £12,000 p.a. Cumiskey & Cooke. 612055

SANDYFORD INDUS. ESTATE — [illegible] new units each 1,444 sq. ft. with [illegible] sq. ft. offices. Now under construction. Joint Agents, Finnegan Menton 293814 Eoin Deering Lic 01673[illegible]

STILLORGAN IND. PK. — Excellent unit warehouse (4,400 sq. ft.) + office/showroom (3,600 sq. ft.). 3 phase, 4 trm. etc. Freehold £265,000. Hassett 600022.

PREMISES FOR SALE

A TAX INCENTIVE area, 41 Aran Quay, D.7. Freehold commercial property c. 2,467 sq. ft. rear access. Auction. Druker Fanning 783022.

DUBLIN 11 — Freehold garage premises in very prominent location. Forecourt, showroom/workshop enclosed yard, great potential. Auction 3rd May Jackson Stops. 725179.

NEAR CHURCH[illegible] — development area, shop premises [illegible] let or for sale pending [illegible] reasonable [illegible]

Irish Times 21/4/89

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Return to report

On 23rd Feb (Thurs) S.H, ACM informed me that allegations had been made by a land assembler (TK) against GR ACM, LL + H CoCo. + others. I asked him (S.H.) to arrange an immediate interview for me with T.K. This was arranged for the following day.

On 24 Feb (Fri) I interviewed T.K. in the presence of SH + HN. The interview lasted for almost 3½ Hrs. I questioned him closely about all the matters which SH had informed me had been alleged.

Later that day I informed J.P. of the allegations + asked him quietly to examine the files in question.

On 27th Feb (Mon) asked for immediate appt with Min. Priv Sec (G Rice) said Min away. coming back for Cabinet Meeting 28th + leaving for London + Brussels 3pm app. Told him I would like to meet Min. anytime on 28th. Agreed to go to L House at 12.45 in hope that Cabinet Meeting would be over then.

On 28th Feb (Tues) met Min with SH. Meeting approx 1 hour. Told Min of allegations + of my particular concern to have charges against officer investigated, preferably by Gardai + that in the ordinary course I would interview officer + determine appropriate action.

Min was aware of some at least of allegations I made + said there were other matters also requiring investigation. He asked that I write out allegations. He would be back in Dublin Fri 3 Mar.

On 2 Mar (Thurs) phoned Mins sec for appt with Min - both away.

On 3 Mar (Fri) Saw Min with S.H. (3.15) T.T. (Dept Sec) also present. Min said Gardai were investigating matter + would be in touch shortly. I welcomed this + said it accorded with my own views. Told Min GR was commencing 2 weeks holidays abroad. Min said scope of investigation would be wider than matters I had mentioned + implied there was at least one other involved.

Gave Min longhand note initialled by S.H. + self covering matters which I had informed him of on 28th Feb.

FJF 3/3/89

Mon 6th Mar recounted details of 24th February to 2 Member Gardai

On 23rd Feb (Thurs) S.H, ACM informed me that allegations had been made by a local assemblyman (FW) against GRACM, LL & HGC. matters. I asked him (S.H.) to arrange an immediate interview for me with T.K. This was arranged for the following day.

On 24 Feb (Fri) I interviewed T.K. in the presence of SH & HN. The interview lasted for almost 3½ Hrs, I questioned him closely about all the matters which SH had informed me had been alleged.

Both that day I informed J.P of the allegations & asked him quietly to examine the files re question.

On 27th Feb (Mon) Asked for immediate appt with Min. Pers Sec (Miss) said Min away. sourcing book for Cabinet Meeting 28th & leaving for London & Brussels 3 pm approx. Told him I would like to meet Min myself on 28th. Agreed & go to L House at 12.45 i hope that Cabinet Meeting could be over then.

On 28th Feb (Tues) met Min with SH. Matters affecting Labour. Told Min of allegations & of my forthcoming interviews. Some charges against officers investigated, hopefully by Gardai & that in the ordinary course I would interview Officers & determine appropriate action.

Min was aware of most at least of allegations I made & said there were other matters also requiring investigation. He asked that I write out allegations. He would be back in Dublin Fri 3 Mar.

On 2 Mar (Thurs) planned to see him with Min - left away

On 3 Mar (Fri) Saw Min with S.H (3.15) T.S (Asst Sec) also present. Min said Gardai were investigating matters & would be in touch shortly. I welcomed this & said it accorded with my own views. Told Min GR was commencing 2 weeks holidays abroad. Min said scope of investigation would be wider than matters I had mentioned & suggested there was at least one other involved.

Gave Min background note initialled by SH & self covering matters which I had informed him of on 28th Feb ODJ,

Return to report

DJ.1-9

1.

Allegations of irregularities in the Planning Permission area
Note 1

On 7th February, 1989 the Minister told me, in the utmost confidence that the Taoiseach had sent for him to put him in the picture about certain allegations about irregularities in obtaining building planning permission, that had come to the Taoiseach's' knowledge through the Minister for the Environment, Mr. P. Flynn. I was told that some person or persons (not named to me) has made the allegations to Mr. Flynn that certain planning approvals in the Dublin area had been procured by virtue of the handing over of sums of money to people connected with An Bord Pleanála. The Minister and I agreed that we would ask the Garda Commissioner to come to the Department later in the day to tell him of the allegations and to get the Garda investigation under way. I was occupied at a meeting and on other business for the rest of the morning and when I mentioned the matter to the Minister some time later in the day (or possibly early the following day) he told me that he had already seen the Commissioner about it and that the Garda enquiry had been put in hand.

Garda report dated 27 February, 1989 was shown to the Minister as soon as it arrived in the Department and the Minister conveyed a copy of the report to the Taoiseach either on that day or the next. On 28 February, and 1 March, 1989 the Minister and I were on official business in London.

On 2 March, 1989 I attended a meeting at 3.15 pm called by the Taoiseach in the Taoiseach's office with the Taoiseach, the Minister for Justice and the Attorney General, at which the Garda report was considered. The Taoiseach asked the AG's advice on whether, in view of the serious ramifications of the allegations made, the DPP should be informed - he appreciated that in the normal way the DPP would become involved only when the Gardai had completed their investigation and had prepared a file for presentation to him. The AG said that he would like to consider the matter before deciding but he thought that perhaps the Gardai should see if they could pursue their investigations a bit further before he considered going to the DPP.

I said that I had checked with the Gardai before coming to the meeting and this position as in the report represented the latest state of play. The Gardai considered that none of the people interviewed so far was likely to make a signed statement - they could, apart from any other consideration, leave themselves open to prosecution for being a party to the payment of bribes . The Gardai would now do some more digging to see if any other names or evidence might be uncovered - perhaps some aggrieved person who has not agreed to pay, in response to demands made on him.

The Taoiseach said that he had been apprised of a further name. A Mr. Tom Gilmartin had been making allegations in regard to improprieties in the granting of planning permission. Gilmartin was an Irish man with interests in London in contracting and/or property development and he was also involved in some way with the Arlington Group who were concerned with the development of property on the

Return to report

DJ.1-10

Dublin Quays. The Taoiseach directed that this name also be passed on to the Gardai and that they be requested to follow up their investigations with Gilmartin and wherever else their enquiries might lead them. The Taoiseach made the point that all that had been learned so far about this whole matter was so far unsubstantiated and it might all turn out to be "a bottle of smoke" - but it was absolutely essential that it be thoroughly investigated to get to the bottom of it.

On my return to my office I phoned the Commissioner to convey the Gilmartin lead to him but he was in Dundalk at the funeral of a Soldier killed while on UNIFIL duty in the Lebanon. I decided to convey the message only personally to the Commissioner. I did this by phone at approx. 9.45 am on 3 March, 1989. I gave him as much information as I had about Gilmartin and the Commissioner seemed to think that the Garda investigation would have no difficulty in tracing him. I asked to be kept informed of all developments.

3 March, 1989.

DJ.1-11

Alleged Planning Permission irregularities

NOTE 2

At 2.30 pm on Friday 3 March 1989 the Minister asked me to join him in his office where the Minister for the Environment, Mr. P. Flynn, was already present and had been shown Zanda report dated 27 Feb.

Mr. Flynn said that he had come into possession of some further information that was related to the Zanda investigation. At 1.15 pm on Tuesday 28 Feb. he had met, at their request, Mr. Frank Feely, City and County Manager and Mr. S. Haughey, Asst. City and County Manager, who told him the following:

On the previous Thursday or Friday (23 or 24 Feb) - the Minister was not sure which day - a Mr T.P. Gilmartin had come to see them (other as the same Mr Gilmartin mentioned as at the meeting on 2 March with Mr Traynor). Mr. Gilmartin told them that he was interested in a property development in Dublin but that irregular proposition had been put to him in connection with certain planning procedures that he had to go through. Large sums of money "up front" were requested as a condition for giving him whatever approvals he needed. Gilmartin named two people who were alleged to be involved in this transaction - Mr George Redmond, Asst. Manager with responsibility for Co. Council matters and Deputy Brian Lawlor. He also said that certain other C. Councillors were involved and Councillor Finbarr Hanrahan was named as one. Gilmartin said that the amounts of money requested were vast - there was a mention of payment of £5 million and also a reference to

DJ.1-11

Alleged Planning Permission irregularities

I

NOTE 2

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DJ.1-12

2

"Look, you see man". Gilmartin was "frightened by the extent of the investigation he was confronting and decided to tell his story to the authorities. [Martin Flynn said that Gilmartin was a tough, paramilitary man - as a member of Parachute Regiment in England he had been pressurised by the P.I.R.A. to continue to think funds but he had absolutely refused.]

Martin Flynn was concerned about what he should say to Det. Insp. Peachy who was, in turn anxious about what action (if any) he should take in relation to Det. Redmond. He was advised that the whole affair required thorough investigation that this could be done only by the Scandal; that the Scandal investigation was already underway and that the additional information he had provided would be immediately conveyed to the Scandal. There was the danger that any premature confrontation with Redmond or any of the other persons named would be counter to the interests of the Scandal investigation.

Martin Flynn said that he could get the address and phone number of Det. Gilmartin - that would help the Scandal enquiry. [T.P. Gilmartin, 20 White Hill Ave, Ratoath, Phone 0582-25846]

The Scandal Commissioner called to my office at 4pm approx, at my request, and I gave him all the information referred to above. He appreciated the importance of proceeding quickly with the investigation and undertook to keep me informed of all significant developments. He was very definite in his view that any approach to the

DJ.1-13

3

Redmond at this stage wanted from Traute Sands enquiries and I confirmed with the Minister that Minister Flynn's advice to the Party had been not to have any confrontation with Mr. Redmond, at least for the present at any rate.

Dr.
3/3/89.

Return to report

NOTE OF TELEPHONE CONVERSATION WITH MR. T. P. GILMARTIN ON 20TH MARCH, 1989, AT 11.25 A.M.

Chief Superintendent Sreenan telephoned Mr. Gilmartin at 11.25 a.m. on 20th March, 1989, and referred to the fact that Mr. Gilmartin had not contacted him, as arranged, when in Dublin last week.

MR. GILMARTIN

"I was only there for two days. I ran into problems and went from Meeting to Meeting. I had problems with the land there. I had to be back here for St. Patrick's Day.

On this thing, I'm being told by all and sundry that it is not in my interest to open this can of worms up. I'm thinking of pulling out altogether. The thing I've been talking to you about, it's as far as I'm going to take it. I've made my living over here and kept nice and quiet and I think I'll stay that way. It's a waste of time over there. There are too many involved and too much to get involved in. There are too many dirty tricks .

Yes, I did say that at a Meeting over there on Friday. Officially, I'll probably announce it within the next couple of weeks. It's not my problem to clean it up. You can't do anything except that someone has the will and the power to do something about it. There is neither the will nor the power there. The General thinks he is a fly boy but he is way behind some of these fellows.

(about the effects of withdrawal from West Side Project and the consequences for the unemployed in the area who might have got jobs because of the Project).
Those are forgotten people. I'm not suprised at this now because of what I know. They may be Housebreakers or Criminals but I can excuse them. They are left there as dogs to rot. In fact that is what they have been referred to as by some of the people I've met, dogs. I left Ireland young. Like many others I had a romantic view of Ireland but that is not the case with me now.

The fellows that brought that (reports of Bribery, etc.) to notice have lived and known of fraudulent deals for the last thirty years. They acted because I made a Complaint and at the same time they are telling me - you won't get anywhere because these fellows are well able to cover their tracks. I can be the villain for them and leave myself open to libel actions, but I am not interested and I am not going to be used. I accept that your interest is genuine but I am not going to let myself in for something that is not my responsibility. I know that I could do it (West Side Project) but there are too many hills to climb.

They are not allegations. They are true but difficult to prove. Yes, I have your Telephone Number and will contact you if I decide to change but you can take it that that's it. There would not be any point in coming over here to me."

Return to report

DC.TG 2 - 123

1/5/1989

conded by Councillor
quiring housing land,
Council agrees that no
ed of." The motion was

Mayor

BARDAS ATHA CLIATH

Minutes of a Monthly Meeting of the Dublin City Council held in the Council Chamber, City Hall, Cork Hill on Monday, 12th June, 1989 at 6.45 p.m.

PRESENT

The Right Honourable the Lord Mayor, Councillor Ben Briscoe, in the Chair.

Alderman:
Tomas MacGiolla, T.D.
Alexis FitzGerald
Carmencita Hederman

Councillor:
Michael O'Halloran
Pat McCartan, T.D.
Michael Delaney
Sean D. Dublin Bay-Rockall Loftus
Joseph Burke
Tom Farrell
Andrew J. Callaghan
Noel Ahern
Eamonn O'Brien
Alice Glenn

Councillor:
Tim Killeen
Pat Carey
Tony Kett
Tony Gregory-Independent, T.D.
John Stafford, T.D.
Michael Keating, T.D.
Christy Burke Sinn Féin
Senator Joe Doyle
Michael Donnelly
Michael McShane
Peter Burke
Brendan Lynch-Community
Michael Mulcahy
Andy Smith

Apologies for inability to attend were received from Councillor Dr. Dermot Fitzpatrick T.D. and Councillor Mary Hanafin.

275. The Minutes of the monthly meeting of Council held on the 1st May, 1989 having been printed, certified by the City Manager and Town Clerk, circulated to the members and taken as read were signed by the Right Honourable The Lord Mayor.

Lord Mayor's Business

276. The Lord Mayor paid tribute to the late Frank Cluskey former Lord Mayor who died on the 7th May, 1989. He recalled that Frank Cluskey was first elected to the City Council in June 1960 and re-elected in June 1967; that he was elected Lord Mayor in 1968; that he was appointed Commissioner for the Corporation in May 1973 and served as Chairman of the Commissioners from 7th May, 1973 to the 25th June, 1975; that among the Committees on which he had served were Housing, Cultural and Old Age Pensions Committees and the Dublin Port and Docks Board.

DC.TG 2 - 124

12/6/1989

ssistant City Manager and
asa) – With reference to the
City Estate premises No. 13
ice and Rachel Gordon, C/o
itors, 40 Fitzwilliam Square,
oseph Burke and seconded by
City Council assents to the
989 and that the City Seal be
e motion was put and carried.

Assistant City Manager and
reasa) – With reference to the
n the premises No. 129 North
and Philomena Wilson, C/o
Solicitors, Kenlis Place, Kells,
Joseph Burke and seconded by
in City Council assents to the
1989." The motion was put and

f Assistant City Manager and
ghcasa) – With reference to the
ni-market at Darndale Shopping
Unemployment Action Group,
le, Dublin 17. It was moved by
ded by Councillor Delaney: "That
the proposal outlined in Report
and carried.

Assistant City Manager and
a) – With reference to the
sborough Road, Dublin 7 to Mr.
silla, Dublin 15. It was moved by
ded by Councillor Delaney: "That
o the proposal outlined in Report
t and carried.

of Assistant City Manager and
uirgheasa) – With reference to the
Road, Chapelizod, Dublin 20 to An
, 63 Rathmines Road Upper, Dublin
cGiolla and seconded by Councillor
red back to An Coisde Pleanala agus
d carried.

9 of Assistant City Manager and
uirgheasa) – With further reference to
lock-up shop Unit No. 4, Darndale,
Mrs. Emily Wallace, Belcamp Lane,
cillor Joseph Burke and seconded by
Dublin City Council assents to the
180/1989." The motion was put and

12/6/1989

225

326. Submitted Report No. 181/1989 of Assistant City Manager and Housing Co-Ordinator (P.S. O Muirgheasa) – With reference to the proposed disposal of the fee simple in the City Estate premises Nos. 1-5 Prices Lane, 13A Westmoreland Street, 19 and 20 Fleet Street and rear of No. 21 Fleet Street, Dublin 2, to Bewley's Cafes Limited, C/o Messrs. Hickey Beauchamp Kirwan & O'Reilly, Solicitors, Dollard House, Wellington Quay, Dublin 2. It was moved by Councillor Joseph Burke and seconded by Councillor Delaney: "That the Dublin City Council assents to the proposal outlined in Report No. 181/1989 and that the City Seal be affixed to any necessary documents." The motion was put and carried.

327. Submitted Report No. 183/1989 of Assistant City Manager and Housing Co-Ordinator (P.S. O Muirgheasa) – With reference to the proposed restructuring of the Leasing Agreement of Ballymun Town Shopping Centre with Ballymun Developments Limited, 1, Castlewood Avenue, Rathmines, Dublin 6, with a view to carrying out a substantial refurbishment programme. It was moved by Councillor Joseph Burke and seconded by Councillor Delaney: "That the Dublin City Council assents to the proposal outlined in Report No. 183/1989." The motion was put and carried.

328. Submitted Report No. 184/1989 of Assistant City Manager and Housing Co-Ordinator (P.S. O Muirgheasa) – With reference to the proposed disposal of the fee simple in lands at Ballycullen Road, Firhouse, Dublin 16 to Willright Ltd., 16 Upper Mount Street, Dublin 2. It was moved by Councillor Joseph Burke and seconded by Councillor Delaney: "That the Dublin City Council assents to the proposal outlined in Report No. 184/1989." The motion was put and carried.

329. Submitted Report No. 185/1989 of Assistant City Manager and Housing Co-Ordinator (P.S. O Muirgheasa) – With reference to the proposed disposal of the fee simple in a site at Gardiner Street Lower/Deverell Place, Dublin 1 to Borg Developments Ltd., Barn Elms, 68 Upper Churchtown Road, Dublin 14. It was moved by Councillor Joseph Burke and seconded by Councillor Delaney: "That the Dublin City Council assents to the proposal outlined in Report No. 185/1989." The motion was put and carried.

330. Submitted Report No. 186/1989 of Assistant City Manager and Housing Co-Ordinator (P.S. O Muirgheasa) – With reference to the proposed disposal of the fee simple interest in lands at Irishtown, Clondalkin, Co. Dublin to Mr. Thomas P. Gilmartin, per S. Maguire & Co. Solicitors, 10 Main Street, Blanchardstown, Dublin 15. It was moved by Councillor Joseph Burke and seconded by Councillor Delaney: "That the Dublin City Council assents to the proposal outlined in Report No. 186/1989." The motion was put and carried.

331. Submitted notification from I.F.H.P. regarding an International Congress 1989 – The Changing Roles for the Public and Private Sectors in Urban Development – to be held in Japan from 13th - 17th November, 1989. It was moved by Councillor Joseph Burke and

Return to report

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Tribunal Ref : ARL/Q 87 - 90 Page No: 2413

DC.TG 2 - 189

Dublin Corporation
Bardas Átha Cliath

Law Department

Ormond House,
Upper Ormond Quay,
Dublin 7
D.D.E. No 204
Tel. 721422 Ext

When calling or telephoning please ask for
Kevin Dowling
All correspondence must be addressed to the Law Agent

My Ref.: KD/SV

Your Ref.:

REGISTERED POST

19th June, 1989.

Thomas P. Gilmartin, Esq.,
c/o Seamus Maguire,
Solicitor,
10, Main Street,
Blanchardstown,
Dublin 15.

RE: Lands at Irishtown, Co. Dublin

Dear Sir,

I have been instructed to inform you that the Corporation has accepted your tender dated the 19th May last and I enclose a copy of the form of tender and conditions of sale with the acceptance sealed by the Corporation.

Please let me have a bank draft in favour of the Corporation for £255,000.00 in accordance with condition number 9 of the conditions of sale and oblige.

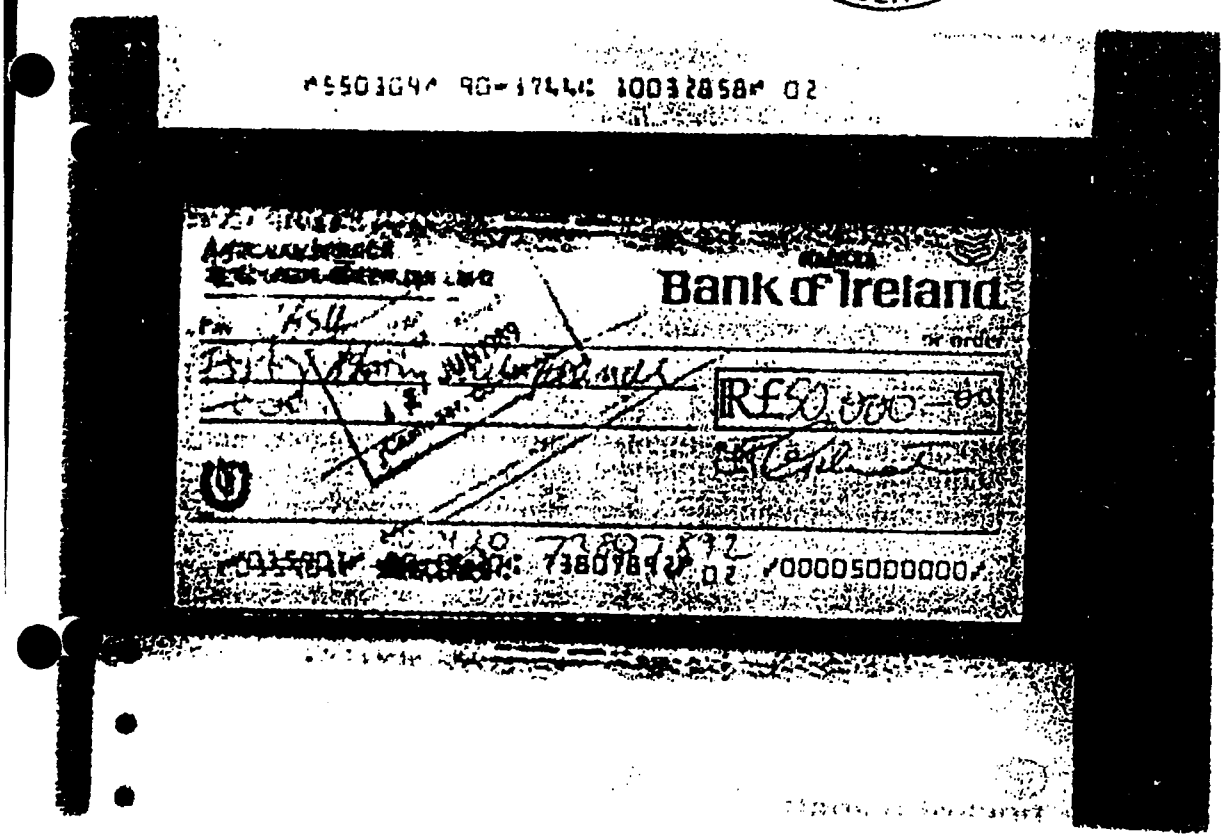
Yours faithfully,

LAW AGENT

Return to report

BOI.TC 4 - 1

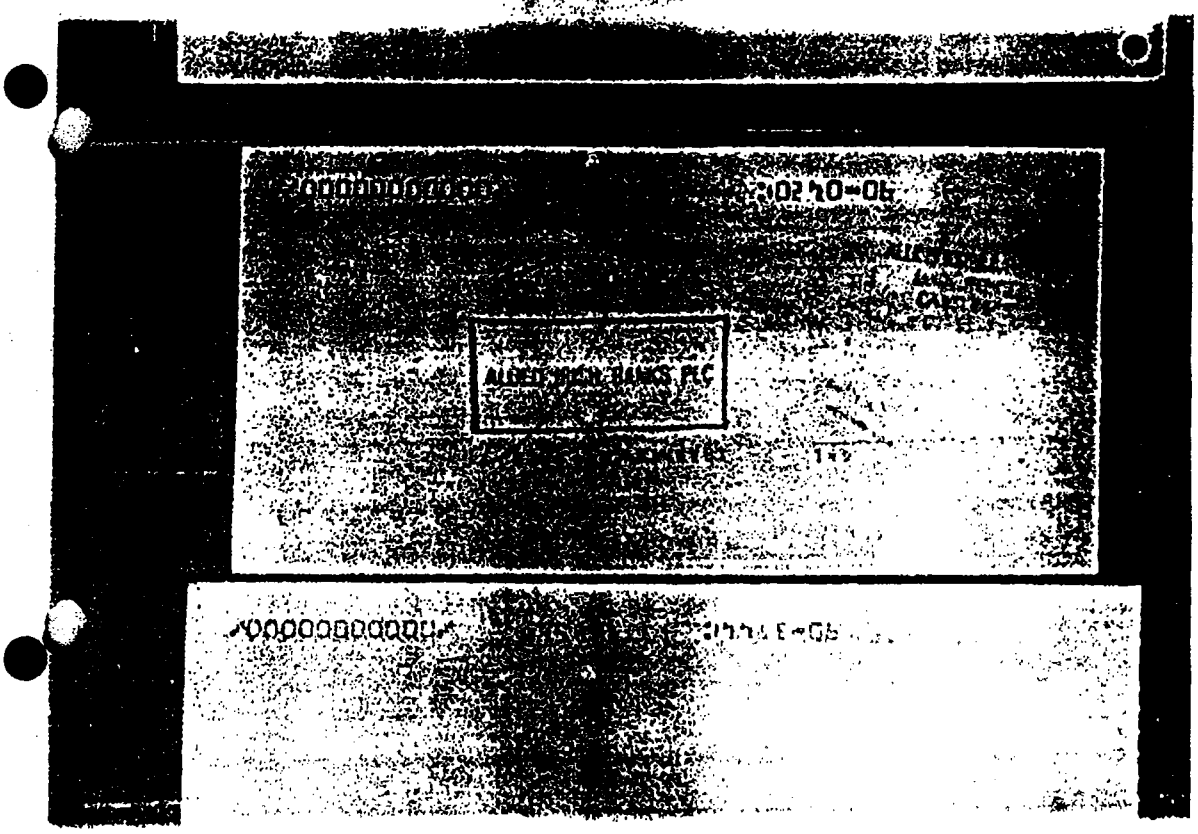
TRIBUNAL OF INQUIRY INTO PLANNING MATTERS
29 SEP 1998
RECEIVED



Return to report

BOI.TG 4 - 2

TRIBUNAL OF INQUIRY INTO PLANNING MATTERS
29 SEP 1998
RECEIVED



BOI.TG 2 - 5

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]HAS P GILHARTIN
[redacted]RRENT ACCOUNT

GILHARTIN THOMAS P
ACCOUNT NUMBER 73807892
STATEMENT. DUE 25JUL1988
CODE M SPAN 1 DAY 25
STAT 46 PRINT 23JUN1988

DATE	PARTICULARS		DEBIT	CREDIT	BALANCE
	LAST LEDGER 08MAY1988				
1988					
08MAY	BALANCE FORWARD				
[redacted]7MAY	CHEQUE	2[redacted]	5000 00		
[redacted]8MAY	LODGMENT	3[redacted]8602		255000 00	
	CHEQUE	22[redacted]	255000 00		
[redacted]2MAY	[redacted]			[redacted]64000 00	
	CHEQUE	23[redacted]	[redacted]64000 00		
24MAY	DEBIT		201 80		
25MAY	[redacted]			[redacted]00000 00	
30MAY	LEGAL FEES		15 00		
[redacted]MAY	CHEQUE	51[redacted]	[redacted]00 00		
	CHEQUE	25[redacted]	31000 00		
06JUN	DEBIT		200 00		
[redacted]2JUN	CHEQUE	24[redacted]	627 00		
	CHEQUE	35801	50000 00		
	CHEQUE BK-GOV DUTY	DD	1 75		
22JUN	CHEQUE	45[redacted]	[redacted]0000 00		
23JUN	DRAFT		25000 00		

[redacted]

TG 12.2 - 93

Mr Gerry Reid TG 12-2-93

T. P. GILMARTIN
22 WHITEHILL AVENUE
LUTON, BEDS.
LU1 3SP

Telephone (0582) 26037

Private and Confidential FAX. 742710.

21st October 1987

The Secretary to the
Minister of the Environment
Custom House
Dublin 1

Dear Sir,

Dublin City Centre Redevelopment Proposals

I have been actively involved in property development and investment over the course of a number of years in both England and Ireland, concentrating primarily on retail, office and industrial schemes.

During my frequent visits to Dublin I have been very conscious of the general dilapidation of the properties bordering the River Liffey in the City Centre, and I have been looking at ways in which this important land area can be rejuvenated to make a significant contribution as part of the overall city framework.

As a result of these studies I have initiated a major new commercially driven project that will involve the substantial redevelopment of the north bank of the River Liffey within an area bounded by Bachelors Walk, O'Connell Street, Abbey Street, and Liffey Street.

I have discussed these proposals in some detail with the Dublin Corporation and also with the Inner City Development Agency and with the confidence of their wholehearted support I am now pushing strongly ahead with these development proposals which will involve a total investment approaching £100 million, commencing initially with the acquisition of the necessary properties.

Continued/.....

TG 12.2 - 94

TG 12.2 - 94

In view of the size and nature of the proposals I would now very much like the opportunity of meeting with the Minister of the Environment together with the Minister of Finance in order to fully brief them on my proposals and also to discuss the Government's current and future proposals relating to the incentives available for new investment in this part of the City.

I would be very grateful if you could arrange such a meeting for me and I look forward to hearing from you with suggested times that would be convenient for the two Ministers indicated.

I look forward to discussing this situation further.

Yours faithfully,

T. P. Gilmartin

Return to report

CUSTOMER HISTORY CARD — Persons

Date: 12/2/86

Computer Code: 000

Account Number: PF AIB 1.25 - 3 — 1000022

CUSTOMER TYPE: 1 [H] (A = Staff, B = Student, M = Other Persons)

CENTRAL BANK CLASSIFICATION: 2 [165] See Codes Card

NON-RESIDENT? 3 [ ] Y = Yes

FORM F? 4 [ ] Y = Yes

POSTAL NAME & ADDRESS (Statement will be mailed to this Address)

5 MRS DOROTHY FLYNN +
6 MR PADRAIG FLYNN
7 34 NORTHUMBERLAND ROAD
8 CHISWICK
9 LONDON

Closed 3/5/93 NR

Payable to Either or Survivor.

Account Type: 10 [ ]
30 = Current Account
40 = Excluded Current Account
45 = Budget Plan Account
50 = Term Loan
55 = Loan Account
60 = Deposit Account
61 = Deposit Receipt
(For other types see Codes Card)

SIGNATURE(S) Dorothy Flynn

SHORT NAME

11 FLYNN D + P EXMK DP

ACCOUNT TITLE (Specify Full Name(s) including Account Designation)

12 DOROTHY FLYNN + PADRAIG FLYNN
13 EXTERNAL ACCOUNT UK DEPOSIT

SIGNING AUTHORITY: 14 [S] (A = All, S = Any One, T = Any Two, P = Per Pro., R = Refer)

FEE TYPE: 15 [ ] (A = Exempt, B = Basic, C = Half Fee, D = Double Fee, E = Negotiated Fee, F = Calculate Only)

NEGOTIATED FEE FOR HALF-YEAR: 16 [ ] Complete only for 'E' Type Fees

ACCOUNT TO WHICH FEES ARE TO BE CHARGED, IF OTHER THAN THIS ACCOUNT: 17 [ ]

INTEREST ALLOWED ON CURRENT A/c.? 18 [ ] (e.g. Charity A/c.) Y = Yes

STATEMENT/LEDGER DIARY: 19 [ ] 20 [ ] 21 [ ]
Code: D = Day, M = Month
Interval: 001–365 / 001–012
Day: 00 / 01–31

DATE OF NEXT STATEMENT/LEDGER: 22 [ ] D D M M Y Y

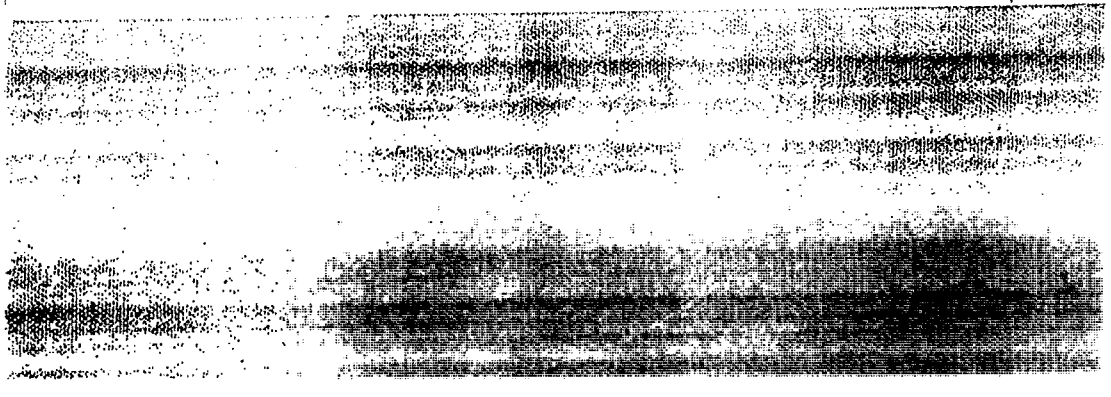
DUPLICATE STATEMENT? 23 [ ] Y = Yes

SUPPRESS BALANCE ON DUPLICATE STATEMENT? 24 [ ] Y = Yes (Valid only if Duplicate Statement Required)

REMINDER: 1. Use Form 215 to establish correct interest category.
2. Use Form 115 where
(a) Customer's Accounts are numbered over two or more lines.
(b) A special set-off for interest arrangement is required.
See Procedures Manual for details. (Section 3.6.17/18)

PREPARED BY

C 090/3



PF 1.10 - 3

MRS DOROTHY FLYNN &
MR [redacted]RAIG FLYNN
34 [redacted]THUMBERLAND ROAD
CHISWICK
LONDON

10000-022 PAGE 3 93-7

DOROTHY FLYNN & PADRAIG FLYNN
EXTERNAL ACCOUNT UK DEPOSIT
6MAR90
878

DATE	PARTICULARS		DEBIT	CREDIT	BALANC
8JUN89	BALANCE FORWARD				[redacted]
	LODG	B580400680		53920.00	
13JUN89	LODG	B610502124		587.80	
	LODG	B610500258		10000.00	
15JUN89	LODG	B610501051		1050.00	
	LODG	B610300165		3320.00	
26JUN89	LODG	B590501[illegible]0		2575.00	
25JUL89	DEBIT	B590400[illegible]0	5861.66		
4AUG89	DEBIT	B600502620	2500.00		
14AUG89	DEBIT	B600501705	1[illegible]2.00		
17AUG89	DEBIT	B600[illegible]0412	502.25		
	DEBIT	B600401266	1275.00		
11SEP89	DEBIT	B640501525	2000.00		
20CT89	INTEREST	ALLOWED		1122.15	
30CT89	DEBIT	B640501945	25000.00		
1NOV89	DEBIT	B641100625	250.00		
2NOV89	CASH	B641100184	200.00		
20NOV89	DEBIT	B641102355	25000.00		
28NOV89	DEBIT	B641102009	30.00		
	SRIO47	C076[illegible]350	30.00		
5DEC89	DEBIT	B641101411	165.00		
18DEC89	DEBIT	B640502205	515.00		
22DEC89	DEBIT	B640502761	800.00		
4JAN90	DEBIT	B641100324	85.00		
	DEBIT	B641100468	500.00		
25JAN90	DEBIT	B641[illegible]00888	150.00		
2FEB90	CR	B641[illegible]020040	1518.21		
13FEB90	DEBIT	B641100[illegible]39	500.00		
19FEB90	LODG	B641[illegible]0897		500.00	
	DEBIT	B641[illegible]02209	280.00		
22FEB90	DEBIT	B641700[illegible]71	784.21		

C/F NEXT PAGE

MR DOROTHY FLYNN &
MR PADRAIG FLYNN
34 NORTHUMBERLAND ROAD
CHISWICK
LONDON

10000-022 PAGE 3 93-7

DOROTHY FLYNN & PADRAIG FLYNN
EXTERNAL ACCOUNT UK DEPOSIT
8JUN89
878

DATE	PARTICULARS		DEBIT	CREDIT	BALAN
8JUN89	BALANCE FORWARD				[redacted]
	LODG	B580400680		53920.00	

PF.AIB 1.25 - 2

Form 'F'

10000022

Form of Notice to be served by a non-resident account-holder.

INCOME TAX ACT, 1967, SECTION 175.

Description of Account Deposit a/c in the name of Mrs Dorothy Flynn and Padraig Flynn 3x North Tuberboard Rd Cheshire, Loyalton

I declare that the person who was beneficially entitled to the interest which was paid or credited in respect of money received or retained in the above stated account was not ordinarily resident in the Republic of Ireland throughout the year ended 5th April, and is not so resident at the date of this notice.

I request that the interest so paid or credited shall not be included in any return to the Inspector of Taxes to be made under the above Section.

I undertake to advise you without delay in the event of the person beneficially entitled for the time being to the interest becoming ordinarily resident within the Republic of Ireland.

Signature Dorothy Flynn
x Padraig Flynn
Date

To the Manager,

ALLIED IRISH BANKS LIMITED

.....*(Branch)*

F 77

Return to report

PF 1.10 - 2

MRS DOROTHY FLYNN & 10000-022 PAGE 2 93-70-8
MR [redacted]RAIG FLYNN
34 [redacted]THUMBERLAND ROAD DOROTHY FLYNN & PADRAIG FLYNN
CHISWICK EXTERNAL ACCOUNT UK DEPOSIT
LONDON 8JUN89 878

DATE	PARTICULARS		DEBIT	CREDIT	BALANCE
19APR88	BALANCE FORWARD				
	DEBIT	B500501578	200.00		
21APR88	DEBIT	B500501251	220.00		
9AUG88	LODGE	B550400352		500.00	
	LODGE	B550400489		10000.00	
17AUG88	DEBIT	B550400405	200.00		
25OCT88	DEBIT	B550401127	1000.00		
7NOV88	931047	C0766111165	700.00		
7NOV88	LODGE	B550402506		700.00	
23JAN89	DEBIT	B550501084	400.00		
26JAN89	DEBIT	B550501696	100.00		
	931047	C0766122556	200.00		
27JAN89	DEBIT	B550501941	400.00		
30JAN89	DEBIT	B550501855	200.00		
1FEB89	DEBIT	B550502054	100.00		
	DEBIT	B550502055	200.00		
3FEB89	LODGE	B550502800		30.00	
	DEBIT	B550502800	600.00		
7FEB89	DEBIT	B550501198	300.00		
20FEB89	DEBIT	B550402237	2000.00		
22FEB89	DEBIT	B550400827	100.00		
2MAR89	DEBIT	B550401033	100.00		
7MAR89	DEBIT	B550401535	437.00		
30MAR89	CR INTEREST PAID			139.12	
3APR89	DEBIT 3850400517		5000.00		
	INTEREST ALLOWED			0.26	
	C/F NEXT PAGE				

MRS DOROTHY FLYNN & 10000-022 PAGE 2 93-70-88
MR [redacted]RAIG FLYNN
34 [redacted]THUMBERLAND ROAD DOROTHY FLYNN & PADRAIG FLYNN
CHISWICK EXTERNAL ACCOUNT UK DEPOSIT
LONDON 19APR88 878

DATE	PARTICULARS		DEBIT	CREDIT	BALANCE
19APR88	BALANCE FORWARD				
	DEBIT	B500501578	200.00		

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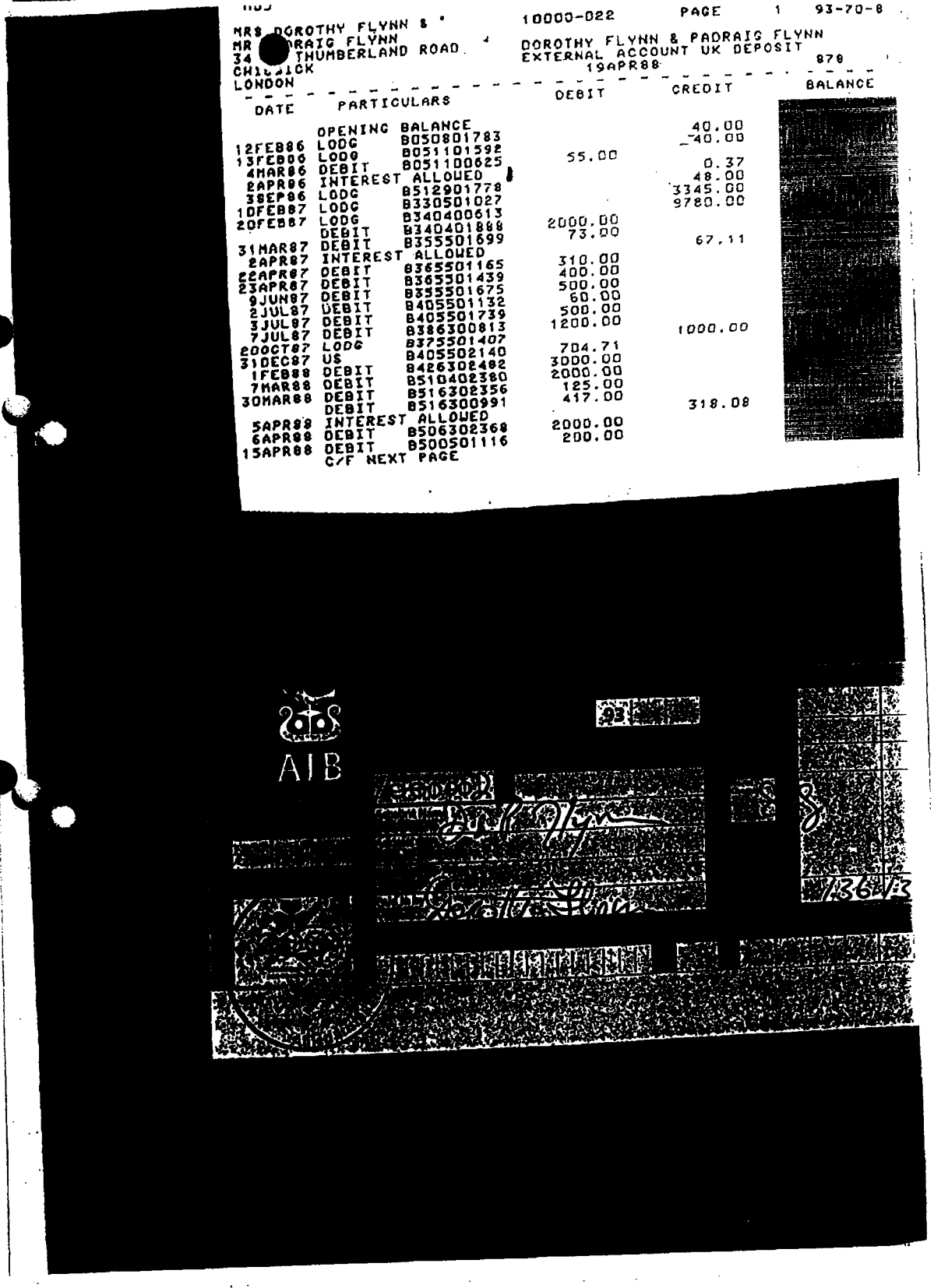
MRS DOROTHY FLYNN &
MR [redacted]RAIG FLYNN
34 [redacted] THUMBERLAND ROAD
CH[redacted]ICK
LONDON

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DOROTHY FLYNN & PADRAIG FLYNN
EXTERNAL ACCOUNT UK DEPOSIT
19APR88 870

DATE	PARTICULARS		DEBIT	CREDIT	BALANCE
	OPENING BALANCE			40.00	
12FEB86	LODG	B050801783		40.00	
13FEB86	LODG	B051101592	55.00		
4MAR86	DEBIT	B051100625		0.37	
2APR86	INTEREST ALLOWED			48.00	
3SEP86	LODG	B512901778		3345.00	
10FEB87	LODG	B330501027		9780.00	
20FEB87	LODG	B340400613	2000.00		
	DEBIT	B340401888	73.00		
31MAR87	DEBIT	B355501699		67.11	
2APR87	INTEREST ALLOWED		310.00		
22APR87	DEBIT	B365501165	400.00		
23APR87	DEBIT	B365501439	500.00		
9JUN87	DEBIT	B395501675	60.00		
2JUL87	DEBIT	B405501132	500.00		
3JUL87	DEBIT	B405501739	1200.00		
7JUL87	DEBIT	B386300813		1000.00	
20OCT87	LODG	B375501407	704.71		
31DEC87	US	B405502140	3000.00		
1FEB88	DEBIT	B426302482	2000.00		
7MAR88	DEBIT	B510402380	125.00		
30MAR88	DEBIT	B516302356	417.00		
	DEBIT	B516300991		318.08	
5APR88	INTEREST ALLOWED		2000.00		
6APR88	DEBIT	B506302368	200.00		
15APR88	DEBIT	B500501116			

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CHAPTER TWO – THE QUARRYVALE MODULE

PART 4 - THE INVOLVEMENT OF MR GILMARTIN, MR O'CALLAGHAN AND OTHERS WITH AIB IN THE PERIOD 1990 TO 1996

INTRODUCTION

1.01 In this Part the Tribunal considered Mr Gilmartin's early dealings with AIB, the circumstances in which Riga (Mr O'Callaghan and Mr Deane) became co-shareholders with Mr Gilmartin and his wife in Barkhill and Barkhill's banking relationship with AIB prior to the involvement of Riga and AIB as shareholders, or putative shareholders, in the company. Certain aspects of these relationships are also considered and further elaborated upon in Parts 5 and 6 (in particular AIB's knowledge of the involvement of Mr Dunlop/Shefran[1] in Quarryvale).

1.02 AIB's involvement with Quarryvale commenced in late 1989 when Mr Gilmartin approached AIB seeking finance to enable him to complete the assembly of the Quarryvale site pending the introduction of an investor/development partner. That involvement continued until early 1998. AIB was a 20 per cent shareholder in Barkhill between 1991 and 1998. In 1998, AIB's 20 per cent share sold for IR£1.5m (a value negotiated downwards from an earlier agreed figure of IR£2m).

1.03 AIB's relationship with Quarryvale (and its main players, Mr Gilmartin and Mr O'Callaghan) was conducted, for the most part, through a small number of its executives and senior staff, whose identities and positions within AIB were as follows:

Mr Edmund (Eddie) Kay: In his capacity as the Senior Manager of Property and Construction in AIB's Corporate Commercial Division, Mr Kay was the Bank Executive who (with Mr Jim Donagh) dealt mostly with Mr Gilmartin/Barkhill between late 1989 and approximately September 1992 (including meeting Mr Gilmartin in London in December 1992)

Mr Michael O'Farrell: In September 1992, Mr O'Farrell was appointed the Senior Manager of Property and Construction in AIB's Corporate and Commercial Division, in succession to Mr Kay, who at that time was transferred to another position within the bank. Mr O'Farrell's involvement with Barkhill Ltd continued from approximately September 1992 until 1996.

Mr James (Jim) Donagh: Mr Donagh held the position of Assistant Manager Corporate Banking Division in AIB, reporting to Mr Kay. His

[1] See Part 1 of this Chapter

involvement with Barkhill (the company which developed Quarryvale), was within the period 1990 to 1992.

Mr David McGrath: Mr McGrath was an Executive in AIB, and from April 1991, a manager of AIB's Corporate Business in the Retail, Indigenous Manufacturing, Motor and Property and Construction Sections. Mr McGrath's involvement with Barkhill commenced in April 1991. He accompanied Mr Kay to London for the December 1992 meeting with Mr Gilmartin.

Ms Mary Basquille: Ms Basquille was an Account Officer in AIB. She managed the Barkhill file on a day to day basis from September 1992, and was in regular contact with Mr Gilmartin following Mr Kay's transfer to another Division within the bank.

Mr Eamon McElroy: Mr McElroy was the General Manager in AIB's Branch and Corporate Banking Ireland Division. He was the Chairman of the Corporate Banking Credit Committee which approved Barkhill's loan application on 19 January 1990.

Mr Andrew Rogals: Mr Rogals was the Chief Manager in AIB's Business Support Unit. He was a member of the Credit Committee which approved the Barkhill loan application on 19 January 1990.

Mr Barry Pitcher: Mr Pitcher was an Executive in AIB. He was appointed a Director of Barkhill Ltd in 1991, representing the Bank's 20% shareholding in the company. He resigned as a Director of Barkhill in early 1998 when the bank disposed of its 20% shareholding in the company.

MR GILMARTIN'S EARLY DEALINGS WITH AIB

2.01 Mr Gilmartin's initial contact with AIB was through Mr Kay in approximately December 1989 when he sought a short-term loan facility for his company, Barkhill, primarily to enable him to complete the assembly of the Quarryvale site. By this time, Mr Gilmartin had invested approximately IR£4.4m in the project and intended seeking an investor/business partner to assist in its completion.

2.02 At the time of Mr Gilmartin's approach to AIB, the bank had an established banking relationship with Mr O'Callaghan and his companies. Mr Kay had known Mr O'Callaghan since approximately 1983 and was the AIB executive most closely associated with Mr O'Callaghan through his direct involvement in the arrangement of loan facilities for Mr O'Callaghan in his property development business. Mr Kay knew Mr Liam Lawlor from the 1970s/early 1980s from his

previous involvement in branch work within AIB. He organised the loan for Mr Lawlor's purchase of lands adjacent to his home in Somerton, Lucan in Co. Dublin in the 1970s.

2.03 Following telephone contact with Mr Gilmartin in December 1989, Mr Kay first met him in person in January 1990 and proceeded to prepare a loan application for presentation to the bank's Credit Committee on 19 January 1990, at a meeting chaired by one of its senior executives, Mr McElroy. This application sought to raise a short-term facility for Barkhill in the sum of IR£9m. By January 1990, Mr Gilmartin had assembled the bulk of the Quarryvale lands but required additional funding to complete some of the purchases, including the Irishtown lands owned by Dublin Corporation. Mr Gilmartin informed Mr Kay that:

- He had invested approximately IR£4.4m of his own money in the project.
- He had loan approval from Irish Intercontinental Bank (IIB). By 2 February 1990 he already owed Bank of Ireland IR£1.2m (initially stated to be IR£1m) in relation to Quarryvale.
- He was actively engaged in seeking an equity partner/investor to assist in the financing of the completion of the Quarryvale project and required a short-term facility from AIB to bridge the gap in time prior to that investment being put in place. Mr Gilmartin maintained that Arlington Plc (with which he was already involved in the Bachelors Walk development) was extremely interested in becoming involved in the Quarryvale project.
- He was confident that Quarryvale would receive tax designation status (as had Bachelors Walk) and this was expected to materialise in the January 1990 budget or soon thereafter.

2.04 Mr Kay told the Tribunal that AIB looked favourably upon Mr Gilmartin's application for a loan facility because, in particular, Mr Gilmartin had already invested a very substantial amount of his own personal money in the project. The bank considered this fact to be the second most important factor in Mr Gilmartin's favour (the most important being the site's location). Other positive aspects from AIB's perspective included Arlington Plc's (the UK company with which Mr Gilmartin was associated in relation to the Bachelor's Walk development) expression of interest in investing IR£10m when planning permission was obtained for Quarryvale and the likelihood of Quarryvale being granted tax designation status in the immediate future.

2.05 Mr Kay presented Barkhill's loan application to AIB's Credit Committee with a positive recommendation. The amount sought was IR£8.5m.

2.06 The documentation presented by Mr Kay to the Bank's Credit Committee recommended that the loan facility be granted to Barkhill subject to four conditions. The third of these four conditions was that there be*'verbal*

confirmation that Designated Status would be forthcoming.' The fourth condition stipulated that the IR£1.325m [sic] payable by Mr Gilmartin to O'Callaghan Properties (in relation to the Neilstown site option agreement) be deferred until *'Designation is obtained.'*

2.07 Mr Kay's presentation to the Bank's Credit Committee also included a *'Risk Profile Summary.'* This document made a number of references to the tax designation status issue, including one paragraph which stated as follows:

> *Minister of Environment to telephone us to confirm designated status will be obtained for Palmerstown site in the Budget 1990'*. (At that time, Mr Pádraig Flynn was the Minister for the Environment).

2.08 The document also provided that certain conditions would be triggered if tax designation status did not materialise. These essentially required Mr Gilmartin to accept an offer of IR£20m from Arlington Plc for the Quarryvale site, and in the event that Arlington Plc withdrew that offer, AIB would then proceed to dispose of the site.

2.09 Somewhat unusually the application to the Credit Committee was withdrawn by it for further consideration over a number of hours before it was acceded to. The Credit Committee's decision to grant Barkhill the loan facilityapparently adopted all but one of the four conditions which had been stipulated in Mr Kay's recommendation. The deleted condition was the requirement that the relevant Government minister verbally confirm to the bank that tax designation status would be granted to Quarryvale in the forthcoming budget. Mr McElroy, the Chairman of the Credit Committee, told the Tribunal that the delay in the consideration of the application arose because of a degree of dissention amongst the Credit Committee's members as to whether or not to approve the facility. Another member of the AIB Credit Committee, Mr Andrew Rogals, confirmed to the Tribunal that there was disagreement within the Committee as to the merits of the Barkhill application. He personally was opposed to granting the facility.

2.10 Mr McElroy maintained that the condition requiring verbal confirmation from the appropriate Government department to the effect that tax designation status would be granted to Quarryvale was removed because he *'did not believe it to be appropriate for the bank to seek such a condition as part of its credit assessment process'*. Mr McElroy advised the Tribunal that one of the reasons for his decision to approve the Barkhill facility was *'the strong written expression of interest to purchase 50% of the site, whether 'designation' was or was not changed.'*

2.11 It was clear, however, from Mr Kay's evidence that AIB was advised by Mr Gilmartin of his, Mr Gilmartin's, confidence that Quarryvale would be granted tax designation status and that this was a particularly important and compelling consideration for Mr Kay in his assessment (and presumably that of AIB itself) of any risk in the decision to lend money to Barkhill. Mr Gilmartin advised Mr Kay that he had had contact with Mr Padraig Flynn (the Minister for the Environment) and with other members of the Cabinet, in relation to tax designation.

2.12 AIB was in no doubt from the information provided by Mr Gilmartin that tax designation status for Quarryvale was likely to be granted and that the Quarryvale project had the support of the Government. AIB was also aware that Mr Gilmartin's previous development project in Bachelors Walk received tax designation and this fact boosted the bank's confidence that Mr Gilmartin would achieve a similar benefit for the Quarryvale site.

2.13 Mr Kay testified that Mr Gilmartin had told him that he, Mr Gilmartin, would ask Mr Flynn to telephone Mr Kay to confirm that tax designation was forthcoming. The Tribunal was told that Mr Flynn did not telephone Mr Kay in relation to Quarryvale. Mr Kay had felt that it would have been inappropriate for himself (or anyone else in AIB) to contact the Minister directly in order to seek confirmation in relation to the tax designation issue.

2.14 In a letter of clarification from Mr Gilmartin's solicitors to the Tribunal dated 29 November 2006, Mr Gilmartin advised the Tribunal that he had never requested Mr Flynn to confirm anything in relation to tax designation to AIB, as had been suggested in a note in an AIB memorandum dated 19 January 1990 prepared by Mr Kay.

2.15 Nevertheless, even in the absence of this verbal confirmation from Mr Flynn, it appeared that certainly in 1990, and indeed into 1991, AIB continued to have confidence that Mr Gilmartin's expectation that Quarryvale would receive tax designation would ultimately materialise. Mr Kay told the Tribunal that he believed Mr Gilmartin to have been genuine when he assured the bank of his belief that tax designation would be forthcoming, and it was also his belief and understanding that Mr Gilmartin was himself disappointed when this did not ultimately occur.

2.16 Irrespective of whether contact with or from Mr Flynn was anticipated by AIB, it appeared that the bank continued to take an interest in the progress, or otherwise, of the tax designation issue. In a telephone conversation on 2 March 1990, Mr Gilmartin advised Mr Kay that he was *'expecting a call from Minister Flynn to travel to the West to discuss the position with him.'* Mr Gilmartin denied

that he had made any such statement to Mr Kay or that he had ever made arrangements to travel to the West of Ireland to meet Mr Flynn. However, the Tribunal was satisfied that Mr Kay's memorandum of that telephone conversation of 2 March 1990 accurately represented what Mr Gilmartin had said to him at that time.

2.17 On 11 April 1990 a memorandum prepared by Mr Kay noted that Mr Gilmartin had told him that he had met Mr Flynn on that day and discussed with Mr Flynn the up-to-date position in relation to Quarryvale. Mr Gilmartin told Mr Kay that Mr Flynn was very positive and told him that he, Mr Gilmartin, would be '*pleasantly surprised within the next three weeks'.* Mr Gilmartin testified however that he did not believe this to be a reference to the grant of tax designation status to Quarryvale. According to Mr Kay, Mr Gilmartin had also told him that Mr Flynn had been adamant that Mr Gilmartin should proceed to apply for outline planning permission for Quarryvale and take steps to release the news of the proposed development publicly. Mr Kay understood from this that Mr Flynn had effectively told Mr Gilmartin that the Government would not consider tax designation for Quarryvale until outline planning permission had been granted thus the reality was that the Quarryvale lands would first have to be rezoned for commercial use before any such application could be made with any likelihood of success.

2.18 It was clear from bank documentation provided to the Tribunal that by 29 April 1990 AIB was aware of reports that Green Property Plc was actively seeking tax designation status for its Blanchardstown development site. A newspaper article at that time, a copy of which was on AIB's file, reported that the Minister for the Environment favoured the granting of tax designation to *'another nearby similar project'* to Blanchardstown, which Mr Kay understood to be a reference to Quarryvale.

THE PERIOD LEADING UP TO THE HEADS OF TERMS AGREEMENT DATED 14 DECEMBER 1990

3.01 By April/May 1990, AIB was becoming concerned about its exposure in relation to the funding which it advanced to Barkhill. It was disappointed with the progress that Mr Gilmartin appeared to be making in relation to his UK interests. By this time Mr Gilmartin was to have received Stg£1m from his involvement in a development in Milton Keynes. It was also becoming increasingly apparent to AIB that the hoped-for grant of tax designation status to Quarryvale was not as certain asit had previously appeared. Nevertheless, in the early months of 1990 AIB was hopeful that Mr Gilmartin would succeed in finding a suitable partner/investor such as would enable suitable alternative finance to be put in

place by the end of August 1990, when the AIB facility to Barkhill fell due for repayment, thus enabling AIB exit its involvement with the project.

3.02 On 26 June 1990, Mr Kay wrote to Mr Gilmartin advising him that the repayment date was drawing closer and that the bank would be calling in its loan at that time in the absence of a definite agreement entered into between Barkhill and a suitable development partner. Mr Kay told the Tribunal that this letter was written because of AIB's impression at that time that Mr Gilmartin had expectations that AIB would permit the loan facility to continue beyond the end of August 1990.

3.03 A public presentation of the Quarryvale project was made by Mr Gilmartin in the Berkeley Court Hotel in Dublin on 5 July 1990. Although Mr Kay did not attend this function, it was his understanding from AIB colleagues who were in attendance that it received a very negative reaction. He had a sense at that time that Mr Gilmartin lacked understanding as to how the retail business operated in Ireland. Mr Kay told the Tribunal that there was considerable adverse media reaction to the launch of the project on that occasion. AIB was by now very concerned about its exposure to the Quarryvale project and of Mr Gilmartin's ability to bring it successfully to fruition.

3.04 In late June or July 1990, Mr Kay and Mr Donagh met Mr Gilmartin in London. Mr Gilmartin's account of this meeting was that he was pressured by the AIB officials to agree to the involvement of Mr O'Callaghan in the Quarryvale project. Mr Kay rejected Mr Gilmartin's evidence that during the meeting his colleague, Mr Donagh, had suggested to Mr Gilmartin that Mr O'Callaghan had better political clout than Mr Gilmartin had. Mr Donagh denied Mr Gilmartin's allegation that at this meeting he, Mr Donagh, was hostile towards Mr Gilmartin or that he had told Mr Gilmartin that he would have to take Mr O'Callaghan on board in relation to the project.

3.05 On 2 August 1990 Mr Gilmartin and Mr Donagh met in AIB's Bankcentre. A memorandum of that meeting was prepared by Mr Donagh in which he noted a number of matters which were discussed between himself and Mr Gilmartin, including Mr Gilmartin's ongoing efforts to find an investor. In the course of this meeting, in that context, Mr Gilmartin referred to options including equity participation by two separate entities. The memorandum also suggested that Mr Gilmartin informed AIB that *'O'Callaghan/Deane have indicated that they would take equity in the project'.* Mr Gilmartin denied that this information came from him and suggested that in fact Mr Donagh himself had made the suggestion of Mr O'Callaghan's possible involvement in Quarryvale.

3.06 Mr Gilmartin told the Tribunal that he had come under pressure from AIB to involve Mr O'Callaghan as a partner in the Quarryvale project. He said that following his London meeting in June/July with the AIB officials he met with Mr O'Callaghan and Mr Deane shortly thereafter, also in London. In a letter to AIB on 5 September 1990, Mr Gilmartin advised the bank that Mr O'Callaghan had expressed a keen interest in negotiations regarding a joint venture or other type of involvement in Quarryvale but that Mr O'Callaghan first wanted the payment to him of the sum of IR£1.35m.[2]

3.07 Mr Deane told the Tribunal that by this date, 5 September 1990, there were tentative discussions underway between Mr Gilmartin and Mr O'Callaghan on the issue of Mr O'Callaghan becoming involved in Quarryvale. Mr O'Callaghan, however, took issue with his partner Mr Deane in relation to this aspect of Mr Deane's evidence. Mr O'Callaghan denied having expressed any such interest to Mr Gilmartin prior to 5 September 1990. Mr O'Callaghan speculated that Mr Gilmartin was advising AIB that he was interested simply in order to keep AIB happy.

3.08 Mr O'Callaghan acknowledged that in or about late September/early October 1990, he spoke to a Mr Saunders (an individual identified by Mr Gilmartin as a potential investor in Quarryvale), about a possible involvement on his, Mr O'Callaghan's part, in Quarryvale, but in circumstances where Mr O'Callaghan was first paid the IR£1.35m due to him.

3.09 A memorandum prepared by Mr Donagh on 19 September 1990, following a telephone conversation with Mr Gilmartin, suggested that pressure was mounting on Mr Gilmartin in relation to the Neilstown option agreement and the IR£1.35m that was due to Mr O'Callaghan. Mr Gilmartin at that time advised Mr Donagh that he was engaged in ongoing discussion with third parties in relation to identifying an equity investor for Quarryvale. In a memorandum prepared by Mr Donagh on 27 September 1990, Mr Gilmartin was noted as having indicated to Mr Donagh that his plans to bring in an investor, namely Mr Saunders, were on course and in that event he would then be in a position to pay Mr O'Callaghan the IR£1.35m in relation to the Neilstown option agreement.

3.10 On 28 September 1990, Dublin County Council granted planning permission for a town centre development on the Neilstown site. This fact significantly increased the pressure on Mr Gilmartin to arrive at some compromise with Mr O'Callaghan. Mr O'Callaghan refuted Mr Gilmartin's allegation that his application for planning permission for the Neilstown site was

[2] This was the final payment due to Mr O'Callaghan on foot of the 1989 option agreement.

merely a tactic to put pressure on him to enter into an arrangement with him in relation to Quarryvale and emphasised the fact that Merrygrove Ltd (the company which held the Option on the Neilstown lands) was required to apply for planning permission on the Neilstown site on foot of its contract with Dublin Corporation.

3.11 A memorandum prepared by Mr Donagh, following a meeting on 1 October 1990 between himself and Mr Kay, Mr Saunders and a Mr Kearns, confirmed that Mr Saunders and Mr Kearns would be introducing equity and loans to (a) enable the Quarryvale site assembly to be completed (b) to pay Mr O'Callaghan his IR£1.35m in relation to the Neilstown site and (c) to clear the debt to AIB. Both Mr Saunders and Mr Kearns had confirmed that between them they had up to IR£20m available.[3] They also apparently expressed a view that they would consider Mr O'Callaghan's participation in the project. In evidence, Mr Gilmartin took issue with the suggestion that either of these potential investors might have suggested any involvement of Mr O'Callaghan, as they knew, according to Mr Gilmartin, that he would never have agreed to any such suggestion other than on the basis that Mr O'Callaghan would invest money in the project on a similar basis as any other investor.

3.12 A memorandum written by Mr Kay on 2 October 1990, following a telephone conversation with Mr O'Callaghan noted that Mr O'Callaghan had met with Mr Saunders and Mr Kearns and that Mr O'Callaghan had indicated to them that if he received the outstanding IR£1.35m from Mr Gilmartin he would walk away from the Neilstown site. On that occasion also, Mr O'Callaghan reported to the bank that Mr Saunders and Mr Kearns were prepared to proceed with their equity participation in Quarryvale once certain land issues were resolved. In the course of the telephone call, Mr O'Callaghan advised the bank that he had recently been granted planning permission for the Neilstown site (28 September 1990) and that he was now under pressure from his partner Mr Deane and from members of his professional team to proceed with the development of that site. He further informed the bank that he had a potential anchor tenant for the site. Mr Kay's memorandum also stated that Mr O'Callaghan had advised Mr Saunders and Mr Kearns that in the event of Mr Gilmartin paying him the IR£1.35m due in respect of the Neilstown site option, he would be willing to participate in the Quarryvale project.

3.13 On 30 October 1990, Mr Kay wrote to Mr Gilmartin stating that the amount outstanding on the loan facility as of 2 November 1990 was a sum in excess of IR£9m. Shortly prior to this letter, on 22 October 1990, a

[3] Mr Gilmartin gave his consent to AIB entering into discussion with these two potential investors.

memorandum of a meeting at AIB between Mr Gilmartin, Mr Saunders, Mr Kearns, Mr Kay and Mr Donagh was the first indication that the Saunders/Kearns proposed investment in Quarryvale was running into difficulty. Mr Saunders and Mr Kearns were now suggesting a smaller injection of funds than had previously been the case, and on the basis that a portion of the security that AIB held in relation to the lands in Quarryvale would be released in order to allow them to raise money. This suggestion was unacceptable to the bank, save in respect of one portion of the site.

3.14 On 8 November 1990, Mr O'Callaghan wrote to Mr Gilmartin and informed him that because of Mr Gilmartin's failure to pay him the outstanding IR£1.35m, he now had no choice but to proceed to develop the Neilstown site. In the course of his evidence, Mr O'Callaghan suggested that, possibly, Mr Gilmartin might have telephoned him a couple of days after receiving the letter and reiterated previous promises that the IR£1.35m would be paid shortly.

3.15 In a memorandum prepared by Mr Donagh on 14 November 1990 it was noted that in the course of a telephone conversation with Mr Saunders, the latter had indicated that he was having difficulty in finalising a financing package and he sought a further 28 days from AIB in which to complete the matter. This suggestion was not acceptable to AIB because of outstanding issues in relation to the site assembly at Quarryvale, the payment due to Mr O'Callaghan and AIB's principal debt. Mr Gilmartin told the Tribunal that at this point (i.e. mid November 1990) he himself was no longer optimistic that Mr Saunders' financing deal would materialise. He blamed this on *'the bank and the O'Callaghan set up'*. However, as appeared from a memorandum prepared by Mr Kay on 21 November 1990 (and confirmed by Mr Gilmartin in evidence), Mr Gilmartin was then advising AIB that he was still in negotiation with Mr Saunders and was also in negotiations with other potential partners, including Abbey Gate Properties and Bankers Trust. On that same date, an AIB memorandum noted that Mr Saunders had advised the bank that he was not proceeding with his intended participation in Quarryvale because he had run into difficulty in raising the necessary finance.

3.16 An AIB meeting followed on 23 November 1990. It was attended by Mr Gilmartin, Mr Kay and Mr Donagh. Reference was made in the course of this meeting to the fact that Mr Saunders was unable to raise the necessary finance. The memorandum recorded the following reference to Mr Gilmartin: *'he hopes O'Callaghan will accept half the money due or come in for an equity stake.'*

3.17 The memorandum went on to state that AIB's position was that they were dissatisfied with matters as they then were and requested that there be a joint meeting with Mr O'Callaghan to discuss his position and also to ascertain Mr Saunders' exact position in relation to raising finance. At this meeting it was agreed that AIB would meet Mr O'Callaghan in relation to Quarryvale. The memorandum stated, referring to AIB, that:*'we indicated we considered it important that O'Callaghan is now brought in on the overall Barkhill project.'*

3.18 A further meeting was held at AIB on 25 November 1990. In attendance were Mr O'Callaghan, Mr Deane, Mr Kay and Mr Donagh. Its purpose was to ascertain Mr O'Callaghan's attitude to the IR£1.35m due to him by Mr Gilmartin in relation to the Neilstown option being deferred in return for his participation in the Quarryvale project. Prior to this meeting, Mr Gilmartin telephoned AIB to say that he was unable to attend but he authorised the bank to discuss Barkhill's affairs with Mr O'Callaghan.

3.19 At this meeting Mr O'Callaghan indicated his intention to proceed with his Neilstown development but agreed to hold off doing so until 30 November 1990 to enable Mr Gilmartin to find the IR£1.35m. Mr O'Callaghan told the bank that he would not be prepared to convert the IR£1.35m debt to him into an equity stake in Quarryvale in circumstances where Mr Gilmartin remained in a controlling position in Barkhill. Mr O'Callaghan was recorded as stating that he did not believe that Mr Gilmartin would come up with the necessary additional equity. According to the memorandum of the meeting, Mr O'Callaghan had conceded that the Quarryvale site was superior to the Neilstown site.

3.20 By 28 November 1990, as confirmed by Mr Kay in evidence, AIB's position was that it intended to take a hard line with Mr Gilmartin. The strategy was to try and arrange for Mr O'Callaghan to take a significant stake in Barkhill and in so doing sideline Mr Gilmartin. AIB had by this time lost confidence in Mr Gilmartin's ability to bring the project to fruition. An AIB memorandum of 23 November 1990 clearly indicated that AIB had by then told Mr Gilmartin that its preferred option was the involvement of Mr O'Callaghan as Mr Gilmartin's development partner. Mr Kay denied, however, that there was any collusion between AIB and Mr O'Callaghan in putting Mr Gilmartin under pressure to enter into some arrangement with Mr O'Callaghan.

3.21 On 4 December 1990, Mr Deane and Mr O'Callaghan telephoned AIB to propose an arrangement which would include O'Callaghan Properties taking an equity stake of 25 per cent in Quarryvale with Mr O'Callaghan and AIB having control of daily decisions in relation to the project. The memorandum of that telephone call noted that Mr Deane and Mr O'Callaghan had confirmed to the

bank their belief in the potential of the Quarryvale site and their belief that they could '*deliver on site rezoning/planning and designation'*. The memorandum also suggested that the bank was advised that Mr Gilmartin had confirmed his interest in the proposal and his agreement in principle to Mr O'Callaghan's participation.

3.22 Mr O'Callaghan confirmed the content of this memorandum but took issue to some extent with the reference to his ability to deliver rezoning/planning and designation. Mr O'Callaghan believed (as did Mr Deane) that what he may have told the bank in fact was his belief that the zoning could be moved from Neilstown to Quarryvale. His evidence was that he would have then intimated that planning would have followed in the ordinary way. He did not believe that he had mentioned tax designation to AIB and he was certain that he did not give any undertaking or promise that he would deliver on that issue. However, the Tribunal was satisfied that the issue of tax designation for Quarryvale was indeed discussed. Asked by the Tribunal to explain how he might *'deliver'* the rezoning of Quarryvale, Mr O'Callaghan stated that he would commence with the lobbying of all 78 county councillors in the hope that they might be persuaded to support Quarryvale because the Neilstown site was not now going to be developed. Mr O'Callaghan told the Tribunal that at that time he was unaware of the exact procedure for bringing a motion before a County Council meeting, but he was aware that the County Council had to make a decision in relation to the rezoning as part of its review of the County Dublin Development Plan.

3.23 Another AIB memorandum, also dated 4 December 1990, of a telephone call to it from Mr O'Callaghan and Mr Deane recorded the following:

> *They* [referring to Messrs O'Callaghan and Deane] *were worried that they had received no proposals since last week's meeting. They are really in a jam politically as they have to indicate on Thursday night whether they are proceeding or not. The suggestion has been made that they are 'stuck in the middle' of the Dublin ?????? situation and that they are delaying things happening. He now has to provide answers and cannot avoid same any longer.*

3.24 The reference to Thursday night in the memorandum was to the Fianna Fáil President's Dinner. Mr Kay said that he did not know who or what Mr O'Callaghan was referring to when he said he had to indicate whether or not Quarryvale was proceeding by the Thursday night. Mr O'Callaghan explained that he was anxious at the time to be in a position to inform politicians[4] about the

[4] Mr O'Callaghan identified Mr Liam Lawlor, Mr Brian Lenihan Snr, Mr Pádraig Flynn and Mr Albert Reynolds as politicians he expected might question him about his plans in West Co. Dublin.

Quarryvale development, as he expected that they would be asking him questions relating to it in the course of the function.

3.25 On 6 December 1990, Mr Kay and Mr Donagh met with Mr McKeon (General Manager of Commercial Banking) to agree on a strategy for the involvement of Messrs O'Callaghan and Deane in Quarryvale. The memorandum of the meeting noted that, *inter alia*, the '*objectives*' were that Mr O'Callaghan would get a 25 per cent stake in Barkhill *'or such other percentage as shall be agreed with Tom Gilmartin'*, that Mr O'Callaghan (with Mr Deane) would have a significant involvement in the management of the project and that the rezoning of Quarryvale would be actively pursued by *'the shareholders'*.

3.26 In a note of a telephone conversation with Mr Kay on 6 December 1990, Mr Gilmartin was recorded as anticipating progress in relation to a possible County Council rezoning vote. The memorandum of this telephone conversation recorded Mr Gilmartin stating that *'a vote will eventually be taken on the 15th January next incorporating the whole draft development plan for Dublin.'*[5] Mr Gilmartin was said to have envisaged that Mr O'Callaghan would inform the County Council within *'the next few days'* that he was not going ahead with Neilstown, and that that information would then leak out progressively. According to the memorandum, Mr Gilmartin also envisaged that Mr O'Callaghan would hold onto Neilstown but would give a commitment to AIB and Mr Gilmartin not to proceed with its development. In this way, Mr O'Callaghan could reactivate the Neilstown development in the event that Quarryvale was not rezoned.

THE FIRST HEADS OF AGREEMENT DATED 14 DECEMBER 1990

4.01 Mr O'Callaghan's participation in Quarryvale was effected by means of a *'Head of Terms Agreement'* which was signedby Mr Gilmartin, Mr O'Callaghan and Mr Kay, on 14 December 1990. It provided, *inter alia* that:

- O'Callaghan Properties would receive a 25 per cent stake in Barkhill in lieu of cash consideration.
- An additional and extended loan facility subject to conditions would be made available by AIB.
- Barkhill's board of directors would include Mr Gilmartin, Mr O'Callaghan and two (or, if AIB desired, three) representatives of AIB.
- The agreement couldbe terminated by the payment in full of the outstanding amount to AIB and by the payment of IR£1.35m to O'Callaghan Properties on or before 10 January 1991.
- All the terms to be achieved and a formal agreement to be entered into by 10 January 1991.

[5] In fact no such vote was scheduled for 15 January 1991. However, there was a deadline for submission of 'wrap up' motions of 8 February 1991, later extended to 15 February 1991.

4.02 In his evidence Mr O'Callaghan commented as follows on the agreement: *'Mr Gilmartin never wanted us involved in Quarryvale. And he agreed to this Agreement only because the banks, I would say insisted on it. We did not want this agreement. We were literally, and I use the word 'dragged in' by the banks so you have two people, two groups together who really didn't want to be in there, but we didn't seem to have much of* [a] *choice actually. We were prepared to go ahead with this because we had to now at this particular stage, our Neilstown site had been, if you like, sterilised at this stage. And we wanted to get on with development. And so we had no choice but to go with this. Tom Gilmartin did not adopt that policy I'm afraid.'*

4.03 Mr Gilmartin told the Tribunal that he was unhappy with the 14 December 1990 agreement but that he felt that he had no choice but to sign it. He claimed that the agreement was worthless as he had been in Luton and did not have the benefit of legal advice when it was signed. It was his belief that he was in his home in Luton on 14 December 1990 when the agreement was finalised and that he signed it and returned it by fax to AIB.

THE PERIOD BETWEEN 14 DECEMBER 1990 AND THE SECOND HEADS OF AGREEMENT DATED 15 FEBRUARY 1991

5.01 Following the signing of the Heads of Agreement on 14 December 1990, Mr Gilmartin continued with his efforts to find an investor for Quarryvale into January 1991. There was some contact between AIB and a Mr McMullen of 'Sentinel Investments' in this respect. Under the terms of the 14 December 1990 agreement Mr Gilmartin had the option, in the event that he found an investor, to pay off AIB, to pay the IR£1.35m sum to Mr O'Callaghan on or before 10 January 1991 and in so doing terminate his relationship with both.

5.02 Mr Gilmartin described Mr McMullen's interest in Quarryvale as a *'scam'* and his proposed involvement as an investor came to nothing.

5.03 Mr Gilmartin succeeded in having the 10 January 1991 deadline stipulated in the 14 December 1990 agreement extended, initially to 29 January 1991, and subsequently to 31 January 1991. Therefore, within this extended period Mr Gilmartin retained the opportunity to buy out of his agreement with Mr O'Callaghan.

5.04 On 24 January 1991, Mr O'Callaghan wrote to Mr Gilmartin and conceded that both he and Mr Gilmartin were unhappy with the 14 December 1990 agreement and that he was prepared to agree to it being torn up. He formally advised Mr Gilmartin that unless all matters were resolved to his satisfaction by

31 January 1991, he intended to proceed with his Neilstown site development. One of these outstanding matters was the payment by Mr Gilmartin of the IR£1.35m to Mr O'Callaghan.

5.05 On 15 January 1991, Mr Gilmartin received a letter from Cllr Colm McGrath stating that it was his intention to table an appropriate motion to rezone the lands of Quarryvale at the February 1991 Development Plan review meeting of Dublin County Council and that he was confident that the motion would enjoy unanimous cross-party support *'particularly in view of your successful negotiations with the developer of the former Town Centre site* [Neilstown] *which is not now being proceeded with'*. At this time Mr Gilmartin was in contact with a number of councillors including Cllr Gilbride and Cllr Tommy Boland (then the Chairman of Dublin County Council). In addition to contact with the author of the letter of 15 January 1991, Cllr McGrath, Mr Gilmartin had occasional contact with Mr Lawlor (who was then a Councillor and a TD). He also knew that Mr Lawlor was in contact with Mr O'Callaghan in relation to the issue of the bringing of a motion to Dublin County Council to have Quarryvale rezoned. Mr Gilmartin said that he was aware from his contact with Cllr Boland that there was strong cross-party support for the rezoning of Quarryvale.

5.06 On 7 February 1991, AIB wrote to Mr Gilmartin. In the letter they referred to a Dublin County Council meeting, at which the proposal to rezone Quarryvale was to feature, being rescheduled for the following day, 8 February 1991 and indicated that it might be further postponed to 15 February 1991. It was probable that what was being referred to in that letter was that a deadline of 8 February 1991 had been set by the County Council for the receipt of motions, which was later revised to 15 February 1991. This letter stated that the rezoning of Quarryvale at the proposed County Council meeting was *'critical'* of the overall shopping centre development plan for Quarryvale and Mr Gilmartin was reminded that he had to either discharge his obligations to O'Callaghan Properties prior to this meeting or reach an alternative acceptable arrangement '*which will facilitate this rezoning process'*.

5.07 Mr O'Callaghan did not believe that he had any contact with Mr Gilmartin around this time (early to mid February 1991) and had not therefore discussed the rezoning meeting issue with him. Mr O'Callaghan said (as did Mr Deane) that as of 12 February 1991, it was his belief that Mr McMullen would find the money to enable Mr Gilmartin to pay him his IR£1.35m.

5.08 On 12 February 1991, AIB wrote to Barkhill and formally called in their loan facility which then stood at approximately IR£9.35m. The position therefore, as of 12 February 1991, was that Mr Gilmartin was being advised by AIB that it

was no longer prepared to wait for him to finalise an agreement with Mr O'Callaghan and in so doing enable the process to have Quarryvale rezoned proceed. AIB had, in effect, given up on Mr Gilmartin, and wanted an arrangement with Mr O'Callaghan put in place.

'THE NIGHT OF THE LONG KNIVES'

6.01 The second *'Heads of Terms'* agreement was signed by Mr Gilmartin, Mr O'Callaghan and Mr Kay on behalf of AIB on 15 February 1991. This new proposed *'Heads of Terms'* was faxed to Mr Gilmartin's Luton home by Mr Kay of AIB on the evening of 15 February 1991. Mr Gilmartin claimed that he signed the agreement under duress and more particularly on the basis of his understanding that unless he signed it Cllr McGrath's motion to rezone Quarryvale would not be lodged with Dublin County Council on that date (the deadline for lodging the motion) and that, consequently, the opportunity to have the Quarryvale lands rezoned would be missed.

6.02 Mr Gilmartin told the Tribunal that in the course of the evening of 15 February 1991 he was in telephone contact from his home in Luton with Mr Kay, Mr O'Callaghan, Cllr McGrath and Cllr Sean Gilbride. Cllr McGrath had telephoned him from the offices of Dublin County Council and told him that AIB and Mr O'Callaghan were preventing him lodging the Quarryvale motion and that the motion would not be lodged unless he signed the *'Heads of Terms'* agreement with Mr O'Callaghan and AIB. It was his belief that this telephone call from Cllr McGrath was made at around five or six in the evening. Mr Gilmartin said that he also received a telephone call from Cllr Gilbride with, in effect, the same message as that given to him by Cllr McGrath. Mr Gilmartin said that in total he had two telephone calls from Cllr McGrath and one telephone call from Cllr Gilbride. He also received telephone calls from Mr Donagh who advised him to sign the agreement *'or else'* the Quarryvale motion would not be lodged. He said that Mr O'Callaghan telephoned him on one occasion. He understood that Mr O'Callaghan was present in the bank at the time of this telephone conversation, as he could hear Mr Kay in the background.

6.03 Mr Gilmartin remarked that Mr O'Callaghan, AIB and Cllrs McGrath and Gilbride *'threatened me with everything bar execution'*. Mr Gilmartin labelled the evening of 15 February 1991 as *'the night of the long knives'* because of the pressure he said was placed on him on to sign the new agreement or alternatively miss the opportunity to have the Quarryvale lands rezoned.

6.04 Mr Gilmartin eventually agreed to sign the agreement and, having done so, faxed it to AIB at 9.05pm. He signed the agreement having discussed the matter with his solicitor, Mr Séamus Maguire.

6.05 Cllr McGrath denied that he had telephoned Mr Gilmartin on 15 February 1991 and told him that the rezoning motion for Quarryvale would not be lodged with Dublin County Council unless the proposed agreement with AIB and Mr O'Callaghan was signed by him. In particular, Cllr McGrath denied that, as alleged by Mr Gilmartin, he told Mr Gilmartin that he was being prevented from lodging the motion. Cllr Gilbride acknowledged that he may have telephoned Mr Gilmartin on the day. The Tribunal was satisfied that Mr Gilmartin received telephone communication from Cllrs McGrath and Gilbride in the circumstances and manner described by him.

6.06 Mr Donagh had no recollection of speaking with Mr Gilmartin on the night of 15 February 1991 but he accepted that as a matter of probability he did so. Mr Kay accepted that AIB put Mr Gilmartin under pressure to sign the second *'Heads of Terms'* agreement. He acknowledged that he advised Mr Gilmartin that a new situation would exist if he did not sign it and probably implied to Mr Gilmartin that AIB would *'take some other steps'* if he did not sign. He was unable to say what these steps might have been but he acknowledged that, in effect, AIB were telling Mr Gilmartin on 15 February 1991 that the rezoning motion for Quarryvale would not proceed unless he entered into an agreement to accommodate Mr O'Callaghan.

6.07 Mr Kay told the Tribunal that to the extent that he understood that a motion could not proceed on 15 February 1991 in the absence of Mr O'Callaghan's agreement, he was probably informed of this by Mr O'Callaghan himself. His understanding would also, he maintained, have been reinforced by what Mr Gilmartin had told him on a number of occasions, namely, that the zoning could not go forward without there being an arrangement between himself and Mr O'Callaghan. Mr Kay agreed that, in effect, Mr O'Callaghan was virtually in complete control of the situation on the evening of 15 February 1991.

6.08 Mr O'Callaghan denied putting any pressure on Cllrs McGrath and/or Gilbride to withhold or delay lodging the Quarryvale motion, as alleged by Mr Gilmartin.

6.09 He claimed that he was unaware at this time that a motion had to be lodged by 15 February 1991 or by any specific date. He said that prior to March/April 1991 it was his understanding that a written motion was unnecessary and that a proposal to rezone land could be brought to the County

Council *'on the floor of the Council Chamber'*. Mr O'Callaghan also maintained that on 15 February 1991 the bringing of a motion to rezone Quarryvale was of *'no interest at all to me'*. He however acknowledged that in early January 1991 he had checked with Mr Lawlor in relation to the zoning matters that were due to come before the County Council in the course of its review of the Development Plan. Mr O'Callaghan said he was unaware that Cllr McGrath had lodged a motion on 15 February 1991 until after it had been lodged and maintained that he only became aware of the lodging of the Quarryvale motion over the following weekend (15 February 1991 was a Friday), having been so informed by Mr Lawlor. He was unable to recollect the circumstances in which he was in contact with Mr Lawlor over the weekend of the 16-17 February 1991 and maintained that Mr Lawlor contacted him *'out of the blue*'. Mr O'Callaghan said he informed Mr Lawlor that an agreement had been reached and that he, Mr O'Callaghan, was now involved in Quarryvale**.** Mr Lawlor had told him that the McGrath motion *'would not be functional'* unless a motion was lodged to *'dezone'* the Neilstown site. He said that Mr Lawlor told him that he, Mr Lawlor, would *'look after it',* and that Mr Lawlor did so.

6.10 The Tribunal was satisfied that from commercial/banking considerations, in particular, AIB's fear of an inability on the part of Mr Gilmartin/Barkhill to repay its debts to the bank, prompted them to pressure him to enter into an agreement with Mr O'Callaghan and ensure that it would be Mr O'Callaghan who would be the driving force in the Quarryvale project from February 1991 onwards**.**

THE MOTION TO 'DEZONE' NEILSTOWN

7.01 On Wednesday 20 February 1991, Mr Deane wrote to Mr Donagh in relation to the Heads of Terms agreement signed on the previous Friday. In that letter, Mr Deane stated *'I confirm that Mr Liam Lawlor T.D. has at our request lodged a Motion with Dublin County Council'*. This was a reference to the 'dezoning' motion prepared by Mr Lawlor, signed by Cllr McGrath and lodged with Dublin County Council. It sought to remove the town centre zoning attaching to the Neilstown lands and replace it with industrial zoning, thereby facilitating the development of Quarryvale as a town centre.

7.02 The Neilstown motion should have been lodged along with the Quarryvale motion by close of business on 15 February 1991, and when subsequently submitted was declared by County Council officials to be out of time.

7.03 On 19 February 1991, Mr O'Callaghan wrote to Mr Kay enclosing a copy of the Dublin County Council agenda which had been provided to him by Mr Lawlor, together with a copy of the Neilstown motion. In that letter Mr

O'Callaghan also referred to other advice given to him by Mr Lawlor as to how to proceed in relation to Quarryvale.

7.04 The content of a document entitled *'Strategic Plan re Westpark'* which was faxed to Mr O'Callaghan by Mr Lawlor on 26 February 1991 included the following: '*Motion* [a reference to the Quarryvale rezoning motion] *likely to be considered 7/22 March. Motion to change Merrygrove to E (Industrial) not accepted by Planning Department due to arrival after closing time Friday 15 February.'*

7.05 Mr Lawlor went on to advise Mr O'Callaghan that he should inform senior officials of Dublin County Council immediately of his intention (as part of a joint venture) to promote the Westpark (Quarryvale) proposal and that he should also seek to negotiate with Dublin Corporation to withdraw the proposed development on the Fonthill (Neilstown) lands. This faxed communication from Mr Lawlor clearly indicated to Mr O'Callaghan that there was a deadline for the lodging of rezoning motions. When this position was outlined to him by Tribunal Counsel, Mr O'Callaghan stated *'I didn't take any great notice of that'.* He said he was unsure if he had read the communication, although he acknowledged that some handwritten notes on the document were his.

7.06 Mr O'Callaghan accepted that he was present in AIB until late on the evening of 15 February 1991 in an effort to conclude his agreement with Mr Gilmartin. Mr O'Callaghan maintained however that in the course of this meeting AIB had not raised any issue with him in relation to the necessity to have the motion to rezone Quarryvale lodged on that particular date.

7.07 Mr Deane told the Tribunal that he had '*no recollection whatsoever'* of the issue of the Quarryvale motion being raised in the course of the meeting on 15 February 1991. He rejected Mr Gilmartin's allegation that he could have been told by Cllr McGrath that he was being prevented from lodging the motion on 15 February 1991 unless Mr Gilmartin executed the agreement. Mr Deane also said that there had been no contact between Mr O'Callaghan (or bank officials) with Cllrs McGrath and Gilbride in relation to the motion in his presence.

7.08 The Tribunal did not accept Mr O'Callaghan's evidence that as of 15 February 1991 he was ignorant of the fact that that date was the deadline for the lodging of a motion to rezone Quarryvale or that he was ignorant of the fact that a motion was lodged on that date. The Tribunal was satisfied that Mr O'Callaghan had been advised on or before 15 February 1991 (probably before) by Mr Lawlor of the necessity to lodge a motion to rezone Quarryvale. It appeared quite incredible to the Tribunal, having regard to Mr O'Callaghan's own

evidenceandthe content of Mr Lawlor's communication with him, that Mr O'Callaghan was not fully conscious of these matters at the time of his meeting in AIB on 15 February 1991. The Tribunal was thus satisfied that the issue of the Quarryvale rezoning motion was a subject of consideration at the meeting in AIB on 15 February 1991.

7.09 Mr Kay, when under cross examination by Counsel for Mr O'Callaghan, appeared to resile somewhat from his earlier evidence of having been advised by Mr O'Callaghan that unless Mr Gilmartin signed the agreement, the Quarryvale motion would not be lodged. However, the Tribunal noted that when giving his earlier evidence on this issue he had done so in a clear and unambiguous manner. The Tribunal remained satisfied that Mr O'Callaghan was aware by 15 February 1991 of Cllr McGrath's proposed motion. Moreover, the Tribunal believed it to have been likely that by 15 February 1991 Cllr McGrath and Mr O'Callaghan had probably been in contact with each other in relation to the necessity to lodge the motion. It was inconceivable that the situation could have been otherwise, particularly having regard to the fact that Mr O'Callaghan had requested Mr Lawlor to put in train a motion to, in effect, dezone the Neilstown lands, a motion which Cllr McGrath duly signed at Mr Lawlor's behest. It appeared to the Tribunal illogical that Mr O'Callaghan, in requesting Mr Lawlor to put this motion in train, would have been at the same time unaware of the McGrath motion which sought to re-zone Quarryvale for Town Centre use.

7.10 The Tribunal was satisfied that Mr Gilmartin had been advised on 15 February 1991, as testified to by him and indeed by Mr Kay, that the motion would not be lodged unless he signed the agreement.

THE 15 FEBRUARY 1991 '*HEADS OF TERMS*' AGREEMENT

8.01 In many respects, the provisions of the 15 February 1991 agreement were similar to those of the Heads of Terms agreement dated 14 December 1990. The essential differences were as follows:

- O'Callaghan Properties Ltd was to receive 33⅓ per cent equity stake in Barkhill.
- Mr Gilmartin and O'Callaghan Properties were to use their best efforts to obtain an outside investor to acquire one-third of the equity in Barkhill at a price of IR£4m.
- A formal agreement was to be entered into by the parties on or before 31 March 1991.

THE PERIOD BETWEEN 15 FEBRUARY 1991 AND 31 MAY 1991

9.01 By 21 February 1991, following the Heads of Terms agreement on 15 February 1991, Mr O'Callaghan engaged himself fully in the Quarryvale rezoning project, as evidenced by Mr Kay's memorandum of that date which noted as follows:

> *John Deane told me that Owen O'Callaghan held a lengthy meeting with Tom Gilmartin and that the relationship was good…it is proposed that Tom will travel to Dublin and in company with Owen O'Callaghan will meet the City and County Managers and other professionals with a view to progressing the zoning issue . . .*

9.02 Mr Gilmartin agreed that AIB asked him to meet County Council officials at this time. However, he took issue with the suggestion in Mr Kay's memorandum that relations between himself and Mr O'Callaghan were good and suggested that this was merely *'wishful thinking'*. To some extent however the Tribunal was satisfied that there was a measure of co-operation between Mr O'Callaghan and Mr Gilmartin at this time, not least because of the knowledge of both of the impending rezoning vote.

9.03 The issue of the granting of tax designation status for Quarryvale continued to be the subject of discussion as evidenced by the content of the following AIB 'credit review mark up' of 20 March 1991, which noted as follows:

> *Tom Gilmartin has always maintained that the Government would be disposed to granting designation status to the site which would give it the same tax benefit as received by Tallaght Town Centre. He remains convinced that the site will receive designated status but has been told this status for political reasons cannot be given in advance of the obtainment of the necessary zoning of the land. Owen O'Callaghan also believes designated status will be obtained in due course. In summary, the politicians have not yet delivered on commitments given.*

9.04 It therefore appeared to be the case that, as late as March 1991, AIB still held out hope that the Quarryvale lands would receive tax designation status. This hoped-for outcome on the part of AIB appeared to be based very much on what Mr Gilmartin was continuing to tell the bank in March 1991, and, according to Mr Kay, on what Mr O'Callaghan himself was advising the bank. Mr O'Callaghan denied that he had ever given AIB any basis for expressing any such view, a denial rejected by the Tribunal.

9.05 According to Mr Kay, Mr O'Callaghan had undertaken to take on the role of securing rezoning and of convincing councillors of the merits of the proposal. Mr Kay maintained that Mr Gilmartin was only in Dublin on a few occasions between February and May 1991. Mr Kay told the Tribunal that AIB did not take any direct steps to ensure that Quarryvale would be rezoned but did encourage Mr O'Callaghan and Mr Gilmartin to pursue this goal. Mr Kay stated that he did not know exactly what Mr O'Callaghan was doing in his efforts to secure rezoning but he knew that he was lobbying councillors and meeting interest groups[6].

9.06 Mr Kay confirmed that he became aware immediately after the 15 February 1991 Heads of Terms agreement that Mr Lawlor was providing strategic advice to Mr O'Callaghan in relation to Quarryvale. He was also aware at that time that Mr Lawlor was an elected county councillor. In answer to a question put to him as to whether he believed Mr Lawlor's involvement was appropriate, given that he was a councillor, Mr Kay responded that he would not have thought Mr Lawlor's involvement *'improper'*if he had made *'his position clear'*.

9.07 On 3 April 1991 Mr Donagh described Mr O'Callaghan as *'confident'* that the Quarryvale rezoning would proceed on either 18 or 25 April 1991. In a further AIB memorandum of 9 April 1991, Mr Donagh noted Mr Gilmartin as being *'satisfied things are in good shape with local elected reps and community associations'* and his view that *'Owen O'Callaghan has done great work in this regard.'* However, Mr Gilmartin denied that he described Mr O'Callaghan's efforts in relation to Quarryvale in these terms.

9.08 By 15 April 1991, as suggested in an AIB memorandum of that date, the bank appeared to be of the belief that Mr Gilmartin's other efforts to refinance were unlikely to bear fruit. However, a Bank of Ireland memorandum (Mr Gilmartin continued to have financial dealings with Bank of Ireland in 1991) suggested that as of 23 April 1991 Mr Gilmartin was still endeavouring to procure outside financing in order to enable him to discharge Barkhill's indebtedness to AIB and to Mr O'Callaghan.

9.09 An AIB memorandum of 15 April 1991 recorded, *inter alia*:

> *Agreement has now been reached between Tom Gilmartin and O'Callaghan Properties to ensure re-zoning of the site can proceed. Dublin County Council are to vote on a motion to re-zone Palmerstown[7] site to Retail on 2nd May 1991. Subject to approval of this motion*

[6] See Part 7.

[7] Quarryvale was on occasion referred to as Palmerstown and West Park. The site is now known as Liffey Valley.

Palmerstown site will be included in the overall Dublin Draft Plan as a Retail development.

Tom Gilmartin/Owen O'Callaghan have in the past fortnight met with local elected representatives, community associations, planning officials and the city and county managers all of whom have expressed their support for the proposed retail development.

9.10 And:

The Bank's priority is to ensure re-zoning of the site and re-negotiation of the outstanding contracts. Should this be achieved Harrington Bannon have valued the site at IR£20m and it would make it easier to attract the interest of a major developer/institution.

In noting the position to Group Credit Committee on 20th March 1991 it was recommended that consideration of a capital provision would be deferred until the outcome of the Dublin County Council vote on rezoning of the site which was expected to take place by the end of March 1991. As this vote has not yet taken place we now recommend a provision of IR£2m.

9.11 AIB memoranda, prepared in the period post February 1991, also documented the involvement of Riga with regard to Mr Gilmartin's continuing efforts to secure outside investors and in relation to his then personal circumstances. Riga provided funds directly to Barkhill in this regard and indeed to Mr Gilmartin personally. On 28 February 1991, Riga provided US$45,850 to a potential investor (Anglo Securities) on Mr Gilmartin's behalf. Mr Gilmartin testified that this potential investor transpired to have been *'a complete scam'*. On 28 February 1991, at Mr Gilmartin's request, Mr Donagh effected the transfer of the said US$45,850 to a bank account of Anglo Securities as an *'upfront fee'*.

9.12 Records indicated that Riga was again instrumental in arranging a transfer (from its overdraft) of Stg£50,000 to Mr Gilmartin on 26 April 1991 which, Mr O'Callaghan explained, was connected to Mr Gilmartin's ongoing refinancing endeavours. This payment was authorised by Mr Donagh. Riga had also paid out a sum of IR£58,407.50 from its resources in connection with the purchase of the Murray lands, as part of the Quarryvale site assembly, (the total purchase price of these lands was IR£116,815), in addition to IR£10,028 transferred to Mr Gilmartin on 5 March 1991. Both sums were subsequently reimbursed by Barkhill.

9.13 Mr Kay acknowledged that in the period February to May 1991 AIB assisted Riga in discharging this expenditure and that Riga had made funds available personally to Mr Gilmartin at a time when there was no legal arrangement in place for Riga to make such payments on behalf of Barkhill. Mr Kay maintained that whatever Riga did in the period February to May 1991 was done without the knowledge of AIB and that AIB had given no commitment that Barkhill would in due course accept responsibility for such payments. However, in this regard the Tribunal noted Mr O'Callaghan's manuscript notation on the instruction given by him on 27 February 1991 to Mr Kay in relation to the US$45,850 which stated as follows: *'Fees refundable'* and *'All refundable when cash drawn down'*. Such notation suggested to the Tribunal that, notwithstanding the absence of any legal or formal arrangement made between AIB/Barkhill and Riga in this regard, there was a clear expectation on the part of Riga that such expenditure would be recouped in some shape or form from Barkhill. Riga was subsequently reimbursed.

THE LEAD UP TO THE 16 MAY 1991 COUNTY COUNCIL VOTE

10.01 In a memorandum prepared on 29 April 1991, Mr Donagh referred to the following information, based on a telephone conversation he had had with Mr O'Callaghan and Mr Deane some three days earlier:

> *Owen O'Callaghan has spent the past few days meeting Councillors. He met with F.F., Sinn Fein and Worker Party Councillors who all expressed support for project. However he was told that Boland, the Chairman of the Council intended to vote against motion and this would split F.F. and would make the outcome of the vote uncertain. Accordingly he arranged to have motion deferred to the 16th May 1991. The reason Boland would vote against was that he supported Green project and turned the sod last year.*
>
> *They has* [sic] *brought in Frank Dunlop former government press officer to advise on media Issues. A meeting has been arranged for next Thursday to discuss projects with F.G. and Labour Councillors.*

10.02 This memorandum suggested two things: i) that Mr O'Callaghan was advising AIB of his ability and his intention to arrange for a motion to rezone the Quarryvale lands to be deferred to 16 May 1991 (the motion was in fact deferred), and ii) that this was the first occasion that AIB was informed of Mr Dunlop's involvement, albeit in the somewhat understated role as an advisor on *'media issues'*. (AIB's knowledge of payments made by Riga to Mr Dunlop via Shefran and to Frank Dunlop & Associates Ltd is considered in Part 5).

10.03 The memorandum also recorded Mr O'Callaghan as stating his belief that he would *'need to undertake a lot of work to ensure rezoning',* given that Mr Gilmartin's attention was taken up with his refinancing attempts and given his *'over-reliance on what a few key councillors have stated they can deliver.'*

10.04 Mr O'Callaghan took issue with Mr Donagh's reference to him, Mr O'Callaghan, having advised that he had *'arranged to have the Motion deferred to the 16th May 1991'*, because, he told the Tribunal, he '*was not capable of doing* so.'

10.05 Mr Gilmartin and Mr O'Callaghan both attended a meeting at AIB on 14 May 1991, two days prior to the scheduled Quarryvale rezoning meeting on 16 May 1991. The content of the bank memorandum relating to that meeting suggested that Mr O'Callaghan was very much the primary strategist (when compared to Mr Gilmartin). Mr Donagh recorded:

> *Owen O'Callaghan had meeting yesterday with a number of Councillors and it was agreed that it would be best to scale down request to 70 acres (from 110 acres). Tom Gilmartin has no difficulty with this and following discussion explaining that this would have greater support it was agreed that amendment would be put forward. Planners, Councillors, Mansfield and Green Properties will be happier with this also and it would diffuse city centre objections. We would be provided with a map on the revised rezoning*.

10.06 Mr Donagh noted in his memorandum that both Mr O'Callaghan and Mr Gilmartin appeared confident *'that positive vote would emerge on Thursday.'*

10.07 The memorandum noted that Mr O'Callaghan and Mr Gilmartin confirmed that they were co-operating with each other to show a united approach to the County Council in advance of the 16 May 1991 meeting. Mr Gilmartin had sought additional funding (approximately IR£2.5m) in order to complete land purchases in Quarryvale. Mr Donagh noted in the memorandum as follows:

> *I indicated clearly the bank had not* [an] *agreement signed or in subsequent discussions agreed to provide funds to complete site assembly. Confirmed we would not be in a position to discuss funds for site assembly and other fees until the site was at least re-zoned. In summary we wished to know by the end of the week whether plans for retail development were on target or not. We would sit down early next week to formulate our views in light of the developments over the next few days and then revert to both Owen O'Callaghan and Tom Gilmartin to agree future policy. Tom Gilmartin was disappointed that we would not give commitment now subject to positive re-zoning vote.*

10.08 The motion to rezone the lands at Quarryvale as a town centre was duly carried by a majority of councillors at the County Council meeting on 16 May 1991 and its effect was to move the existing town centre zoning from Neilstown to Quarryvale.

10.09 The successful vote followed an amendment made to Cllr McGrath's motion which had the effect of limiting the scale of the proposed town centre to that which had been provided for Neilstown in the 1983 Development Plan. Mr O'Callaghan claimed that he could not recall how exactly this amendment came about. However, it was noted by the Tribunal that in the course of his meeting (together with Mr Gilmartin) with AIB on 14 May 1991, Mr O'Callaghan was in a position to apprise AIB that he had met with a number of councillors on 13 May 1991 and that agreement had been reached to scale down the retail element of Quarryvale. The Tribunal was satisfied that by 14 May 1991 at the very least Mr O'Callaghan was aware of a meeting which took place on 13 May 1991 between Mr John Corcoran[8] of Green Properties Plc and Cllr Boland, the Chairman of Dublin County Council, and others. The Tribunal was therefore satisfied that Mr O'Callaghan was aware, in advance of 16 May 1991, that the size of the retail element of the development of Quarryvale was a matter of concern amongst some councillors and would have to be dealt with.

THE HEADS OF AGREEMENT DATED 31 MAY 1991

11.01 A third Heads of Agreement was executed by 31 May 1991 and on this occasion involved AIB as a party thereto, as well as Mr Gilmartin and Mr O'Callaghan. Mr Gilmartin believed that he must have signed it on 14 May 1991, as he said that he would not have signed it after the success of the rezoning motion on 16May 1991.

11.02 The recitals to the agreement noted that efforts to obtain new investors for Barkhill as had been envisaged in the February 1991 agreement had been unsuccessful and that the parties had agreed alternative arrangements for the future financing of the company which, it was agreed, would be binding on the parties and in due course would be incorporated into a more formal agreement or agreements. The agreement acknowledged that Barkhill had a further financial requirement of IR£4m, plus provision for an interest roll-up. It provided that AIB would lend IR£3m directly to Barkhill. The interest on both this and existing facilities would be accrued until May 1993 (or until the unpaid interest reached IR£2.5m, whichever was first). Riga would provide the balance of IR£1m, together with a bank guarantee of another IR£1m plus interest, in

[8] Mr Corcoran opposed the proposal to rezone the Quarryvale lands as a town centre. For full consideration of this issue see Part 7 and Part 9 and Chapter Sixteen (Liam Lawlor).

respect of all borrowings of Barkhill. Riga's loan of IR£1m to Barkhill and Mr Gilmartin's director's loan (being the money he had already invested in Barkhill up to this point) were to be subordinated to loans made by AIB.

11.03 The agreement provided that the Barkhill loan facility was not to be used in the absence of the unanimous consent of Mr and Mrs Gilmartin, Riga and AIB for any purpose other than the completion of the purchase of the remaining lands required for the proposed Quarryvale development. It was also part of the agreement that the loan facility would not be availed of until Riga's IR£1m loan to Barkhill had been fully drawn down and Riga's IR£1m bank guarantee was in place.

11.04 The agreement also provided for the revision of the shareholding structure in Barkhill as follows: Gilmartins 33⅓, Riga $44^{4}/_{9}$ and a nominated subsidiary of AIB $22^{2}/_{9}$.

11.05 The agreement further provided the Gilmartins with an option to acquire AIB's shareholding of $22^{2}/_{9}$ for a sum of IR£2m. The option could be exercised at any time after 31 May 1993 or, if before that date, in the event of Riga and AIB so agreeing, or in the event of AIB deciding to sell its shareholding, with the Gilmartins having first refusal in relation thereto. It was further agreed that if the Gilmartins, having acquired the AIB interest, decided to sell any part of the acquired AIB shareholding, then Riga was entitled to acquire as much of that shareholding from the Gilmartins as would bring its shareholding to 50 per cent. It was stated that each party had the right to acquire the interest of the other in the event of the sale of their respective shareholdings. The board of directors of Barkhill was to comprise three members, with one representative each to be nominated by the Gilmartins, Riga and AIB. Riga was appointed project manager, although it was not entitled to charge a fee for this role. The agreement also provided that AIB were to be paid two-thirds of the sale proceeds of any lands sold by Barkhill and such funds were to be used in reduction of Barkhill's indebtedness to AIB. The remaining one-third of any such sale proceeds was to be applied by Barkhill to the Gilmartins, in reduction of the loans which they had made to Barkhill.

11.06 The Heads of Agreement of 31 May 1991 was concluded at a time when AIB had itself received a valuation (also dated 31 May 1991) on the Quarryvale lands from Harrington Bannon Auctioneers. In its valuation, Harrington Bannon advised that assuming full assembly of the Quarryvale site and in the event that the lands were rezoned, their value was IR£12m, and that in the event of planning permission being obtained for the lands, their open market value would rise to IR£20m. Mr Kay acknowledged that AIB took comfort from this valuation,

and suggested that it was *'a definite step forward'*. However, Mr Gilmartin, in evidence, disagreed with the valuation, as he believed that once rezoning on the lands had become a reality on 16 May 1991, their value was a multiple of the figure suggested by Harrington Bannon.

11.07 While Mr Kay agreed that as of 31 May 1991 AIB had the comfort of the fact that the Quarryvale lands were valued at IR£20m, subject to planning, he maintained that AIB regarded the project as of May 1991 as still *'a long way'* from planning permission. The Tribunal noted, however, that according to an AIB Credit Committee document of 31 May 1991 it was being suggested that within three months (of May 1991) a planning application would be made for circa 600,000 square feet of retail space. This mindset on the part of AIB in May 1991 appeared to suggest, contrary to Mr Kay's evidence, that AIB did not believe that planning permission was a long way off.

11.08 In the period of a few months between December 1990 and the end of May 1991, the Gilmartins' proposed shareholding[9] in Barkhill had been reduced from a position of full ownership prior to 14 December 1990, to a 75 per cent interest post the December 1990 Heads of Agreement, to an ownership of two-thirds by 15 February 1991 and to a one-third ownership based on the agreement of 31 May 1991. At the same time, Riga's proposed shareholding had improved from 25 per cent in December 1990 to 33⅓ per cent in February 1991 and $44^{4}/_{9}$ at the end of May 1991.

11.09 Records indicated that on 31 May 1991 Mr McGrath attended a meeting with William Fry, Solicitors, together with Mr Byrne (AIB's internal legal advisor), at which the elements of the third Heads of Agreement were discussed. Mr McGrath told the Tribunal that he had no specific recollection of this meeting but accepted that he must have been in attendance. He acknowledged that a note taken by William Fry's indicated that the proposed shareholding in Barkhill, on foot of the new Heads of Agreement, was on the basis that Mr Gilmartin would hold a one-third interest in Barkhill with Riga holding $44^{4}/_{9}$ and AIB $22^{2}/_{9}$. Mr McGrath stated that he did not recall it having been envisaged that Mr Gilmartin's shareholding in Barkhill might be less than that of Riga's. The Tribunal was satisfied, however, that Mr McGrath must have been privy to this decision. Ultimately Riga's shareholding became 40 per cent. (See below)

11.10 In acquiring a $44^{4}/_{9}$ per cent interest (as provided for in the agreement), Riga was not required to invest any funds into Barkhill, but it was providing a loan to Barkhill and a guarantee to AIB for its loan to Barkhill, which created for

[9] Mr and Mrs Gilmartin owned 100 per cent of Barkhill's shares from 24 April 1990 until 13 September 1991, whereupon their shareholding was reduced to 40 per cent.

Riga a combined potential exposure of IR£2m. In addition, Mr O'Callaghan had agreed to forego the IR£1.35m debt due by Mr Gilmartin. Mr Kay testified that he regarded Mr O'Callaghan's investment in Barkhill to be, in reality, in the order of IR£3.35m. Mr Kay regarded Mr Gilmartin's investment in the project as of May 1991 (being in excess of IR£4.4m) as having been effectively wiped out.

AIB'S KNOWLEDGE OF MR GILMARTIN'S UK REVENUE DIFFICULTIES

12.01 At a meeting in the offices of William Fry (AIB's solicitors) on 31 May 1991, when the salient elements of what became the third Heads of Agreement were discussed and outlined in detail, one of the issues which was noted in the course of the discussions which took place at that time between Mr McGrath, Mr Byrne and William Fry Solicitors was the possibility that Mr Gilmartin *'could perhaps be made bankrupt in the UK'*, an event which subsequently in fact occurred.

12.02 In 1991 the UK Revenue were pursuing Mr Gilmartin for substantial money.[10] Mr Gilmartin's difficulties with the UK Revenue were unrelated to his involvement in Quarryvale. Mr Gilmartin blamed AIB for disclosing information which he had provided them in relation to his tax problems and in the course of his evidence proceeded to blame a number of individuals (namely, Mr Dunlop, Mr O'Callaghan, Mr Lawlor and Mr Ambrose Kelly) for tipping off the media about his UK Revenue difficulties, with resulting publicity in both the UK and Ireland.

12.03 Mr Kay told the Tribunal that Mr Gilmartin had apprised him at that time of his bankruptcy concerns in the UK and that he was facing a demand from the UK Revenue for Stg£5/6m. Mr Kay said however that Mr Gilmartin had not mentioned to him, or made any complaint to him about reports of his UK Revenue difficulties which had appeared in newspapers.

THE APPLICATION TO AIB FOR THE ADDITIONAL LOAN FACILITY OF IR£3MILLION

13.01 On 31 May 1991, the date of the third Heads of Agreement, the Credit Committee of AIB met to consider an application being made by Barkhill (and brought to the committee by Mr Kay) for the provision of a further IR£3m (as provided for in that agreement) to enable Barkhill to complete the assembly of the Quarryvale site and to take the Quarryvale project to planning stage. A further IR£2.5m of interest roll-up was also sought, which would bring the total indebtedness of Barkhill to AIB to IR£14.5m. It was also requested that the

[10] Mr Gilmartin was declared bankrupt in the UK in late 1992

credit rating on the loan, heretofore categorised as *'bad'*, be re-categorised as *'vulnerable.'*

13.02 The information provided to the bank's Credit Committee largely reflected the terms of the Heads of Agreement of 31 May 1991. It adverted, *inter alia*, to Mr Gilmartin's financial position then being *'very precarious.'*

13.03 In support of the application, the following reasons were given as to why the funds should be provided*:*

> *We consider that their* [sic*] have been a number of significant recent favourable developments in this case.*
> *The decisive zoning vote by Dublin County Council.*
> *The dominant role to be taken on by Owen O' Callaghan, who is highly regarded as a retail property developer.*
> *The significant cash/guarantee commitment which O'Callaghan is prepared to make.*
> *The very positive professional comments which have been made about the site and its location.*
> *The virtual abandonment by Green of their project.*
> *We recognise that the economy may be moving towards recession but consider that their* [sic] *are reasonable prospects that this situation will have eased before the Palmerstown development is on stream. We also recognise that there is no certainty that planning will be obtained, but we believe the prospects are at this stage excellent.*
> *We believe that the location is of such quality that*it *should be relatively unaffected by any downturn in the economy. In all the circumstances we consider that the proposed refinancing of Barkhill Limited affords the Bank best prospects of recovering of our debt in full with the strong possibility of generating substantial windfall gains of up to £2m in addition to complete recovery of our provision.*

13.04 Among the matters noted by the Committee on that date was that *'designation* [for Quarryvale] *has been reputedly proposed by Government sources but this remains to be seen.'*

13.05 In the course of his evidence, Mr Gilmartin made the following observation on the Credit Committee's document:

> *'I find it amazing some of the stuff in that. If you notice there, the bank was taking over a chunk of the company. They wanted me to hand over control to them and O'Callaghan, 22% to them and* [45]*% to Owen O'Callaghan. But then they told me that my money had all evaporated. That the site wasn't worth what they were owed. But at the same time,*

they wanted me to pay them 2 million to get the 20% stake back that they got for nothing.

Do you not see an irony in all of this? The day after they demanded 2 million off me to buy back what they had taken off me for nothing. On the basis that they would guarantee I would never collect a penny of my money. Otherwise I sign over to them.

Owen O'Callaghan had absolutely nothing in the site. He put up there £1m loan, which was drawn against my assets. If you done a forensic study of Barkhill's accounts you'll find that the 1 million to Owen O'Callaghan was put up against my assets against Barkhill. The so called loan.And all the other monies that was paid out through Dunlop and others. Don't you find it amazing this letter and the comments in it? Then they're referring to it's the best site in Ireland. That any economic downturn would have no effect on it.Which was their opinion from day one. That it was the best site in Ireland. Now, I'm supposed to read all this crap and then say nothing.'

THE PROVISION OF THE IR£1MILLION LOAN TO RIGA BY AIB AND RIGA'S PROVISION OF THIS MONEY TO BARKHILL

14.01 On 6 June 1991 AIB advised the Directors of Riga that it had sanctioned a facility of a loan of IR£1m to Riga for the purpose of Riga funding *'inter-company loan/equity in Barkhill Ltd'.* Mr Kay acknowledged that when these funds were made available to Riga on 6 June 1991, AIB opened a separate account to enable Riga receive the payment and he confirmed that the first withdrawal Riga made from that account was in the sum of IR£660,000 to acquire the O'Rahilly lands. The terms of the Heads of Agreement provided that Barkhill was to avail of this IR£1m Riga loan prior to drawing down the IR£3m loan which AIB had agreed to provide to Barkhill under the terms of that agreement. A further term agreed that both loans were provided solely for the purposes of the cost of site acquisition and *'costs directly related to the development of Barkhill's lands.'*

14.02 The next major transaction on this account was a debit of IR£230,000 on 19 June 1991, money which Riga paid by way of credit transfer to its own current account. The sum comprised the US$45,850 (IR£26,192.52) payment Riga had made to Anglo Securities, a sum of IR£10,028 advanced to Mr Gilmartin on 5 March 1991, the Stg£50,000 (IR£55,666.36) payment it had made on behalf of Mr Gilmartin on 28 April 1991, a sum of IR£58,407.50 it had paid for the Murray lands (as representing 50 per cent of the purchase price of these lands) and three payments made to Shefran totalling IR£80,000 paid to Shefran (Mr Dunlop's company) between 16 May 1991 and 7 June 1991. Mr Kay

believed that this reference to Shefran was the first occasion on which he heard of Shefran.

14.03 Questioned about the proviso in the 31 May 1991 Heads of Agreement to the effect that the IR£1m loan Riga was giving to Barkhill was to be utilised for the same purposes as the IR£3m loan, Mr Kay stated that AIB took the view that this money could be drawn down without AIB necessarily monitoring all individual transactions but that Riga would in due course have to account for it to Barkhill, AIB and Mr Gilmartin. Mr Kay stated that ultimately AIB took the view that the IR£230,000 expenditure (duly outlined in January 1992 by Riga in its *'Westpark expenses'* document) had been expended on legitimate expenses. As set out in Part 5 hereof, the IR£80,000 provided to Shefran by Mr O'Callaghan was for the purposes of disbursement to Councillors by Mr Dunlop, including during the Local Election campaign.

THE PERIOD BETWEEN JUNE AND SEPTEMBER 1991

15.01 In mid-1991 the ongoing opposition of Green Property Plc to the Quarryvale project and the ramification of that opposition, as manifest in the outcome of the June 1991 Local Election, exercised the minds of AIB personnel. In a report by Mr Benson of Frank L. Benson & Associates, Planning and Development Consultants, provided to Mr Donal Chambers (General Manager of Corporate and Commercial in AIB) on 31 July 1991, it was stated that:

> *The strength of reaction against the recommendation for rezoning of the Quarryvale site for Town Centre uses was under estimated and the political consequences of the decision were reflected in a number of surprise 'casualties' in the local elections in June of this year*.

15.02 And:

> *Fianna Fail Party has been considerably weakened by the results of the local elections and it now only commands some 29% of the seats of the overall council. It should be noted that several of the Fianna Fail Councillors who supported the original Quarryvale motion lost their seats including the former chairman of the Council, Mr Tom Boland. In addition, Fianna Fail Councillors representing the Blanchardstown area where Green Properties have announced that the proposed town centre will not go ahead if the Quarryvale rezoning proposal is retained, have since given undertakings to the Blanchardstown Town Centre Action Group that they will support the rescinding of the May decision on Quarryvale.*

15.03 Mr Benson continued:

> *Overall the prospects for the retention of the proposed rezoning of the Quarryvale site do not look promising. The developers will have to engage in a carefully planned lobbying campaign in an effort to maintain the proposed re-zoning of the site. This is a legitimate course of action to take and it has long been established planning policy that the area should have a Town Centre which the Quarryvale site can fulfil without detriment to the Blanchardstown town centre if the shopping centre floorspace is capped as proposed at 500,000 sq. ft. Such a campaignwill have to be skilfully handled if the new Council is to give its required support.*

15.04 A file note prepared by Mr McGrath on 16 August 1991 in relation to a meeting between himself and Mr Benson, referred to AIB's then belief that *'Blanchardstown will proceed with costs of the Political implications.'*

15.05 Mr McGrath acknowledged that the file note indicated that he must have been aware in August 1991 that by then Green Property Plc was proceeding with the development of its Blanchardstown Town Centre, notwithstanding their announcement that if Quarryvale was rezoned in the May 1991 vote they would stop work on Blanchardstown. Mr McGrath accepted that he must have had some discussion with Mr Benson about the political implications of this for Quarryvale. Mr McGrath's file note recorded as follows:

> *In light of the above position it will make Quarryvale quite difficult. Benson's recommendation is that Quarryvale should be put forward as a substitution for Neilstown and it should be done on an incremental basis. An application should be produced for planning permission around November/December. Benson suggests it should be done with the Council Executive rather than through the politicians.*

15.06 And:

> *Benson suggested that the developer might give consideration to offering some lands to the Council as a* [site] *for perhaps the National Stadium. He believes that this would be a very positive development and would sweeten receptiveness of the application.*

15.07 By August 1991 the Share Subscription Agreement as envisaged in the 31 May 1991 Heads of Agreement had still not been formalised. On 2 August 1991, Mr Gilmartin met with Mr Kay and Mr Donagh in London. Mr Kay prepared a memorandum in relation to that meeting in which he stated:

> *We met him* [Mr Gilmartin] *in London at our request and to emphasise to him the seriousness of the current situation. We told him that we had a deadline on our part to make progress by 31st July 1991 and to report*

back to our people within that timeframe. Clearly we have made little or no headway in progressing the shareholder's agreement and the view internally in the bank is if he refuses to sign this agreement then we are in [an] *entirely new situation and the probability is that the bank would be forced to take firm action and the matter would be taken out of our hands.*

We also emphasised no reliance on his current refinancing proposals and at any rate in the very unlikely event of these materialising, they would require the agreement of all parties.

15.08 And:

Tom Gilmartin said that he fully recognised our position and regretted the bank had been placed in the current situation. However he indicated that he was not prepared to sign a detailed shareholder's agreement as per the draft Heads of Terms which he said was signed by him under duress. He strongly feels the arrangements are totally inequitable to him and if he cannot amend the terms he will dig in his heels irrespective of the consequences. As he sees it there is c. £5m plus of his money in the project whereas O'Callaghan has contributed nothing yet. He strongly resents O'Callaghan and Deane having a larger share than him in the project given their negative cash input and he feels that they have jumped on the bandwagon and profited from his misfortunes.

15.09 Mr Kay also noted the following:

We obviously disputed this and said that essentially when the deal was done with O'Callaghan, the Gilmartin equity was virtually gone at that stage. He completely refused to accept this and stated that while he agreed there might be difficulty in disposing of the site now for a value which would clear our debt and leave a surplus equal to his equity he had no doubt that the longer term value of the site existed. He confirmed that he would accept 50/50 shareholding with O'Callaghan and suggested the following:

40% O'Callaghan; 40% Gilmartin; 20% bank.

He also strongly resents the move taken by O'Callaghan in respect of the professional team and says that an architect has been appointed against his wishes. He is prepared to consider some joint arrangement between Ambrose Kelly and Taggarts but believes that Taggart should be involved as they have stood by him since the beginning of the project, had not demanded money and were due substantial sums.

15.10 At this time, Mr Gilmartin was still pursuing efforts to find an outside investor and advised Mr Kay that he expected to have '*full information by the evening of Tuesday, 6th of August*'. The information provided at this meeting by Mr Gilmartin in relation to those efforts was described by Mr Kay as *'extremely vague'*. His memorandum noted that *'realistically it appears extremely unlikely that this will happen.'*

15.11 The memorandum also noted that at the meeting of 2 August 1991 Mr Gilmartin gave *'a categoric undertaking that in deference to the wishes of the bank he would sign'* the share subscription agreement (a copy of which was given to him on the day) by 9 August 1991, subject to *'(a) having an equal percentage shareholding to O'Callaghan, (b) agreement with O'Callaghan re the professional team and (c) approval of the draft by his solicitor.'*

15.12 The meeting on 2 August 1991 concluded on the following basis as noted by Mr Kay:

> *Finally we said that we would have to reflect on his views, what reliance could we place on his assurances, the repercussions of his non-cooperation and the reliance on the Heads of Terms Agreement. He maintains that the Heads of Terms would not stand up legally as they were signed under duress but he was at pains to point out that he had no dispute with the bank but he felt that he was being unfairly treated by O'Callaghan. He is conscious of the implications of a total breakdown and undertook to make every effort to resolve the situation.*

15.13 In his evidence to the Tribunal, Mr Gilmartin confirmed that he had a significant problem with the proposed Share Subscription Agreement, which, it was noted, he conveyed to Mr Kay and Mr Donagh in the course of the meeting on 2 August 1991, namely that the proposed shareholding in Barkhill left Riga with a larger share than he, Mr Gilmartin, would have.

15.14 It was acknowledged that Mr Gilmartin was very hostile to the 31 May 1991 Heads of Agreement and that he had been equally unhappy with the earlier Heads of Agreements of 15 February 1991 and 14 December 1990.

15.15 Mr Gilmartin told the Tribunal that he advised Mr Kay at the 2 August 1991 meeting that he *'would not accept'* a proposed 444/9 shareholding for Mr O'Callaghan/Riga. He acknowledged having told Mr Kay that he would accept a situation where both he and Riga had an equal shareholding in Barkhill. Mr Gilmartin had also suggested to AIB that Mr O'Callaghan should repay the IR£2.15m which Mr Gilmartin had paid him (for the option agreement) and that Mr O'Callaghan should then invest equity equal to that which had been provided

by him. He maintained that, had this occurred, AIB's exposure would have been reduced to a minimum.

15.16 In any event, efforts continued in August 1991 to persuade Mr Gilmartin to sign a Share Subscription Agreement and to formalise the arrangements which had been agreed on 31 May 1991.

15.17 On 15 August 1991 a memorandum prepared by Mr Donagh following a meeting between himself, Mr Kay and Mr Byrne of AIB's legal department, stated: *'The percentage equity share of each party to be clarified i.e. 44:33:22 or 40:40:20 as recently requested by Tom Gilmartin.'*

15.18 A further meeting took place on 29 August 1991 in the Airport Hotel at Heathrow between Mr Gilmartin, Mr O'Callaghan, Mr Deane, Mr Kay and Mr Donagh during which Mr Donagh produced a copy of a draft Share Subscription Agreement. A manuscript note on the cover page of a copy of the proposed draft (as discovered to the Tribunal by AIB) indicated the following: *'All parties happy with general content and it was agreed a formal signing to take place on Wednesday next'*. No other note or memorandum relating to this meeting was provided to the Tribunal.

15.19 In his evidence to the Tribunal, Mr Gilmartin (although he appeared to have little memory of the meeting or of the circumstances in which the agreement was produced to him) stated that although still unhappy with the proposed agreement, he agreed to sign the Share Subscription Agreement on the basis that he had an equal 40 per cent shareholding with Mr O'Callaghan, with AIB holding the balance. His decision to conclude this agreement was, Mr Gilmartin said, prompted by his personal financial circumstances and his difficulty with the UK Revenue matter. Mr Gilmartin described the meeting on 29 August 1991 as *'heated'*.

15.20 Some days later, Mr Deane furnished Mr Gilmartin with a draft of an agreement wherein it was proposed that Riga would purchase from Mr Gilmartin the loan of IR£5.25m which the Gilmartins had made to Barkhill, for an upfront payment of IR£100,000 to Mr and Mrs Gilmartin, with the remaining balance to be paid on a phased basis. The purpose of this proposed agreement was in effect to enable Riga to buy out the Gilmartins' interest in Barkhill.

THE LEAD UP TO THE SIGNING OF THE SHARE SUBSCRIPTION AGREEMENT IN SEPTEMBER 1991

16.01 On 4 September 1991, Mr Kay received a letter from Mr John Murphy of M. J. Horgan & Sons Solicitors, Cork which stated as follows:

> *Dear Mr Kay*
>
> *We today received instructions from Mr Thomas Gilmartin in relation to a dispute which has arisen between him and your bank the resolution of which apparently involves a three-sided deal being done between Allied Irish Banks, Mr Noel* [sic] *O'Callaghan (property developer), and our client. You will appreciate that to enable us to advise our client, Mr Gilmartin, we shall need a reasonable opportunity of perusing the agreement, we assure that we shall deal with the matter as expeditiously as possible.*
>
> *Hopefully we shall be in touch with you concerning the text of the document prior to the end of this week.*

16.02 Mr Gilmartin told the Tribunal that he recalled at this time engaging the services of Mr Murphy, a Cork based Solicitor, at the suggestion of a third party. He spoke to Mr Murphy on the telephone and provided him with a broad outline of the events current at that time concerning Quarryvale. He appeared unsure, however, if he had in fact instructed Mr Murphy to write to AIB.

16.03 On 5 September 1991 formal letters were written by Mr Donagh to Mr Gilmartin, Mrs Gilmartin and Riga. These letters, which were identical in content, demanded that the Share Subscription Agreement, as envisaged by the Heads of Agreement of 31 May 1991, be executed by all parties on or before Friday 13 September 1991. If that did not occur, AIB would take such steps, as it deemed appropriate, to recover all sums due to it by Barkhill.

16.04 On 12 September 1991 Mr Murphy, Solicitor, wrote to Mr Kay on behalf of Mr Gilmartin formally requesting that AIB postpone taking further action until 18 September 1991, a date on which Mr Gilmartin expected to be in a position to provide satisfactory evidence that he had an alternative source of funding available to him to complete the Quarryvale development and which was sufficient to discharge liabilities due to AIB. Mr Kay refused to postpone the issue beyond 13 September 1991.

16.05 Notwithstanding the exchange of correspondence which took place between Mr Murphy and AIB, and its agents, with regard to Mr Gilmartin and the draft Share Subscription Agreement, Mr Gilmartin was not ultimately represented by, or accompanied by Mr Murphy when he attended AIB on 13 September 1991 to sign the agreement.

16.06 The meeting to sign the Share Subscription Agreement took place at AIB on 13 September 1991. Mr Gilmartin was represented by Mr Seamus Maguire, Solicitor, at this meeting. Mr Maguire told the Tribunal that he attended the meeting on 13 September 1991, late at night and after it had commenced. He attended as a solicitor representing Mrs Gilmartin.[11] He said that he found Mr Gilmartin in a very distressed state and that AIB were threatening to wind up Barkhill unless Mr Gilmartin signed the agreement.

16.07 Ultimately, the Share Subscription Agreement was signed by all parties on that night. Under its terms, Mr Gilmartin became a 40 per cent shareholder in Barkhill, Riga became a 40 per cent shareholder and AIB Capital Markets became a 20 per cent shareholder. Under the agreement, Mr O'Callaghan and Mr Pitcher[12] were appointed to the Board of Directors of Barkhill. Mr Gilmartin, Mr O'Callaghan and Mr Deane also signed the necessary documentation which enabled the transfer of the shareholding in Merrygrove Estates (with whom Dublin Corporation were contracted to sell the Neilstown lands) to Barkhill.

16.08 Mr Gilmartin's main bone of contention on 13 September 1991 was the extent to which his own shareholding in Barkhill was diluted in the absence of any direct financial contribution by Mr O'Callaghan/Riga. This was the subject of discussion between Mr Gilmartin and Mr David McGrath.

16.09 Mr Gilmartin maintained that he had attended a meeting in the offices of William Fry, Solicitors on 13 September 1991 in the course of which it was made clear to him that unless he signed the agreement AIB would call in their loans and he would never collect a penny of his money. A memorandum prepared by Mr Neville O'Byrne (of William Fry Solicitors) made reference to a meeting attended by Mr Gilmartin, Mr Deane, Mr Kay and a Mr Murtagh (of AIB). Mr Gilmartin believed that Mr McGrath also attended and that he was the one who delivered the ultimatum to sign the agreement. Mr McGrath's belief was that he was not at the meeting but he accepted that if he had been present, it was something he would have been likely to have said.

16.10 Mr McGrath recalled a meeting with Mr Gilmartin and Mr O'Callaghan prior to the signing of the Share Subscription Agreement. Although he could not recall the date of this encounter, he believed it took place at some point between May 1991 and the date of the signing of the Agreement. He had no idea who set up this meeting, although it was quite possible that he had asked Mr Kay to arrange it. He acknowledged that there was no memorandum or correspondence

[11] Mr Maguire had been appointed by Power of Attorney to represent the interests of Mrs Gilmartin.

[12] Mr Pitcher was an Executive in AIB. He was appointed a Director of Barkhill Ltd in 1991, representing the Bank's 20% shareholding in the company. He resigned as a Director of Barkhill in early 1998 when AIB disposed of its 20% shareholding in the company.

in relation to the matter on the AIB file. He said it was one of those *'heavy'* meetings with significant forthright discussion. Both he and Mr Gilmartin had used strong language. Mr Gilmartin had been told that his money was gone and that AIB had the option of putting in a Receiver but that in its judgement it would be better if he worked with Mr O'Callaghan to complete the site assembly, achieve zoning and planning permission, and find a development partner. He believed that the purpose of the meeting was to convey the necessity for Mr Gilmartin to sign the Share Subscription Agreement so that AIB could unlock the monies it had approved by way of further loan facility to Barkhill. Mr McGrath could not recall whether Mr Gilmartin had complained about the lack of parity between his and Mr O'Callaghan's shareholding, nor could he recall if he was present for the signing of the Share Subscription Agreement on 13 September 1991 but he believed he was not present, as Mr Kay had signed the agreement on behalf of AIB. When asked what complaints Mr Gilmartin had conveyed when they met he stated that Mr Gilmartin said that *'Corkmen'* were *'robbers'* to which Mr McGrath had responded that Mr Gilmartin's money was already gone. His meeting with Mr Gilmartin had lasted one or two hours.

THE GILMARTIN/RIGA LTD 'SIDE' AGREEMENT

17.01 By a Side Agreement[13] made on 13 September 1991 between Riga and Mr and Mrs Gilmartin it was provided that the Gilmartin's would transfer their shareholding in Barkhill to Riga for IR£1, in consideration of Riga procuring repayment of the Gilmartins' loan of IR£5,250,000 to Barkhill. It was agreed that Riga would procure repayment of IR£100,000 of this loan on 15 September 1991 and would endeavour to procure the balance in three IR£1m instalments over a period of one year followed by an IR£2.15m to be paid at a time to be agreed. This agreement was subsequently varied on two occasions, on 28 September 1991 and again in January 1992[14]. The IR£100,000 payment was provided to the Gilmartins by Riga on 20 September 1991. This IR£100,000 was then added to the debt owed by Barkhill in Riga's books at year end 30 April 1992. At that year end, the Riga /Barkhill inter-company loan balance showed an indebtedness of slightly in excess of IR1.2m. The Barkhill indebtedness to the Gilmartins was reduced by IR£100,000, and correspondingly its liability to Riga increased by the same amount.

[13] A draft of which had been furnished to Mr Gilmartin some days previously.

[14] Ultimately the agreement was not put into effect and the Gilmartins' shareholding was duly bought out in 1996 in the course of the Grosvenor Properties Plc deal.

MR O'CALLAGHAN'S 'EXPENSES' PAYMENTS

18.01 On 3 December 1991, Mr O'Callaghan wrote to Mr Kay enclosing '*a list of payments made by Riga Limited on behalf of Barkhill and payments due to be paid by Barkhill.'* The '*Payments made by Riga Ltd on behalf of Barkhill'*were listed as follows:

	'Remarks
20/09/1991 – Tom Gilmartin - £100,000	
23/09/1991 – Expenses - £10,000	*I will explain on Friday*
27/09/1991 – Frank Dunlop - £8,484.29	*Brochures. Invoice available.*
11/10/1991 – Expenses - £10,000	*I will explain on Friday*
11/11/1991 – Ambrose Kelly - £26,195	*Architect, model etc. Invoice available*'

18.02 The '*I will explain Friday'* reference to the two '*expenses*'sums was a reference to an intended meeting on the following Friday. The Tribunal was satisfied that such a meeting took place[15], and probably on 6 December 1991.

18.03 It was duly established, in the course of the public hearings, that the two *'expenses'* amounts were payments which Mr O'Callaghan claimed were political contributions made to Mr Liam Lawlor and Cllr Colm McGrath in September 1991 and October 1991 respectively.[16]

18.04 Mr O'Callaghan told the Tribunal that he advised Mr Kay what both payments represented. Mr O'Callaghan testified as follows:

> *'I explained to him what both of those payments were for. That is that the payment to the late Liam Lawlor and the payment to McGrath, that they were both election expenses paid for the June elections. And that I wanted them to be reimbursed because as far as I was concerned they were Barkhill expenses.'*

Mr O'Callaghan maintained that Mr Kay had agreed that the two payments could be reimbursed to Riga out of the Barkhill No. 2 Loan Account but that he had made it clear at the time that they would be the only political payments that Barkhill would refund to Riga.

18.05 In the course of his evidence Mr Kay accepted that he had received Mr O'Callaghan's letter of 3 December 1991 and that the meeting referred to by Mr

[15] Mr O'Callaghan's name appeared in Mr Dunlop's diary for 6 December 1991, suggesting his presence in Dublin.
[16] See Parts 7 and 9.

O'Callaghan had probably taken place, although Mr Kay had no record of such a meeting. He agreed that by virtue of the reference to '*I will explain on Friday*' in the letter, Mr O'Callaghan must have discussed to whom or for what purpose, the two IR£10,000 payments had been made. Mr Kay said that he had no recollection of Mr O'Callaghan informing him that one of the IR£10,000 payments represented a political contribution to Cllr McGrath, and indeed denied that he had been told this.

18.06 Mr Kay contended that if that had been the case '*the alarm bells would certainly have rung in my head*', as he would not have considered such a payment to have been appropriate, and he would not have approved it '*off my own bat*'. Mr Kay believed that Mr O'Callaghan must have given him some more '*innocuous*' explanation as to the purpose of the two IR£10,000 'expenses' payments.

18.07 Mr Kay was not questioned in the course of his sworn evidence to the Tribunal in relation to the September 1991 IR£10,000 payment to Mr Lawlor because at the time Mr Kay gave evidence, Mr O'Callaghan had not disclosed to the Tribunal that one of the IR£10,000 payments was in fact a payment to Mr Lawlor, claiming lack of recollection as to the beneficiary of the payment.[17] Mr Kay was therefore questioned only in relation to the IR£10,000 payment to Cllr McGrath, and specifically, as to what information had been provided to him by Mr O'Callaghan in relation to that payment

18.08 Mr Kay acknowledged that he had not recorded whatever explanation had been tendered by Mr O'Callaghan in relation to these two '*expenses*' payments of IR£10,000 each.

18.09 In any event, whatever explanation had been tendered by Mr O'Callaghan at the meeting was sufficient for approval to have been given by AIB for Riga to be reimbursed from the Barkhill No. 2 Loan Account, in respect of both payments. (See below)

18.10 Mr O'Callaghan had made the payments to Mr Lawlor and Cllr. McGrath by way of personal cheque drawn on his own account and had been duly reimbursed by Riga. Neither the payment of IR£10,000 to Mr Lawlor on 23 September 1991 nor the amount of IR£10,000 paid to Cllr McGrath on 11 October 1991 were identified in Riga's cheque payments book as funding payments to these individuals, by way of political contribution or otherwise. Both payments were simply recorded as '*Quarryvale/West Park expenses*'. Insofar as

[17] However in correspondence and in later sworn evidence he clarified that Mr Lawlor was the recipient of this payment IR£10,000

Mr O'Callaghan's personal records described the beneficiaries of the payments, it was to the extent that the cheque stub relating to the 11 October 1991 payment of IR£10,000 to Cllr McGrath stated '*OOC cheque to OOC…C / McGrath…£10,000…In/out'*. The cheque stub relating to the September 1991 payment to Mr Lawlor was not made available to the Tribunal.

18.11 Having reimbursed Mr O'Callaghan for the two sums of IR£10,000 in '*Quarryvale / Westpark expenses*' paid by him on 23 September and 11 October 1991 respectively, Mr O'Callaghan, by his letter of 3 December 1991, approached AIB seeking to recoup these sums from Barkhill. The two sums of IR£10,000 were duly reimbursed to Riga from the Barkhill Number 2 loan account on 24 January 1992 and were included in the sum of IR£56,598.71[18] repaid to Riga from the Barkhill Number 2 loan on that date.

18.12 Mr O'Callaghan and Mr Barry Pitcher (the AIB nominated Director of Barkhill) authorised the payment from the Barkhill Number 2 loan account. The payments were described as '*sundry expenses – 20,000'*. The text of the authorisation was in Mr Kay's handwriting. The other payments for which Riga was reimbursed on 24 January 1992 included a payment of IR£26,195 which Riga had made on behalf of Barkhill to Mr Ambrose Kelly and two payments of IR£8,228.42[19] and IR£8,484.29 made to Frank Dunlop and Associates Ltd.

18.13 Prior to Riga's recoupment of the two sums of IR£10,000 referred to in the letter of 3 December 1991, both were posted in January 1992 in Riga's nominal ledger, as Quarryvale related expenses.

18.14 Ms Clare Cowhig, Riga's auditor, told the Tribunal that when she queried the two payments of IR£10,000, she had been simply informed, most probably by Mr Deane, that they were Quarryvale '*expenses*'.

18.15 In contrast to the manner in which the two IR£10,000 *'expenses'*payments were recorded in its books, Riga's half year accounts to 31October 1991 revealed that a IR£5,000 political contribution made by Riga to Mr Micheál Martin in June 1991 was identified exactly as that. The Tribunal also noted that a IR£5,000 'cash' cheque of 18 November 1991 was similarly identified in the cheque payments book and nominal ledger for the year ended 30 April 1992 as a political contribution made to Mr Lawlor. This was the

[18]Riga had sought in total repayment of some IR£62,907.71 of which it received IR£56,598.71. The difference (IR£6,309) represented the amount by which the total reclaimed to that time exceeded the IR£1m loan sanctioned to Riga in May 1991 to be expended for the benefit of Barkhill.

[19] This payment to Frank Dunlop was not in the list of payments by Riga set out in Mr O'Callaghan's 3 December 1991 letter, and was paid by Riga on 2 December. It appears in manuscript on a copy of the 3 December letter.

IR£5,000 which Mr O'Callaghan had originally claimed was a political contribution to Mr Lawlor, but in respect of which he subsequently said was a payment to himself personally to assist in the purchase of a pony.[20]

18.16 Within the audit working papers of Barkhill for the period from incorporation to 30 April 1992, the two IR£10,000 payments were ultimately attributed as monies paid by Barkhill to Mr Gilmartin. As a consequence of Mr Gilmartin being deemed to have been the recipient of these monies in Barkhill's books, Mr Gilmartin's Directors Loan Account – the monies owed by Barkhill to Mr Gilmartin – was reduced by IR£20,000.

18.17 Both Mr O'Callaghan and, in effect, Mr Deane acknowledged that Mr Gilmartin had never been apprised of the IR£10,000 payments that had been made to Mr Lawlor and Cllr McGrath, and they agreed that the two IR£10,000 '*Expenses*' should not have been attributed as payments made to Mr Gilmartin.

18.18 Neither Mr O'Callaghan nor Mr Deane could account to the Tribunal as to how, or why, the two IR£10,000 payments, claimed by Mr O'Callaghan as having been paid as '*political contributions'* to Messrs Lawlor and McGrath in September and October 1991 respectively, were ultimately ascribed in Barkhill's audited accounts as payments made to Mr Gilmartin. Mr Gilmartin stated that he knew nothing about these payments. The Tribunal was satisfied that this was the case.

18.19 Mr Leo Fleming of Deloitte & Touche (Barkhill's auditors) was uncertain as to who had decided that the two payments of IR£10,000 be attributed as payments made to Mr Gilmartin. Mr Fleming initially suggested that the decision was based on information from either Mr Aidan Lucey (Riga's Bookkeeper) or Mr Gilmartin. Later, however, Mr Fleming appeared to discount the possibility that he had discussed the matter with Mr Gilmartin and suggested that either he had discussed the matter with Mr Lucey, or had taken it upon himself to transfer the expenses to Mr Gilmartin's loan account '*as an interim measure subject to Mr Gilmartin's review'.* The Tribunal believed it unlikely that Mr Gilmartin would indeed have accepted that these payments were made in his name, unless he had done so by mistake.

18.20 In any event, the Tribunal accepted that Mr Fleming probably received information which identified Mr Gilmartin as the beneficiary of these funds and it appeared that although Mr Fleming sought specific information from Riga, correct information regarding these '*Expenses*' payments was not provided to him.

[20] See Part 9.

18.21 As auditor of Barkhill's books, Mr Fleming sought supporting documentation for the payments and on 15 December 1992 he wrote to Mr Lucey of Riga. In a Schedule attached to that letter Mr Fleming sought documentation relating to:

> *Two amounts of £10,000 each described as 'Sundry' in the Riga reimbursement from AIB No 2 A/c on the 21/1/92 which were apparently paid to Tom Gilmartin*.

18.22 Mr Fleming sent copies of this letter to Mr Gilmartin, Mr O'Callaghan and Ms Basquille of AIB. The reference to the two IR£10,000 sums having been paid to Mr Gilmartin was clearly incorrect, as Mr Gilmartin had never received them, nor had it been intended that he should have.

18.23 Notwithstanding that this correspondence was addressed to Mr Lucey, the information sought was not provided. On 8 February 1993, Mr Lucey wrote to Mr Fleming (with a copy of the letter sent to Mr Deane) stating that he did not have any further supporting documentation for these (and certain other) items and advising Mr Fleming to '*check with AIB as they paid out most of those items'.* Following a telephone conversation they had on 30 April 1993 about unresolved matters, Mr Fleming wrote to Mr Deane on 3 May 1993, repeating his request for information. Mr Fleming's request was, *inter alia*, the subject of discussion at a Barkhill board meeting of 16 June 1993.[21]

18.24 Mr Pitcher, the AIB-appointed Director of Barkhill, attended this meeting of 16 June 1993 at which Mr Flemings request for backup documentation for the two IR£10,000 *'expenses'* payments was discussed. He told the Tribunal that he could not '*shed light'* on the two IR£10,000 payments, although he had certified their payment in January 1992. He emphasised to the Tribunal that he was simply a non-executive director and was not involved in the day-to-day management of the company. Specifically, Mr Pitcher said that he had no direct dealings with Messrs O'Callaghan and Deane. Mr O'Farrell who was also at that meeting maintained that he had no recollection of any discussion at that meeting in relation to the two IR£10,000 payments.

18.25 The Tribunal was satisfied that in December 1992 and again in May 1993, Mr Deane (and Mr O'Callaghan) had been provided with Mr Fleming's Schedule and were aware of the request for documentation relating to the two payments.

[21] See also Part 5

18.26 Mr O'Callaghan acknowledged that he did not provide the information relating to the two IR£10,000 amounts to Mr Fleming. On Day 885, Tribunal Counsel questioned Mr O'Callaghan as to why had had not provided the information to Mr Fleming, thus:

> *'Q. So the first port of call for any such payment particularly a figure of round sum of 10,000 pounds would have been the cheque payments book, isn't that right?*
>
> *A. Yes.*
>
> *Q. And if you had gone to the cheque payments book –*
>
> *A. I would never have gone there. That's the trouble.*
>
> *Q. Asked Mr. Lucey –*
>
> *A. Yeah.*
>
> *Q. If you had said to Mr. Lucey for example, look Riga was repaid money in January will you find out what the breakdown was?*
>
> *A. Uh-huh.*
>
> *Q. I suggest to you it wouldn't have taken Mr. Lucey very long to find two items of 10,000 pounds?*
>
> *A. No, I agree, yes.*
>
> *Q. Isn't that right?*
>
> *A. Yes.*
>
> *Q. But that step was never taken, isn't that right?*
>
> *A. That's right.*
>
> *Q And no information was ever provided to Deloitte & Touche that in fact … those two figures of 10,000 pounds that were written up to Mr. Gilmartin's loan account was a payment of 10,000 pounds to Mr. Lawlor and another payment to Mr. McGrath, isn't that right?*
>
> *A.Yes.*
>
> *Q. Why could that be, Mr. O'Callaghan, when there was no necessity if those payments had been made and accounted for, what would have been the difficulty in disclosing to Deloitte & Touche that in fact what one had was not an item of unspecified expenses but a payment to a politician that could be properly recorded on and accounted?*
>
> *A. There was no reason except that there wasn't enough of attention paid to that paragraph to figure out what – it was my fault I presume. I never looked at it in detail. I didn't give myself enough of time to figure out what*

to figure out what it was all about is more, that's more than likely what happened.

Q. If we look now just looking back on it, Mr. O'Callaghan, and we see that from the very initiation of the two transactions of 10,000 pounds, other than your personal bank stub and the note that you made on the document of the 14th of November 1991, recording Mr. McGrath's name. There is nothing that links Mr. Liam Lawlor or Mr. McGrath to these two payments, isn't that right?

A. Uh-huh that's, right.

Q. And insofar as the auditor of Barkhill was concerned, that is Mr. Fleming of Deloitte & Touche, unless somebody came to him and said of their own knowledge look, this is in fact a political payment, a payment to Mr. Lawlor or McGrath, Mr. Fleming could never have known about it, isn't that right?

A. Yes.'

18.27 While Mr Deane acknowledged that he had been made aware of the payments to Mr Lawlor and Cllr McGrath shortly after the event, he did not, he said, '*link'* these payments to the two '*expenses'* payments in respect of which Mr Fleming was continuing to seek backup documentation. Mr Deane's Discovery to the Tribunal yielded a copy of Mr Fleming's schedule on which the word '*noted'* in Mr Deane's handwriting appeared against the two IR£10,000 expenses items. Mr Deane accounted for this on the basis that the two payments had been noted by Mr Fleming '*…as apparently made to Tom Gilmartin'*, and Mr Deane had taken this '*at face value.'*

18.28 In the course of his evidence Mr Deane agreed that a degree of '*unusualness*' pertained to the two IR£10,000 *'expenses'* payments made in September/October 1991 to Mr Lawlor and Cllr McGrath. These unusual features were as follows:

- Both were paid from Mr O'Callaghan's personal account to the individuals concerned.

- Both payments were described as expenses or sundry expenses in documentation created at or around the time of their payment.

- Although properly sanctioned by two Directors of Barkhill Mr O'Callaghan and Mr Pitcher (AIB's representative on the board), Mr Gilmartin was not asked to sanction the payments.

- Barkhill's auditors ultimately attributed the payments as having been made (presumably on instructions from the company) to Mr Gilmartin, yet

Mr Gilmartin derived no benefit therefrom nor had he any connection to the payments.

- No invoices or written acknowledgements were furnished by the recipients of the payments.
- The ultimate recipients of the two IR£10,000 payments made by Mr O'Callaghan, and in respect of which he had been reimbursed, were not identified in the records of Riga or Barkhill, save for the manuscript notations already referred to.
- Mr Donagh's evidence (see below) was that he believed that he had been told by Mr Deane that the monies had been paid in connection with meetings Mr O'Callaghan had with councillors and local interest groups, including the hiring of venues for public meetings.
- Mr O'Callaghan's letter of 3 December 1991 to Mr Kay of AIB seeking reimbursement to Riga from Barkhill for these expenses and other expenditure, while identifying the subject of the other expenditure, had not identified either the purpose of or the identity of the recipients of the two IR£10,000 payments, citing them only as '*Expenses*' in respect of which Mr O'Callaghan would*'explain on Friday*'.

18.29 Mr Donagh, who agreed that it was he who had stamped and initialled Mr O'Callaghan's 3 December 1991 letter, when asked if he had been present at the meeting between Mr O'Callaghan and Mr Kay on, probably, Friday 6 December 1991, stated '*The explanation in relation to those payments didn't take place at one discussion, one telephone call, one meeting. I had a number of discussions during December and January with both* Mr Gilmartin[22] *and Mr Deane. And I certainly have a recollection of also having a meeting, if not two, with Mr Deane in relation to the matter.'*

18.30 On Day 851 Mr Donagh was questioned as follows:

Q. Irrespective of when the explanation was given, can you tell the Tribunal, Mr. Donagh, who received the two 10,000 pounds payments referred to in that letter?

A. Again, my recollection from discussions that I had with Mr. Deane, they were… I have no recollection of two payments of ten. But I certainly have a recollection of discussion of 10,000. It related to, as it says there, expenses. And I remember having discussions with Mr. Deane where he said there were a number of different meetings being held with local

[22] The Tribunal believed it was possible that when making that statement Mr Donagh mistakenly referred to Mr Gilmartin instead of Mr O'Callaghan.

interest groups, councillors etc. to appraise them of the overall development etc. etc. and that they'd hired community halls, they had laid on sandwiches and tea ladies and things like that[23]*. And Owen had bought rounds of drinks and things like that afterwards for the people. And he hadn't got receipts for every little bit. And there were a number of those kind of ones. And that was the primary explanation that was given to me at the time. In terms of completing the reconciliation, just as matters evolved and with both Tom Gilmartin and John Deane, Owen O'Callaghan being happy and satisfied that the reconciliation was eventually agreed. I have to say I didn't dwell too much or didn't – there was lots of other issues in terms of, as I said, the Bruton closing etc. etc. So that's my only recollection of an explanation that was given at the time. But I certainly recall that discussion.*

Q. It would appear that the stub of … Mr. O'Callaghan's cheque book which relates to the payment on the 10th of October '91, contains the reference C/McGrath. Do you see that?
A. I do, yes.

Q. And I understand that it would be Mr. O'Callaghan's evidence that that payment was to Mr. Colm McGrath, Councillor.

A. Well that was not advised to me.

Q. At the time?

A. At the time, no. No, not advised to me, no.

Q. Did you know Councillor McGrath?

A. No, I did not.

Q. Mr. McGrath was the signatory in the February '91 motion. Did you know that?
A. I may have done so but it wouldn't have meant a lot to me.

Q. But can the Tribunal take it that you would have queried those two payments and that insofar as you were given an explanation it was that they were to reimburse Mr. O'Callaghan in respect of out-of-pocket expenses in connection [with] *local meetings held in the Quarryvale area at this time?*

A. Certainly I can certainly recall from – that that was the explanation given to me on one of them. Just from my recall I can't remember that there were two.

[23] Mr Deane said that he doubted that he had ever identified '10,000 pounds being accosted to that'.

18.31 With reference to Mr Donagh's evidence of his understanding of the purpose of one of the payments, in fact there was no evidence before the Tribunal that Mr O'Callaghan was the instigator of a series of public meetings which undoubtedly took place in the period September to December 1991. A note of a meeting attended by Mr Kay, Mr Donagh, Mr O'Callaghan and Mr Deane on 20 September 1991 made reference to Mr O'Callaghan's attendance at a Palmerstown residents meeting on the previous evening, and it recorded, *inter alia*, as follows:

> *From mid-October the other 5 Residence* [sic] *Associations will be holding meetings and Owen O'Callaghan will attend as guest to explain Quarryvale position.*

18.32 Thus, notwithstanding Mr Donagh's evidence, whatever explanation was tendered to him by Mr O'Callaghan for an expenditure of IR£10,000 on '*Expenses*', it was unlikely that Mr O'Callaghan could have been referring to hiring meeting venues in the period September to November 1991. Indeed, even when conveying his recollection of what he was told, Mr Donagh himself agreed that IR£10,000 was *'Absolutely'* a large amount of money for anyone to have spent on hiring meeting venues.

18.33 Mr Kay's handwritten document which detailed the total repayment (IR£62,907.71) sought by Riga from the Barkhill no 2 loan account specifically identified three (the two payments to Mr Dunlop and the payment to Mr Kelly) of the four items which made up this total but it did not specify the recipient(s) of the two IR£10,000 '*Expenses'* payments. In similar fashion to Mr O'Callaghan's mode of description, Mr Kay noted them as follows '*Sundry expenses 20,000-00'.* Mr Kay's note (in effect the bank's authorisation document following which the reimbursement was made to Riga) also included five further payments to Barkhill's creditors, which were to be paid to them directly by bank drafts from the Barkhill No. 2 loan account. In the case of each of these, the identity of the intended payees (Taggarts Architects, Deloitte & Touche, Mr Fintan Gunne and Mr Gilmartin) was clearly identified.

18.34 Mr Donagh did not recall whether in January 1992 he had sight of the authorisation document prepared by Mr Kay (and duly signed by Mr O'Callaghan and Mr Pitcher) consequent upon which the IR£56,598.71 was repaid to Riga. On 14 January at a meeting attended by Mr O'Callaghan, Mr Deane, Mr McGrath, Mr Kay and Mr Donagh, the reconciliation was the subject of discussion and the memorandum of that meeting (provided to the Tribunal in Mr Deane's discovery and probably written by him) noted that AIB agreed to the transfer of IR£62,907 following which Riga was duly reimbursed (IR£56,598.71). This memorandum noted that there were '*invoices available'* in respect of the IR£62,907. When

questioned as to whether invoices had indeed been available at the time, Mr Kay said that it was his assumption that if Mr Deane had said that there were '*invoices available',* Mr Deane must have had '*something available'.* However, Mr Kay told the Tribunal that he had no recollection of seeing invoices relating to the two IR£10,000 payments.

18.35 Mr Donagh agreed that prior to AIB's sanction in relation to the payments, Mr Gilmartin did not sign and had not been asked to sign an authorisation in order to facilitate Riga's reimbursement for the two IR£10,000 *'Expenses*' payments. Yet, at the time when Mr O'Callaghan's letter of 3 December 1991 was being discussed, preparations were under way for Mr Gilmartin to sign a document prepared by AIB authorising a draw down from the Barkhill no 2 loan account to facilitate payment directly to a number of Barkhill's creditors. This draw down, furnished to Mr Gilmartin on 19 December 1991, did not make reference to the two '*Expenses'* payments of IR£10,000.

18.36 Mr Donagh sought to explain this anomaly in the following manner:

> *'..Because the reconciliation of all of the payments hadn't been concluded at that point in time. It was only concluded in January 1992. So at that stage a number of payments that were considered 'urgent' and both parties were in agreement with, were paid and signed off inverted commas, but not the reconciliation of every payment and the explanation thereof.'*

18.37 The payments which Mr Gilmartin, as a Director of Barkhill, authorised were to Mr Seamus Maguire solicitor, Taggarts Architects, Mr Fintan Gunne, Deloitte & Touche and Mr Dunlop. These creditors were also listed[24] on the undated authorisation document which had been prepared by Mr Kay and which was signed by Mr O'Callaghan and Mr Pitcher on some date between 3 December 1991 and 24 January 1992.

18.38 Notwithstanding that the document which Mr Gilmartin duly signed on 19 December 1991[25] was prepared by Mr Kay, it did not make reference to any of the payments (including the two IR£10,000 *'expenses'* payments), in respect of which Riga was reimbursed from the Barkhill no 2 loan account.

18.39 Mr Kay did not know why he had not sought Mr Gilmartin's authorisation for the reimbursement but believed it likely, when requesting his authorisation, that he had concentrated on immediate payments to creditors out of the Barkhill

[24] In fact some of those creditors were also referred to in Mr O'Callaghan's letter of 3 December 1991 under the heading '*payments to be made by Barkhill.'*

[25] This was likely to have been signed by Mr Gilmartin when he met Mr Kay in London on that date in connection with outstanding land acquisition by Barkhill.

no 2 loan account rather than historical payments for which Riga was seeking reimbursement. Mr Kay stated that at no stage had he deliberately withheld information from Mr Gilmartin.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE 'EXPENSES' PAYMENTS

19.01 The Tribunal accepted Mr O'Callaghan's evidence that he informed Mr Kay of the identities of the recipients of the two IR£10,000 payments (and to that extent it rejected Mr Kay's evidence of his assumption that he had been given an innocuous explanation for that expenditure), and that Mr Kay had indicated to him a degree of displeasure that such payments had been made but that AIB would permit their reimbursement to Riga on that occasion as a '*once off.'*

19.02 The Tribunal believed that decisions were made, firstly by Mr O'Callaghan not to identify the identities of the recipients of the two IR£10,000 payments in his correspondence to Mr Kay, and secondly by Mr Kay not to record the identities of those individuals in any internal AIB memoranda, in order to ensure that such information would not be documented. Thus, the Tribunal was satisfied that senior personnel within AIB knew (as of December 1991) that payments had been made to two named politicians (Mr Lawlor and Cllr McGrath) and that the payments had been treated by Mr O'Callaghan as Quarryvale related expenses for which Riga sought reimbursement, duly acceded to by AIB.

19.03 The repayment of the two IR£10,000 'Expenses' payments from the Barkhill No.2 loan account was permitted by AIB (albeit, as testified to by Mr O'Callaghan with a degree of concern on its part), despite the requirement (as per the IR£3m loan facility sanction dated 13 September 1991) that funds drawn down '*may only be used by the borrower towards, or for the purpose of the purchase of the properties set out in Appendix III hereto and to discharge costs directly related to the site…'*

19.04 The Tribunal rejected the position advanced in evidence that the reason for not alerting Mr Gilmartin by 19 December 1991 to the two IR£10,000 *'expenses'* payments was that a decision might not have been taken as to whether reimbursement would be made. Even if that were the case, there was no reason for Mr Gilmartin not to have been advised that a request had been made to repay to Riga a sum of IR£20,000 out of the Barkhill No 2 loan account. In all the circumstances the Tribunal was led to the conclusion that there was a concerted effort in December 1991 to keep the fact of the two IR£10,000

'*expenses*' payments from Mr Gilmartin in order to avoid questions being raised by him as to their purpose.

19.05 The Tribunal rejected Mr O'Callaghan's evidence that the only reason for not alerting Mr Fleming as to the true recipients of the money was that '*not enough attention'* had been paid to Mr Fleming's request for information on the issue. The Tribunal believed it far more likely that Mr O'Callaghan deliberately withheld information from Mr Fleming (and indeed from Mr Gilmartin), which would have correctly identified the recipients of these funds, in order to maintain secrecy as to their identities because they were politicians. It was noteworthy that other politicians who had been favoured with financial assistance had been clearly identified within Riga's own accounts.

19.06 The Tribunal found it surprising that Mr Deane in 1993 had not seen fit to write to Mr O'Callaghan (a director of Barkhill) concerning the two IR£10,000 expenses payments, in circumstances where Mr Deane had been written to by Mr Fleming on 3 May 1993, and in circumstances where on receipt of that letter Mr Deane had taken it upon himself to write to a director of Barkhill (Mr Gilmartin) and indeed others (for example Mr Maguire, Solicitor) in an endeavour to obtain answers to Mr Fleming's queries. Mr Deane's failure to follow up this matter with Mr O'Callaghan in writing appeared all the more extraordinary given that he himself had written to Mr Fleming on 25 March 1993 requesting that he be updated on outstanding queries in relation to the Barkhill audit, and given that Mr Deane was recorded in the minutes of a Barkhill board meeting of 28 April 1993 as stating that he was pursuing the issue of the completion of the Barkhill audit and outstanding matters in relation thereto '*…as a matter of urgency.'*

19.07 The Tribunal was satisfied that Mr Fleming, when he sought information as to the purpose of the payments, was not provided with that information and was ultimately wrongly advised that the payments were connected with Mr Gilmartin, thus leading him to assign the payments in Barkhill's accounts as benefits which had been made to Mr Gilmartin.

19.08 Ultimately, having regard to the manner in which the two *'expenses*' payments were accounted for in Barkhill's books, it transpired in the absence of authority from Mr Gilmartin (and his wife) for doing so, he funded the payments made by Mr O'Callaghan to Mr Lawlor and Cllr McGrath.

THE REDEPLOYMENT WITHIN AIB OF MR KAY IN THE AUTUMN OF 1992

MR KAY'S TRANSFER WITHIN AIB

20.01 As the senior manager of the property and construction team in AIB's Corporate Commercial Division from the mid 1980s, and as the AIB executive who dealt with Mr Gilmartin/Barkhill affairs, Mr Kay continued in charge of these affairs until approximately September 1992, when Mr O'Farrell took over that role. During this 1991/2 period, Mr Kay and Mr Gilmartin were regularly in contact and it was quite evident from the evidence given to the Tribunal from both men that they had a friendly working relationship and respected each other. Mr Gilmartin appeared to have trusted Mr Kay to a considerably greater extent than he did the other AIB officials with whom he had contact over a number of years. Mr Kay remarked that Mr Gilmartin spoke freely to him and, while they had many disagreements, they never fell out. Mr Kay said he thought Mr Gilmartin was a *'decent'* man.

20.02 Mr Gilmartin told the Tribunal that it was his belief and understanding that Mr Kay was taken off the Barkhill file in the Autumn of 1992, and was in effect demoted within AIB, because AIB took the view thatMr Kay and Mr Gilmartin were too close. This suggestion from Mr Gilmartin as to the reason for his redeployment within AIB was angrily rejected by Mr Kay, who was adamant that his then transfer to another position was in reality a promotion. Mr Gilmartin also alleged that Mr O'Callaghan had told him that AIB had replaced Mr Kay with an individual who was a friend of Mr O'Callaghan.

20.03 The suggestion that Mr Kay had been demoted or transferred to another position within AIB because of his friendly working relationship with Mr Gilmartin was not established, as a matter of probability, to have been the case and appeared to the Tribunal to have been unfounded, and was merely a suspicion on Mr Gilmartin's part.

20.04 In any event, with the exception of the occasion in December 1992 (see below) when he accompanied his colleague Mr McGrath to London to meet with Mr Gilmartin, Mr Kay had no further meetings with Mr Gilmartin (or with Barkhill regarding Quarryvale) subsequent to his internal redeployment in the autumn of 1992.

MR O'FARRELL TAKES OVER FROM MR KAY

20.05 Having taken over the management of the Barkhill file from Mr Kay, Mr O'Farrell was briefed by Mr O'Callaghan at a luncheon meeting on 28August 1992 on the progress of the Quarryvale rezoning and the Neilstown Stadium project. By the time of Mr O'Farrell's introduction to the Quarryvale file, Mr

O'Callaghan and Mr Dunlop's campaign to secure the support of councillors in advance of the next Quarryvale vote was well under way. Mr O'Farrell's note of the meeting recorded that Mr O'Callaghan *'and a team of people are actively lobbying the* [councillors]' and were '*optimistic'*that they could get a majority vote. However, the possibility of a negative outcome for the rezoning was also being adverted to at that time, as evidenced by a memorandum of 18 August 1992 following a meeting of the AIB Group Credit Committee in relation to Riga. It was noted as follows:

> *In July 1991 Riga, at our* [AIB's] *instigation, acquired a 40% equity stake in Barkhill, effectively for £2.5m (cash of £1.5m, guarantee £1m), In addition, they waived an inter-company debt of £1.35m due by Barkhill. This company owns a 176 acre site at Palmerstown, which has been the subject of considerable publicity and on which there is currently gross AIB exposure of £14.5m). The zoning of the Palmerstown site was altered from Industrial/Residential to Retail by vote of Dublin County Council in mid-1991 but in the subsequent local election, 5 of the Councillors who had supported the rezoning lost their seats. As a result opposition to the retention of Retail zoning mounted and was assisted by the vocal objections of Green Property Plc., who stated that their long planned rival development at Blanchardstown will not proceed, unless the Barkhill site is dezoned. The matter will be decided as part of consideration of the draft Dublin Development Plan, which will be voted on next October. Due to the exceptional abilities and commitment of Owen O'Callaghan, who has worked tirelessly to secure the support of politicians, local interest groups and Council officials, it is possible that retail zoning will be retained following the October vote. Should this be the position, our professional advice is that the value of the site will be greatly enhanced and the prospects of full recovery of the Barkhill debt much improved. If the zoning is reversed, it will be a set back and we will have to re-assess the position.*

20.06 Mr O'Farrell told the Tribunal that by September 1992, the approach adopted by AIB was to invest money into the Quarryvale site in the expectation that it would be rezoned. He stated that *'we had no choice but to follow our money'.* The Barkhill debt continued to be a non-performing one and the interest thereon was not being served. Thus, the only prospect for a successful outcome from AIB's perspective was for Quarryvale to retain its May 1991 zoning. Mr O'Farrell at this time understood Mr O'Callaghan's efforts to be focused on this issue. He acknowledged that AIB's opinion of Mr O'Callaghan, as noted in the Credit Committee Report of 18 August 1992, was that Mr O'Callaghan *'is probably the most respected and capable Shopping Centre developer in Ireland',* and also, *'the involvement of Owen O'Callaghan in Barkhill is undoubtedly very*

helpful to us and through his efforts it is probable that the site value will be substantially enhanced, thereby protecting our exposure.'

20.07 Between March and December 1992, in advance of the second crucial Quarryvale vote, Mr O'Callaghan and Mr Dunlop engaged in intensive lobbying of councillors. The extent of this lobbying is considered in Part 7. In tandem with his lobbying endeavours, Mr O'Callaghan remained in regular contact with AIB, for the most part to persuade them to make payments from the Barkhill No. 2 loan account to discharge expenditure on lobbying and other expenses then being incurred in connection with Quarryvale. Included in the requests for payment and reimbursement were payments made to Shefran and Frank Dunlop & Associates Ltd. The manner in which such requests were dealt with by AIB in 1992 and the extent to which AIB were aware of the purpose of such payments is considered in Parts 5 and 6.

THE MEETING IN LONDON ON 17 DECEMBER 1992

21.01 Relations between Mr Gilmartin and Mr O'Callaghan and between Mr Gilmartin and AIB deteriorated progressively throughout 1992. This deterioration stemmed from a number of factors, including Mr Gilmartin's dissatisfaction with his reduced shareholding in Barkhill, the increasing prominence of Mr O'Callaghan as the person leading the project to zone Quarryvale as a Town Centre (and which had been provided for in the third Heads of Agreement), the effective sidelining of Mr Gilmartin, Mr Gilmartin's complaints from mid 1992 onwards about large round-figure payments made to Mr Dunlop/Shefran[26] in 1991 and 1992 and Mr Gilmartin's then difficult financial position.[27]

21.02 In 1992, contact between Mr Gilmartin and AIB culminated in a meeting in London between Mr Gilmartin, Mr Kay and Mr McGrath, on 17 December 1992. Although Mr Kay was no longer involved with Barkhill /Quarryvale and had not been for the previous two or three months , because of his previous good relationship with Mr Gilmartin he was asked by AIB to accompany Mr McGrath to meet Mr Gilmartin in London on 17 December 1992. This was also the date when the vote was scheduled to take place at Dublin County Council relating to Quarryvale, and AIB had become concerned that its success might be undermined by Mr Gilmartin.

21.03 Some days prior to 17 December 1992 Ms Basquille had a telephone conversation with Mr Gilmartin in which he threatened to go to the press with complaints he had relating to the Quarryvale project. Strangely, Ms Basquille did

[26] See Part 5.
[27] He was by then bankrupt in the UK.

not prepare a memorandum in relation to that telephone call. She gave as probable reasons for her failure to prepare a memorandum that she was busy at the time, or alternatively, having taken the telephone call, she had immediately gone with the information to her superior, Mr O'Farrell, and therefore did not need to prepare a memorandum. The Tribunal did not accept her evidence as credible, given the meticulous nature with which AIB usually documented contact, not only with Mr Gilmartin, but also with Mr Deane and Mr O'Callaghan.

21.04 Mr McGrath told the Tribunal that he had decided that he and Mr Kay should meet Mr Gilmartin in London, and had asked Mr Kay to accompany him for that purpose[28]. Mr O'Farrell said that he had no recollection of Mr Kay or Mr McGrath reporting back to him after their meeting with Mr Gilmartin in London but suggested that the purpose of the visit was to advise Mr Gilmartin that it was in everyone's interest, including Mr Gilmartin's, that the Quarryvale rezoning vote scheduled for that day should make its way through the County Council, even on the basis of the retail element of Quarryvale being restricted to 250,000 square feet, a proposal to which Mr Gilmartin strongly objected.

21.05 Mr Kay told the Tribunal that Mr McGrath had explained to him in advance of the trip to London that the vote in relation to the rezoning of Quarryvale was imminent and that AIB had been in touch with Mr Gilmartin in relation to it. Mr Kay was led to believe that Ms Basquille had recently spoken to Mr Gilmartin about the upcoming vote and that Mr Gilmartin had told her that he had been made aware that Mr O'Callaghan would probably agree to a scaling back of the size of the retail element of the project. Mr Gilmartin was of the opinion that Mr O'Callaghan, in agreeing to scale back the project, was engaged in a deliberate ploy to diminish his, Mr Gilmartin's, equity in the project, and that in the longer term, the scale of the project would then be increased with Mr Gilmartin no longer part of the picture. According to Mr Kay, Mr Gilmartin had told Ms Basquille that he intended going to the press and that he *'was going to pour out all of his complaints and grievances about how he had been treated'*, and that he would *'wreck the whole project and bring it down'*. Mr Kay said that the purpose of his and Mr McGrath's trip to meet Mr Gilmartin in London was to *'try and assuage his concerns and try and get him to change his mind.'*

21.06 Mr Kay described how, when he and Mr McGrath arrived in London, there was no sign of Mr Gilmartin and that they were kept waiting for a couple of hours and were at the point of considering booking an early return flight to Dublin when Mr Gilmartin appeared. Mr Kay said that they discussed the

[28] In later evidence to the Tribunal, Mr McGrath stated that it was possible that Mr O'Farrell, and not himself, had requested Mr Kay to meet Mr Gilmartin in London. However, Mr Kay stated that it was '*almost certainly'*Mr McGrath who had asked him.

situation with Mr Gilmartin but reached no definite conclusion. Mr Gilmartin told them that he would think about what they had said to him.

21.07 Mr Gilmartin described the 17 December 1992 meeting as a '*stunt'* to keep him engaged until it was too late for him to contact the County Council offices in Dublin (to request that the Quarryvale motion be withdrawn). Mr Gilmartin described how he and Mr Kay met at the arranged time in the hotel but were kept waiting for a number of hours for Mr McGrath to arrive. Mr Gilmartin said that he '*suddenly realised that the main reason for Mr McGrath being late, or that was my opinion, was to stall me until after the Council offices were shut, so, when I did try to get through the people answering the phone was John Deane, Frank Dunlop and John Gilbride'*

21.08 Mr Kay rejected any suggestion that the visit to London and the delay in the meeting getting underway was all part of a strategy on the bank's part to divert Mr Gilmartin from being in a position to make contact with *'whoever his contact people in Dublin were*.'

21.09 Mr Kay told the Tribunal that he and Mr McGrath tried to reassure Mr Gilmartin that the Quarryvale project appeared to be moving ahead and that it was not in his interest to torpedo it at that stage or to *'bring the whole thing down'*, as Mr Kay understood that Mr Gilmartin had indicated he was prepared to do, given his earlier discussions with Ms Basquille. When asked by Tribunal Counsel to indicate what he understood Mr Gilmartin's complaints were at the time, Mr Kay stated:

> *'Well only in a very broad outline I suppose. The complaints were mainly against Mr. O'Callaghan. That if he was going to I presume recount all that had happened in terms of the change of ownership of Quarryvale from being 100 per cent his to now being in a minority position and how it had come about. And I don't think there was any suggestion at that stage that he was going to involve the bank as having been involved in any particular wrongdoing.*
>
> *Q. Was he making allegations of wrongdoing against Mr. O'Callaghan?*
> *A. Oh, yes.*
> *Q. And was he making allegations of corruption against Mr. O'Callaghan?*
> *A. No, I don't think he was at that stage'.*

21.10 Mr Kay said that the meeting in London took at least two hours. His initial recollection to the Tribunal was that he discussed the meeting and its outcome with Ms Basquille and, possibly, Mr O'Farrell on his return to Dublin, but later in his evidence to the Tribunal he doubted that he had done so, before finally concluding that it was *'quite possible'* that he had done so.

21.11 Mr McGrath gave the Tribunal a broadly similar account of the 17 December 1992 meeting with Mr Gilmartin in London, as was given by Mr Kay, but added that Mr Gilmartin was two hours late for the meeting. Mr McGrath was concerned that Mr Gilmartin, as a shareholder, intended to talk to the press and he was concerned that if he did so, it would delay the Quarryvale project. Mr McGrath acknowledged that AIB was anxious to avoid adverse publicity relating to Quarryvale prior to the County Council vote.

21.12 He acknowledged that no note or memorandum was prepared in relation to the London meeting but denied that this was unusual for him, as he rarely prepared such documentation. He did accept, however, that the absence of any file note relating to the meeting was quite unusual. He was unable to recall any allegations made by Mr Gilmartin or what was discussed at the meeting. He did not recall if Mr Gilmartin had complained about the Shefran payments or of money being taken from Barkhill or of payments to politicians. Mr McGrath said that he could not recall if Mr Gilmartin made any allegation of collusion as against AIB, nor did he recall him making complaints of bribery and/or corruption. The Tribunal regarded the absence of any memorandum either prior to or subsequent to the meeting as strange and was led by it to the conclusion that, for one reason or another, AIB made the unusual decision to avoid noting details of the discussions with Mr Gilmartin in relation to the reasons for, or the outcome of, the meeting in London.

21.13 The Tribunal was satisfied that Mr Gilmartin's complaints related not just to his opposition to the proposal to limit the retail element of Quarryvale but also related, *inter alia*, to Mr Dunlop and the Shefran payments totalling IR£150,000 which had been by then paid to Mr Dunlop and of which Mr Gilmartin was by then aware. For the reason set out in part 5 hereof, the Tribunal was satisfied that from June 1992 Mr Gilmartin was aware of the connection between Shefran and Mr Dunlop and that indeed by October 1992 he was aware that between May 1991 and June 1992 Shefran had been paid IR£150,000. The Tribunal had no doubt from the testimonies of Mr Gilmartin and, in particular, Mr Paul Sheeran that Mr Gilmartin's complaints in the lead up to December 1992 and indeed on 17 December 1992, concerned, *inter alia*, Mr Dunlop and the Shefran payments.

21.14 The Tribunal heard evidence of attempts by Mr Gilmartin to make contact with Cllrs McGrath and Gilbride on the evening of 17 December 1992. It was established, to the Tribunal's satisfaction, that his attempts were not successful largely because the telephones in the Fianna Fail rooms in Dublin County Council were, on the evening in question, being manned by Mr Deane, in

order to control contact by Mr Gilmartin with Cllrs McGrath and Gilbride. This issue is also addressed in Part 7.

THE BARKHILL BOARD MEETINGS IN THE PERIOD 1993 TO 1996

22.01 The subsequent memorandum closest in time to the London meeting on 17 December 1992, prepared within AIB, was that prepared by Ms Basquille following a meeting between herself, Mr McGrath, Mr O'Farrell, Mr O'Callaghan and Mr Deane on 20 January 1993. In that memorandum Mr McGrath made reference to a commitment having being given in December 1992 (presumably at the meeting in London) to Mr Gilmartin to hold a Barkhill shareholders' meeting during the month of January. In her memorandum Ms Basquille referred to an inquiry being made by Mr McGrath as to whenever on 20 January 1993 there was *'any strategy to bring him on side'* [Mr Gilmartin].

22.02 The majority (if not all) of Barkhill board meetings in the period 1993 to 1996 were held at AIB's Bankcentre in Ballsbridge. In fact, from the time of Mr O'Callaghan's involvement in Barkhill the financial affairs of the company were largely conducted at AIB Bankcentre in conjunction with Messrs O'Callaghan and Deane, while the main activity of lobbying councillors was largely managed out of Mr Dunlop's offices.

22.03 Following on the commitment given to Mr Gilmartin at the December 1992 London meeting, Mr McGrath wrote to Mr Gilmartin on 2 February 1993 regarding a proposed Barkhill board meeting scheduled for 9 February 1993 and reference was made in the letter to Mr Gilmartin's request (as previously communicated to Mr Kay) to discuss matters with AIB on a *'one to one basis'*. In the event, Mr Gilmartin did not attend the board meeting of 9 February 1993 although he had earlier indicated his willingness to do so. AIB had offered to fund his flight to Ireland to attend the meeting.

22.04 The next board meeting of Barkhill Ltd was held on 24 March 1993. Mr Gilmartin did not attend this meeting but made contact with AIB on 26 March 1993. A note prepared by Ms Basquille of AIB stated as follows:

> *Phone call from Tom 26th March 1993. Tom phoned essentially to find* [out] *about the contents of Wednesday's board meeting—I was unable to give him any specific information and advised that no doubt Seamus Maguire as Company Secretary would be forwarding him minutes in due course.*
>
> *Tom then launched into past grievances, complaining about blackmail and corrupt practices in relation to the putting in place of the shareholder's agreement, referred to the fact that Barkhill was and still*

should be his deal, and expressed dissatisfaction at the fact that he is not being consulted [on] *any decisions taken by the Company. I responded that these were matters better suited to discussion at a board meeting and that, in my view, his failure to attend scheduled meetings appeared to signal a lack of interest in the company's affairs to the other shareholders.*

He indicated that he would be in a position to provide a solution to Barkhill's problems if the other shareholders could be got rid of, but failed to respond to a suggestion that any change in the present shareholding would require the submission of a buy-out proposal to the other shareholders.

He requested a confidential meeting with the bank for the following week—11am on Wednesday was subsequently agreed.

22.05 Mr Gilmartin told the Tribunal that at the time of this telephone contact with Ms Basquille he was raising the issue of payments to Mr Dunlop and Shefran with AIB and was complaining of Mr Dunlop's involvement in the project. He said specifically that he was querying round-figure sums which had been paid to Shefran. Mr O'Farrell told the Tribunal that he had no recollection of such matters being raised by Mr Gilmartin at this time.

22.06 While Mr O'Farrell maintained that he had no recollection of complaints from Mr Gilmartin in relation to these matters, he was aware at this time that there was an issue of the absence of backup documentation for the 1991 Shefran payments amounting to IR£80,000. He would have been aware that invoices were still being sought in relation to these payments which had not been at that time provided to AIB or to Mr Fleming of Deloitte & Touche who had been seeking them from Mr Gilmartin, Mr O'Callaghan and AIB as far back as December 1992.[29] For those reasons, and the reasons set out in Part 5 the Tribunal was satisfied that Mr O'Farrell was aware of an ongoing issue regarding the 1991 Shefran payments to Mr Dunlop.

22.07 Mr Gilmartin attended part of a board meeting of Barkhill on 28 April 1993. The minutes of that meeting did not document any complaints made by Mr Gilmartin. Mr O'Farrell said he had no recollection of Mr Gilmartin seeking details relating to the payments to Shefran, or its involvement with Barkhill, at that meeting. The minutes of that meeting documented, *inter alia,* that:

…serious concern was expressed on the question of the completion of the accounts and the filing of the returns in the Companies Office. John Deane reported that he had written twice to Leo Fleming for a list of

[29] See Part 5.

outstanding items. He would continue to pursue this as a matter of urgency.

22.08 Mr O'Farrell stated that as was the case with all of the memoranda compiled by him following meetings he had over a number of years, he claimed to have no independent recollection of what transpired at meetings, save that he stood over the contents of his memoranda. Mr O'Farrell stated that he had *'absolutely no recollection'* of Mr Gilmartin at the board meeting of 28 April 1993 seeking details relating to Shefran or its involvement with Barkhill. While there was no specific reference in the minutes of the meeting of 28 April 1993 to Mr Gilmartin having expressed concerns, the Tribunal was satisfied that Mr Gilmartin did express his concerns, particularly in the light of his knowledge of Mr Dunlop's association with Shefran, his distrust of Mr Dunlop and Mr Fleming's ongoing pursuit of backup documentation with regard to, *inter alia*, the 1991 Shefran payments.

22.09 The Barkhill board meeting on 16 June 1993[30] was not attended by Mr Gilmartin. Minutes of this meeting indicated that amongst the items discussed at the meeting was a letter sent by Mr Fleming of Deloitte & Touche on 3 May 1993, by way of follow-up to his earlier December 1992 letter in which he sought backup documentation in relation to a number of payments including the three Shefran payments in 1991 amounting to IR£80,000 (and indeed the two IR£10,000 'Expenses' payments, as already referred to).

THE IRISH TIMES ARTICLES IN JULY 1993

23.01 In July 1993, a series of articles appeared in *The Irish Time*s which suggested that a number of rezoning decisions made by Dublin County Councillors in the period since April 1992 were questionable and may have involved corruption. An article written by Mr Frank McDonald on 12 July 1993 bore the title *'Where it is possible to boost the value of parcels of land beyond the dreams of avarice on a role call vote'*and another article on the same date written by Mr Mark Brennock bore the title:

Minister: 'Tell me this is money changing hands?

Councillor: 'Well, Minister, I couldn't deny it

23.02 On 13 July 1993, Mr McDonald penned an article entitled *'Gardaí to investigate rezoning claims'*. A copy of this and the 12 July 1993 articles were enclosed in an AIB Barkhill file discovered to the Tribunal. The 13 July 1993 article also referred to comments made by the then Minister for the Environment, Mr Michael Smith and his expression of concern in relation to reports of

[30] This Board Meeting is considered also in Part 5.

corruption within the planning process. Mr Smith was said to have viewed the matter *'with the utmost gravity.'*

23.03 On Tuesday, 13 July 1993, *The Irish Times* reported on its front page that:

> *It is believed that the Minister for the Environment, Mr Smith, is prepared to direct the county council to change at least part of its draft development plan because of the scale of the rezonings involved. This Ministerial power under Section 22 of the 1963 Planning Act, has never been exercised before.*

23.04 On 26 July 1993 Mr O'Farrell prepared a memorandum headed *'re Barkhill'*. Its content related specifically to the *Irish Times* article, as follows:

> *'Some issues arising from the recent articles in the Irish Times on planning.*
>
> - *What are the expected objections to the Barkhill zoning arising from the present public display of the Draft Development Plan?*
> - *Minister Michael Smith is encouraging the County Council to review their rezoning decisions in light of the number of same. He has been critical of the County Council in this regard. What is O'Callaghan's relationship with Michael Smith?*
> - *Does O'Callaghan have any indication of Smith's view of the proposed Barkhill zoning?*
> - *The Irish Times of Tuesday 13th July, 1993 indicated—'It is believed that the Minister for the Environment, Mr Smith is prepared to direct the County Council to change at least part of its Draft Development Plan because of the scale of the rezonings involved. This Ministerial power, under Section 22 of the 1963 Planning Act, has never been exercised before.' Is there a possibility if the County Council refused to amend their decisions themselves. Could such a process cause delays?*
> - *In the same context the Irish Times of Monday 12th July, 1993 indicated the following—'In 1983, under the spotlight of the media as well as pressure from the public and from the then Taoiseach, Garrett Fitzgerald, who whipped Fine Gael Councillors into line, the County Council voted to rescind about 80% of its rezoning decisions. This may happen again, depending on the public's response to the current exhibition of amendments to the Draft County Plan'.*
> - *Quote Irish Times 13th July, 1993—'Mr Smith said yesterday he was asking the Garda Commissioner, Mr Patrick Culligan, to investigate urgently the reports of money changing hands, with a view to the Director of Public Prosecution deciding whether criminal prosecutions*

should be instituted. He viewed the matter with the utmost gravity, he said. He went on to say that—it is vitally important for our Democratic system that the planning system operates, and is seen to operate, in an open and accountable fashion, and that the highest standards of personal integrity are observed by all those involved—landowners, developers, public representatives and officials. Recalling that he had unequivocally set out his position on the planning activities of Dublin County Council over the past two months, the Minister indicated clearly that he wanted some recent rezoning decisions reversed. I would again appeal to Dublin County Cllrs to act responsibly and in the wider public interest when the Plan comes before them in September he declared.'

Does any of the foregoing have implications for Barkhill?

- *Plans are due to be submitted on the 30th July, 1993—where is O'Callaghan at vis-à-vis the planners and the County Manager? What kind of PR strategy is in place by O'Callaghan and what kind of PR impact do they expect their application to have?*
- *In view of Corcoran's recent resignation from Green's, are there any implications in this for Barkhill. What implications will their planning application have in this regard?*
- *How do we deal with the Tom Gilmartin factor?'*

23.05 Mr O'Farrell maintained that the memorandum simply recorded his thoughts at that time and that it had not been compiled necessarily with a view to any upcoming meeting with Mr O'Callaghan. He stated that he was unsure as to why he had mused as to why Mr O'Callaghan's relationship with Mr Smith might be relevant to what Mr Smith had to say about zoning. Mr O'Farrell was asked specifically to explain his reference *'does any of the foregoing have implications for Barkhill?'* contained in the memorandum, particularly in the context of the fact that at this time in excess of IR£100,000 had been paid to Frank Dunlop & Associates, in addition to a sum of IR£70,000 paid to Shefran Ltd in the period April/June 1992, (as well as the 1991 Shefran Ltd payments totalling IR£80,000). Mr O'Farrell acknowledged that at the time he read the *Irish Times* articles and subsequently prepared his memorandum in July 1993, he would have been aware of very substantial sums having been paid to Mr Dunlop, and commented *'...but it's very easy in hindsight to join all of these sums together and add them...up'*

23.06 Mr O'Farrell acknowledged to the Tribunal that the newspaper articles had led him to *'a series of questions 'in my head. These were '...are there implications for Barkhill? Could the ...whole planning development plan be thrown out, could it be overturned, could there be delays?'*

23.07 He did not recollect discussing the issue with Mr O'Callaghan and believed that if he had done so and if he had been told that bribes were being paid, this would have stuck in his mind. Mr O'Farrell indicated to the Tribunal that any concerns that he had at the time he prepared the memorandum on 26 July 1993 related to potential delays that might arise because of possible moves by the Minister for the Environment, Mr Smith, to have previous rezoning decisions of Dublin County Council rescinded or set aside.

23.08 The Tribunal was quite satisfied that Mr O'Farrell was concerned about the articles and about Mr Gilmartin's possible response to them, particularly in the light of his knowledge, as of July 1993, of Mr Gilmartin's queries relating to and complaints about the large round figure payments totalling IR£150,000 which had been paid to Mr Dunlop via Shefran, and in light of the of the fact that in December 1992 Mr Gilmartin had threatened to go to the newspapers about his concerns. This information had impelled Mr O'Farrell to dispatch Mr Kay and Mr McGrath to meet Mr Gilmartin in London on 17 December 1992.

23.09 Mr O'Farrell testified that in the period following the publication of the Irish Times articles in the week of 12 July 1993 (referring to corrupt payments to councillors in relation to the rezoning process) he had not asked Mr O'Callaghan if he was involved in making payments to councillors, as it would have been inappropriate, in his opinion, to ask such a question of an upstanding customer of the bank.

23.10 In a memorandum relating to a meeting between Mr O'Callaghan and Mr McGrath and Mr Chambers (General Manager of Corporate and Commercial) on 28 July 1993 there was no reference to any of the issues raised in the *Irish Times* articles or indeed to any matter referred to by Mr O'Farrell in his memorandum of 26 July 1993. The Tribunal found this absence of any mention or reference to the content of the *Irish Times* articles in such a memorandum, so soon following their publication and Mr O'Farrell's memorandum relating to them, strange and it found extraordinarythe suggestion as outlined in evidence that their content was not raised with Mr O'Callaghan, in the context of AIB's knowledge of the substantial round-figure payments to Mr Dunlop/Shefran and Mr Gilmartin's complaints in relation thereto.

23.11 Mr McGrath told the Tribunal that he had no recollection of discussing the articles with Mr O'Callaghan.

23.12 Mr O'Callaghan maintained that the issues referred to in Mr O'Farrell's memorandum concerning the media articles were not discussed with him, nor was there any discussion about an inquiry into corruption.

23.13 Mr O'Farrell was questioned in relation to his reference in his memorandum of 26 July 1993 to wit '*how do we deal with the Gilmartin factor'.* His response to this query was that he could not specifically recall why he had written this on 26 July 1993 but he felt that he had done so in a broader context that in the context of the articles which appeared in the Irish Times. Mr O'Farrell stated that he had no recollection of having a concern about any possible response by Mr Gilmartin to those articles.

23.14 With regard to his evidence on this issue, Mr O'Farrell was questioned about the contents of a memorandum compiled by Ms Basquille following a conversation she had with Mr Gilmartin on 16 August 1995 wherein she noted as follows:

> *Phone call from Tom Gilmartin 16th August, 1995 to advise that he had received an approach from a UK TV company seeking information in relation to Quarryvale/Owen O'Callaghan, which obviously stemmed from the recent publicity concerning the planning process and surveillance allegations.*
>
> *He indicated that he had been offered IR£100,000 by the company (which were involved in the TV programme which sparked the Beef Tribunal) and that he had also received a similar offer of IR£50,000 from a Northern Ireland company.*
>
> *I responded that the Bank would be alarmed that any director/shareholder/interested party in Barkhill would take any action which may jeopardise the successful outcome to the companies current development plans and negotiations with anchor tenants. However, he subsequently reverted to his old story of being cheated out of his company and indicated his belief that he will never see any return out of the Quarryvale development. He became irrational and resisted any attempt to recognise the reality of Barkhill's position of a likely receivership prior to his entering into the shareholders agreement.*

23.15 While Mr O'Farrell claimed that he had no specific recollection of this issue, the Tribunal noted the contents of a memorandum prepared by him on 23 August 1995, following Mr Gilmartin's contact with Ms Basquille wherein Mr O'Farrell noted: *'I raised the issue of the planning controversy vis a vis the Newry Solicitors etc. He* [Mr O'Callaghan] *indicated that this had absolutely nothing got to do with him or with Quarryvale.'*

23.16 The reference to the Newry solicitors was a reference to a newspaper advertisement in 1995 placed by a firm of solicitors in Newry, Co. Down seeking information relating to planning corruption. Mr O'Farrell told the Tribunal that he

had a vague recollection of the advertisement, although he had no recollection of raising the issue with Mr O'Callaghan.

23.17 The Tribunal was satisfied that Mr O'Farrell raised the July 1993 Irish Times articles with Mr O'Callaghan in 1993 and the Tribunal did not identify any reason why he would not have done so, having regard to the fact that he documented his discussion of matters of a similar ilk with Mr O'Callaghan in 1995. The Tribunal rejected Mr O'Farrell's contention that the Irish Times articles were not raised with Mr O'Callaghan, having regard to, in particular, Mr O'Farrell and Mr O'Callaghan's then knowledge of Mr Gilmartin's complaints concerning Mr Dunlop and Shefran. It was simply not credible that this matter was not raised with Mr O'Callaghan by Mr O'Farrell, if for no other reason than for Mr O'Farrell to satisfy himself that the Quarryvale project would not become embroiled in public controversy.

THE INVOLVEMENT OF MR PAUL SHEERAN ON BEHALF OF MR GILMARTIN IN BARKHILL AS OF OCTOBER 1994

24.01 On 3 October 1994 Mr Gilmartin advised AIB that he had nominated Mr Sheeran (his friend and Bank of Ireland Manager) to act as his agent in relation to Quarryvale and Barkhill. Mr O'Farrell and Mr Sheeran met on 11 October 1994, a meeting documented by Mr O'Farrell, as follows:

> *Following receipt of authorisation from Tom Gilmartin, I met Paul Sheeran in Bankcentre.*
>
> *We discussed the background to the case in broad outline. His only desire in getting involved is to try and help Tom Gilmartin and try and bring some degree of rationality into his behaviour. Tom has made some wild acquisitions* [sic] *and to enable Paul deal with these he sought clarification of the following:*
>
> *1. Clarify Riga's original involvement—cost/rationale/Neilstown site etc.;*
>
> *2. What is the background to the shareholders agreement?*
>
> *3. What was the level of zoning on Quarryvale when Riga became involved?*
>
> *I agreed to go back over our old files and to revert in relation to these points.*
>
> *From our discussions, it is clear that Paul has no information other than that provided verbally by Tom Gilmartin. Accordingly, we agreed that it would be appropriate for him to get the following information:*
>
> - *Copy of shareholders agreement;*
> - *Copy of planning permission;*
> - *Minutes of recent Board meeting;*
> - *Copy of accounts;*

- *Schedule of expenses paid/funded.*

Mary Basquille is to arrange to get Tom's confirmation that we can provide this information to Paul.

As regards Paul's role, he does not wish to become a Director of the company. He would see himself attending Board meetings and perhaps voting on behalf of Tom, but only with Tom's specific instructions in this regard. The issue of him becoming a shadow director was discussed briefly and I suggested that in view of the financial circumstances of Barkhill Limited, he should take independent legal advice in this regard. His solicitor is Seamus Maguire and he intends to discuss this matter with him. In the meantime, I agreed that we would review the shareholders agreement and ensure whatever legalities are required in relation to his role are attended to—Mary is following this up also.

We agreed that the most appropriate agreed next step is to have a further brief meeting to clarify the above points, before which we can send him the above mentioned documents. After this we should arrange for an early Board meeting when he can attend and meet John Deane and Owen O'Callaghan and receive a full update on progress.

Overall I indicated that we had been very frustrated by Tom Gilmartin's attitude and that we see Paul Sheeran's involvement as a very welcome step forward particularly at this point in time when significant decisions will have to be made by all parties in relation to the future direction of Barkhill Limited.

24.02 Mr Sheeran attended a meeting at Bankcentre on 9 November 1994 which was also attended by Mr O'Farrell, Ms Basquille, Mr Pitcher, Mr Deane and Mr Benson (AIB's planning consultant). He duly attended a further meeting on 14 March 1995. The minutes of these meetings documented that a number of matters were considered including matters pertaining to the Quarryvale site, the Quarryvale planning permission, proposed retail anchor tenants, investor interest, finance and company matters.

THE BARKHILL BOARD MEETING OF 23 MARCH 1995

25.01 From documentation discovered by Mr Deane to the Tribunal it appeared that a further board meeting of Barkhill took place on 23 March 1995. Mr Deane's Discovery included a document headed *'Barkhill Limited'* which was stated to be an agenda for a board meeting to be held on 23 March 1995 at Bankcentre,Ballsbridge, Dublin. However, no minutes of such a meeting were discovered by any party to the Tribunal. AIB's discovery yielded a document in handwriting headed *'Re Quarryvale'* which contained a few lines and which was dated 23 March 1995. The document suggested that present at a meeting on

that date were Mr Gilmartin, Mr Maguire, Mr O'Farrell, Ms Basquille, Mr Deane and Mr O'Callaghan. Other than one sentence, nothing further was written on the handwritten document. It appeared therefore that a board meeting did take place on 23 March 1995 but that no minutes were maintained in respect thereof.

THE BARKHILL BOARD MEETING OF 24 MAY 1995

26.01 The minutes of a meeting of 24 May 1995 record that those in attendance were Mr O'Callaghan, Mr Pitcher, Mr Gilmartin, Mr Maguire, Mr O'Farrell, Ms Basquille, Mr Deane and Mr Sheeran. Among the issues discussed were matters relating to the Quarryvale site, the Quarryvale planning permission, anchor tenant interest in the proposed development and investor interest.

THE EVENTS IMMEDIATELY FOLLOWING THE FORMAL BOARD MEETING

26.02 It was accepted that following the formal board meeting and after Mr Pitcher's departure, a number of issues were raised by Mr Gilmartin, which were variously documented by Mr Deane and Ms Basquille. Mr Deane's attendance note recorded as follows:

> *After Barry Pitcher left the meeting the following matters were discussed:*
>
> *(a) Tom Gilmartin's personal position.*
>
> *Tom Gilmartin gave a detailed statement of his dissatisfaction with matters in general incorporating the following*
>
> - *lack of information*
> - *no communication*
> - *the whole saga was very unfair to his family*
> - *he complained at the treatment he had received from O'Callaghan Properties*
> - *he was the subject of a dirty tricks campaign*
> - *O'Callaghan Properties had walked away with £2m of his money*
> - *His credibility had been totally undermined*
> - *His telephone calls were not answered*
> - *The bank lost faith with him because his credibility was undermined*
> - *He had given certain personal information regarding his financial standing only to the bank and as this information subsequently appeared in the papers it must have been leaked by the Bank.*
> - *That if he had been left handle matters himself he could have done the entire deal himself without anybody's assistance*
> - *John Deane had made certain that he did not speak to people the night of the zoning meeting.*

• *Generally he was subjected to political manoeuvrings, blackmailing and a campaign of dirty tricks such that he had now lost everything.*

In response Michael O'Farrell indicated that insofar as the bank were concerned he totally rejected the suggestions made by Tom Gilmartin.

John Deane indicated that while responses to these items had been made at previous meetings he wanted to make three points.

1. There would be no involvement of O'Callaghan Properties in Quarryvale whatsoever if Tom Gilmartin had completed the Contract for Sale which he entered into for the acquisition of the Neilstown Site.

2. He totally rejected that information was not forthcoming. He had attended on a fortnightly basis at Bankcentre and had put all the information before the meeting.

3. As a result of a letter which Tom Gilmartin wrote to AIB indicating that Paul Sheerin [sic] *was to represent his interests all the information and communication was then given or made with Paul Sheerin.'*

26.03 In her memorandum of the meeting, Ms Basquille noted the following:

Tom Gilmartin raised a query in relation to changing his shareholding from the personal name of himself and his wife to the Gilmartin Trust, the entity which originally made the cash investment in Barkhill. However, before there was any opportunity to discuss this issue, he went off on a tangent about various points on which he feels he has been wronged in the past as follows:

- *The leaking of information in relation to his bankruptcy hearing: the company's difficulty in getting the Quarryvale site rezoned, which he feels he could have avoided;*
- *The fact that he has no say in relation to Barkhill's business although a large amount of his cash is tied up in the company;*
- *Different rates of interest payable on shareholder loans to Gilmartin and to Riga:*
- *The fact John Deane acting in the Hammerson deal will ensure that Riga get more out of Barkhill than Tom Gilmartin will.*

  Eventually he became completely irrational and was unwilling to allow anyone respond to the allegations made. At this point, Paul Sheeran intervened and indicated his view that Tom's outburst was the result of his poor financial circumstances for some time now, which will only be improved when he is in a position to get some of his investment back out of Barkhill. He requested that John Deane and Owen O'Callaghan seriously consider whether they may be able to finance some expenses for Tom until such time as cash starts to flow on the Barkhill deal. The meeting concluded at this point.

26.04 Mr Sheeran told the Tribunal that his *'abiding memory'* of the meeting was Mr Gilmartin making open allegations of fraud and collusion against Mr O'Callaghan and AIB. Mr Sheeran's evidence was that, insofar as the memoranda which recorded Mr Gilmartin's allegations were concerned, a number of matters had been omitted (including the references to fraud and collusion) from both Mr Deane's and Ms Basquille's record of the meeting. He also said Mr Gilmartin '*made it very clear as regards bribery and corruption to parties concerned'* and defined the '*parties'* as being *'both the other shareholders',* Mr O'Callaghan and AIB. Mr O'Callaghan maintained to the Tribunal that nothing was said by Mr Gilmartin in relation to Shefran or payments to politicians. He said that Mr Gilmartin had made reference to Messrs George Redmond and Liam Lawlor. In the course of his evidence, Mr Maguire made the point that the board meeting minutes could not be relied on fully as a record of everything discussed at them.

26.05 Mr O'Farrell disagreed with Mr Sheeran's evidence. He was certain that had the word *'bribe'* been used it would have remained in his memory. He accepted that in the course of this meeting Mr Gilmartin had aired a number of grievances and it was his belief that Mr Gilmartin had raised these issues after the formal board meeting had concluded and when Mr Pitcher had left the meeting. Mr O'Farrell's testimony appeared to confirm that some of the matters raised by Mr Gilmartin at the meeting had previously been raised by him, but Mr O'Farrell expressed his doubt that Mr Gilmartin had previously had a similar '*outburst'*relating to these complaints. It remained Mr O'Farrell's position that it was his recollection that Mr Gilmartin had never complained about bribes or payments having been made to Mr Dunlop or Shefran without his consent.

The Tribunal rejected Mr O'Farrell's recollection in this regard, particularly in circumstances in which Mr O'Farrell professed to have had little independent recollection of anything, save his acceptance of the content of memoranda prepared by him.

26.06 Ms Basquille told the Tribunal that she had had many telephone conversations with Mr Gilmartin. He telephoned her on a '*very regular basis'* throughout the four-year period in which she was involved with Barkhill/Quarryvale. She said that he frequently complained to her that his company had been (as he put it) *'taken from him'*. She described Mr Gilmartin's discussions with her as *'extremely irrational'* and she commented that Mr Gilmartin did not put forward any *'concise or clear complaint'*. She said that Mr Gilmartin made allegations and complaints of being badly treated by AIB. She described Mr Gilmartin as speaking in *'a rant'*. She said that she could not recall

if he mentioned Mr Dunlop to her but he certainly had not done so in the context of money being paid to Mr Dunlop for onward transmission to politicians.

26.07 She had no recollection of any particular disagreement in relation to expenditure issues from Mr Gilmartin, and she had no recollection of Mr Gilmartin complaining of Mr Dunlop being paid large sums of money. She was certain that Mr Gilmartin had never made any allegation of bribery to her, although he frequently referred to Mr O'Callaghan and Mr Deane as *'a pair of gangsters',* or had used similar language to describe them. Ms Basquille recalled occasional complaints from Mr Gilmartin that he was not being kept up to date with what was happening in Quarryvale. On those occasions, Ms Basquille advised him that he needed to attend more of the meetings in AIB in order to keep abreast of developments.

26.08 Ms Basquille stated that Mr Gilmartin's complaints took the form of a *'lengthy tiradeabout everything that had happened to him*'. She stated that Mr Gilmartin had said *'blackmail and corrupt practices had been at play*', but he never elaborated on those issues or permitted Ms Basquille to ask questions or to get clarification from him. Ms Basquille said that she appealed to Mr Gilmartin to put his complaints in writing, either himself or through his solicitor. She stated: *I would also add that to the best of recollection, almost every conversation that I had with him along these lines would have ended with him acknowledging that at the time he entered into the shareholders agreement, his back was to the wall, he had no options. The money that he had put into a project was virtually gone because it hadn't worked out the way he had thought. And that if he had stayed as the 100 percent owner of that company, it wouldn't have brought any return of his investment. The fact that he had entered into the shareholders agreement and taken on a development partner had allowed the project to continue to the stage where value could be added to the site by the obtainment of zoning, planning permission and later on securing tenants and investors for the development.*

26.09 Ms Basquille also stated: *'In many of these conversations he would apologise at the end of them for having thrown all this at me and we would have ended our conversation very amicably only to have possibly the next day the same conversation again.'* Ms Basquille also maintained that to her knowledge Mr Gilmartin never asked to whom the Shefran payments were being made and added that she herself did not know at the time who Shefran really was.

26.10 Irrespective as to whether or not Ms Basquille knew who Shefran was, the Tribunal was satisfied that over the course of his attendance at meetings, and in telephone conversations, a constant theme of Mr Gilmartin's complaints

in the period 1992 to 1996 was the issue of Mr Dunlop's involvement with Quarryvale and the payments made to him. It was to the Tribunal inconceivable that Ms Basquille would not have been alert to this fact, given her regular contact with Mr Gilmartin and her attendance at board meetings.

26.11 The Tribunal accepted as accurate Mr Gilmartin's testimony that he had communicated in the strongest terms his unhappiness at the lack of information being provided to him by AIB in relation to the payments to Mr Dunlop and/or Shefran and that he did so in very specific and outspoken terms on 24 May 1994. The Tribunal was also satisfied that, as a matter of probability, Mr Gilmartin had, prior to that date, made complaints at AIB meetings in relation to, *inter alia*, corruption, payments to Mr Dunlop/Shefran and a failure to provide information to him.

26.12 The Tribunal was satisfied that on some occasions AIB's memoranda/minutes of meetings relating to Barkhill did not always accurately note or record, or indeed record at all, complaints and allegations made by Mr Gilmartin.

26.13 The Tribunal was satisfied that there was a tendency on the part of AIB personnel not to document at all or to minimise Mr Gilmartin's criticisms and complaints of what he perceived to have been AIB's unfair and unreasonable treatment of him as a substantial shareholder in Barkhill and as the creator of the Quarryvale project. It was also satisfied that there was equally a tendency on the part of AIB personnel to avoid the documenting of Mr Gilmartin's complaints (including those in relation to Mr Dunlop and the Shefran payments) and allegations of corruption, which undoubtedly were made by him to or in the presence of AIB personnel.

26.14 The likely reason for this deficiency on AIB's part in its otherwise detailed minuting of Barkhill board meetings probably stemmed from its desire to exclude from bank documentation references to corruption or other non commercial wrongdoing, in the event that such documentation might in the future be the subject of external scrutiny.

26.15 The Tribunal was satisfied that Mr Gilmartin repeatedly complained to AIB personnel about what he perceived to have been in effect the bank's failure to keep him abreast of all developments in the Quarryvale project, and particularly information relating to payments of money to third parties (and especially Mr Dunlop) by or on behalf of Barkhill.

THE BARKHILL BOARD MEETINGS OF 28 JUNE AND 5 OCTOBER 1995

27.01 Mr Gilmartin attended a Barkhill board meeting on 28 June 1995 (as did Mr Sheeran). Documentation discovered by AIB to the Tribunal included a handwritten document which referred to *'Tom Gilmartin's points of contention 29/6/95'* and which, *inter alia,* recorded that Mr Gilmartin had complained that *'he was effectively precluded from taking an active part'* in matters relating to Quarryvale because of lack of money and that no meaningful effort had been made by AIB or Riga Ltd to provide him with funds[31] in order to enable him to participate meaningfully in those matters.

MR GILMARTIN'S EXIT FROM BARKHILL

27.02 By the autumn of 1995 the Duke of Westminster/Grosvenor Properties plc were expressing an interest in developing the Quarryvale site, an issue that was considered by a board meeting of Barkhill on 5 October 1995. Mr Gilmartin did not attend this meeting.

27.03 The two major issues which dominated discussions within Barkhill in the period October 1995 to May 1996 were the conclusion of a deal with Grosvenor and Mr Gilmartin's exit from Quarryvale/ Barkhill. On 15 November 1995 Mr Maguire wrote to Mr Deane and to AIB stating that Mr Gilmartin was willing to sell his shareholding in Barkhill to the other shareholders. He was doing so because of personal financial difficulties. At a board meeting on 5 October 1995 (not attended by Mr Gilmartin) it had been decided that the Grosvenor offer would be accepted.

27.04 By mid-December 1995, Mr Gilmartin had entered negotiations with Riga for the latter's buy out of the Gilmartin shareholding and Heads of Agreement had been negotiated in this regard. By January 1996 Mr Gilmartin had retained Mr Noel Smyth, Solicitor, to represent him, and the earlier Heads of Agreement entered into between Mr Gilmartin and Riga had been repudiated by Mr Gilmartin through his Solicitor Mr Smyth.

THE BARKHILL BOARD MEETING OF 8 FEBRUARY, 1996

28.01 This Board meeting was attended by Mr O'Callaghan, Mr Pitcher and Mr Gilmartin, in their capacity as Directors of Barkhill, The records also documented attendance by Mr O'Farrell, Ms Basquille, Mr Neville O'Byrne of William Fry Solicitors – AIB's legal advisors, Mr Deane, Mr Maguire and Mr Smyth. At the end

[31] One of Mr Gilmartin's complaints was a failure of the parties to adhere to an agreement made in 1994 to provide him with funds.

of the formal board meeting, Mr Smyth raised a number of issues which were recorded by both Mr Deane and Ms Basquille. Mr Deane's memorandum stated:

> *Noel Smyth indicated that he had been instructed to advise Tom Gilmartin. Tom Gilmartin had put in £4m to £5m upfront and the Grosvenor deal as envisaged would seek to have the Bank repaid in full before any of the shareholders received any funds due to them'.*
>
> *As far as Noel Smyth was concerned his instructions made it clear that there was some misrepresentation and duress by the bank and that Tom Gilmartin was an oppressed shareholder. There are a number of matters around the time for the site assembly, those which are of grave cause for concern. Also the Shareholders Agreement leaves a lot to be desired. He had advised his client to initiate proceedings. He also had four or five Councillors who would be subpoenaed to give evidence.*
>
> *Noel Smyth stated that it was not his intention to use the delicacy of the Grosvenor deal to 'blackmail' anybody but he felt equally that the bank should be cognisance* [sic] *of the fact that they were only entitled to be repaid funds on a pro rata basis as the Bankcentre held themselves to be partners in the deal. Consequently, as partners they shall only receive funds pro ratum to the other shareholders.*
>
> *If the bank were not prepared to ensure that this happens, then he was prepared to go to Court to ask the Court to freeze funds until there is a culmination of the legal action.*

28.02 Mr Deane also noted Mr Smyth as stating that:

> *…Tom could be described as naïve or stupid or maybe a combination of both but he was an honest man. He had been treated very badly, the situation regarding some of the matters was criminal. When challenged on use of this word he said he would withdraw the word but did not withdraw the implication contained by such a word that there had been grave and serious misconduct.*

28.03 Ms Basquille's memorandum of Mr Smyth's intervention on behalf of Mr Gilmartin documented, *inter alia*, that Mr Smyth had stated that Mr Gilmartin considered himself *'an oppressed shareholder'*. She noted that Mr Smyth was of the view that a review of the documentation *'left a lot to be desired'* and that Mr Gilmartin *'was put under duress to sign the Shareholders Agreement'*. She also noted Mr Smyth's remark that *'some documents had been signed by Tom without legal advice which he considered criminal but he withdrew this word subsequently.'*

28.04 Mr O'Farrell acknowledged that on 8 February 1996 Mr Smyth had made a number of allegations but could not recall what they were. He could not recall a reference made by Mr Smyth to a threat to subpoena councillors. Mr O'Farrell confirmed that the bank's legal advisor, Mr Neville O'Byrne, had rejected any allegation of misconduct or impropriety on the part of AIB and had rejected the allegation that AIB had been guilty of misrepresentation or duress in relation to Mr Gilmartin.

28.05 On 9 February 1996 Mr Smyth wrote to AIB's solicitors and again reiterated Mr Gilmartin's complaints in relation to the shareholders' agreement which had been signed on 13 September 1991 and again alleged that Mr Gilmartin had been exposed to threats, duress and undue influence. AIB's solicitors replied to Mr Smyth on 14 February 1996 rejecting his allegations and expressing the bank's concern at *'defamatory statements'* which had been made about AIB at the board meeting on 8 February 1996.

28.06 Mr O'Farrell's evidence was that he viewed Mr Smyth's attendance and intervention at the board meeting of 8 February 1996, as well as his subsequent correspondence, as part of a *'negotiating tactic'* for the purposes of enhancing Mr Gilmartin's position in relation to a buyout of his shareholding in Barkhill. Mr Deane expressed a similar opinion.

THE BARKHILL BOARD MEETING OF 23 FEBRUARY 1996

29.01 By 23 February 1996, the deal with Grosvenor was close to completion. The purpose of the 23 February 1996 board meeting, as documented by Ms Basquille in a memorandum compiled by her, was *'to clarify the intentions of the Directors in relation to proceeding with the Grosvenor deal…'*At the meeting Mr O'Farrell outlined the extent of Barkhill's indebtedness to AIB as of 23 February 1996 as being the *'staggering'*sum of IR£24mand outlined that the Grosvenor deal was close to completion. Moreover, he was recorded as stating that AIB *'had to face outrageous allegations which it intends to defend vigorously'*. Ms Basquille also documented Mr O'Farrell as having outlined the consequences if the Grosvenor deal did not go through and his request that the Directors of Barkhill advise AIB of their position in relation to the proposed Grosvenor deal and in relation to repayment of the monies owed by Barkhill to the Bank.

29.02 The response of Mr Gilmartin to the issues raised at the meeting were recorded by Ms Basquille as follows:

> *Tom Gilmartin responded that as the bank/Michael O'Farrell had been running the company for a number of years he has no say in its affairs. Barry Pitcher disputed Tom Gilmartin's comments which led to Gilmartin*

revisiting some of his previously stated views in relation to events in 1991 when the Shareholders Agreement was signed. He stated that he had been asked not to interfere in the Grosvenor deal and had not done so but advised that he can refund the deal if he gets his shares in the company back; he also disputed the amount that was owed to the Bank and indicated that it was his intention to get KPMG to carry out an audit of the interest charges.

29.03 The memorandum also recorded that Mr Gilmartin, having left the meeting for a period of time to talk to his advisor, returned and indicated his intention not to interfere with the proposed Grosvenor buyout deal. He was further recorded as stating that once the deal was completed he would then take action to protect his position. Ms Basquille also noted Mr O'Farrell as making the suggestion to Mr O'Callaghan and Mr Gilmartin that they negotiate in relation to agreeing terms for a sale of shares, which they agreed to do.

29.04 By 14 March 1996 Mr Gilmartin and Mr O'Callaghan had reached agreement for the buy out of Mr Gilmartin's shareholding by way of staged payments. However, this agreement was in effect overtaken by the events of 21 March 1996 when the deal between Grosvenor and Barkhill was concluded.[32] In turn, Riga paid IR£7.675m to Mr and Mrs Gilmartin for their shareholding in Barkhill

29.05 On 31 May 1996 Mr O'Farrell prepared a memorandum signed by himself and Ms Basquille entitled '*Barkhill Summary position paper'* and headed *'private and confidential- not for circulation'.* In this document, Mr O'Farrell outlined the history of the relationship between Barkhill and AIB from 1990. The document referred to AIB's *'continued support to enable O'Callaghan obtain zoning and planning',* and it described Mr Gilmartin as *'difficult and irrational'.* Mr O'Callaghan and Mr Deane were described as being '*unstinting in their efforts over the past five years and have been outstanding in their delivery'.*

MR GILMARTIN'S ALLEGATION OF EAVESDROPPING BY MR O'CALLAGHAN DURING A BREAK IN A MEETING AT AIB

THE ALLEGATION

30.01 In the course of its inquiry, the Tribunal heard evidence relating to an alleged eavesdropping incident during a break in a meeting in AIB on a date unknown. Mr Gilmartin alleged that on that occasion Mr O'Callaghan eavesdropped on a conversation between himself and his then Solicitor, Mr

[32] The Grosvenor agreement envisaged staged payments to the Gilmartins but ultimately the entire shareholding was bought out in May 1996. As of 30 May 1996 therefore the ownership of Barkhill was vested in Riga 40%, Grosvenor 40% and AIB 20%

Seamus Maguire, while in a bathroom at AIB. Mr O'Callaghan emphatically rejected the allegation.

30.02 Although somewhat peripheral to the matters considered in this Part of Chapter Two, the eavesdropping allegation became an issue of controversy in the course of the Tribunal's Inquiry, and on that basis was considered to be an appropriate issue for consideration in the Report.

MR GILMARTIN'S EVIDENCE

30.03 In his evidence to the Tribunal, Mr Gilmartin described the eavesdropping incident in the following terms: '*...we had a break and went into the gents and Mr O'Callaghan had been outside the door talking to someone and he disappeared when we went out and he fell out of a broom cupboard. I literally – we heard this rattling and when I looked, here he opened the door of the broom cupboard and he fell out of it.'*

30.04 Mr Gilmartin confirmed that the '*we'* was a reference to himself and Mr Maguire. In the course of his taped interview, conducted with his then solicitor, Mr Noel Smyth in London in May 1998, Mr Gilmartin made a brief reference to Mr O'Callaghan having engaged in a '*stunt'*, which he described as follows: '*...Just before there was a break up, you know, for tea or something and you'd go to the toilet, and he'd be out from front of you and he'd be in the broom cupboard in the toilet. He done that. I caught him out, deliberately caught him out.'*

MR O'CALLAGHAN'S EVIDENCE

30.05 Mr O'Callaghan denied that an incident of the type described by Mr Gilmartin had ever occured. Furthermore, when asked if in his recollection, anything had occured which might have left Mr Gilmartin with the impression that Mr O'Callaghan had eavesdropped on him (albeit innocently), Mr O'Callaghan responded in the negative.

MR MAGUIRE'S EVIDENCE

30.06 In a letter to the Tribunal dated 6 July 2007, in response to a request from the Tribunal to provide it with information as to his recollection, if any, of the broom cupboard incident recounted by Mr Gilmartin, Mr Maguire stated:

> *I do recall a break during a meeting when I went to the bathroom with Mr. Gilmartin. I did not notice any broom cupboard in the bathroom. I did not see Owen O'Callaghan in the bathroom if he was there. I left the bathroom before Mr. Gilmartin and returned to the meeting room. Later*

on Mr. Gilmartin said to me that Mr. O'Callaghan had been 'ear wigging' our conversation.

30.07 In his sworn evidence to the Tribunal, Mr Maguire confirmed that he recalled a complaint made by Mr Gilmartin to him, to the effect that Mr O'Callaghan had been 'ear wigging', and that this complaint was made by Mr Gilmartin following upon his return from the bathroom during a break at a meeting in AIB.

30.08 On Day 810, Mr Maguire told the Tribunal:

'*...my recollection is as follows, this can be checked in the geography of the bank. When we went in the door, the main door, the general meeting area was on the right- hand side, that's where the board meetings were held. On the left-hand side of the corridor there was a small room, that sometimes you went to for a private meeting. And the toilet or the bathroom was next door, further on. Now I might be wrong about this, this is my recollection of it. I remember going to the toilet with Tom and when we went back to the side room he said to me Owen O'Callaghan had been ear- wigging. Now I didn't see Owen O'Callaghan. Now I will say that many times after that Tom Gilmartin returned to that topic and said that Owen O'Callaghan was ear- wigging but I didn't see him.'*

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE EAVESDROPPING ALLEGATION

i. The Tribunal was satisfied, particularly having regard to the evidence of Mr Maguire, that on a date unknown, Mr Gilmartin conveyed to Mr Maguire his belief that during a break from a meeting in AIB, Mr O'Callaghan had been eavesdropping on a conversation between himself and Mr Maguire while both attended the bathroom. Mr Maguire, while he confirmed that Mr O'Callaghan was present in AIB at the time, had not himself witnessed the alleged eavesdropping, nor had he seen the broom cupboard from which Mr Gilmartin alleged Mr O'Callaghan emerged.

ii. Although the Tribunal was unable to determine as a fact that an incident had occured during a break at a meeting in AIB, as recounted by Mr Gilmartin, it was nevertheless satisfied, having regard, in particular, to Mr Maguire's evidence that Mr Gilmartin had genuinely believed that Mr O'Callaghan had eavesdropped on a conversation between himself and Mr Maguire and it was satisfied that Mr Gilmartin had commented thereon to Mr Maguire at the time and subsequently.

iii. The Tribunal did not believe it to have been the case, having regard to the foregoing, that Mr Gilmartin concocted the incident, although it was possible that he embellished aspects of it (and in particular his belief that Mr O'Callaghan fell from a cupboard).

iv. The Tribunal noted Mr O'Callaghan's strong denial that an incident of the nature described by Mr Gilmartin had occurred, and it accepted as true his absolute lack of recollection of any incident which could reasonably have left Mr Gilmartin with an impression that Mr O'Callaghan had eavesdropped on himself and Mr Maguire.

CHAPTER TWO – THE QUARRYVALE MODULE – PART 4

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FILE NOTE *3096/93/JWD/cob*

BARKHILL LIMITED *2/8/90*

Meeting held at Bankcentre 2nd August 1990.

Present: *Tom Gilmartin - Barkhill*
Jim Donagh - Corporate

- *Meeting held at my request to obtain up-date on the current position.*

- *He had hoped to have decision from L.E.T. this week but he has been told that due to annual leave of senior personnel L.E.T. decision will be a further week to ten days. I indicated that this was leaving things very tight to complete O'Rahilly/Murray sales on 15th August 1990 particularly if decision is negative.*

- *He is persuing other options in the event of negative decision which include.*

- *Equity participation by Capital and County and a large French Institution - both would only proceed if planning were obtained.*

- *Sale of Retail Warehousing element c 36 acres to subsidiary of B. & Q. for IR£5/6m. U.K. bank has indicated they would provide IR£3.5m against this portion of the side. He is trying to get them to increase offer to £4.5m.*

- *O'Callaghan/Deane have indicated they would take equity stake in the project.*

- *H.O.K. have indicated the Val Haul land 30 acres which is surplus to requirements could be sold in two lots at IR£150,000 to IR£200,000 an acre.*

- *L.E.T. have changed their term over the past few weeks. Originally they were taking option to acquire 80% of development at 25% discount and provide IR£10m against first charge on property.*

- *Now propose taking over all of the development and repay IR£5/6m of Tom Gilmartins equity and give him 30% of profits of land value on obtainment of planning permission.*

- *Cashflow:*

  He requires the following to secure the site in full:-

* *O'Rahilly/Murray:*	*0.700m*
* *O'Callaghan:*	*1.350m*
* *Bruton:*	*1.100m*
* *Fees*	*0.350m*
	3.500m

- *Milton Keys offices sold to Pension Fund but final Stg£1.1m not available until Key, a subsidiary of Legal & General sign the lease. Will be signed within 10 days.*

- *Planning Permission will be lodged in September 1990.*

- *Agreed to keep in touch and hopefully L.E.T. decision will be announced shortly. He mentioned he has told told them next week or else he will have to persue talks with other interested parties.*

- *I indicated I was unhappy that things were drifting. Reminded him that we wanted repayment of Loan by the end of the month and needed firm proposal from him to achieve this.*

J.W. Donagh.

Return to report

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial
&
Commercial Developers

21/24 LAVITT'S QUAY,
CORK.
Telephone: (021) 275008 / 274323
Telefax: (021) 275626

By Telefax

8th November, 1990.

Mr. Tom Gilmartin.

Re: Clondalkin Town Centre

Dear Tom,

As you know I am under severe internal pressures, mainly due to the fact that we have received full Planning Permission, which I could not avoid, and that Jim Mansfield has also received Planning Permission for his site. Mansfield is actively canvassing Dunnes Stores and Quinnsworth, who I know are talking to him, because they are not quite sure what I am going to do.

I am afraid, Tom, I have no choice at this critical stage but to proceed with my own site.

I have held off for 12 months sending you this letter, but at this stage I have absolutely no alternative.

Tom, I am sorry to be the bearer of such bad news but I have done everything possible to facilitate your situation, and I certainly do not relish writing this letter to you.

Yours sincerely,

Owen O'Callaghan

Building Companies: — Riga Limited — Tullovin Housing Limited.
Directors: J.J. O'Callaghan B.E., M.Eng.Sc., A. Lucey (Secretary), Owen O'Callaghan F.C.S.I.

Return to report

FILE NOTE *4206/36/EWK/cob*

BARKHILL LIMITED

Discussions held on 28/11/90 between Donal Chambers, Aidan McKeon, Eddie Kay.

We discussed the present position regarding the Gilmartin situation and it was agreed that the following priorities should be dealt with.

1: *Tom Gilmartin must attempt to deal with Bruton and arrange for a deferral of the Bruton contract. It was proposed that a meeting between Bruton's Solicitor, Tom Gilmartin, Neville O'Byrne and myself to see what could be achieved on that front.*

2. *In relation to Derek Saunders it was agreed that if his £2m is available it should be used to complete the purchase of the Bruton land and to bring about reduction of c £1m in the AIB debt. Steps would also be taken to discuss with Owen O'Callaghan the possible defferal of his final payment of £1.3m. We also discussed the possible giving of security to Saunders for his £2m and a number of options were mentioned which included allowing him to take a first charge in the Bruton land with AIB taking a second charge or alternatively allowing to share pari passu with us a charge over the entire site in the ratio:- Saunders £2m : AIB £9m*

3. *It was also agreed that I would contact Owen O'Callaghan and arrange for a meeting with him which would be attended by Pat Fitzgerald and myself. We would attempt to persuade him to defer the acceptance of the final payment due to him while at the same time relinquishing his option on the Clondalkin site. It was suggested that we would propose to O'Callaghan that he would be given a significant on a no risk to him basis and that there might be some mechanism whereby he would receive his £1.3m down the line and subject to the site receiving planning.*

It was also agreed that Tom Gilmartin should be summonned to Bankcentre on 29th November and he would be met by Aidan McKeon and advised that his equity in the site is now totally eroded and that the Bank is stepping into the driving seat. He would be offered some small ongoing equity stake in the development subject to his co-operation.

E.W. Kay,
Senior Manager,
Corporate Banking.

Return to report

HEADS OF TERMS SUBJECT TO FORMAL AGREEMENT 4206/61
BARKHILL LTD

1. *Satisfactory agreement reached with O'Callaghan Properties Limited in relation to outstanding payment IR£1.350m to complete purchase of Merrygrove Ltd. which should ensure Merrygrove Ltd. would not develop their Clondalkin site in competition to the Company's Palmerstown site. O'Callaghan Properties Ltd. to receive 25% equity stake in Barkhill Ltd. in lieu of cash consideration and to appoint Director to the Board of Barkhill Ltd. Barkhill Ltd. to have control of Merrygrove Ltd.*

2. *The Bank to retain a professional advisor who shall advise the Bank on all matters related to the Palmerstown site.*

3. *Subject to 1,4,8 & 9 being complied with by the 10th January 1991 the Bank to issue new Facility Letter agreeing to commit facilities for a further six months and to allow an interest roll-up for six months subject to the Terms & Conditions contained therein and subject to the terms and conditions contained therein being incorporated into a formal legal agreement satisfactory to the Bank. In the event of the site being re-zoned retail within a six month period the Bank would be prepared to very favourably consider an extension of the time period to enable formal planning to be obtained as long as no other events of defaults have occurred.*

4. *Comprehensive plan and timeframe to be drafted within three weeks covering rezoning of the site to retail and to improve access to the site and on approval of this plan by the Bank, the Shareholders to actively persue its implementation as an immediate priority.*

5. *Tom Gilmartin to re-negotiate in a manner satisfactory to the Bank contracts in relation to the "Bruton" land; the "O'Rahilly" land and the "Murray" land to ensure deferral of payments for at least 6 months and to ensure Barkhill Ltd. retains exercisable options over these lands. In the event this is not achieveable all parties to agree to a course of action to be adopted.*

6. *Tom Gilmartin to renegotiate outstanding fees due to the "professional team" in a manner satisfactory to the Bank. The Bank to be provided with a list of fees paid to date and the amounts outstanding to the various professionals.*

7. *The Bank to approve the appointment of any "Professional team" in relation to the on-going professional advise the Company will require.*

8. *Board of Directors to comprise of Tom Gilmartin, Owen O'Callaghan and two representatives of the Bank. The Bank to have the right to appoint a third Director at any time during the currency of the Facility. Any amendments to the Memorandum & Articles of Association to effect this to be adopted.*

9. *Mortgage over not less than 51% of the entire equity in the Company (limited to the value of the shareholding) to be executed in favour of the Bank. The Bank agree to release back shares held under this mortgage on a) re-zoning of the site to retail, b) reduction in the Bank's facility to IR£6m and c) the payment of a fee IR£350,000.*

10. *Disposal of non-essential elements of the site to be pursued by the Shareholders with a view to reducing Bank debt and with a view to providing funds to complete site assembley and to pay fees. All of the foregoing as to time and amount to be agreed by a majority of the Board.*

11. *This agreement may be terminated by the payment in full of the amount outstanding to the Bank (Principal & Interest) and by the payment of IR£1.35m to O'Callaghan Properties Ltd. on or prior to 10th January 1991.*

12. *The foregoing to be achieved and incorporated into a legal agreement by the 10th January 1991.*

Tom Gilmartin,	*E.W. Kay,*	*Owen O'Callaghan,*
Director,	*Senior Manager,*	*Director,*
Barkhill Ltd.	*AIB plc.*	*O'Callaghan Properties Ltd.*

Dated 14th December 1990.

Return to report

Dublin County Council Comhairle Chontae Atha Cliath Seomra an Chomhairle

P.O. Box 174
48/49 Upper O'Connell Street
Dublin 1
Telephone (01) 727777

Mr T Gilmartin
22 Whitehill Avenue
Luton
Bedfordshire
England
LU1 3SP

Our Ref. TG/DPR/01/90
Your Ref.
Date 15/1/91

RE: WESTPARK DEVELOPMENT

Dear Mr Gilmartin,

Further to your comprehensive presentation in the Berkeley Court Hotel of your proposed 'Westpark' development of North Clondalkin, I am pleased to inform you that in the context of the review of the Dublin County Development Plan it is my intention to table an appropriate motion at the February review meeting which will effect the re-zoning of the site as required for the development.

I am confident that this motion will enjoy unanimous cross-party support particularly in view of your successful negotiations with the developer of the former Town Centre Site at Foxdene which is not now being proceeded with.

I will keep you informed of progress in this matter and in the meantime if I can be of any further assistance do not hesitate to contact me.

Wishing you a happy, peaceful and prosperous New Year.

Yours sincerely,

COLM MCGRATH M.C.C.
COUNCIL MEMBER

Return to report

AIB Bank

Corporate Banking
Bankcentre
P O Box 452
Ballsbridge
Dublin 4

Telephone
(01) 600311
Facsimile
(01) 682508
Telex
93680
S.W.I.F.T. Address
AIBK IE2D

Mr. Tom Gilmartin,
Director,
Barkhill Limited,
22 Whitehill Avenue,
Bedfordshire.

4352/28/JWD/cob

7th February 1991.

Re: Barkhill Ltd

Dear Tom,

We refer to recent telephone conversations in relation to your Palmerstown site. As already advised your loan facility has expired since the end of August 1990 and we have sought your proposals to repay this loan which is in default. A number of proposed equity partnerships which incorporated clearance of our loan facility have failed to materialise after long protracted discussions - notably joint venture proposals with L.E.T. and with Derek Saunders.

Heads of Terms were signed by O'Callaghan Properties, AIB and Barkhill Limited on 14th December 1990 with a view to facilitating re-zoning of the Palmerstown site. The agreement included a clause terminating same by the repayment in full of outstanding amounts due to both the Bank and to O'Callaghan Properties by 10th January 1991. You sought and obtained an extension of time to the end of January 1991 as you were at an advanced stage in completing a full refinancing package. You will recall that the Bank requested you to furnish a proposal to cater for the non-completion of this proposed re-financing package by end January 1991. We have not received any such proposal from you and we have not received any payment to discharge your Loan Facility with us.

We understand the meeting to consider the rezoning of the Palmerstown site is rescheduled for tomorrow, 8th February 1991. We understand this meeting might be postponed until the 15th February 1991. It is accepted that rezoning of the site at this proposed meeting is critical to your overall shopping centre development plans. We know you must either discharge your obligations to O'Callaghan Properties in advance of this meeting or reach an acceptable arrangement which will facilitate this rezoning process. In view of the critical importance of rezoning to your overall plans we must again ask for your immediate proposals which should be agreed in advance with O'Callaghan Properties to deal with the situation should your proposed refinancing package not be in place prior to the rezoning meeting. In view of the critical importance of rezoning to your overall plans we confirm that we are no longer prepared to tolerate the situation where no proposal exists to cater for the non-availability of cash from your refinancing package prior to the rezoning meeting.

.../.

We understand that you have had considerable discussions in relation to the remaining portions of the site which have not yet been assembled and we would be obliged for an update on the current position in regard to the 'Bruton, O'Rahilly & Murray' lands.

We know you are confident that the proposed refinancing package will be in place shortly, however we must now ask you to seriously consider your fall-back proposals should money not be available prior to the rezoning meeting. We now require your proposals to deal with this situation by close of business tomorrow 8th February 1991.

Yours sincerely,

E.W. Kay,
Senior Manager,
Corporate Banking.

Return to report

AIBQ 29.02 - 10

15 FEB '91 16:56

4386/2

HEADS OF TERMS OF AGREEMENT BETWEEN THOMAS GILMARTIN, O'CALLAGHAN PROPERTIES LTD &. AIB IN RELATION TO BARKHILL LTD

1. O'Callaghan Properties Limited (OCP) will ensure Merrygrove Ltd. will not develop their Clondalkin site in competition to the Company's Palmerstown site. O'Callaghan Properties Ltd. to receive 33 1/3% equity stake in Barkhill Ltd. in lieu of outstanding payment due to OCP and to appoint Director to the Board of Barkhill Ltd. Barkhill Ltd. to have control of Merrygrove Ltd.

2. The Bank to retain a professional advisor who shall advise the Bank on all matters related to the Palmerstown site.

3. Subject to 7 & 8 being complied with by the 31st March 1991 the Bank to issue new Facility Letter agreeing to commit facilities for a further six months and to allow an interest roll-up for six months subject to the Terms & Conditions contained therein and subject to the terms and conditions contained therein being incorporated into a formal legal agreement satisfactory to the Bank. In the event of the site being re-zoned retail within a six month period the Bank would be prepared to very favourably consider an extension of the time period to enable formal planning to be obtained as long as no other events of defaults have occurred.

4. Tom Gilmartin to re-negotiate in a manner satisfactory to the Bank contracts in relation to the "Bruton" land; the "O'Rahilly" land and the "Murray" land to endeavour to obtain deferral of the payments due and to ensure Barkhill Ltd. retains exercisable options over these lands. In the event this is not achievable all parties to agree to a course of action to be adopted.

5. Tom Gilmartin to renegotiate outstanding fees due to the "professional team" in a manner satisfactory to the Bank. The Bank to be provided with a list of fees paid to date and the amounts outstanding to the various professionals.

6. The Bank to approve the appointment of any "Professional team" in relation to the on-going professional advise the Company will require.

7. Board of Directors to comprise of Tom Gilmartin, Owen O'Callaghan and two representatives of the Bank. Subject to the Bank's position not being prejudiced, all decisions must be by unanimous consent of Tom Gilmartin and OCP. The Bank to have the right to appoint a third Director at any time during the currency of the Facility. Any amendments to the Memorandum & Articles of Association to effect this to be adopted.

8. Mortgage over not less than 51% of the entire equity in the Company (limited to the value of the shareholding) to be executed in favour of the Bank. The Bank agree to release back shares held under this mortgage on a) re-zoning of the site to retail, b) reduction in the Bank's facility to IR£6m and c) the payment of a fee IR£350,000.

9. Disposal of non-essential elements of the site to be pursued by the Shareholders with a view to reducing Bank debt and with a view to providing funds to complete site assembley and to pay fees. All of the foregoing as to time and amount to be agreed by a majority of the Board.

10. Both Thomas Gilmartin and OCP to use their best endeavours to obtain an investor to acquire 33 1/3% equity in the Company for the sum of IR£4.0m so that following the injection of IR£4.0m by the investor, Thomas Gilmartin, OCP and the investor shall each hold 33 1/3% equity in Barkhill.

11. This Agreement supercedes and replaces agreement between the parties dated 14th December 1990.

12. The foregoing to be achieved and incorporated into a legal agreement by the 31st March 1991.

T.P. Gilmartin.
Tom Gilmartin,
Director,
Barkhill Ltd.

E.W. Kay,
Senior Manager,
AIB plc.

Owen O'Callaghan,
Director,
O'Callaghan Properties Ltd.

Dated 16th February 1991.

TOTAL P.01

Return to report

31, South Mall,
Cork.
Telephone (021) 277377
Telefax: 270437

John W.T. Deane, B.C.L.
David B. Browne, B.C.L.
Bridget Hynes, B.C.L.
Pat Ahern, B.C.L.
Brendan Murphy, B.C.L.

DEANE & CO. SOLICITORS
Incorporating Frederick Hall & Son - Jasper R.H. Swanton & Co.

Your Ref:

Our Ref:
JD/VMcC

Date:
20 February 1991

Jim Donagh, Esq.,
Corporate Banking,
A.I.B. Bank,
Ballsbridge,
Dublin 4.

Re; Barkhill Limited

Dear Jim,

Following up on the signing of the Agreement with Tom Gilmartin on Friday I confirm that Mr. Liam Lawlor T.D. has at our request lodged a Motion with Dublin County Council to have the Merrygrove Site at Neilstown, re-zoned from a Town Centre to Industrial and other ancillary uses.

With kind regards.

Yours sincerely,

John W. T. Deane B.C.L.

DEANE & COMPANY

TOTAL P.02

Return to report

1991-02-19 12:35 O'CALLAGHAN PROP.LTD.CORK 353 21 275626 P.01

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial & Commercial Developers

21/24 LAVITT'S QUAY,
CORK.
Telephone: (021) 275008 / 274323
Telefax: (021) 275626

TELEFAX TRANSMISSION COVER SHEET

TO: Mr. Eddie Kaye
FROM: Owen O'Callaghan

COMPANY: AIB Bank Centre
FAX NO.: 021 275626

FAX NO.: 01 6825 08
DATE: 19th February, 1991.

No. OF PAGES TO FOLLOW: 4

MESSAGE:

Dear Eddie,

I enclose the following:

a. Copy of Agenda sent to me by Liam Lawlor.
b. Copy of motion changing the Designation on the Clondalkin site to Zone E.

Liam wants me to meet the various managers and elected members on Thursday next. Obviously I would like to have Tom's blessing before I do this, or preferably I would like to have Tom with me when I keep these appointments.

I have failed to make contact with Tom over the weekend and on Monday. I have not heard from him yet today. If I have not made contact with Tom before 5.00pm today, Tuesday, I will have to ask you to intercede. Do not ring him until you hear from me.

Yours sincerely,

P.P. V. Healthy
Owen O'Callaghan

P.S. I think John Deane is due to call in to you about 12.30pm today

1991-02-19 12:36 O'CALLAGHAN PROP.LTD.CORK 353 21 275626 P.03

MOTION

Re: Fonthill Road

"THAT DUBLIN COUNTY COUNCIL HEREBY RESOLVES THAT THE AREA OUTLINED IN BLACK ON THE ATTACHED MAP, LYING NORTH OF THE GRAND CANAL, DESIGNATED PREVIOUSLY FOR TOWN CENTRE, NOW BE CONSIDERED FOR ZONING E FOR INDUSTRIAL AND RELATED USES."

91 TUE 13:38 P.01

07 2.13676

FAX MESSAGE

ATTENTION: OWEN O'CALLAGHAN :

FROM FAX NUMBER: 6281018:

DATE: 26 FEB. '91 :

NO. OF PAGES INCLUDING COVER: 1

IF INCOMPLETE PLEASE TELEPHONE: 6282471:

(Dail Print Unit) 768/20

Return to report

Strategic Plan re Westpark:

Present Position:
Merrygrove Limited, likely to receive planning permission in the near future which will complicate the resolving by formally endorsing the Town Centre Fonthill site.

Action required: Discussion with Ambrose Kelly to endeavour to ensure no decision is granted.
- Action - Owen O'Callaghan / Ambrose Kelly: -

Westpark motion submitted to put town centre and other uses on the 186 acre site. Motion likely to be considered 7/22 March. Motion to change Merrygrove to E (Industrial) not accepted by Planning Department due to arrival after closing time Friday 15 February; In order to attempt to resolve this situation it is very urgent that Owen O'Callaghan formally informs senior management i.e. John Prendergast County Manager; Kevin O'Sullivan Planning Manager, Gay McCarron/Willie Murray Senior Planning Officials; and Al. Smith Principal Officer, of the formal position as follows:-

It is proposed by joint venture that Owen O'Callaghan will now pioneer the Westpark proposal and will negotiate a suitable arrangement with the Dublin Corporation to withdraw from pursuing the town centre proposal on the Fonthill site.

It is also important after these consultations to formally inform the County Council Chairman so that the elected members can fully understand the Westpark situation. At the moment community groups are actively lobbying for the Fonthill project and have objected to the board on the Paper Mills site. The situation at Westpark can be turned into a political football unless it is handled positively and in advance of the motion coming up for discussion in the

Council to place town centres only on the Westpark lands.

Action required:

a) Appoint Planning Team;
b) Investment consultant;
c) Agree media strategy;
d) Agree time programme;

With such a contentious motion presently on the County agenda and local elections now scheduled for mid June, it is important decisive action is taken.

I will telephone you to discuss the above.

Return to report

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial & Commercial Developers

21/24 LAVITT'S QUAY,
CORK.
Telephone: (021) 275008 / 274323
Telefax: (021) 275626

£10000 Irish - 5/2/91

TELEFAX TRANSMISSION COVER SHEET

TO: Eddie Kaye
FROM: Owen O'Callaghan
COMPANY: AIB Corporate Banking
FAX NO.: 021 275626
FAX NO.: 01 682508
DATE: 27th February, 1991
No. OF PAGES TO FOLLOW: 1

RE: Tom Gilmartin transaction

Dear Eddie,

Can you please arrange to have $45,850 or it's equivalent in sterling transferred to the attached address i.e. Barclay's Bank plc, Cockspur Street, London.

We hereby authorize you to debit Riga Limited account 45176023 at 97 South Mall, Cork.

Letter of Credit due Tues/Wed
& all complete within 14 days.

Yours sincerely,
Owen O'Callaghan

(Fees Refundable) - all funded when Cert drawn down

TOTAL P.01

$45,850 Dollars

52; 16 26 Feb 1991 Amstrad FX9600AT Page 1

ANGLO SECURITIES LIMITED

CAPITAL DEPLOYMENT

RUE CAPOUILLET 9 à 21, BRUXELLES 1060, BELGIQUE

Pacific Trade Nat. Bank
(Crédit Liese)

FAX 32 2 536 8601
TELEX 61 344

Bank account offshore:
Anglo Securities Limited: Number 00 135038 at
Barclays Bank plc, International Branch, Sort Code 20 22 59.
Telex: 916046 BARCPS G
at 1A Cockspur Street, London.

'91-02-26 12:50 PAGE 1

27-02-1991 15:27 MR.T.P.GILMARTIN. 0582 417698 P.01

Return to report

[redacted]

AIBQ 9 - 247

8216D

HEADS OF AGREEMENT

BETWEEN

1. *Thomas Gilmartin of 22, Whitehill Avenue, Luton, Bedfordshire, LU1 3SP ("Mr. Gilmartin")*

2. *Mrs. Thomas Gilmartin of 22, Whitehill Avenue, Luton, Bedfordshire, LU1 3SP ("Mrs. Gilmartin") acting through her lawfully appointed attorney, Mr. Seamus Maguire.*

3. *Riga Limited having its registered office at 81, South Mall, Cork ("Riga"); and*

4. *Allied Irish Banks p.l.c., having its registered office at Bankcentre, Ballsbridge, Dublin 4. ("AIB")*

WHEREAS:

A. *Mr. Gilmartin and Mrs. Gilmartin (the "Gilmartins") are the registered owners of the entire issued share capital of Barkhill Limited ("Barkhill").*

B. *By an agreement made on the 16th February, 1991, between the Gilmartins, Riga and AIB, it was agreed that in certain circumstances where another Investor was obtained to provide IR£4,000,000 to Barkhill, the shareholding in Barkhill would be amended to provide that each of the Gilmartins, Riga and the new Investor would have a one third interest in Barkhill.*

C. *Efforts to obtain such a new Investor having been unsuccessful, the parties have agreed alternative arrangements for the future financing of Barkhill. These agreements are set out in the following Heads of Terms. The parties accept that these Heads of Terms shall be binding on the parties and will, in due course, be incorporated into a more formal agreement or agreements.*

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:-

1. *Barkhill requires further financial assistance to the extent of IR£4,000,000, plus provision for an interest roll up on that and the existing AIB facilities of approx IR£10,000,000 for the period up to 31st May, 1993.*

2. *AIB agrees to provide an additional term loan of £3,000,000 and agrees that interest on this facility and the existing facilities of approx £10,000,000 shall be accrued and added to the facilities until 31st May 1993 or, if earlier, such time as the amount of interest so accrued but unpaid reached £2,500,000. Thereafter, all interest accruing due on the total facilities shall be paid in full on the due date.*

   The additional facility of £3,000,000 shall be available to Barkhill until 31st May, 1993. It may be used only for the purpose of discharging sums due by Barkhill in respect of the purchase of those lands known as the "Bruton Lands", the "O'Rahilly" land and such lands at a cost not exceeding £900,000 as may be purchased from Dublin County Council ("the County Council Lands") and costs directly related

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AIBQ 9 - 248

to the development of Barkhill's lands. The facility may not be used for any other purpose unless Gilmartins, Riga and AIB shall unanimously so agree. No part of the facility may be availed of until the loan from Riga Limited referred to in paragraph 4 shall have been fully drawn, and the guarantee referred to in that clause executed

3. Riga agrees to provide to Barkhill a loan in the amount of £1,000,000 for the same purpose and for the same period as the AIB loan. Riga further undertakes to provide a Guarantee (in such form as AIB may require) in the sum of £1,000,000 plus interest thereon to AIB in respect of all borrowings of Barkhill from AIB.

4. Riga's loan and the existing director's loan provided by Mr. Gilmartin will be subordinated to the loans made or to be made to Barkhill by AIB. They shall carry interest at similar rates to those being charged by AIB. Such interest shall accrue from the date or dates of the introduction of the relevant monies, but such interest shall not be paid to either Riga or Mr. Gilmartin unless all sums due to AIB have been repaid in full, and the option referred to in paragraph 8 shall have been exercised or AIB's Shareholding interest shall have been otherwise purchased from it.

5. Save as expressly otherwise provided herein, the terms of the AIB loan will be identical to the terms of the existing facility letter dated 19th February 1990 from AIB to Barkhill. Apart from the Letter of Guarantee to be provided from Riga as mentioned at point 3 above0 as additional security there shall also be provided to AIB an assignment of a term life policy in the amount of not less than IR£5,000,000 on the life of Mr. Owen O'Callaghan, which policy shall be for a period of not less than 2 years. AIB will document the new arrangement in a facility letter in such terms as AIB may decide, but which must incorporate in substance the appropriate provisions of this agreement. In particular, there will be included the following Events of Default :-

   a. Events of Default of the normal nature that would be included in an AIB DIBOR related term Loan, including a material adverse change clause.

   b A specific clause which will stipulate as an Event of Default the failure to obtain final Planning Permission and Building Bye-Law approval for a retail shopping development of at least 500,000 sq feet of net lettable space within 2 years from the date hereof. If a refusal shall be made on appeal earlier than that, then such refusal shall constitute an event of default.

AIB shall be granted a first fixed charge over the Bruton Lands, the O'Rahilly Land and the County Council Lands.

Prior to any part of the IR£3,000,000 being availed of from AIB, AIB must be satisfied in its absolute discretion that the contracts in respect of the Bruton Lands will be completed in accordance with their terms.

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6. *The parties agree that the shareholding structure in Barkhill will be varied by the issue of new shares to provide that each of the parties shall have the following percentage of the total shareholding:-*

Gilmartins	33 1/3rd%
Riga	44 4/9th%
Nominated subsidiary of AIB ("AIBS")	22 2/9th%

The shares subscribed for shall be issued at par.

Gilmartins undertake to Riga and to AIB to procure issuance of sufficient shares to each of Riga and AIBS to achieve the above agreed percentages. They further undertake that such issuance shall be achieved as soon as possible and in any event by not later than 31st July, 1991.

7. *AIB shall nominate to Gilmartins, the name of AIBS which is to be entitled to the shareholding referred to above.*

8. *The following provisions shall apply in respect of the AIB shareholding:-*

   a. *AIB shall procure that Gilmartins shall be granted by AIBS the right to acquire the AIB Shareholding for the sum of £2,000,000. Such option may be exercised at any time after 31st May, 1993, but may not be exercised prior to that date unless:-*

      a. *AIB and Riga both agree that they should be permitted to so exercise; or*

      b. *AIBS decides to exercise the right granted to it pursuant to clause 9 below, and Gilmartins chooses to exercise the right granted to them pursuant to that clause.*

9. *Notwithstanding the provisions of Clause 8 above, at any time AIBS may choose to offer the AIB Shareholding to the other parties for the sum of £2,000,000. Should it wish to exercise this option, as between Riga and Gilmartins, AIB shall procure that Gilmartins shall have the first right to acquire the AIB Shareholding.*

10. *In the event of Gilmartins exercising their option pursuant to clauses 8 or 9 above, then they may do so by not less than 3 months notice in writing, the purchase monies to be paid not later than the expiry of the period of such notice.*

11. *Should Gilmartins exercise their right to acquire the AIB Shareholding, then Riga shall have the option to acquire from Gilmartins sufficient of their total shareholding to enable Riga's shareholding to be increased to 50%. PROVIDED HOWEVER, that the provisions of this clause shall only come into operation if Gilmartins wishes to sell any or all of their shareholding, whether at the time of the acquisition of the AIB Shareholding or at any later time. If*

AIBQ 9 - 250

Riga shall decide to exercise the right contained herein within two years of the date hereof, the cost to Riga of the acquisition of the number of shares necessary to bring Riga's shareholding up to 50% shall be related to the price of £2,000,000 paid for the AIB Shareholding. At any time thereafter, the price to be paid by Riga shall be pro rata to the price being obtained by Gilmartins for their shareholding.

12. Gilmartins and Riga shall have the right to sell all but not part only of their shareholdings to other parties but only after first offering such shareholding to the other shareholders. In this regard standard pre-emption provisions shall be contained in the shareholders agreement/ Memorandum and Articles of Barkhill.

In the event that following the exercise of the pre-emption rights referred to above neither of the existing shareholders wishes to purchase the shareholding on offer, then Gilmartins or Riga, as the case may be, shall be free to offer to other outside shareholders, provided however that unless all sums due to AIB shall have been discharged and AIB's Shareholding shall have been purchased, no shares may be sold to an outside shareholder without the consent of the other shareholders, such consent not to be unreasonably withheld.

13. Riga shall be appointed as Project Manager by Barkhill for the purpose of the development of the lands at Palmerstown owned or to be acquired by Barkhill. Riga shall not be entitled to any fee for discharging this function.

14. The Board of Directors of Barkhill shall comprise one representative each nominated by Gilmartins, Riga and AIB

15. In the event that Barkhill shall wish to dispose of any of the lands at Palmerstown now acquired or to be acquired, and where such lands are not required for the purposes of the proposed Retail Shopping Centre Development, then for so long as any sums are due to AIB at foot of loan facilities, or AIBS shall remain as a shareholder, in the event that any such sales take place at a price of not less than £175,000 per acre, then the net proceeds of such sales, providing no event of default shall have occurred, will be used to repay facilities as follows:-

a. 2/3rd thereof shall be applied to reduce amounts due to AIB; and

b. 1/3rd thereof in repayment of the loan made available by Gilmartins.

16. The above terms shall be incorporated into detailed legal documentation to be prepared by Messrs. William Fry, Solicitors, which documentation shall include a Shareholder's Agreement between the parties hereto providing for the relationship between the parties as shareholders which shall include such restrictions on actions by Barkhill as AIB may reasonably require.

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17. *This agreement shall be governed by and construed in accordance with the laws of Ireland.*

Dated this 31st day of May, 1991

Thomas Gilmartin

Seamus Maguire, as the lawfully appointed attorney of Mrs. Thomas Gilmartin.

for and on behalf of Riga Limited

For and on behalf of Allied Irish Banks, p.l.c.

AIBQ 24.11

AIB Bank

Corporate Banking - Ireland
Bankcentre
P O Box 452
Ballsbridge
Dublin 4

Telephone
(01) 600311
Facsimile
(01) 682508
Telex
93680
S.W.I.F.T. Address
AIBK IE2D

The Directors,
Riga Limited, — file
81 South Mall,
Cork.

4520/14/JWD/cob *6th June 1991.*

Dear Sirs,

We are pleased to inform you that the Board of Allied Irish Banks p.l.c. (the Bank) has sanctioned a facility to Riga Limited ("the Borrower"), subject to the following terms and conditions ("the Facility"):-

1. ***AMOUNT***

IR£1m (One million Irish Pounds), ("the Loan" which term shall mean such amount or such lesser amount as is for the time being outstanding).

2. ***PURPOSE***

To fund Inter-company loan/equity in Barkhill Ltd.

3. ***METHOD***

Term Loan

4. ***REPAYMENT***

The Loan shall be repaid in full on 5th June 1993 by means of a Bullet Repayment.

5. ***INTEREST***

Interest shall be payable on the Loan at the Banks AA Overdraft rate minus 0.75 per cent at present 12.75 per cent as the same may vary from time to time. Interest will be payable in accordance with the Bank's standard practice from time to time. The Bank is agreeable to allow a full interest roll-up on the Loan Facility.

Allied Irish Banks, p.l.c.
Registered Office
Bankcentre
Ballsbridge
Dublin 4
Registered in Ireland
No 24173

Return to report

AIBQ 24.11 - 13

6. ***SECURITY***

The Loan, all interest thereon and all other sums payable to the Bank in respect of the Facility shall be secured in a manner satisfactory to the Bank as follows:-

HELD

i) Debentures (2) over the assets of the Company incorporating fixed charges over Paul Street Shopping Centre, Cork and Douglas Shopping Centre, Cork.

HELD

ii) Letter of Pledge over shares in Delview Limited representing 50% of issued share capital of the Company.

HELD

iii) Letter of Guarantee IR£7.25m from Berryvale Ltd. supported by a debenture incorporating a fixed charge on its 37 1/2% interest in Arthurs Quay Shopping Centre, Limerick.

HELD

iv) Letter of Guarantee IR£1m from John Deane supported by an assignment of Term Cover on his life for IR£2m.

IN COURSE

v) Term Cover on the life of Owen O'Callaghan IR£2m.

7. ***NEGATIVE COVENANTS***

By acceptance of the Facility the Borrower hereby covenants with the Bank that as long as any sums shall be owing to the Bank under the Facility, it shall not without the prior consent in writing of the Bank:-

a) Create or agree to create or permit any mortgage, charge or other incumbrance of any nature over any of its assets.

b) Permit its total borrowings to exceed the sum of IR£12m.

8. ***FEES***

The Borrower shall pay to the Bank a Fee of IR£10,000 on 5th June 1993.

9. ***DRAWDOWN***

Drawdown shall be permitted in minimum tranches of IR£100,000 on satisfaction of all preconditions, at any time prior to 30th August 1991 after which date no further drawings are allowed without the prior written consent of the Bank.

10. ***FINANCIAL INFORMATION***

During the currency of the Facility the Borrower shall furnish to the Bank such information as the Bank may require from time to time and, in particular, the following:-

a) Copy of the Borrower's audited profit and loss account and balance sheet within 120 days of the end of the financial year to which the accounts and balance sheet relate.

b) A copy of the information required at a) above in relation to the Guarantor Companies within 120 days as set out above.

AIBQ 24.11 - 14

11. ***EVENTS OF DEFAULT***

The Bank reserves the right to terminate its commitment hereunder and to call for repayment of all monies outstanding hereunder, including interest and other charges, should any of the following events occur:-

(a) if the Borrower defaults in the performance of any other obligation, covenant, term or condition herein contained and such default continues unremedied for seven days from the date thereof; or

(b) if an order is made, proceedings are commenced, or an effective resolution is passed for the winding up of the Borrower, other than for the purpose of reconstruction or amalgamation while solvent on terms which have been previously approved by the Bank in writing; or

(c) if any loan, debt, guarantee or other obligation constituting indebtedness of the Borrower becomes due prior to its specified maturity or is not paid when due or the Borrower is in breach of or in default under any agreement, deed or mortgage under or pursuant to which such indebtedness was incurred (whether or not steps are taken to enforce same); or

(d) if the Borrower convenes a meeting of or proposes or enters into any arrangement or composition for the benefit of its creditors; or

(e) if a distress execution attachment or other process is levied or issued against any of the Borrower's property and is not discharged within fourteen days from the date thereof; or

(f) if a petition is presented for the appointment of an Examiner to the Borrower; or

(g) if an encumbrancer takes possession of or a receiver administrator or other similar officer is appointed in respect of the whole or any part of the Borrower's property undertakings and assets; or

(h) if any representation or warranty made or reaffirmed pursuant to the Facility proves at any time to be incorrect or inaccurate; or

(i) if the Borrower is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 or any statutory modification or re-enactment thereof; or

(j) if the Borrower defaults in payment of any taxes due and payable (other than those being contested in good faith); or

(k) if the Borrower ceases or threatens to cease to carry on its business or substantially the whole of its business without the prior written consent of the Bank; or

AIBQ 24.11 - 15

(l) *if any event or events shall happen or occur or be likely to happen or occur in relation to the business or affairs of the Borrower and/or the Guarantors which in the opinion of the Bank constitutes a material adverse change in its or their business assets or future prospects or is or are detrimental to the interests of the Bank; or*

(m) *if in the opinion of the Bank any change shall take place in any applicable law or regulation or in the interpretation thereof which shall make it unlawful for the Bank to maintain or give effect to its obligations hereunder; or*

12. ***EXPENSES/FEES***

All fees, charges and expenses, legal and otherwise, incurred by the Bank in connection with the Facility (including the completion of the security) or the enforcement thereof (together with VAT thereon) shall be borne and paid by the Borrower on demand. The same shall be payable whether or not the Facility is utilised in whole or in part.

13. ***GENERAL TERMS***

The Facility is further subject to the terms and conditions contained in the General Terms a copy of which is attached hereto provided that clauses 3 and 5 shall not apply to the Facility

Acceptance by the Borrower of this Offer Letter shall be deemed to be an acknowledgement and acceptance of the General Terms.

14. ***OTHER FACILITY(S)***

This Facility is in addition and not in substitution for facilities set out in the letter dated 28th March 1991.

ACCEPTANCE

If the terms and conditions of the Facility are acceptable to you, we shall be obliged if you will so indicate by returning to us within twenty-one days:-

a) *a certified copy of a resolution of your Board authorising the acceptance of the Facility;*

b) *the enclosed copy of this Offer Letter duly accepted;*

We are pleased to have the opportunity of placing the Facility before you.

Yours faithfully,
for and on behalf of
Allied Irish Banks p.l.c.

E.W. Kay,
Senior Manager,
Corporate Banking.

J.W. Donagh,
Manager,
Corporate Banking.

P.T.O.

Return to report

TG 11.19 - 210

AIB Bank

Corporate Banking
Bankcentre
P O Box 452
Ballsbridge
Dublin 4

Telephone
(01) 600311
Facsimile
(01) 682508
Telex
93680
S.W.I.F.T. Address
AIBK IE2D

Mrs. Vera Gilmartin,
c/o Mr. Seamus Maguire,
Messrs. Seamus Maguire & Co.,
Solicitors,
10 Main Street,
Blanchardstown,
Dublin 15.

TG 11.19-210

Our Ref: GNJB/8462/2

5th September, 1991

Dear Mrs. Gilmartin,

BARKHILL LIMITED

We refer to the Heads of Terms signed by, inter alia, your Attorney, Mr. Seamus Maguire, on behalf of yourself on 31st day of May, 1991 in regard to the above Company.

As you are aware, it was part of the Heads of Terms that a Shareholders Agreement, incorporating the terms, would be signed by the parties. Nothwithstanding that over 3 months have now elapsed, 2 drafts of the Shareholders Agreement have been produced, and certain changes requested by your husband on behalf of himself and yourself have been included in it, the document has still not been signed. You will be aware that under the provisions of clause 6 of the Heads of Terms, the necessary issuance of shares to conform with the provisions of that clause were to have been effected by not later than 31st July, 1991.

The Bank has been more than patient, and notwithstanding that demands made by it in respect of the existing sums due to it by the Company have not been met, and it has been at all times, and remains, entitled to enforce its security held from the Company, it has refrained from taking any action at foot of its security.

We must regretfully inform you that the Bank is not prepared to continue to exercise such restraint. Accordingly, unless the Shareholders Agreement to reflect the Heads of Terms, and to be in or substantially in the format of the draft dated 28th August, 1991, prepared by Messrs. William Fry and furnished to your Attorney, Mr. Maguire, is executed by all parties by not later than Friday, 13th September, 1991, the Bank will take such action as it may be advised is open to it to recover all sums due to it by Barkhill Limited.

We are also writing to the other parties to the Heads of Terms and also to Barkhill Limited, advising them of the above decision by the Bank.

Yours faithfully,
for Allied Irish Banks p.l.c.,

P. E.W.Kay
Senior Manager

Allied Irish Banks, p.l.c.
Registered Office
Bankcentre
Ballsbridge
Dublin 4
Registered in Ireland
No 24173

OC. 1.4 - 176

577430.

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial & Commercial Developers

21/24 LAVITT'S QUAY,
CORK, IRELAND.
Telephone: (021) 275008
Telefax: (021) 275626

3rd December, 1991.

Mr. Eddie Kay,
A.I.B. Bankcentre,
Ballsbridge,
Dublin 4.

Dear Eddie,

I enclose a list of payments made by Riga Limited on behalf of Barkhill and payments due to be paid by Barkhill. I would like to discuss these with you on Friday when we meet.

Payments made by Riga Limited on behalf of Barkhill

		Remarks
20/09/1991 - Tom Gilmartin	- £100,000.00	to pay Sim agreement
23/09/1991 - Expenses	- £10,000.00	I will explain on Friday.
27/09/1991 - Frank Dunlop	- £8,484.29	Brochures. Invoice available.
11/10/1991 - Expenses	- £10,000.00	I will explain on Friday.
11/11/1991 - Ambrose Kelly	- £26,195.00	Architects Model etc. Invoice available.

F/Dunlop £7,467.70 + VAT £8228.42 ...1

OC. 1.4 - 177

O'Callaghan (Properties) Limited
Continuation Sheet No.

/...

			Remarks
Payments to be made by Barkhill			
Deloitte & Touche	Invoice amount. Settlement.	£18,412.00 + VAT £15,000.00 + VAT	Invoice available. ✓
Frank Dunlop	Invoice amount.	£7,467.90 + VAT Paid by Riga.	Brochures, Leaflets, etc. Invoice available. ✓
* Taggart		£154,865.00 stg.	Invoice available. ✓ X
Ove Arup	U.K. & Ireland	£66,254.00	This amount is not being sought at present.
Kiaran O'Malley	Invoice amount.	£50,000.00	Prepared to settle when payment time is known.
Advanced Printers	No approach has has been made by me on this.	£38,347.76 stg.	Invoice available.

Yours sincerely,

F. Gunne & → £13300 D/M Ca

Owen O'Callaghan.

F. Brush
re Advertising
McC

Return to report

[redacted]

11/10/ 1991

To ooe

For deposit to ooe

Balance

Am't Lodged Total C W Smith

Am't this chq

Bal. forwd. 10,000 —

500052

M/out

[redacted]

1992-01-31 14:28 DEANE & CO. 353 21 270437 P.02

OC. 1.4 - 180

81, South Mall.
Cork.
Telephone (021) 277577
Telefax: (021) 270437

John W.T. Deane, B.C.L.
David B. Browne, B.C.L.
Michael A.G. Enright, B.C.L.

Bridget M. Hynes, B.C.L.
Patrick M. Ahern, B.C.L.

Your Ref:

Our Ref: JD/MMcC

Date: 31 January 1992

Deane Enright & Partners
SOLICITORS

Jim Donagh, Esq.,
Corporate Banking,
AIB Bank,
Bankcentre,
Ballsbridge,
DUBLIN 4.

re: Westpark Expenses

Dear Jim,

The sum of £56,598.71 has been credited to the account of Riga Limited on the basis that the sum of £6,593.38 was necessary to bring the "Westpark facility" up to the sum of £1m.

I think this matter has been dealt with incorrectly. It was agreed that the Invoices totalling £63,192.09 were properly payable. As these had been paid out of the Riga general facility I think the reimbursement should have beer made up as follows:

a. The sum of £6,593.38 should have been debited to the Riga "Westpark facility" and credited to the Riga Current Account and

b. The sum of £56,598.71 which has aleady been lodged to the account has been, I presume, debited to the main Barkhill account.

If you agree I will ask Aidan Lucey to Debit the Riga "Westpark facility" with the sum of £6,543.38 and credit the Riga General Account.

With kind regards,

Yours sincerely,

JOHN W.T. DEANE
c.c. Aidan Lucey

TOTAL P.02

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Payment of expenses on behalf of Rowbuck Ltd.

F. Dunbar	£828-42
Funding Expenses	30,000-00
F Dunbar	8484-29
A. Kelly	26195-00
	62907-71 ✓

to Rigid Ltd.

Seamus Maguire	£48,400-
Taggarts Sol	£134665-00
Deloitte & Touche	£18150-00 ✓
F. Dunne	£16093-00 ✓
T. Gilmartin Sol	£12,000-00 ✓

Please issue Bank drafts as detailed above

for and on behalf of Rowbuck Ltd.

Liam McCarthy

Barry Ritchie

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D+T 2.[illegible]45

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial
&
Commercial Developers

21/24 LAVITT'S QUAY,
CORK, IRELAND.
Telephone: (021) 275008
Telefax: (021) 275626

8th February, 1993.

Your Ref FWB/LB/BB.

Mr. Leo Fleming,
Deloitte & Touche,
Earlsfort Centre,
Earlsfort Terrace,
Dublin 2.

Re: Barkhill Limited.

Dear Leo,

I refer to your letter of 15th December, 1992.

I confirm that the proposed journal numbers 49, 50 and 52 all of which relate to transactions with Riga Limited are correct.

As regards proposed journal numbers 46, 47, 48 and 51 I can only assume that these journals are correct as they are in respect of information submitted by A.I.B.

I do not have any further supporting documentation for items 1 - 10 and maybe you would check with A.I.B. as they paid out most of these items.

D+T 2.2 - 46

O'Callaghan (Properties) Limited
Continuation Sheet No.

The abridged accounts for Merrygrove Limited in respect of the year ended 29th February, 1992 have now been prepared and no other transactions are entered into the books of Merrygrove Limited other than the debtor of £300,000.00 due from Dublin Corporation and a corresponding liability to Cadnam Construction Limited of £300,000.00

I have requested sight of Merrygrove Limited share certificates for inspection by Deloitte & Touche and expect to receive these in due course.

I trust the above is of benefit to you and if you need any further information please let me know.

Yours sincerely,
O'CALLAGHAN (PROPERTIES) LIMITED

Aidan Lucey.

C.C. Mr. John Deane.

Return to report

Deloitte & Touche

Chartered Accountants

Deloitte & Touche House
Earlsfort Terrace
Dublin 2
Telephone: (01) 75 44 33
Facsimile: (01) 75 66 22

Your Ref

Our Ref FWB/LF/PC

3 May 1993

Mr. John W. T. Deane,
D. Enright & Partners,
Solicitors,
81 South Mall,
CORK.

Dear John,

Re: BARKHILL LIMITED - FINANCIAL STATEMENTS
FOR THE 3½ YEAR PERIOD ENDED 30 APRIL 1992

Further to your recent correspondence and our telephone discussion on Friday 30 April, I am setting out hereunder the unresolved matters that I am aware of, at this stage, in relation to the finalisation of the draft financial statements of Barkhill Limited. The comments noted had been mentioned extensively in correspondence to Tom Gilmartin, Owen O'Callaghan and AIB.

1. TOM GILMARTIN'S LOAN ACCOUNT	IR£
Advances (net) by Tom Gilmartin to Barkhill during the period to 30 April 1992	4,002,052
Provisional interest figure to 30 April 1992	1,225,000
	5,227,052

The share subscription agreement allows for interest on Tom Gilmartin's advances. The above interest figure has been calculated by us at a rate of 12% per annum. In certain instances, it was necessary for us to estimate the date of introduction of funds by Tom Gilmartin to Barkhill.

Tom Gilmartin's agreement is required to the above summary. He has been furnished with full particulars showing the manner of preparation of his loan account to Barkhill.

Other shareholders and directors must also agree on the level of indebtedness of Barkhill to Tom Gilmartin as these matters directly impact on the financial statements.

Deloitte Touche Tohmatsu International

PJ Barton FW Bowen PG Butler PB Byrne PJ Carr PP Carty P Cullen DB Deasy CA Dennehy F Dolan J Donnelly CW Donovan B Gaffney JP Gilmartin JM Hayden JJ Keenan P Kenny G Lyons R MacDarby J McAvoy BP McDonald EP McHugh JA McLaughlin GV Magee D Murrey RJ Nolan PJ Nunan C O'Carroll TR O'Ferrall TG O'Rourke JS Pittock BF Scannell MM Smith BD Uniacke
Consultants: H Boland TP Butler D O'Hegarty
Also at Cork & Limerick
Authorised by the Institute of Chartered Accountants in Ireland to carry on investment business in the United Kingdom.

Return to report

Deloitte & Touche

2. OPTION AGREEMENT (DATED 31 JANUARY 1989) BETWEEN O'CALLAGHAN PROPERTIES AND TOM GILMARTIN RE CLONDALKIN LANDS

Tom Gilmartin has advised us that the following payments were made by him to O'Callaghan Properties to enhance the value of Barkhill's lands.

Date (estimated)	IR£
1 January 1989	800,000
1 January 1990	1,350,000
	2,150,000

We understand that these payments are dealt with in an option agreement. We have seen no documentary evidence on these payments. We are also advised by Tom Gilmartin that the total option cost regarding the Clondalkin lands was IR£3.5M. and that the difference of IR£1,350,000 has been fully abated by O'Callaghan Properties.

We require sight of this option agreement and confirmation from O'Callaghan Properties that no further sums are due in respect of this agreement. Mary Basquille at AIB has indicated that AIB do not have a copy of the agreement.

These payments are included in Tom Gilmartin's loan account to Barkhill.

3. MERRIGROVE

We understand that Merrigrove is a wholly owned subsidiary of Barkhill. It will be necessary to disclose this in the financial statements of Barkhill Limited. We have requested a copy of the most recent balance sheet of Merrigrove from Aidan Lucey. We also require to inspect the share certificates of Merrigrove which will confirm the ownership by Barkhill of Merrigrove.

We require a copy of the agreement that Merrigrove has entered into with Dublin Corporation.

4. PROPERTIES ACQUIRED

As you are aware, a number of the properties were acquired in Tom Gilmartin's own name. We understand from AIB that, as part of their security arrangements, all necessary declarations of trust were completed by William Fry and signed by Tom Gilmartin, confirming the transfer of ownership to Barkhill. I should be grateful if you could arrange for copies of the relevant declarations of trust to be forwarded to us. I am assuming that these are not bulky documents.

Deloitte & Touche

During the course of our examination of the various files at Seamus Maguire's office, we did note that there was certain correspondence relating to claims for interest arising from the late closings of certain properties. By far the most significant of these was an amount of IR£405,000 claimed by Dublin Corporation. Seamus Maguire has advised us that any further liabilities arising are remote as he has not had any further correspondence on these matters. Can you also confirm that this is also your understanding of the matter?

5. BARKHILL BANK ACCOUNT A BANK OF IRELAND, BLANCHARDSTOWN

An amount of IR£124,000 was lodged to this account in respect of a VAT refund received by Barkhill. Payments totalling IR£122,852 were made from this account. Tom Gilmartin has advised me that he has no recollection of payments amounting to IR£122,852 from the campany's bank account and accordingly we have charged these amounts to his loan account.

We understand that the original VAT liability was funded by Tom Gilmartin.

6. VALUATION OF PROPERTIES

The accounting policy which we have adopted in relation to the costs incurred to date is to include all such costs, especially interest accruing, in the heading development properties in the draft financial statements. However, this policy has only got validity if the development progresses reasonably quickly and in accordance with plan. Otherwise, the ongoing costs and interest will result in a carrying value of development properties which could exceed their valuation. Accordingly we require copies of the most recent valuations to confirm that the carrying values of development properties in the draft financial statements do not exceed the valuations obtained from professional advisers.

We have in our possession copies of the following valuations:

VALUER	DATE OF VALUATION
Gunne	10 December 1991
Hamilton Osborne, King	19 February 1992
Lisney	1 December 1989

Deloitte & Touche

7. SECRETARIAL MATTERS

You will also be aware that the secretarial affairs of the company are very much out of date. There is an ongoing risk of the company being struck off by the Registrar and the directors do have an exposure to fines.

Whilst it may not impact directly on the presentation of the financial statements, there would appear to be some doubt on the precise ownership of Tom Gilmartin's shares, i.e. whether they are owned by a Trust or by himself in his personal capacity. I believe it will be necessary to liaise with the Trustees in the Isle of Man on this matter.

8. AIB

I believe it is also necessary to evaluate the position of AIB facilities in view of the apparent breach of conditions and covenants with AIB.

I did write to Aidan Lucey on 15 December 1992 setting out what I regarded as the unresolved matters of strict accounting nature. I am attaching to this letter a schedule of payments/transactions for which Deloitte & Touche received no supporting documentation. The transactions recorded on this schedule have been booked in the accounts of Barkhill on the basis of discussions and explanations received from Tom Gilmartin, Aidan Lucey, Seamus Maguire and AIB.

I look forward to the finalistion of the draft financial statements.

Yours sincerely,
DELOITTE & TOUCHE

LEO FLEMING

Payments/Transactions for which Deloitte & Touche have received no supporting documentation

	Details	IRE Amount
1.	Amount paid to Seamus Maguire on 11/5/90 from AIB No.1 A/c in respect of option cost on St.Patrick's Trust land	100,000
2.	Sterling amount paid from AIB No.2 A/c to T.Sills on 16/10/91	Stg£ 50,669
3.	Amount paid to F.Gunne Estate Agents from AIB No.2 A/c on 3/1/92	16,130
4.	Amount paid to C.Meenan & Co. from AIB No.2 A/c on 4/2/92	2,420
5.	Amount paid to Shannon & Co. from AIB No.2 A/c on 4/2/92	632
6.	3 Amounts paid to Sheafran Ltd. from the Riga Sub-ordinated loan on the following dates:	
	16/5/91	25,000
	30/5/91	40,000
	13/6/91	15,000
7.	A number of Seamus Maguire & Co. invoices as follows(Vat incl.):	
	Re Sharpe's land	15,004
	Re Grey's Cottage	500
	Re Crom Cottage	1,045
	Re Bruton's land	27,467
	Re Corporation land	66,550
	Re O'Rahilly land	7,260
	Re Council land	10,648
	Re O'Rahilly v Gilmartin	9,166
8.	Two amounts of £10,000 each described as "Sundry"in the Riga reimbursement from the AIB No.2 A/c on 24/1/92 which were apparently paid to Tom Gilmartin	20,000
9.	Three amounts paid to Tom Gilmartin from the Riga Sub-ordinated loan as follows:	
	28/2/91	26,192
	5/3/91	10,028
	29/4/91	55,656

Payments/Transactions for which Deloitte & Touche have received no supporting documentation

	Details		IRE Amount
10.	Two Ove Arup invoices refered to in the letter to Edward Kaye (AIB), on 22/7/92		
	Ove Arup Ireland (incl. Vat)		54,164
	Ove Arup London	STGE	35,276

J.DEANE 1.1 - 211

Meeting in Dublin re Barkhill - 14/01/1992

Present: Owen O'Callaghan
John Deane
Eddie Kay
Jim Donagh
Dave McGrath

Extent of Riga involvement in Barkhill was agreed as follows:

Loan and Guarantee	2.0
Clondalkin Deposit comes back to A.I.B.	.3
Contribution to additional cost of Bruton land reduced from .2 to .1	.1
Payment to Tom Gilmartin to sign agreement	.1
	2.5
Exposure capped at	2.5

A.I.B. agreed to transfer the £62,907 due to Riga from Barkhill into Riga Account on 15/01/1992.
(Invoices available)

A.I.B. also agreed to increase Riga facility from 7.25 or 8.25 (incl. Barkhill) by between .3 or .5.

We will push for the .5, and expect to get it.

This will be done in early February, when the Bond is released and the .5 from Quinnsworth is in.

The .250 from Andersons Quay should be in by September at the latest.

when this is put in place we should pay £62,000 odd to N.W.D. Family

Return to report

TG 11.20 - 6

To 11.20-6

E.W. Kay,
Senior Manager,
Allied Irish Banks p.l.c.,
Bankcentre,
Ballsbridge,
Dublin 4.

19th December 1991.

RE: BARKHILL LIMITED

Dear Mr. Kay,

We should be obliged if you would arrange to draw-down the following amounts on our Loan Facility and forward cheques directly to the following parties:-

AMOUNT	-	PAYABLE TO
IR£ 48,400.00		Seamus Maguire, Solicitor.
Stg£154,865.00		Taggarts Architects
IR£ 9,036.16		F. Dunlop
IR£ 16,000.00		Fintan Gunne, Estate Agents
IR£ 18,150.00		Deloitte & Touche

Yours sincerely,
for and on behalf
Barkhill Limited

Thomas Gilmartin

OC. 1.4 - 428

E.W. Kay,
Senior Manager,
Allied Irish Banks p.l.c.,
Bankcentre,
Ballsbridge,
Dublin 4.

19th December 1991.

RE: BARKHILL LIMITED

Dear Mr. Kay,

We should be obliged if you would arrange to draw-down the following amoun on our Loan Facility and forward cheques directly to the following parties:-

AMOUNT	PAYABLE TO
IR£ 48,400.00	Seamus Maguire, Solicitor.
Stg£154,865.00	Taggarts Architects
IR£ 9,036.16	F. Dunlop
IR£ 16,000.00	Fintan Gunne, Estate Agents
IR£ 18,150.00	Deloitte & Touche

£12,600 Drafting Touche Ross.?

Yours sincerely,
for and on behalf
Barkhill Limited

Thomas Gilmartin
Thomas Gilmartin

AIBQ 3 - 78

AIB Bank
Corporate Banking - Ireland
Bankcentre
P O Box 452
Ballsbridge
Dublin 4

Telephone
(01) 600311
Facsimile
(01) 682508
(01) 604945
Telex
93680
S.W.I.F.T. Address
AIBK IE2D

The Directors,
Barkhill Limited,
c/o Seamus Maguire & Co.,
Solicitors,
10 Main Street,
Blanchardstown,
Dublin 15.

4520/35

13th September 1991.

Dear Sirs,

Further to our recent discussions we are pleased to inform you that the Board of Allied Irish Banks plc. ("the Bank") has sanctioned facilities for Barkhill Limited ("the Borrower") subject to the following terms and conditions:-

1. ***AMOUNT:*** (a) *IR£3,000,000 (Three million Irish Pounds);*

(b) *Interest roll-up in respect of sums drawn hereunder and sums drawn pursuant to facility letter from the Bank dated 19th February 1990, and accepted by the Borrower on that day ("the 1990 Facility Letter"), up to a maximum of IR£2,500,000.*

2. ***PURPOSE:*** *To part-finance the site assembly of 176 acres at Palmerstown, Co. Dublin.*

3. ***METHOD:*** *Loan*

4. ***REPAYMENT:*** *Repayment in full to be effected by 31st May 1993 at latest.*

5. ***INTEREST:*** *An interest period, ("Interest Period"), shall be of one, three or six months duration at the option of the Borrower or such other duration as may be agreed between the Borrower and the Bank.*

Where the Borrower does not notify the Bank of its option prior to 11 a.m. on the first day of an Interest Period, an Interest Period of three months will be deemed to have been selected, subject to availability of funds.

Interest shall be payable on the Loan at the rate of 3% per annum over the cost to the Bank of funds on the Dublin Interbank Market, plus reserve asset cost if applicable for the appropriate Interest Period.

Allied Irish Banks, p.l.c.
Registered Office
Bankcentre
Ballsbridge
Dublin 4
Registered in Ireland
No 24171

Return to report

Reserve Asset Cost shall be such additional percentage as the Bank shall conclusively determine to be necessary to compensate the Bank for the cost to the Bank (calculated by reference to circumstances existing on the first day of the Interest Period) of making or maintaining the Loan for such Interest Period by reason of the then current liquidity or other requirements of the Central Bank of Ireland and any other regulatory Authority.

6. ***SECURITY:*** *The Loan and all interest thereon and all other sums payable to the Bank in respect of the Loan will be secured in a manner satisfactory to the Bank as follows:-*

a) *Mortgage Debenture incorporating a fixed charge over the Borrowers right, title and interest (held in fee simple free from encumbrances with good marketable title) in and to the properties as more particularly set out in Appendix i & ii hereto together with a first fixed charge over the contracts for sale set out in Appendix iii hereto;*

b) *a first fixed charge over all of the Borrowers right, title and interest (free from encumbrances and with good marketable title) (if any) including any proceeds of sale in and to Confey Stud, Leixlip containing approximately 200 acres subject to a Contract for Sale dated the 21st day of September, 1988 and made between John Desmond Bruton as vendor and Mr. Tom Gilmartin of 22 Whitehill Avenue, Luton, LU1 35P, England ("Mr. Gilmartin") in trust for the Borrower as purchaser being the hereditaments and premises comprised in Folio 5353 County Kildare and a fixed charge over the Borrower's plant and machinery, uncalled capital and goodwill and after acquired property and a floating charge over all the Borrower's assets and undertakings;*

c) *a letter of confirmation and undertaking from Cotton Bower Cotton, Solicitors, London:-*

(i) *confirming that Mr. Gilmartin is entitled through SK Property (Holdings) Limited to receive a minimum of STG£1,000,000 under the terms and conditions of the Milton Keynes Agreement (as defined in the 1990 Facility Letter); and*

(ii) *confirming that they have irrevocable instructions for Mr. Gilmartin and SK Property (Holdings) Limited to hand over to the Bank a minimum of STG£1,000,000 due to Mr. Gilmartin through SK Property (Holdings) Limited under the terms of the Milton Keynes Agreement; and*

(iii) *undertaking to hold in trust, on behalf of the Bank, and to pay over a minimum of STG£1,000,000 unconditionally at the request at any time of the Bank.*

d) a fixed charge over the Borrowers right, title and interest (Free from encumberances and with good marketable title) in and to the properties set out in Appendix iii hereto.

e) Letter of Guarantee in form and content satisfactory to the Bank for IR£1,000,000 plus interest from Riga Limited.

f) Assignment of Term Cover in the amount of IR£5,000,000 on the lives of each of Mr. Owen O'Callaghan, of Glenfarm, Upper Rochestown Road, Co. Cork ("Mr. O'Callaghan") and Mr. Gilmartin, such cover in each case to be for a minimum period of 2 years.

7. POSITIVE COVENANTS: By acceptance of the Facility, the Borrower hereby covenants with the Bank that as long as any sums shall be owing to the Bank under the Facility, it shall pay promptly all debts which, pursuant to the provisions of Sections 98 and 285 (as amended) of the Companies Act 1963, are to be paid in priority to all other debts in the winding up of a company and upon the appointment of a receiver under, or the taking of possession of property comprised in, a debenture secured by a floating charge.

8. EVENTS OF DEFAULT: On the occurrence of any of the following events ("Events of Default") the Loan and all interest and all other sums due hereunder shall forthwith become repayable to the Bank:-

(a) if the Borrower shall make default in the payment of any installment of any advance repayable by installments;

(b) if the Borrower shall make default in the payment of any interest hereby secured.

(c) if a distress or execution is levied or issued against any of the property of the Borrower;

(d) if an order is made or an effective resolution is passed for the winding up of the Borrower (except for the purpose of amalgamation or reconstruction without insolvency the Bank's approval in writing being first obtained) or if a petition shall be presented for the appointment of an Examiner to the Borrower pursuant to the provisions of the Companies (Amendment) Act 1990;

(e) if the Borrower ceases or threatens to cease to carry on its business or substantially the whole of its business;

(f) if an encumbrancer takes possession of or a Receiver is appointed over all or any part of the assets of the Borrower;

(g) if the Borrower or Mr. Gilmartin makes default in observing or fulfilling any of its or their obligations under this Facility Letter/The 1990 Facility Letter or (where relevant) the Security Documents;

(h) if the Borrower is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963;

(i) if the Borrower fails to observe or perform any of the convenants in any lease licence concession or agreement whereby any property or rights of the Borrower may become liable to forfeiture and any such default as aforesaid continue either for a period of 7 days (seven days) or for a shorter period as would at any time if continued render any property of the Borrower liable to forfeiture;

(j) if any charge granted the Borrower over its property and undertaking crystallises or becomes enforceable or if any other action is taken to enforce any charge or encumbrance granted created or issued by the Borrower which if successful will have an adverse affect on the ability of the Borrower to carry on its business or if any charge granted by Mr. Gilmartin to any third party crystallises or is enforced;

(k) if the Borrower shall at any time alter or attempt to alter its Memorandum or Article of Association in any manner which in the sole judgement of the Bank shall be prejudicial to the security hereby created or to any other security held by the Bank from the Borrower;

(l) if any representation or warranty given by the Borrower and/or Mr. Gilmartin to the Bank under any loan agreement or facility letter proves to be untrue or if the Borrower and/or Mr. Gilmartin be in breach of any of the terms and conditions herein set out or set out in any other facility letter or loan agreement subsisting from time to time between the Bank and the Borrower and/or Mr. Gilmartin and governing the granting of loan facilities to the Borrower and/or Mr. Gilmartin by the Bank;

(m) if Mr. Gilmartin is declared bankrupt;

(n) if Mr. Gilmartin and/or the Borrower varies the terms of the documents set out in the Third Schedule hereto and/or fails to complete the contracts of sale set out in the Third Schedule hereto within 90 days of the date of this Facility Letter;

(o) if the Bank shall be entitled to enforce the Security Documents;

(p) if Mr. Gilmartin encumbers his right under the Milton Keynes Agreement;

(q) *if the undertaking by Bower Cotton Bower referred to in Clause 6 (c) is unenforceable;*

(r) *if any circumstances shall occur which in the judgement of the Bank is prejudicial to or imperils or is likely to prejudice the ability of the Borrower and/or Mr. Gilmartin and/or Mr. O'Callaghan and/or Riga Ltd. to fulfil its or their obligations herein contained.*

(s) *If the Borrow fails to obtain final Planning Permission and Building Bye-Law Approval for a Retail Shopping Development of minimum 500,000 sq.ft. of net lettable space within 2 years from the date hereof or if a refusal shall be made on appeal on an earlier date.*

(t) *The Borrower, Mr. Gilmartin, Mrs. Vera Gilmartin, Riga Limited, AIB Capital Markets p.l.c. and Mr. O'Callaghan in the form or substantially in the form of the draft dated 28th August prepared by Messrs. William Fry, or if such agreement having been entered into, the Borrower or Mr. Gilmartin shall breach any of the terms thereof.*

(u) *If the Borrower or Mr. Gilmartin shall breach any of the terms of the Share Subscription Agreement referred to at clause 2 (f) of the Schedule hereto.*

If any Event of Default shall occur, the commitment of the Bank to advance any further monies hereunder shall terminate without notice and the whole of the Loan together with all interest accrued thereon to the date of payment shall become immediately due and payable to the Bank in the event of the Bank at any time thereafter demanding payment thereof.

9. ***ARRANGEMENT FEE:*** *NIL*

10. ***DRAWDOWN:*** (a) *In minimum tranches of IR£100,000 on satisfaction of all preconditions provided always that;*

(i) *Funds to be drawdown hereunder, may only be used by the Borrower towards, or for the purpose of the purchase of the properties set out in Appendix III hereto and to discharge costs directly related to the site; and*

(ii) *the cost of the lands purchased or to be purchased from Dublin County Council shall not exceed £900,000 (unless the Bank shall agree otherwise).*

(b) *Without prejudice to anything else herein contained, or contained in the 1990 Facility Letter, the Bank agrees with the Borrower that, subject to no Event of Default occuring, and to the provisions following, the Borrower shall not have to pay interest in accordance with the terms of this letter (other than this Clause 10 (b)) or the terms of the 1990 Facility Letter:*

AIBQ 3 - 83

(i) *Any and all amounts of interest which, but for the provisions of this Clause 10 (b) would be required to be paid by the Borrower shall be debited to a loan account in the name of the Borrower under this facility (b).*

(ii) *Any amount or amounts so debited shall themselves bear interest in accordance with the terms of this Facility Letter.*

(iii) *If and to the extent that the amount of interest (including interest on interest) debited to this facility (b) shall reach £2,500,000, thereafter all interest due in respect of facilities (a) and (b) of this Facility Letter, and the 1990 Facility Letter, shall be payable by the Borrower in full as they fall due in accordance with the terms of the relevent Facility Letter (excluding sub-clauses (i) and (ii) of this sub-clause 10 (b)).*

11. ***EXPIRY DATE:*** *The full amount of the Facility may be drawn down in accordance with the foregoing provisions at any time prior to 31st May 1993 after which date no further drawings are allowed.*

12. ***FINANCIAL INFORMATION:*** *During the currency of the Facility the Borrower shall furnish to the Bank:-*

(a) *a copy of its consolidated Audited Profit and Loss Account and Balance Sheet within 120 days of the end of the financial year to which the accounts and Balance Sheet relate.*

(b) *such other information as the Bank may require from time to time.*

13. ***EXPENSES/FEES:*** *All fees, charges and expenses, legal and otherwise, incurred by the Bank in connection this the Facility or the enforcement thereof shall be borne and paid by the Borrower on demand.*

14. ***SCHEDULE:*** *The Facility is offered subject to and with the benefit of the terms and conditions in the following schedule.*

AIBQ 3 - 84

SCHEDULE

1. **DEFINITIONS:**

Facility: The loan facility, the terms of which are set out in this schedule and the letter to which it is attached.

Loan: The total amount of the facility or such lesser amount as is for the time being outstanding.

2. **PRE-CONDITIONS:** The Bank shall not be obliged to advance the Loan or any part thereof unless:-

a) the Bank is satisfied that there shall have been no material adverse change in the business, assets or future prospects of the Borrower between the date on which the Facility was applied for and the date of final drawdown.

b) the Bank is satisfied that it is in a position to advance the Facility having regard to the Credit Guidelines and Exchange Control Regulations of the Central Bank of Ireland.

c) The security requirements have been executed in a manner satisfactory to the Bank.

d) IR£1,000,000 Loan provided by Riga Limited is fully drawn.

e) All Directors Loans and the loan of IR£1,000,000 from Riga Limited are subordinated to Facilities made or to be made to the Borrower by the Bank.

f) The Borrower, Mr. Gilmartin, Mrs. Vera Gilmartin, Mr. O'Callaghan, AIB Capital Markets p.l.c. and Riga Limited shall enter into a Share Subscription Agreement in the form or substantially in the form of the draft dated 28th August 1991 as prepared by Messrs. William Fry.

g) Merrygrove Estates Limited becomes a subsidiary of Barkhill Limited and Merrygrove Estates Limited obtains agreement in a form satisfactory to the Bank to defer repayment of the Loan IR£300,000 payable to O'Callaghan Properties Limited until repayment in full of the Facilities set-out in this Letter.

3. **PREPAYMENT:**

a) The Borrower may on the last day of any Interest Period prepay the whole or any part of the Loan (being IR£100,000 or an integral multiple thereof) together with all outstanding interest up to the date of prepayment on giving the Bank prior notice in writing of its intention to do so.

b) In the event of the amount so prepaid being less than the balance of the Loan such prepayment shall be applied towards facility (b) until such is cleared, and then to facility (a).

c) *No amount prepaid shall be available for redrawing, and the total amount of facility (b) shall be reduced accordingly.*

d) *No prepayment shall be permitted other than in accordance with the provisions hereof, without the prior written consent of the Bank.*

4 ***NOTICE:***

a) *The Borrower shall give the Bank not less than three working days notice in writing of its intention to drawdown together with brief details of the use to which the funds are to be put.*

b) *The Borrower shall give the Bank not less than three days notice in writing of prepayment.*

c) *Any such notice of drawdown or prepayment shall be irrevocable and shall oblige the Borrower to drawdown or prepay the amount specified therein.*

5. ***INTEREST:***

a) *The Interest Rate will be set on the date of first drawdown and shall be reset on the first day of each Interest Period.*

b) *In the event that any drawing shall occur other than on the first day of an Interest Period, the rate applicable to such drawing shall be determined on the relative drawdown date in accordance with the provisions hereof for a period expiring at the end of the then current Interest Period.*

c) *Interest shall be payable on the last day of each Interest Period and on the date of final repayment of the Loan, should such date differ from that quoted above.*

d) *All interest payments shall be payable gross without deduction on account of taxes or otherwise.*

e) *Interest shall accrue from day to day (both before ant after judgement) on the amount of the Loan, such interest to be calculated In arrears up to the last day of each Interest Period on the basis of 365 day year.*

f) *In the event of interest or repayments not being paid on the due date interest on the amount overdue shall be charged at an additional rate of 5% per annum over the rate set out above and such interest shall be payable on demand by the Bank.*

6. ***RESERVE REQUIREMENTS*** *If the cost to the Bank of making or maintaining the Facility increases as a result of the introduction of or change in any reserve or liquidity requirements of the Central Bank of Ireland or other regulatory authority or from any change in any law or regulation (other than a change in tax payable on income), the Borrower shall pay to the Bank as additional interest on the Loan that percentage which will compensate the Bank for such additional cost.*

AIBQ 3 - 86

7. ***REPRESENTATIONS & WARRANTIES:*** *The Borrower warrants to the Bank that:-*

i) It has full power, authority and legal right to borrow hereunder and to observe the terms and provisions of this Offer Letter.

ii) It is not in default of any of the terms and conditions of this or any other agreement.

iii) No material litigation is pending or threatened in relation to its business or likely to have an adverse effect on its business.

8. ***NEGATIVE COVENANT*** *The Borrower shall not during the continuance of the Facility alter its Memorandum and Articles of Association in a manner prejudicial to the Bank without the prior consent in writing of the Bank.*

9. ***INSURANCE:*** *The Borrower undertakes that the properties mortgaged to the Bank will be adequately insured at all times during the term of the facility.*

10. ***CERTIFICATION:*** *A Certificate of the Bank as to any amount payable hereunder shall be final and binding on the Borrower save in the case of manifest error.*

11. ***WAIVER:***

i) A waiver by the Bank of any of the terms or conditions contained herein shall not constitute a general waiver of such term or condition.

ii) No failure or delay by the Bank in exercising any right, power or privilege granted to it hereunder, shall operate as a waiver thereof nor shall any single or partial exercise of any such right power or privilege preclude the further exercise of any such right, power, or privilege.

iii) The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

12. ***TIME:*** *In the construction of the provisions herein relating to the payment of monies, time shall be of the essence of the contract.*

13. ***BENEFIT OF FACILITY:*** *The Benefit of the Facility is personal to the Borrower and shall not be capable of assignment by the Borrower, in the whole or in part.*

14. ***ASSIGNMENT:*** *The Bank reserves the right to assign all or part of the Facility to any member of the AIB Group or to any other bona fide Bank, either within the State or otherwise, without the prior consent of the Borrower.*

AIBQ 3 - 87

ACCEPTANCE: *If the terms and conditions of the Facility are acceptable to you, we shall be obliged if you will so indicate by returning to us within twenty-one days:-*

i) a certified copy of a resolution of your Board authorising the acceptance of the Facility.

ii) the enclosed copy of this Offer Letter duly signed.

The facility herein offered is in addition to and not in substitution for that contained in the 1990 Facility Letter, the terms and conditions of which (save and to the extent that they are specifically varied by the provisions hereof) will remain in full force and effect.

Yours faithfully,

for ALLIED IRISH BANKS PLC.

AIBQ 3 - 88

APPENDIX 1

1. ***GREYS COTTAGE***

All that and those the hereditaments and premises comprised in Folio 12395 County Dublin.

2. ***O'DWYERS***

All that and those the hereditaments and premises comprised in Folio 7908F County Dublin.

3. ***SHARPS LAND***

All that and those the hereditaments and premises comprised in Folio 23732F County Dublin.

4. ***VAN HOOL***

All that and those the hereditaments and premises comprised in Folio 3197F County Dublin.

5. ***CORPORATION LAND***

All that and those the hereditaments and premises being part of the lands comprised in Folios 1678 and 1927 County Dublin.

6. ***CROM COTTAGE***

All that and those the hereditaments and premises comprised in Folio 8185 County Dublin.

APPENDIX 11

1. ***O'RAHILLY***

All that and those the hereditaments and premises comprised in Folio 8542F County Dublin.

2) ***MURRAY***

All that and those the hereditaments and premises comprised in Folio 8541F County Dublin.

AIBQ 3 - 90

APPENDIX III

1. ***DALE VIEW***

All that and those the hereditaments and premises comprised in Folio 541 County Dublin the subject matter of a Contract of Sale dated the 21st September, 1988 and made between John Desmond Bruton and Thomas Gilmartin in trust for the Borrower as the Purchaser.

2) ***DUBLIN COUNTY COUNCIL***

All that and those the hereditaments and premises comprised in Folios 4428 and 63421F County Dublin the subject matter of a Contract of Sale between Dublin County Council as Vendor and Thomas Gilmartin in trust for the Borrower as the Purchaser.

Return to report

AIBQ 2 - 402

FILE NOTE 20the January 1993.

Our Ref:MB/SH/6513/53

RE: BARKHILL/RIGA

Meeting at Bankcentre 20the January 1993.

Present: Owen O'Callaghan.
John Deane.
Dave McGrath.
Michael O'Farrell.
Mary Basquille.

RECENT DEVELOPMENTS

Owen O'Callaghan advised that there are currently 42 families of itinerents on the Quarryvale site - 14 will be moving by the end of March and Owen is hopeful that the entire site will be cleared by end of April, although he is prepared to go for injunctions if necessary. Security on the Bruton House has cost £600 per week and Owen has recently put in place an alternative arrangement whereby a builder will move into the house rent free under a caretakers agreement.

When asked to clarify the site boundary, Owen confirmed that the only element of the original L shape site which has not yet been acquired are the County Council lands fronting on to the new motorway, and one cottage adjacent to the Sharp Lands on the Fonthill Road which is occupied by a large family of itinerents. It was indicated that Tom Gilmartin had failed to acquire this small portion of land several years ago, however Owen has resumed negotiations - while this small strip of land is not material to the development as it is adjacent to the new roundabout planned from the Fonthill Road to the site, it was indicated that it was possible that the family may be moved on a temporary basis to the bungalow behind the Bruton House.

A revised development layout has been prepared in draft form following discussions with the planners. The new plan involves moving the retail element towards the Fonthill Road access, after the space earmarked for hotel and leisure facilities and the filling station, the McDonald Restaurant and the pub.

RETAIL PLAN

Some discussion is taking to place as to the merits of an open centre compared with an enclosed centre, and a decision must be taken shortly, to enable the final plans be drawn up. An open layout for the mall areas could reduce mall building costs by c.40% and would also reduce service charges for tenants.

The current plan incorporates three anchor stores with capacity for a fourth store to be incorporated in the plans in early 1994 when the new local Councils takes effect. Owen O'Callaghan advised that he is aiming to have planning permission obtained by the end of December 1993 on the basis of the current cap of £250,000 sq.ft. of retail space, which he estimates will gross up to 350,000 sq.ft. Marks & Spencers, Dunnes, Roches and Quinnsworth have all expressed interest to date and it was indicated that Marks & Spencers representatives will be meeting Owen O'Callaghan on 4the February next to progress discussions. Owen O'Callaghan is confident that the new Council will agree to a fourth anchor store next January subject to proving demand. They are currently working on submitting a detailed planning application by the end of March for all elements of the site - it was indicated that they are currently under pressure from the planners to speed up the application process. In view of the fact that the final plan submitted will have the support of the Council, it is expected that a decision would be made on the application by the end of June, or whenever the draft development plan is finalised. In this regard, target date for finalisation is the beginning of June, which could run to the end of July, at the latest, following which matters could be held up for a further 4/6 months on the basis of some objections are expected. In view of the foregoing, Owen O'Callaghan is confident that work could start as early as January 1994, or by March/April 1994 at the latest. He stressed that as for all previous developments, his team will be working closely with the County Manager and the planners to ensure that any contentious issues are raised and agreed in advance.

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With regard to a strategy for development, we were advised that the current priority is to ensure that planning is obtained as soon as possible. When the question of a development partner was raised, or selling-on some elements of the site, it was highlighted that selling the site without planning in the current climate would not give a decent return, whereas disposal of the hotel/leisure and pub elements of the site could generate up to £3.5m with planning. John Deane then indicated that they would be reluctant to actively seek an equity partner until planning had been finalised, while Owen suggested that this was something that could perhaps be followed quietly. In this regard, it was mentioned that an insurance company had expressed interest last year in becoming a development partner and some tentative approaches will now be made to see if they remain interested. It was indicated that Daly Hickey may be interested in a merger with Green and Barkhill, and while it was suggested by John Deane that they would make a suitable partner for the industrial land, this was not considered realistic as they already appear to be committed on their West 1 project. M.O'Farrell advised that it had recently come to our attention that sites for a major Stena Pub were sought and appeared to give a contract figure to them over the next few years.

COMPETING DEVELOPMENTS - ADJACENT SITES

In relation to the Neilstown site, the Town Centre zoning has been retained (primarily to avoid legal action) however the Neilstown site is effectively land locked while Merrygrove retains an option on the site for which a Stadium has been proposed. In addition, the road infrastructure in this area would not be adequate for a major retail/town centre development and for this reason the Neilstown location is not considered a threat short term.

With regard to the Clondalkin Mills site, John Deane advised that Jim Mansfield has now received planning permission but will have to reassure the planners in relation to potential flooding problems on site.

Land adjacent to Barkhill's site which has recently been re-zoned industrial for the IDA was discussed, and it was indicated that development of this site is unlikely to be a short term option. ~~that~~ Apparently Dublin Corporation who previously owned the land gave the land to the IDA some time ago, but the IDA have no funds for development.

TOM GILMARTIN

Dave McGrath highlighted that a commitment had been given to Tom Gilmartin last December that a joint meeting of the Barkhill shareholders would take place during January and enquired whether O'Callaghan/Deane had formulated any strategy to bring him on side. It was agreed that this was an important issue, but John Deane highlighted previous difficulties in getting Tom to attend meetings. It was suggested that Tom would be lined up for a meeting on 9th February 1993, by which time an outlined development plan would be prepared for discussion between all shareholders.

BARKHILL'S REQUIREMENTS FOR THE COMING YEAR

Basically O'Callaghan & Deane feel that the Barkhill debt will have to be carried for a further year which will involve a further rollup of interest. When pressed, it emerged that they would also be expecting AIB to fund fee outlay in relation to the planning application - Owen O'Callaghan advised that Ambrose Kelly had been requested to give an estimate of his fees on a cost basis, ~~for~~ on conditional back end fee payable at a later stage of the development (generally architects fees prior to planning are in the region of 6% of total development costs).

AIBQ 2 - 404

Dave McGrath responded that while we would be recommending to our Board a further roll up of interest charges for the coming year, there would be no funding available from AIB for further fee outlay. In this regard, it was highlighted that the last increase in facility sanctioned (from £9m to £14.5m) had incorporated c.£0.9m to acquire the County Council land which remains outstanding, despite the fact that this portion of the facility and more besides has been utilised for increased fee/land payments beyond the level anticipated. Owen O'Callaghan appeared somewhat taken aback at this and advised that Riga did not have the ability to pick these fees either. He then asked whether AIB were prepared to live with the consequences and requested clarification of our thinking/objectives in relation to Barkhill - Dave McGrath outlined that, in AIB's view, the priority is to obtain planning permission as soon as possible at the lowest cost; He indicated the view the development was too large for Riga to handle alone and that serious consideration should be given to disposing of part of the site at the earliest possible date. In addition, Barkhill/Riga should give ongoing attention to seeking a development partner for the project.

U.S. REFINANCING

John Deane outlined that following the recent meeting with the American Bankers Insterstate Johnson Lane, it had emerged that the cheapest options for refinancing would only become available as soon as the anchor stores are tied up - in the meantime the existing borrowing could be refinanced at a low margin on the basis of a guaranteed take-out from AIB. Some discussion followed on the benefit, in cost terms, of proceeding along these lines, and the dangers of incurring a substantial exchange loss if the debt had to be reconverted to Irish Pounds. It was indicated that AIB would be interested in pursuing this refinancing option provided the exchange risk could be adequately covered off.

OUTSTANDING FEES

Owen O'Callaghan advised that a payment of £64k was still due to Frank Dunlop in relation to zoning costs and requested payment of this invoice from Barkhill's loan facility. He was clearly disappointed when told that this would not be possible in view of the fact that the facility was drawn to the maximum amount permitted, and he highlighted that Riga would be covering all fees in relation to the Green takeover and the Stadium proposal (which has indirect benefit for Barkhill) and had also paid security costs in relation to the Bruton House. In relation to urgent fees, he also indicated that approximately £10k would be required after all itinerents were cleared from the site, to put up an earth mound around the site in order to avoid further itinerents moving in. At this point, it was highlighted that a budget for the coming year should be prepared as soon as architects/planning fees had been quantified.

BARKHILL AUDIT

Owen O'Callaghan gave us a copy of a letter from Deloitte & Touche stressing the need for an early meeting to finalise the audit, and highlighting the potential difficulties if Barkhill appears on the next companies office strike off notice. It was agreed that Owen would request Deloitte & Touche to forward a similiar letter to Tom Gilmartin

AIBQ 2 - 405

RIGA

Owen O'Callaghan raised the subject of the increased overdraft facility previously sought and requested an update on this matter. Michael O'Farrell replied that we had been waiting for funds flow details from John Deane since early December, highlighting income from each development less associated costs, together with details of any outstanding creditors. Owen expressed dissatisfaction at the way this matter had been regularly deferred since it was first raised in early 1992. He confirmed that Riga's ability to improve its cash flow position through asset disposal was not a realistic option, apart perhaps from taking an investment partner in Douglas Shopping Centre where rents are generating a 10% return compared to a 13% funding cost for related borrowings. The aspects of most concern appear to be the £2.5m equity injection in Delview Ltd (Cumberland House) and funds invested in Barkhill, neither of which appear to capable of generating any income in the short term. Owen requested John Deane to provide AIB with the required information at the earliest possible date to enable us progress discussions on this matter and suggested that it may be appropriate to meet on the morning of the 9th February to progress this matter, prior to the Barkhill meeting.

The interest rate on the Arthurs Quay Developments Ltd overdraft facility was queried by Owen O'Callaghan. Apparently the relevant rate is Prime +1.5% which averaged at over 20% in recent weeks. We highlighted that the AQD facility of £400k was overdue for review since the end of December last and, while we were aware that John Deane had already requested continuation of this facility for a further year, consideration of this request was something that could only be considered in the light of Riga's cash flow situation.

With regard to the North Main Street project, John Deane advised that the Dunnes contract had not yet been signed. He commented on past experience with Ben Dunne in relation to Merchants Quay Shopping Centre where Ben Dunne refused to sign a contract but provided monthly stage payments without any difficulties. While it was indicated that Frank Dunne is looking after the North Main store and that signing of documentation should not present difficulty, John Deane asked how we would react if Riga were unable to comply with the loan condition relating to signed contracts - he confirmed that Dunnes had already paid £670k in advance of the due date (re site acquisition). We replied that we would need to see a revised cash flow for this project highlighting peak borrowing requirements to enable us consider matters further.

SUMMARY - ISSUES TO BE FOLLOWED UP

Barkhill	-	budgeted outlay for coming year
Tom Gilmartin	-	Contact to arrange meeting for 9th February 1993.
Riga	-	Funds flow statement and revised cash flow for North Main Street.

M. Basquille,
Assistant Manager,
Corporate Banking.

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28/7/93

Backhill / Points raised by O.O'Callaghan in meeting with D.Chambers/DHL

- Planning Application OK
- Full planning expected early Jan (no allow. for Bord Pleanal
- M+S lined up
- Q Roen want Penneys also
- Roches - Reply options open
-

Rigg

- N. Main St. all Ltr Fllcolc (Burger King for Redevelt)
- Dunns hand over shortly - everything enlarged.
- Cumberland Hse - Abby/C.Gallagher int. - also in Backhill Shop
- Carlow to move ahead soon.

Return to report

CHAPTER TWO – THE QUARRYVALE MODULE

PART 5 - THE FINANCIAL RELATIONSHIP BETWEEN MR O'CALLAGHAN AND MR DUNLOP, AND RELATED MATTERS

INTRODUCTION

1.01 As set out in Part 4, in the wake of the second Heads of Agreement of 15 February 1991 and following upon the lodging of the motion to rezone the Quarryvale lands, Mr O'Callaghan commenced the lobbying campaign and duly engaged Mr Frank Dunlop[1] of Frank Dunlop & Associates Ltd to assist in this endeavour.

1.02 In this Part, the Tribunal considered the payments made to Mr Dunlop by Mr O'Callaghan, Riga Ltd ('Riga') and Barkhill Ltd ('Barkhill') over the course of a ten year period commencing in 1991 and ending in 2001. During this period a total of IR£1,808,556.81 was paid to or for the benefit of Mr Dunlop by Mr O'Callaghan through Riga/Barkhill. Of this circa IR£1.8m, in excess of IR£1.6m, (IR£1,633,556.81) was paid to Mr Dunlop's company, Frank Dunlop & Associates Ltd ('Frank Dunlop & Associates')[2] and the balance of IR£175,000 was paid to Mr Dunlop through his company, Shefran Ltd ('Shefran').

1.03 The sum of IR£1,633,556.81, paid to Frank Dunlop & Associates by Riga and Barkhill can be broken down as follows:

1991 - IR£16,712.71, paid by Barkhill.

1992 - IR£157,386.66, of which IR£87,386.66 was paid by Barkhill and IR£70,000 paid by Riga.

1993 - IR£110,238.38, of which IR£20,340.60 was paid by Barkhill and IR£89,897.78 paid by Riga.

1994 - IR£10,825, paid by Barkhill.

1995 - IR£14,148.76, paid by Barkhill.

1996 - IR£36,207.50, paid by Barkhill.

1997 - IR£203,348.83, of which IR£78,650 was paid by Barkhill and IR£124,698.83 paid by Riga.

1998 - IR£612,143.57, of which IR£72,600 was paid by Barkhill and IR£539,543.57 paid by Riga.

1999 - IR£143,959.19, of which IR£72,942.84 was paid by Barkhill and IR£71,016.35 paid by Riga.

2000 - IR£310,436.21, of which IR£36,300 was paid by Barkhill and IR£274,136.21 paid by Riga.

2001 - IR£18,150, paid by Riga.

[1] For further details of the circumstances of Mr Dunlop's retention see Part 9

[2] Of this figure, the payments of IR£70,000 in November 1992 and IR£25,000 in September 1993, invoiced by Frank Dunlop & Associates, were made directly to Frank Dunlop. See Part 6.

1.04 For convenience, those payments are considered in this Part under five main headings, namely: (1) the Shefran Payments; (2) the Quarryvale Payments to Frank Dunlop & Associates; (3) the retainer payments to Frank Dunlop & Associates; (4) other Financial Compensation; and (4) the Legal Fees Payments to Frank Dunlop & Associates.

1.05 In order to understand these payments it is also necessary to have some understanding of Mr Dunlop and his *modus operandi*. Consequently, these matters are considered in the first section, including the circumstances in which Mr Dunlop became involved in Quarryvale.

MR DUNLOPS INVOLVEMENT

MR DUNLOP

2.01 Mr Dunlop was born in Kilkenny in 1947. Following a period as a journalist in RTE, he was appointed as Press Secretary to the Fianna Fail Party in 1974. In 1977, he was appointed Head of the Government Information Service. In 1978, Mr Dunlop was appointed Government Press Secretary, a position he held until the fall of the Fianna Fáil led Government in 1982.

2.02 A new Fine Gael led Coalition Government took office in 1982. Mr Dunlop was appointed an Assistant Secretary in the Department of Education on the recommendation of the Minister for Education, Mr John Boland. Subsequently, when Mr Boland was appointed Minister for the Environment, Mr Dunlop moved to the Department of the Environment as its Assistant Secretary, and was later appointed Assistant Secretary in the Department of Public Service.

2.03 Mr Dunlop left the public service in 1986 and became an Executive Director of a public relations company, Murrays Consultants. In late 1989, he established his own company, Dunlop and Associates Ltd (later Frank Dunlop & Associates Ltd). He described the activity of that company as the provision of services of a dual nature, namely public relations and public affairs, which included lobbying. Shortly after Dunlop & Associates was established, two further companies were incorporated for Mr Dunlop, namely Sheafran Ltd (later changed to Shefran) and Xerxes Consult (Jersey) Ltd (an offshore company).

THE WAR CHEST ACCOUNTS

3.01 Mr Dunlop as well as his companies operated a number of bank accounts. Of these, 5 were what he referred to as his ''w*ar chest'*[3] accounts, namely:

(i) An account in the name of Shefran at AIB College Street (Account No. 48181083 opened 15 April 1992) ('the Shefran AIB 083 account');

(ii) Bank of Ireland account at Westland Row in the name of Sheafran (Account No. 45735780 opened 1994) ('the Shefran Bank of Ireland 780 account');

(iii) an account at Irish Nationwide Building Society ('INBS 910 account');

(iv) an account at the Terenure branch of AIB ('AIB 042 Rathfarnham account'); and

(v) an offshore account in the name of his company Xerxes Consult (Jersey) Ltd at Midland Bank Trust, Jersey.

3.02 According to Mr Dunlop, the purpose of these accounts was to provide a repository for significant sums of money which he wanted to keep secret. For example, Mr Dunlop testified that he opened his AIB 042 Rathfarnham account in order to *'...create a fund in which I would have ready cash.'*

3.03 Between 1990 and 1993 and, in particular, in the period May/June 1991, and in November 1992, significant large round figure sums were both lodged to and withdrawn from these accounts. In tandem with Mr Dunlop's operation of these accounts for the purposes of both lodging and withdrawing cash sums, he utilised his company Shefran to receive payments in connection with his retention as a lobbyist for the Quarryvale lands rezoning project.

MR DUNLOP'S ENGAGEMENT WITH QUARRYVALE

4.01 This section considers: the circumstances in which Mr Dunlop became engaged as a lobbyist for Quarryvale; the nature of the agreement between him and Mr O'Callaghan; Mr Gilmartin's opposition to his engagement; and Mr Gilmartin's and AIBs knowledge of his engagement.

CIRCUMSTANCES OF MR DUNLOP'S ENGAGEMENT

4.02 Mr O Callaghan engaged Mr Dunlop as a lobbyist for Quarryvale in the early months of 1991, although there is some dispute regarding the exact date of his engagement.

4.03 According to Mr O'Callaghan, when he decided to retain Mr Dunlop as a lobbyist, he did so in light of the imminence of the Quarryvale rezoning vote. Mr

[3]The Tribunal understood Mr Dunlop's 'war chest' to be a fund he built up for, *inter alia*, the purpose of having ready funds available to him for disbursement to politicians.

O'Callaghan stated that in his discussions with Mr Gilmartin about the Quarryvale rezoning, Mr Gilmartin had focused on contacts he had with senior politicians who, as far as Mr O'Callaghan was concerned, were of no benefit to the Quarryvale project. Therefore, according to Mr O'Callaghan, the employment of Mr Dunlop as a lobbyist was predicated on the necessity to lobby councillors in Dublin County Council.

4.04 Mr O Callaghan acknowledged that in 1991 he was aware of Mr Dunlop's Fianna Fáil connections and that he was aware that the support of Fianna Fáil councillors, who held a majority on the County Council, would be required to ensure the success of the rezoning proposal. He told the Tribunal that Mr Dunlop was engaged: '... [to] *introduce me to as many as he possibly could of the 78 County Councillors, let me make my case to them.'*

THE AGREEMENT

4.05 Mr O'Callaghan explained the services which Mr Dunlop agreed to provide and in respect of which he was to be paid his fees, in the following terms:

> *The arrangement with Frank Dunlop because I was now using his office, using his staff, using his car, using his telephones, in fact using everything, plus himself more or less on a full-time basis, was that if the vote took place in April of '91 he would charge a fee, an all in fee, that was his own fee included his office expenses, his staff, his outlay, the whole lot of 80,000 pounds. If the vote went beyond April of '91 the fee could go to 100,000 pounds inclusive, including everything, expenses, outlay, office, staff, phones, everything.*

4.06 Mr O'Callaghan did not tell Mr Gilmartin of his arrangement to pay either IR£80,000 or IR£100,000 to Mr Dunlop

4.07 Mr O'Callaghan told the Tribunal that he subsequently entered into a second *'fees'* agreement with Mr Dunlop pursuant to which Mr Dunlop's professional fee was to be IR£75,000 plus IR£20,000 '*arrears'*. Mr O'Callaghan believed that this arrangement was agreed at some time between June and August 1991.

4.08 According to Mr O' Callaghan, at the same time he and Mr Dunlop agreed as to the manner of the payment of Mr Dunlop's fees, they had discussed what was to be involved in the lobbying of councillors. Mr Dunlop had informed him that:

> '*...I* [Mr O'Callaghan] *would have to be prepared to, as I said, spend most of the week in Dublin. Every week right up to the date of the vote and*

that I would have to go and meet, he would arrange it, but I would have to meet as many of the councillors as were prepared to meet us. Meet them on a one-to-one. Explain to them what our proposal was. And try and convince them the advantages of supporting Quarryvale as against Neilstown and at the same time to ensure that the Quarryvale site would go ahead as well as the Blanchardstown site would go ahead and that we would not really disrupt the retail hierarchy in the rest of West County Dublin. That is what the challenge was.'

4.09 Mr O'Callaghan acknowledged that he and Mr Dunlop had discussed the then imminent Local Elections. Asked if Mr Dunlop discussed with him whether the payment of any political donations would be part of his duties as a lobbyist, Mr O'Callaghan stated:

I can't say that we specifically had that discussion but I'm pretty sure that I would know even then that as a political lobbyist that Frank Dunlop would be making political contributions to politicians.

4.10 Mr O'Callaghan maintained that during the course of his discussions with Mr Dunlop the subject of Mr Dunlop making political donations on Mr O'Callaghan's behalf '*did not come up.'*

4.11 According to Mr Dunlop his original agreement with Mr O'Callaghan in 1991 in relation to the project was for a fee of IR£100,000 of which he claimed he had issued invoices for IR£80,000 in total and had been paid that amount. His belief was that he did not issue an invoice for the missing IR£20,000 and maintained that Mr O'Callaghan agreed with him that he would make up the shortfall in 1992.

4.12 Mr Dunlop told the Tribunal that he did not believe that a meeting recorded by him in his diary for 26 April 1991 in Buswells Hotel with Mr O'Callaghan and noted *'Eoin (Buswell's Hotel)',* was the meeting at which he discussed the manner in which he was to be paid by Mr O'Callaghan.[4] The Tribunal was satisfied that their financial arrangement was probably made on that date.[5]

4.13 Mr Dunlop's diary for 26 April 1991, furnished to the Tribunal in October 2001, revealed a heavily attempted obliteration of an entry immediately above the entry in which Mr Dunlop had recorded the meeting with Mr O'Callaghan. Forensic analysis carried out for the Tribunal revealed that it was Mr Gilmartin's name that Mr Dunlop had attempted to obliterate. Mr Dunlop explained this attempted obliteration to the Tribunal as follows:

[4] Mr O'Callaghan disputed the date of this meeting as identified by Mr Dunlop.
[5] See Part 9

'*Presumably on the basis that I did not meet him. I did not have a meeting with Tom Gilmartin and Owen O'Callaghan in Buswells Hotel on the day following the meeting that I had with them and Liam Lawlor.'*

4.14 The Tribunal believed that if Mr Dunlop's explanation was correct, he would most likely have drawn a simple line or lines through Mr Gilmartin's name rather than attempt to obliterate it completely. There are many instances in Mr Dunlop's diary where he used this commonly employed method to cross out a diary entry. However the Tribunal was unable to determine the real reason for Mr Dunlop's determined effort to conceal the reference to Mr Gilmartin.

4.15 There was some conflict between Mr O'Callaghan's and Mr Dunlop's evidence as to what had been agreed between them on the issue of the quantum of his fees and the manner in which Mr Dunlop was to be paid.

4.16 The thrust of Mr Dunlop's position was that he and Mr O'Callaghan had agreed a fee of IR£100,000 for Mr Dunlop, to be paid through Shefran and that it would be paid within a certain timeframe and that his outlay and expenses were to be invoiced through Frank Dunlop & Associates. Mr Dunlop made no mention of an agreed IR£80,000 'fee' inclusive of his outlay and expenses on the basis that the Quarryvale vote would be concluded by the end of April 1991 or, as Mr O'Callaghan contended, of an alternative fee arrangement of IR£100,000, inclusive of outlay and expenses, if the Quarryvale vote took place after April 1991. Mr Dunlop's evidence did not allude to any agreement having been reached in the period June to August 1991.

4.17 According to Mr Dunlop, at the time of his discussion with Mr O'Callaghan about payments to him, Mr Dunlop was conscious of the imminence of the 1991 Local Election and had appreciated (having regard to the fact that a rezoning Motion had been lodged with the County Council on 15 February 1991) that,'*If a strategy to get this matter dealt with prior to the Local Elections was to take place it had to be done before a certain date.'*

4.18 Mr Dunlop acknowledged to the Tribunal that at the time of his discussions with Mr O'Callaghan regarding the manner in which he was to be paid his fees, he, Mr Dunlop knew that it was likely that payments of money to councillors would be involved in order to ensure successful outcomes to the Quarryvale rezoning proposal and in the course of his evidence he testified to making disbursements to councillors in the period May June 1991 from his '*confluence of funds*', which included *inter alia*, monies provided by Mr O'Callaghan. Mr Dunlop also acknowledged that it was his intention to use

'*some'* of the funds as would be paid to Shefran by Mr O'Callaghan for the purpose of paying councillors.

4.19 Mr Dunlop however denied that in the course of the negotiation with Mr O'Callaghan of what, he claimed, was his professional fee, he had any discussion on the subject of payments to councillors. Nor, he stated, did he discuss such an issue with Mr O'Callaghan by reference to the suggestion '*that the ways of the world'*[6] would have to apply.

MR GILMARTIN'S OPPOSITION

4.20 From the outset, Mr O'Callaghan was aware of Mr Gilmartin's opposition to the retention of Mr Dunlop[7] and initially kept his retention secret from him.

4.21 In the course of his sworn evidence on Day 882, Mr O'Callaghan gave the following reason for his desire to keep Mr Dunlop's arrangement in relation to the project secret from Mr Gilmartin:

> '*Because I was as I said again timing between then and the actual vote in the middle of May at that time we expected the middle of April was very, very short. And I was hoping that Tom Gilmartin might have had some few councillor contacts that would be on side. And (when) Tom Gilmartin discovered that I was using Frank Dunlop against his wishes, he might withdraw that council support from me, I felt he was that type of a person. So I didn't want him to know that I was using Frank Dunlop in case I would lose the few Councillors that he might have had. I discovered afterwards that he only had two Councillors on side, that was McGrath and Gilbride, so it didn't make any great difference.'*

4.22 Also on Day 882, Mr O'Callaghan elaborated as follows;

> '*The purpose of that exercise was to keep from Mr Gilmartin the fact that I was using Frank Dunlop and at the same time to protect the councillors, to prevent Tom Gilmartin from taking from me, supporting Quarryvale the councillors that I felt would have been on his side.'*

4.23 In the course of his evidence Mr O'Callaghan maintained that once appraised of Mr Dunlop's retention, Mr Gilmartin's objection to Mr Dunlop diminished, although he never became '*enamoured*' by him.

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[6] A phrase Mr Dunlop acknowledged he used in discussions with other landowners/developers when he was being retained as a lobbyist.

[7] See Part 9 of this Chapter.

4.24 Mr O'Callaghan's evidence in this regard was in contrast to the position advanced by him in his 3 May 2000 statement to the Tribunal, in which he stated, '*…Tom Gilmartin totally rejected any involvement of Frank Dunlop'* in Quarryvale. In that statement Mr O'Callaghan also stated the following:-

> '*In view of Tom Gilmartin's opposition to using Frank Dunlop, I agreed with Frank Dunlop that he could invoice using his Company Shefran in order to keep Frank Dunlop's involvement from Tom Gilmartin. However when I sought funds from AIB as Barkhill's Bankers to discharge the invoices or to reimburse Riga, then Frank Dunlop's position had to be disclosed. Some of the Invoices were VAT rated 0. I did not complain. However there would not be any loss of revenue as if the Invoices did contain a VAT element, then this would have been recoverable by Barkhill/Riga.'*

4.25 Mr Dunlop told the Tribunal that the meeting(s) wherein he and Mr O'Callaghan agreed on the mechanisms by which he was to be paid for his work as a lobbyist promoting Quarryvale took place against a backdrop of opposition by Mr Gilmartin[8] to Mr Dunlop's role as lobbyist for Quarryvale.

4.26 Asked for the reasons for Mr Gilmartin's objection to him, as advised to him by Mr O'Callaghan, Mr Dunlop said:

> '*…He said that Gilmartin had obviously been talking to people or had spoken to various people, and that he was vehement in relation to me, that he didn't want me involved.'*

4.27 And:

> '*Well, in fairness to Mr O'Callaghan, I didn't pursue it any further with him in that particular context. But I mean, he just said that Gilmartin had said that he did not want Frank Dunlop involved. Now again Judge, hindsight is a wonderful thing, and we subsequently discover in relation to the evidence that Mr Gilmartin has given, that he suspected, or was told that I had a relationship with Liam Lawlor, and that arising out of the experience that he had already had with Mr Liam Lawlor, that he didn't want me involved. But, there was – it was as simple as Mr O'Callaghan was having a difficulty with Mr Gilmartin because Gilmartin did not want me involved, but Mr O'Callaghan did. And AIB.'*

[8] Mr Gilmartin's first meeting with Mr Dunlop is considered in Part 9 of this Chapter.

AIB'S KNOWLEDGE OF MR DUNLOP'S ENGAGEMENT

4.28 Mr Jim Donagh[9] told the Tribunal that he became aware of Mr Dunlop's involvement in Quarryvale on 26 April 1991, which was approximately three weeks prior to the successful motion on 16 May 1991. It was his understanding that Mr Dunlop was *'assisting'* Mr O'Callaghan in *'the advancement of the obtainment of zoning of the site.'*

4.29 Mr Eddie Kay[10] recalled seeing Mr Dunlop at the celebration function held by Mr O'Callaghan following the successful rezoning motion before Dublin County Council on 16 May 1991, in a hotel next door to Dublin County Council's offices. He recognised Mr Dunlop from newspaper articles. Mr Kay said that this was the first hint he had of any involvement by Mr Dunlop in Quarryvale.

4.30 Mr Kay said that AIB was not asked by Mr O'Callaghan to approve of Mr Dunlop's involvement. However, he suggested that if the bank had been asked, it would almost certainly have given its approval as he was well known in the public relations area. Mr Kay also said that AIB assumed that Mr O'Callaghan would have wanted to appoint his own people to the project and that AIB would have little reason to concern itself with who exactly was being engaged. The bank was given information on a general basis as to who Mr O'Callaghan had appointed or intended to appoint, but was prepared to let Mr O'Callaghan do his own thing, within reason.

4.31 AIB personnel at all times denied any knowledge at any time of corrupt payments made by Mr Dunlop to politicians, including councillors.

MR GILMARTIN'S KNOWLEDGE OF MR DUNLOP'S ENGAGEMENT

4.32 Mr O'Callaghan told the Tribunal that shortly after he and Mr Dunlop entered their arrangement, Mr Gilmartin (and later AIB) became aware of Mr Dunlop's involvement. It is clear from the evidence of Mr Dunlop, Mr O'Callaghan, and Mr Gilmartin that Mr Gilmartin was made privy to Mr O'Callagahan's intention to retain Mr Dunlop as a lobbyist at a meeting on 25 April 1991. Moreover, by 2 May 1991, Mr Dunlop faxed to Mr Gilmartin certain information connected with the Quarryvale rezoning proposal thereby informing him directly of his involvement as a lobbyist for Quarryvale.

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[9] Mr Donagh held the position of Assistant Manager Corporate Banking Division in AIB, reporting to Mr Kay. His involvement in the Quarryvale was within the period 1990 to 1992.

[10] In his capacity as the Senior Manager of Property and Construction in AIB's Corporate Commercial Division, Mr Kay was the bank executive who (with Mr Jim Donagh) dealt mostly with Mr Gilmartin/Barkhill between late 1989 and approximately September 1992 (including meeting Mr Gilmartin in London in December 1992).

THE SHEFRAN PAYMENTS

5.01 Between 16 May 1991 and 17 February 1993, Mr O Callaghan's company Riga and Barkhill made six individual payments to Shefran amounting to IR£175,000.

5.02 Mr Dunlop and Mr O'Callaghan both maintained that all the Shefran payments were preceded by invoices issued in the name of Shefran and addressed to Riga. None of the invoices discovered to the Tribunal made provision for VAT and each was unnumbered.

5.03 The majority of the cheque payments made to Shefran were cashed by Mr Dunlop. Insofar as Mr Dunlop made lodgements to bank accounts from the proceeds of the six Shefran payments he received from Riga/Barkhill in the period May 1991 to February 1993, such lodgements (save one to discharge a loan obtained by Mr Dunlop in February 1992) were made to 'war chest' accounts (see above) then being operated by him. None of the payments made to Mr Dunlop using the name Shefran were lodged to Frank Dunlop & Associates bank accounts.

SHEFRAN

5.04 SHEAFRAN was incorporated as a limited liability company on 6 March 1990. The name SHEAFRAN was changed to SHEFRAN on 3 October 1991. Mr Dunlop explained that this was done because the spelling of the company name at the date of incorporation was erroneous,[11]and that it had been his intention to incorporate the company as 'Shefran'. Shefran, Mr Dunlop claimed, was an amalgam/derivative of the spellings of Mr Dunlop and his wife's Christian names, (SHEila and FRAnk). In the following pages the company will be referred to as SHEFRAN, unless otherwise indicated.

5.05 In the years 1991 to 1994 Shefran's auditors, Coyle & Coyle, based on information provided by Mr Dunlop, recorded the company as a non-trading company, a position Mr Dunlop acknowledged to the Tribunal was incorrect. In fact, Shefran, in the years 1990 to 1994 was in receipt of income and had during that time opened at least two bank accounts.

5.06 Shefran did not maintain books or records for auditing or other purposes. Mr Dunlop described Shefran as a vehicle utilised by him to receive professional fees which he did not wish to appear in the books of his company, Frank Dunlop

[11]For convenience, this Report will, in general, refer to the payments made to Mr Dunlop's said company, whether SHEAFRAN or SHEFRAN, as the SHEFRAN payments, unless the context otherwise requires. Equally, and on the same basis, references to Mr Dunlop's said company will be to SHEFRAN.

& Associates. Mr Dunlop also described Shefran as a source of '*ready cash*', a vehicle for personal income, and as a means of evading tax.

REASONS FOR PAYMENTS TO SHEFRAN

6.01 Mr Dunlop told the Tribunal that, because of Mr Gilmartin's opposition to his involvement in Quarryvale, he had introduced the idea of using Shefran for invoicing purposes. It was therefore agreed that Mr Dunlop would invoice his fees through this entity. Mr Dunlop maintained that it was also agreed that he would recover costs and expenses incurred by him via Frank Dunlop & Associates.

6.02 According to Mr Dunlop, on Day 763, Mr Dunlop stated as follows:

A. In, on I think the second meeting I had with Mr Owen O'Callaghan, whom I had never met previously, and he outlined to me the difficulties that he was having with Mr Tom Gilmartin in relation to me, notwithstanding any other difficulties he was having with Mr Gilmartin, in relation to me.

That Mr Gilmartin had specifically made it clear that he did not want me involved. I told Mr O'Callaghan of this other company that I had, a company called Shefran, which as you quite rightly say had no bank account at that stage, and that I could invoice him through that company, to which Mr O'Callaghan agreed.

6.03 According to Mr Dunlop the agreement, whereby he was to receive fees through Shefran and outlays and expenses through Frank Dunlop & Associates was discussed solely between himself and Mr O Callaghan.

6.04 Mr Dunlop told the Tribunal that what was intended to be kept secret from Mr Gilmartin was the payment of his fees and not his involvement *per se* as a lobbyist for Quarryvale. Mr Dunlop said his proposed involvement would within a short time have become known to Mr Gilmartin because of his lobbying activities with councillors, some of whom were also in contact with Mr Gilmartin.

6.05 Mr Dunlop's testimony in this regard was at odds with pronouncements reported in the press in October 1998, as having been made by him at that time in relation to Shefran. Specifically, on 11 October 1998, during the course of contact between Mr Gilmartin and the Tribunal, and some five days following the Tribunal first contacting Mr Dunlop in relation to his involvement with Quarryvale, an article was published in the Sunday Independent Newspaper under the heading, '*Dunlop's PR fees paid through Channel Isles – linked company*'.

6.06 The article reported, *inter alia*, that:

Last week in the company of his Solicitor and in an interview which he tape-recorded, Mr Dunlop said that Shefran was a company 'under my indirect control. [12]

And:

Yesterday, in a telephone interview, he added: 'Tom Gilmartin did not want me under any circumstances – and I use that word advisedly – involved in the Quarryvale project. In order to avoid him being aware of my involvement, invoices for professional services issued were through Shefran.

6.07 In the course of his evidence on Day 763, Mr Dunlop acknowledged that, as was evident from the newspaper report, by late 1998 he had publicly stated that the reason why he had decided to invoice Barkhill and Riga through Shefran, was namely, to conceal his (Mr Dunlop's) involvement from Mr Gilmartin.

6.08 On that same day, the following exchange took place between Tribunal Counsel and Mr Dunlop as to the purpose of using Shefran to receive payments from Mr O'Callaghan:

'Q. …what you were keeping from Mr Gilmartin in 1991 are the funds that are being paid to Shefran, is that correct?

A. Yes, yes.

Q. Right?

A.That is the purpose of my discussion with Mr O'Callaghan'

Q. So that yourself and Mr O'Callaghan agree that your keeping these funds a secret from Mr Gilmartin?

A.Correct

Q. Fine. And that was the purpose of the Shefran payments, if I understand your evidence to date correctly, is that right?

A. Arising out of the discussion, we'll keep this money, you are going to pay me these professional fees which we have agreed, Gilmartin doesn't want me involved, I am not going to work without being paid, I have this other company, you can pay them into that. Now, I could equally have said I don't give a toss about Tom Gilmartin whether he knows or not, so all the invoices …you are going to get from Frank Dunlop and Associates.'

[12] In his evidence to the Tribunal on Day 763, Mr Dunlop corrected this quotation and confirmed that Shefran had been under his control at all times.

6.09 On Day 763, it was put to Mr Dunlop by Tribunal Counsel that his evidence regarding the purpose of making payments through Shefran was untrue:

> *'Q. I suggest to you, Mr Dunlop, that your story, that the Shefran payments were routed through Shefran to avoid Mr Gilmartin knowing about it are untrue, because on 16th May 1991, which is the date you first received a Shefran payment, was the same date that Mr Gilmartin, according to your statement, congratulated you on the work you had done in the rezoning of Quarryvale?*
>
> *A. I do not dispute any of the facts that you have outlined, but I do dispute, vehemently, and will continue to do so, is that the scenario that you paint as some sort of ineluctable scenario, is wrong. I don't accept that, and I won't accept it. I made the arrangement with Mr O'Callaghan on foot of the discussion that I had with Mr O'Callaghan, in the circumstances that I outlined. I have also said to you in my narrative statement the circumstances in which Mr Gilmartin, distasteful and all as it is now to recollect it, actually gave me a bear hug in the upper room in the Royal Dublin Hotel and congratulated me and said 'we couldn't have done it without you, Frank'. Yes that is indisputable.*
>
> *Q. I am saying to you, Mr Dunlop, that that is inconsistent with setting in place a system of payments in order, you say, to prevent Mr Gilmartin, in 1991, knowing that you were involved in the transaction. And I am suggesting as an alternative reason that the separate Shefran system, is that you were putting in place, at a minimum, a mechanism whereby you were putting yourself in funds in order to bribe Councillors to secure the rezoning of Quarryvale?*

6.10 Mr Dunlop acknowledged that because of the dual system, agreed between himself and Mr O'Callaghan, for the payment of his professional fees through Shefran and the recovery of outlays and expenses through Frank Dunlop & Associates, it was probable that Mr Gilmartin would, in due course become aware of payments being made to Frank Dunlop & Associates. However, Mr Dunlop continued to maintain that, as far as he and Mr O'Callaghan were concerned, Mr Gilmartin's opposition to his, Mr Dunlop's, involvement in Quarryvale had been dealt with by the use of Shefran. Mr Dunlop stated:

> '*...Mr Gilmartin and Mr O'Callaghan have obviously had a conversation, when, I don't know, in relation to my involvement. Mr Gilmartin strongly demurs to the effect that the advice that Mr O'Callaghan is getting from*

others, and then I'm presuming here, including Mr Lawlor, that I should become involved causes a difficulty.

In that if Mr O'Callaghan is to pay me the amount of money that we have agreed through Frank Dunlop &Associates, that direct, that directly identifies my involvement. Mr O'Callaghan said that it was a difficulty we had with Mr Gilmartin about my involvement. I proffered Shefran. It is very convenient for me to proffer Shefran. After I proffered Shefran and Mr O'Callaghan agreed there is no need for any further discussion with Mr O'Callaghan in relation to these professional fees. He has agreed to do it and does do it. Thereby providing me with valuable cash.'

6.11 Asked why he continued the dual payments system in 1992, after Mr Gilmartin became aware of his engagement by Mr O Callaghan, Mr Dunlop told the Tribunal that he had found it more '*convenient*' to claim what he termed were his professional fees from Mr O'Callaghan, via Shefran, as opposed to billing for his services through Frank Dunlop & Associates.

6.12 Mr Dunlop maintained that it was he who, in 1992, made the decision to continue invoicing via Shefran, and that he had issued such invoices to Barkhill on the direction of Mr O'Callaghan. Mr Dunlop refuted Tribunal Counsel's suggestion that there was no element of convenience associated with his continued use of Shefran having regard to the fact that Mr Dunlop was by then also invoicing Mr O'Callaghan via Frank Dunlop & Associates. In fact, during 1992 Frank Dunlop & Associates issued invoices for a total of IR£157,386.66 including invoices totalling IR£63,603.35 directed to Barkhill.

6.13 Mr Dunlop also refuted any suggestion that his continued use of Shefran in 1992 was to facilitate cash payments to councillors or politicians. He maintained that his continued use of Frank Dunlop & Associates invoices with VAT and Shefran invoices without VAT was more than likely '*a clumsy way of doing business.'*

6.14 Mr O'Callaghan stated that the initial decision that Mr Dunlop would use Shefran to claim and receive payments from Riga (and which, with the exception of the IR£25,000 payment on 17 February 1993, were duly reimbursed by Barkhill) was for the purposes of concealing Mr Dunlop's involvement in the Quarryvale project from Mr Gilmartin, and at the same time to prevent Mr Gilmartin:

'*from taking from me, supporting Quarryvale, the Councillors that I felt would have been on his side'.*

6.15 Mr O'Callaghan stated:

'*Shefran was a company that Frank Dunlop had and when I, when both of us in our discussion, when I suggested I was concerned that if Tom Gilmartin was aware that Frank Dunlop was involved in the lobbying with me, which as I said to you was a fallacy but that's the way we discussed it at the time. Frank suggested that he could use another company, a company by the name of Shefran. And he used that to invoice me.'*

6.16 Mr O'Callaghan did not agree with the suggestion that the use of Shefran was to keep secret from Mr Gilmartin the payments he had agreed to make to Mr Dunlop.

6.17 Asked why, given that Mr Gilmartin within a very short timeframe became aware of Mr Dunlop's retention[13], he had not told Mr Gilmartin of the fact of his decision to pay Mr Dunlop through Shefran, Mr O'Callaghan replied:

'*Because again, this was totally irrelevant. As far as I was concerned, Shefran meant absolutely nothing. Shefran and Frank Dunlop were one and the same entity'.*

6.18 And in response to being asked why he had not advised Mr Gilmartin:

'*There wasn't any, in my opinion, there wasn't any need. I told him about Frank Dunlop. If he asked me about Shefran I would have told him. It just didn't crop up. It could have been called anything, Shefran meant nothing to me, except it was the same thing as Frank Dunlop.'*

6.19 Mr O'Callaghan elaborated:

'*…I told Mr Gilmartin that I was dealing with Frank Dunlop and I told Tom Gilmartin that I was paying Frank Dunlop and we were paying Frank Dunlop. I never used the word 'Shefran' to him because it didn't make any difference. He could have called it West Cork Foods as far as I was concerned. Shefran meant nothing to me.'*

And,

'*…Shefran was used to protect whatever councillors* [who] *would support Quarryvale, Tom Gilmartin's Councillors that would support Quarryvale, protect them and make sure they stayed inside with me. That's the reason the whole thing was set up.'*

[13] In the course of his evidence Mr Dunlop acknowledged that on 2 May 1991 he faxed a press cutting relating to the Quarryvale lands to Mr Gilmartin in London and that by early May 1991, Mr Gilmartin must have known of his retention as a lobbyist.

6.20 Mr O'Callaghan was questioned as to why the payments to Mr Dunlop could not have been made to Frank Dunlop & Associates rather than to Shefran, Mr O'Callaghan replied:

> '*Because Frank Dunlop used, had I think had a second- as I said, I didn't worry about this. I didn't mind this really. Quite a lot of our professional teams used separate companies to invoice us outside of their professional names. This is a normal procedure. You wouldn't know what name a company would come up with, for all different reasons that they have. Frank was using Shefran and it was set up originally to avoid, to assist me in Tom Gilmartin not knowing that Frank Dunlop was involved, to protect the Councillors that we wanted to support us.*
>
> *Secondly, and Frank was interested in this. And the reason why I think he probably kept this going was that he also had some arrangement, which he hasn't said anywhere in his evidence. He had some arrangement with his own communication company, Murray Consultants, the company that he worked with before. That any new clients, any new clients that would come into his company, that he probably would have to give a percentage of that I think to Murray Consultants or some arrangement like that. I am not totally privy this. So it suited him as well to have a separate company for any new clients like ourselves.'*

6.21 Mr O'Callaghan further stated:

> *I think the answer to that is that first of all Shefran, the Shefran payments were for Frank's – the initial Shefran payments from March until the middle of May, let's call it the first vote, were inclusive, they included total expenditure, outlay, they included everything actually. From August of '91 on Frank split the system, his complete outlay expenses office etc. was Frank Dunlop & Associates and his fees was strictly Shefran. As to why he, I think the reason why he operated two systems both Shefran and FDA from May on was because I believed he discovered that there was a lot more involved in this whole lobbying system and it cost a lot more money that we expected and it was going to go on a lot longer than was expected. So he decided for his own reasons to keep his fees separate from his outlay and expenses. That he was his choice and I had no objection to that.'*

6.22 Mr O'Callaghan told the Tribunal that by 1992 he and Mr Dunlop had agreed that Mr Dunlop would continue to invoice his professional fees through Shefran and that his expenses and outlay would be invoiced through Frank Dunlop & Associates.

6.23 Mr O'Callaghan also stated that the question of paying all bills through Frank Dunlop & Associates '*didn't suit'* Mr Dunlop, and that he '*obviously preferred to use the other system'*. Mr O'Callaghan maintained that this 'dual' payment practice was a system adopted by many of Mr O'Callaghan's professional team.

6.24 Mr Gilmartin maintained that the explanation for the payments to Shefran was to conceal Mr Dunlop's activities from him. On Day 740, the following exchange took place between Tribunal Counsel and Mr Gilmartin regarding payments to Shefran:

'*Q.The, just to revert again, Mr Gilmartin to 7566, were you concerned that there was 150 thousand pounds VAT free paid in round sum figures to a company that you say you had no connection with or no knowledge of?*

A. That's correct.

Q. And did you raise queries with anyone in relation to that?

A. I did, at board meetings in the bank, I demanded to know what Shefran was and who they were and why they were getting these large sums of money, as well as why Dunlop was getting large sums of money. The bank made a statement to somebody that Shefran was there to hide the fact from me of Mr Dunlop's involvement, but that was total nonsense because Dunlop was on the invoices and Dunlop was on the list of payments, and I couldn't understand why the bank would have said this to somebody. Somebody queried on my behalf, for an explanation, and they said according to what I was told, that it was to hide the fact of Dunlop's involvement.

Q. Who told you that, Mr Gilmartin?

A. *Mr Sheeran, because when I was bankrupt and when I was in trouble I had to appoint Mr Sheeran to, or I appointed Mr Sheeran to sit in on my behalf and I kicked up quite rough with the bank at one board meeting and Mr Sheeran tried to distance himself from what I was saying, and he demanded to know afterwards as to why they were refusing to tell me who Shefran was. And they told him Shefran was there to hide Dunlop's involvement from me. Now I couldn't figure that one out because here is Frank Dunlop getting a load of payments openly, and I came to the conclusion that they were hiding the fact of what Mr Dunlop was up to from me, that this is why it was set up.*

Q. Well, may be they were keeping from you the level of payment that Mr Dunlop was receiving?

A. *Well, I don't know what the reason for it is or was, but that was their statement to Mr Sheeran.*

Q. Well, Mr Sheeran –

A. Well, because I in discussion with Mr Sheeran, he relayed that to me, that the bank had said it was to hide Dunlop's involvement from me, so I said that's nonsense, sure Dunlop's name is on the thing.'

KNOWLEDGE OF THE CONNECTION BETWEEN MR DUNLOP AND SHEFRAN

AIB

6.25 According to Mr Kay he learned of Mr Dunlop's connection to Shefran in January 1992 when Mr O'Callaghan told him that Shefran was '*another arm*' of Mr Dunlop. Mr O Callaghan suggested that he told Mr Kay of the connection between Shefran and Mr Dunlop sometime after April 1991

6.26 On 17 May 1991 Mr Donagh was telephoned by personnel in AIB, College Street seeking his sanction for clearance of a cheque payment for IR£25,000, payable to Shefran, and drawn on Riga's current account. Mr Donagh's evidence was that having been requested by someone in AIB, College Street to clear the cheque payable to Shefran, he had responded to that request by stating that the payee (Shefran) meant nothing to him. He said he was then told that Mr Dunlop was in the branch and had presented the cheque for payment, whereupon he advised AIB College Street that it was in order for the cheque to be paid. Thus, on 17 May 1991 Mr Donagh was privy to the fact that Mr Dunlop required IR£25,000 in cash for some purpose. The Tribunal viewed this as a check clearance procedure. It clearly did not constitute formal notification to AIB (or Mr Donagh) of the connection between Mr Dunlop and Shefran.

MR GILMARTIN

6.27 Although aware from perhaps as early as December 1991 of the fact of payments having been made to Shefran by Riga, Mr Gilmartin did not then know of Shefran's connection with Mr Dunlop. His evidence (which the Tribunal accepted as accurate) was that on being informed of a reference (in documentation which had been furnished by AIB) to payments to Shefran by Riga in connection with Quarryvale he assumed Shefran to be merely one of a number of companies employed by Riga in connection with the Quarryvale project.

6.28 Although he had, in January 1992, queried the purpose for which Shefran had been retained, Mr Gilmartin maintained that no one, including Mr

O'Callaghan or AIB personnel, apprised him of who, or what Shefran was, nor had he been apprised of the purpose of the payments.

6.29 Mr Gilmartin told the Tribunal that he was kept in the dark about a connection between Shefran and Mr Dunlop for about two years. Mr Gilmartin alleged that he was misled and ill informed as to this connection by AIB.

6.30 However, according to Mr Donagh of AIB, in the course of telephone contact with Mr Gilmartin in January 1992, he recalled Mr Gilmartin asking him who Shefran was and telling him that Shefran was Mr Dunlop. There was, however, no AIB memorandum of any such conversation.

6.31 According to Mr Kay, he told Mr Gilmartin about the connection between Mr Dunlop and Shefran on 5 June 1992. Mr Kay said that the disclosure came about as follows; in the course of a telephone call, Mr Kay apprised Mr Gilmartin of Mr O'Callaghan's written request of 4 June 1992 seeking payment of IR£30,000 to Shefran from the Barkhill No. 2 Loan Account. Asked by Mr Gilmartin as to what it was all about, Mr Kay responded that Shefran was an '*arm'* of Mr Dunlop. Mr Kay acknowledged that, until informed by him on 5 June 1992, Mr Gilmartin had not known who or what Shefran was and had not known of any connection between Shefran and Mr Dunlop.

6.32 There was a conflict of evidence as between Mr Gilmartin and Mr Kay as to the extent of the disclosure made by Mr Kay to Mr Gilmartin, regarding Shefran on 5 June 1992. Mr Gilmartin maintained that he was not told by Mr Kay on 5 June, despite asking, who Shefran in fact was.

6.33 The Tribunal was satisfied that Mr Kay did provide some information to Mr Gilmartin on 5 June 1992 which should have left him with knowledge of a link between Shefran and Mr Dunlop. This disclosure to Mr Gilmartin, such as it was, as to a link between Mr Dunlop and Shefran coincided with the commencement of an audit of Barkhill's accounts.

6.34 The Tribunal was satisfied that Mr Gilmartin, in early 1992, remained ignorant of Mr Dunlop's connection to Shefran, and it accordingly rejected Mr Donagh's belief that by January 1992, he had informed Mr Gilmartin of that connection.

6.35 Mr Gilmartin's knowledge of the connection between Shefran and Mr Dunlop was probably imparted to Mr Fleming of Deloitte & Touche (Barkhill's auditors) in the course of his and Mr Fleming's discussions about the Barkhill audit for the period 25 November 1988 up to 30 April 1992, then being

conducted by Mr Fleming. On a copy of the '*Westpark Expenses*' document, furnished by Riga to Deloitte and Touche on 18 June 1992 (which listed, *inter alia*, the three 1991 Shefran payments made by Riga on behalf of Barkhill) Mr Fleming identified, by way of manuscript notation, the connection between Shefran and Mr Dunlop. Mr Fleming's evidence was that he did so, most probably in August 1993, based on information provided to him by Mr Gilmartin in the preceding months. Mr Fleming told the Tribunal that Mr Gilmartin had linked Mr Dunlop to Shefran, by saying to him '*that's Frank Dunlop's company*'. Later in his testimony, Mr Fleming described Mr Gilmartin's imparting his knowledge regarding the connection between Shefran and Mr Dunlop in the following terms: '*My recollection of the discussion was and it is 16 years ago 'that's Frank Dunlop's company, is it.*'' The manner in which Mr Fleming described to the Tribunal Mr Gilmartin's comment suggested to the Tribunal that Mr Dunlop's association with Shefran had not at that time been confirmed definitively to Mr Gilmartin.

THE SHEFRAN PAYMENTS

7.01 Between 16 May 1991 and 17 February 1993, Mr O Callaghan's company, Riga, and Barkhill made six individual payments to Shefran amounting to IR£175,000. Three of these payments were made in 1991, two in 1992 and the third and final payment in 1993.

THE 1991 PAYMENTS

7.02 In 1991, a total of IR£80,000 was paid to 'Shefran' by Mr O'Callaghan's company, Riga. This total was comprised as follows:

- IR£25,000 paid 16 May 1991
- IR£40,000 paid 30 May 1991
- IR£15,000 paid 7 June 1991

7.03 The first Shefran payment of IR£25,000 was paid to Mr Dunlop on 16 May 1991, by cheque dated 16 May 1991, payable to SHEAFRAN, drawn on the Riga AIB 023 account, and co-signed by Mr O Callaghan and Mr Aidan Lucey, Riga's book keeper. This date was also the date of the Quarryvale rezoning vote, a fact which Mr O'Callaghan described as *'pure coincidence.'*

7.04 In relation to the second payment of IR£40,000, both Mr O'Callaghan and Mr Dunlop, respectively, acknowledged the payment and receipt of the sum. No copy of the cheque was made available to the Tribunal. A debit of IR£40,000 appeared on Riga's current account on 5 June 1991 and the cheque payments book for the Riga AIB 023 account contained an entry for the payment of a

cheque in the sum of IR£40,000 on 30 May 1991. The payee was noted as SHEAFRAN.

7.05 The third Shefran payment of IR£15,000 was made by Riga on 7 June 1991. It was not possible to decipher with certainty whether the payee on this cheque was SHEAFRAN, SHEFRAN or SHEFRON, but SHEAFRAN was the name recorded in Riga's cheque payments book as the payee of the cheque. It was likely, therefore, that the payee on the cheque was SHEAFRAN.

7.06 Mr Dunlop and Mr O'Callaghan each discovered to the Tribunal invoices dated 25 March 1991, 2 April 1991 and 1 May 1991 which, they maintained, were the invoices associated with the aforesaid payments made to 'Sheafran' within a four-week period between 16 May 1991 to 7 June 1991.

7.07 The said three invoices provided to the Tribunal were each headed 'Shefran Ltd', described as *'Public Affairs Consultants*', and with an address at 25 Upper Mount Street, Dublin 2, the same address as Frank Dunlop & Associates. All three invoices were addressed to '*Accounts Payable, Riga Ltd, 21/24 Lavitts Quay, Cork'* and described the work, which was the subject of each invoice, in the following terms: '*To the provision of professional strategic communications and educational services.'*

7.08 Both Mr Dunlop and Mr O'Callaghan maintained, as they did in the case of all subsequent payments to Shefran (and indeed in relation to most payments made on foot of Frank Dunlop & Associates invoices) that the invoiced amounts were agreed in advance of the issue of each invoice. Yet, the dates on the individual Shefran invoices, claimed to have been furnished to Mr O'Callaghan in 1991, suggested that Mr Dunlop had provided Mr O'Callaghan with the three 1991 Shefran invoices prior to the receipt by him on 16 May 1991 of the first of the payments.

7.09 None of the three 1991 Shefran invoices was stamped either 'received' or 'paid' by Riga. Mr Aidan Lucey (Riga's book keeper) told the Tribunal that there was no '*hard and fast rule'* of stamping invoices 'paid' within Riga. Mr Dunlop and Mr O'Callaghan also both agreed that no documentation passed between them in relation to any of the 1991 payments (save, they claimed, for the invoices themselves). These invoices are considered in more detail in the section dealing with the Audit, below.

THE TREATMENT OF THE 1991 SHEFRAN PAYMENTS IN RIGA'S BOOKS[14]

7.10 In Riga's cheque payments book, the three 1991 payments were recorded as having been made to SHEAFRAN, and were recorded as payments made by Riga on behalf of Barkhill. As with other Barkhill/Quarryvale related payments made by Riga the payments were given the attribution '*5098*', which indicated that the payments had been made on behalf of Barkhill.

7.11 In the half-yearly nominal ledger of Riga for the period to 31 October 1991, and in the nominal ledger of Riga for the year ended 30 April 1992, the total sum of IR£80,000 paid to Shefran in 1991 was posted by the auditors of Riga to Nominal Account 735, which was the Barkhill Loan account, as items paid out by Riga on behalf of Barkhill.

THE TREATMENT OF THE 1991 SHEFRAN PAYMENTS BY MR DUNLOP

7.12 Mr Dunlop received the first Shefran payment on 16 May 1991. The Tribunal was satisfied that this cheque was cashed by Mr Dunlop on 17 May 1991 at AIB College Street, in pursuance of an arrangement in existence between Mr Dunlop and Mr John Aherne, a Manager at AIB's College Street branch, to facilitate the encashment of cheques[15]. On the same day as he cashed the Shefran cheque, Mr Dunlop lodged IR£14,500 in cash to his INBS 910 account. Mr Dunlop maintained that this cash was sourced from the encashment of the Shefran cheque. Mr Dunlop retained the remaining cash of IR£10,500.

7.13 With regard to the second payment for IR£40,000, Mr Dunlop suggested that a sum of IR£80,000, which was credited on 5 June 1991 to the AIB 042 Rathfarnham account, may have included all or a portion of that payment.

7.14 The Tribunal established that on 5 June 1991 the AIB 042 Rathfarnham account was indeed credited to the extent of IR£80,000. Documentation furnished by AIB revealed that the said sum was received by the Rathfarnham/Terenure branch by way of credit transfer. That documentation did not assist the Tribunal as to the source of this IR£80,000 lodgement to the AIB 042 Rathfarnham account or whether the said IR£80,000 credit transfer included the encashed proceeds of the Shefran cheque or any part of same.

7.15 In the course of his evidence in this Module, Mr Dunlop conceded that a '*very likely scenario*' regarding the IR£40,000 Shefran cheque received by him from Riga was that the proceeds of the encashment of same were retained by him in their entirety. The evidence of Mr John Aherne supported that of Mr Dunlop as to the probability that the IR£40,000 Shefran cheque was encashed

[14] This issue is considered elsewhere in more detail.
[15] See Chapter 15 for details of this arrangement

by Mr Dunlop. Mr Aherne was unable to say what Mr Dunlop did with the IR£40,000 cash.

7.16 The Tribunal was satisfied that Mr Dunlop did in fact cash the 30 May 1991 Shefran cheque for IR£40,000 and that the IR£80,000 credited to the AIB 042 Rathfarnham account on 5 June 1991 did not include any part of that cash.

7.17 The third 1991 Shefran payment for IR£15,000 was negotiated by Mr Dunlop in AIB College Street on 7 June 1991, on foot of his arrangement with Mr Aherne of AIB. The reverse of the cheque bore two signatures '*P. Kennedy and P. O'Dualachain*'. According to Mr Dunlop, the latter signature, looked like his handwriting and could well have been an attempt by him to sign the back of the cheque by using an Irish translation of his own name.[16] Mr Aherne suggested that the '*P. Kennedy*' endorsement could have been written by Mr Dunlop. Mr Dunlop claimed that he was unable to assist the Tribunal in relation to the author of the '*P. Kennedy*' signature.

7.18 In correspondence with the Tribunal, Mr Dunlop attributed a cash lodgement of IR£15,000 made to the AIB 042 Rathfarnham account on 11 June 1991 as representing the proceeds of the third cheque payment. However, the Tribunal was satisfied that upon cashing the cheque, the entire proceeds were retained by Mr Dunlop in cash. Indeed, Mr Dunlop himself explained that cashing cheques in AIB College Street in pursuance of the arrangement he had with Mr Aherne was undertaken for the purposes of providing himself with cash funds and that he did not usually re-lodge such funds.

7.19 On the same day that Mr Dunlop cashed the IR£15,000 Shefran payment, according to his testimony, he also withdrew IR£25,000 from the AIB 042 Rathfarnham account and both were added to his confluence of funds from which he made distributions to councillors.

THE PURPOSE OF THE 1991 SHEFRAN PAYMENTS

7.20 Both Mr Dunlop and Mr O'Callaghan claimed that the total of IR£80,000 paid to him via Shefran over a three week period constituted his fee as agreed.

7.21 Mr Dunlop testified that out of the funds paid to him by Mr O'Callaghan through Shefran in 1991, and from other monies available to him at the time, he made payments to a number of councillors in the course of the May/June Local

[16] For other examples of the manner in which Mr Dunlop endorsed cheques see below and see Chapter 15.

Elections.[17] He stated that he had anticipated and received requests for contributions for the forthcoming Local Elections from councillors whom he had lobbied to support the Quarryvale rezoning Motion on 16 May 1991. Mr Dunlop's sworn admission was that such payments were corrupt payments on his part.

7.22 Mr O Callaghan specifically denied that any part of the IR£80,000 paid to Mr Dunlop in 1991 was for the purpose of placing Mr Dunlop in funds in order to facilitate payments in the course of the Local Election, or for transmission onwards by Mr Dunlop to senior politicians. Mr O'Callaghan denied any knowledge of why Mr Dunlop cashed the Shefran cheques or of the purpose for which Mr Dunlop required cash of IR£40,000 on 7 June 1991. Mr O'Callaghan stated that he had no knowledge of cash withdrawals made by Mr Dunlop in the period May/June 1991. With regard to Mr Dunlop's testimony[18] about what he did with cash from the Shefran payments over the course of May/June 1991, Mr O'Callaghan remarked, *'I can't understand why Mr Dunlop gave his fees away'*. Further evidence regarding Mr O Callaghan's knowledge of the use of the three 1991 payments to pay councillors is discussed in the Audit Section of this Part.

7.23 Mr Dunlop also testified that from the IR£80,000 Shefran payments received from Mr O'Callaghan in May/June 1991, he paid IR£40,000 to Mr Lawlor.[19]

AIB'S KNOWLEDGE OF THE PAYMENTS

7.24 Following a meeting between Mr Donagh of AIB, Mr O Callaghan and Mr Gilmartin on 14 May 1991, Mr Donagh compiled a memorandum documenting Mr O' Callaghan's retention of Mr Dunlop to assist '*in the advancement of the obtainment of zoning of the site'*. That memo did not suggest that Mr O'Callaghan told Mr Donagh that as of that date he was in possession (as he claimed) of three invoices from Shefran totalling IR£80,000 and that as a consequence Barkhill now carried this liability.[20] The Tribunal was satisfied that Mr O'Callaghan had the IR£25,000 Shefran cheque in his possession on 14 May 1991 for transmission to Mr Dunlop.

7.25 Prior to the conclusion of the 1991 Share Subscription Agreement, and subsequent to a Heads of Terms Agreement which was signed by Mr and Mrs Gilmartin, Riga and AIB on 31 May 1991, an arrangement was put in place on 6 June 1991, as between AIB and Riga for the provision to Riga of a IR£1m loan, to be utilised in relation to Quarryvale/Barkhill ('*the Riga subordinated IR£1m*

[17] This matter is dealt with elsewhere in this Chapter.
[18] See Part 7 of this Chapter.
[19] This issue is dealt with elsewhere in this Chapter.
[20] As of 14 May 1991 Mr Gilmartin with his wife were the sole legal and beneficial owners of Barkhill.

loan'). Upon receipt of the IR£1m, Riga shortly thereafter debited a sum of IR£230,000 from the loan, and paid that sum into the Riga AIB 023 account, by way of reimbursement to Riga of expenditure theretofore incurred by it on behalf of Barkhill. The IR£230,000 sum included, *inter alia*, the IR£80,000 which Riga had by then paid to Shefran. This sum continued, throughout 1991 and 1992, to be carried in the books of Riga as part of the inter-company loan balance owed by Barkhill. These payments were undoubtedly substantial, even in the context of the expenses of the Quarryvale project, and would understandably have caught the attention of AIB, as in fact they did.

7.26 Consequently, the first indication of the extent of the 1991 cost of Mr Dunlop was made known to AIB when it was notified by Mr O'Callaghan of a number of payments totalling just over IR£230,000 made by Riga on behalf of Barkhill, On 2 January 1992, AIB was advised by O'Callaghan Properties (presumably on behalf of Riga) that it had expended a sum of IR£230,284.38, by way of '*WestparkExpenses*', in the period February to June 1991. It was likely that AIB were provided with this information by way of explanation for the fact that upon the establishment of the Riga subordinated IR£1m loan facility, Riga had shortly thereafter debited IR£230,000 and had paid that sum into the Riga AIB 023 account. Included in the document, as furnished by Riga to AIB, and which set out Riga's claim to have expended IR£230,000 approximately on the Quarryvale project, were the three payments to Shefran between 16 May 1991 and the 7 June 1991, amounting to IR£80,000.

7.27 Mr Kay of AIB told the Tribunal that he first became aware of the 1991 Shefran payments in January 1992. He told the Tribunal that although it was never specifically stated to him, he '*deduced*' that the Shefran monies were in fact Mr Dunlop's fees, and that the payments being made to Frank Dunlop & Associates represented expenses and outlays.

7.28 Mr Kay did not at that time believe that the large round-figure payments to Shefran were out of line with what he might have expected Mr Dunlop's fees to have been.

MR GILMARTIN'S KNOWLEDGE OF THE PAYMENTS

7.29 The Tribunal was satisfied that at the time Riga paid the three 1991 Shefran cheques to Mr Dunlop, Mr Gilmartin was not aware of such payments and the Tribunal was equally satisfied that Mr Gilmartin remained unaware of the Shefran payments when the Share Subscription Agreement (whereby the

shareholding in Barkhill was formally vested in Mr Gilmartin and his wife, Riga and AIB) was signed on 13 September 1991.[21]

7.30 Although aware from perhaps as early as December 1991 of the fact of payments having been made to Shefran by Riga, as discussed above, Mr Gilmartin did not then know that Mr Dunlop was the recipient of the IR£80,000.

7.31 It appeared to the Tribunal, based on Mr Gilmartin's evidence, that he most likely became aware of the three 1991 Shefran payments when he received a copy of the '*Westpark Expenses*' document from AIB in early 1992.

THE 1992 SHEFRAN PAYMENTS

7.32 Two payments were made to Shefran in 1992. They were:

- IR£40,000 paid 13 April 1992
- IR£30,000 paid 5 June 1992

7.33 In addition, over the course of 1992, a total of IR£157,386.66[22] was paid to Frank Dunlop & Associates by Barkhill and Riga on foot of invoices generated by Frank Dunlop & Associates.

7.34 The first Shefran payment of IR£40,000 was made by way or a Barkhill bank draft paid to Shefran on 13 April 1992 and which showed that Mr O'Callaghan's authorisation for the bank draft was dated 10 April 1992. The draft was likely to have been handed over to Mr Dunlop by Mr O'Callaghan on 13 April 1992 when they met outside the Horse Show House public house in Ballsbridge, Dublin. It was noteworthy that on 13 April 1992, when Mr O'Callaghan handed the bank draft for IR£40,000 payable to Shefran to Mr Dunlop, it appeared that he also handed a draft for IR£954.55 payable to Frank Dunlop & Associates.

7.35 The second 1992 Shefran payment in the sum of IR£30,000 was made to Mr Dunlop on 5 June 1992, following the provision of a Shefran invoice on 30 April 1992 for that amount. It was made by bank draft and again debited to the Barkhill No. 2 Loan Account at AIB. Similarly to the first payment, on that date, Frank Dunlop & Associates invoiced Riga for the sum of IR£10,253.27, which was discharged by Riga on 22 June 1992 and in respect of which Riga was reimbursed by Barkhill on 2October 1992.

[21] See Part 4 of this Chapter.
[22] IR£87,386.66 paid by Barkhill and IR£70,000 paid by Riga.

7.36 Invoices were discovered to the Tribunal in respect of both of the 1992 Shefran payments, dated, respectively, 20 March 1992 and 30 April 1992. Both invoices were in the name of Shefran, and were addressed to '*Accounts Payable, Riga Ltd'* and'*Riga Ltd*' respectively, and contained the following narrative:

> *....provision of professional strategic communications and educational services.*

They were not numbered and contained no VAT element.

7.37 Both invoices issued at a time which coincided with the reactivation of the Quarryvale rezoning issue within the County Council, from April 1992 onwards.

7.38 On 10 April 1992, Dublin County Council recommenced its consideration of the Review of the Development Plan i.e. the Council's second stage review. Mr O'Callaghan agreed that on that date it was anticipated that the first formal County Council meeting pertaining to this stage of the review of the Plan would be held on 30 April 1992.

7.39 Both of the 1992 payments were paid directly by AIB from the Barkhill No 2 Loan Account at Mr O'Callaghan's request. This was in contrast to the 1991 payments to Shefran which were: paid by Riga on behalf of Barkhill; paid before AIB was informed of their existence; and for which no invoices were provided to AIB.

7.40 The Tribunal was satisfied that the likely reason that Mr Dunlop, through Shefran, issued such invoices in 1992 was that it had been suggested to him (most probably by Mr O'Callaghan) that the funds he was to be paid in 1992 would be sourced from an account of Barkhill (the Barkhill No. 2 loan account) and not Riga. As Mr Dunlop in this instance was to be paid from the Barkhill No. 2 Loan Account, it was possible that AIB (who were administering the account) might not have permitted the withdrawal of such funds in the absence of invoices, or would in any event have sought supporting invoices for such payments.

MR DUNLOP'S TREATMENT OF THE PAYMENTS

7.41 Mr Dunlop cashed the bank draft for IR£40,000 at AIB, College Street, Dublin on 14 April 1992. Of the proceeds he used IR£20,652.63 to discharge a IR£20,000 loan that had been advanced to him by AIB on 4 February 1992, apparently by way of a IR£20,000 cash withdrawal.

7.42 After the repayment of the loan the balance of the IR£40,000 Shefran cash was utilised as follows:

- IR£6,847.37 was used by Mr Dunlop to open the account in the name of Shefran on 15 April 1992 at AIB,

- IR£4,000 was lodged to his INBS 910 account, on 16 April 1992,

And:

- IR£8,500 was probably taken by Mr Dunlop in cash.

7.43 Of the second 1992 payment to Shefran, IR£28,000 was lodged on 8 June 1992 to the Shefran AIB 083 account[23] and the balance was taken by Mr Dunlop in cash.

7.44 On 20 August 1992, Mr Dunlop withdrew IR£30,000 (by bank draft) from the Shefran AIB 083 account. He claimed that the withdrawal was used for the purchase of an option on lands on the Dublin to Naas Road. However, according to Mr Dunlop, he never concluded the purchase which resulted in the forfeiture of his IR£30,000 option payment.

THE PURPOSE OF THE 1992 PAYMENTS

7.45 According to both Mr Dunlop and Mr O Callaghan, the 1992 Shefran payments were in respect of professional fees.

7.46 Mr O'Callaghan, together with Mr Deane, met with AIB on 18 March 1992. The AIB memorandum which documented this meeting noted that the bank was advised that:

> *there are ongoing fees between now and the* (zoning) *vote of £150,000 and decision will have to be taken as to whether the Bank is willing to fund this amount, by implication he is not prepared to do so. This matter was left in* (a)*beyance.*

7.47 Mr O'Callaghan told the Tribunal that he could not say how the IR£150,000 mentioned in that memorandum had been calculated but at the time he envisaged that it was going to be an expensive period because of expected invoices from Ambrose Kelly & Co.[24] and other anticipated expenses, associated with lobbying communities across West Dublin. Mr O'Callaghan also believed that his arrangement with Mr Dunlop regarding Mr Dunlop's 1992 fees was probably encompassed in this IR£150,000 figure. The AIB record of this meeting did not make any specific reference to Mr Dunlop.[25]

7.48 Mr O'Callaghan agreed that the memorandum recorded his belief that there was a 40% chance of there being a successful Quarryvale vote, but that he hoped to bring this to 50%. Asked if, in 1992, he had seen any connection

[23] Opened on 15 April 1992
[24] The architectural firm retained by Mr O'Callaghan.
[25] No Shefran invoices for 1992 had issued by 18 March 1992

between money he knew he would have to pay Mr Dunlop and his own projections about an increase in councillors' support, Mr O'Callaghan stated that he had not. However, in January 1992 a manuscript notation[26] in Mr O'Callaghan's hand on a document which was being considered at a meeting between Mr O'Callaghan and AIB on 14 January, 1992 had connected three matters; money paid by Riga to Mr Dunlop/Shefran in 1991, the June 1991 Local Election and councillors. Mr O'Callaghan agreed this was so. Mr O'Callaghan was questioned by Tribunal Counsel as follows:

'..So when you are now in the bank on the 18th of March, 1992, and you are discussing the figure of 150,000 pounds and within that figure is the 70,000 pounds you are going to pay Mr Dunlop, did you have the same view in your head that you had when you made the doodle that Mr Dunlop might have had to layoff some money to the councillors?'

7.49 Mr O'Callaghan replied:

'If, of course that would be possible, yeah, in the sense that if there was an election, he would be asked again, like he was for the '91 election, to give this minimal support to the various councillors. At the time I didn't foresee any election coming up so I didn't assume there would be any need for this. The money that was paid to Frank Dunlop would have been strictly for his fees and for his support and the use of his office and his staff etc. and himself in bringing me around to meet the 78 councillors. And the more of them we met, the more I increased my chance of getting Quarryvale rezoned.'

7.50 And, in response to the suggestion, as put to him as follows:-

'Yes. So there is a connection then, Mr O'Callaghan, as you had already noted in the document in January 1992, between the money that you are paying to Mr Dunlop and the councillors, isn't that right?'

7.51 Mr O'Callaghan said:

'Sorry, no, no, no that it not correct again, no. That is not correct. The monies we are talking about now is the 70,000 pounds to Frank Dunlop, the Barkhill fees. That was to pay Frank Dunlop his fees to bring me and to make sure I spoke to and met, together with my various documents, literature etc. as many of the 78 councillors as could possibly meet, which I could not have

[26] This issue is dealt with below.

met without Frank Dunlop. And to try and get them across the line to support Quarryvale rather than Blanchardstown. That's the connection!'

7.52 The Tribunal was satisfied that the connection Mr O'Callaghan was promoting to AIB at the meeting on 18 March 1992 between a successful zoning and an unsuccessful zoning underpinned the requirement, on his part, to have available funds of IR£150,000 (including two Shefran payments for IR£70,000).

7.53 Mr Dunlop did not provide any explanation to the Tribunal as to the purpose for which he borrowed IR£20,000 on 4 February 1992 from AIB at a time when he had approximately IR£75,000 on deposit in his '*war chest*' accounts comprised as follows:

- IR£12,528.51 in his INBS 910 account:
- IR£10,000.85 in his AIB 042 Rathfarnham account: and
- Stg£49,793.40 in his Xerxes account at Midland Bank Trust, Jersey.

7.54 The Tribunal rejected Mr Dunlop's claimed failure of recollection as to the purpose of the IR£20,000 AIB loan having regard, in particular, to the fact that he gave evidence to the Tribunal of details of payments made by him to councillors involving sums of as little as IR£500 in the period 1991 - 1993.

7.55 On the date of the loan, 4 February 1992, Mr O'Callaghan was known (from Mr Dunlop's diary) to have been in Mr Dunlop's offices at 4pm. However, Mr O'Callaghan rejected any suggestion that Mr Dunlop's loan of IR£20,000 had been arranged to facilitate him, either directly by providing him with funds, or indirectly by facilitating the making of a payment to a third party on his behalf.

AIB'S KNOWLEDGE OF 1992 PAYMENTS

7.56 Mr Kay accepted that he saw the 1992 Shefran invoices but said that at the time he did not pay any heed to the fact that neither invoice made provision for VAT nor included a VAT number. Mr Kay told the Tribunal that he probably regarded the payment of IR£40,000 to Shefran to have been part of the ongoing fees of IR£150,000 which Mr O'Callaghan had advised, on 18 March 1992, were required between then and zoning. Its size did not seem out of line to Mr Kay when compared to other payments being made from the account. By June 1992 therefore, the Barkhill No 2 Loan Account had funded IR£70,000 to Mr Dunlop/Shefran from the IR£150,000 sum which had been projected by Mr O'Callaghan on 18 March 1992.

7.57 Mr Michael O'Farrell[27] (having succeeded Mr Kay as the senior official within AIB in charge of the Barkhill account from September 1992) conducted a general review of the Barkhill expenditure with Mr O'Callaghan on 16 September 1992. He said that he was unable to recollect what explanation had been tendered to him by Mr O'Callaghan in respect of the IR£80,000 total payments made to Shefran in 1991. Mr O'Farrell accepted that he was at that time aware of the link between Mr Dunlop and Shefran, but did not know, nor did he apparently question Mr O'Callaghan, as to why Mr Dunlop was using Shefran, as well as Frank Dunlop & Associates to receive payments from Mr O'Callaghan, or why the Shefran payments were all round-figure sums.

7.58 In a memorandum prepared by Mr O'Farrell on 8 September 1992, reference was made to the need *'to review Deloitte and Touche queries in relation to the audited accounts'* and '*in particular check fees paid and proposed fees which should be paid'* and *'payments have been made from the Barkhill account which do not appear to have been properly authorised i.e. Owen O'Callaghan has signed but there has not been an authorised counter signature'* and *'it would be preferable if Tom Gilmartin could authorise these and could authorise the current request for the fees from Owen O'Callaghan.'*

7.59 In the course of this review, in relation to expenditure incurred and in respect of which Riga had sought reimbursement, Mr O'Callaghan *'provided explanations where he could for the various items'.* Mr O'Farrell was also unable to recall explanations provided by Mr O'Callaghan, if any, in respect of two IR£10,000 payments made by Riga to Messrs Lawlor and McGrath and repaid to it in January 1992 from the Barkhill No. 2 Loan Account. Mr O'Farrell was unable to account as to why the two IR£10,000 payments were ultimately allocated by Deloitte & Touche as payments made to Mr Gilmartin. In fact these payments of IR£10,000 had been made by Mr O'Callaghan to Mr Lawlor and Cllr McGrath.

7.60 By September 1992 Mr O'Farrell was aware that the Barkhill No. 2 Loan Account had paid out two round-figure sums of IR£40,000 and IR£30,000 to Shefran in April and June 1992 respectively in addition to IR£80,000 in 1991 making a total of IR£150,000. By that time the IR£150,000 paid to Shefran ranked as one of the largest payments made to any consultant in relation to the Quarryvale account.

[27] In September 1992, Mr O'Farrell was appointed the Senior Manager of Property and Construction in AIB's Corporate and Commercial Division, in succession to Mr Kay, who at that time was transferred to another position within AIB. Mr O'Farrell's involvement with Barkhill continued from approximately September 1992 until 1996.

MR GILMARTINS KNOWLEDGE OF 1992 PAYMENTS

7.61 The Tribunal was satisfied that Mr Gilmartin was unaware of the IR£40,000 payment to Shefran on 13 April 1992. The Tribunal was also satisfied that prior authorisation for the making of the said payment to Mr Dunlop/Shefran was not sought from Mr Gilmartin. Documents furnished to the Tribunal revealed that notwithstanding the provision in the AIB mandate for the requirement that two Directors[28] of Barkhill authorise draw-downs from the Barkhill No. 2 Loan Account, Mr O'Callaghan, on 10 April 1992, was the sole signatory for the drawdown of the IR£40,000 Shefran payment.

7.62 Ms Basquille's evidence suggested that this authorisation was sought from Mr Gilmartin when Mr O'Farrell realised that Mr O'Callaghan's was the sole signature on the drawdown authorisation and which had been signed prior to the Shefran payments being made. Mr Kay telephoned Mr Gilmartin on 5 June 1992 and sought verbal authorisation in relation to the IR£30,000 payment. Ms Basquille also suggested, as a possibility, that Mr Gilmartin had been requested to verbally authorise the drawdowns.

7.63 Mr Kay acknowledged that he sought and obtained Mr Gilmartin's consent to the payment after it had been paid. He was '*virtually*' certain that at the time he did so he informed Mr Gilmartin as to the connection between Mr Dunlop and Shefran – see above.

7.64 The IR£30,000 payment made to Shefran on 5 June 1992 was again made on foot of an authorisation signed solely by Mr O'Callaghan on 4 June 1992.

7.65 The Tribunal was satisfied that the fact that a Shefran invoice for IR£30,000, had been furnished to AIB by 5 June 1992, was the subject of a telephone discussion between Mr Gilmartin and Mr Kay on that date. Mr Gilmartin maintained that he was simply told that Shefran was a company engaged by Mr O'Callaghan and that he was not advised at this time of a connection between Mr Dunlop and Shefran.

7.66 On 10 June 1992, Mr Kay wrote to Mr Gilmartin seeking authorisation for the payment in the following terms:

[28] As of April 1992 Barkhill's Directors were Mr Gilmartin, Mr O'Callaghan and Mr Barry Pitcher.

RE: BARKHILL

Dear Tom, I refer to our telephone conversation on Friday and enclose a copy of an invoice for IR£30,000 payable to Shefran Ltd, which as agreed we have paid.

I should be grateful if you would confirm your authorisation for this payment to be made, to keep our records correct.

7.67 In respect of the two Shefran payments (IR£40,000 and IR£30,000) made to Mr Dunlop from the Barkhill No. 2 Loan Account in 1992, the Tribunal was satisfied that these payments were made, in the first instance, solely on the direction of Mr O'Callaghan and only authorised retrospectively by Mr Gilmartin in October 1992.

7.68 The Tribunal was satisfied that the copy invoice furnished to Mr Gilmartin with Mr Kay's letter was the first occasion on which Mr Gilmartin was provided with a Shefran invoice.

7.69 Mr Kay did not explain why he had not spoken to Mr Gilmartin in April 1992 about the larger payment of IR£40,000 to Shefran and he assumed, with regard to the second payment, that he may have been speaking with Mr Gilmartin when the IR£30,000 invoice arrived into the bank.

7.70 Mr Kay accepted that in the course of his 5 June 1992 contact with Mr Gilmartin he did not raise with him the existence of the three earlier 1991 Shefran payments totalling IR£80,000.[29] It was unclear to the Tribunal why Mr Kay failed at this time to advise Mr Gilmartin of the 1991 Shefran payments.

7.71 Mr Gilmartin maintained to the Tribunal that when the issue of the Barkhill draft accounts[30] had been raised by him with AIB, in the context of Barkhill's auditors Deloitte & Touche requesting backup documentation for, *inter alia*, the 1991 Shefran payments he, Mr Gilmartin, had raised with AIB the issue of Shefran and the purpose for which payments were being made to that company. Mr Gilmartin told the Tribunal that he had done so in the context of Mr Leo Fleming of Deloitte & Touche having queried him as to why the Shefran payments were VAT free, and about the purpose of Shefran's retention in the Quarryvale project. He had duly referred Mr Fleming to Mr O'Callaghan and AIB

[29] Mr Gilmartin would have been aware in a general way from a '*Westpark Expenses*' document, furnished to him in January 1992, that an entity Shefran had been paid a total of IR£80,000 in 1991- see further below.

[30] An audit of Barkhill was then underway.

for answers to these queries. Mr Gilmartin said he himself raised the matter at meetings with AIB.

7.72 Mr Gilmartin testified that he was reasonably certain that his concern at the time of his raising the issue with AIB was that large round-figured VAT free payments were apparently being made to a company about which he had no knowledge.

7.73 It was likely that Mr Gilmartin's efforts to obtain answers to his queries regarding the payments to Shefran intensified in 1993, after he was provided with the documentation from AIB on 2 February 1993. By 2 February 1993 the sum owed by Barkhill to Riga was circa IR£1.3m, in respect of which Barkhill had repaid IR£56,598.71 on 24 January, 1992. In the letter to Mr Gilmartin from Mr McGrath and signed by Ms Basquille which accompanied the documents, reference was made to a forthcoming meeting with AIB for the purposes of a review of the Barkhill loan facility. Reference was also made in the letter to Mr Gilmartin's desire (which the Tribunal was satisfied had been previously communicated to AIB) to discuss some matters on a '*one to one*' basis. Ms Basquille (who managed the Barkhill file from September 1992), denied that Mr Gilmartin either queried or complained about the Shefran payments, and she suggested that Mr Gilmartin's concern at that stage was the preference being afforded by AIB and Mr O'Callaghan to discharging payments due to certain professional individuals employed by Mr O'Callaghan, (including Mr Dunlop) to those who had been retained initially by Mr Gilmartin. She said that she had *'no particular knowledge'* of who Shefran was. She said that she was aware of an issue concerning missing invoices for the 1991 Shefran payments, but understood this to have been a matter essentially as between Deloitte & Touche (Barkhill's auditor), and Riga, rather than a matter for AIB. Ms Basquille also stated that she would have checked the AIB files to assist with the Deloitte & Touche inquiry.

7.74 While Mr Gilmartin agreed that he was concerned at what he perceived was a preference in such payments, he said that his principal concern at the time were the large round figure payments to Shefran, and his failure to get an explanation as to their purpose.

7.75 Notwithstanding his concerns about the Shefran payments, on 27 January 1994 Mr Gilmartin, together with Mr O'Callaghan, duly signed the Barkhill's accounts for the period ended 30 April 1992 which had been prepared by its auditors Deloitte & Touche.

7.76 On Day 740, the following exchange took place between Tribunal Counsel and Mr Gilmartin:

'Q.In January 1994 did you know where the 150 thousand pounds shown in the books and records as having been paid to Shefran Ltd had gone?

A. I knew it had been paid to Shefran, but I don't know for what.

Q. Did you know who Shefran was?

A. Pardon?

Q. Did you know who Shefran was when you signed these books and records?

A. No, I didn't.

Q. Did you know what services Shefran Ltd had provided to the company?

A. No, I didn't.

Q. When you signed those records?

A. No, I didn't and I was refused answers. And until Mr Dunlop cracked here, or --- that was the first time I knew exactly what Shefran was used for. There was no amount of demands by me or anything, I had to assume that they were legitimate because the bank went along with it.

Q. If we look at 9539 please? Sorry, if I could have the full document? Did you know, or did you have answers to the queries raised in that document? And in particular, did you know and had you seen supporting documentation for the amounts paid to Shefran?

A. I had answers for the one where I was involved and I provided those answers. I had no answers whatsoever for Shefran, Dunlop or other monies.

Q. You were advising the Tribunal, Mr Gilmartin, in 1998?
A. Yeah.

Q. To have a look at a company called Shefran. I think it's spelled C-E-F-R-A-N in one of the attendances on you, isn't that right?

A. Well, I can't remember the spelling of it

Q. Yes, but leaving aside the spelling of it?

A. I know there was a difference appeared in the spelling of it. S-H-E-F or S-H-E-A-F, I'm not quite sure, but there was a difference.

Q. Yes, it changed its name at one change from S-H-E-A-F-R-A-N to S-H-E-F-R-A-N?

A. Yeah.

Q. But what I am putting to you Mr Gilmartin is that you were able to tell the Tribunal legal team in 1998 of the existence of that company and the fact that monies were paid through that company, is that right?

A. That's correct.

Q. So it would be incorrect to say that it wasn't until Mr Dunlop, as you describe it, broke here, which would have been a reference I think to his evidence in April 2000 that you discovered?

A. That I really discovered why Shefran was being used.

Q. Were you ever at a board meeting, or did anyone connected with Barkhill, that is Mr Kay, Mr Donagh, Ms Basquile, Mr Deane, Mr O'Callaghan, Leo Fleming of Deloitte and Touche, were any of those people gave you an explanation for the amounts paid to Shefran?

A. Nobody. Last time I spoke to Mr Fleming he was still awaiting confirmation. The bank had passed him on to, to I don't know was it Aidan Lucey or someone connected with Owen O'Callaghan or to Riga, and he was awaiting answers from them. So following from me being made bankrupt I had no input or say whatsoever in anything and I wasn't particularly –I had enough to worry about.'

7.77 In the course of telephone conversations between Mr Gilmartin and Senior Counsel for the Tribunal, Mr Gilmartin was noted as having made, *inter alia*, the following references to Shefran:

- That he was suspicious of large round figure sums being paid to Shefran, and that Mr Dunlop was providing Mr O'Callaghan with invoices enabling him to recoup the payments from Barkhill.
- His suspicions were enhanced by Mr O'Callaghan's and AIB's failure to answer questions from him in relation to the identity of Shefran.
- That he was convinced that Shefran monies had been paid to politicians *'higher up'* than councillors.
- That he had been lied to by AIB about the purpose of payments to Shefran.
- That the Shefran payments were in reality reimbursements to Mr O'Callaghan from Barkhill for payments made to senior politicians by Mr O'Callaghan.

7.78 Mr Gilmartin relayed the information summarised above to Counsel for the Tribunal in the course of telephone conversations in the period 1998 - 2002. The Tribunal was satisfied that the said information was indicative of Mr Gilmartin's strong and genuine belief, ongoing from late 1992, that the

substantial payments made to Shefran were linked to illicit third party payments, and that the use of Shefran was to facilitate non-commercial activity associated with the Quarryvale project.

7.79 The Tribunal rejected Ms Basquille's evidence that she had not heard Mr Gilmartin complain of payments to Shefran, and indeed doubted her claimed ignorance of Shefran and its association with Mr Dunlop.[31]

7.80 On 22 October 1998, Tribunal Counsel made a note of Mr Gilmartin informing the Tribunal (in the course of a telephone conversation), *inter alia*, that at an AIB meeting on 9 February 1993, he had called Mr O'Callaghan and Mr Deane '*a pair of gangsters'*, and that '*he challenged the payment to Shefran and Dunlop and said these monies were for corrupt payments to politicians.'* Subsequently, when giving evidence to the Tribunal when it was pointed out to him that he had not attended the 9 February 1993 meeting. Mr Gilmartin stated that he was uncertain of the date of the meeting at which he made this remark.

7.81 While the Tribunal noted that the minutes of the AIB meeting on 9 February 1993 did not record Mr Gilmartin's presence at that meeting, it was however satisfied that Mr Gilmartin did, on occasions at such meetings either directly or later via Mr Paul Sheeran, express his concerns regarding the payments that were made to Shefran, and it accepted the evidence from Mr Sheeran and Mr Maguire to the effect that Mr Gilmartin had expressed such concerns.

7.82 In her evidence, Ms Basquille accepted that Mr Gilmartin frequently referred to Mr O'Callaghan and Mr Deane as '*corrupt*', and as a '*pair of gangsters.'* She said*'I think that he might frequently have referred to them in that way.'*

7.83 Ms Basquille's admission of the intemperate language used by Mr Gilmartin at meetings (irrespective of the veracity or otherwise of what Mr Gilmartin had said) suggested to the Tribunal that his concerns, as expressed at such meetings, were more wide ranging than merely the issue of the preferential payment of fees to professional individuals associated with Mr O'Callaghan.

7.84 In the course of his evidence, Mr Gilmartin's friend and former Bank Manager Mr Sheeran essentially confirmed Mr Gilmartin's evidence of his concern regarding the round figure payments being made to Shefran in 1991 and 1992, and for which no explanation had been tendered to Mr Gilmartin. Mr

[31]See Part 4 for a further consideration of Mr Gilmartin's complaints to AIB in the period 1993 to 1996.

Sheeran described Mr Gilmartin as having '*an awful lot of concern'*, about the matter. When asked if Mr Gilmartin had mentioned Shefran at Board meetings, Mr Sheeran responded, thus:

> '*I mean he made very widespread allegations of fraud and corruption and I just couldn't conceive him not mentioning* [to AIB] *the company Shefran because it was, to use that word paranoid, he was paranoid about it. I mean it got between and a night's sleep as to what Shefran was being used for'.*

7.85 Mr Sheeran had by this time advised Mr Gilmartin that he had been told by Mr O'Callaghan at an AIB Board meeting[32] that Shefran was a mechanism to facilitate payments to Mr Dunlop without Mr Gilmartin's knowledge.

7.86 Mr Sheeran also testified that in the course of his attendance at a Barkhill Board meeting[33] (which was not attended by Mr Gilmartin) it was stated to him by Mr O'Callaghan (in the presence of Mr O'Farrell of AIB) that Shefran was being used to conceal from Mr Gilmartin certain payments being made to Mr Dunlop.

THE 1993 SHEFRAN PAYMENTS

7.87 Riga paid Shefran IR£25,000 by way of cheque on 17 February 1993. This payment was in discharge of a Shefran invoice for IR£25,000 to Riga, (discharged by Riga on 17 February 1993), and which had been furnished by Mr Dunlop on 18 December 1992.

7.88 The invoice contained the following work description:

'*To professional advice re.development in North Clondalkin.*'[34]

7.89 Mr Dunlop informed the Tribunal that the description on the invoice was for work carried out by him in respect of the Quarryvale rezoning which was confirmed on 17 December 1992, the day prior to the invoice date. Mr Dunlop told the Tribunal that it was likely that he had agreed the detail of the invoice with Mr O'Callaghan.

[32] In October 1994 Mr Sheeran was given Power of Attorney by Mr Gilmartin to represent him at Board meetings

[33] The purpose of Mr Sheeran's attendance at such meetings was twofold; to arrange for financial assistance to be given to Mr Gilmartin, and to make enquiries regarding Shefran.

[34] A schedule to Mr O'Callaghan's 12 April 2000 statement described the services on foot of which Mr Dunlop was paid this IR£25,000 as '*public relations services, political and community lobbying.'*

THE TREATMENT OF THE 1993 SHEFRAN PAYMENT BY MR DUNLOP

7.90 Mr Dunlop cashed the Riga cheque for IR£25,000 on 18 February 1993 at AIB, College Street in Dublin. The cheque was endorsed in the names of '*Hugh McGowan*'and '*Kieran O'Byrne'*, in Mr Dunlop's handwriting.

7.91 Mr Dunlop claimed that a cash lodgement of IR£10,000 made to his INBS 910 account on 19 February, 1993 formed part of the proceeds of the encashed Shefran IR£25,000 cheque, although, as in other instances, it was accepted by him that it was simply the proximity of the relative dates of both transactions that influenced his suggestion in this regard, rather than any specific memory. Mr Dunlop claimed not to know what he did with the cash balance of IR£15,000 which was left, in the event that IR£10,000 of the IR£25,000 cheque was in fact lodged to the INBS account. His only explanation for retaining IR£15,000 in cash was: '*...because I was dealing in cash to a considerable extent at that time.'*[35]

7.92 Some three days following the issuing of the Shefran invoice on 18 December 1992, Frank Dunlop & Associates invoiced Riga for IR£64,897.78. The narrative on that invoice claimed this sum for '*...ongoing costs re Quarryvale.'*[36]

THE TREATMENT OF THE 1993 SHEFRAN PAYMENT IN RIGA'S BOOKS

7.93 The IR£25,000 Shefran cheque payment of 17 February 1993 was analysed within the Riga cheque payments book under '*creditors*'. The payment was classified as a Quarryvale expense in the working papers of Riga's auditors for the year ended 30 April 1993, and in Riga's audited accounts it was ultimately attributed to monies expended in relation to the Stadium project. The consequence of this attribution having being given to the Shefran payment within Riga's books was that it never became part of the Riga/Barkhill inter-company loan balance.[37] The Shefran payment of IR£25,000 was one of a number of payments made by Riga on behalf of Barkhill in the accounting year ended 30 April 1993 which was posted to Riga's '*Work in progress -Stadium*'[38] account within its books.

[35]By the Spring of 1993 Mr Dunlop was involved in a number of rezoning projects as a lobbyist and indeed had himself an interest in one such project (See Chapter Nine).
[36]This invoice and other Frank Dunlop & Associates '*ongoing costs'* invoices are considered below.
[37]Barber & Co.'s analysis contained in the audit working papers for the Riga audit under 'Clondalkin Purchases' posted the IR£25,000 from nominal ledger code 735 (Barkhill expenditure) to 270 (Professional Fees).
[38]This account was Riga's treatment of expenses associated with the Stadium project.

7.94 In those circumstances therefore, unlike the position which pertained in relation to the three 1991 Shefran payments totalling IR£80,000 made by Riga, no recoupment was ever sought by Riga from Barkhill in respect of the February 1993 Shefran payment of IR£25,000.

THE PURPOSE OF THE 1993 SHEFRAN PAYMENT

7.95 According to Mr Dunlop, the 1993 payment was part of his *'fee structure'* He said that the payment was not a '*success fee.'*

MR GILMARTIN'S KNOWLEDGE

7.96 The Tribunal was satisfied that there was no evidence to suggest that Mr Gilmartin had any knowledge of this payment of IR£25,000 at the time that it was made having regard to the fact that Riga never made any attempt to recoup it from Barkhill.

THE BARKHILL AUDIT

8.01 In 1992, Deloitte & Touche were engaged to conduct an audit of the Barkhill accounts from the date of incorporation, 25 November 1988 to 30 April 1992. To enable it conduct this task, AIB provided Barkhill's auditors with details of the two loan accounts of Barkhill and details of the utilisation by Riga of its IR£1m subordinated loan account.[39]

8.02 From documentation provided by AIB, Deloitte & Touche gleaned that among the payments Riga claimed to have made on behalf of Barkhill from the IR£1m subordinated loan were the three 1991 payments to Shefran (described on the AIB document as *'fees'*) of IR£25,000, IR£40,000 and IR£15,000 paid on 16 May 1991, 30May 1991 and 13 June 1991 respectively.

8.03 By mid-1992, AIB had provided to Deloitte & Touche the Shefran invoice dated 20 March 1992, on foot of which Barkhill made the payment of IR£40,000 on the 13 April 1992. It was likely that Deloitte & Touche received a copy of the Shefran invoice dated 30 April 1992 (which was the subject of the June 1992 IR£30,000 payment by Barkhill to Shefran) from AIB on 6 November 1992.

8.04 On 22 June 1992, Mr Fleming of Deloitte & Touche faxed to Mr Gilmartin, for his perusal, the draft accounts prepared for Barkhill to the period ended 30 April 1992. Among the schedules provided to Mr Gilmartin was a '*Schedule 5'* entitled *'Public Relations/Marketing Costs to 30 April 1992.*' The marketing costs referred to in this schedule included payments made to Frank Dunlop &

[39]On foot of the third Heads of Agreement 31 May 1991, Riga committed to the provision of IR£1,000,000 for expenditure on Barkhill (a sum borrowed by Riga from AIB). See Part 4.

Associates and four payments listed as having been made to Shefran, in the sums of IR£40,000, IR£25,000, IR£40,000 and IR£15,000.

8.05 Shortly thereafter, on 24 June 1992, Mr Fleming wrote to Mr Gilmartin (a letter copied to Mr O'Callaghan (O'Callaghan Properties) and Mr Kay of AIB). In that letter, Mr Gilmartin was alerted to the fact that Barkhill '*incurred significant amounts in professional fees under various headings in connection with site assembly and development'* and was requested by Mr Fleming to arrange for '*third party confirmations at 30 April, 1992*' to be sent to Deloitte and Touche in respect of a number of companies. Among the parties listed by Mr Fleming in respect of which he was seeking backup documentation was Shefran and Mr Dunlop.

8.06 It was evident to the Tribunal that by June 1992, Deloitte & Touche had been alerted to a number of issues relating to Shefran namely:

i) That the 20 March 1992 Shefran invoice, on foot of which Barkhill had made a IR£40,000 payment, did not include VAT; and

ii) That no invoices had been provided to it in respect of the three round figure payments totalling IR£80,000 and paid by Riga to Shefran in 1991, and in respect of which Barkhill was indebted to Riga, on foot of the inter company loan balance.

8.07 Mr Gilmartin told the Tribunal that he suggested to Mr Fleming that he seek information on these various issues from Mr O'Callaghan and from AIB.

8.08 Deloitte & Touche set about seeking the necessary information from Riga. Efforts made on the part of Deloitte & Touche in mid to late 1992 to obtain third party confirmation of the Shefran payments culminated in a letter sent by Mr Fleming to Mr Aidan Lucey of Riga on 15 December 1992. Prior to this, Riga's auditors, Barber & Co Ltd, had by 27 August 1992 effectively confirmed to Deloitte & Touche that included in the balance of IR£1,227,756 owed to Riga by Barkhill to the period ended 30 April 1992 (i.e. the inter-company loan account) were the payments totalling IR£80,000 made to Shefran.

8.09 Mr Fleming's letter of 15 December to Mr Lucey contained, *inter alia*, the following request:

> *At this point we have comprehensively examined all documentation received in support of the payments and transactions of Barkhill Ltd and we have noted that they are certain items for which no supporting documents have been received. A schedule of the relevant payments/transactions is also attached. I would be grateful if you could*

arrange to have your records checked and copies of any supporting documents sent to me as soon as possible.

8.10 Among the items in respect of which Mr Fleming sought supporting documentation were:[40]

3 amounts paid to Sheafran Ltd. from the Riga sub-ordinated loan on the following dates: 16/5/91 25,000, 30/5/91 40,000, 13/6/91 15,000

8.11 Mr Gilmartin, Mr O'Callaghan and Ms Mary Basquille (AIB) were provided with copies of this request.

8.12 Mr Lucey, on behalf of Riga, responded to Deloitte & Touches' request on 8 February 1993 to the effect that Riga did not have the supporting documentation in question, and suggested that Deloitte & Touche contact AIB in relation to the issue. However, AIB had by that time confirmed to Deloitte & Touche that it had no supporting documentation in relation to the Shefran payments.

8.13 Mr Fleming continued in his efforts to obtain backup documentation for the unresolved audit matters, (including the three 1991 Shefran payments) and in particular, in a letter written to Mr Deane on 3 May 1993 in connection with the Barkhill audit, he advised as follows:

I did write to Aidan Lucey on 15th December 1992 setting out what I regarded as the unresolved matters of strict accounting nature. I am attaching to this letter a schedule of payments/transactions for which Deloitte & Touche received no supporting documentation. The transactions recorded on this schedule have been booked in the accounts of Barkhill on the basis of discussions and explanations received from Tom Gilmartin, Aidan Lucey, Seamus Maguire and AIB.

8.14 The schedule Mr Fleming attached to his 3 May letter to Mr Deane was the schedule he had earlier (in December 1992) sent to Mr Lucey, Mr Gilmartin, Mr O'Callaghan and AIB.

8.15 The minutes of a Barkhill Board meeting at AIB on 16 June 1993 and which was attended by Mr O'Callaghan, Mr Pitcher (AIB), Mr Michael O'Farrell (AIB) and Mr Seamus Maguire (Mr Gilmartin's Solicitor) record, *inter alia*, that a discussion took place in relation to a number of matters set out in Mr Fleming's letter of 3 May 1993. However the Board minutes did not record either any

[40] Mr Fleming had also sought, inter alia, supporting documentation for two '*Expenses*' payments of IR£10,000 – See Part 4

discussion on, or any proposed action to be undertaken in relation to either the penultimate paragraph of Mr Fleming's letter, which repeated his earlier request for supporting documentation, or the schedule which Mr Fleming had attached therewith. At the meeting, Mr Gilmartin's concern that he was not being kept informed of the affairs of Barkhill was expressed by Mr Seamus Maguire. Mr O'Callaghan was noted as rejecting any suggestion that he (Mr O'Callaghan) had not been forthcoming with information to Mr Gilmartin.

8.16 Notwithstanding the absence of any reference thereto in the Board minutes, the Tribunal was satisfied that Mr Fleming's schedule itemising '*payments/transactions for which Deloitte & Touche have received no supporting documentation*' (including the three 1991 Shefran payments) was discussed in the course of the said Board meeting. A note compiled by Mr O'Farrell of AIB, on foot on his attendance at the meeting of 16 June 1993, included the following '*schedule of claims and transactions – noted*', a notation, which the Tribunal was satisfied, related to Mr Fleming's queries. Mr O'Callaghan suggested that Mr Fleming's document (in which the 1991 Shefran payments were referred to) was '*considered*' at the Board meeting of 16 June 1993.

8.17 Some action was taken with regard to certain items as listed on Mr Fleming's schedule, and it was noteworthy that on the 12 May 1993 Mr Deane wrote to Mr Maguire regarding item 7 on Mr Fleming's schedule, wherein Mr Maguire was requested to provide invoices in relation to certain land transactions. Mr Deane's request to Mr Maguire was directly referable to Mr Fleming's queries. Yet, as the Tribunal noted, Mr Deane appeared not to have been authorised or requested to follow up on item 6 of Mr Fleming's schedule (namely his request for documentation surrounding the three Shefran payments).

8.18 Notwithstanding Mr Deane's sworn testimony that he knew, from 1991, of Mr Dunlop's association with Shefran, there was no letter from Mr Deane to Riga requesting that it provide the Shefran invoices sought by Mr Fleming. The Tribunal regarded the absence of such a letter as significant.[41]

8.19 The accounts of Barkhill were eventually signed on 27 January 1994 by Mr Gilmartin and Mr O'Callaghan, in the absence of any invoices in relation to the 1991 Shefran payments having been produced to Barkhill's auditors.

8.20 Documents furnished to the Tribunal revealed that Mr O'Callaghan when he attended the meeting of 16 June 1993 had in his possession a copy of Mr Fleming's schedule, as provided with his letter of 3 May 1993 to Mr Deane.

[41] See further Part 4

8.21 Of particular interest to the Tribunal were a number of manuscript notations, in Mr O'Callaghan's handwriting, which appeared on the copy of Mr Fleming's schedule which Mr O'Callaghan had in his possession at the Board meeting.

8.22 On Mr O'Callaghan's copy of the document, to the left of typed references to the three payments of IR£25,000, IR£40,000 and IR£15,000 payments, Mr O'Callaghan wrote in manuscript the words *'no invoice June elections.'*[42]

8.23 Mr O'Callaghan informed the Tribunal that these notations were not made by him at the 16 June 1993 meeting but were in fact made by him when perusing the document in his own office in Cork, some two days or so following the AIB meeting.

8.24 Mr O'Callaghan told the Tribunal, that:

> '*... I was sitting on my own and described this as no more just than probably actually a doodle on this. I was looking at the extent of the payments. And I always felt that these payments were pretty extensive. We didn't have any choice but to pay them, as I described the last time. What I am doing there is making it up to myself that okay these fees look quite expensive but in fairness, I do know that during the May 16th election, Sorry. The May 16th vote, that I do know that at that particular time that Frank Dunlop had been asked by quite a few Councillors for election expenses towards pamphlets, brochures etc. for the election, the forthcoming at the end of June. And that's what's written down there. That's why the note was written down there'.*

8.25 Asked what had led him to make the notation, Mr O'Callaghan maintained:

> '*Well as I've said before, I would be, was always concerned in my mind that 25, 40, 15 that's the 80,000 pounds was a bit on the high side. But as I said, likewise, nothing we could do about it actually because we were in a position where we had to pay those, as I considered, high fees, because we were completely using Dunlop's office and staff an everything else at that time. So I always felt they were a bit high and that note I've made there, I was justifying in my own mind as to what he would have done for that or what would have happened for that or how could I justify in my own mind paying such high fees to him. And that's why I've written*

[42] To the right of the listing of the three amounts of IR£25,000, IR£40,000 and IR£15,000 in type, a manuscript notation 'no invoice' also appeared. Mr O'Callaghan stated that this notation was not in the handwriting of his book-keeper, Mr Aidan Lucey.

down there opposite that 'during May 16th' that's the Quarryvale vote. At that particular time he would have been more than likely and this is just me now surmising and scribbling on my notes or scribbling on the paper really.

That he would have had actually at that time he would have had to contribute or he would have promised during the May 16th vote, that's the Quarryvale vote, that he would have promised at that vote with the election , the Local Elections which was due a few weeks away, I think about five weeks. And most people knew that that was on the way. That was coming. He would have made promises to help people of course at that particular time to help them in the Local Elections. That would be very normal if he asked somebody to support Quarryvale it's quite possible that the councillor would say back to him, yes I will and I am going to do it but I want you to look after me as well when the election comes up etc. etc.'

8.26 The following exchanges took place between Tribunal Counsel and Mr O'Callaghan, on Days 884 and 906:

'Q.Whenever you made the notation, Mr O'Callaghan, what you have noted in relation to the 80,000 Shefran payments is not a reference to Mr Frank Dunlop and professional fees. It is a reference for the June election and that there is no invoices, isn't that right?

A. Yes. And can I explain that to you?

Q. Yes.

A. As I outlined.The are the reason for 'no invoice June election' is these invoices were raised in March, April, May and what I referredto there,there would not be an invoice or sorry there was not an invoice sorry for June 16 because there was an election in June, so there wasn't any lobbying work done in June so there would be no reason for Frank Dunlop to invoice us in June.

Q. I suggest to you, Mr O'Callaghan that after the event and looking at this document, you are cobbling together an excuse for what you have written there?

A. Absolutely not.'

8.27 And:

'Q. Are you saying, Mr O'Callaghan, that the words 'No invoice' and beneath that 'June election' means there was no invoice for June because of the election?

A. There was no invoice for made out for the month of June because there was no work done for the month of June because the local elections were on and we had no business lobbying anybody at that particular time.'

8.28 Mr O'Callaghan explained his handwritten notes on the document in the following terms:

'*The notation there 'no invoice June election' was a doodle put on that by me because thankfully there was no invoice coming, an invoice would not have come to us and did not come to us for the month of June because Frank Dunlop was not working for us then because of an election on and there was no lobbying going on so I wouldn't be charged for that particular time. That is that particular notation'.*

8.29 The Tribunal did not believe Mr O'Callaghan's explanation to be true. The Deloitte & Touche schedule on which Mr O'Callaghan hand wrote his comment '*no invoice June elections*' was received by Mr O'Callaghan in May 1993. It was simply not credible, and highly unlikely, that nearly two years after the event (the 1991 Local Elections) Mr O'Callaghan had any reason to identify, consider, speculate or otherwise concern himself that he '*wouldn't be charged for that particular time',* i.e. June 1991, by Mr Dunlop.

8.30 Furthermore, the Tribunal was satisfied that no factual basis existed in 1991 or 1993 for the explanation, as tendered by Mr O'Callaghan in evidence, for the '*doodle*'. Documents furnished to the Tribunal revealed that on 6 August 1991 Mr Dunlop, through Frank Dunlop & Associates, had invoiced Riga in the sum of IR£8,484.29, for expenses incurred by him relating to the June 1991 Local Elections and which was discharged by Riga on 30 September 1991.

8.31 Mr O'Farrell was questioned on Day 848 in relation to the schedule of items provided by Mr Fleming, which included references to the three 1991 Shefran payments. He was questioned in particular in relation to Mr O'Callaghan's handwritten notes which appeared on a copy of the document in question and which stated in manuscript alongside the reference in the schedule to the payments of IR£25,000, IR£40,000 and IR£15,000 to Shefran in 1991, the words as follows: *'no invoice, for June election.'*

8.32 When asked if he recalled any discussion about this issue at the meeting on 16 June 1993, and in particular whether he recalled being advised by Mr O'Callaghan that the payments to Shefran related to the 1991 June Election, Mr O'Farrell told the Tribunal that he had '*no recollection at all'*of the issue of the Shefran payments and the June Election being discussed at the Board meeting

on the 16 June 1993. He had merely noted '*schedule of claims and transactions – noted'* in relation to Mr Fleming's schedule of unresolved matters.

8.33 Mr O'Farrell denied that AIB had any knowledge that politicians were being bribed to support the rezoning of the Quarryvale lands. He said that he was certain that had any such comment or suggestion relating to illicit or corrupt payments to politicians arisen, this would have *'stuck in my mind.'*

8.34 As discussed above, documents furnished to the Tribunal revealed that 16 June 1993 was not the first occasion on which Mr O'Callaghan, by way of manuscript note on a third party document, had noted a connection between the three 1991 Shefran payments totalling IR£80,000 and the June 1991 Local Elections.

8.35 Following the provision by Riga on 2 January 1992 to AIB of the list of '*Westpark expenses*' paid by Riga on behalf of Barkhill (which included the three 1991 Shefran payments) Mr Deane, on 8 January 1992, requested Mr Donagh of AIB to prepare a projected balance of the AIB lending regarding Barkhill as of 31 March 1992. AIB duly did so and the document prepared by AIB in response to Mr Deane's request was the subject of a further meeting which took place on 14 January 1992. In attendance at this meeting were Mr O'Callaghan, Mr Deane, Mr Kay, Mr Donagh and Mr David McGrath[43].

8.36 The document compiled by AIB was entitled '*Barkhill Ltd*', a document which, the Tribunal was satisfied, was distributed to the attendees at the meeting (including Mr O'Callaghan) on 14 January 1992.

8.37 While Mr O'Callaghan was uncertain as to when exactly he received the document i.e. whether prior to or at the meeting, he accepted that it was most likely that it was produced at the meeting. When asked as to when he made a number of handwritten notes on the document, Mr O'Callaghan speculated that these were made subsequent to the meeting, and after he had taken it back to his office.

8.38 Mr O'Callaghan's copy of this document, as discovered to the Tribunal included thereon a number of manuscript notes which he agreed had been written by him.

[43] In April 1991 Mr McGrath assumed responsibility for the management of AIB's Corporate Business in the Retail, Indigenous Manufacturing, Motor and Property and Constructions Sectors.

8.39 In the portion of this AIB *'Barkhill Ltd'* document headed '*Utilisation of Riga subordinated £1m loan'*the three 1991 Shefran payments made by Riga were listed sequentially. Mr O'Callaghan's handwritten note grouped the three payments together, and added the words.....

during May 16th for election funds in June

↓

Election pamphlets etc.

8.40 These handwritten notations from Mr O'Callaghan clearly connected the Shefran payments, totalling IR£80,000, to the June 1991 Local Election and to expenditure incurred in relation to that Election.

8.41 The Tribunal was satisfied that, on the face of them, Mr O'Callaghan's notations appeared to associate three specific matters, namely:

- the payments totalling IR£80,000 to Shefran,
- the date of the Quarryvale rezoning vote, and
- the Local Election campaign in May/June 1991.

8.42 Mr O'Callaghan conceded that, as appeared on the AIB document, an association had been made by him between the payment of IR£80,000 by Riga to Shefran in May/June 1991 and the 1991 May/June Election campaign. When asked to explain his handwritten notes on the AIB document, Mr O'Callaghan stated;

'Well, what I think what I meant by that was that in that particular, I was making that note on it. That I must admit I always felt that the fees were pretty high but we had no choice but to pay them under the circumstances. As we asked Frank Dunlop to do so much work in short time and using his office etc. And I would have, I was quite conscious in making that note that during the election, sorry, during the vote coming up to May 16th, that Frank Dunlop would have of course have asked by quite a number of councillors for assistance in the forthcoming election, Local Election. And that he would have been asked to provide by them, he would asked to provide posters, pamphlets, etc.'

8.43 And, he stated:

'.... what that note actually means is that because of all of the connections that Frank Dunlop would have made with various politicians etc. and in particular when there was a vote in on May 16th because he would have met and made contact with so many politicians. Like any normal business person with an election on hand he would have been asked of course for political contributions. And political type contribution that I assume there from that note that Frank Dunlop would have been

asked for and these would have been brought to him probably in probably more importantly because of the May vote and all of the politicians he had met during that month of May, that he would have been asked on numerous occasion for small contributions, for pamphlets, for posters and little things like that. Small amounts of money. And that would be significant because he would be asked by 30,40,50 councillors for that. Which is a lot of money when he add it all up.'

8.44 Mr O'Callaghan also advised the Tribunal:

'That [Mr Dunlop] *would have had actually at that time he would have had to contribute or he would have promised during the May 16th vote, that's the Quarryvale vote, that he would have promised at that vote with the election, the Local Elections which was due a few weeks away, I think about five weeks. And most people knew that that was on the way. That was coming. He would have made promises to help people of course at that particular time to help them in the Local Elections. That would be very normal if he asked somebody to support Quarryvale it's quite possible that the Councillor would say back to him yes I will, and I am going to do it, but I want you to look after me as well when the Election comes up etc, etc.'*

8.45 On Day 891, the following exchange took place between Tribunal Counsel and Mr O'Callaghan:

'Q *So your justification to yourself if I understand your reasoning correctly, Mr O'Callaghan, for the payment of 80,000 pounds to Shefran, was that it was connected to the 16th of May vote and for election expenses that you felt might have been expended by Mr Dunlop to the councillors in some way in connection with their support for Quarryvale, is that right?'*

A. *No, not for Quarryvale. Support generally at election time as I mentioned that when councillors, this is just me surmising now and it's a very, very normal thing to happen. That (SIC) when Frank Dunlop would have been asking the various councillors for support on May 16th vote for Quarryvale, that they would of course in turn would probably say to him well like that's fine don't forget me I will have my own election in the end of June. Very normal thing to happen, happens to somebody in business, especially somebody like Frank Dunlop who would be in touch with so many councillors. And that's just an assumption there and the follow on to that he didn't get 80,000 pounds to put into his pocket for such a short period of time for example, that you know, it wasn't all free. He would have had to probably give a little bit of support to some Councillors*

because he knew so many of them come the election on the 27th of June. As simple as that.

Q. *Yes*

A.*This was easing my own mind really that's all. Kind of a silly note to be blunt about it really.*

Q. *On the other hand, Mr O'Callaghan, if I can put this to you: if one were to take the note at face value without the explanation you have given about your solitary musings in Cork, it is a note that records an attribution by the person who paid Mr Dunlop, that the money was paid during May 16th, which is the day of the Quarryvale vote, for election expenses in June, isn't that right? That's what the note records on its face.*

A. *You could read it like that I suppose.*

Q.*The benefit of your explanation in the witness box, Mr O'Callaghan, and one coldly considered what you had noted on the document when you were on your own and giving consideration to it, one would be left with the view or could well be left with the view that the sum of £80,000 was paid for the vote in Quarryvale on May 16th, isn't that right?*

A.*Well that would be very, very wrong. And to do that you would have to get to read my mind. I don't know who (SIC) you actually take that out of it.'*

8.46 The Tribunal was satisfied that Mr O'Callaghan's notations were made on 14 January 1992 while attending a meeting in AIB and that they were made by him (whether or not articulated by him on that occasion) in the context of a discussion about, *inter alia*, the three 1991 Shefran payments. The Tribunal was also satisfied that Mr O'Callaghan, at the time, noted on the document that the money was paid in connection with the Local Election campaign and that at the time he did so that was his understanding of the purpose of the payments.

8.47 With regard to the notations on Mr Fleming's schedule, the Tribunal was satisfied that these notations were made in the context of a discussion likely to have taken place at the Board meeting on 16 June 1993 regarding Mr Fleming's request for documentation to support the 1991 Shefran payments. The Tribunal rejected Mr O'Callaghan's claim that the notations were '*doodles*' or '*scribbles*' made by him in his office in Cork.

8.48 The Tribunal was satisfied that, as part of that discussion, the 1991 Shefran payments totalling IR£80,000 would have been alluded to in the context of Mr Flemings request for the missing invoices.

8.49 The Tribunal was satisfied that any reasonable or logical reading of the two documents in question, and Mr O'Callaghan's notations thereon, suggested that Mr O'Callaghan's belief and understanding, as of 14 January 1992 and 16 June 1993 respectively, was that IR£80,000 had been paid by Riga to Mr Dunlop, through Shefran, for utilisation by him in the context of the Local Election campaign in 1991.

8.50 The Tribunal was also satisfied that in the course of the meeting of 16 June 1993 Mr O'Callaghan advised those present that invoices were unavailable in respect of the 1991 Shefran payments. One of the subject matters at this meeting was Mr Fleming's request, *inter alia*, for the 1991 Shefran invoices and other invoices. It was established with certainty that no invoices were ever produced to Mr Fleming for the purpose of the Barkhill audit. Records showed that notwithstanding Mr Fleming's letters of 15 of December 1992 and 3 May 1993, and notwithstanding consideration given to the matter at the Barkhill board meeting on 16 of June 1993, Mr Fleming's working documents in the lead up period to the accounts being signed off continued to note the absence of invoices for the three 1991 payments.

MR O'CALLAGHAN'S EVIDENCE IN RELATION TO THE 1991 SHEFRAN INVOICES

8.51 Mr O'Callaghan told the Tribunal that he received, individually, the three Shefran invoices from Mr Dunlop in 1991, prior to discharging the sums claimed on each invoice and that on their receipt he kept them in his office in Cork and did not provide them to his book-keeper, Mr Lucey, prior to or at the time the three cheques were written. It was normal practice in Riga that invoices were received from third parties to whom payments were due, before Riga would issue cheques to such third parties. Mr Lucey testified that *'in the normal course of events'* invoices for services would be stamped as paid, when paid but there were no hard and fast rules. Mr Lucey confirmed that Mr Dunlop's business involved the provision of *'services'.*

8.52 The content of Mr Lucey's letter to Mr Fleming of Deloitte & Touche dated 8 February 1993 suggested that Mr Lucey clearly did not, at that point in time (which was close to two years after the payments had been made) have possession of these invoices. The Tribunal was satisfied that Mr Lucey did not, in fact, have the invoices at that time.

8.53 Mr O'Callaghan maintained that, notwithstanding the fact (as claimed by him) that the Shefran invoices were in his possession in 1991 and despite his awareness of Mr Fleming's requirement for sight of such invoices, he had not provided them to Mr Fleming. Mr O'Callaghan's stated reason for not so doing was that he was too busy to look for them in his office. Mr O'Callaghan said that he did not regard the invoices as being of any significance, as their cost had been refunded. He accepted that he did not provide them to Mr Lucey, Deloitte & Touche, AIB or Mr Gilmartin, and that he made them available for the first time when the Tribunal sought them.

8.54 Mr Lucey, in his evidence, could not recollect if, having been advised by Mr Fleming of the requirement for backup documentation, he had ever gone in search of such invoices.

8.55 Mr O'Callaghan told the Tribunal that he handed over the three invoices to Mr Lucey in late 1993 and that at some stage copies must have been made of them, as copies were discovered to the Tribunal in 2000.

8.56 In an Affidavit of Discovery sworn on 3 May 2000, Mr O'Callaghan averred, *inter alia*, to the existence within Riga of copies of the Shefran invoices, including the three 1991 invoices, which copies were duly produced to the Tribunal by Mr O'Callaghan.

8.57 Mr O'Callaghan claimed to have located the original Shefran invoices in a box marked 'Quarryvale' in his office in Cork, in approximately May 2008, while the public hearings into the QVII module were ongoing. Mr O'Callaghan duly furnished these originals to the Tribunal in July 2008.

8.58 No explanation was provided by Mr O'Callaghan as to why copies of the invoices had been made, or why, or how the originals of the invoices remained in his office until 2008.

8.59 Prior to Mr O'Callaghan making Discovery in May 2000 of copies of the three 1991 invoices, Mr Dunlop and Mr O'Callaghan met in Cork on 9 or 10 March 1999. According to both, Mr Dunlop travelled to Cork in order, *inter alia*, to obtain copies of the Shefran invoices from Mr O'Callaghan, as it had been Mr Dunlop's practice not to keep copies of Shefran invoices, once issued.[44] Mr Dunlop required the copy invoices for the purposes of complying with an Order for Discovery made by the Tribunal.

[44]Mr Dunlop claimed also not to have retained copies of two Frank Dunlop & Associates invoices issued to Riga in 1992 and 1993 in respect of amounts of IR£70,000 and IR£25,000 respectively.

8.60 As already set out, an examination by the Tribunal of the six Shefran invoices indicated that none included VAT, none were numbered (sequentially or otherwise) and none had a date of receipt stamped thereon. Five of the six invoices described the work, the subject of the invoice, as including the provision of *'professional strategic, communications and educational*[45] *services'*, although, as acknowledged by Mr Dunlop, no such services were provided by Mr Dunlop, either to Riga or Barkhill. All six invoices were in the name of Shefran, including the three 1991 invoices, although the 1991 payments were written up in the records of Riga as payments to S-h-e-a-f-r-a-n. As already indicated, in the case of two of the 1991 payments, where the cheques were made available to the Tribunal, the payee on one cheque was clearly '*Sheafran*' (cheque for IR£25,000 dated 16 May 1991) and in respect of the other cheque (cheque for IR£15,000 dated 7 June 1991) the payee was less clear, although the Tribunal believed the cheque to have been made out to Sheafran, given the entry in Riga's records.

8.61 Only two of the invoices, namely those of 20 March 1992 and 18 December 1992[46] are marked '*paid*'.

8.62 Mr O'Callaghan told the Tribunal that he always believed the name of Mr Dunlop's company to be S-H-E-F-R-A-N, and never knew it as S-H-E-A-F-R-A-N. Mr O'Callaghan told the Tribunal that it had always been his understanding that the name Shefran, was an amalgam of the names Sheila (Mr Dunlop's wife's first name) and Frank. He suggested that the misspelling in Riga's books, and in the cheques, of Shefran to read Sheafran was due to human error, and that this erroneous spelling was merely replicated in the account books, and in the writing of cheques.

8.63 In fact, as set out above, Shefran did not exist as a legal entity until late 1991. In March 1990, the company was incorporated using the name S-H-E-A-F-R-A-N Ltd. Its change of name to S-H-E-F-R-A-N occurred on 19 November 1991. All three 1991 payments totalling IR£80,000 were made therefore at a time when the name of the company was Sheafran, and not Shefran.

8.64 The entire contemporaneous documentary trail examined by the Tribunal and which referred to or touched upon the issue of the three 1991 Shefran payments, on the face of them, indicated that invoices for the three 1991 Shefran payments of IR£25,000, IR£40,000 and IR£15,000 had not been

[45] In his evidence in the Pennine/Baldoyle Module, Mr Dunlop told the Tribunal that he deliberately used the word *'educational'* in his invoices, because such services were not subject to VAT.

[46] The 18 December 1992 invoice was never a subject of discussion within Barkhill as Riga never sought recoupment thereof.

issued in 1991. Indeed, as already referred to, Mr O'Callaghan's handwritten notations on the AIB document of January 1992 and his handwritten notations on Mr Fleming's schedule as re-copied by Mr Fleming to Riga on 3 May 1993, indicated, in the view of the Tribunal, that no invoices had issued in 1991.

8.65 Only Mr O'Callaghan and Mr Dunlop asserted that the three Shefran invoices dated 25 March 1991, 2 April 1991 and 1 May 1991 were extant in 1991. Of the other individuals likely, in the period 1991 to 1993, to have had sight of these invoices, if they existed, only Ms Cowhig, Riga's auditor, merely assumed that she had seen them. Mr Lucey, the individual *'at the coal face'* in terms of Riga's internal bookkeeping procedures told the Tribunal that he had no recollection of ever seeing such invoices.

8.66 The Tribunal was of the view that if the invoices had been available to Mr O'Callaghan from 1991, then he would have provided them to Mr Lucey to be forwarded to Deloitte & Touche at the time when their production was requested. Moreover, the Tribunal did not see why, if copies of the original invoices were made in (or prior to) 2000, the originals were subsequently maintained in storage in Mr O'Callaghan's personal office until furnished to the Tribunal in July 2008. The Tribunal believed that a likely explanation for the foregoing was that the invoices were not generated at all until many years after 1991.

8.67 The Tribunal was satisfied that:

(i) Mr Dunlop did not provide Mr O'Callaghan with any invoices in the name of SHEFRAN in 1991.

(ii) The copy 1991 Shefran invoices, discovered to the Tribunal in April 2000 by Mr Dunlop and May 2000 by Mr O'Callaghan, and the originals of which were discovered by Mr O'Callaghan in July 2008, were generated much later than 1991, probably at or close to the time of Mr Dunlop's visit to Mr O'Callaghan's office in Cork in March 1999. This visit was undertaken for the purpose, *inter alia*, of enabling Mr Dunlop to provide documentation to the Tribunal.

RIGA'S ACCOUNTING TREATMENT AND THE AUDIT TREATMENT OF THE 1991 SHEFRAN PAYMENTS

8.68 In Riga's audited accounts for the year ended 30 April 1992[47] the figure stated as the sum owed by Barkhill to Riga (including the IR£80,000 paid in 1991 to Shefran) was IR£1,216,914.43. In Barkhill's accounts for the period

[47]The Auditor's Report to the members of Riga was signed by its auditor, Barber & Co., on 23 October 1992

ended 30 April 1992[48] the sum owed by Barkhill to Riga for the said period was stated to be IR£1,227,756. The difference of IR£10,842 (to the nearest punt) was said to represent travel expenses paid by Riga.

8.69 On foot of documentation furnished under cover of correspondence from Mr Lucey dated 28 October 1993, Barkhill's auditors were alerted to the fact that Riga's inter-company account working papers in relation to the inter-company loan then being prepared for the year ended 30 April 1993 did not reflect the IR£80,000 Shefran payments as a sum due and owing by Barkhill to Riga as at 30 April 1992. This was contrary to the position that had prevailed in the audited accounts of both companies as at 30 April 1992. Nor was such sum carried over in Riga's books as owing by Barkhill for the year ended 30 April 1993.

8.70 This revised position was to all intents and purposes confirmed to Mr Fleming (of Deloitte & Touche) by facsimile document entitled '*Barkhill Limited – Loan'* forwarded by Ms Cowhig (of Barber & Co) on 8 December 1993. Ms Cowhig confirmed that the opening inter-company balance figure as of 1 May 1993 in the sum of IR£1,365,824.80, contained in this document, did not include the IR£80,000 Shefran payment.[49]

8.71 On 25 January 1994, Mr O'Callaghan and Mr Deane, as Directors of Riga, signed the Riga audited accounts for the year ended 30 April 1993. Omitted from the signed off accounts was a loan balance of IR£6,309.29 owed to Riga by Barkhill (being a shortfall left after a number of invoices had been repaid by Barkhill in January 1992) and the IR£80,000 Shefran payments, all of which had previously been carried in Riga's books as monies owed to Riga by Barkhill.

8.72 This total of IR£86,309.29 removed from the Riga/Barkhill inter-company loan balance was attributed within Riga's accounts for the year ended 30 April 1993 as expenditure connected with Riga's Stadium project. With the attribution to *'Work in progress – Stadium'* therefore, the IR£86,309.29 expenditure was no longer open to scrutiny by the auditors of Barkhill, unlike the position which had pertained in relation to the year ending 30 April 1992.

8.73 On 11 May 1994, Mr Fleming, then in the process of auditing the accounts of Barkhill for the 18 month period ended 31 October 1993 and having identified the discrepancy in the inter-company loan balance, communicated with

[48]The Report of the Auditor to the members of Barkhill was signed by its auditor, Deloitte & Touche, on 27 January 1994.

[49]Although not actually confirmed by Ms. Cowhig in her evidence, the document faxed by her to Deloitte & Touche on 8 December 1993 also clearly indicated that the closing balance of IR£1,386,242.85 as of 31 October 1993 did not include the IR£80,000 Shefran payments.

Ms Mary Basquille[50] of AIB and advised that among the '*Unresolved Audit Matters*' set out in the Appendix which accompanied his letter was the issue of the treatment in Riga's books of the Shefran payments. By fax dated 17 May 1994, Mr Lucey forwarded to Ms Cowhig a copy of Mr Fleming's letter to Ms Basquille. On the same date, Mr Deane wrote to Ms Cowhig in relation to Mr Fleming's queries.

8.74 In essence, Mr Fleming sought clarification from Riga and its auditors as to why three items, two of which had previously been attriutable to the inter-company loan balance within Riga were, as of 31 October 1993, omitted therefrom. The three items which had been identified by Mr Fleming were the 1991 Shefran payments totalling IR£80,000, the sum of IR£6,309 and a travel expenses figure of IR£10,842. No explanation was provided by Riga to Mr Fleming in 1994. Ms Cowhig speculated that she may have spoken to Mr Fleming by telephone in relation to the matter. However, Ms Cowhig agreed that the content of Mr Fleming's letter to Ms Basquille in February 1995 suggested that this matter had not been addressed up to that time.

8.75 In a letter to AIB on 9 February 1995 and copied (as had Mr Fleming's 11 May 1994 letter to Ms Basquille) to Mr O'Callaghan, Mr Deane, Mr Seamus Maguire, Mr Lucey, Mr Gilmartin and Mr Pitcher of AIB, Mr Fleming repeated his request for clarification. On 7 March 1995 Ms Cowhig responded to Mr Fleming's letter of 9 February 1995 with confirmation that as at 30 April 1994 the IR£80,000 Shefran payment and the sum of IR£6,309 were once again included in the Riga/Barkhill inter-company loan balance in Riga's books.[51]Ms Cowhig's letter neither explained the decision to omit such sums in the accounts for year ended 30 April 1993, nor why the sums had now been reinstated to the inter-company loan balance account.

8.76 Having been so reinstated, the Shefran IR£80,000 payment continued to be carried in the books of Riga as a debt due by Barkhill, and which was ultimately recouped by Riga in 1996.

8.77 Ms Cowhig told the Tribunal that at some stage after 30 April 1993, she was advised by Mr Deane, in discussions regarding Riga's accounts for that year-end, that certain of the expenditure which had been incurred by Riga on behalf of Barkhill in the period 1991 to 30 April 1993 was believed, as of 30 April 1993, not to be readily recoverable from Barkhill. Some of this expenditure had already

[50]Ms Basquille was an account officer in AIB. She managed the Barkhill file on a day-to-day basis from approximately September 1992, and was in regular contact with Mr Gilmartin following Mr Kay's transfer to another division within the bank.

[51] Ms. Cowhig clarified in her statement and in evidence that while it was intended to transfer back the IR£86,309, the figure actually transferred back was IR£80,000

been accounted for in the inter-company loan balance for the year ended 30 April 1992, namely, the IR£80,000 Shefran payments and the IR£6,309.29 shortfall.

8.78 According to Ms Cowhig, the expenditure which had been incurred by Riga on behalf of Barkhill, and about which doubt was now being cast as to the likelihood of recovery, related to professional fees paid by Riga to a number of entities, including Shefran. On foot of Mr Deane's instructions, Ms Cowhig, in the course of her audit for year ended 30 April 1993, duly transferred the IR£80,000 Shefran balance, the IR£6,309.29 shortfall and a sum of IR£130,890.36 to Riga's '*Work in progress Stadium*' account.

8.79 The sum of IR£130,890.36 transferred in such manner included payments by Riga to a number of other entities (as of the year ended 30April 1993) including Frank Dunlop & Associates and Cllr Sean Gilbride.

8.80 The total sum thus attributed in Riga's books to '*Work in progress – Stadium*', as opposed to being carried in the Riga/Barkhill inter-company loan balance, was IR£217,199.65.[52]

8.81 Mr Deane explained the doubt that had arisen regarding the recovery by Riga of the afore-mentioned professional fees on the basis that it was believed AIB would not release the necessary funds, and that Mr Gilmartin would not be amenable to the discharge of such fees to Riga by Barkhill. Mr Deane claimed that his concern in this regard arose because of prior objection from both himself and Mr O'Callaghan to the discharge of sums due and owing to professionals originally retained by Mr Gilmartin in connection with the Quarryvale project. Mr Deane feared that Mr Gilmartin would reciprocate by refusing to agree to Barkhill's reimbursement of Riga for payments it had made to certain professionals on behalf of the Quarryvale project.

8.82 Counsel for the Tribunal asked Ms Cowhig to account for the decision, in 1995, to reattribute the IR£80,000 Shefran payments to the inter-company loan balance account for year ended 30 April 1994 (as per Ms Cowhig's letter to Mr Fleming of 7 March 1995 and as reflected in Riga's accounts for the year ended 30 April 1994). Ms Cowhig told the Tribunal that that reattribution was done on the direction of Mr Deane who she claimed had advised her in 1994 that, with zoning having been achieved for the Quarryvale site, Riga's prospects of recovering the IR£80,000 Shefran fees from Barkhill had improved considerably.

[52] Of the sum of IR£217,199.65 written up to Work in progress – Stadium, only IR£86,309.29 of same was queried by Mr Fleming of Deloitte & Touche (Barkhill's auditors) in late 1993/1994 as only that sum had appeared in the Riga/Barkhill inter-company loan balance to year ended 30 April 1992 and not in Riga balance at 31 October 1993.

In her evidence to the Tribunal, Ms Cowhig stated that the sums were reinstated after she had discussed the matter with Mr Deane. It was done:

> '*on the basis that there's, once the zoning for Quarryvale came through that it should be easier to recover the expenses from Barkhill and that Tom Gilmartin, well I thought that Tom Gilmartin might now not object to those payments, therefore, that it should now – that they could not be recovered from Barkhill.'*

8.83 In his evidence, Mr Deane told the Tribunal:

> '*I believed at that time that zoning had gone through. The row with Tom Gilmartin over payment of his particular consultants had ameliorated somewhat because we had made arrangements with Connell Wilson, who had been in fairness owed a lot of money, but we didn't have the money to pay them. And I felt at the very least we would get back the fees incorporated the our*[sic] *subordinate loan.'*

8.84 Mr O'Callaghan told the Tribunal that he had not been consulted in relation to this issue, and was not involved in the decision to reattribute the IR£80,000 Shefran payments. Mr O'Callaghan also maintained that he had '*probably never'* read letters from auditors concerning account-related queries.

8.85 Ms Cowhig, both in transferring the IR£80,000 Shefran payments from the inter-company loan balance for year ended 30 April 1993, and in subsequently reinstating them in March 1995, did so at the behest of Mr Deane. The Tribunal was satisfied that Ms Cowhig was given the reasons, as attributed by her to Mr Deane for doing so.

8.86 The Tribunal considered that the decision made by Mr Deane, most probably in mid to late 1993, to direct Ms Cowhig to remove the IR£80,000 Shefran payment from the Riga/Barkhill inter-company loan account for year ended 30 April 1993 was connected to questions being asked by Mr Gilmartin about the payments, from late 1992 onwards.

8.87 The Tribunal was satisfied that Mr Deane's decision to remove the 1991 Shefran payments from the inter-company loan balance was attributable to the facts that: Mr Gilmartin in the latter half of 1992 and continuing into 1993 was actively seeking reasons as to why a sum of IR£150,000 had been paid to Shefran; and Barkhill's auditors were requesting invoices, in 1992 and 1993, for the 1991 Shefran payments. As following that removal, Barkhill would be deemed no longer liable for the 1991 Shefran payments, Mr Gilmartin's request for answers as to why Barkhill had incurred such a liability would become redundant.

8.88 The Tribunal considered that the above factors were likely to have been the prevailing factors in the mind of Mr Deane as the person who, the Tribunal was satisfied, made the decision. Thus, the Tribunal rejected Mr Deane's contention that he anticipated opposition, on the part of Mr Gilmartin, to Riga being reimbursed by Barkhill for the IR£80,000 as a *quid pro quo* for the prior opposition of Riga to the payment of certain of Mr Gilmartin's creditors/professionals. In rejecting Mr Deane's evidence in this regard, the Tribunal took cognisance of the fact that, while Mr Gilmartin had indeed taken issue with Riga's non-payment of certain of his professionals, he nonetheless, on a number of occasions, signed authorisations relating to payments made to many of the professionals retained by Riga.

8.89 Furthermore, the Tribunal believed it likely that the direction given by Mr Deane to Ms Cowhig to repost within Riga's books the IR£80,000 Shefran monies as a sum due and owing by Barkhill was triggered by Mr Fleming's requests, ongoing from May 1994, for clarification as to why the IR£80,000 had been removed from the inter-company loan balance.

THE TRIBUNAL'S OVERALL CONCLUSIONS AS TO THE ARRANGEMENT ENTERED INTO BY MR O'CALLAGHAN AND MR DUNLOP IN RELATION TO SHEFRAN

9.01 The Tribunal was satisfied that the arrangement arrived at between Mr O'Callaghan and Mr Dunlop, most probably on 26 April 1991, was that Mr Dunlop would be put in funds by Mr O'Callaghan for the purposes of making disbursements to councillors and that he would be facilitated in this regard by payments made to him otherwise than to his public relations company, Frank Dunlop & Associates. The Tribunal was satisfied that because of the imminent Local Election and the likelihood, as appreciated by Mr Dunlop and Mr O'Callaghan, that certain councillors would seek money from Mr Dunlop in the course of his lobbying, both knew and at the time appreciated that Mr Dunlop would need funds for this purpose. Moreover, the Tribunal was satisfied that by 26 April 1991, Mr O'Callaghan and Mr Dunlop knew of a demand then being made by Mr Lawlor[53] (then a Councillor) for a substantial payment in connection with the assistance he had provided and was likely to render in the future to Mr O'Callaghan and Mr Dunlop, in connection with securing support for the Quarryvale rezoning.

9.02 As conceded by Mr Dunlop and Mr O'Callaghan, in 1991 there was discussion between them about the manner in which Mr Dunlop was to be funded for the purposes of his lobbying activities. It was likely that Mr Dunlop,

[53] See Part 9

from the outset, promoted a dual system whereby Frank Dunlop & Associates would invoice Riga in respect of outlay and expenses incurred in connection with Mr Dunlop's lobbying activities, and whereby Mr Dunlop would be put in funds by Riga through an entity other than Frank Dunlop & Associates Ltd, from which Mr Dunlop would have the facility to disburse money to councillors who were likely to be election candidates in the then imminent Local Election.

9.03 The Tribunal was satisfied that the entity which Mr Dunlop promoted as the payment vehicle in this regard was Shefran. The Tribunal was satisfied that the agreement reached between Mr O'Callaghan and Mr Dunlop for the latter to be put in funds through Shefran was for the purpose of keeping the scale of the payments to be made to Mr Dunlop by Mr O'Callaghan secret from Mr Gilmartin. The Tribunal was satisfied that the scale of the Shefran payments made to Mr Dunlop allowed Mr Dunlop, at all relevant times, to have sufficient funds for the purposes of complying with requests or demands which he anticipated would be made of him by councillors.

9.04 The Tribunal was satisfied that the use of Shefran was not promoted by Mr Dunlop or agreed to by Mr O'Callaghan to conceal Mr Dunlop's involvement as a lobbyist from Mr Gilmartin. Mr O'Callaghan himself acknowledged the '*fallacy'* of this suggestion, having regard to the fact that from an early stage Mr Gilmartin was aware of Mr Dunlop's involvement.

9.05 The Tribunal was also satisfied that Shefran was nominated by Mr Dunlop to Mr O'Callaghan as the vehicle whereby Mr Dunlop was to receive large VAT free round figure payments from Mr O'Callaghan for utilisation in connection with the agreed purpose. The happenstance of Mr Dunlop having available to him such a company, coupled with the cheque cashing arrangement which Mr Dunlop had negotiated with Mr Aherne of AIB, College Green, provided Mr Dunlop with an effective mechanism to shield from the scrutiny of Mr Gilmartin the fact that he was the recipient of large round figure payments in connection with his Quarryvale lobbying endeavours.

9.06 It was patently clear from the evidence of Mr Dunlop, Mr O'Callaghan and Mr Gilmartin, that Mr Gilmartin, in the course of the meeting which took place between Mr Dunlop, Mr O'Callaghan, Mr Gilmartin and Mr Lawlor on 25 April 1991,[54] was made privy to Mr O'Callaghan's intention to retain Mr Dunlop as a lobbyist, something which, Mr Dunlop and Mr O'Callaghan agreed, Mr Gilmartin was objecting to from the outset. There was no dispute but that by 2May 1991 Mr Dunlop's involvement as a lobbyist for Quarryvale was made known to Mr

[54] See Part 9

Gilmartin in a direct fashion, when Mr Dunlop faxed to Mr Gilmartin certain information connected with the Quarryvale rezoning proposal. By 16 May, 1991 the day of the Quarryvale rezoning vote, and the day when Shefran received the first payment from Riga Ltd, Mr Dunlop's involvement in the lobbying campaign for Quarryvale was known to all concerned, including Mr Gilmartin. Thus the Tribunal gave no credence to Mr O'Callaghan's contention that the purpose of Shefran was:

> '*...to protect whatever councillors [who] would support Quarryvale, Tom Gilmartin's Councillors that would support Quarryvale, protect them and make sure that they stayed inside with me. That's the reason the whole thing was set up'.*

9.07 The Tribunal rejected the evidence of Mr O'Callaghan and Mr Dunlop, insofar as they maintained that the IR£80,000 paid to Mr Dunlop in 1991 was for professional '*fees*' as a lobbyist for Quarryvale. The Tribunal also rejected their evidence that the payments totalling IR£80,000 represented the substantial portion of a IR£100,000 professional fee for Mr Dunlop, claimed as having been negotiated between them. It was inconceivable to the Tribunal, if there been agreement for a sum of IR£100,000 by way of a professional fee in respect of his lobbying work up to the date of 16 May 1991 Quarryvale vote, that Mr Dunlop would not have sought and been paid the outstanding IR£20,000 balance.

9.08 The Tribunal was satisfied that the IR£80,000 paid to Mr Dunlop over the course of three weeks in 1991 was never intended to be Mr Dunlop's fee as understood in the ordinary sense of the word. The Tribunal was satisfied that the primary purpose of Mr Dunlop being funded to the extent of IR£80,000 over a three week period in May/June 1991 was to provide Mr Dunlop with the facility by which disbursements could easily be made to councillors in the course of the Local Election campaign. Given the purpose for which Mr Dunlop was retained, namely to lobby councillors in support of the Quarryvale rezoning proposal, the provision of such funds to Mr Dunlop was made for a corrupt purpose.

9.09 In arriving at its conclusion in this regard, the Tribunal took cognisance of Mr Dunlop's own admissions in the course of his sworn evidence to the Tribunal, that the encashed proceeds of the IR£80,000 Shefran payments he had received between 16 May 1991 and the 7 June 1991 (together with other cash funds available to him over the course of the Local Election campaign), were used by him to make payments/donations to a number of County Council candidates during the May/June 1991 Local Election campaign, and to make a payment of IR£40,000 in cash to Mr Lawlor.

9.10 The Tribunal was satisfied that in 1991, Riga was not invoiced by Mr Dunlop in respect of the three payments totalling IR£80,000.

9.11 The Tribunal was satisfied that Mr Dunlop and Mr O'Callaghan shared the ambition that those councillors who supported Quarryvale on 16 May 1991 would be re-elected so that they would continue to provide support for the Quarryvale Town Centre proposal. Elsewhere in this Chapter the Tribunal has considered the scale of that opposition and which arose particularly in the aftermath of the 16 May 1991 vote, and which became intensive during the currency of the 1991 Local Election campaign. Indeed, opposition to Quarryvale was a constant feature in the lead up to the December 1992 Council vote, and beyond.

9.12 The Tribunal was satisfied that Mr O'Callaghan's evidence to it as to the purpose and destiny of the IR£80,000 paid to Mr Dunlop over the space of three weeks in May/June 1991, through Shefran was untrue, having regard, in particular, to the Tribunals findings regarding Mr O Callaghan's hand written notes and the fact that no invoices were extant at the time of those payments.

9.13 The Tribunal was satisfied also that Mr Dunlop's evidence as to the purpose of these payments, as personal income to himself, was untrue.

9.14 Mr Dunlop utilised the IR£40,000 Shefran payment received in April 1992 by:

(i) settling (with IR£20,652.63) the loan of IR£20,000 drawn down by Mr Dunlop in cash from AIB on 4 February 1992,
(ii) opening (with IR£6,847.37) the Shefran AIB 083 account ('war chest' account), and
(iii) lodging IR£4,000 to his INBS 910 account ('war chest' account), and
(iv) retaining IR£8,500 in cash.

9.15 Mr Dunlop and Mr O'Callaghan maintained that the April 1992 Shefran payment of IR£40,000 was part of the agreed professional fee for Mr Dunlop's lobbying work, post May 1991. A portion of the IR£40,000 payment, once received by Mr Dunlop, was utilised by him to discharge his indebtedness to AIB. The Tribunal believed it likely that the February 1992 IR£20,000 AIB loan which was taken by Mr Dunlop in cash, and in respect of which Mr Dunlop maintained he was unable to provide an explanation as to its purpose and use, was in all probability used for some purpose connected with Mr Dunlop's lobbying activities on behalf of Quarryvale. This loan was repaid with approximately half of the April 1992 Shefran payment from Barkhill. In arriving at its conclusion above, the Tribunal noted Mr Dunlop's evidence that, in general, he utilised money paid to

him through Shefran as one of the means by which payments to councillors were made.

9.16 According to Mr Dunlop, the belief within the Quarryvale team in March/April 1992 was that the next Quarryvale vote would take place in June and July 1992. Mr O'Callaghan confirmed to the Tribunal that initially he himself believed that Quarryvale would be dealt with under the Development Plan review by June 1992.

9.17 While Mr Dunlop made no claim or allegation of having expended any part of the IR£70,000 Shefran monies, received by him in 1992, on payments to councillors in relation to Quarryvale, and while noting what Mr Dunlop did with the June 1992 IR£30,000 Shefran payment, the Tribunal was nevertheless satisfied that the timing of the Shefran invoices (20 March 1992 and 30 April 1992) together with their prompt discharge by Mr O'Callaghan – the IR£40,000 was paid on 13 April 1992 and the IR£30,000 was paid on 5 June 1992 –was connected to events which were then occurring within Dublin County Council in mid 1992, namely the recommencement, post the first statutory public display, of the review of the Draft Development Plan.

9.18 In view of the manner (round figure payments with no VAT element through a non-trading company) in which such payments were made to Mr Dunlop, and having regard to Mr Dunlop's admission that Shefran was used as a vehicle for ready cash, the Tribunal believed it likely, insofar as Mr Dunlop retained a portion of the IR£40,000 April 1992 payment in cash, that all or a portion of that cash was retained by him for the purposes of making corrupt cash disbursements in the course of his lobbying activities.

9.19 Equally, the Tribunal was satisfied that, insofar as Mr Dunlop retained at a minimum, IR£15,000 in cash from the encashment of the February 1993 Shefran cheque (for IR£25,000) it was likely that that money was used by Mr Dunlop for the purpose of corrupt disbursements to councillors.

9.20 The Tribunal was satisfied that the primary purpose for the use of Shefran by Mr Dunlop in connection with Quarryvale was to facilitate the receipt of substantial funds from Mr O'Callaghan from which corrupt payments could be made to councillors in connection with Quarryvale and to conceal, from Mr Gilmartin, both the fact that such funds were being provided to Mr Dunlop and their scale.

THE TRIBUNAL'S CONCLUSIONS ON THE LIKELY TIMEFRAME IN WHICH MR GILMARTIN BECAME AWARE OF THE ASSOCIATION BETWEEN SHEFRAN AND MR DUNLOP

9.21 The Tribunal was satisfied that Mr Gilmartin's knowledge of a link between Shefran and Mr Dunlop was learned by him on an incremental basis. The probable timeframe regarding Mr Gilmartin's awareness of Shefran and its link to Mr Dunlop was as set out below:

9.22 In January 1992, Mr Gilmartin was made aware, through AIB, of three payments to Shefran totalling IR£80,000 in 1991. Mr Gilmartin assumed these to have been the discharge of monies claimed by professional experts employed by Mr O'Callaghan. It was probable that by January 1992, Mr Gilmartin also had knowledge of at least one of the Frank Dunlop & Associates invoices discharged by Riga and for which it was to be reimbursed by Barkhill.[55]

9.23 On 5 June 1992, Mr Kay telephoned Mr Gilmartin to obtain his verbal authorisation for the payment of the 30 April 1992 Shefran invoice for IR£30,000 which was about to be paid from the Barkhill No. 2 Loan Account. By that time Mr Kay himself was aware of Mr Dunlop's connection to Shefran. It was probable, although disputed by Mr Gilmartin, that to some extent Mr Kay apprised Mr Gilmartin of a link between Mr Dunlop and Shefran.

9.24 It therefore appeared to be the case that following this telephone call, and following the receipt of Mr Kay's 10 June 1992 letter enclosing a copy of the 30 April 1992 Shefran invoice, Mr Gilmartin by then knew of payments to Shefran totalling IR£110,000, and of a link with Mr Dunlop.

9.25 Mr Gilmartin's awareness of these sums having been paid to Shefran coincided with the commencement (June 1992) of the Barkhill audit and Mr Fleming's request for supporting documentation for various items, including the three 1991 Shefran payments amounting to IR£80,000.

9.26 The evidence established that despite Mr Fleming's endeavours to obtain backup documentation from in or about mid-1992 until the Barkhill accounts were signed off by Mr Gilmartin and Mr O'Callaghan in January 1994, he had been singularly unsuccessful in obtaining invoices in respect of the 1991 Shefran payments.

[55] On 19 December 1991 Mr Gilmartin signed an authorisation for a drawdown from the Barkhill No. 2 Loan account to discharge a number of payments to creditors, including a payment to Frank Dunlop & Associates.

9.27 Certainly by October 1992, Mr Gilmartin was aware of the 13 April 1992 IR£40,000 Shefran payment.

9.28 On 2 February 1993 the full extent of the payments made to Mr Dunlop through Shefran in 1991 and 1992 was made clear to Mr Gilmartin when he received correspondence from AIB. In January 1993, Mr Gilmartin had requested Ms Basquille to provide him with (1) an update on Barkhill's present debt, and (2), outstanding commitments.

9.29 The documentation pertaining to the Barkhill No.2 Loan Account furnished to Mr Gilmartin on 2 February, 1993 indicated that the fees, as opposed to land acquisition costs,which had been paid out of the Barkhill No.2 Loan Account, as of that date, totalled £909,383.87.

9.30 By the time Mr Gilmartin received this documentation Mr Dunlop's company Shefran had been paid a total of IR£150,000, IR£70,000 of which had been funded by the Barkhill No. 2 Loan Account. Moreover, a sum of approximately IR£104,000[56], had by this time also been paid to Frank Dunlop & Associates.

9.31 The last documented drawdown on the Barkhill loan account signed by Mr Gilmartin was on 5 November 1992[57]. All of the subsequent drawdowns for 1993 and 1994 were signed by Mr O'Callaghan and Mr Pitcher (the AIB nominated Barkhill Director). AIB witnesses suggested that the reason for this was that it was more convenient to have Mr Pitcher co-sign the necessary documentation. The Tribunal, however, was inclined to disregard this reason, and believed it more likely that Mr Pitcher was the signatory on occasions when Mr Gilmartin failed or refused to sign. The Tribunal noted with interest that among the documents furnished to Mr Gilmartin under cover of Ms Basquille's letter of 2 February 1993 was an undated authorisation for a drawdown on the Barkhill No. 2 Loan Account for Mr Gilmartin's signature. This document listed, *inter alia*, a payment to Frank Dunlop & Associates. There was no evidence that he had signed the authorisation.

9.32 Although no written authorisation was sought from Mr Gilmartin prior to the payment to Shefran of IR£40,000 from the Barkhill No. 2 Loan Account on 13 April 1992 and the IR£30,000 paid on 5 June 1992, it was the case that on 9 October 1992 Mr Gilmartin faxed a document signed by him to AIB wherein he sanctioned the historical payment of the aforementioned payments and other sums (including payments to Frank Dunlop & Associates Ltd) from the Barkhill No. 2 Loan Account.

[56] See below, Frank Dunlop & Associates invoices

[57] See below Frank Dunlop & Associates invoices.

9.33 The Tribunal was satisfied that the document which Mr Gilmartin signed and dated 27 July 1992 was provided to him by AIB sometime after 15 July 1992, most probably in October 1992. Mr Gilmartin said that he did not know why AIB had requested him to backdate the sanction to 27 July 1992, but appeared to suggest it was connected to the fact that he had been adjudicated bankrupt in the UK on 7 October 1992. The document was faxed to Mr Gilmartin on 9October, 1992, two days after he had been made bankrupt.

9.34 Mr Gilmartin's failure to obtain, at an early stage, answers to his queries relating to Shefran, and the phased manner in which he received information which prompted him to associate the Shefran payments with Mr Dunlop, coupled with Mr Gilmartin's inherent distrust of Mr Dunlop[58], was probably the basis of Mr Gilmartin's suspicion that money paid to Shefran was questionable and/or inappropriate.

9.35 The Tribunal was satisfied that Mr Gilmartin was to a very great extent denied knowledge of the reason why substantial payments were made to Shefran. The Tribunal was also satisfied that Mr Gilmartin was not provided with full information either by Mr O'Callaghan or AIB, in relation to the five Shefran payments for which Barkhill incurred indebtedness and their association to Mr Dunlop.

AIB'S KNOWLEDGE OF THE PURPOSE AND NATURE OF MR DUNLOP'S USE OF THE FUNDS PAID TO SHEFRAN

9.36 The Tribunal was satisfied, as a matter of probability that senior executives in AIB were aware that:

(a) Shefran was Mr Dunlop's company and at least became aware of the connection between the two by December 1991.

(b) Substantial round figure sums were being paid to Shefran in 1991 and 1992 at Mr O'Callaghan's direction. However, AIB were unaware of the 1991 payments until some months after they were made.

(c) There were no invoices available in 1991 in respect of the three payments to Shefran, amounting to IR£80,000.

(d) IR£80,000 paid to Mr Dunlop over the course of a three to four week period in 1991 was paid to him for disbursement by him in the course of his lobbying activities in connection with the 1991 Local Election campaign. The Tribunal was satisfied, having regard to the handwritten notations made on the documents in the possession of Mr O'Callaghan at the meetings of 14 January 1992 and 16 June 1993 that, at a minimum,

[58] Mr Dunlop himself, Mr O'Callaghan and Mr Kay gave evidence of their knowledge of Mr Gilmartin's dislike and distrust of Mr Dunlop. See further, Part 9

AIB personnel present at the meeting of 16 June 1993 learned from Mr O'Callaghan that the IR£80,000 which had been provided to Mr Dunlop, via Shefran, in three tranches in May/June 1991 was for purposes associated with the 1991 Local Election. The Tribunal so found having regard, in particular, to the fact that one of the purposes of that meeting was to discuss Mr Fleming's schedule, as had been re-submitted by him in the context of his ongoing quest to obtain invoices for a number of payments (including the 1991 Shefran payments), for which Barkhill remained indebted, or in respect of which it had already reimbursed Riga.

(e) The Tribunal was satisfied that AIB were probably unaware of individual[59] payments to councillors by Mr Dunlop or the identities of councillors to whom such contributions were made.

THE FRANK DUNLOP & ASSOCIATES PAYMENTS BETWEEN 1991 - 1993

10.01 Of the circa IR£1.8m paid to or for the benefit of Mr Dunlop by Mr O'Callaghan through Riga/Barkhill, in excess of IR£1.6m was paid to Mr Dunlop's company, Frank Dunlop & Associates. Of this amount, some IR£189,337.75 was paid on foot of invoices issued by Frank Dunlop & Associates in varying amounts between August 1991 and December 1993. The invoices can be broadly broken down in to two types of payments, namely, itemised invoices and invoices for 'on-going costs' as well as an invoice of 25 August 1993.

10.02 The itemised invoices at issue were provided by Frank Dunlop & Associates to Riga between August 1991 and April 1992. There are six such invoices in all. The on-going costs invoices date from June 1992 and between then and November 1993, Frank Dunlop & Associates provided seven such invoices to Riga/Barkhill. However, six out of seven of these invoices issued between June and December 1992.

10.03 This section considers these invoices as well as AIB's and Mr Gilmartin's knowledge of those invoices and the purposes of the resulting payments.

ITEMISED INVOICES

11.01 As mentioned, between 6 August 1991 and 30 April 1992, Frank Dunlop & Associates issued six itemised invoices for payment by Riga. In total, these payments amounted to IR£41,940.31.

[59] However, in December 1991 Mr Kay of AIB learned from Mr O'Callaghan that he had made a political contribution of IR£10,000 each to Mr Lawlor and Cllr McGrath in September and October 1991 respectively – see Part 4.

THE FIRST ITEMISED INVOICE

11.02 The first itemised invoice was issued on 6 August 1991 some two months after the Local Election campaign of that year. The invoice was for the sum of IR£8,484.29 and included VAT. It was discharged by Riga on 27 September 1991 and the cheque was lodged to the bank account of Frank Dunlop & Associates on 30 September 1991, as part of a composite lodgement of IR£10,652.29.

11.03 Riga analysed the payment of IR£8,484.29 in its cheque payment book under *'Creditors'*. In contrast, the 1991 Shefran payments to Mr Dunlop were listed in Riga's books under *'Sundry'.* According to Mr O'Callaghan, Riga regarded the invoice as Barkhill/Quarryvale expenditure, although the Quarryvale attribution (5098) did not appear in Riga's books with regard to it.

11.04 Mr Dunlop retained back-up documentation for the amounts claimed, which he duly discovered to the Tribunal.

11.05 This first invoice was issued primarily to recoup expenditure incurred by Mr Dunlop in funding the election expenses of councillors, incurred in the course of that campaign. It represented the cost of distributing leaflets, advertising in the local press and the design and printing of election leaflets. With regard to election literature which had been produced for a number of councillors, Frank Dunlop & Associates discharged invoices to Dublin Tribune, Newswest, O'Donoghue Print Services, Keyline Studios and Door to Door Distributors. Also included in the invoice was the cost of the production of a document entitled *'Blanchardstown Town Centre, the Truth and the Facts'* , bearing the Fianna Fáil logo, and which referred to Fianna Fail councillors, and which had also thereon, in small print, the words *'issued by Fianna Fáil.'*

11.06 Mr O'Callaghan agreed that he had given Mr Dunlop permission to assist in the preparation of posters, brochures and leaflets for certain councillors. He acknowledged that in June 1991 he must have agreed with Mr Dunlop that Mr Dunlop would, in the first instance, discharge such expenses on his behalf.

11.07 Mr O'Callaghan told the Tribunal:

> *'I can't remember but obviously sometime around 1st of June when all of this started. This is a follow-up to Blanchardstown, to John Corcoran and Blanchardstown. Blanchardstown Councillors starting off this political battle to see who could get themselves elected in on the 27th of June. And we got dragged into it, of course, as well. It was a pretty heated battle between both sides of the Liffey at the time. Frank would have*

been very much involved in it because of all of his connection with the various Councillors. And he would have told me that we would have had to support the Councillors that supported us and this is how this developed. Support it at ground level by producing this kind of stuff.'

11.08 Counsel for the Tribunal posed the following question to Mr O'Callaghan:

'... Before we go to look now at this actual documentation that was generated to Mr Dunlop at that time by various people who provided services by way of printing. What was the nature of your agreement, Mr O'Callaghan, with Mr Dunlop about the reimbursement of the expenses in question?'

11.09 Mr O'Callaghan replied:

'Well I don't think I put a limit on it. I suppose I told him that we would have to do what had to be done.'

11.10 Mr O'Callaghan agreed that the 6 August 1991 invoice was effectively one which sought reimbursement for outlay and expenditure incurred by Mr Dunlop in relation to the June 1991 Local Elections and all of which was attributed by Mr Dunlop as having been incurred on behalf of Mr O'Callaghan. Mr O'Callaghan agreed that the invoice was, primarily, an accumulation of a number of third party invoices Mr Dunlop had discharged on behalf of a number of candidates.

11.11 Mr O'Callaghan agreed that Mr Dunlop's 6 August, 1991 invoice did not reflect any out of pocket expenses incurred by Mr Dunlop prior to the June 1991 Election campaign and he agreed that there was nothing in the books and records of Frank Dunlop & Associates up to June 1991 to suggest that Mr Dunlop had incurred any expenses on behalf of Mr O'Callaghan/Quarryvale up to that time. Mr O'Callaghan stated that sometime between 16May 1991 and early June 1991 he and Mr Dunlop made the agreement whereby Frank Dunlop & Associates Ltd could invoice Riga for out of pocket expenses incurred in the course of the 1991 Local Election campaign and whereby Frank Dunlop & Associates would recoup from Riga all the costs incurred with printers, leaflet distributors etc. pertaining to that campaign.

11.12 Over the course of September and October 1991, Mr Dunlop, together with Mr O'Callaghan, attended a number of public meetings relating to Quarryvale.

11.13 A copy of the document entitled *'Blanchardstown Town Centre, the Truth and the Facts'*was provided by Mr Deane to Mr Jim Donagh (of AIB), on 20 June

1991, presumably as an example of the type of literature being distributed at that time by Mr O'Callaghan to aid the Quarryvale rezoning campaign.

THE SECOND AND THIRD ITEMISED INVOICES

11.14 The second Frank Dunlop & Associates invoice was issued to Riga on 21 October 1991 for a sum of IR£3,569.50 and this invoice was followed by a third invoice for IR£4,658.92, also issued to Riga, dated 19 November 1991. Both invoices were itemised and included VAT. They were discharged by Riga on 2December 1991 – a total of IR£8,228.42.

11.15 The receipt of these two amounts was duly recorded in the cash receipts book of Frank Dunlop & Associates Ltd and this sum was lodged to the bank accounts of that company. As with the first Frank Dunlop & Associates invoice, Mr Dunlop had some back-up information pertaining to the invoices of 21October and 19November 1991, which Mr Dunlop provided to the Tribunal.

11.16 The invoices indicated that the sums claimed were for the production and distribution of literature designed to assist Mr Dunlop and Mr O' Callaghan's Quarryvale lobbying endeavours.

THE FOURTH, FIFTH AND SIXTH ITEMISED INVOICES

11.17 On 14January, 1992, Frank Dunlop & Associates issued an invoice for IR£14,019.78 to Riga. As was the case with the three previous invoices, this invoice included VAT and recorded a detailed breakdown. It was discharged by Barkhill from the No.2 Loan Account by way of bank draft on 12 February 1992 on foot of an authorisation signed by Mr O'Callaghan. Receipt of the money was again recorded in the cash receipts book of Frank Dunlop & Associates.

11.18 Mr O'Callaghan and Mr Dunlop agreed that among the items included in the invoice was a sum of money (IR£1,000) which had been paid by Mr Dunlop to councillor John O'Halloran, for transmission to a local school related fundraising endeavour.

11.19 On 23 March 1992 Frank Dunlop & Associates Ltd issued an invoice for IR£954.55 (itemised and with a VAT element) which was discharged on 13 April 1992 by AIB draft from the Barkhill No.2 Loan Account. This was in or about the same day as the Barkhill No.2 Loan Account issued the draft for IR£40,000 to Shefran on foot of a Shefran invoice which issued from Mr Dunlop on 20 March 1992.

11.20 Frank Dunlop & Associates duly recorded the receipt of the IR£954.55 in its cash receipts book, unlike the position which pertained to Mr Dunlop's treatment of the IR£40,000 Shefran payment, paid at the same time. This payment was included in the authorisation dated 27 July 1992 which Mr Gilmartin faxed to AIB in October 1992.[60]

11.21 The next Frank Dunlop & Associates Ltd invoice was issued by Mr Dunlop to Riga on 30April 1992.[61] This invoice was for a sum of IR£10,253.27. It included a breakdown of how the sum was calculated and, as with all of the previous Frank Dunlop & Associates invoices issued since August 1991, was a numbered invoice and included a VAT element. Riga discharged the IR£10,253.27 on 22 June 1992 from the Riga AIB 023 account.[62]

11.22 The IR£10,253.27 Riga cheque was recorded by Mr Dunlop in the books and records of Frank Dunlop & Associates Ltd and the cheque was duly lodged to the Frank Dunlop & Associates AIB 067 account on 25 June 1992.

11.23 As part of the IR£10,253.27 claimed, Mr Dunlop sought reimbursement for a Word Processor provided to Mr John McCann (Secretary of the Quarryvale Residents Association) and sought reimbursement of IR£1,422.67 for his intended discharge of IR£1,000 for *'Secretarial Services'*in respect of which Frank Dunlop & Associates had been invoiced by '*Tower Secretarial Service*' (a company operated by Cllr Colm McGrath) in April 1992. Mr Dunlop accounted for the differential in the two figures on the basis that when invoicing Mr O'Callaghan/Riga for sums he had paid to third parties, he, Mr Dunlop, invariably increased the amounts to provide for this '*added value*', as a profit element for himself.

11.24 Mr O'Callaghan said that he did not know of this practice prior to the establishment of the Tribunal.

THE ON-GOING COSTS INVOICES

12.01 Starting on 10 June 1992, Frank Dunlop and Associated issued a series of 'ongoing costs' invoices to Riga. These invoices contained no breakdown of the amount specified on the invoice. Each of these invoices either had no element of VAT or itemised VAT at 0%. All of the previous Frank Dunlop &

[60] This authorisation also included the 14 January 1992 Frank Dunlop & Associates Ltd invoice for IR£14,019.78 and the two Shefran payments made in April and June 1992 respectively.

[61] This was also the date Shefran invoiced Riga for IR£30,000, duly paid by way of bank draft from the Barkhill No. 2 Loan Account on 5 June 1992

[62] Riga duly received reimbursement of this Frank Dunlop & Associates Ltd invoice from the Barkhill No.2 Loan Account on 2 October 1992.

Associates invoices from August 1991 to April 1992 had a detailed narrative of the makeup of the amounts involved.

THE FIRST ON-GOING COSTS INVOICE

12.02 The first invoice was issued on 10 June 1992 in the sum of IR£13,530.04, which was duly paid by Riga on 28 August 1992. The sum claimed was for:

> *To ongoing costs and expenses in relation to Quarryvale.*

12.03 Asked why no breakdown appeared on the invoice for IR£13,530.04, Mr Dunlop stated:

> *'I cannot give you a cogent reason as to why that was other than to say in general terms that it probably related to the level of activity that was going on, but you are correct that these invoices were issued in that format by me in contrast to the earlier invoices in relation to the recovery of costs and expenses. But these invoices to revert to an earlier point that I made, these invoices would be issued by me to Riga or to the entity nominated by Mr O'Callaghan, which was Riga, for costs by agreement. In other words, I would have a discussion with Mr O'Callaghan prior to the issuing of these invoices'*

12.04 The *'ongoing costs'*invoice of 10 June 1992 included a sum of IR£10,700 which Mr Dunlop had paid, at Mr O'Callaghan's behest, to William Fry Solicitors, on behalf of Cllr Colm McGrath, albeit without any specific reference thereto appearing on the invoice.[63]

12.05 Mr O'Callaghan agreed that in May 1992, at his behest, Mr Dunlop discharged a sum of IR£10,700 to William Fry Solicitors, associated with legal proceedings in which clients of William Fry were pursuing against Cllr McGrath. On 26May 1992 Mr O'Callaghan wrote to Mr Dunlop thanking him for facilitating him by making this payment and requesting Mr Dunlop to include the sum in his next invoice. Mr O'Callaghan agreed that the 10 June 1992 invoice did not make any specific reference, on the face of it, to Mr Dunlop's discharge of IR£10,700 on behalf of Cllr McGrath, although it was inclusive of it. Asked why he had accepted an invoice from Frank Dunlop & Associates in the absence of a detailed breakdown, Mr O'Callaghan replied, *'Because I must have known at the time what it was for, obviously. So I must have known when that invoice was written that it did include the £10,700.'*

[63] This payment of IR£10,700 is considered in greater detail in Part 7 of this Chapter (Cllr McGrath)

THE SECOND ON-GOING COSTS INVOICE

12.06 Frank Dunlop & Associates issued its second ongoing costs invoice to Riga on 24 July 1992 for a sum of IR£6,314.76. As with the previous ongoing costs invoice, there was no breakdown and no VAT element. The IR£6,314.76 was discharged to Frank Dunlop & Associates on 2 October 1992 by way of bank draft from the Barkhill No.2 Loan Account. The draft was duly lodged to the account of Frank Dunlop & Associates Ltd on 8 October 1992, as part of a composite lodgement of IR£10.678.63.

12.07 Insofar as Mr Dunlop had back up documentation (as provided to the Tribunal) for this invoice, it was only in respect of a *'Keyline Studio and Typesetting'*30 June 1992 invoice in the sum of IR£24.20.

12.08 Asked to identify the detail of the IR£6,314.76 expenditure (other than the aforementioned '*Keyline'* expenditure), Mr Dunlop stated as follows:

> *'...that I cannot tell you other than to say that the invoice would not have been drawn down or issued except in agreement with Mr O'Callaghan.'*

12.09 Save for that Keyline invoice, Mr Dunlop did not provide any back up documentation to the Tribunal for second on-going costs invoice. However, this was a timeframe in which Mr Dunlop was incurring expenditure on behalf of Mr O'Callaghan by way of subscriptions and contributions relating, *inter alia*, to a number of events and organisations associated with West Dublin. This expenditure was evidenced from a schedule which Mr Dunlop issued to Riga on 21 December 1992 when Frank Dunlop & Associates issued an invoice for IR£64,897.78 (see below).Mr Dunlop did not seek to recoup any of these costs/expenditure in any of the *'ongoing costs'* invoices issued prior to 21 December 1992.

12.10 Questioned about 24 July 1992 invoice, Mr O'Callaghan stated that he believed that he and Mr Dunlop were *'getting careless'*. He told the Tribunal that he and Mr Dunlop had agreed across the table that invoices could be issued, and that such invoices were being made out quickly. In fact, the invoice dated 24 July 1992 was not discharged until 2 October 1992 over two months later.

THE THIRD, FOURTH AND FIFTH ON-GOING COSTS INVOICES

12.11 The third *'ongoing costs'*invoice was issued by Frank Dunlop & Associates Ltd on 9 September 1992.[64] The invoice was for IR£11,490 and was addressed

[64]This was the day prior to the launch in public of the *'All Purpose National Stadium*' project – See Part 6 of this Chapter

to Riga. It had no breakdown and quoted VAT at 0%. This invoice was discharged directly by way of bank draft from the Barkhill No.2 Loan Account on 2 November 1992.[65] While receipt of this draft was not recorded in the cash receipts book of Frank Dunlop & Associates the draft was duly lodged to the Frank Dunlop & Associates Ltd AIB 067 account on 10 November 1992.

12.12 The fourth *'ongoing costs'* invoice was issued on 1 October 1992 to Barkhill for a sum of IR£21,063.36. The invoice referred to VAT at 0% and as with all the previous *'ongoing costs'* invoices no breakdown was given. The invoice was duly discharged out of the Barkhill No.2 Loan Account on 1December 1992 and the AIB draft was lodged into the accounts of Frank Dunlop & Associates on 1 December 1992.

12.13 On the date (1 December 1992) that this invoice was discharged from the Barkhill No.2 Loan Account, Mr Dunlop's diary recorded as follows, *-'Owen to bank'.* Mr Dunlop agreed that he had sought to redact this entry, prior to furnishing his diary to the Tribunal. It was put to Mr Dunlop: *'Isn't it likely that the reason that you were bringing Mr O'Callaghan to the bank was because you were going to get the payment yourself on that occasion?'*

12.14 Mr Dunlop (while acknowledging that he may well have driven Mr O'Callaghan to the bank) replied:

> *'No, I never, I have never gone into the bank with Mr O'Callaghan to collect a payment, correct me if I'm wrong Ms Dillon, but there is a history to either this particular bank draft from AIB or another because there was only a few occasions on which I got paid in this manner by bank draft from AIB. No, obviously Mr O'Callaghan was going to the bank. He more than likely was collecting the draft, I don't know, I can't recollect. But certainly I did get paid by draft on that occasion.'*

12.15 On 7 December 1992 Frank Dunlop & Associates Ltd issued yet another (the fifth) on-going costs invoice in the sum of IR£9,760.90 which was duly discharged by AIB draft from the Barkhill No.2 loan account on 14 December 1992, some three days before the Quarryvale rezoning vote. The narrative on this invoice stated: '*To costs associated with Quarryvale'.*

THE SIXTH ON-GOING COSTS INVOICES

12.16 On 21 December 1992 (four days following the Quarryvale rezoning vote) Frank Dunlop & Associates issued an invoice for IR£64,897.78 to Riga described as *'ongoing costs re Quarryvale'.* Unlike the previous five '*ongoing costs*'

[65] The draft was posted to Mr Dunlop by AIB

invoices, Mr Dunlop on this occasion attached a document to the invoice which provided some breakdown of the invoice total. This schedule included claims for expenses and outlay which Mr Dunlop had incurred as far back as June, July and August, 1992 (outlay/expenditure which apparently was not sought to be recovered by Mr Dunlop in prior *'ongoing costs'* invoices.)

12.17 Immediately after the Quarryvale vote of 17 December 1992, Mr Dunlop also furnished Riga with his sixth Shefran invoice (dated 18 December 1992) for IR£25,000 which Riga discharged on 17 February 1993. As already set out, the evidence did not indicate that Mr O'Callaghan apprised AIB of this invoice, or of its payment, although both he and Mr Dunlop claimed it was a Quarryvale expense. It was treated as such for a period in Riga's books.

12.18 Ultimately, the IR£64,897.78 invoice (and the December 1992 Shefran invoice amount), were written off in Riga's books over the course of a couple of years as part of a total of approximately IR£345,000[66] written off by the company.

12.19 By the time the IR£64,897.78 invoice issued, a total of IR£62,159.06 had already been paid out of the Barkhill No.2 Loan Account by way of discharge of *'ongoing costs'* invoices.

12.20 Mr O'Callaghan was questioned about the nature of the schedule which accompanied Mr Dunlop's invoice for IR£64,897.78. This document was headed *'Invoice 778 detail'* and it was broken down into three headings, namely *'contributions', 'security'* and *'other miscellaneous costs'.*

12.21 It recorded *'contributions',* totalling IR£11,860, including a contribution of IR£1,400 to a Fine Gael fundraising Golf Classic, with the balance of the '*contributions*' accounted for by monies paid in respect of donations to a number of community events, organisations and charities in West Dublin, including a donation of IR£2,460 to Neilstown Golf Club, at the behest of Cllr John O'Halloran.

12.22 The *'security'* costs discharged by Mr Dunlop totalled IR£17,330.01.

12.23 Under the heading *'other miscellaneous costs'* (IR£35,707.77) Mr Dunlop requested reimbursement of IR£15,636.77, described as *'other costs including expenses and Christmas gifts.'* Mr O'Callaghan agreed that this figure related to Christmas hampers which had been presented by Mr Dunlop to councillors.

[66] Mr Deane acknowledged that approximately 50 per cent of this written off total related to Mr Dunlop. This 50 per cent also included the IR£70,000 Riga paid Mr Dunlop on 10 November 1992.

12.24 Mr O'Callaghan told the Tribunal that with regard to Mr Dunlop having invoiced Riga for Christmas Gifts/Hampers for councillors, this was done because of the belief that Blanchardstown/Green Property Plc. were providing similar gifts to councillors at that time.

12.25 Also included in the IR£35,707.77 figure which made up the *'other miscellaneous costs'* was a *'miscellaneous'* figure of IR£7,300. No breakdown was provided for this figure.

12.26 Mr Dunlop's Discovery to the Tribunal yielded a number of invoices sent to Mr Dunlop from third parties around November 1992 which related to General Election leaflet costs discharged by Mr Dunlop for Cllr Therese Ridge, Mr Liam Lawlor and Cllr Marian McGennis. Mr Dunlop does not appear to have sought reimbursement of these costs from RIGA in any specific document, however he testified that he had been reimbursed by Mr O'Callaghan.

12.27 These third party invoices were put to Mr O'Callaghan in the course of his sworn evidence as follows:

> *'Q. Now, the Tribunal from Mr Dunlop's documentation has found a number of invoices, Mr O'Callaghan, which in fairness to you I'm going to put to you. 8971, is an invoice of the 25th of November '92 in the sum of 421 pounds which relates to leaflets for Therese Ridge/ Liam Lawlor, isn't that right?*
>
> *A. Yes.*
>
> *Q. Invoice 8970 in the sum of 2,105.40 pounds dated the 25th of November '92 in connection with Marion McGennis, isn't that right?*
>
> *A. Yes.*
>
> *Q. 8969 is a sum of 435.60 pounds dated the 25th of November '92 in connection with Therese Ridge.*
>
> *A. Yes.*
>
> *Q. And then there is 8968, a sum of 780 pounds plus VAT dated the 25th of November '92, also attributable to Therese Ridge, isn't that right?*
>
> *A. Yes.*
>
> *Q. And one of those, Mr O'Callaghan, is disputed by Councillor Ridge as having been received by her and I'm sorry that I can't tell you which one it is but one of them was disputed by her.*
>
> *A. Yes, okay.*

Q. That appears to be the only back up documentation by way of invoices received by Mr Dunlop that might be referable to the list at 8976.

A. Yes, okay'.

12.28 By 21 December 1992 therefore, Frank Dunlop & Associates Ltd had billed in total IR£127,056.44 for *'ongoing costs'*. No back up documentation had been provided to Mr O'Callaghan in respect of approximately 50% of this figure.

THE SEVENTH ON-GOING COSTS INVOICE

12.29 Mr Dunlop issued a seventh 'ongoing costs' invoice reciting *'To costs associated with Quarryvale'*dated 26 November 1993 for IR£7,300 (and IR£500 in handwriting). It was discharged by Riga on 19 April 1994 and was attributed in its books as an expense of Quarryvale and was duly written up to the Barkhill Loan account.[67]

12.30 The document which accompanied this invoice, entitled *'Private and Confidential Outlay on behalf of QV and OOC'.* This document listed a sum of IR£7,300 (from the total of IR£7,800), as being comprised thus:

'Xmas 93 -	*£4,500*
Golf and Lunch (AD and NO) -	*£500*
Dublin West Race Night (JB)-	*£200*
Balgaddy Community Ass. (JOH) -	*£500*
C. Kearney Benefit Fund (TR) -	*£250*
St. Patrick's Day Parade Fund (P) -	*£100*
Old Folks/Ladies Club (TR) -	*£400*
Miscellaneous -	*£850*
	£7,300'

12.31 Mr O'Callaghan and Mr Dunlop testified that the aforesaid sums related to donations made by Mr Dunlop in respect of events/organisations/charities following requests made by a number of councillors, and to a IR£4,500 provision made by Mr Dunlop for '*Hampers, bottles of whiskey, wine, whatever'* as gifts to councillors for Christmas, 1993.

[67] It was ultimately removed from the intercompany loan balance in Riga's books and accounted for in Riga's 'Work in Progress - Stadium' account, and was ultimately written off.

EXPLANATIONS FOR THE ON-GOING COSTS INVOICES

13.01 On Day 811, the following excerpt of a statement by Mr Philip Connolly, Mr Dunlop's office employee was put to Mr Dunlop:

> '*In the early period, say during 1991, detailed third party invoices were sent to Riga Ltd. Subsequently, on Frank Dunlop's direction, the invoices became somewhat less specific; the amounts involved were usually round figures and details of third party charges were not included. The narrative for a number of the invoices simply referred to 'costs associated to Quarryvale project' and 'to ongoing costs re: Quarryvale'. The narratives, amount involved and addressee of the invoice would be given to me by Frank Dunlop'*

13.02 Mr Dunlop agreed with Mr Connolly's reference to the invoices becoming less specific but disagreed that the amounts involved were usually round figures. He agreed that it was he, Mr Dunlop, who had provided the narrative amounts and the addressees on the invoices to Mr Connolly. Mr Dunlop stated:

> *'Well certainly I would have given a description that was put on the invoices but as I recollect matters, when invoices were required to be sent out, Mr Connolly came to see me or I told Mr Connolly that an invoice was due to be sent vis-à-vis Quarryvale and I either computed the costs in relation to it in consultation with him or together with him or I gave him a figure at an appropriate time.'*

13.03 Mr Dunlop said that at no stage had Mr O'Callaghan queried the ongoing costs invoices. It was Mr Dunlop's evidence that he always discussed and agreed invoices with Mr O'Callaghan prior to their issue.

13.04 On Day 810, when questioned about the absence of a breakdown on the invoices, Mr Dunlop stated:

> *'I may well have in conversation with Mr O'Callaghan. I may well have given him a general overview of what the reason of what the costs were but certainly we did need or attach or send or give to Mr O'Callaghan a detailed breakdown in relation to the costs'*.

13.05 With regard to the ongoing costs invoices which were discharged between June and December 1992, Mr Dunlop stated that no one queried him in relation to them.

13.06 It was Mr Dunlop's position that with the exception of what had been discovered to the Tribunal he had no record of the composition of the '*ongoing costs'* invoices.

13.07 Questioned on Day 892, as to why there had been, in June 1992, a change in the manner in which Mr Dunlop issued invoices to Riga/Mr O'Callaghan, (i.e. the change from detailed invoices to the concept of *'ongoing costs'* invoices, without any breakdown), Mr O'Callaghan replied as follows:

> *'I think the reason for that was that, when this developed we would have been very busy. You have seen his diary there on a few occasions, of what was happening in June/July/August. We assumed the vote could take place in September. And during the months of June/July we would have been very, very busy. It would have been difficult to contact Councillors in the month of August. We would have given very little timing to itemising these details. He would have shown me what was available, what invoices he had or what correspondence he had and they would be added up and put in an invoice. It was a time element I think basically.'*

13.08 By 1 October 1992, Frank Dunlop & Associates Ltd had issued four invoices for *'ongoing costs re Quarryvale'*, totalling IR£52,398.16[68], with no breakdown. In relation to these invoices, the following exchange took place between Tribunal Counsel and Mr O'Callaghan:

> *'Q. Does it follow from that, that you authorised or agreed to pay Mr Dunlop between the 28th of August and the 1st December '92, 52,398.16 pounds without sight of any backup documentation from Mr Dunlop?*
>
> *'A. I would have seen sight of the backup documentation when we agreed the actual, agreed the invoice amount.*
>
> *Q. What you have would you have seen, Mr O'Callaghan?* (sic)
>
> *A. I can't tell you. Similar to what would have been on the other invoices various outlays and various expenses etc. They should have been attached to the invoices by Frank Dunlop but they were not.*
>
> *Q. Yes.*
>
> *A. They should have been outlined in his invoice of course.*
>
> *Q. Mr Dunlop has told the Tribunal you never sought a breakdown of these invoices that he never provided a breakdown of these invoices save in a limited number of circumstances which I am going to come to.*
>
> *A. He produced them to me. They were always there. They were always available.*
>
> *Q. And indeed, Mr Dunlop hasn't produced any back up documentation in relation to these invoices and you aware of that?*
>
> *A. No, I am not.'*

[68] Incorrectly stated in the transcript of evidence as totalling circa IR£53,398.00

13.09 Mr O'Callaghan did not direct his book-keeper, Mr Lucey, to seek a breakdown of the '*ongoing costs*' invoices. Mr O'Callaghan accepted that the *'ongoing costs'*invoices was a method of invoicing employed by Mr Dunlop in the lead up to the Quarryvale rezoning vote of 17 December 1992 and he accepted that the '*ongoing costs*' invoices issued by Mr Dunlop between June and December 1992 were similar to the 1991/1992 Shefran invoices, in that neither provided a detailed breakdown.

13.10 Like Mr Dunlop, Mr O'Callaghan confirmed that he had not maintained any note or record of the nature of the expenditure, but continued to maintain that their detail was explained to him by Mr Dunlop at the time the invoices were being provided to him.

13.11 Mr O'Callaghan's position in relation to these invoices was further illustrated in the following exchange as between Tribunal Counsel and Mr O'Callaghan on Day 901:

> '*Q.And there are a series of these invoices culminating in December of 1992, isn't that right?*
>
> *A. Yes*
>
> *Q. And throughout that period when Mr Dunlop was putting in invoices that are described as to ongoing costs re Quarryvale, did you ever seek from Mr Dunlop a breakdown in relation of those invoices?*
>
> *A. Not for those particular ones, but the initial invoices had a detailed breakdown and some of the latter invoices had a detailed breakdown as well. All invoices were agreed across the table between Frank Dunlop and myself, on some occasions he issued invoices like that, having agreed it with me across the table. He should have detailed them more, but I think time was probably the reason, but they were all agreed in advance, some of them were not detailed as you have seen.*
>
> *Q. Yes. Would you agree with me that the majority of the invoices generated by Mr Dunlop under the auspices of Frank Dunlop & Associates from June 1992 to December 1992 are described as 'To ongoing costs re Quarryvale'?*
>
> *A. That's right, from June on, that's correct.*
> *Q. To December?*
>
> *A. Yes*
>
> *Q. So this is the mechanism employed by Mr Dunlop in the lead-in to the confirming vote in December 1992?*
> *A. Yes.*

Q. And if I understand you correctly, you don't object to Mr Dunlop furnishing the invoices in this manner?

A. No because agreed them in advance sorry I would have preferred he would have itemised them of course, but I think it was probably a time issue with him, at the time he probably didn't give enough time. But we would have agreed all the figures, I would have preferred to see them itemised when the invoices come out but they didn't come that way.

Q. Certainly invoices up to this point in time had a been itemised insofar as they emanated from Frank Dunlop & Associates?

A. That's correct.

Q. The ones that have emanated from Shefran had not had any breakdown in it?

A. That's right.

Q. Although you have told the Tribunal in some of those invoices they did contain an element of expenses, isn't that right?

A. Yes.

Q. But they were not detailed or broken down on the Shefran invoices, isn't that the position?

A. That's correct, yes.'

13.12 When put to Mr O'Callaghan that it was Mr Dunlop's evidence that, save in limited circumstances, Mr O'Callaghan had never sought a breakdown of these invoices and Mr Dunlop never provided a breakdown nor had Mr Dunlop provided one, Mr O'Callaghan again stated: *'He produced them to me. They were always there. They were always available.'*

13.13 Mr Deane stated that he had no particular awareness of such invoices but believed that Mr O'Callaghan would have known what '*ongoing costs*' constituted.

13.14 Mr Deane agreed that the whole issue of fees was a very topical issue in discussions he and Mr O'Callaghan had with AIB in the months of September/October 1992. They had pressed for funds from the Barkhill No.2 loan account in order to pay invoices but Mr Deane's evidence was that AIB were resistant to this, as was indicated by the AIB memorandum of 22 October 1992. Mr Deane stated that AIB were requesting that Riga dip into its resources so that AIB, Mr Deane believed, could avoid those costs. He said that Riga could not ignore or terminate Mr Dunlop's request for the payment of invoices as this

would be *'imprudent',* given that Mr Dunlop was the person doing the lobbying. Mr Deane believed that a lot of the Frank Dunlop & Associates invoices concerned outlay in the form of commitments given to various groups in the community and to local people whom Mr Deane and Mr O'Callaghan felt should be financially supported.

13.15 Mr Deane was asked to explain why Mr Dunlop had not been requested to provide a breakdown of his *'ongoing costs'*invoices, and why, for example, no breakdown had been given for an invoice dated 1 October 1992 in the sum of IR£21,063.36 (discharged on 1 December 1992). Mr Deane's response was that as far as he was concerned he was not aware of these invoices because he was not in daily contact with the accounts department of Riga.

THE 25 AUGUST 1993 INVOICE

14.01 On 25 August 1993 Frank Dunlop & Associates Ltd furnished Riga with an invoice, inclusive of VAT, for IR£11,265.60. This invoice was stated to be for *'to professional services vis-à-vis media/communications in connection with planning application for Quarryvale project.'* It was paid by Riga on 23August 1993.[69]

14.02 Mr O'Callaghan was asked by the Tribunal to provide a break down of this figure. He stated:

> *'Yes. Well basically because we were making the planning application before the plan was ratified, this was August, '93, we decided that we would go and contact, the councillors and explain to them what we were doing, that we were making the planning application before, well before we could officially make it, because we couldn't make it until after the plan was ratified obviously, because of the pressure to get the thing going and to try and get planning permission we were putting it in as you know, as I have said we were putting it in a bit earlier than we were entitled to, but I got permission from the County Council to do that. What that was about, is that we decided [to] tell as many councillors as we could what we were doing so the Blanchardstown people could not start an argument about it when they saw the planning application.'*

14.03 The documentary trail pertaining to this August 1993 invoice suggested that Riga had discharged a sum of IR£9,310.42 to Mr Dunlop prior to receiving an invoice. Mr O'Callaghan agreed that, essentially, Mr Dunlop was being paid

[69] A sum of IR£9,310.42 was duly recouped from the Barkhill No. 3 Loan Account on 16 September 1993.

this money for informing councillors that Barkhill intended to lodge a planning permission application relating to Quarryvale, prior to the final confirmation vote for the Quarryvale rezoning.

14.04 Yet by this time there was already in place a tacit agreement by the Manager of the County Council that a planning application for Quarryvale could be submitted, in advance of any final vote regarding Quarryvale zoning which was expected to take place in late 1993.

AIB AND THE FRANK DUNLOP & ASSOCIATES INVOICES

15.01 The three itemised invoices produced by Frank Dunlop & Associates in late 1991 were, *inter alia*, the subject of a letter written by Mr O'Callaghan to Mr Kay on 3 December 1991. In that letter, Mr O'Callaghan sought payment/reimbursement from the Riga Barkhill No. 2 Loan Account for these invoices as well as for other payments Riga had made on behalf of Barkhill, including: a IR£100,000 payment to Mr Gilmartin; a payment made to Mr Ambrose Kelly in the amount of IR£26,195; and two IR£10,000 *'expenses'*[70]payments made in October and November 1991 respectively.

15.02 The two payments of IR£8,484.29 and IR£8,228.42 together with Mr Kelly's invoice of IR£26,195 and the two *'expenses'* payments of IR£10,000, less IR£6,309, comprised the repayment of IR£56,598.71 to Riga which was made from the No. 2 Loan Account of Barkhill on 24January 1992. The authorisation for this drawdown was signed by Mr O'Callaghan and Mr Pitcher of AIB.

15.03 With regard to the sanction given by AIB for such reimbursement, Mr Kay told the Tribunal that he could not be precise as to what information he had as of January 1992 but stated that it may well be the case that AIB had been shown, *inter alia*, the Frank Dunlop & Associates invoices. The Tribunal was satisfied that by 24 January 1992 AIB had such invoices.

15.04 By March 1992 Mr Kay was aware of the two methods of receiving payment being utilised by Mr Dunlop. He also agreed that as of January 1992 (from the contents of the *'West Park expenses'* document) he knew that Mr Dunlop, via Shefran, had already received paymentstotalling IR£80,000. Mr Kay stated that he did not ask himself why Mr Dunlop was invoicing in two formats and he stated:

[70] For a consideration of the *'expenses'*payments - see Parts 4, 7 and 9 of this Chapter.

'I assume that he, that he collected his fees and in some different manner to how he collected his outlay. But I didn't, I didn't really dwell on it to be honest. I just. I was told it was Shefran was Dunlop. I had no reason to think otherwise. And I didn't, as I said, I didn't spend much time thinking about it.'

15.05 Mr Kay acknowledged that he probably did not know a lot of creditors who operated separate companies to bill for outlay and for professional fees. He agreed that it probably would be *'unusual'.* He stated that he took *'no steps'*to ascertain the reason why this was being done by Mr Dunlop.

15.06 Mr Kay was questioned about the '*ongoing costs'*invoices which issued from Mr Dunlop in June and July 1992. He expressed surprise that neither the invoice of 10 June 1992 nor the next ongoing costs invoice of 24 July 1992 included any breakdown. On Day 844, the following question was put to Mr Kay:

'It would appear, Mr Kay, and this was put and you will have seen that in your analysis of Mr Dunlop's transcripts. That when this issue arose with Mr Dunlop, Mr Dunlop was questioned as to why starting in mid-June, 1992 a series of invoices were put forward to Riga which contained only the words to 'ongoing costs re Quarryvale' culminating in late December, 1992 in an invoice for 63,000 (sic) *pounds.*

And Mr Dunlop – information to the Tribunal was that he had agreed the amount of these invoices with Mr O'Callaghan before he issued the invoices. And that they related to the costs and expenses that he had incurred as he was going along but that no breakdown was provided save for the invoice in late December, 1992. And I hope that I am not being unfair to Mr Dunlop in any way in that summary of his evidence. But it would appear to have commenced in early or mid-1992 and the invoices were put forward under the heading 'Ongoing Costs re Quarryvale'

15.07 Mr Kay responded as follows:

'I must admit I never noticed it at that time as I think when the original invoices came to the bank from Mr Dunlop, I can remember the first one. We requested a detailed breakdown of what it was all about. Subsequently, we probably didn't follow that up but I'm, I am surprised that they are just one liners.'

15.08 It was Mr Kay's testimony that he presumed that AIB had taken it for granted that Mr O'Callaghan knew what the invoices were for. He acknowledged that AIB had sight of the *'ongoing costs'* invoices issued from mid to late 1992.

15.09 In the period after Mr Dunlop started issuing his '*on-going costs*' invoices, Mr O Callaghan was requesting AIB's permission to draw down funds from the Barkhill No 2 Loan Account in connection with the Quarryvale project.

DRAWDOWN OF IR£100,000

15.10 Mr O'Callaghan met with Mr O'Farrell on 16 September 1992. At this meeting, Mr O'Callaghan sought sanction from AIB for a number of payments including invoices from Frank Dunlop & Associates Ltd for IR£6,314, IR£13,530 and IR£10,253. He also sought sanction for a fee of IR£10,000 due in relation to planning permission for the stadium project, and an invoice from Ambrose Kelly and Co., Architects for IR£19,064. Mr O'Farrell, in his memorandum relating to that meeting, noted Mr O'Callaghan as informing him, in relation to the Neilstown stadium project, that he was *'strongly of the view that if they don't have an alternative use set up for the Neilstown site, they will not get the required support at the zoning meeting.'*

15.11 Mr O'Farrell noted a further sum of IR£30,000 as being due to Mr Kelly, IR£10,000 for Quarryvale *'to bring to zoning'*, and a further IR£50,000 *'to bring to planning.'*

15.12 In a position paper compiled by Mr O'Farrell on 22September 1992 for discussion internally within AIB (and which followed upon the meeting between Mr O'Farrell and Mr O'Callaghan on 16 September 1992) Mr O'Farrell noted under the heading '*Background Factors*'*inter alia*, as follows:-*'Fees projected in May '91 appear very tight and would not have assumed the difficult and extensive lobbying required.'*

15.13 The position paper also noted, *'The vote re the zoning is due by end of October, but could be into November. At this stage, it looks positive although the campaign against has probably not yet started in earnest. Accordingly it would still have to be regarded as uncertain.'*

15.14 Thus, it appeared that while Mr O'Farrell was aware by September 1992 (probably having been briefed by Mr O'Callaghan), that the forthcoming rezoning vote for Quarryvale '*looks positive'* it was nonetheless appreciated by him in September 1992 that '*the campaign against* (Quarryvale) *has probably not yet started in earnest'.* This was a likely reference to the understanding that there was continued significant opposition to the rezoning of the lands as a Town Centre.

15.15 In his 22 September 1992 position paper, Mr O'Farrell listed therein fees, which required to be paid, '*now/before zoning*', as follows:

'*Deloitte & Touche*	*8*
F. Dunlop	*30*
A. Byrne	*4*
A. Kelly (re Stadium)	*19*
Planning Applic. (re Stadium)	*10*
Mis.	*29*

	100'

15.16 Under the heading '*recommendation',* Mr O'Farrell, *inter alia*, set out the following:

> *Fees c. IR£100k, identified above require settlement. We have been stalling to date and need to recognise that genuine fees have been incurred by Owen O'Callaghan. Refusal to fund same at this particular time, with the decision on zoning so close, could be high risk. The fees relating to the Stadium are a new dimension, about which we were never formally consulted. Nevertheless the strategy in relation to same, in the context of the overall zoning issue, does appear to be sound.*
>
> *Accordingly it is recommended that we will allow further drawdowns on the Barkhill loans up to IR£100k for this purpose – we will keep drawdowns to the minimum possible and will also <u>seek</u> Riga's input towards same.*

15.17 Mr O' Callaghan's request (and Mr O'Farrell's position paper), was the subject of discussion between Mr O'Farrell and AIB officials, Mr Dave McGrath and Mr Donal Chambers on 25 September 1992. Mr McGrath, in evidence, recalled the decision made by AIB in September 1992 to allow a further IR£100,000 drawdown from the Barkhill No.2 Loan Account and he acknowledged that at the time, as per Mr O'Farrell's document, the thinking within AIB was that a refusal to allow this drawdown so close to the rezoning vote could be *'high risk.'*

15.18 When questioned, Mr McGrath saw no connection between the fees being sought and the upcoming rezoning vote on the Quarryvale lands. However, he knew as of September 1992 how the IR£100,000 drawdown was to be utilised, namely to discharge three Frank Dunlop & Associates invoices (totalling approximately IR£30,000) and a number of other invoices, including those from Ms Auveen Byrne and Mr Ambrose Kelly and knew that provision was being sought for a planning permission application fee of IR£10,000 and for a miscellaneous sum of IR£29,000.

15.19 Mr McGrath appreciated that Mr Dunlop was working closely with Mr O'Callaghan at this time vis-à-vis lobbying councillors. In response to a question from the Chairman of the Tribunal, he stated that there might have been a concern at the time if Mr Dunlop's *'legitimate'* lobbying of councillors was to slow down because of fees due to him being unpaid.

15.20 Mr O'Farrell's recommendation was duly agreed to by Mr McGrath and Mr Chambers of AIB on 25September 1992. It was on foot of this recommendation that Barkhill paid or reimbursed Riga in respect of three Frank Dunlop & Associates invoices, two of which were the*'ongoing costs'* invoices of 10 June 1992 and 24 July 1992.[71]

15.21 Under cover of a letter of 28 September 1992, Mr O'Callaghan furnished Mr O'Farrell with copies of three Frank Dunlop & Associates invoices (two of which were relating to '*ongoing costs'*). Included in this letter also were invoices from Ms Auveen Byrne (a Town Planner) in the sum of IR£4,235 and Mr Ambrose Kelly in the sum of IR£19,064.76. The invoices from Ms Byrne and Mr Kelly described the nature of the services being billed for. All five invoices were duly paid out of the Barkhill No.2 Loan Account on 2 October 1992.

15.22 Mr O'Farrell agreed that the AIB sanction, given in late September 1992, for a IR£100,000 drawdown from the Barkhill No.2 Loan Account encompassed, *inter alia*, these three Frank Dunlop & Associates invoices.

DRAW DOWN OF IR£40,000

15.23 Mr O'Callaghan met with Mr O'Farrell and Mr McGrath on 22 October, 1992, and Mr O'Farrell's memorandum of that meeting referred to Mr O'Callaghan having:

> *'brought us up to date in relation to the lobbying situation – they are still confident. The vote is definitely set for two of the days 3rd/4th/5th December. This will ensure that it is heard on two dates which are back to back.'*

15.24 At that meeting Mr O'Callaghan provided yet another invoice from Mr Dunlop. This invoice was not identified in Mr O'Farrell's memorandum but Mr O'Callaghan believed that the invoice produced at the meeting was probably the third Frank Dunlop & Associates *'ongoing costs'*invoice dated 9September 1992 and which claimed a sum of IR£11,490. Mr O'Farrell's memorandum, also documented Mr O'Callaghan as having: *'... indicated that there will be further*

[71] The Barkhill loan account was debited on 2 October 1992

invoices which he said would total £40,000 including the one provided today. This would bring the matter up to zoning.'

15.25 The memorandum recorded Mr O'Farrell's surprise at the IR£40,000 figure then being suggested by Mr O'Callaghan. He recorded as follows:

> *I indicated that I was clearly under the impression that only IR£10,000 would be required, in addition to what had already been paid. This is the basis I have brought forward the matter for consideration when the last invoices had been provided. He* (Mr O'Callaghan) *indicated that he had stated that the time further fees of IR£40,000 would be required. He indicated that a further invoice of £15,000 would require settlement shortly.*

15.26 Mr O'Callaghan's request for funds met with some opposition from AIB. A memorandum prepared by Mr O'Farrell stated the following:

> *He indicated that he, and ourselves, have little choice but to continue on the existing route and that will require further cash to pay further fees. There are a lot of other fees outstanding which, following zoning, will also become a major issue. He indicated that he is not giving these any thought at this stage – his main priority is to get zoning. We left them clearly in the knowledge that paying further fees would not be on by the bank – however we agreed to revert to him in relation to the fees issue and specifically in relation to the invoice provided to us dated 9th September, 1992.*

15.27 Asked on Day 902, to explain what was meant by the '*existing route',* Mr O'Callaghan stated:

> *'I presume the way we were going, that what we had to keep paying fees for the design of the Stadium, keep the Stadium project going. We had to keep our lobbying going, we had to keep the full emphasis on lobbying which we were doing at that particular time, which as I said to you it was extremely difficult then because of the Blanchardstown involvement. That's the position we were in.'*

15.28 Mr O'Callaghan's priority as of October 1992 was to have funds for his lobbying activity. He stated to the Tribunal:

> *'It was vital to keep the lobbying campaign going because at the time it was extremely intense because of the opposition from Blanchardstown.'*

15.29 The funds of IR£40,000, which Mr O'Callaghan apprised AIB on 22 October 1992 were required for lobbying, included Mr Dunlop's 9 September 1992 invoice. As with the previous two '*ongoing costs*' invoices, it contained no

breakdown. Yet, Mr Ambrose Kelly's invoice for IR£19,064.76, which had also been submitted by Mr O'Callaghan to Mr O'Farrell in September 1992, had thereon a breakdown of the sum sought.

15.30 Mr McGrath acknowledged that as of 22 October 1992 when he met with Mr O'Callaghan together with Mr O'Farrell, Mr O'Callaghan was indicating his confidence *vis-à-vis* a successful zoning vote for Quarryvale, but was requesting that further funds be made available from the Barkhill account.

15.31 Mr McGrath was questioned as to his understanding of what Mr O'Callaghan intended to convey, when on 22 October 1992 Mr O'Callaghan was noted as stating that:

> *'.. he and ourselves had little choice but to continue on the existing route and this will require further cash to pay further fees.'*

15.32 Mr McGrath's belief was that Mr O'Callaghan was advising AIB that it would cost more money to complete the *'development'.* It was put to Mr McGrath that Mr O'Callaghan's reference to the *'existing route',* in the context of the meeting, was a reference to the lobbying of Councillors. Mr McGrath however told the Tribunal that he could not draw that inference. However, as set out above, Mr O'Callaghan himself accepted that the '*existing route*' related to lobbying.

15.33 While acknowledging that it was possible that the primary purpose of the meeting concerned the costs connected with zoning/lobbying in the lead up to the December 1992 vote, Mr McGrath, however, professed no recollection of what transpired at the meeting. He had no recollection of seeing the Frank Dunlop & Associates invoice, dated 9 September 1992, re *'ongoing costs'*(although he acknowledged it was produced at the meeting), and claimed to have little knowledge of the details relating to Quarryvale/Barkhill which, he maintained, had been dealt with by Mr Kay and later by Mr O'Farrell.

15.34 By early November 1992, AIB had sanctioned an additional IR£30,000 drawdown from the Barkhill No. 2 Loan Account. The Tribunal was satisfied that this sanction was, in effect, the balance of the IR£40,000 sum Mr O'Callaghan had requested at the meeting on 22 October 1992 (AIB also authorised payment of the invoice for IR£11,490).

15.35 Mr O'Callaghan and Mr Deane met with Mr O'Farrell and Ms Basquille on 5 November 1992[72]. Ms Basquille noted Mr O'Callaghan, on that date, as stating

[72] The General Election was called on this date.

that *'the Council vote on zoning should take place within the first ten days of December and substantial additional costs are likely to arise before then.'*

15.36 It was evident from Ms Basquille's memorandum that AIB's reluctance to advance further funding was communicated to Mr O'Callaghan. Ms Basquille noted the following:

> *It was indicated that AIB could have difficulty advancing more funds as we were already drawn in excess of agreed limits. Owen then asked if we were prepared for the consequences of the vote not going through due to stopping the campaign now.*

15.37 Ms Basquille further noted that AIB agreed to consider the implications of what Mr O'Callaghan had said and to revert to him within a day or two. It was also noted that Mr O'Callaghan had stated that if AIB could provide funds, O'Callaghan Properties would be prepared to cover some of the outlay from its own resources.[73]

15.38 Following the meeting with Mr O'Callaghan on 5 November 1992, Mr O'Farrell telephoned him on 8/9 November 1992 in the course of which he was advised that a drawdown of IR£30,000 from the Barkhill No. 2 Loan Account would be permitted.[74]

15.39 On 20 November 1992, Mr O'Farrell recorded Mr O'Callaghan as having advised, during the course of a telephone conversation, as follows:

> *He has not been in Dublin since the election[75] was called – today is his first day back on the lobbying route. I confirmed that the £30,000 drawdown that I indicated would be available from the Barkhill account was still available towards fees. He will send in an invoice next week. He confirmed that they had, at least, matched this amount themselves towards fees. He is still optimistic regarding the vote – however nothing is certain. The date for the vote will not be set until the 26th November when the party Whips meet. There is no certainty it will be on in the first week in December.*

15.40 On 23 November 1992, some three days following this telephone conversation, Mr O'Callaghan wrote to Mr O'Farrell seeking payment for the fourth *'ongoing costs'* invoice, in the sum of IR£21,063.36. Mr O'Callaghan's letter stated, *inter alia*:

[73] Riga in fact did contribute outlay from its own resources on 10 November 1992 when IR£70,000 was transferred to Mr Dunlop's AIB 042 Rathfarnham account- See Part 6 of this Chapter

[74] This drawdown was utilised to discharge the ongoing costs invoices of the 1 October 1992 and 7 December 1992, which amounted to, in total, IR£30,824.26

[75] A reference to the November 1992 General Election called on 5 November 1992.

I enclose an invoice on behalf of Frank Dunlop. I am anxious to get our own 'Election' going again next Friday/Monday. Hopefully the Councillors will be settled down by then.

As I mentioned to you, we have provided as much support as we could afford over the past few weeks. I will inform you of this when we meet.

I would like to collect a cheque for this invoice from you on Monday/Friday next. I will ring you to arrange a suitable time.

15.41 This letter was written to Mr O'Farrell after Riga's inter-bank transfer of IR£70,000 from an account in Bank of Ireland to Mr Dunlop's AIB 042 Rathfarnham account on 10 November 1992, a fact which would not of itself have been known to Mr O'Farrell or others within AIB dealing with Barkhill affairs.

15.42 On 1 December 1992 Mr O'Farrell met Mr O'Callaghan at Bankcentre in Ballsbridge where, *inter alia,* they discussed the forthcoming Quarryvale vote. The following was noted; - '*he [*Mr O'Callaghan] *is confident a decision will be made one way or the other on that date. It is very tight…..His lobbying continues and he indicated that he had injected IR£85,000 into the situation from O'Callaghan Properties'.* The *'date'* referred to in this extract was the expected date of the meeting in Dublin County Council for the crucial second vote in connection with Quarryvale.

15.43 Notwithstanding the clear inference in Mr O'Callaghan's 23 November 1992 letter that financial support had been given to politicians, there was no suggestion that in November 1992 AIB personnel took issue with Mr O'Callaghan's *modus operandi*. Nor did Mr O'Farrell's 1 December 1992 file note record any concern on the part of the bank that Mr O'Callaghan had *'injected'* some IR£85,000 *'into the situation'*, a note which on the face of it appeared to suggest that Mr O'Farrell had been made aware that a sum of IR£85,000 had been expended in relation to the lobbying of councillors.

15.44 Mr O'Farrell confirmed to the Tribunal that he understood that the reference to IR£85,000 having been *'injected'* into the *'situation'* was a reference to the cost of lobbying activities associated with the rezoning of Quarryvale. Mr O'Farrell stated, however, that he had no recollection of asking Mr O'Callaghan for details as to the composition of this IR£85,000 expenditure. Mr O'Callaghan told the Tribunal that the IR£85,000 included IR£70,000 fast-tracked by Riga to Mr Dunlop's AIB 042 Rathfarnham account on 10 November 1992, (from which Mr Dunlop immediately withdrew IR£55,000 in cash), IR£10,000 paid to Mr Batt O'Keeffe TD, and IR£5,000 paid to Cllr G. V. Wright.

15.45 Both the 23 November 1992 letter and the bank's memorandum of 1 December 1992 appeared to indicate a degree of knowledge on AIB's part that Mr O'Callaghan had at that time expended considerable sums on payments to councillors, in the course of the 1992 General Election.

15.46 Mr Dunlop's fourth '*ongoing costs*' invoice was paid from the Barkhill no 2 loan account, by draft, on 1 December 1992, and was in all probability collected by Mr O'Callaghan on that date during the course of his meeting with Mr O'Farrell.

RELEASE OF IR£64,897.78

15.47 At meetings with AIB on 20 January 1993 and 16 June 1993 Mr O'Callaghan requested that AIB discharge the Frank Dunlop & Associates sixth on-going costs invoice for IR£64,897.78. AIB refused to do so, although, as testified to by Mr Deane, it represented a genuine Barkhill/Quarryvale expense.

MR GILMARTIN AND THE FRANK DUNLOP & ASSOCIATES INVOICES

16.01 Documentation discovered by AIB suggested that on 19 December 1991 Mr Gilmartin had signed an authorisation for a drawdown on the Barkhill No.2 Loan Account. Included in this authorisation was a payment to Mr Dunlop of IR£9,036.16.[76] Mr Kay agreed that on the authorisation, as signed by Mr Gilmartin, two question marks appeared and he acknowledged that such marks could have been made by Mr Gilmartin, as he knew Mr Gilmartin disapproved of Mr Dunlop and that it was probably the case that Mr Gilmartin was asking for the reason for the payment to Mr Dunlop. Mr Kay stated that on each occasion Mr Kay mentioned Mr Dunlop to Mr Gilmartin, Mr Gilmartin raised an objection. He stated that Mr Gilmartin raised objections to virtually all payments made out of the Barkhill No.2 Loan Account, save for these payments being made in relation to land purchase.

16.02 The Tribunal was satisfied that Mr Gilmartin was aware by at least 19December 1991 of payments being made to Frank Dunlop & Associates Ltd. With regard to the authorisation signed by him on 19 December 1991, Mr Gilmartin agreed that it was possible, that it was he who had placed the question marks beside the figure of IR£9,036.16 pertaining to Mr Dunlop, and which appeared on the document which had been faxed to him for the purposes of obtaining his signature. Mr Gilmartin said that he would have queried this figure as he never wanted to have Mr Dunlop involved in his project. It was likely, he stated, that he queried it with Mr Kay and that he was told that Mr Dunlop was a PR consultant, and was absolutely necessary for the project.

[76] No sum of IR£9,036.16 was in fact paid to Frank Dunlop & Associates, that firm having been paid by Riga on 2 December 1991 and Riga having been reimbursed by Barkhill on 24 January 1992.

16.03 Mr Gilmartin sanctioned this payment to Mr Dunlop although, according to Mr Gilmartin's own testimony, by December 1991 he was privy to a conversation, overheard by him, between Mr O'Callaghan and Mr Dunlop, wherein it was stated that Mr Dunlop had given IR£40,000 to Mr Lawlor[77] in April 1991. Asked why he would in those circumstances have sanctioned payments to Frank Dunlop and Associates, particularly in view of his claimed distrust of Mr Dunlop, Mr Gilmartin's response was that he had felt that he had no option but to do so. He said that when he queried the payment to Mr Dunlop, he was merely told that Mr Dunlop was '*a P.R. man.*'

16.04 Mr Gilmartin did not authorise the drawdown on the Barkhill No.2 Loan Account which ultimately resulted in the reimbursement of IR£56,598.71 to Riga on 24 January 1992, although, as set out, he had been requested to and he did authorise a payment out of the Barkhill No 2 Loan Account on 19 December 1991 (which included a payment to Frank Dunlop & Associates). Nor did it appear that Mr Gilmartin was ever requested to authorise the January 1992 reimbursement to Riga.

THE TRIBUNAL'S CONCLUSIONS ON THE ISSUE OF THE FRANK DUNLOP & ASSOCIATES INVOICES ISSUED BETWEEN AUGUST 1991 - NOVEMBER 1993.

17.01 The Tribunal was satisfied that the sums claimed by Frank Dunlop & Associates Ltd on foot of the invoices issued between August 1991 and November 1993 were associated with his lobbying endeavours in connection with the zoning of the Quarryvale lands.

17.02 With the exception of the first '*ongoing costs*' invoice of 10 June 1992, Riga did not itself discharge any of the subsequent such invoices which issued between that date and 7 December 1992, rather Mr O'Callaghan authorised their payment and presented them for payment to AIB and they were discharged from the Barkhill No. 2 Account. Mr O'Callaghan also presented the first such invoice (Riga having discharged same) to AIB in order to seek reimbursement to Riga from Barkhill.

17.03 As between Mr Dunlop and Mr O'Callaghan there was a dispute as to whether or not Mr Dunlop provided Mr O'Callaghan, at the time he produced the relevant invoices, with backup documentation indicating how the sums were calculated.

[77] See Part 9 of this Chapter.

17.04 The Tribunal was satisfied that Mr Dunlop did not provide such backup documentation to Mr O'Callaghan. It was likely, as suggested by Mr Dunlop, that no such backup documentation was requested by Mr O'Callaghan. It appeared to the Tribunal that, had such backup documentation been in existence at the time the invoices were discussed between himself and Mr O'Callaghan, Mr Dunlop would have retained, and, most probably, would have furnished such details to the Tribunal, as he did in relation to invoices issued in the name of Frank Dunlop & Associates Ltd between 6 August 1991 and 30 April 1992.

17.05 Of the five '*ongoing costs*' invoices issued between 10 June 1992 and 7 December 1992, the only specific explanation provided by Mr Dunlop and Mr O'Callaghan, in evidence for the raising of such invoices was given in relation to the first of such invoices – namely the reimbursement of Mr Dunlop for his having assisted Cllr Colm McGrath, at Mr O'Callaghan's request.Thus, with regard to the balance of the invoices, other than one item for IR£24.20, the Tribunal was left in the position whereby it was unable to identify, either from the testimony of any witness or from a documentary trail, what costs or expenditure had been incurred by Mr Dunlop between 24 July and 7 December 1992 to merit payments slightly less than IR£50,000.

17.06 Thus, it appears to have been the case that both Mr O'Callaghan and AIB were presented with '*one liner*' invoices by Mr Dunlop, over a six month period.

17.07 The production of the '*one liner*''*ongoing costs'*invoices coincided with an intensive lobbying campaign conducted by Mr Dunlop and Mr O'Callaghan between June and December 1992.

17.08 The Tribunal found it significant that Mr Dunlop appeared to have commenced his '*ongoing costs'* system of invoicing when he sought reimbursement from Mr O'Callaghan in respect of the IR£10,700 payment he made to William Fry Solicitors, at Mr O'Callaghan's request, to discharge a debt on behalf of Cllr McGrath. The first '*ongoing costs*' invoice thus had a 'political' element. It was the view of the Tribunal that this fact in turn raised the question, did the subsequent '*ongoing costs'*invoices issued between 24 July 1992 and 7 December 1992 also include a '*political element.'*

17.09 The Tribunal also noted that both the sixth and seventh '*ongoing costs*' invoices dated 21 December 1992 and 26 November 1993 respectively contained, *inter alia*, a request by Mr Dunlop for reimbursement to him for gifts (Christmas Hampers) provided to councillors.

17.10 The Tribunal did not accept that the '*ongoing costs'*invoices issued between 24 July 1992 and 7 December 1992 merely related to uncontroversial matters such as the procuring and distribution of literature to aid lobbying or financial assistance rendered to community/charity organisations and events. If that was the case, it was more likely that Mr Dunlop, as he had done prior to June 1992, and as he had done on 21 December 1992 (with regard to the invoice for IR£64,897.78) would have itemised such expenditure and, moreover, provided some backup documentation, or alternatively a written explanation of the sums claimed.

17.11 The Tribunal was satisfied that at least some of the payments made by Mr Dunlop on the part of Mr O'Callaghan to or for the benefit of councillors through the mechanism of Frank Dunlop & Associates generated invoices were motivated by an attempt to influence those councillors in the performance of their public duties and were therefore corrupt. The Tribunal is also satisfied that Mr O'Callaghan was aware that some of the payments which he made to Mr Dunlop were being used for this corrupt purpose.

17.12 Insofar as AIB were privy to the purpose for which drawdowns connected to Mr Dunlop were made on the Barkhill No. 2 Loan Account between January 1992 and April 1992, it was clear that when it sanctioned such drawdowns on 24 January 1992, 12 February 1992 and 13 April 1992, the five Frank Dunlop and Associates invoices, the subject matter, *inter alia*, of these drawdowns were available to personnel within AIB for their perusal. From the descriptions on the five invoices, the nature of the expenditure incurred by Mr Dunlop was readily obvious. This also held true for the invoice for IR£10,253.27 of 30 April 1992 which was discharged out of the Barkhill No. 2 Loan Account on 2 October 1992, by way of reimbursement to Riga.

17.13 It appeared that the mere words *'to ongoing costs Re',* or *'to ongoing costs associated'* with Quarryvale without further explanation, as appeared on the Frank Dunlop & Associates Ltd invoices produced to AIB between the months of September 1992 to December 1992, did not exercise the minds of anyone within AIB, as all such invoices were duly discharged from the Barkhill No. 2 Loan Account, apparently without question. The Tribunal noted that this was done at a time when there was severe pressure on the Barkhill No. 2 loan facility and indeed at a time when that facility was stretched beyond the original sanction. An analysis of memoranda compiled by Mr O'Farrell during this period reflected the status of the Barkhill No. 2 Loan Account at that time.

17.14 It was clear from an analysis of payments, other than land acquisition related payments, made from the Barkhill No. 2 Loan Account in the latter half of 1992, that Mr Dunlop was the principal beneficiary of such payments. Barkhill paid IR£72,412.33 between 2 October 1992 and 14 December 1992 on foot of Frank Dunlop & Associates invoices, all of which, save one (the 30 April 1992 invoice) were '*ongoing costs'* invoices.

17.15 An analysis of the memoranda compiled by Mr O'Farrell in the period September to December 1992 also revealed that it was being urged upon AIB by Mr O'Callaghan and Mr Deane that ongoing funds were required to bring the Quarryvale lands to '*zoning'*.

17.16 Equally, it appeared to the Tribunal that AIB acceded to pressure from Mr O'Callaghan (noted in Mr O'Farrell's memorandum of 22 October 1992) to pay further sums from the already overdrawn Barkhill No. 2 Loan Account. The 22 October 1992 memorandum noted Mr O'Callaghan as stating that fees of IR£40,000 would be required. From that document, it was obvious that the sum claimed included Mr O'Callaghan's provision for Mr Dunlop's third '*ongoing costs'* invoice of 9 September 1992 for IR£11,490. Mr O'Farrell's memorandum recorded that AIB agreed '*to revert to him in relation to the fees issue and specifically in relation to the invoice provided to us dated 9th September, 1992.'*

17.17 It was evident to the Tribunal that by November 1992 AIB had taken on board Mr O'Callaghan's pronouncement that he and AIB should '*continue on the existing route'* in funding Mr Dunlop's lobbying of councillors. On 2 November 1992, as already stated, AIB sent a draft for IR£11,490 to Frank Dunlop & Associates. It was also clear to the Tribunal that the balance of the IR£40,000 sum, which Mr O'Callaghan had indicated would be required, was also provided from the Barkhill No. 2 Loan Account. Mr O'Farrell's memorandum of 20 November 1992 indicated that he told Mr O'Callaghan that a further IR£30,000 drawdown on the Barkhill No. 2 Loan Account had been sanctioned, and it was this IR£30,000 that duly funded Mr Dunlop's fourth '*ongoing costs'*invoice in the sum of IR£21,063.36 (paid to Mr O'Callaghan by way of draft on 1 December 1992) and Mr Dunlop's fifth such invoice in the sum of IR£9,760.90 paid by AIB draft from the Barkhill No. 2 Loan Account on 14 December 1992.

17.18 A consideration of the operation of the Barkhill No.2 Loan Account between December 1991 and December 1992 showed that, apart from land purchase costs, a substantial portion of the professional fees from that account went to Frank Dunlop & Associates and Shefran. Between those dates Frank

Dunlop & Associates alone received payments totalling IR£104,099.37[78], all of which was funded by the Barkhill No.2 Loan Account - either by the reimbursement of Riga for Frank Dunlop & Associates invoices it had discharged or by paying Frank Dunlop & Associates directly from the Barkhill No.2 Loan Account.

THE RETAINER PAYMENTS

18.01 Between 30September 1993 and 2 April 2001 Mr Dunlop (through Frank Dunlop & Associates) issued retainer fee invoices to either Riga or Barkhill to the value of IR£371,470 (inclusive of VAT). These invoices were duly paid by Riga or Barkhill.

18.02 The retainer invoices, may be broken down as follows:

i. Four invoices to Riga between 30 September 1993 and 5 January 1994 in the amount of IR£3,025 each (inclusive of VAT).

IR£12,100

ii. Five invoices to Riga between 2 January 1995 and 28 April 1995, in the amount of IR£1,210 each(inclusive of VAT).

IR£6,050

iii. Eleven invoices to Riga between 31 May 1995 and 29 March 1996, in the amount of IR£2,420 each (inclusive of VAT).

IR£26,620

iv. Five invoices to Barkhill between 30 April 1996 and 30 September 1996, in the amount of IR£2,420 each (inclusive of VAT).

IR£12,100

v. Forty three invoices to Barkhill between 31October 1996 and 28 April 2000, in the sum of IR£6,050 each (inclusive of VAT).

IR£260,150

vi. Nine invoices to Riga between 31 July 2000and 2 April 2001 in the sum of IR£6,050 each (inclusive of VAT).

IR£54,450

[78]This figure excludes the total IR£70,000 which Shefran was paid in April 1992(IR£40,000) and June 1992(IR£30,000). Moreover, as set out elsewhere, Shefran was paid IR£80,000 over a three week period in May/June 1991, although this sum was not recouped from the Barkhill No. 2 Loan Account nor any Barkhill loan account from the period 1991 to 1993. It was recouped in 1996.

18.03 According to Mr Dunlop, prior to September 1993, he operated a dual payment system whereby his professional fees were paid through Shefran and his expenses were paid via Frank Dunlop & Associates. However, in August 1993, he entered into a more formal arrangement with Mr O Callaghan whereby he was to be paid on a retainer basis. Its purpose was to provide for Mr Dunlop's services to be available to Mr O'Callaghan on an ongoing basis with regard to Quarryvale, including the use of Mr Dunlop's office facilities.

18.04 Mr Dunlop's diary for 25August 1993 indicated that there was on that date an agreement in place between himself and Mr O'Callaghan which provided for the payment of IR£2,500 per month from then until the end of December, a total of IR£10,000. In contrast, Mr O'Callaghan, in the course of his evidence, sought to maintain that as and from September 1993 it had been agreed with Mr Dunlop that Frank Dunlop & Associates was to be the recipient of monthly retainer fees of IR£5,000 per month. This is discussed further below.

18.05 The Tribunal was satisfied that the cessation of the operation of this practice by Mr Dunlop and Mr O'Callaghan was related to the progress of the Quarryvale rezoning in 1993. Mr Dunlop himself acknowledged that by September 1993 he and Mr O'Callaghan anticipated that the Quarryvale C and E zoning, achieved in December 1992, would be confirmed as part of the 1993 Development Plan, an objective which was achieved on 19 October 1993.

18.06 As is clear from the above, Mr Dunlop was paid retainer fees between 1993 and 2001 for every year with the exception of 1994.[79] The exact amount of the fees paid was varied on occasion by agreement over the course of that period.

18.07 All retainer fees received by Mr Dunlop, whether from Riga or Barkhill, were lodged into the accounts of Frank Dunlop & Associates. Mr Dunlop's treatment of his retainer fees was, the Tribunal noted, in marked contrast to the manner in which he treated the eight round figure payments made to him by Mr O'Callaghan in the years 1991 to 1993 amounting to IR£270,000

THE 1993 RETAINER PAYMENTS

18.08 On 17 December 1993 Riga paid IR£9,075 to Frank Dunlop & Associates on foot of three invoices for IR£3,025 each (inclusive of VAT) stated to be for the provision of '*public relation consultancy services'.* These invoices issuedto Riga respectively on 30 September, 29 October and 30 November 1993.

[79] A retainer payable for September 1993 was the subject of an invoice dated 5 January 1994 (in the sum of IR£3,025), paid by Riga and lodged into an account of a Frank Dunlop & Associates on 14 February 1994.

THE 1995 RETAINER PAYMENTS

18.09 Mr Dunlop's diary for 9 January 1995 recorded a retainer fee arrangement being agreed with Mr O'Callaghan as follows:

> *Agreed 1k per month for Jan/Feb/March/Apr.New arrangement as from 1st May.*

18.10 Frank Dunlop & Associates Ltd issued invoices for IR£1,210 each (inclusive of VAT) between January and April 1995 totalling IR£6,050. These invoices were paid by Riga to Frank Dunlop & Associates.

18.11 On 1 May 1995, Mr Dunlop's diary noted the following:

> *Review arrangement with OOC. Refer back to meet on the 9/1/95 (see diary) → Spoke to OO'C re retainer. Agreed to review again on 1st June. Retainer will be increased & will not be less than £2000.00 from that date.*

18.12 His diary on 1 June 1995 recorded a reference to a discussion which took place between the two men on that topic as follows: '*OO'C Retainer to be increased from today. Not less than 2k.'*

18.13 Frank Dunlop & Associates Ltd commenced issuing retainer invoices in the sum of IR£2,420 (inclusive of VAT) from 31 May 1995, a monthly sum discharged by Riga until mid-1996. By year end 1995, a total of IR£13,310 had been received by way of retainer fees, paid by Riga, and duly reimbursed by Barkhill in May 1996.

THE 1996 RETAINER PAYMENTS

18.14 For the year 1996, Frank Dunlop & Associates Ltd were paid a total of IR£31,460 retainer fees by Riga and Barkhill, with Barkhill duly reimbursing Riga for its outlay in this regard.

18.15 On 31 October 1996 Frank Dunlop & Associates began to issue invoices in the sum of IR£6,050 (inclusive of VAT) and continued to issue until they ceased in April 2001.

18.16 The Tribunal was satisfied that the increase in the retainer amount to IR£5,000 per month was agreed between Mr Dunlop and Mr O'Callaghan on 13/14 June 1996, as noted in Mr Dunlop's diary, *inter alia*, as follows: '*Met OOC at FDA & he undertook to arrange new retainer for FDA.*'[80]

[80]For a further consideration of this diary entry see below.

18.17 By and large, the retainer fee arrangements, as noted by Mr Dunlop in his diaries on various dates in 1995 and 1996, coincided with invoices actually issued by Frank Dunlop & Associates and payments made by Riga /Barkhill.

THE 1997 – 2000 RETAINER PAYMENTS

18.18 In 1997 Barkhill paid a total of IR£78,650 in discharge of thirteen retainer invoices for IR£6,050 issued by Frank Dunlop & Associates, and in 1998 it made a further twelve such payments, totalling IR£72,600. Payments by Barkhill to Frank Dunlop & Associates Ltd in 1999 by way of retainer fees totalled IR£72,600 on foot of 12 invoices.

18.19 In 2000, such payments amounted to IR£72,600, on foot of twelve invoices, the first six invoices being discharged by Barkhill, with the remainder discharged by Riga.

18.20 Retainer fee invoices directed to Barkhill ceased at the end of April 2000, a timeframe which coincided with the revelations and admissions made by Mr Dunlop at his public appearances before the Tribunal in that same month. Thereafter, the retainer invoices were addressed to Riga until the final invoice on 2 April 2001.

THE RETAINER AGREEMENT

18.21 As set out above, in contrast to, and notwithstanding the references in Mr Dunlop's diaries to the agreements made with Mr O'Callaghan regarding retainer fees over the years 1993-1996, Mr O'Callaghan, in the course of his evidence, sought to maintain that as and from September 1993 it had been agreed with Mr Dunlop that Frank Dunlop & Associates was to be the recipient of monthly retainer fees of IR£5,000 per month. Mr O'Callaghan claimed that, on occasions, Riga/Barkhill were unable to make such payments and that a substantial arrears shortfall in retainer fees was duly settled as between Riga and Frank Dunlop & Associates Ltd by the payment by Riga of IR£100,000 plus VAT on 4 June 1998. The Tribunal was not satisfied to accept Mr O'Callaghan's evidence in this regard.[81]

18.22 In the course of his evidence, Mr Dunlop did not suggest that the retainer fees, as had been agreed and noted by him in his diaries over the period of 1993 to 1996, were unpaid or that a lesser sum than that agreed had been paid to him by Riga or that there were periods in the years 1993 – 2001 in respect of which there were unpaid retainer fees.

[81] The payment of the IR£100,000 in June of 1998 and the purpose of such payment is considered elsewhere.

18.23 The Tribunal was satisfied, notwithstanding that Frank Dunlop & Associates was paid different retainer fees at different times and that there were periods when no retainer fees were paid at all, that such payments as were actually made by Riga/Barkhill were the actual sums due and owing on foot of the retainer fee arrangements which were, in all probability, correctly noted by Mr Dunlop in his 1993, 1995 and 1996 diaries.

MR DUNLOP'S FINANCIAL RECOMPENSE BETWEEN 1995 TO 1998

19.01 The Tribunal believed that over the course of two and a half years from 1995 to May 1998 the provision of a substantial payment to Mr Dunlop by Mr O'Callaghan was the subject of a number of discussions and negotiations between the two men. The Tribunal was satisfied that the context in which such discussions and negotiations took place was that Mr Dunlop no longer expecting to achieve an involvement (as a 25% shareholder) in Leisure Ireland/Leisure West Ltd.[82]

19.02 It appeared to the Tribunal that Mr Dunlop, by 1995 (and indeed probably from December 1994), had come to the realisation that his anticipated 25% ownership of the Neilstown and other lands was not going to become a reality, given the demise of the Stadium project. It was satisfied that Mr Dunlop then began to concentrate his efforts on securing financial recompense/a success fee from Mr O'Callaghan for his contribution to the successful Quarryvale rezoning, and indeed for his work on the by then defunct Stadium project. In effect, the Tribunal believed that Mr Dunlop turned his mind to obtaining a payment from Mr O'Callaghan in lieu of '*Big One.*'[83]

19.03 In this respect, Mr Dunlop appeared to have made some progress by September 1995, as he recorded in his diary for 1 September 1995 the words '*OOC to deliver*'. Mr O'Callaghan agreed that this notation was a record of a financial arrangement having been agreed between them, but he could not identify the financial arrangement in question. Mr Dunlop, for his part, said that he did not know what Mr O'Callaghan was '*to deliver'*on that date.

19.04 On 15 September 1995 Mr Dunlop recorded the following in his diary:

> *Spoke by phone to OOC. He reiterated his commitments to fulfilling his obligations absolutely, no problem*.

[82] Leisure Ireland/Leisure West Ltd was the company which had been envisaged by Messrs O'Callaghan, Dunlop, Lawlor and Kelly as being the vehicle by which they would acquire Merrygrove's Option to purchase the Neilstown and other lands from Dublin Corporation, and the entity that was to be the promoter/developer of the proposed *'All Purpose National Stadium'*project. See Part 6 of this Chapter.

[83] For a consideration of 'Big One' see Part 6.

In relation to this entry, Mr Dunlop accepted (albeit somewhat reluctantly) that this diary note was a reference to a success fee.

19.05 The Tribunal was satisfied that this entry (as was the case with the entry recorded two weeks earlier) related to a discussion in which Mr Dunlop and Mr O'Callaghan agreed a substantial financial matter.

19.06 Prior to furnishing his unredacted diaries to the Tribunal in 2001, Mr Dunlop sought to obliterate the first mentioned diary entry '*OOC to deliver*' in its entirety, and also attempted to obliterate the majority of the second entry of 15 September 1995, save for the words '*Spoke by phone to OOC.*'

19.07 Following the forensic analysis of Mr Dunlop's diaries, the Tribunal was provided with an insight into the matters which Mr Dunlop had sought to conceal in his diaries. The Tribunal was satisfied that Mr Dunlop's attempted obliteration of his diary entries was a deliberate act on his part to ensure that certain negotiations which took place between himself and Mr O'Callaghan (together with other information) were concealed from the Tribunal.

19.08 While the Tribunal was satisfied that Mr Dunlop, by September 1995, anticipated a payment of a substantial sum from Mr O'Callaghan, no such payment, it appeared, materialised during that year, or indeed by June of 1996 having regard to what Mr Dunlop recorded in his diary for 13/14 June 1996. This entry, as previously referred to, recorded as follows:

> *Met OO'C at FDA.*
> *& he undertook to (a) arrange new retainer for FDA*
> *(b) agree to pay success to FD (all in 10 to 14 days)*

19.09 While a new retainer arrangement was put in place by 31 October 1996, there was no evidence to suggest that in 1996 Mr Dunlop received a '*success*' fee.

19.10 Similarly to the way in which Mr Dunlop sought to conceal the 15 September 1995 diary entry referred to above, prior to furnishing his 1996 diary to the Tribunal, he attempted to conceal a portion of the entry in his diary for 13/14June 1996 relating to his discussions with Mr O'Callaghan. Unfortunately, the portion of the entry that was obliterated by Mr Dunlop defied forensic analysis. Both Mr Dunlop and Mr O'Callaghan essentially acknowledged that the obliterated entry, in all probability, related to a financial matter which had been discussed and/or agreed between them on 13/14 June 1996. Their evidence

did not assist the Tribunal in determining what Mr Dunlop had concealed from the Tribunal.

THE IR£1 MILLION

20.01 By October 1996 Mr Dunlop continued to anticipate payment of substantial financial recompense from Mr O'Callaghan for his Quarryvale endeavours. On 3 October 1996 Mr Dunlop's Bank Manager Mr Aherne noted Mr Dunlop as stating that his expected recompense for his Quarryvale work was on the following basis:

> *IR£1m as owing to Frank Dunlop with IR£500k relating to back-up contract support and payable as follows:*
> *IR£200k October 1996*
> *IR£400k October 1997 (IR£300k contract support)*
> *IR£400k October 1998 (IR£200k contract support)*

20.02 Mr Dunlop insisted that there was never any agreement to pay a sum of IR£1m in relation to Quarryvale. He told the Tribunal that the information he provided to his bank manager was, in essence, designed to impress the bank in relation to his, Mr Dunlop's, financial outlook.

20.03 Mr Dunlop did however maintain that there had been a discussion between himself and Mr O'Callaghan '*on a number of occasions'* in relation to the '*possibility'* of a payment of IR£1m. Mr Dunlop was questioned as to the circumstances in which the issue of a IR£1m payment arose with Mr O'Callaghan. His recollection was that the matter arose following a discussion between Mr O'Callaghan and Mr Ambrose Kelly. Mr Dunlop stated:

> '*Mr O'Callaghan came to me on a specific – I can't give you the exact date. On a specific morning and said that he had a discussion the previous evening with Ambrose Kelly and that he spoke in general terms about people being looked after for all of the work that they had done. And this included Mr Liam Lawlor.'*

And:

> '*…As I recollect matters, the first occasion on which this, an issue of a million pounds arose, arose out of Mr O'Callaghan coming to me or being with me and telling me that he had a conversation the previous evening with Ambrose Kelly in which matters in relation to rewarding or looking after people who had been helpful above and beyond the cause of duty as it were in relation to Quarryvale and that they should be recompensed in some way and that a figure of a million was mentioned.'*

20.04 Mr Dunlop said that he understood that the discussion about IR£1m took place between Mr O'Callaghan and Mr Kelly in the context of a payment of IR£250,000 to those who had been particularly helpful in relation to the Quarryvale project.Mr Dunlop identified those individuals as himself, Mr Ambrose Kelly and Mr Liam Lawlor. Mr Dunlop said he thought that it had probably been his understanding that the discussion about the payment of IR£1m was in the context of such a sum being paid to him and that he would then distribute it as appropriate.

20.05 Mr Dunlop told the Tribunal that on a number of occasions, following Mr Kelly's approach to Mr O'Callaghan, on the prompting of Mr Lawlor, Mr Dunlop had himself raised the issue of a IR£1m composite payment for himself, Mr Kelly and Mr Lawlor with Mr O'Callaghan but, he stated, Mr O'Callaghan had been '*negative*' to such an idea.

20.06 Mr Kelly did not dispute that he had approached Mr O'Callaghan seeking a bonus payment for the '*lads*'. He claimed that he went to Mr O'Callaghan, on the instigation of Mr Lawlor, seeking a bonus arrangement[84] for Messrs Lawlor's and Dunlop's work in relation to the Stadium. He told the Tribunal:

> *'Mr Lawlor, I think had felt he brought a lot to the project because if I correctly could say to you from memory that original idea of this project didn't emanate from Mr O'Callaghan or Mr Deane or Mr Lawlor. The original idea of this project emanated from Mr Lawlor. That's from my recollection. The idea of actually using a Stadium on this land – origins of this idea, my recollection was Mr Lawlor's idea. So he felt probably, he felt that he, for having come up with what would seem to be the idea of the century, that there was an entitlement to remuneration in relation to it. That's, you know, if there's files and documents to say different but that's my reasonable recollection is that it was actually Mr Lawlor that came up with the original concept. Like who thought why would we put a Stadium in this land from day one. It certainly wasn't me I can tell you came up with the idea. I most certainly would believe it wasn't Frank or Mr Dunlop because he wasn't orientated towards sports at all. A Kilkenny man that doesn't support Kilkenny certainly isn't involved in supporting football.*
>
> *Mr O'Callaghan was more into show jumping and football was very outside his scope and sphere. I loved football but I know I didn't come up with the idea. So I think Mr Lawlor was the conclusion or the person who came up with the idea. Any success fee that we would have been looking*

[84] Mr Kelly was uncertain whether the bonus arrangement was to be money paid to Mr Dunlop and Mr Lawlor, or a write off of what he claimed was their required investment funds into the Stadium project. (IR£250,000 each) – see 'Big One' (Part 6 of this Chapter)

for would relate to, look, I came up with the idea, I brought people to the table, I put people together…'

20.07 Mr Kelly also stated:

'*This wouldn't have been a formal discussion, I would have said the lads are looking for 250,000 for a success and you know Liam and so on. I wouldn't have sat down and made this a minuted meeting. It wouldn't have been a nice subject to be discussing either if I may say to you. It wouldn't have been a job you would like to be elected to do every day,'*

20.08 Mr Kelly maintained that while he was the emissary sent to Mr O'Callaghan, he himself had not been seeking such a payment.

20.09 The Tribunal believed it likely, insofar as Mr Kelly had approached Mr O'Callaghan in this regard that he did so on behalf of himself, Mr Lawlor and Mr Dunlop.

20.10 It appeared unlikely to the Tribunal that Mr Kelly would have been chosen to approach Mr O'Callaghan seeking bonus payments for Mr Dunlop and Mr Lawlor, in circumstances where both (or either) were well capable of approaching Mr O'Callaghan themselves, other than in circumstances where Mr Kelly was himself to benefit.

20.11 Mr O'Callaghan denied any suggestion that Mr Dunlop had raised the issue of a IR£1m fee entitlement or that Mr Dunlop might have raised such a payment with him in the aftermath of the collapse of the '*All Purpose National Stadium'* project.

20.12 On 12 April 2007, the Tribunal wrote to Mr O'Callaghan's Solicitors, Ronan Daly Jermyn, in relation to information provided to it by Mr Dunlop in private interview, namely, that Mr Dunlop had been advised by Mr O'Callaghan that Mr Kelly had approached Mr O'Callaghan seeking IR£250,000 each for himself, Mr Dunlop and Mr Lawlor.

20.13 In response, Mr O'Callaghan provided a written statement to the effect that insofar as IR£250,000 had been mentioned, he, Mr O'Callaghan, had indicated that such a sum would need to be invested by Mr Kelly, Mr Lawlor and Mr Dunlop if they were to receive an interest in the Stadium.[85]

[85]The Tribunal has found that in return for their proposed interest in the Stadium project there was no requirement on Mr Dunlop, Mr Kelly and Mr Lawlor to invest IR£250,000 each - see Part 6 of this Chapter.

20.14 With regard to his own quest for payment of IR£1m for the work he had carried out for Mr O'Callaghan, Mr Dunlop stated, on Day 806, that:

> '*There was ongoing discussion with Mr O'Callaghan in relation to payments to me. I am specifically about me now. In relation to payments to me that I was anxious to get from Mr O'Callaghan. Yes, there were a number of discussions with Mr O'Callaghan about the million pounds that allegedly, that arose from the conversation with Mr Kelly. There was no, as I recollect it, there was no agreement with Mr O'Callaghan to pay me a million pounds*'.

20.15 Mr Dunlop's best surmise was that his anticipated success fee was to be in the region of IR£0.5m.

20.16 Notwithstanding Mr Dunlop's denials about any agreement for or discussion about Mr Dunlop being paid IR£1m from Mr O'Callaghan, the Tribunal was satisfied that by 1996 Mr Dunlop and Mr O'Callaghan were engaged in discussions about Mr Dunlop then receiving a substantial sum of money from Mr O'Callaghan.

THE HORGANS QUAY IR£100,000

21.01 In January 1997, Riga paid Mr Dunlop a sum of IR£121,000 (inclusive of VAT). In that year in total, Frank Dunlop & Associates received IR£203,348.83, including IR£78,650 by way of the monthly retainer fees, discharged by Barkhill. Riga made the balance of the 1997 payments. A sum of IR£3,698.83 was lodged (with other funds) to the Frank Dunlop & Associates AIB 067 account on 12 August 1997 (by way of reimbursement of expenses).

21.02 The payment of IR£121,000 arose in the following circumstances. On 9 January 1997 Frank Dunlop & Associates Ltd invoiced Riga in the sum of IR£121,000, for '*professional services rendered*', a sum paid by Riga in or around 23 January 1997. Riga's books accounted for the payment as *'advertising'*. On receipt, it was lodged to two separate Frank Dunlop & Associates bank accounts. The VAT element, IR£21,000, was lodged to the Frank Dunlop & Associates AIB 067 account, and the IR£100,000 was lodged to Frank Dunlop & Associates Allied Irish Finance account, to facilitate the eventual purchase of shares.

21.03 Mr Dunlop and Mr O'Callaghan maintained that the payment of IR£121,000 was in respect of public relations work carried out by Mr Dunlop for Mr O'Callaghan in relation to what was termed by both as the '*Horgans Quay*' controversy, in which Mr O'Callaghan found himself embroiled in the Summer of 1995 in relation to a property in Cork. According to Mr O'Callaghan, Mr Dunlop

was requested, in August 1995, to return from his holidays to deal with media issues relating to the matter and Mr Dunlop worked on these issues for a period of 18 months. When the controversy ended, Mr O'Callaghan maintained that Mr Dunlop nominated a fee of IR£100,000 for his work, which he agreed to pay.

21.04 At the time that this payment of IR£121,000 was made, Frank Dunlop & Associates Ltd was on retainer by Barkhill at a monthly fee of IR£5,000, plus VAT.

21.05 Evidence given by Mr Dunlop suggested that he had discussed this £100,000 (plus VAT) payment with Mr Lawlor who, according to Mr Dunlop, immediately demanded half of it. This demand by Mr Lawlor was ultimately settled as between the two men in March 1997 when Frank Dunlop & Associates Ltd paid Mr Lawlor £25,000.[86]

21.06 Forensic analysis of an obliterated entry in Mr Dunlop's diary for 13 November 1997 revealed the words '*OOC D Day'*. Mr Dunlop claimed that he was unable to explain the meaning of the entry. He acknowledged that the import of the words suggested an arrangement for the payment of money from Mr O'Callaghan. While he agreed that he had forcefully attempted to obliterate the entry, Mr Dunlop did not believe that the entry made by him on 13 November 1997 bore any connection to the fact that the Tribunal had been established earlier that month. For his part, Mr O'Callaghan was not in a position to explain the reference in Mr Dunlop's diary, but speculated that it might have related to a success fee – although he said none had been agreed.

THE 1998 PAYMENTS OF IR£100,000 AND IR£300,000

22.01 In the course of 1998, Frank Dunlop & Associates Ltd received a total of IR£612,143.57 from Riga/Barkhill, broken down as follows:

- IR£72,600 in total paid by Barkhill by way of discharge of monthly retainer fees of IR£5,000, plus VAT per month;
- payment by Riga of IR£121,000 (IR£100,000 plus VAT) on 4 June 1998, on foot of an invoice dated 22 May 1998;
- payment by Riga of IR£363,000 (IR£300,000 plus VAT) on 9 October 1998, on foot of an invoice dated 5 October 1998;
- payment by Riga of IR£55,543.57[87] on 19 November 1998, based on an invoice dated 13 November 1998.

[86] Mr Lawlor used an invoice on a Ganley International Ltd letterhead, with a London and an Albanian address, dated 11 March 1997, to generate this payment. See Part 9 of this Chapter.

[87] See Section below on legal fees.

22.02 Mr Dunlop maintained that the sums of IR£100,000 and IR£300,000[88]/[89] paid to him by Riga in June and October 1998 respectively were in discharge of a success fee due to him. He claimed that he and Mr O'Callaghan had reached agreement in principle on that fee possibly as far back as 1992 and its payment was contingent upon the retail cap which had been imposed on the Quarryvale site in December 1992 being removed.

22.03 Mr O'Callaghan concurred with the evidence given by Mr Dunlop regarding a long-standing agreement between them for payment of a success fee to Mr Dunlop. However, Mr O'Callaghan, while agreeing that the IR£300,000 payment made in October 1998 was a success fee, disputed Mr Dunlop's contention that the IR£100,000 paid on 4 June 1998 represented such a fee. As set out above, he maintained that this sum had been paid to Frank Dunlop & Associates by way of a balancing payment due to Mr Dunlop, because of a shortfall that had arisen in relation to the monthly retainer fees paid to Frank Dunlop & Associates Ltd from 1993 to 1998.

22.04 Mr Dunlop did not advance any such reason for his having invoiced for the IR£100,000 plus VAT in May of 1998 (and which was paid on 4 June 1998). He claimed that this payment represented his success fee. The Tribunal rejected Mr O'Callaghan's evidence that the IR£100,000 payment made to Frank Dunlop & Associates on 4 June 1998 was a balancing payment in respect of arrears of retainer fees.

22.05 According to both Mr Dunlop and Mr O'Callaghan, it had been agreed between them, possibly in December 1992/January 1993, that in the event that success was achieved in having the Quarryvale retail cap of 250,000 sq. ft. removed, a success fee would then be payable to Mr Dunlop. While, according to Mr Dunlop no specific amount had been agreed, he anticipated a sum in the region of IR£500,000 as a success fee.

22.06 On 24 September 1998, in the course of the making of the Development Plan for South Dublin County Council and following an attempt, by way of Motion to reinstate the retail cap on Quarryvale, the Manager recommended its removal, a recommendation duly agreed to by South Dublin County Council.

[88] Respectively IR£121,000 and IR£363,000 inclusive of VAT.

[89] On Day 734 (15 June 2007), Mr Gilmartin told the Tribunal that he had been informed by an unidentified third party that *'…£300,000 was paid to Dunlop to…..to buy his silence or for him to sing the right song to the Tribunal.'*

22.07 Mr Dunlop attributed the payments of IR£100,000 and IR£300,000 which he received in 1998 to the success fee due to him following the removal of the Quarryvale retail cap. In contrast, Mr O'Callaghan only attributed the October 1998 IR£300,000 payment, as made to Mr Dunlop, to that event, a payment which, according to Mr O'Callaghan, was requested by Mr Dunlop in particular circumstances in October of 1998.

22.08 In the course of his evidence, Mr Dunlop effectively conceded that he had had no direct involvement in the campaign to remove the Quarryvale retail cap. Mr O'Callaghan agreed that Mr Dunlop had done little in relation to this matter. The Tribunal was satisfied that whatever the circumstances under which either the IR£100,000 or the IR£300,000 were paid to Mr Dunlop in 1998, such were not predicated on or prompted by the removal of the retail cap on Quarryvale.

22.09 The Tribunal sought to establish the true circumstances under which Mr Dunlop came to receive these sums of IR£100,000 and IR£300,000 in 1998.

THE JUNE 1998 PAYMENT OF IR£100,000

22.10 On 22 May 1998 Frank Dunlop & Associates Ltd issued an invoice to Riga for IR£100,000 plus VAT for '*professional services rendered*' which was discharged by Riga on 4 June 1998, a fact duly noted by Mr Dunlop in his diary on that date.

22.11 On the very day that the Frank Dunlop & Associates invoice issued, Mr Dunlop and Mr O'Callaghan met at CityWest. This meeting was noted by Mr Dunlop in his diary.[90]

22.12 The Tribunal was satisfied, based on a forensic analysis of an entry in Mr Dunlop's diary for 22 May 1998, that Mr Dunlop and Mr O'Callaghan in the course of that meeting negotiated a financial arrangement whereby Mr Dunlop was to be immediately paid IR£100,000 by Mr O'Callaghan.

22.13 Mr Dunlop was initially questioned in relation to the 22 May 1998 diary entry in the course of his evidence to the Tribunal on Day 784 (6 November 2007).

22.14 A consideration of Mr Dunlop's 1998 diary for 22 May 1998 (prior to its forensic analysis) revealed that in addition to his having recorded the 22 May 1998 meeting with Mr O'Callaghan (noted as follows – '*9.00 OO'C @ City*

[90] Mr Dunlop's diary also indicated a meeting with the then Taoiseach, Mr Ahern, on the date in question.

West'),Mr Dunlop had on the same date noted a scheduled meeting with Mr Eamon Duignan.[91] The diary entry relating to Mr Duignan read as follows:

E. Dig. In office today to finalise matters as agreed on Wednesday.

No. Jack to deal with it.

22.15 Two asterisks appeared on either side of the notation. From the asterisk to the left, an arrow pointed downwards to a further entry which read:

3.30 Received chq. (client Acc.) of 10k from Jack R. On behalf of E. Dig. This leaves 4k on his return from hols in July.'

22.16 From the aforesaid left asterisk another arrow was drawn by Mr Dunlop across the top of the entry, which pointed towards the diary space for 23May 1998. This portion of the diary was heavily obliterated.

22.17 Mr Dunlop claimed that the diary reference related to the financial transaction involving Mr Duignan, as noted in his diary, and that it did not relate to his meeting with Mr O'Callaghan at 9am on the same date at CityWest.

22.18 On Day 784 the following exchange took place between Mr Dunlop and Counsel for the Tribunal:

'Q. Yes. So what you have recorded there is an entire financial transaction involving Mr Duignan and Mr Duignan's solicitor, isn't that right?

A. Yes. Correct.

Q. And you are also noting there in the entry the receipt of £10,000 from Mr Duignan and that there is an outstanding balance of four, isn't that right?

A. Correct, yes.

Q. And now if you go back to the top of the page and look at the other arrow that goes across. You see that, into the 23rd?

A. Yes.

Q. Now, what was that matter about, can you remember, Mr Dunlop, that's overwritten?

A. Well, it obviously relates to the substantive item in relation to Eamonn Duignan. I cannot say to you, I cannot tell you. It obviously has some relationship to the reference to 'Eamonn Duignan in office today re to finalise matters as agreed on Wednesday. No Jack to deal with it.'

Q. Or is it possible that what's being overwritten relates to the first entry '9 o'clock OOC at City West'?

A. No, because I think the arrow is specifically, the asterisk is between the two arrow starting points, and one refers to the cheque from 10 grand from Jack Roundtree, and the other goes across to something either that

[91]Mr Duignan and Mr Dunlop had business dealings in 1998

was discussed with Eamonn Duignan, or something in relation to the same matter.

Q. So you don't believe that that's an entry that relates to Mr O'Callaghan at all?

A. Well, it doesn't appear to me as I look at it now. I mean I am quite prepared to look at in the original diary but as of now it looks to me,

Q. May, '98 please (Mr Dunlop was looking at the original diary).

A. That it goes straight across from the contained matters between the asterisks and it overrides or overshoots the reference to Owen O'Callaghan, sorry. Yes, it is absolutely clear from the original here that the item in a box relating to Eamonn Duignan is the subject of two subsequent entries in the diary. One at the very bottom of the page relating to the cheque, and the other going straight across to the 23rd overshooting the note relating to Owen O'Callaghan at City West.

Q. And you say that that has nothing whatsoever to do with the entry in relation to Mr O'Callaghan?

A. From the diary as it, as it is, appears to me in its original format here I certainly don't believe it was so, no.'

22.19 In relation to the attempted obliterations and/or alterations and/or overwriting made to Mr Dunlop's diary, Mr Dunlop stated that it was '*possible*' that he had made the obliteration attempts after his diaries had been requested by the Tribunal in 1999. Prior to 2001, Mr Dunlop was required to furnish, in the course of making Discovery to the Tribunal, redacted portions of his diaries. Redactions were to be undertakenon the basis that entries relating to Quarryvale or Mr O'Callaghan were to be disclosed to the Tribunal. In purported compliance with Tribunal Orders for Discovery Mr Dunlop had provided his 'redacted' diaries for specific years (for the period 1 January 1990 to 30 December 1993).

22.20 In the course of his evidence, Mr Dunlop conceded that a number of matters recorded in his diaries and relevant to meetings relating to Quarryvale had been concealed by him, on occasion by the use of '*post it*' type stickers, when he made his initial Discovery to the Tribunal. These became apparent to the Tribunal when, subsequently, Mr Dunlop's entire unredacted diaries were furnished to it. When these diaries were provided to the Tribunal in 2001, it was noted that they contained many heavily obliterated entries. The Tribunal also noted other diary references which had been wrongfully redacted by Mr Dunlop when he had previously provided his redacted diaries to the Tribunal.[92] The

[92] '*Obliterated entries*' are a reference to diary entries which were heavily overwritten or scribbled out in what appeared to be a deliberate effort to ensure that their content was impossible to decipher. 'Redacted entries' are a reference to diary entries which Mr Dunlop concealed from the Tribunal, purportedly in compliance with the Tribunal's discovery requirements.

Tribunal was satisfied that some (if not all) of these heavy obliterations were made by Mr Dunlop prior to his furnishing the diaries to the Tribunal in 2001, with some obliterations made prior to his having sworn his first Affidavit of Discovery. The Tribunal was satisfied that Mr Dunlop's objective in this regard was to conceal certain matters from the Tribunal, particularly financial matters, and including financial matters concerning himself and Mr O'Callaghan and concerning Mr Lawlor. References to meetings with politicians and others had also been concealed by Mr Dunlop.

22.21 While the forensic analysis of the obliterated entry in Mr Dunlop's diary referable to the events of 22 May 1998 did not reveal in its entirety the original entry, the Tribunal nonetheless was satisfied, following that analysis and having regard to other factors (set out below), which assisted the Tribunal in its analysis of the original text, that on 22 May 1998 Mr Dunlop had recorded the following relating to his discussion with Mr O'Callaghan: '*Cheque for £100,000 to issue at once, remainder to be discussed on 1/9/'98. £300,000 remaining.*'

22.22 The Tribunal noted that while the forensic analysis suggested that the first six figure sum could give rise to an interpretation that it was either IR£100,000 or IR£600,000 (Mr Dunlop believed it to have likely been IR£100,000), it believed it probable that the figure in question was IR£100,000, having regard to the fact that Mr Dunlop furnished an invoice for this sum to Riga on the same day. While there was a question mark as to whether the second six figure sum read '*£300,000 remaining'* or '*£300,000 on planning'*(or even, as mused by Mr Dunlop, whether it referred to *'£300,000on plumbing*'), the Tribunal was satisfied that the entry was in fact a note to the effect that IR£300,000 remained due to Mr Dunlop.

22.23 The belief that Mr Dunlop and Mr O'Callaghan's agreement/arrangement made on 22 May 1998 was to the effect that Mr Dunlop was to receive IR£100,000 '*at once*', was supported by the fact that on the date the arrangement was recorded in Mr Dunlop's diary, Frank Dunlop & Associates issued an invoice for IR£100,000 and VAT to Riga. Moreover, Mr Dunlop's diary for 1 September 1998 contained a reminder to himself to contact Mr O'Callaghan, noted as follows: '*Ring OOC Re discussion of Fri. 22/5/98 re remainder.*'

22.24 The Tribunal was satisfied that the cheque for IR£121,000 issued by Riga on 4 June 1998 was issued on foot of the arrangement arrived at by Mr Dunlop and Mr O'Callaghan on 22 May 1998.

22.25 The Tribunal was satisfied that the aforesaid diary entry obliteration was intended by Mr Dunlop to conceal information from the Tribunal,[93] and that Mr Dunlop's evidence on Day 784 on this issue was false.

22.26 The Tribunal rejected Mr Dunlop's and Mr O'Callaghan's claimed lack of recollection as to what had been discussed between them on 22 May 1998 regarding '*The October 1998 payment of IR£300,000.'*

22.27 On 5 October 1998, Frank Dunlop & Associates furnished an invoice in the sum of IR£363,000 (IR£300,000 plus VAT) to Riga claiming the said sum as:

> *part payment of success fee in relation to extension of Liffey Valley development*

RIGA PAID THE SAID SUM ON 9 OCTOBER 1998

22.28 Prior to Mr Dunlop's furnishing the said invoice on 5 October 1998, a meeting took place between himself and Mr O'Callaghan on 1 October 1998 which was recorded in Mr Dunlop's diary thus:'*OO'C all day.*'

22.29 Both Mr Dunlop and Mr O'Callaghan claimed that possibly in the course of this meeting, the issue of Mr Dunlop's success fee was raised by Mr Dunlop. On Mr O'Callaghan's account of events, Riga's payment of the IR£300,000 plus VAT on 9 October 1998 was in discharge of Riga's obligations vis-à-vis Mr Dunlop's success fee entitlement.

22.30 However on Mr Dunlop's account of events, the money paid to Frank Dunlop & Associates on 9 October 1998 was the second tranche[94] of the success fee arrangement which he claimed was agreed with Mr O'Callaghan.

22.31 According to Mr Dunlop, when he met Mr O'Callaghan possibly on 1 October 1998, he had advised him that he required payment of his success fee as he, Mr Dunlop, '*had a tax issue.*'

22.32 Mr O'Callaghan testified that in October 1998 Mr Dunlop approached him and advised him that he owed a substantial amount of money to the Revenue Commissioners and that as a consequence he was seeking payment of his success fee. Mr Dunlop had advised him that IR£300,000 was the figure necessary to settle his Revenue obligations. Following payment of the

[93] On Day 802, when it was put to Mr Dunlop by Tribunal Counsel that his (Mr Dunlop's) purpose for obliterating the diary entry was to conceal information from the Tribunal, Mr Dunlop responded '*that is likely'.*

[94] Mr Dunlop claimed that the first tranche was the IR£100,000 paid in June 1998

IR£300,000 on 9 October 1998, Mr O'Callaghan considered the success fee due to Mr Dunlop to have been discharged, notwithstanding Mr Dunlop's reference in his invoice to the sum of IR£300,000 as being on account and '*part payment*' of a success fee.

22.33 On 30 September 1998, (the day prior to his meeting with Mr O'Callaghan) Mr Dunlop had advised his accountant Mr Hugh McGowan of his, Mr Dunlop's, failure to that point in time to make disclosure to the Revenue in respect of certain monies Mr Dunlop had received through Shefran over a period of years. Mr McGowan's record of what Mr Dunlop told him is contained in a note dated 2October 1998 as follows:

> *Rang Tom Tuite, Chief Inspector's Office – 2nd October 1998.*
> *Spoke to Tom Tuite on the basis that I understood from T.A.L.C that he might be willing to give some guidance on a no names basis of possible revenue approach in the case of voluntary disclosure.*
> *Explained to him that client has brought something to my attention within the past 48 hours which required disclosure to revenue. Explained family circumstances of client and the fact that he wishes to make disclosure now before anything becomes public. He asked if it was likely to come into the public arena and I explained I did not know and gave him some detail of circumstance and an idea of amount involved and the fact that there was a previous audit which appeared to have 'withered on the vine.*

22.34 The Tribunal was satisfied that what precipitated Mr Dunlop's visit to his accountant was, in all probability, the content of a number of newspaper articles published between 20 and 28 September 1998 relating to Quarryvale and which identified, amongst others, Mr Gilmartin and Mr Lawlor. In the course of an article in the Sunday Independent of 20 September 1998, the following was stated:

> *Meanwhile, the Sunday Independent has also learned that a brother of the former Taoiseach, Mr Haughey, informed Gardai of serious allegations made by businessman Tom Gilmartin in relation to a number of his building projects in Dublin in the 1980s.*
>
> *Sean Haughey, former senior Dublin Corporation Official, was later interviewed by gardai in 1989 in relation to those allegations. Former City Manager Frank Feely also sat in on the interview.*
>
> *Mr Haughey passed the allegations on to the Gardaí on foot of a complaint made directly to him and other council officials by Mr Gilmartin.*
>
> *According to a reliable garda source, among the more serious allegations was that a named Fianna Fail TD arranged a meeting between Mr*

Gilmartin and four Dublin councillors, who each demanded £100,000 in return for a favourable rezoning decision.

22.35 The Tribunal was satisfied that it was abundantly clear to Mr Dunlop from the contents of those newspaper articles as well as Mr Dunlop's general knowledge regarding Mr Gilmartin's meetings with the Tribunal at that point in time, that one of the topics likely to be the subject of discussion between Mr Gilmartin and the Tribunal would be Mr Dunlop and Shefran and, in particular, Mr Gilmartin's allegations concerning the utilisation of monies paid by Riga /Barkhill to Shefran.

22.36 Mr Gilmartin's first contact with the Tribunal was in early 1998. Mr Dunlop told the Tribunal that he became aware of Mr Gilmartin's involvement with the Tribunal either through '*the media or through Liam Lawlor*'.[95] Mr Dunlop conceded that, knowing Mr Gilmartin's view of him, he had a concern about the fact that Mr Gilmartin was in contact with the Tribunal, although he could not say '*how big or small that* (concern) *was.*'

22.37 The Tribunal was satisfied that the principal topic of discussion between Mr Dunlop and Mr O'Callaghan on 1 October 1998 was the expected imminent contact by the Tribunal with Mr Dunlop and with Mr O'Callaghan. Mr Dunlop acknowledged that he was in contact with Mr O'Callaghan following the publication of the September 1998 newspaper articles.

22.38 The Tribunal rejected as not credible Mr O'Callaghan's evidence on Day 913 when he stated that he and Mr Dunlop did not on 1 October 1998 discuss the matters likely to be the subject of inquiries by the Tribunal of Mr Dunlop. Having already found as a fact that Mr O'Callaghan was aware of the purpose for which the Shefran monies were paid to Mr Dunlop and indeed how Mr Dunlop applied other monies paid to him by Riga (the IR£70,000 paid in November 1992[96]) the Tribunal was satisfied that Mr O'Callaghan knew that the Tribunal was likely to question Mr Dunlop on the topic of payments to councillors/politicians in the context of any inquiry into the Quarryvale rezoning.

22.39 The Tribunal believed that Mr Dunlop had not, as claimed by him simply, '*called in*' his '*success*' fee on 1 October 1998. Rather, the Tribunal believed it likely that Mr Dunlop approached Mr O'Callaghan on that occasion and

[95] On Day 475 Mr Lawlor made reference to having being told by Mr Noel Smyth (Mr Gilmartin's solicitor in 1998) '*about the content*' of the taped interview between Mr Gilmartin and Mr Smyth which took place in London on 20 May 1998. On Day 785 Mr Smyth, in the course of his evidence, denied that he had ever discussed the contents of Mr Gilmartin's statement with Mr Lawlor or with anyone, or that he provided him or others with a transcript of that statement.

[96] See Part 6 of this Chapter.

requested payment of the sum which then remained outstanding, as part of the arrangement entered into on 22 May 1998, namely the *'£300,000 remaining*', as noted in Mr Dunlop's diary for that date. The Tribunal was satisfied that Mr Dunlop requested payment of this money in the context of the inquiries he anticipated the Tribunal would make of him. It was further satisfied that Mr Dunlop's disclosures to the Revenue in October 1998 were precipitated by his anticipation that his activities as a Quarryvale lobbyist, especially his use of Shefran, would be a matter that was likely to be focused on by the Tribunal and the ensuing publicity, as in fact occurred.

22.40 Moreover, the Tribunal was satisfied that by late 1998 notwithstanding what had been noted as agreed by Mr Dunlop and Mr O'Callaghan on 22 May 1998 (a total payment of IR£400,000) events were in place by October 1998 (in particular the publication of the newspaper articles, and Mr Dunlop and Mr O'Callaghan's belief that the Tribunal's inquiries were likely to involve both of them) such as, impelled Mr Dunlop and Mr O'Callaghan to discuss the additional payment of money to Mr Dunlop. Thus, the Tribunal was satisfied that this is what prompted Mr Dunlop to describe the IR£300,000 payment, for which he invoiced Riga on 5of October 1998, as '*part payment*[97] *of success fee*'.

PAYMENT OF LEGAL FEES

23.01 Between November 1998 and July 2000, Mr Dunlop (through Frank Dunlop & Associates) invoiced and received a total of approximately IR£364,400 (inclusive of VAT) from Riga (marginally in excess of IR£301,000 Net). This sum was paid on foot of fifteen invoices which issued during that timeframe from Frank Dunlop & Associates Ltd to Riga, claiming payment for '*legal fees*' or '*legal costs*'.

23.02 The relevant invoice dates and payments were as follows:

13 November 1998	IR£55,543.57
7 December 1998	IR£16,247.49
5 February 1999	IR£21,650.63
27 April 1999	IR£6,129.47
10 May 1999	IR£2,876.90
9 June 1999	IR£6,303.24
13 July 1999	IR£3,545.12
13 August 1999	IR£14,263.50
11 November 1999	IR£19,552.18
11 January 2000	IR£6,709.34
1 February 2000	IR£45,635.15

[97] Tribunal's emphasis

15 March 2000	IR£3,666.28
29 April 2000	IR£9,074.25
18 May 2000	IR£135,416.48
11 July 2000	IR£17,782.66

23.03 Both Mr Dunlop and Mr O'Callaghan claimed that these payments were made against the backdrop of the Tribunal's private inquiry into the rezoning of Quarryvale, and in respect of which Mr Dunlop had first been contacted by the Tribunal by letter dated 6 October 1998, and Mr O'Callaghan/Barkhill by letter dated 15 October 1998.

23.04 Between 6 October 1998 (the date of the Tribunal's first letter to Mr Dunlop) and the date of the issuing of the first '*legal fees'* invoice on 13 November 1998, Mr Dunlop, via Frank Dunlop & Associates, had been paid the IR£363,000 (IR£300,000+VAT) for which he invoiced Riga on 5 October 1998, a payment, the discharge of which, the Tribunal was satisfied, had been the subject of the meeting between Mr Dunlop and Mr O'Callaghan on 1 October 1998. As set out elsewhere in this Report, the Tribunal was satisfied, notwithstanding that the payment of the IR£300,000 to Mr Dunlop in October 1998 had been outstanding since 22 May 1998, that the trigger for the discharge of that payment nearly five months later was media reports, circulating in September 1998 which referred to Mr Gilmartin's contacts with the Tribunal.

23.05 The Tribunal was satisfied that, from the commencement of the Tribunal's interest in their respective affairs, in the context of Quarryvale, Mr Dunlop and Mr O'Callaghan were in regular contact. Specifically, Mr O'Callaghan's name coupled with a question mark appeared in Mr Dunlop's diary for 30 October 1998. While Mr Dunlop's diary for the month of November 1998 did not record any scheduled meeting between him and Mr O'Callaghan, a diary entry for 9 November 1998 suggested that on that date Mr Dunlop had a meeting with legal representatives retained by him in relation to Tribunal inquiries. A diary entry on the following date, 10 November 1998, proclaimed: *Lawyer fees!*

23.06 Some days later, on 13 November 1998, Mr Dunlop, via Frank Dunlop & Associates, issued an invoice for IR£55,543.57 to Riga for '*legal fees'*. This invoice was discharged by Riga on 19November 1998.

23.07 Mr Dunlop told the Tribunal that he believed that Mr O'Callaghan's agreement to discharge his then anticipated legal fees, on foot of his dealings with the Tribunal, was given in the course of a telephone call between the two men. Mr Dunlop claimed that he initiated such contact, most probably following his meeting with his legal advisors on 9 November 1998. Mr Dunlop told the Tribunal:

'*I had a discussion on a date unknown, unspecified I should say but in or around this time with Mr O'Callaghan in relation to legal fees. And when it became evident to me the extent of the amounts that would be required. And in the course of the conversation with Mr O'Callaghan I cannot say that I asked and I cannot say that he offered but it was mutually agreed that he would discharge by legal fees. I more than likely said something to the effect that I don't envisage myself having the amount of money necessary to fulfil this if it goes on for any length of time. But certainly there was a discussion between Mr O'Callaghan and myself in relation to legal fees. The result of which was Mr O'Callaghan agreed that he would meet the legal costs in my regard'.*

23.08 And:

'... I raised the matter with Mr O'Callaghan as I recall it by telephone and in which I said that I namely Frank Dunlop, in the corporate sense Frank Dunlop & Associates, didn't see a scenario where the fees that were being envisaged could be met on an ongoing basis. As I say it, Mr O'Callaghan said something to the effect and I will not credit him with the actual words. Mr O'Callaghan can give evidence in his own regard in this matter. But as I recollect matters, Mr O'Callaghan undertook to discharge the legal fees by something or use of the phrase I will look after that'.

23.09 In response to the question:

'*Well how did that discussion, first of all what did you say to Mr O'Callaghan? Did you ask him to pay the legal fees?'*

23.10 Mr Dunlop replied as follows:

'*No, I probably said to him that I've had a discussion with my lawyers or I had received a bill, I can't – I had received a fee note. I can't specifically say whether it was as a result of either. But certainly it was a discussion in the context of a realisation on my part of the amounts of money that would be required in relation to discharging legal fees. And I raised that matter with Mr O'Callaghan in a conversation. Mr O'Callaghan didn't raise it with me, I raised it with him. And in the course of the conversation Mr O'Callaghan said something to the effect that I will look after that'.*

23.11 Questioned as to what he had said to Mr O'Callaghan to prompt Mr O'Callaghan to agree to discharge his legal fees, Mr Dunlop stated:

'*I probably said, I can't say definitively the exact words I used but I think the likelihood is that when I realised not having been in a litigious circumstances prior to that, and I realised what was, this was going to entail, I probably said something to the effect I don't have that type of money'.*

23.12 When asked whether he had requested Mr O'Callaghan to discharge the legal fees because same would be incurred on foot of Mr Dunlop's involvement with Quarryvale, Mr Dunlop responded:

> '*…I don't recollect that I ever said to Mr O'Callaghan… I don't recollect saying to Mr O'Callaghan listen, I am involved in this, I am sorry I ever met you or knew you, I am sorry I ever heard of Quarryvale, none of this would have happened if it wasn't for Quarryvale or for you. I don't recollect any such conversation other than to say that yes, I did have a conversation from Mr O'Callaghan straight forwardly, undeniably, hopefully he will say the same thing, in which legal fees were discussed and in which I said that I didn't see an ability on my part to fund this on an ongoing basis and probably and I don't want to leave this in any way as attempting to drive people up cul-de-sacs. I may well have taken the view at this stage that because of the level of interest that was being shown publically at Quarryvale and because my name had appeared in the newspaper that this would adversely impact on my business. And that on an ongoing basis I would not be able to discharge such fees. I can't say that this was a predominant issue in my mind, other than to say that I said to Mr O'Callaghan, without giving the exact phrase, that I don't see how I'm going to able to meet this on an ongoing basis and he said I will look after it.'*

23.13 Later in his evidence, in response to the suggestion, as appeared from the contents of Mr O'Callaghan's statement of 4 November 2005, that he had raised the issue of payment of legal fees with Mr Callaghan in the context of the Tribunal's contact with him in relation to Quarryvale, Mr Dunlop responded:

> '*Well, well, I think one would need an IQ of more than one to know that the discussion with Mr O'Callaghan in relation to legal fees specifically related to Quarryvale. That was generated by contact by the Tribunal to me, regardless of any contact Mr O'Callaghan had, to me by the Tribunal and that I raised this matter. I cannot specifically say this to you but there is no other way that it could have occurred but I raised the matter with Mr O'Callaghan.'*

23.14 When questioned as to whether Mr O'Callaghan had told him of the reason for his agreement to fund his legal costs, Mr Dunlop told the Tribunal that, *'probably'* Mr O'Callaghan had provided the reason, but he was unable to '*credit him'* (Mr O'Callaghan) with the '*exact words*' used by Mr O'Callaghan. Mr Dunlop suggested that all that was of importance to him was Mr O'Callaghan's agreement to discharge his legal fees. He confirmed that he did not have to persuade Mr O'Callaghan to assist him in this way.

23.15 Mr Dunlop also advised the Tribunal thus:

> '*…I think the general tone and the general orientation of the conversation was such that these were circumstances that had evolved. They weren't very pleasant. I found myself in the cross hairs of the rifle in the context of receiving documentation from the Tribunal, we didn't know how long it was going to last. We had an indication, I cannot say specifically what it was now but I am sure it is something that can be checked. That I was obviously in receipt of information as to the extent the amount and extent. And that that conversation the general orientation of that conversation was something of the order of well we're in this together or this happened because of. I can't say what Mr O'Callaghan said but I certainly I didn't say to Mr O'Callaghan listen here, you know, I am involved in this because of you or because I couldn't possibly have said anything of that nature to Mr O'Callaghan in the context of anything that I was doing with individual councillors and that there was no such discussion with Mr O'Callaghan in those terms. It was a conversation in relation to fees. And Mr O'Callaghan said sure look I'll look after that. '*

23.16 Mr Dunlop testified that although in receipt of his legal fees from Mr O'Callaghan from November 1998 he chose nevertheless not to fully cooperate with the Tribunal until 19April 2000.[98]

23.17 At the time of his claimed conversation with Mr O'Callaghan in November 1998 Mr Dunlop was not short of money, and had in or about IR£400,000 in the current account of his company Frank Dunlop & Associates Ltd.

23.18 Mr Dunlop maintained that Riga's payment of his legal fees was a stand alone arrangement as between himself and Mr O'Callaghan and denied that such payments, as were made for that purpose, constituted, either in part or in whole, a further payment of a '*success*' fee to him in relation to Quarryvale.

23.19 Mr O'Callaghan testified that Mr Dunlop had advised him that he had to have legal representation in his dealings with the Tribunal, and that same would be expensive. Mr Dunlop had asked him if he would be prepared to pay the legal fees. He had thought about it for a very short time and agreed. No limit had been put on the amount of money that might be paid by Mr O'Callaghan for this purpose because, according to Mr O'Callaghan, '*we hadn't a notion what it would cost.'*

[98] The Tribunal has not made a determination on Mr Dunlop's cooperation.

23.20 Asked by Tribunal Counsel why he had agreed to fund legal costs likely to be incurred by Mr Dunlop in connection with his dealings with the Tribunal, Mr O'Callaghan stated:'*Because he asked me number one. Number two, because I felt that these were false allegations made by Gilmartin against Frank Dunlop.'*

23.21 Mr O'Callaghan also stated:

> '*Because as I said they were false allegations by Mr Gilmartin, number one, number two, Frank Dunlop was working for us; or number three rather, like any of our consultants if they had difficulties or got into problems like structural engineers or whatever, we would always come in to assist and this is exactly why we did it. I also believe that eventually because I believed they were false allegations that this money would eventually be refunded.'*

23.22 Mr O'Callaghan further stated that Mr Dunlop had told him that he could not afford the legal fees. Mr O'Callaghan said he was unaware that Mr Dunlop had funds available to him at the time.

23.23 In response to the question:

> *'...When you were concerned about the falsity of the allegations being made by Mr Gilmartin, did you ask Mr Dunlop whether there was any truth in the allegation that he was involved in making payments to councillors?',*

Mr O'Callaghan replied:

> *'I don't think I did, because I didn't have to. There it* (sic) *would have been a superfluous question for me to ask'.*

23.24 Prior to his sworn testimony to the Tribunal on the issue of the payment of Mr Dunlop's legal fees, Mr O'Callaghan furnished a written statement on 4 November 2005 wherein he, *inter alia*, stated:

> *Around November, 1998 Mr Dunlop found it necessary to engage a firm of solicitors and counsel in relation to the allegations surrounding the Quarryvale project and incurred legal expenses associated with such representation as a direct consequence, as I then understood, of his involvement in Quarryvale.*
>
> *At this stage, and up to Mr Dunlop's direct evidence in 2000, neither Riga, Barkhill nor myself were aware of Mr Dunlop's so-called 'war chest'. Whilst I was aware that he, naturally, had other clients who were developers, I was not aware of any details of this involvement. There was no mention in either the media or by the Tribunal of any investigation into any other development by the Tribunal involving Mr Dunlop other than Quarryvale.*

On the basis that (i), the allegations made, it then appeared, by Mr Gilmartin were spurious and of no substance in respect of the alleged payments by Mr Dunlop and; (ii), I was not aware that any alleged payments had been made to members of Dublin County Council other than those political donations notified by Mr Dunlop to me, it was agreed that we would consider refunding Mr Dunlop in respect of legal costs incurred arising out of the inquiries of the Tribunal. It must be reiterated and stressed that this was in the belief that Mr Dunlop's involvement with the Tribunal flowed only from allegations penned against his professional conduct in relation to the Quarryvale development. Assurances regarding this were given by Mr Dunlop throughout that period and given the nature of our professional relationship and the fact that neither I, Riga nor Barkhill were involved in any such payments to elected members in return for any planning favours there was no reason for me to doubt that Mr Dunlop was telling the absolute truth.

23.25 In the course of that statement Mr O'Callaghan also stated:

The legal fees paid by Riga on production of relevant invoices from Mr Dunlop related, as far as I was concerned and honestly believed, solely to the involvement of Mr Dunlop with the Tribunal to assist them in their private enquiries in relation to false allegations of certain improper payments concerning the Quarryvale development only. In order to expedite the work of the Tribunal and remove any such allegations from the media and general public I believed that by assisting Mr Dunlop in this way it would resolve the matter quickly.

23.26 Although Mr O'Callaghan initially appeared to accept that Mr Dunlop must have told him that the queries being made of Mr Dunlop by the Tribunal related to whether Mr Dunlop had made payments to politicians/councillors regarding Quarryvale, he later told the Tribunal that that issue had not been the subject of a discussion between them.

23.27 When questioned about the '*assurances'*, claimed by Mr O'Callaghan in his November 2005 statement to have been given by Mr Dunlop, Mr Dunlop stated:

'*No, I don't recollect Mr O'Callaghan ever seeking an assurance from me. I think the progress of any discussion with Mr O'Callaghan was on the basis that, from his point of view, of what had occured in Quarryvale and the involvement that he had had in Quarryvale himself personally and with me. Yes, Mr O'Callaghan and I did discuss the payment of monies to a particular politicians, in particular cases in particular instances, most of those were generated by Mr O'Callaghan'.*

23.28 Mr Dunlop also stated, in the same context:

> *'…But all I recollect in conversations with Mr O'Callaghan related to the issue of my being, my becoming involved with the Tribunal. The associated legal costs and the conversations that I've told you about. I don't recollect Mr O'Callaghan ever asking me for an assurance about what I had or had not done…'*

23.29 In effect, Mr Dunlop rejected the suggestion (inherent in Mr O'Callaghan's statement) that Mr O'Callaghan had sought an assurance from him, to wit, that Mr Dunlop had not made payments to politicians while retained as a Quarryvale lobbyist, other than payments already known to Mr O'Callaghan.

23.30 With regard to the detail of his discussion with Mr O'Callaghan Mr Dunlop stated:

> '*I don't recollect. I don't recollect any such specific conversation. All I recollect, Ms Dillon, is a conversation. Let's not specify it as a conversation because there were a number of conversations. But all I recollect in conversations with Mr O'Callaghan related to the issue of my being, my becoming involved with the Tribunal. The associated legal costs and the conversations that I've told you about. I don't recollect Mr O'Callaghan ever asking me for an assurance about what I had or had not done. I don't doubt the nature of the relationship with Mr O'Callaghan would not have led to any such conversation because it was quite a close relationship'*and *'…I don't recollect Mr O'Callaghan ever asking me specifically Frank, did you ever do anything untoward or did you ever give money to people that I don't know anything about'.*

23.31 Mr Dunlop claimed that Mr O'Callaghan never raised with him any question as to whether or not Mr Dunlop had ever done *'anything untoward'.* Nor, according to Mr Dunlop, had he volunteered to Mr O'Callaghan that he had done so.

23.32 Mr Deane maintained that the decision in November 1998 to fund Mr Dunlop's legal costs was on the basis of the belief that Mr Dunlop would, in due course, recover them from the Tribunal, and thus reimburse Riga.

23.33 Ms Cowhig (Riga's auditor) testified that she had been informed by Mr Deane that Riga would be reimbursed the legal costs paid for Mr Dunlop, and so recorded same in Riga's books.

23.34 There was ongoing contact between the Tribunal and Mr Dunlop between November 1998 and April 2000 which related to, *inter alia*, requests to Mr

Dunlop for written statements and Discovery. Similarly, during the same period inquiries were being made by the Tribunal of Mr O'Callaghan and companies associated with him, in relation to Quarryvale.

23.35 Mr Dunlop and Mr O'Callaghan both acknowledged that during the timeframe in question, and indeed thereafter, they had ongoing contact, including telephone contact on a weekly basis. In March 1999, Mr Dunlop travelled to Riga's offices in Cork in search of, according to Mr Dunlop, copies of six Shefran invoices, and copies of at least two Frank Dunlop & Associates invoices in order to satisfy the Tribunal's requirements in relation to Discovery.

23.36 The Tribunal was satisfied that Mr Dunlop had a meeting with Mr O'Callaghan on 13 April 1999, and possibly also on 15 April 1999, based on an entry in Mr Dunlop's diary.

23.37 Mr Dunlop's diary suggested that meetings took place between himself and Mr O'Callaghan on 6 and 20 May 1999. The diary recorded, '*9.30 OOC at FDA'* (for 6 May 1999) and *'OOC in town'*(for 20 May 1999).

23.38 On 20 May 1999, Mr Dunlop made a second payment to the Revenue Commissioners, on this occasion for IR£228,544, from the current account of Frank Dunlop & Associates.

23.39 Mr Dunlop and Mr O'Callaghan met on 2 July 1999, most probably following upon the Tribunal's letter of 30 June 1999 to Mr Dunlop calling on him, in clear and unequivocal terms, to make Discovery no later than 2 July 1999.

23.40 With regard to Mr Dunlop and Mr O'Callaghan's contact in 1999, it was apparent to the Tribunal, that, as of mid-1999 there was continuing discussion between Mr Dunlop and Mr O'Callaghan concerning a substantial sum of money which Mr Dunlop believed was still due to him. This was notwithstanding: Mr Dunlop's evidence that he had received a '*success'* fee of IR£400,000 (in two tranches, IR£100,000 in June 1998 and IR£300,000 in October 1998); Mr O'Callaghan's evidence that Mr Dunlop's *'success'* fee had been honoured by the October 1998 IR£300,000 payment: and the open-ended legal fees arrangement entered into between the two in November 1998.

23.41 A forensic examination of yet another attempted obliteration in Mr Dunlop's diary for 30 July 1999[99] revealed the following detail: '*Spoke at length*

[99] This date entry had been heavily obliterated by Mr Dunlop prior to his furnishing, in 2001, his unredacted diaries to the Tribunal

with OOC', '*re fees 300', 'contribution', 'asked to talk after 16/9/99', 'payment' and 'outstanding.'*[100]

23.42 That forensic analysis of this attempted obliteration failed to yield a comprehensive picture of the original diary entry, which had probably been written by Mr Dunlop following his discussion with Mr O'Callaghan. However, Mr Dunlop agreed with Tribunal Counsel's suggestion, that the import of the words, as revealed by the forensic analysis, suggested that he and Mr O'Callaghan had discussions about a IR£300,000 payment, Mr Dunlop nonetheless maintained to the Tribunal that no such arrangement had in fact been concluded between himself and Mr O'Callaghan.

23.43 Mr O'Callaghan, while claiming that he had no recollection of any such discussion in July 1999 with Mr Dunlop which could have led to an agreement whereby IR£300,000 remained outstanding to Mr Dunlop, acknowledged to the Tribunal the possibility that he and Mr Dunlop did have a discussion concerning the payment of a IR£300,000 *'fee'* contribution. Mr O'Callaghan stated:

> '*I would say that he* (Mr Dunlop) *was never happy. I don't think he has accepted to this day that the success fee has been paid in full.'*

23.44 Mr O'Callaghan refuted any suggestion that such discussion, as may have taken place between himself and Mr Dunlop in July 1999 about money, had taken place in the context of Mr Dunlop's increasing contact with the Tribunal. However he acknowledged that Mr Dunlop may have apprised him that he was coming under financial pressure arising from his ongoing dealings with the Tribunal. Mr O'Callaghan also acknowledged the possibility that such discussion, as noted in Mr Dunlop's diary on 30 July 1999, may have been associated with a view which was possibly held by Mr Dunlop to the effect that, in total, he believed himself entitled to IR£1m success fee for his Quarryvale endeavours. Mr O'Callaghan however maintained that he had never been requested specifically by Mr Dunlop to pay any such sum.

23.45 By the autumn of 1999 there was continued media reports of issues which concerned, *inter alia*, Mr O'Callaghan. On 8 August 1999, newspaper articles written by the journalists Mr Frank Connolly and Mr Jody Corcoran referred to an alleged contribution made by Mr O'Callaghan to Fianna Fail in 1994, and an alleged dinner party in Cork,[101] when money was donated to Fianna Fail. Mr Corcoran's Sunday Independent article made reference to Cllr Colm McGrath having been paid IR£30,000 by Mr O'Callaghan.

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[100] Mr Dunlop agreed that the last word in the diary entry was probably '*outstanding*'. He remarked however, that there was at that time nothing outstanding from Mr O'Callaghan.

[101] See Part 8 of this Chapter

23.46 Mr Dunlop met with Mr O'Callaghan on 5 October 1999 in the '*Deadman's Inn*' public house near Lucan, in the course of which, as conceded by Mr Dunlop, ongoing issues relating to the Tribunal were '*definitely raised*'. Mr Dunlop's diary suggested that a further meeting occurred with Mr O'Callaghan on 13 January 2000.[102]

23.47 Mr Dunlop first gave sworn testimony to the Tribunal on 11 April 2000 (Day 145). His evidence continued into 18 and 19 April 2000 (Days 146 and 147) and on 9 May 2000 (Day 148).

23.48 On Day 145[103], Mr Dunlop brought with him to the Tribunal a document which had been prepared by an agent of Riga/Barkhill on his behalf and which Mr Dunlop claimed was a schedule of the payments made by Riga/Barkhill to Frank Dunlop & Associates and to Shefran between 1991 and year end 31 December 1998. Mr Dunlop acknowledged that in so far as the document he had produced to the Tribunal on Day 145 purported to be a schedule of all payments made by Riga/Barkhill to year end 31 December 1998 to him, via Frank Dunlop & Associates or otherwise it omitted the payment of IR£55,543.57 made by Riga by way of discharge of a legal fees invoice on 13 November 1998[104]. Mr Dunlop told the Tribunal that he did not believe that reference to the legal fees payment had been deliberately omitted from the schedule.

23.49 Mr Dunlop suggested to the Tribunal that the purpose of the schedule, as prepared for him, was to indicate the payments which he, via Frank Dunlop & Associates/Shefran, had received for services rendered over a period of years for Quarryvale. Thus, Mr Dunlop suggested to the Tribunal that he would not have expected the schedule to include legal fees paid by Riga as he did not consider them to be payments made by Barkhill/Riga to himself or to Shefran, in connection '*with the Quarryvale development and other matters.'*

23.50 The Tribunal did not accept the logic of Mr Dunlop's reasoning for his omission of the legal fees payments, because the schedule included details of a IR£121,000 (IR£100,000 plus VAT) payment made in January 1997 by Riga to Frank Dunlop & Associates for Public Relations work relating to the '*Horgan's Quay*' controversy.

[102] Mr Dunlop did not connect this meeting per se to the Tribunal
[103] Incorrectly stated in evidence on Day 809, to have been Day 146
[104] The schedule save for this omission was substantially accurate. This legal fees invoice was the only legal fees invoice paid prior to 31 December 1998.

23.51 Mr Dunlop acknowledged that the reason he had provided the schedule to the Tribunal in the first place was because he anticipated that in the course of his attendance for questioning by the Tribunal in April 2000, he was likely to be questioned, *inter alia*, about his dealings with Mr O'Callaghan/Riga/Barkhill, and as to whether he had made any payments to elected representatives. Mr Dunlop was so questioned in April and May 2000.

23.52 On 11 April 2000 (Day 145), Mr Dunlop informed the Tribunal that Cllr Tom Hand (then deceased) was the only councillor who had sought money from him in relation to Quarryvale. On Day 146, Mr Dunlop provided to the Tribunal a list (the *'Preliminary List'*) of elected representatives who he claimed had sought political donations/money from him. Mr Dunlop did not however on Day 146 make allegations of impropriety against the listed elected representatives (with the exception of Cllr Hand).

23.53 On Days 147 (19 April 2000) and 148 (9 May 2000), Mr Dunlop provided the Tribunal with additional lists of names of councillors and developers to whom he paid money, and from whom he received money respectively, including such information relevant to Quarryvale.[105]

23.54 By the date of his Tribunal admissions on 19 April 2000, Frank Dunlop and Associates had issued twelve '*legal fees'* or*'legal costs*' invoices to Riga, and had been paid a total of circa IR£200,000 in relation thereto.

23.55 In his November 2005 statement, Mr O'Callaghan advised the Tribunal as follows:

> *In April 2000 Mr Dunlop gave evidence at the Tribunal and his revelations came as a total surprise to me. Having thought about these revelations it became apparent to me that Mr Dunlop's involvement in the Tribunal was not one which related solely to his link with the Quarryvale development. I decided to cease any assistance given to Mr Dunlop in his involvement with the Tribunal as it would appear that (i) he was taking monies paid to him or Shefran Ltd for professional work done and advices given to me and my connected companies in respect of the Quarryvale development*

[105]On Day 147 (19 April 2000) Mr Dunlop provided the Tribunal with a list entitled '*1991 Local Election contributions',* numbered 1 – 16 relating to payments from his AIB 042 Rathfarnham account. On Day 148 (9 May 2000) Mr Dunlop provided the Tribunal with a list entitled '*1992 List'*, numbered 17 – 30, relating to disbursements made in 1992/withdrawals from the AIB 042 Rathfarnham account. This list was a continuation of the 1991 list prepared on Day 147, numbered 1 – 16. Mr Dunlop provided a list numbered 31 – 38 as a continuation of the 1991 list and the 1992 list. Mr Dunlop provided a list entitled '*1991 – 1993 (inclusive)'* which was a list of developers who provided Mr Dunlop with money in connection with the review of the County Dublin Development Plan.

and putting them, or a part of them, into a 'war chest' which he in turn utilised for payments to certain elected members; and (ii) he was involved with other developments and developers who in turn were the subject matter of the private investigations of the Tribunal and their fees, or a part of them were also being transferred into this 'war chest'. Therefore, his involvement with the Tribunal was not Ltd solely to the allegations made by Mr Gilmartin and those reported in the media.

23.56 In the course of his evidence on Day 913 (16 October 2008), Mr O'Callaghan told the Tribunal that Riga ceased paying Mr Dunlop's legal fees for the reasons set out in his November 2005 statement. Moreover, Mr O'Callaghan acknowledged that when the decision to cease the payments was made in 2000, he had by then accepted and believed Mr Dunlop's disclosures in relation to payments to elected representatives (as was provided by Mr Dunlop to the Tribunal in April 2000).

23.57 However, on Day 913 (16 October 2008) Mr O'Callaghan testified that sometime between 4 November 2005 (when he furnished his statement to the Tribunal) and Day 913, he, Mr O'Callaghan, had come to disbelieve Mr Dunlop's assertions that he had made corrupt/improper payments to elected representatives.

23.58 Notwithstanding Mr Dunlop's re affirmation, in the course of evidence he gave in the Quarryvale module (and indeed as testified to by him in other modules) that he had made corrupt/improper payments, Mr O'Callaghan was not*'certain anymore*' whether Mr Dunlop's assertions were credible.

23.59 It was Mr Dunlop's evidence that following his public appearance at the Tribunal in April/May 2000, Mr Dunlop met with Mr O'Callaghan. Mr Dunlop claimed that the result of such meeting was that Mr O'Callaghan advised him that Riga were ceasing the payment of his legal costs. Mr Dunlop's diary revealed a meeting with Mr O'Callaghan on 25 May 2000, two days after Mr Dunlop was privately interviewed by the Tribunal. Mr Dunlop claimed he was unable to recall what was discussed on that occasion but told the Tribunal that '*at some stage'* after his public appearances at the Tribunal, Mr O'Callaghan '*began to express concern'* about Mr Dunlop having made improper payments to councillors, an activity, which Mr Dunlop maintained, was hitherto unknown to Mr O'Callaghan.

23.60 Mr O'Callaghan's evidence on this issue was that following a meeting with Mr Dunlop in or about May/June 2000, Mr Dunlop had assured him, in response to a question posed by Mr O'Callaghan, that Mr Dunlop had never made payments to politicians/councillors on Mr O'Callaghan's behalf. Moreover, Mr

O'Callaghan maintained that Mr Dunlop had dealt with his queries in a dismissive manner, commenting that his dealings with the Tribunal did not involve Mr O'Callaghan.

23.61 Mr O'Callaghan confirmed that he had earlier met Mr Dunlop, after his (Mr Dunlop's) April 2000 attendance at the Tribunal and that he and Mr Dunlop, who he said was in bad form, had a '*very, very brief discussion'*. He said he had no '*official discussion'* with Mr Dunlop on that occasion.

23.62 Mr O'Callaghan said he met Mr Dunlop approximately one month later, and that on this occasion he advised Mr Dunlop that he would not be paid further retainer fees, or reimbursement of his legal fees (other than fees already incurred).

23.63 Mr Dunlop told the Tribunal that in the period post 19 April 2000 Mr O'Callaghan made a '*number of telephone calls'* to him, which he believed were motivated by humanitarian concern, rather than any other reason. Mr Dunlop stated that he and Mr O'Callaghan did not discuss, '*in detail'*, those matters which were then ongoing between Mr Dunlop and the Tribunal.

23.64 Notwithstanding the meetings and telephone contact which took place between Mr Dunlop and Mr O'Callaghan in the post 19 April 2000 period, Mr O'Callaghan chose to write a letter to Mr Dunlop on 14 July 2000 in which he asked Mr Dunlop to assist in establishing if he, Mr O'Callaghan, had paid '*some monies'* to a solicitor on behalf of Cllr McGrath in 1992. (This was a reference to a payment of IR£10,700 paid to settle a debt due by Cllr McGrath. Mr O'Callaghan also paid Cllr McGrath IR£10,000 in October 1991 and IR£20,000 in November 1993). The penultimate paragraph of this letter was, in the Tribunal's view noteworthy, in that it stated, somewhat out of context having regard to the letter's content, the following: '*I know you have confirmed to me that you never paid politicians on my behalf.'*

23.65 Indeed, somewhat in conflict with that statement, the said IR£10,700 payment had in fact been paid by Mr Dunlop to a third party on Cllr McGrath's behalf, at the behest of Mr O'Callaghan.

23.66 Mr Dunlop, in his evidence, denied that post his April/May 2000 Tribunal revelations, that he had ever been asked by Mr O'Callaghan for confirmation that he had not made payments to politicians on his behalf.

23.67 Both Mr Deane and Mr O'Callaghan acknowledged to the Tribunal that invoices dated between 29 April 2000 and 11 July 2000 were discharged by Riga. In fact, of the total of circa IR£364,000 (gross) legal fees, as invoiced and received between 13 November 1998 and 11 July 2000, IR£162,273 (gross) of this figure was discharged by Riga between 29 April 2000 and 11 July 2000. Three payments in all were made in discharge of Mr Dunlop's legal fees post his evidence on Days 146 and 147.

23.68 Mr O'Callaghan told the Tribunal that the post 19 April 2000 legal fees invoices were paid because they concerned fees due prior to that date, and in paying them, he was merely honouring his earlier agreement with Mr Dunlop. This was not withstanding his assertion, and that of Mr Deane, that the cessation of payment of Mr Dunlop's legal fees was linked to their having become aware, in April 2000, (for the first time according to Mr O'Callaghan and Mr Deane), that Mr Dunlop had in fact made corrupt/improper payments to councillors, including payments in connection with the rezoning of Quarryvale). IR£9,074.25 on foot of an invoice dated 29 April 2000;

- IR£135,416.48 on foot of an invoice dated 18 May 2000 (an invoice issued nine days after Mr Dunlop's Day 148 evidence to the Tribunal);
- IR£17,782.66 on foot of an invoice dated 11 July 2000.

23.69 The post 19 April 2000 payments equalled approximately 45% of the total paid by Riga to Frank Dunlop & Associates for legal fees. Moreover, these post 19 April 2000 payments were made by Riga in the knowledge of Mr O'Callaghan and Mr Deane that, under oath, Mr Dunlop had admitted to making payments to elected representatives in relation to rezoning issues, including Quarryvale.

23.70 The legal fees invoice dated 18 May 2000 from Frank Dunlop & Associates Ltd to Riga included a handwritten note stating '*per letter and reply OOC'*, but no such correspondence was provided to the Tribunal. Mr Dunlop was unable to recall its content. Mr O'Callaghan was not questioned in relation to this matter.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE CIRCUMSTANCES IN WHICH MR DUNLOP'S LEGAL FEES WERE PAID BY MR O'CALLAGHAN

24.01 The Tribunal was satisfied that neither Mr Dunlop nor Mr O'Callaghan, in their evidence, apprised the Tribunal of the likely subject matter of their discussions, both prior to Riga embarking on paying legal fees at the behest of Mr Dunlop in November 1998, and post Mr Dunlop's April 2000 revelations to the Tribunal.

24.02 It was to the Tribunal quite inconceivable, in the course of their contact over the course of October and November 1998, that Mr Dunlop and Mr O'Callaghan did not discuss the circumstances and the purpose for which Mr Dunlop was retained by Mr O'Callaghan in 1991. Moreover, the Tribunal found it inconceivable that Messrs O'Callaghan and Dunlop would not have discussed the likely inquiries that would be made by the Tribunal when the Tribunal (as it did) received details of a number of round figure VAT – free payments made to Mr Dunlop via Shefran and Frank Dunlop & Associates Ltd in the period May 1991 to September 1993 (the duration of the Quarryvale rezoning campaign). By October/November 1998, both Mr Dunlop and Mr O'Callaghan must have anticipated that such payments would be probed by the Tribunal, in particular, the Shefran payments, having regard to newspaper reports of allegations then being made to the Tribunal by Mr Gilmartin.

24.03 Having found elsewhere in the Report, that Mr O'Callaghan was at all relevant times aware that a substantial portion if not all of the IR£80,000 paid to Mr Dunlop via Shefran in 1991 was disbursed to councillors by Mr Dunlop, and equally that Mr O'Callaghan was privy to the purpose for which Mr Dunlop was paid IR£70,000 in November 1992, the Tribunal considered it inconceivable that the likely interest of the Tribunal in such payments (when the details of same would become known to the Tribunal), would not have been a topic of discussion as between Mr Dunlop and Mr O'Callaghan.

24.04 As a consequence the Tribunal rejected as not credible Mr Dunlop's vague account of the discussions that ensued between himself and Mr O'Callaghan prior to 13 November 1998. Nor can the Tribunal accept Mr Dunlop's vague evidence as to what he and Mr O'Callaghan discussed in the immediate aftermath of Mr Dunlop's April 2000 revelations to the Tribunal.

24.05 There was no logic either to Mr O'Callaghan's evidence that, prior to November 1998, it was Mr Dunlop's Quarryvale involvement of itself that led him to agree to an open-ended discharge of Mr Dunlop's legal fees. Logic dictated that among the issues discussed by Mr O'Callaghan and Mr Dunlop had to have been the manner in which certain payments made by Riga to Mr Dunlop between 16 May 1991 and 17 September 1993 were effected and the purpose for which some or all of these payments had been made to Mr Dunlop.

24.06 The Tribunal was satisfied that in light of his anticipated Tribunal interest in his affairs, Mr Dunlop approached Mr O'Callaghan in order to follow up on the agreement that had been made between them as of 22 May 1998 to secure the sum of IR£300,000 '*remaining*' to be paid to Mr Dunlop (the money which funded Mr Dunlop's payment to the Revenue Commissioners). The Tribunal was

equally satisfied that at some point prior to 13 November 1998 Mr Dunlop prevailed upon Mr O'Callaghan to part with substantial additional money in respect of Mr Dunlop's anticipated legal costs.

24.07 The Tribunal was satisfied that, in seeking (and obtaining) agreement for the payment of his legal costs, Mr Dunlop was in fact '*calling in*' money which he believed was due to him for his Quarryvale endeavours. It was noteworthy that in October 1998 Mr Dunlop himself believed that the 9 October 1998 IR£300,000 *'success*' fee obtained by him was a payment '*on account'*(as referred to on Mr Dunlop's invoice). The Tribunal was satisfied that this belief indeed proved to be the case, in that between 13 November 1998 and 11 July 2000 Riga paid '*legal fees'* or '*legal costs'*, amounting to circa IR£301,000.

24.08 The Tribunal was satisfied that as and from November 1998, Mr Dunlop and Mr O'Callaghan had an agreement whereby Mr Dunlop would be paid a sum of money, (probably in the region of IR£300,000, having regard to the content of Mr Dunlop's forensically restored diary entry of 30 July 1999), in the guise of legal fees.

24.09 Had it been the case, as Mr O'Callaghan and Mr Deane would have the Tribunal believe, that from November 1998 they simply embarked (at Mr Dunlop's request) on the payment of Mr Dunlop's legal fees because they believed that Mr Gilmartin's allegations (about Mr Dunlop etc) would be proved to be false, it followed that, as soon as Mr O'Callaghan and Mr Deane learned of Mr Dunlop's own admissions to the Tribunal in April 2000, their payment of his legal fees would have ceased immediately. However, such did not happen, indeed close to half the £301,000 was paid after Mr Dunlop's revelation to the Tribunal. The Tribunal therefore concluded that in October/November 1998, Mr O'Callaghan and Mr Dunlop had discussions about lump sum payments to be paid to Mr Dunlop, including, probably, a lump sum payment of IR£300,000 which was to be paid to him incrementally in discharge of his legal costs.

24.10 The Tribunal was satisfied that the question of Mr O'Callaghan's undertaking to discharge Mr Dunlop's legal fees could not have been predicated on Mr O'Callaghan's belief that Mr Dunlop had not engaged in making payments to councillors/politicians, given that the Tribunal was satisfied that Mr Dunlop had engaged in making a series of payments to election candidates in 1991 and 1992 respectively, with the imprimatur of Mr O'Callaghan, and had been funded by Mr O'Callaghan to enable him do so. Moreover, as found by the Tribunal, Mr Dunlop paid Mr Lawlor IR£40,000 in or about May/June 1991, with Mr O'Callaghan's knowledge.

24.11 Of the circa IR£1.8m paid to Mr Dunlop on Mr O'Callaghan's instructions between May 1991 and July 2001, and excluding the monthly retainer payments made to Frank Dunlop & Associates Ltd in the period 1998 to 2001, Mr Dunlop (through Frank Dunlop & Associates Ltd) was paid in excess of IR£700,000 (net of VAT), directly or indirectly, between June 1998 and July 2000.

THE TRIBUNAL'S GENERAL CONCLUSIONS IN RELATION TO PAYMENTS TO COUNCILLORS BY MR. O'CALLAGHAN AND MR. DUNLOP.

24.12 These findings are made by way of a summation of findings made in this Part, and elsewhere in Chapter Two, in relation to the expenditure of certain funds by Mr O'Callaghan and Mr Dunlop.

(i) Mr O'Callaghan was aware of, and actively engaged in facilitating the corrupt disbursement of substantial sums of money to politicians by Mr Dunlop, in the period 1991 to 1993 for the purposes of ensuring councillors support for the rezoning of the Quarryvale lands.

(ii) The Tribunal rejected as untrue the often repeated evidence of Mr. O'Callaghan, that he was unaware of Mr Dunlop's corrupt activity in paying councillors to support the rezoning of the Quarryvale lands in the period 1991 to 1993, prior to Mr Dunlop's disclosure to the Tribunal of such activity in April 2000.

(iii) The Tribunal was satisfied that Mr O'Callaghan personally made corrupt payments (or otherwise authorised such payments through his company), to certain politicians for the purposes of ensuring their continued support and assistance for the rezoning of the Quarryvale lands.

(iv) The Tribunal was satisfied that the process of paying councillors to ensure and copper fasten support for the project to rezone the Quarryvale lands, during the course of the Review of the County Dublin Development Plan (in the period 1991 to 1993), was strategic. This strategy was planned, promoted and organised by Mr O'Callaghan and was, almost certainly, a strategy devised in the first instance by Mr Dunlop and Mr Liam Lawlor.

(vi) The Tribunal recognised the possibility that Mr O'Callaghan may have been initially, a reluctant participant in the corrupt activity in which both himself and Mr Dunlop engaged. However, the Tribunal was satisfied that is such the case, Mr O'Callaghan nevertheless embraced and adopted the strategy of corruptly engaging with councillors, as espoused by Mr Dunlop and Mr Lawlor.

CHAPTER TWO – THE QUARRYVALE MODULE – PART 5

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AIBQ 1 - 54

Fax cover sheet

AIB Bank
Corporate Banking
Bankcentre
Ballsbridge
Dublin 2

Telephone
(01) 600311
Facsimile
(01) 682508

AIB

To Tom Gilmartin
Company Name Barkhill
From Eddie Kay
Date 10.6.92
Time 2.20
Number of pages including this one 4
Subject
Comment

In case of poor transmission telephone
And ask for Ext: 3728

AIB.Q 23 - 105

AIB Bank

Corporate Banking – Ireland
Bankcentre
P O Box 452
Ballsbridge
Dublin 4

Telephone
(01) 600311
Facsimile
(01) 682508
(01) 604945
Telex
93680
S.W.I.F.T. Address
AIBK IE2D

Mr. Tom Gilmartin,
Director,
Barkhill Limited,
22 Whitehall Avenue,
Luton,
Bedfordshire,
LU1 3SP.

Our Ref: EWK/amce/5328/47

10th June, 1992

RE: BARKHILL LIMITED

Dear Tom,

I refer to our telephone conversation on Friday and enclose a copy of an invoice for IR£30,000 payable to Shefran Limited, which as agreed we have paid.

I should be grateful if you would confirm your authorisation for this payment to be made, to keep our records correct.

Yours sincerely,

E.W. Kay,
Senior Manager,
Corporate Banking.

Allied Irish Banks, p.l.c. incorporated in Ireland, Registered Office, Bankcentre, Ballsbridge, Dublin 4. Registered in Ireland Number 24173.
[illegible] Life Assurance Company Limited for life assurance business.

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Tribunal Ref : QV II

Page No: 7511

1992-06-18 15:41 | D'CALLAGHAN PROP.LTD.CORK 353 21 275626 P.02

Westpark Expenses

		Expenses	Payments	Balance
26/2/91	Lending & Administration	£26,192.52		£26,192.52
5/3/91	Tom Gilmartin	£10,028.00		£36,220.52
29/4/91	Tom Gilmartin	£55,656.36		£91,876.88
10/5/91	Sheafran Limited	£25,000.00		£116,876.88
27/5/91	Lending & Administration	£58,407.50		£175,284.38
30/5/91	Sheafran Limited	£40,000.00		£215,284.38
13/6/91	Sheafran Limited	£15,000.00		£230,284.38
19/6/91	Refunded - from Westpark Loan A/c to Current A/c		£230,000.00	£284.38
23/9/91	Expenses	£10,000.00		£10,284.38
27/9/91	Frank Dunlop	£8,484.29		£18,768.67
11/10/91	Expenses	£10,000.00		£28,768.67
)11/91	Ambrose Kelly	£26,195.00		£54,963.67
2/12/91	Frank Dunlop	£8,228.42		£63,192.09
24/1/92	Lending & Admin - Current A/c		£56,598.71	£6,593.38

5.3.92 Refunded from Westpark Loan A/c to Current A/c 6309.00. 284.38.

16.3.92 Rigpa to A Kelly 10,000.

16.6.92 Refunded by Barrihill 10,000.

note: All transactions have been picked up by Brian Buckley & appropriately posted. 5/8/93

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AIBO 27.28 - 2

AIB
35314753057
97 SOUTH MALL CORK.

16/5 1991 93-63-83

Pay Shefran Ltd.
twenty five thousand pounds
IRE 25,000 — 00
or order
RIGA LIMITED

PAID

Allied Irish Banks, p.l.c.
17 MAY 1991
PRESENTED FOR PAYMENT
Teller No. 1

"501613" 93"6383" 4517602 3" 02 "0000250000"

AIB
97 SOUTH MALL CORK.

7/6/19 91 93-63-83

Pay Shefran Ltd.
fifteen thousand pounds
IRE 15,000 — 00
or order
RIGA LIMITED

PAID

Allied Irish Banks, p.l.c.
93-33-84
7 JUN 1991
MANAGER'S DEPT.
COLLEGE STREET
DUBLIN 2

"501690" 93"6383" 4517602 3" 02 "0000150000"

AIB
97 SOUTH MALL CORK.

17/2 1993 93-63-83

Pay Shefran Limited
twenty five thousand pounds
Only
IRE 25,000 — 00
or order
RIGA LIMITED

PAID

Allied Irish Banks, p.l.c.
18 FEB 1993
Presented
Teller No. 1

"503202" 93"6383" 4517602 3" 02

13/04 '00 15:12 FAX 35314753057 AIB RETRIEVALS → 97 STH MALL 003

35314753057

170591 051473 003 171

MY '91' 21
A.I.B.
AIB Bank
5 College St.
Dublin.
93-38-64

070691 939528 005 171

'E '91' 11
A.I.B. plc
PRESENTED
AIB Bank
5 College St.,
Dublin.
93-38-64

"0000052000" 11 "5176029" "E8E9"93 "2025052"

FD 3.6 - 6

SHEFRAN Ltd.
Public Affairs Consultants
25 Upper Mount Street, Dublin 2. Phone: 01 613543. Fax: 01 614377.

Accounts Payable,
Riga Ltd.,
21/24 Lavitts Quay,
Cork,
Ireland.

25th March 1991

INVOICE

To the provision of professional strategic communications and educational services		IR£25,000.00
	Total	IR£25,000.00

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FD 3.6 - 7

FD. 2.6 - 7

SHEFRAN Ltd.
Public Affairs Consultants
25 Upper Mount Street, Dublin 2. Phone: 01 613543. Fax: 01 614577.

Accounts Payable,
Riga Ltd.
21/24 Lavitts Quay,
Cork,
Ireland.

2nd April 1991

INVOICE

To the provision of professional strategic communications and educational services	IR£40,000.00
Total	IR£40,000.00

FD 3.6 - 8

FD. 2.6 - 8

SHEFRAN Ltd.
Public Affairs Consultants
25 Upper Mount Street, Dublin 2. Phone 01 [illegible]. Fax 01 [illegible]

Accounts Payable,
Riga Ltd.,
21/24 Lavitts Quay,
Cork,
Ireland.

1st May 1991

INVOICE

To the provision of professional strategic communications and educational services		IR£15,000.00
	Total	IR£15,000.00

FD. 1.10 - 13

SHEFRAN Ltd.
Public Affairs Consultants
25 Upper Mount Street, Dublin 2. Phone: 01 613543. Fax: 01 614677.

Accounts Payable,
Riga Ltd.,
21/24 Lavitt's Quay,
Cork,
Ireland.

20th March 1992

INVOICE

To the provision of professional strategic communications and educational services.	IR£40,000.00
Total:	IR£40,000.00

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Allied Irish Bank

INTERNATIONAL DIVISION BANKCENTRE DUBLIN 4

PAY TO THE ORDER OF Shefrain Ltd. IR£40,000 00

THE SUM OF Forty Thousand Pounds only

Allied Irish Banks, p.l.c.
Assistant Manager
14 APR 1992
93-33-24
5 COLLEGE ST.,
DUBLIN 2.

For and on behalf of ALLIED IRISH BANKS plc

MANAGER

NO. 778

INTLS

Allied Irish Banks plc

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AIBQ 11 - 40

10/4/92

Please buy the following invoices as detailed below to debit of Rowlills Ltd A/c.

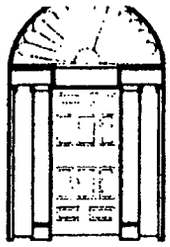
Ambrose Kelly	£10,000 —
Aubrey Byrne & Assoc.	£1815 —
Frank Dunlop.	954-55
Shelton Ltd	£40,000 —

for Rowlills Ltd.

Ben Dolly

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AIBQ 1 - 56



SHEFRAN Ltd
Public Affairs Consultants
25 Upper Mount Street, Dublin 2. Phone: 01 613543. Fax: 01 6145

Riga Ltd.,
21/24 Lavitt's Quay,
Cork.

30th April 1992

INVOICE

To provision of professional strategic communications and educational services.	**£30,000.00**
	£30,000.00

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AIB,Q 23 - 104

93-00-67

DEMAND DRAFT

5th June 1992

Allied Irish Bank

INTERNATIONAL DIVISION BANKCENTRE DUBLIN 4

PAY TO THE ORDER OF Shefran Limited

IR£ 30,000.00

THE SUM OF Thirty Thousand Pounds

For and on behalf of ALLIED IRISH BANKS plc

1718 MANAGER

NO. 393

INTLS.

⑈001611⑈ 93⑈0067⑆ 99946246⑈ 12

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AIBQ 4 - 311

FILE NOTE

18th March 1992

BARKHILL LTD

Meeting with Owen O'Callaghan and John Deane on the 18/3/92.

The meeting, the first to be held for some weeks with Messrs. O'Callaghan and Deane was to bring us up to date and they indicated that DCC now seems to be out of the picture in respect of Green as they were not in the position to bring John Corcorcan on side.

It appears also that Jim Flavin of DCC now considers that one centre only would work in Dublin West. John Mulcahy has spoken to Michael Buckley and while initially positive he has now backed off, persumably following some prompting from John Corcoran.

O' Callaghan and Deane are now working on the premise that if a Green deal is not possible, how do they progress matters? They intend actively canvessing the councillors over the next number of weeks and are also speaking to the IDA in relation to industrial use of c. 50% of the site. Owen O'Callaghan's intention is to meet all 78 of the councillors over the next month. As of now he anticipates that he has now 28 lined up.

In relation to the alternative site of Clondalkin, they are progressing the concept of a stadium and have produced a model. They believe that the stadium could be viable at a total cost of £32m and would be funded by £10m from the State, £10m from the sale of 10 year tickets and perhaps another £10m from private promotors. This would be 40,000 seating capacity.

When asked about the prospects of the success of ~~disowning~~ as of now, Owen O'Callaghan considered that it is about 40% likely but he would hope to bring that to better than 50% over the next 4 to 6 weeks. He indicated that there are ongoing fees between now and disowning vote of £150,000 and decision will have to be taken as to whether the Bank is willing to fund this amount, by implication he is not prepared to do so, This matter was left in obeyance.

Overall, O'Callaghan seemed very cautious about the prospects about bring a Green deal to fruitition or indeed managing to keep the zoning in place.

Ref: EK/KM/5058B/86

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AIBQ 4 - 199

FILE NOTE *16th September 1992.*

Our Ref:MO'F/SH/5486/25

RE:BARKHILL

Meeting with Owen O'Callaghan at Bankcentre. I took the opportunity to get Owen to take me through the background to the zoning situation in Quarryvale.

BACKGROUND

- *May 1991 - first vote - Fianna Fail had majority - vote was 33/12. This effectively transfered the Town Centre zoning which applied to the Neilstown site over to Quarryvale. Following this the zoning had to be put into the draft development plan. Accordingly at this stage the land at Quarryvale is zoned 70 acres for retail with the remainder of 116 acres industrial. Accordingly a formal rescinding motion will be needed to change the zoning - this has to come from an affected Councillor ie a Councillor in Blanchardstown. There are seven Councillors in Blancharstown - three of them are for Quarryvale - one will not put forward the motion - the remaining three could put forward such a motion (two from Labour and one from P.Ds).*
- *Draft Development Plan. There are twenty eight maps in the whole plan. Initially it had been intended that all of the plans would be dealt with before the 30th June 1992 - this had been in the Minister for the Environment's stipulation to the previous chairman, Stanley Lang. However the matter drifted and an extension was applied for from the Minister - December 1992 was agreed as the final date for agreement. O'Callaghan had been gearing his operations towards a June vote at the latest but the extension of time has obviously thrown the timing back. They are working back through the plans - at this stage they have dealt with maps 28, 27 and 26. One of these related to the Phil Monahan Cherrywood site and took a long time to resolve. At this stage there is a further meeting in September, 3 for October, 3 for November and 2/3 for December. The Council was on holidays for July and August and a number of members of Council are now away on a ten day trip to Israel. Owen does not envisage any difficulties with the forthcoming maps 25 down to 21. Map 20 could well take 2 meetings in that there are a number of issues involved in it and a site visit may also be required - this would obvousily cause delays. Barkhill is map number 17. They had been hoping for early October but they are very confident that it will be during October at the latest.*

Return to report

AIBQ 4 - 200

(2)

- There are 78 members on the Council - a straight majority is required (any further Section 4 motions from material contraventions will require 75% following the completion of this draft development plan). Owen O'Callaghan is confident that their lobbying will result in a positive vote.

- This scheme was originally launched in October 1990 by Tom Gilmartin the Berkley Court. At that stage he spoke about a 1.5m sq.ft. development. This has now been scaled to 500,000 sq.ft. - the zoning permission actually caps the retail space at 500k sq.ft. Opposition to the zoning has included claims that once the zoning is approved in the development plan, the developers will develop 1.5m sq.ft. - this is based on the fact that with the 70 acres zone retail, it could hold this amount of retail space. By comparison, Blanchardstown is 1m sq.ft. on 40 acres - however plans there are to build 350/450ksq.ft.

- A negative factor is that the change in zoning has effectively moved the Town Centre from the original site to the Quarryvale site which is .8 miles in distance.

- Efforts to link up with Green earlier in the year had taken some months of their time in an effort to resolve the situation vis a vis Blanchardstown. Having failed with this, they sought an alternative use for the Neilstown site - hence the proposals for a National Stadium.

PRESENT POSITION

- Green's planning permission in Blanchardstown is for 350/400k sq.ft. Dunnes are totally committed to Blanchardstown as are Quinnsworth. Both are getting frustrated because Green won't sign. Dunnes have sought another site and they will be submitting planning application on same within the next 2/3 weeks in an effort to move Greens towards signing.

John Corcoran has been lobbying the Councillors himself. Pat Keating (ex Graylings) is more or less full time with Corcoran.

AIBQ 4 - 201

(3)

- *If is obtained at the end of October, Barkhill are ready to go in for full planning permission immediately. They would anticipate that 3 months with the local authority followed by an appeal to an Bord Pleanna. Under Government directive, Bord Pleanna can take no longer than 4 months to complete their investigations and issue a decision. Accordingly Owen O'Callaghan would be confident that planning would still be in place by summer 1993. Following receipt of zoning they would have to seek a development partner.*

  Roches Stores have told him officially that they will go into Quarryvale as have Dunnes. Marks & Spencers are nearly certain. Owen O'Callaghan makes the point that given the anchors lined up in Blanchardstown and in Quarryvale, there is an obvious case for justifying both Centres which has been O'Callaghan's line all along.

- *Owen O'Callaghan is confident that Tom Gilmartin knows the position regarding the iminent zoning.*

- *Sports Centre -:Following their failure to link up with Green, they set about seeking an alternative use for the Neilstown site. Opposition to Quarryvale had always argued that they had no objection to a shopping centre in Clondalkin but that it should take place on the original site which had been designated the Town Centre. From this comment came the concept of the Sports Stadium.*

FEES

- *I gave Owen O'Callaghan a copy of the attached pages outlining the break-down of the loans and a break-down of the fees paid and the fees outstanding. We went through the various fees that have been paid and he provided explanations where he could for the various items - see attached.*

  He made the point that VAT is repayable/refundable on a number of the bills paid. Aidan Lucey and his office is handling that matter. He feels the amount involved is IR£30/40k. We agreed that we would contact Aidan directly in this matter to find out the timing and the amount of same - Mary please follow up - Owen O'Callaghan confirmed that these funds will all be due to reduce the loan of Barkhill with AIB.

AIBQ 4 - 202

(4)

- We went through the various fees outstanding as of today's date and an estimate of the fees to go before planning is obtained - see attached schedule.

- There is a further IR£60k due by Riga to AIB Corporate Finance in relation to the Green takeover - Riga recognise this is for their account.

- I made the point to Owen O'Callaghan that AIB were already drawn way beyond our original sanction. An element of this overrun related to fees, even before we paid any further fees. In these circumstances it would be very difficult to pay out more money from the loan to cover further fees, particularly as zoning is not yet in place. He recognises this and consequently has pushed out a lot of the fees. In essence, he is identifying possibily IR£40,000 which needs to be paid now in relation to the general Quarryvale zoning issue with a further IR£19,000 due to Ambrose Kelly in relation to the design/plans for the Sports Stadium.

- On the latter point I indicated that we had never been consulted about the Sports Stadium plans either as bankers or as directors/shareholders - neither had Tom Gilmartin, as far as we were aware. In these circumstances I indicated that we would have difficulty in paying in relation to same. He argued strongly that the Sports Centre plans are an integral part of obtaining the zoning - he is strongly of the view that if they don't have an alternative use set up for the Neilstown site, they will not get the required support at the zoning meeting. Accordingly he is arguing that the fees related to the stadium which total IR£58k with a further IR£30k to go, will have to be paid by Barkhill Ltd.

- I agreed to revert to him as soon as possible on this matter of fees.

GENERAL

- Comapnies office returns - I indicated that we would have to get the audited accounts completed to make these returns. John Deane/Aidan Lucey should, he thinks, be working on outstanding issues.

- Derelict sites act - He has a copy of the letter of the 16th July 1992 with enclosures, received from Seamus Maguire. He is dealing with the issue - no action is required.

AIBQ 4 - 203

(5)

- He has not seen the letter of 3rd September 1992 from Seamus Maguire - see attached - I am to send him a copy of same and he will pick up the issue in relation to the caravans/mobile homes on the land at Quarryvale.

- He agreed that Riga are funding IR£200k in relation to the Bruton Lands - he asked me to contact John Deane in relation to this - Owen does not know the details.

- I indicated that security in relation to the Bruton House was going to become an issue on the 30th September on vacation. This house will be knocked if the development goes ahead - however it is likely it will be occupied in the meantime by squatters. He will follow up this issue.

- I raised the issue of life cover with Owen both in relation to Barkhill and in relation to Riga - he indicated that he had been anticipating my question - he undertook to put the necessary life cover in place following receipt of zoning next month. He asked that I leave the matter in abeyance until then because his time is committed in relation to the zoning issue.

POINTS FOR FOLLOW UP

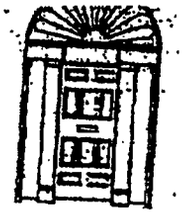
1. VAT issue.
2. Bruton monies.
3. Security on Bruton House - follow up with Owen O'Callaghan in about a week.
4. Life cover Owen O'Callaghan - diary forward to 15th October 1992.
5. Position paper in relation to request for additional fees.
6. Meet Neville O'Byrne in relation to security issues and in particular to shareholders agreement.
7. Deloitte & Touche - complete accounts. In this regard Tom Gilmartin phoned on the 17/9/92 and indicated to me that he is following up various points requested by Deloitte & Touche.

Will check the position with him next week if he comes to see us.

M. O'Farrell,
Senior Manager,
Corporate Banking.

Return to report

FD. 1.10 - 2

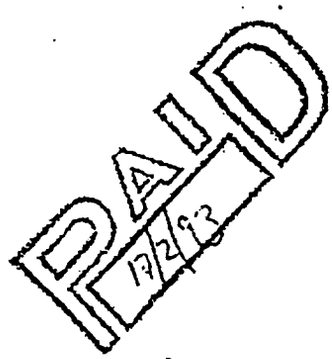


SHEFRAN Ltd.
Public Affairs Consultants
25 Upper Mount Street, Dublin 2. Phone: 01 [illegible] Fax: 01 [illegible]

Riga Ltd.,
21/23 Lavitt's Quay,
Cork.

18th. December, 1992

To professional advice re.
development in North Clondalkin £25,000.00



17/2 1993

Shefran Ltd.

Fees.

Clondalkin

: 25 000 -00

503202

J.DEANE 1.3 - 164

Payments/Transactions for which Deloitte & Touche have received no supporting documentation

	Details	IRE Amount
1.	Amount paid to Seamus Maguire on 11/5/90 from AIB No.1 A/c in respect of option cost on St.Patrick's Trust land	100,000
2.	Sterling amount paid from AIB No.2 A/c to T.Sills on 16/10/91	Stg£ 50,669
3.	Amount paid to F.Gunne Estate Agents from AIB No.2 A/c on 3/1/92	16,130
4.	Amount paid to C.Meenan & Co. from AIB No.2 A/c on 4/2/92	2,420
5.	Amount paid to Shannon & Co. from AIB No.2 A/c on 4/2/92	632
6.	3 Amounts paid to Sheafran Ltd. from the Riga Sub-ordinated loan on the following dates:	
	16/5/91	25,000
	30/5/91	40,000
	13/6/91	15,000
7.	A number of Seamus Maguire & Co. invoices as follows(Vat incl.):	
	Re Sharpe's land	15,004
	Re Grey's Cottage	500
	Re Crom Cottage	1,045
	Re Bruton's land	27,467
	Re Corporation land	66,550
	Re O'Rahilly land	7,260
	Re Council land	10,648
	Re O'Rahilly v Gilmartin	9,166
8.	Two amounts of £10,000 each described as "Sundry"in the Riga reimbursement from the AIB No.1 A/c on 24/1/92 which were apparently paid to Tom Gilmartin	20,000
9.	Three amounts paid to Tom Gilmartin from the Riga Sub-ordinated loan as follows:	
	28/2/91	26,192
	5/3/91	10,028
	29/4/91	55,656

J.DEANE 1.3 - 165

[redacted]

Payments/Transactions for which Deloitte & Touche have received no supporting documentation

	Details		IRE Amount
10.	Two Ove Arup invoices refered to in the letter to Edward Kaye (AIB), on 22/7/92		
	Ove Arup Ireland (incl. Vat)		54,164
	Ove Arup London	STGE	35,276

14

Barkhill Limited

Projected Balance AIB Loans 31/03/92

Loan 1 *	10.757m
Loan 2 **	2.830m
	13.587m

Utilisation of AIB Facility

*** Loan 1**

Dublin Corporation Land	4.590
Van Hool Land	1.355
Bank of Ireland	1.200
Crom Cottage	0.079
Stamp Duty	0.476
Arrangement Fee	0.250
Planning, Engineer & Legal Fees	0.200
Bank Interest 19/02/90 to 30/10/90	0.828
	8.978
Bank Interest 31/10/90 to 31/12/91	1.464
	10.442
Bank Interest 01/01/92 to 31/03/92	0.315
Projected Loan Balance as at 31/03/92	10.757
	======

**** Loan 2**

15/10/91	T. Sills (Stg£50,669.05) +	55,376
01/11/91	S. Maguire	88,000
24/12/91	S. Maguire — fees	48,400
Bank Interest to 31/12/91		3,000
Balance as at 31/12/91		194,776
02/01/92	Deloitte & Touche —	18,150
03/01/92	F. Gunne —	16,093
10/01/92	Taggarts (Stg£154,865)	165,986
Land Acquisitions		2,350,000*
Bank Interest 1/01/92 to 31/03/92		84,709
Projected Loan Balance as at 31/03/92		2,829,714

* Figure includes £1.400m (Bruton Land)
£0.816m (Council Land)
£0.134m (Stamp Duty)
£2.350m (Taken as drawn 13/01/92)

Utilisation of Riga Sub-ordinated £1m Loan

28/02/91	Tom Gilmartin	26,192
05/03/91	Tom Gilmartin	10,028
29/04/91	Tom Gilmartin	55,656
06/06/91	O'Rahilly Land	660,000
08/07/91	S. Maguire - Fees	45,000
01/08/91	Murray Land	116,815
16/05/91	Sheafran Limited - Fees	25,000
30/05/91	Sheafran Limited - Fees	40,000
13/06/91	Sheafran Limited - Fees	15,000
		993,691
		6,309 (outstanding) - to be deleted
		1,000,000 off outstanding fees not
		========== re-imbursed.

Projected Interest charged on Riga Loan to 31/03/92:-

17/06/91	2,296.43
16/09/91	30,379.14
10/12/91	31,381.48
31/03/92	33,983.72
	98,040.77

FRANK DUNLOP
& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Barkhill Limited,
21-23 Lavitts Quay,
Cork.

1st. October, 1992

INVOICE NO.: 740

To ongoing costs re. Quarryvale	£21,063.36
VAT @ 0%	£ 00.00
	£21,063.36

Return to report

AIBQ 4 - 90

FILE NOTE *22nd October, 1992*

RE: BARKHILL

Meeting in Bankcentre.

Present: *Owen O'Callaghan - Barkhill*
Dave McGrath - AIB, Corporate Banking.
Michael O'Farrell - AIB Corporate Banking.

- *Owen O'Callaghan brought us up to date in relation to the lobbying situation - they are still confident. The vote is definately set for 2 of the days 3rd/4th/5th December. This will ensure that it is heard on two dates which are back to back.*

- *He has arranged permanent security on the Bruton House, at least pending the zoning vote.*

- *Derelict Sites Act - He is dealing with this and will ensure that it is dealt with before the pending court hearing in mid November.*

- *He produces a further invoice in relation to fees. He indicated that there will be further invoices which he said would total IR£40,000 including the one provided today. This would bring the matter up to zoning. I indicated that I was clearly under the impression that only IR£10,000 would be required, in addition to what had already been paid. This is the basis I have brought forward the matter for consideration when the last invoices had been provided. He indicated that he had stated at that time that further fees of IR£40,000 would be required. He indicated that a further invoice of IR£15,000 would require settlement shortly.*

  We indicated that there was no way the bank was going to continue to allow drawdown on the loan account in respect of further fees. Between land purchases and fees, together with interest roll-up, we were already way over where we had anticipated at this stage and these circumstances could not allow further drawdowns. He indicated that he, and ourselves, have little choice but to continue on the existing route and that this will require further cash to pay further fees. There are alot of other fees outstanding which, following zoning, will also become a major issue. He indicated that he is not given these any thought at this stage - his main priority is to get zoning. We left them clearly in the knowledge that paying further fees would not be on by the bank - however we agreed to revert to him in relation to the fees issue and specifically in relation to the invoice provided to us dated 9th September, 1992.

MOF/amce/5560/2

Return to report

AIBQ 11 - 93

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial
&
Commercial Developers

21/24 LAVITT'S QUAY,
CORK, IRELAND.
Telephone: (021) 275008
Telefax: (021) 275626

23rd November, 1992.

Mr. Michael O'Farrell,
Senior Manager,
AIB Corporate,
BankCentre,
Ballsbridge,
Dublin 4.

Dear Michael,

Following Friday's telephone conversation, I enclose invoice on behalf of Frank Dunlop.

I am anxious to get our own "Election" going again next Friday/Monday. Hopefully the Councillors will be settled down by then.

As I mentioned to you, we have provided as much support as we could afford over the past few weeks. I will inform you of this when we meet.

I would like to collect a cheque for this invoice from you on Monday/Friday next. I will ring you to arrange a suitable time.

Regards,

Owen.

P.S. The contract with Cork Corporation has been signed for North Main Street. The Dunnes Stores contract has been completely agreed and will be signed by Dunnes Stores next Monday. John Deane will liaise with you or Mary on this.

ALLIED IRISH BANKS
CORPORATE
24 NOV 1992
DAIL

Return to report

AIBQ.13 - 288

1st December, 1992

FILE NOTE

RE: BARKHILL/RIGA

Meeting at Bankcentre with Owen O;Callaghan.

- Date for the Quarryvale vote has been set for 17th and 18th December. He is confident a decision will be made one way or the other on that date. It is very tight. In response to my query, he confirmed that the officials are thinking in terms or a compromise at this stage which will involve the Jim Mansfield Clondalkin Centre and a smaller centre for Quarryvale of approximately 250,000 sq ft. The position will obviously will be clear in about two weeks. His lobbying continues and he indicated that he had injected IR£85,000 into the situation from O'Callaghan properties.

- North Main Street - He queried the margin on which had been quoted of 2.5%. He indicated that his memory of the meeting with Eddie Kay at the end of August was that the margin being discussed was 2% with an arrangement fee. I indicated that Eddie had indicated on that date that the margin perhaps could be 2 1/4% with the arrangement fee of £20,000 but that any further reduction to 2% would have to be compensated by an arrangement fee. I indicated that my present view was that we should stick with a margin of 2 1.4% with the arrangement fee. This was agreed.

- They have received an approach from Porter in relation to a 1,000 sq ft unit in North Main Street. IR£200,000 is being discussed - ~~we here~~ are seeking £250,000.

- Corporation contract is signed - Dunnes contract is ready for signing.

- Cumberland House - they have made a lot of progress over the last few weeks in relation to rent reviews - they have been increased to £11 per sq ft and they anticipate an additional income of IR£300,000 per annum - 50% of this would be due to Riga.

- I discussed their recent request for an additional IR£500,000. I indicated that we had received the cashflow projections and were trying to tie them back to the figures of rent schedules which we had received previously. We agreed that Mary Basquille would visit Cork and meet with John Deane and Aidan Lucy to go through the figures in detail. Following this we can have a more meaningful strategic type meeting.

Overall I indicated that the position is very tight - he acknowledged this but is quite happy that interest is being covered. He recognises that a negative Barkhill decision will leave cashflow implications in terms of interest cover but he feels that they can cover this from the additional rent from the North Main Street units and from additional rent from Cumberland house. He also indicated that the residual North Main Street Shops could be used to secure the additional IR£500,000. I responded to the effect that I regarded the income/value of these units as covering the existing debt.

He indicated that they are at an advanced stage with the Smiths in relation to the Crumlin development beside the Submarine Bar. They see themselves getting cash out of this development and work is progressing at pace. They are trying to pre-sell units to Quinnsworth and Dunnes Stores. We did not get into a detailed discussion on this - Graham McDonald may have further information.

AIBQ.13 - 289

In relation to the mentioned of his involvement, together with Michael Tiernan, in the Temple Bar development, he indicated that they had discussions with Temple Bar Properties which had been very preliminary. They were requested, as one of six, to make a further proposal in relation to the development. Tiernan and Ambrose Kelly are working on same. He does not see them getting involved with this although he asked that we would not convey this view to Michael Tiernan at this stage.

ACTION

- *Mary Basquille to arrange to visit Jone Deane/Aidan Lucy and to view the shopping centres in Cork following which we need to arrange a meeting with Owen O'Callaghan and John Deane in relation to the bigger picture.*

MOF/amce/6506/17-18

August 1995

28 Monday 95 08 28

Summer Bank Holiday (E-N.I.-W)

Ring Frances Joines

1.00 Liam C (lunch) "The Old Dublin"

PM CTF?

4.30

5.30

29 Tuesday 95 08 29

10.30 Dr. Breathnach (Celtic)

[redacted]

30 Wednesday 95 08 30

12.00 Buntglen AGM

5.00 Kilkenny (Sam)

August/September 1995

31 Thursday 95 08 31

8.30 Grace Period / Castlethorn / Castlesale / Drive D.14

9.15 Tom R. @ FDA.

11.30

4.30 IHBA re. DKM?

1 Friday 95 09 01

[redacted]

9.30 Mr Gibney Greenmount

Ring Neal Thurnley

11.30 Hugh Lawrence Co.

1.00 Lunch, N. Duggan?

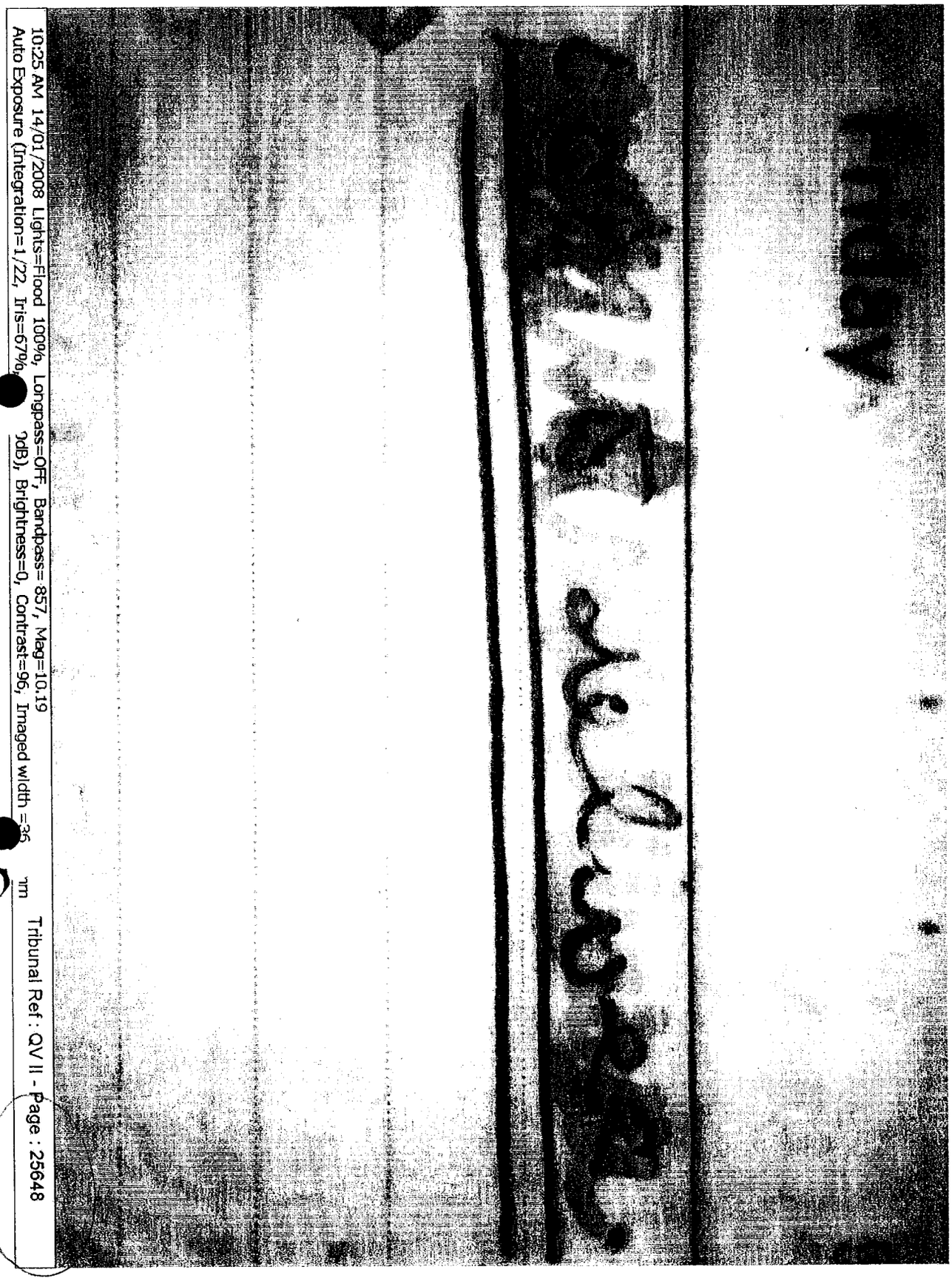
3.00 N. Quinn @ No. 38

Ring Gary McGann

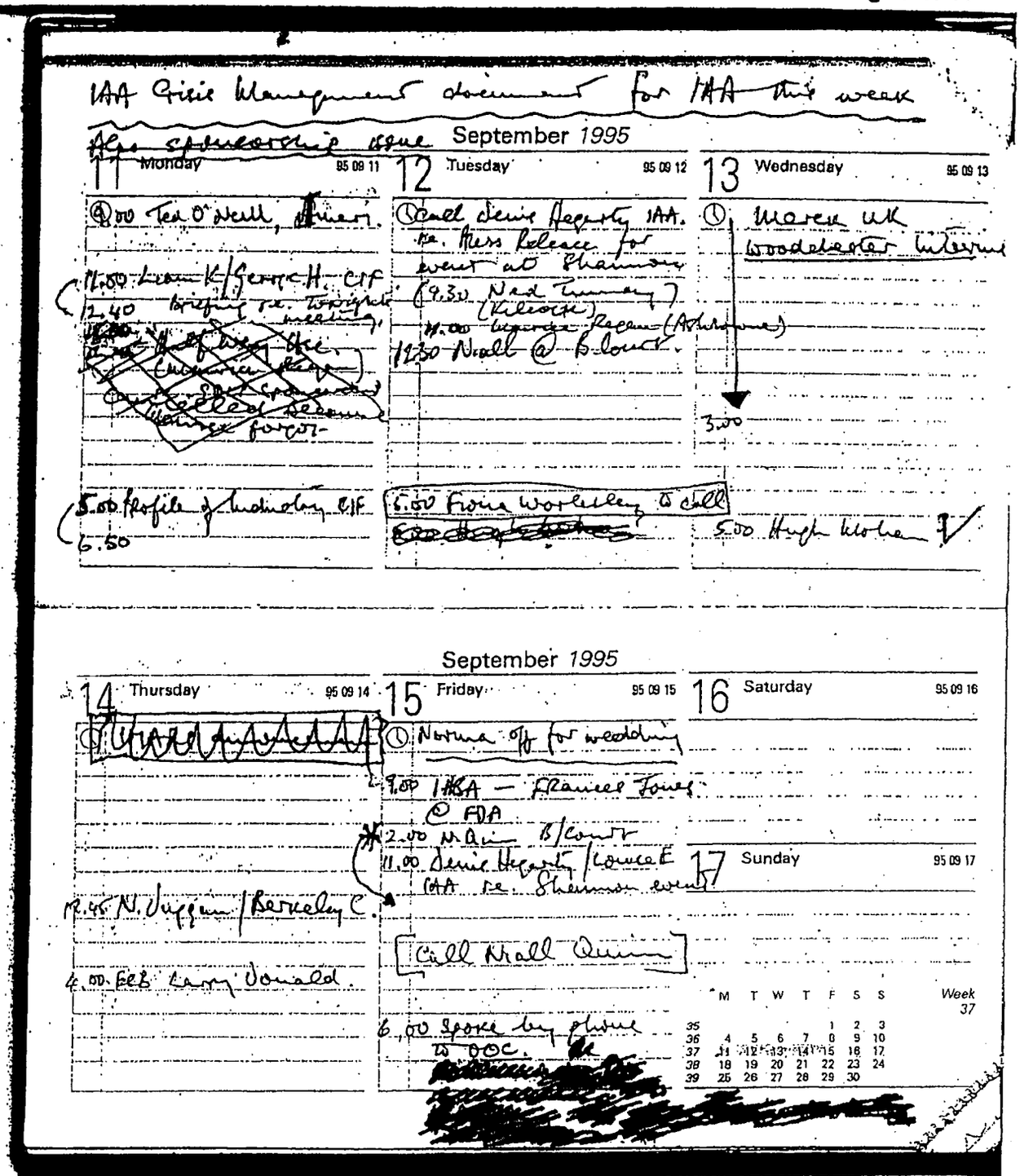
2 Saturday 95 09 02

3 Sunday 95 09 03

	M	T	W	T	F	S	S	Week 35
35					1	2	3	
36	4	5	6	7	8	9	10	
37	11	12	13	14	15	16	17	
38	18	19	20	21	22	23	24	
39	25	26	27	28	29	30		



Return to report



IAA Crisis Management document for IAA this week

Age sponsorship issue

September 1995

11 Monday 95 09 11

12 Tuesday 95 09 12

13 Wednesday 95 09 13

9.00 Ted O'Neill, Finers.

11.00 Liam K/George H. CIF

12.40 briefing re. Tonight's meeting

5.00 Profile of Industry CIF

6.50

Call Denis Hegarty IAA. re. Press Release for event at Shannon

(9.30 Ned Tunney (Kilcock)

11.00 Eugene Keem (Advertiser)

11.30 Niall @ Bloom

5.00 Fiona Woolley to call

Marcus UK Woodchester Interest

3.00

5.00 Hugh Mohan

September 1995

14 Thursday 95 09 14

15 Friday 95 09 15

16 Saturday 95 09 16

17 Sunday 95 09 17

Norma off for wedding

9.00 IAA — Frances Fox

@ FDA

2.00 Main B/Court

11.00 Denis Hegarty / Louise E IAA re. Shannon event

12.45 N. Duggan / Berkeley C.

4.00 FEB Larry Donald.

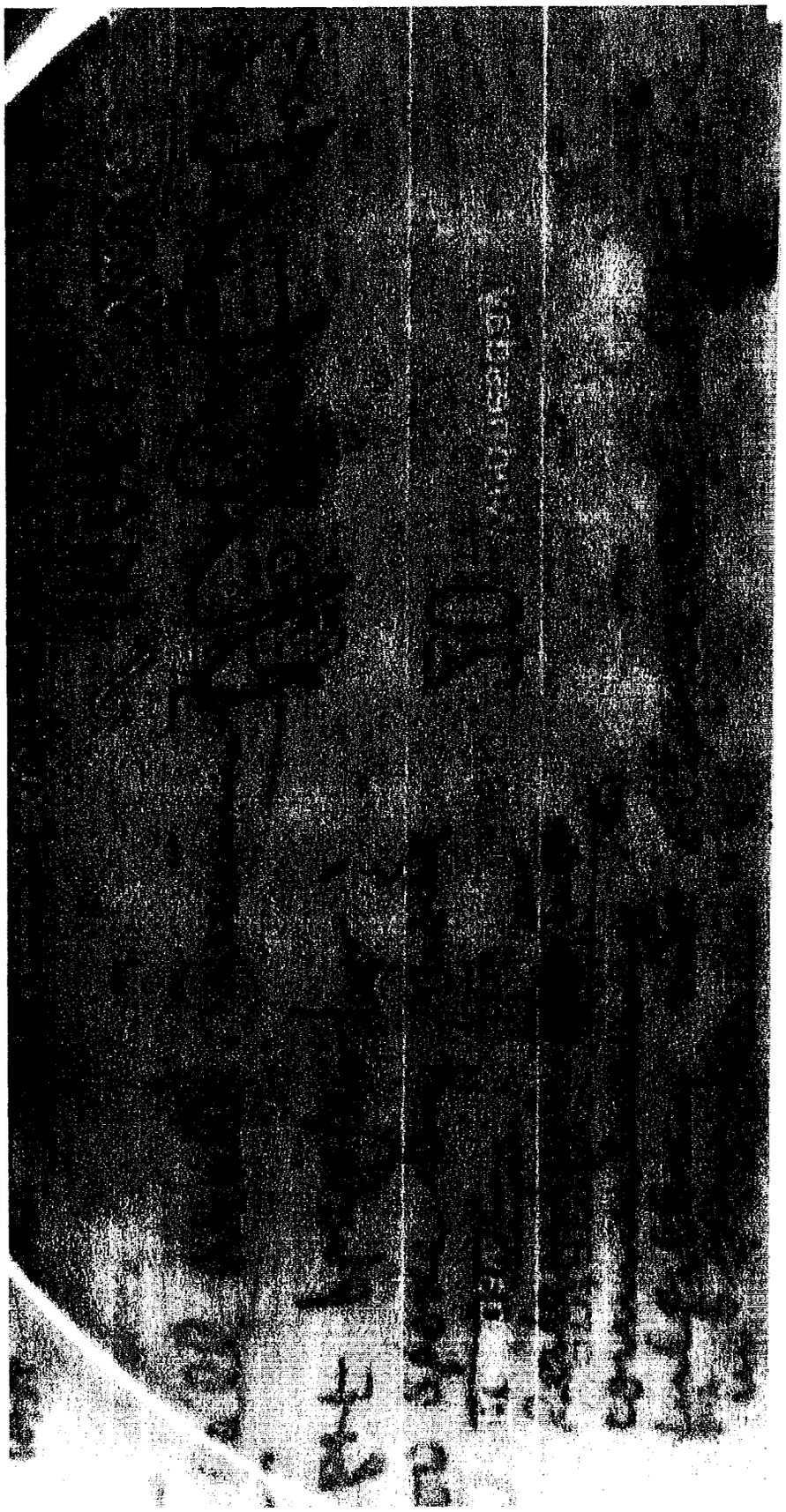
Call Niall Quinn

6.00 Spoke by phone to DOC.

Week 37	M	T	W	T	F	S	S
35					1	2	3
36	4	5	6	7	8	9	10
37	11	12	13	14	15	16	17
38	18	19	20	21	22	23	24
39	25	26	27	28	29	30	

8:36 AM 10/01/2008 Lights=Spot 515-590 (50), Longpass=628, Bandpass=OFF, Mag=9.29
Integration=1.4 Sec, Iris=50%, Gain=6dB, Brightne 50, Contrast=53, Imaged width =39.61 mm

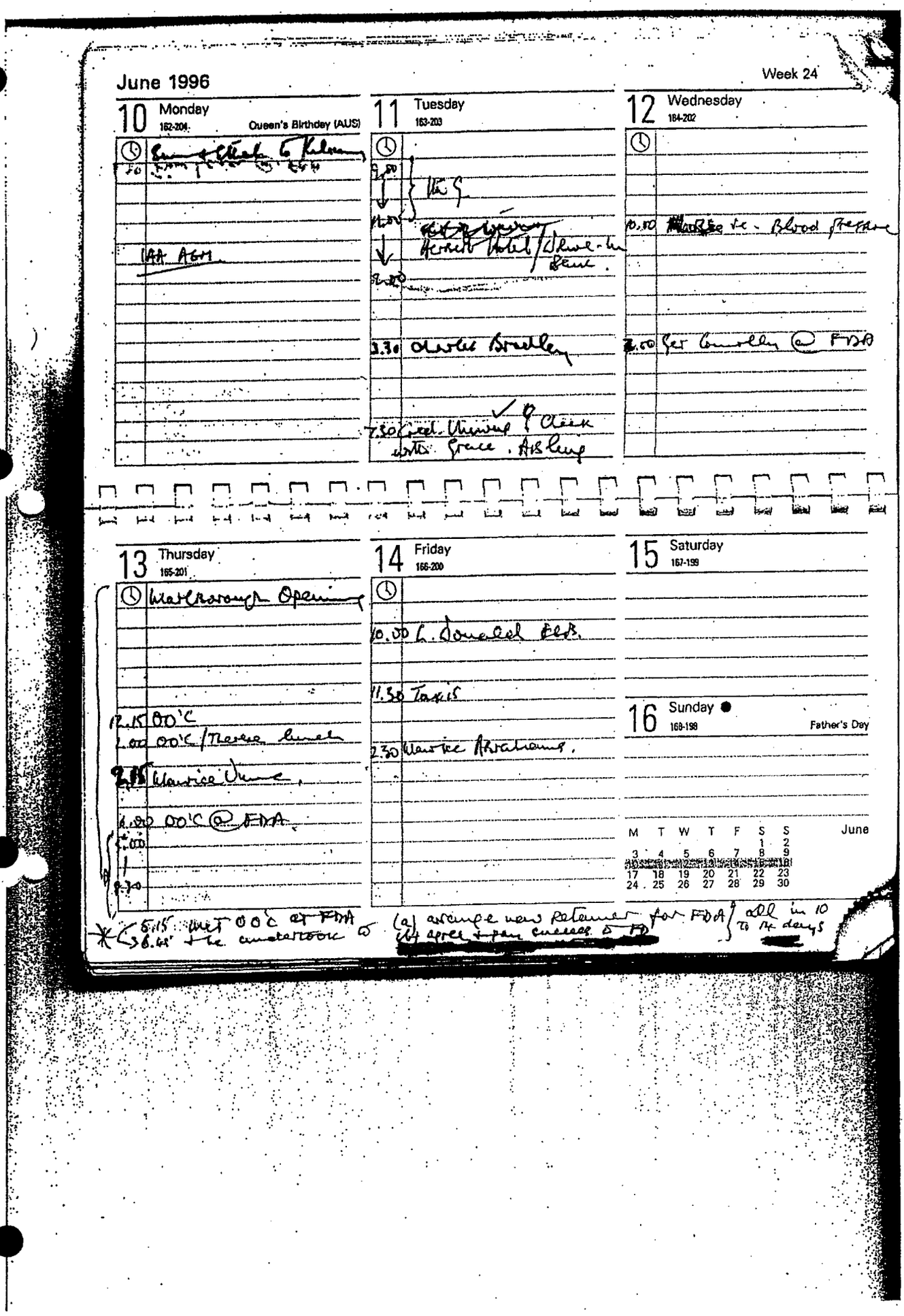
Tribunal Ref : QV II - Page : 25650



8:41 AM 10/01/2008 Lights=Spot 545-590 (38), Longpass=628, Bandpass=OFF, Mag=4.59
Integration=1/2, Iris=72%, Gain=12dB, Brightr =66, Contrast=79, Imaged width =80.17 mm

Tribunal Ref : QV II - Page : 25652

Return to report



June 1996 — Week 24

10 Monday 162-204 — Queen's Birthday (AUS)
IAA AGM

11 Tuesday 163-203
Herbert Hotel / Wkwl-la Bank.
Charles Bradley
Geel. Uni. Creek with Grace. Abseng

12 Wednesday 184-202
Get Connolly @ FDA

13 Thursday 165-201
Waterways Opening
12.15 DD'C
1.00 DD'C / Theresa lunch
Maurice Jones.
4.00 DD'C @ FDA.
5.15 Meet DD'C at FDA
6.45 the waterfront

14 Friday 166-200
10.00 L. Jones Ed. Ed.
11.30 Taxis
2.30 Maurice Abrahams.

15 Saturday 167-199

16 Sunday 168-198 — Father's Day

M T W T F S S — June
3 4 5 6 7 8 9
17 18 19 20 21 22 23
24 25 26 27 28 29 30

(a) arrange new Patterner for FDA } all in 10 to 14 days
(b) speak to Pam Cussens @ FD

AIB.SHEFRAN 1.3 - 57

Our Ref:JA/GF

3rd October 1996

FILE NOTE

Re: Frank Dunlop

Investments:

- Midland Bank Trust Ltd., St. Helier, Jersey / Xerxes Limited Stg.£75,000.
- RDC Deposits (Dunlop & Associates Limited) IR£72,510.
- 1,250 Irish Life Shares at IR£3,250 (at 2.60)
- 7,000 Greencore Shares (Shefran Limited) IR£49,700. (at 3.55)
- Ark Life Single Premium Bond No. B00351Q IR£17,963.
- Ark Life Savings Plan No. L17614B IR£11,167.
- Davy Hickey (City West Business Park) Stake Value c. IR£625k. (profit units) - IR£20,000. dividend paid 7/1996 (Shefran Limited)
- Rental Income Dunlop & Associates Limited IR£28,000. per annum.
- Rental Income Upstream Energy Services Limited / Outsource Energy Services Limited IR£4k per annum
- Rental Income Systemaction IR£6.2k per annum
- Rental Income Roantree, Solicitor IR£7k per annum
- Leasehold Interest 25 Upper Street vesting in Frank Dunlop held since 1991 for the unexpired portion of a 35 year lease from 1977 on a current annual rental of IR£28k subject 5 yearly reviews.
- 4 storey / attic over basement property with a 5 letting capacity !
- Greenside Properties Limited (completed housing development in Navan) IR£64,714. due 18/11/1996 .

AIB:SHEFRAN 1.3 - 58

Investment Deals in Course:

- Kennedy Row, Navan tax designated Shopping Complex - 4 Apartments/ 6 Retail Units all fully let and operational by Christmas - Anglo Irish Bank borrowing IR£250k - Developers Trimgate Investments Limited (Eamon Dignam, Cathal McCarthy, Des Richardson & Frank Dunlop value c. IR£300k x 4.

- Trimgate Street investments Limited - New Shopping Complex to commence - planning etc. already in place - completed value will be in line with Trimgate Investments Limited.

- Quarryvale Shopping Development in course / completion Christmas 1988 (Owen O'Callaghan Development) - IR£1m as owing to Frank Dunlop with IR£500k relating to back-up contract support and payable as follows:
  IR£200k October 1996
  IR£400k October 1997 (IR£300k contract support)
  IR£400k October 1998 (IR£200k contract support)

- 100 acres in Carrickmines - New Motorway to bisect the land - sewage and water already in place together with impending road network - land acquired by Jackson Way Properties and Frank Dunlop engaged by Miley & Miley Solicitors to have land rezoned for industrial usage with the purpose of developing a Business Development Park - rezoning should be in place in one year giving a return of IR£250k.

- Sold option in Baldoyle Racecourse to Sean Mulryan (Ballymore Homes) for IR£300k (IR£50k already paid with IR£10k due annually for five years + a then lump sum of IR£200k. - a residential zoning should be in place in 3 years.

Return to report

OC 4.07 - 240

FRANK DUNLOP

& A S S O C I A T E S

AF B+Co.

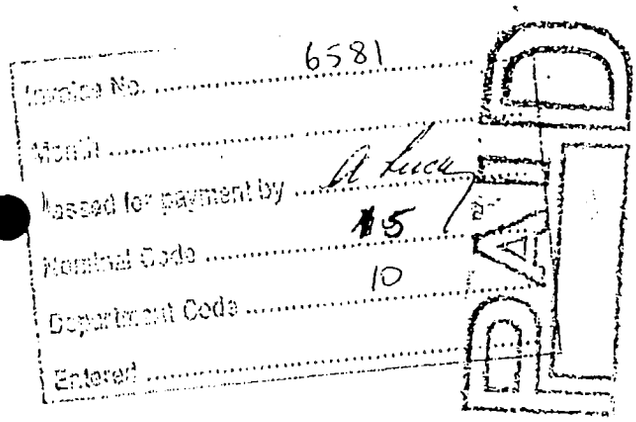
Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577

Riga Ltd.,
21-24 Lavitt's Quay,
Cork.

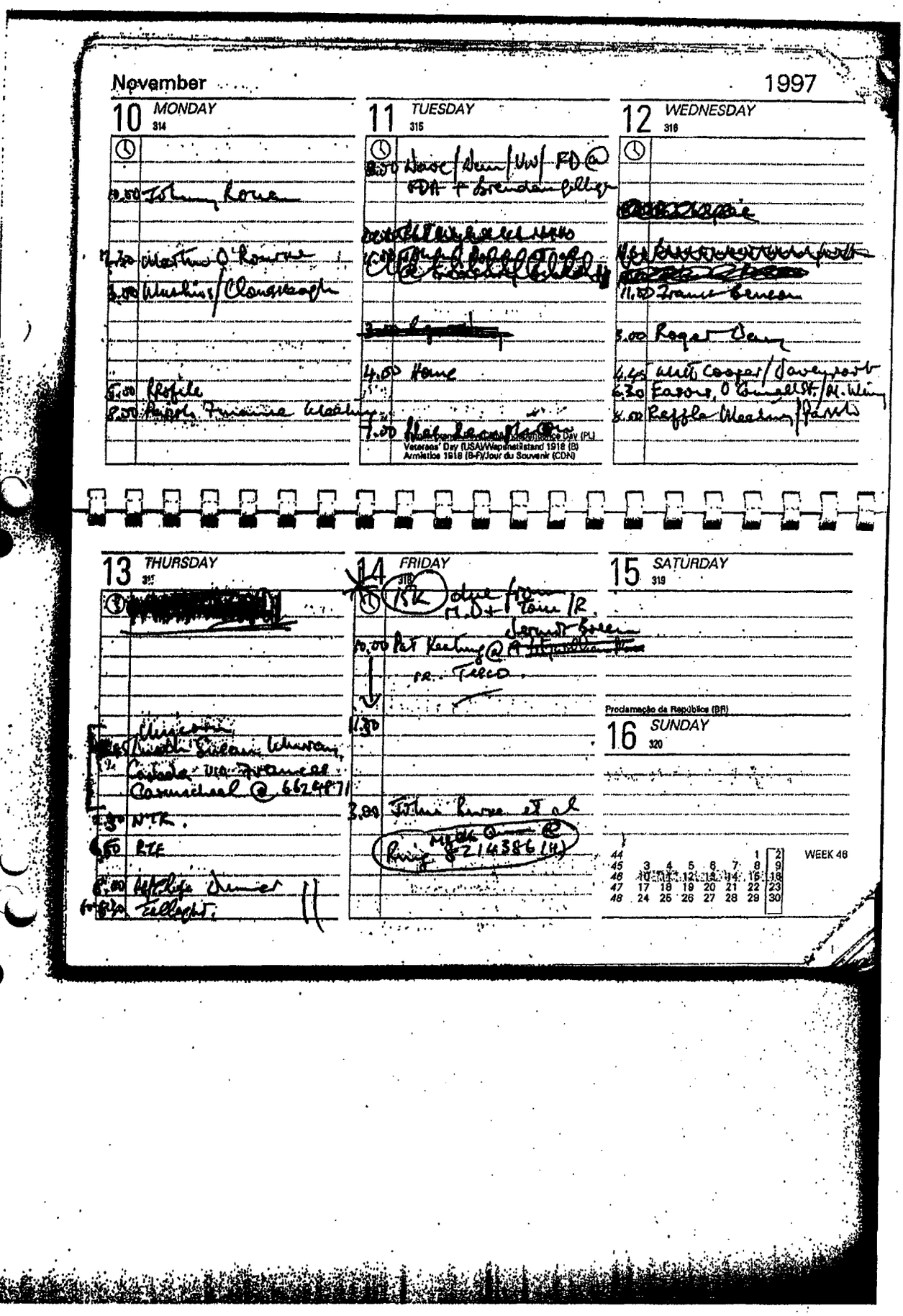
9th. January, 1997

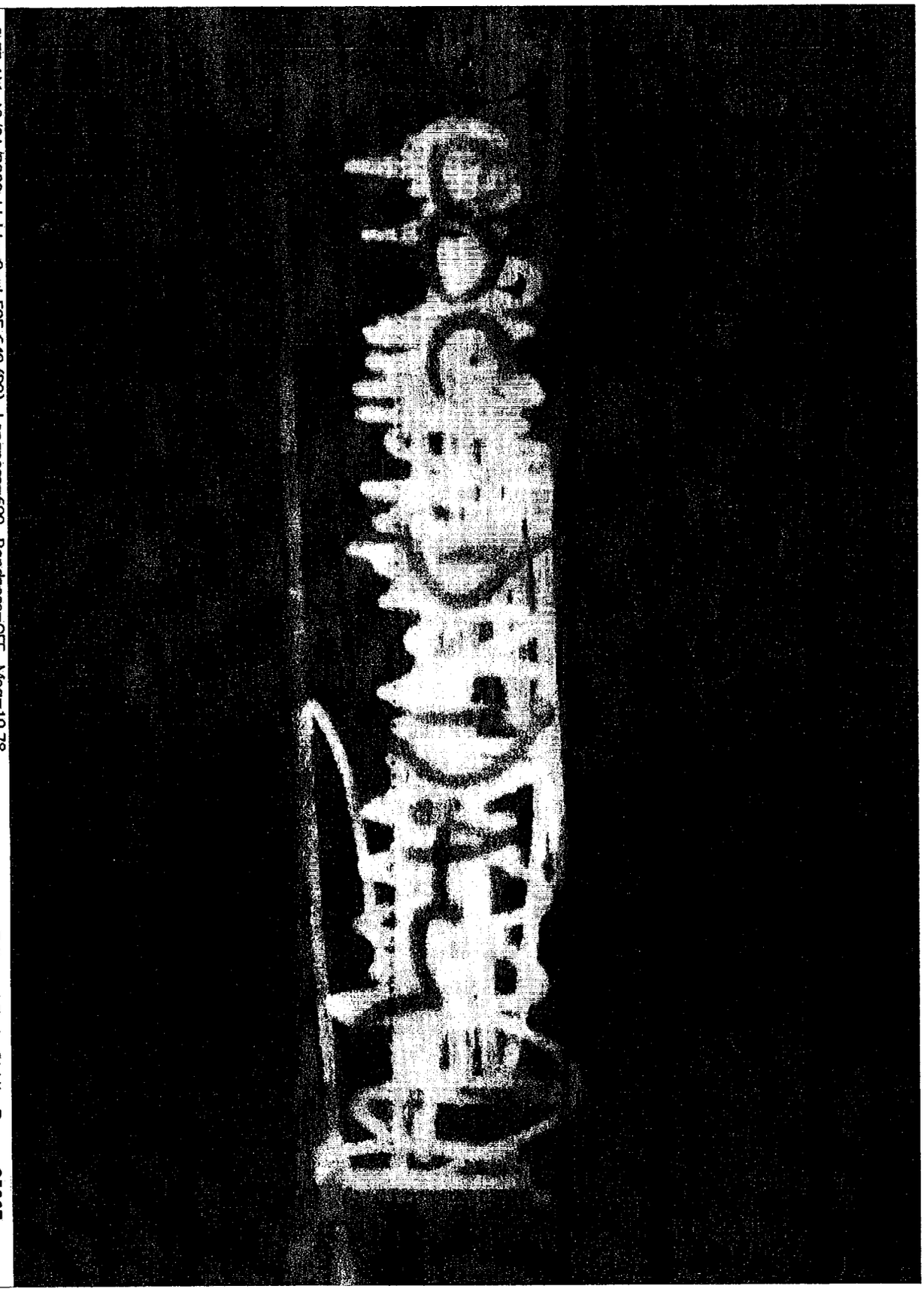
INVOICE NO.: 1592

To professional services rendered	£100,000
VAT @ 21%	£21,000
	£121,000



VAT NO.: 6547261I


November
1997
10 MONDAY 314
11 TUESDAY 315
12 WEDNESDAY 316
13 THURSDAY 317
14 FRIDAY 318
15 SATURDAY 319
16 SUNDAY 320
Veterans' Day (USA/Weapenstilstand 1918 (B)
Armistice 1918 (B-F)/Jour du Souvenir (CDN)
Proclamação da República (BR)
WEEK 46



Return to report

OC 4.07 - 243

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations
25 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577 • e-mail address: fdunlop@indigo.ie

RECEIVED 26 MAY 1998

Riga Ltd.,
21-24 Lavitt's Quay,
Cork.

22nd May, 1998

INVOICE NO.: 1879

To professional services rendered	£100,000
VAT @ 21%	£21,000
	£121,000

Invoice no. R7259

5360

PAID

VAT NO.: 6547261I

Return to report

May 1998 — Week 21

18 Monday 138-227 — Victoria Day (CDN)

Remember Dunster

11.00 Larry J @ ESB

6.30 Vincent Maguire @ County Club

8.20 church / Terence Cox

19 Tuesday 139-226

9.30 Timmy's

8.00 IHBA ✓

20 Wednesday 140-225

Spoke to ED. Agreed chq 10K on Tuesday + 40K later after he returns from holidays in Turk

11.50

7.30 CBS Kilgarvan ? Prize giving

21 Thursday 141-224 — Ascension Day (CDN)

King Des

10.00 Sam O'Connor @ Glebe Lane

1.45 John R.

3.00 Vincent Maguire + Pike. St. Anne's Hill Town

22 Friday 142-223

9.00 DC @ City Wax

ED's in office today & finalise matters as agreed on Wednesday. NO LOCK TO DESK WITH IT.

10.30 T. Roche @ NTR

11.00 Tax Repeal

12.30 [redacted] Donald + FD & Dad R.

3.30 Received chq. (Client Acc.) of 10K from Jack R. on behalf of E.D.'s. This leaves 4K on his return from Turk

23 Saturday 143-222

[redacted]

24 Sunday 144-221

May

M	T	W	T	F	S	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

OC 4.07 - 244

FRANK DUNLOP

& ASSOCIATES

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25 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577 • e-mail address: fdunlop@indigo.ie

RECEIVED 07 OCT 1998

Riga Ltd.,
21/24 Lavitts Quay,
Cork.

5th October, 1998.

INVOICE NO: 1961

To part payment of success fee in relation to extension of Liffey Valley development	£300,000.00
VAT @ 21%	63,000.00
	£363,000.00

PAID

Invoice No. R7432.
Month
Passed for payment by
Nominal Code 5360.
Department Code 9.
Entered

VAT NO.: 6547261I

Return to report

OC 4.07 - 246

RECEIVED 0 9 DEC 1998

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations
25 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577 • e-mail address: fdunlop@indigo.ie

Riga Ltd.,
21/24 Lavitts Quay,
Cork.

7th December, 1998.

INVOICE NO: 1996

To legal fees for period 1/11 - 30/11/98	£13,427.68
VAT @ 21%	2,819.81
	£16,247.49

Invoice No. R7575
5330.
1.

PAID

VAT NO.: 6547261I

Return to report

CHAPTER TWO – THE QUARRYVALE MODULE

PART 6: SECTION A - THE NEILSTOWN STADIUM AND RELATED MATTERS

INTRODUCTION

1.01 Between 1991 and 1998, the concept of the development of a sports stadium on the Neilstown/ Ballygaddy lands in Clondalkin in north Co. Dublin was actively considered and planned by Mr O'Callaghan and others. That concept was contemplated in three distinct and separate formats at different times within this eight-year period. These were, in approximate terms:

- 1991–2: a national football stadium
- 1992–4: an all-purpose national stadium
- 1997–8: a football stadium linked to Wimbledon Football Club

1.02 The option to purchase the Neilstown lands during the years 1991 to 1996 was held by a) Barkhill Ltd, whose shareholders were Mr Gilmartin and his wife (40 per cent), b) Riga Ltd (40 per cent) and c) AIB (20 per cent). However, there was no evidence to suggest that during this period Mr Gilmartin involved himself or was invited to involve himself in any shape or form with the stadium project.

1.03 Mr Gilmartin himself testified that he had no interest in the Neilstown lands beyond his endeavour in 1989 to acquire from Mr O'Callaghan/O'Callaghan Properties the option held by Merrygrove Ltd[1] to purchase the lands from Dublin Corporation, so as to ensure control of the Neilstown site while he progressed his plans for a town centre on Quarryvale. Mr O'Callaghan acknowledged that he had not involved Mr Gilmartin in his stadium plans although he agreed that, given the proposals he was formulating, via Leisure Ireland Ltd/Leisure West Ltd, for these lands between 1992 and 1994 in particular, he would have had to engage in due course with Mr Gilmartin and AIB, having regard to their respective 40 per cent and 20 per cent ownership of the Merrygrove Ltd option. Mr O'Callaghan maintained, however, that Mr Gilmartin was on occasion provided with some information in relation to the stadium project.

[1] On 31 January 1989, Mr Gilmartin had acquired from Mr O'Callaghan's company O'Callaghan (Properties) Limited, the Merrygrove option on the Neilstown lands from Dublin Corporation. Mr Gilmartin's purpose in doing so was to leave the way clear for the progress of his Quarryvale Town Centre project. Merrygrove Ltd applied for planning permission to develop a town centre on the Neilstown lands in December 1989. Mr O'Callaghan, in evidence, maintained, that the validity of Merrygrove Ltd's option agreement with Dublin Corporation required that such a planning permission application be lodged.

1.04 No stadium was in fact ever developed on the Neilstown site.

1.05 Mr O'Callaghan and Mr Dunlop told the Tribunal that the idea of building a stadium on the Neilstown lands came from Mr Lawlor. Mr O'Callaghan believed that Mr Lawlor in turn got the idea from a Government White Paper on the subject of the development of a national stadium in the Dublin region.[2]

1.06 Following the success of the 16 May 1991 motion to rezone the Quarryvale lands for a town centre, Mr O'Callaghan was anxious to identify an alternative use for the Neilstown lands (other than retail), in order to ensure confirmation, in due course, of the Quarryvale rezoning by countering opposition (both within and outside Dublin County Council) to the fact that the town centre zoning had been moved from Neilstown to Quarryvale. The success or otherwise of the 'moving' of the town centre zoning from Neilstown to Quarryvale depended on a suitable alternative use being promoted for the Neilstown lands.[3] Mr O'Callaghan was anxious to ensure that the knowledge of a stadium project as a replacement development for the Neilstown site was known to elected councillors by mid 1992, when the Quarryvale rezoning confirmation vote was expected to arise for consideration from within Dublin County Council. Mr Dunlop acknowledged that, after the 16 May 1991 successful Quarryvale vote, there was concern that some councillors would continue to lobby for Neilstown (which had been rezoned to E (industrial) on 16 May 1991) to have its town centre zoning reinstated.[4]

1.07 In December 1989, Mr O'Callaghan, via Merrygrove Ltd, applied for planning permission to develop the Neilstown lands as a town centre, a permission which issued in September 1990. Certain aspects of this planning permission were appealed by Merrygrove Ltd to An Bord Pleanála on 13 November 1990, and the oral hearing of that appeal was scheduled to be heard by An Bord Pleanála on 21 May 1991. On 20 May 1991 Ambrose Kelly Group Architects, on behalf of Mr O'Callaghan/Merrygrove, wrote to An Bord Pleanála,

[2] From late 1987/8 there was discussion at Cabinet level about the development of a national sports centre. At a certain point in time a site at the Custom House docks had been identified as suitable, but a decision was made ultimately not to proceed for financial reasons and the disposal of the site at the Custom House docks was duly done. This decision had been made by early 1992.

[3] There was considerable political controversy in West Dublin following the rezoning of Quarryvale as a town centre on 16 May 1991 particularly from John Corcoran of Green Property Plc who was in the process of constructing the Blanchardstown Town Centre. Mr Corcoran was lobbying hard for the reversal of the 16 May vote. Moreover, there was a serious risk that there would be political unrest among the population of Ronanstown/Neilstown and local politicians were concerned that they would have to explain why the town centre zoning for Neilstown, in place since 1983, had been moved.

[4] In December 1992 motions seeking this were brought before Dublin County Council and on 17 December 1992 the D (town centre) zoning was duly reattributed to the Neilstown lands but with an amendment to the written statement that would permit the development of a national stadium on the lands.

withdrawing Merrygrove Ltd's application for planning permission for a town centre on the Neilstown lands.

1.08 With the withdrawal of the planning permission application by Mr O'Callaghan/Merrygrove Ltd by letter of 20 May 1991, the way was left open for the progression of the plan to build a town centre on the newly rezoned Quarryvale lands and for Mr O'Callaghan to put into place an action plan for an alternative development (to retail development) on the Neilstown lands.

THE NATIONAL FOOTBALL STADIUM PROPOSAL

1.09 According to Mr Dunlop, at a meeting between himself, Mr O'Callaghan, Mr Kelly and Mr Lawlor shortly after the 16 May 1991 vote, Mr Lawlor put forward the proposal to build a football stadium on the Neilstown lands.

1.10 The first documented evidence of the existence of this project was a letter of 29 May 1991, written by Cllr Colm McGrath to Mr Frank Fahey, Minister of State for Sport. The concept of a national football stadium required liaison with the Football Association of Ireland (FAI). Mr O'Callaghan's correspondence with the FAI commenced in 1991. By October 1991, a presentation had been made to Mr Fahey in relation to the '*National Soccer Stadium'* proposal for North Clondalkin, and was followed by Mr O'Callaghan's letter to Mr Fahey of 4 November 1991. There was correspondence between Mr O'Callaghan and the FAI in November 1991, and it appeared that Mr O'Callaghan's proposals at this time involved a joint venture agreement to be entered into between the FAI and O'Callaghan Properties Ltd with regard to the development of a *'National Sports Stadium'*. At all relevant times the concept of a national football stadium envisaged Government support, direct or indirect, in order for it to be viable.

1.11 On 3 December 1991, the Ambrose Kelly Group, on behalf of O'Callaghan Properties Ltd, lodged a submission (in the course of the first statutory public display of the Draft Development Plan 1991) with Dublin County Council, proposing the development of a National Soccer Stadium on the Neilstown/Ballygaddy lands.[5] This submission was made in addition to the submission to maintain the D (town centre) zoning for the Quarryvale lands which had been achieved in May 1991.

1.12 In the course of his evidence, Mr Dunlop told the Tribunal that at the outset he regarded the stadium proposal as a mechanism merely to ensure that

[5] Mr Ambrose Kelly, at the direction of Mr O'Callaghan, having first sent the submission to Mr Lawlor for his comments.

the Quarryvale lands would remain zoned town centre, but that over time the idea of a stadium for the Neilstown lands gained momentum and that as a result there was a succession of meetings between Mr O'Callaghan and the Minister for Sport and the FAI. Mr Dunlop likewise described the initial progress of the stadium idea as a 'ruse' to aid the progression of the Quarryvale Town Centre zoning.

1.13 The Tribunal was satisfied, as a matter of probability, that at its inception the stadium proposal was regarded as merely a mechanism to ensure that the town centre zoning on the Quarryvale lands would remain intact. That this was the original thinking was evidenced to some extent by a letter written by Mr John Deane (Mr O'Callaghan's solicitor and business partner) to Mr Michael O'Farrell of AIB on 10 February 1993 wherein it was stated:

> *£250,000.00 has been spent in connection with the Stadium project for the old Neilstown site.*
>
> *By way of background to the expenditure you will recall that the Neilstown site was the original site zoned for the town centre. Part of the Quarryvale problem was to obtain the moving of the zoning from Neilstown to Quarryvale. The City Manager made it clear that he expected an alternative use to be found for the Neilstown site and that the site was not simply to be dumped and left there. With this in mind the Stadium project was conceived.*
>
> *However to make the project seem a real project and not just a mythical scheme, it was necessary to prepare detailed and substantial drawings to such a standard that would lead to a detailed Planning application. Furthermore, a working model with a sliding roof and moving floor was also prepared. International consultants in the leisure field were retained to vet the project and Deloitte & Touche Accountants were also retained to give a feasibility report for the entire project for the American financiers who were interested in providing the finance.*
>
> *The introduction to the financiers was made by the Taoiseach Albert Reynolds to Owen when the financiers were in Dublin to meet the Taoiseach who was then Minister for Finance. In order to establish credibility for the stadium project, it was necessary for the project to be seen as a viable workable project which would have the support of the Government, the FAI and other sporting organisations who may use the project. Considerable work was done in this regard and consultants employed to ensure that the project was presented in the best possible light as a credible project for the site.*

1.14 Interestingly, the letter went on to explain, *inter alia*, that the lodgement of a planning application for a stadium on the site would in effect

freeze or delay any other use for the site, or development in its immediate area. In the letter Mr Deane remarked: *'The consequence . . . is that the old Neilstown site is locked up for a number of years which will allow Quarryvale to progress without threat from the Neilstown site.'*

1.15 However, the Tribunal was satisfied that, while the concept of a stadium for the Neilstown lands might not initially have been viewed as a definite or realistic project by Mr O'Callaghan, his thinking in this regard appeared to have changed by early 1992.

1.16 On 13 February 1992, Mr O'Callaghan wrote to Mr Louis Kilcoyne of the FAI concerning the proposed *'Football Stadium'* and *inter alia* he advised Mr Kilcoyne that *'the present Political situation may be even more favourable to our proposal than the past'.* The Tribunal was satisfied that this was a reference to Mr Reynolds' election as Taoiseach.

1.17 It was clear to the Tribunal that Mr O'Callaghan's intention, in or about February 1992, with regard to the development (with the FAI) of a football stadium was that it would be developed with Government grant support. In the course of an oral submission made to Dublin County Council on 6 March 1992, a manuscript notation on a document provided by Mr O'Callaghan to a Council official referred to the likely cost of the proposed football stadium as IR£35 million, with a provision of IR£15 million from the Government.[6] Mr O'Callaghan agreed that it was probable that he had provided this information to the County Council on 6 March 1992. In the course of that submission Mr O'Callaghan advised:

> *'We are at an advanced stage in negotiations with the FAI, the relevant Government Departments and other interested parties in formulating a proposal to fund and provide a 40,000 all-seater National Football Stadium on the Ronanstown site.'*

1.18 A memorandum compiled by AIB on 18 March 1992, following a meeting with Mr O'Callaghan and Mr Deane, noted that:

> *In relation to the alternative site of Clondalkin, they are progressing the concept of a stadium and have produced a model. They believe that the stadium could be viable at a total cost of £32m and would be funded by £10m from the State, £10m from the sale of 10 year tickets and perhaps another £10m from private promoters. This would be 40,000 seating capacity.*

[6] The notation indicated that the balance of the funds was to be provided by the developer and the FAI.

1.19 On 18 March 1992, Mr Dunlop wrote to the Minister for Sport, Mr Liam Aylward, seeking to arrange a meeting between Mr O'Callaghan and the Minister. It was not clear if in fact such a meeting took place, but there was evidence of contact between the Minister's office and Mr Dunlop's office in relating to setting up a meeting.

1.20 The Tribunal considered it probable (and Mr O'Callaghan did not dispute) that by February/March 1992, Mr O'Callaghan had discussed the idea of a football stadium for the Neilstown lands with Mr Reynolds, including the requirement for Government financial support for the project.[7]

1.21 Mr O'Callaghan told the Tribunal that, while in the course of discussions he had with Mr Reynolds in February/March 1992, he had received no assurances from Mr Reynolds on the subject of state funding for a stadium, he recalled that there had nevertheless been a lot of goodwill towards the project from Mr Reynolds. Consequently, Mr O'Callaghan believed, in March 1992 that his proposal for a national football stadium would receive Government support.

THE *'ALL-PURPOSE NATIONAL STADIUM'* PROPOSAL

1.22 The Tribunal was satisfied that by late spring 1992, the concept of developing a national football stadium on the Neilstown lands had moved to a proposal for an *'All-Purpose National Stadium*'. It would appear that by spring 1992, Mr O'Callaghan's negotiations with the FAI had come to naught.[8] Mr O'Callaghan claimed that the national football stadium project *'didn't stack up financially'*, as the FAI did not have the funds available for investment in the project.

1.23 The idea of an '*All-Purpose National Stadium'* came about following contact between Mr O'Callaghan and Mr Bill O'Connor of Chilton & O'Connor, a Los Angeles based company which provided a finance facilitating service for major infrastructural and development projects.[9]

1.24 Mr O'Callaghan believed that his introduction to Chilton & O'Connor had come through either Mr Reynolds or Mr Lawlor, as he was advised by Mr O'Connor that Mr Reynolds was instrumental in effecting that introduction. At some stage in the early 1990s, Mr Lawlor's son, Mr Niall Lawlor became an employee of Chilton & O'Connor in Los Angeles. Mr Lawlor advised the Tribunal

[7] Mr Reynolds was elected Taoiseach on 11 February 1992.
[8] Participation by the FAI continued to be envisaged in the stadium's second inception.
[9] Chilton & O'Connor was a US firm with expertise in creating municipal bonds which would then be sold on the market.

that *'Bill O'Connor spear headed and coordinated the putting together at my request the financing proposal for the proposed National Soccer Stadium at Neilstown.'*

1.25 Evidence to the Tribunal established that the entity through which Mr O'Callaghan intended ultimately to progress his stadium proposal was Leisure Ireland Ltd/Leisure West Ltd, whose shareholding was to be held by Mr O'Callaghan, Mr Dunlop, Mr Lawlor and Mr Kelly, but with Mr Lawlor's interest to be held in trust.[10]

1.26 Government support for a stadium at Neilstown was clearly considered to have been a vital ingredient in the overall plan to construct an *'All-Purpose National Stadium'* on the Neilstown site. The Tribunal was satisfied that significant effort was invested, particularly by Mr Dunlop and Mr O'Callaghan, in cultivating contacts with Government Ministers in order to ensure that such support was forthcoming. The evidence indicated that, from early to mid 1992 onwards, Mr O'Callaghan was confident of Government support for the project and did on occasions indicate to interested parties that such support was assured.

1.27 The Tribunal was satisfied that as the year 1992 progressed, Mr O'Callaghan maintained high level Government contact in relation to the stadium issue, as did Mr Dunlop. Documentation available to the Tribunal indicated that Mr Dunlop was instrumental in arranging meetings (which he sometimes also attended) for Mr O'Callaghan[11] with senior political figures, including the Taoiseach Mr Reynolds, in relation to the proposed stadium project. Mr O'Callaghan, together with Mr Dunlop, met Mr Reynolds on 8 or 29 April 1992 in relation to the project. On 29 April 1992, prior to his meeting with the Taoiseach, Mr O'Callaghan apparently met with Mr Dunlop, Mr Kelly and Mr Lawlor[12] in Mr Dunlop's office.

1.28 Mr Dunlop's diary for 10 April 1992 recorded a meeting with Mr Ahern, then Minister for Finance, but Mr Dunlop did not believe that the meeting concerned the stadium proposal. Other individuals with whom meetings were arranged, and to whom information presentations were made, included Mr Liam Aylward, Minister for Sport, Mr Michael Smith, Minister for the Environment and Mr John Fitzgerald, Dublin City and County Manager. Mr Dunlop's office

[10] See elsewhere in the Report for the Tribunal's consideration of the proposed interest of these individuals in the stadium project.

[11] In his evidence Mr O'Callaghan acknowledged that, given his friendship with Mr Reynolds, he did not need Mr Dunlop to arrange contact with Mr Reynolds.

[12] See Chapter 2, Part 6, Section B, 'Big One' with regard to a proposed beneficial involvement of these four individuals in the *'All-Purpose National Stadium'* project.

telephone contact records and his diary for the period, in particular, between March and December 1992, indicated significant contact between senior Government figures (or their representatives) and Mr Dunlop (or his office), although not necessarily relating to the stadium project. In March 1992, Mr Dunlop's office telephone records noted telephone contact with Mr Aylward's office. In April 1992, Mr Dunlop's office telephone records indicated one telephone call from Mr Ahern's office (7 April), one telephone call from the Taoiseach's office (8 April) while his diary referred to two meetings with the Taoiseach (8 and 29 April), one meeting with Mr Ahern (10 April) and a reference to telephoning Mr Smith's private secretary, Mr Gerry Rice (28 April). Mr Dunlop's office records for May 1992 suggested telephone contact from the Taoiseach's office (four instances), Mr Ahern's office and Mr Aylward. In addition, Mr Dunlop's diary for May 1992 noted two meetings with the Taoiseach's office, and one meeting each with Mr Smith, Mr Aylward and Mr Ahern.

1.29 In July 1992, and again in August 1992, Mr Ahern's office contacted Mr Dunlop's office. In September 1992, Mr Dunlop's diary recorded meetings with Mr Ahern and the Taoiseach, Mr Reynolds and Mr Aylward, the Minister for Sport. Mr Dunlop also met Mr Ahern on 10 September. Telephone calls to Mr Dunlop's office in September 1992 were noted from Mr Rice, Mr Aylward and two from the Taoiseach's office. In November 1992, Mr Dunlop's office telephone records indicated that Mr Ahern telephoned on one occasion, while the Taoiseach's office sought to contact Mr Dunlop on one occasion. In December 1992, Mr Ahern again sought to make telephone contact with Mr Dunlop.

1.30 Mr O'Callaghan met Mr Smith, the Minister for the Environment, on 7 May 1992, a meeting at which the necessity for capital grants for the improvement of the road structure in the Neilstown area was likely to have been discussed. Mr O'Callaghan commented that he would not have been doing his job if he had not raised this topic with the Minister, but that this was not the purpose of the meeting.

1.31 The Tribunal was satisfied (and Mr O'Callaghan acknowledged in his evidence) that from about spring 1992, Mr O'Callaghan received assurances of political support from Mr Reynolds for the stadium project generally.

1.32 Mr Dunlop's diary for 30 April 1992 recorded a meeting between himself and Mr O'Connor of Chilton & O'Connor. In a fax message on 6 May 1992, compiled by Mr Barry Flannery of Trivo AG[13] for the attention of Mr Neal

[13] Trivo AG's proposed role in the stadium project was to finance it through the issuing of bonds.

Gunn of *'Houston Sports Association Inc'*,[14] reference was made to a meeting with Mr Reynolds. Mr Flannery's memo contained the following:

> *The present status of the project is that we had a meeting last week with Owen O'Callaghan of O'Callaghan Properties Ltd who is the owner of the Stadium site. He and Frank Dunlop had just come from a meeting with the Prime Minster Albert Reynolds where the support of the National Lottery for such a project was assured.*
>
> *The most important next step is to start on a feasibility study. I gave Owen O'Callaghan a copy of the submission by the Deloitte people. He is going to provide us with a copy of his own study—done by the local office but on the basis of a single-purpose Stadium i.e. solely for soccer. A lot of the demographic data etc. out of this report must be available, so it should only be a question of extrapolating this data to cover all the other aspects of a multi-purpose-Stadium. Your input on this matter would be appreciated and hence the desire on behalf of Frank Dunlop and Owen O'Callaghan to meet up with you.*
>
> *One of the main purposes of conducting the feasibility study is to be in a position, to present the officials at the Ministry of Sport with a number of alternatives, e.g. multi-purpose as opposed to single purpose, 40,000, 50,000, 70,000 seater and associated costs etc. As a rule of thumb one is using the figure of £1,000 construction cost per seat, would cost £40 million. The Holzmann people, however, indicated that the costs rise exponentially per seat once one gets above the 50,000 seat-level. Some input would be appreciated on this aspect.*

1.33 In his memorandum Mr Flannery also stated:

> *In conclusion I would say that the ball lies very much in O'Callaghan's court at the moment and it is up to him to make the next move. Political support at the projects seems to be there and according to Tom Keane and Bill O'Connor the project is readily advanceable once the support of the National Lottery is assured.*

1.34 The Tribunal was satisfied that Mr Flannery's belief as to the fact of support with National Lottery funds arose as a result of discussions he had with Mr Dunlop, or Mr O'Callaghan, or both.

1.35 On 4/5 May 1992, Mr Dunlop's office records indicated direct telephone contact from the offices of Mr Reynolds, Mr Ahern, the Minister for Finance, and Mr Lawlor. Mr Dunlop's diary suggested that there was probably a

[14] Houston Sports Association Inc. was a US company with experience in the building of stadiums; it had been introduced to the All-Purpose National Stadium project by Chilton & O'Connor.

meeting with Mr Reynolds on 14 May 1992. If the meeting occurred, Mr O'Callaghan probably attended.

1.36 As of 14 May 1992, Mr Gunn of Houston Sports Association Inc was of the view that there was political support for Mr O'Callaghan's stadium proposal, as he recorded, *inter alia*, in a memorandum of 14 May 1992: *'It seems to be good news that the support of the National Lottery is there. I guess we have to see if it becomes a reality.'* References in Mr Dunlop's office telephone records for mid May 1992 suggested the presence in Dublin of representatives of Chilton & O'Connor. On 21 May 1992 Mr Dunlop and Mr O'Callaghan met with Mr Aylward, Minister for Sport. Mr Dunlop's diary recorded a meeting with Mr Reynolds on 27 May 1992, but Mr Dunlop told the Tribunal that his meeting related to *'Citywest'.*[15]

1.37 In the course of his evidence Mr O'Callaghan maintained that the financial support he believed he was likely to receive, and which, he claimed, was indicated to him by Mr Reynolds (subject, according to Mr O'Callaghan, to the consent of the then Minister for Finance, Mr Ahern) was funding from the National Lottery. A memorandum compiled by Mr Reid, of the Ambrose Kelly Group, on 18 June 1992 stated:

> *It was confirmed that the financing package for the proposed development of the National Stadium was by means of municipal bonds raised by Chiltern O'Connor Incorporated. Under the terms of this agreement Heuston Sports Association Incorporated would be engaged to manage the facility and the Government would underwrite the shortfall in the day to day running of the facility on a per annum basis and this funding would come from lottery sources.*

1.38 In the course of his evidence, Mr O'Callaghan denied that he sought designated area tax status for the stadium project at any stage in his discussions with Mr Reynolds or senior Government Ministers. The Tribunal noted, however, that Mr Frank Bowen of Deloitte & Touche (who were commissioned to compile a feasibility study in relation to the stadium project) wrote as follows in a letter of 23 June 1992 to Mr O'Callaghan:

> *My colleague, Kieran Mulcahy and I were pleased to meet with you to discuss your proposals for the development of a multi purpose stadium in Clondalkin. I understand that your proposals have advanced to the point where you now wish to commission a preliminary market and financial feasibility study for the proposed stadium project. I further understand that you wish this study to be conducted without publicity and that we are to limit our contacts to certain key individuals whose input to the stadium*

[15] A development project in which Mr Dunlop had an interest.

could be significant. The full market study will now be conducted as Phase II of the assignment.

This engagement letter sets out our understanding of the project, our approach for the financial study, together with our proposed study team, timetable and fees.

Background

O'Callaghan Properties have been examining the feasibility of developing a major sports stadium in Clondalkin for some time. During the course of the evaluation, discussions have taken place with L.M.I Inc., who have been identified as potential managers of the proposed stadium, and with Chilton O'Connor Inc., investment bankers who are considering the viability of a US bond issue to fund the proposed stadium.

The Company's architect, Ambrose Kelly & Associates, have prepared preliminary designs for a stadium with a capacity for 40,000 seated spectators. The design proposals includes a retractable roof and floor which will add significantly to the number and range of events which the stadium is capable of holding.

The company has had discussions with the Department of Education who have indicated that a State Guarantee could be forthcoming to secure borrowing for the project, together with possible designated area tax status similar to the tax status granted to Tallaght to encourage investment. It is understood that to secure these incentives, any proposal would have to provide for the range of sports which it was intended would be catered for in the Department's National Indoor Sports Arena proposal, excluding the swimming pool. The stadium should also return to State ownership at some time in the future.

1.39 Deloitte & Touche reported the estimated cost of the project as IR£47.5 m.

1.40 The thrust of Mr O'Callaghan's evidence in relation to the issue of references to tax designation in the Deloitte & Touche documentation, was that such references were erroneous, and he denied having advised Mr Bowen at any stage that tax designation status might be forthcoming to the project. The Tribunal rejected Mr O'Callaghan's evidence in this regard, particularly in light of the fact that the error (on Mr Bowen's part) was not rectified by Mr O'Callaghan in his letter to Mr Bowen of 26 June 1992, nor indeed at any point thereafter when Deloitte & Touche made reference to the issue of tax designation. In August 1992, Deloitte & Touche issued their preliminary feasibility report with regard to the stadium project. The report made reference to possible state support being made available by *'a direct payment'* from *'the National Lottery'* and went on to state that *'An alternative approach would be for the Government*

to grant Designated Area Tax Status to the proposed Stadium site on a similar basis to the Temple Bar area.'

1.41 The Tribunal was satisfied (as is evident from matters set out elsewhere in this chapter) that at all relevant times while the *'All-Purpose National Stadium'* project was being promoted at Governmental level, Mr O'Callaghan made the case for Designated Area tax status for the project. On 25 September 1992, Deloitte & Touche were certainly of this view when, under the heading *'Clondalkin Stadium proposals'*, they wrote to Mr O'Callaghan as follows:

> *From our discussion, I understand that the present position regarding Government support for the project may be summarised as follows:*
>
> - *A grant of £3 to £4 million per annum for 10 years from the National Lottery towards the cost of developing the Stadium.*
> - *A State guarantee will not be forthcoming to secure the balance of the funding required to develop the Stadium.*
> - *During previous discussions with the Government, it was indicated that Designated Area tax status would be granted to the proposed Stadium site. While this was not discussed specifically at your recent meeting, you believe that this is still the position.*
> - *The level of National Lottery and Government support indicates that the Stadium is not to be transferred to State ownership at some time in the future.*

1.42 Similarly to Mr O'Callaghan, Mr Dunlop professed not to have any recollection of the issue of tax designation for the stadium proposal having been discussed.

1.43 However, Mr Deane's evidence to the Tribunal suggested that tax designation status for the stadium project was pursued and discussed. Mr Deane told the Tribunal that at the time it was felt that tax designation status would be difficult to obtain. The Tribunal also noted the contents of a statement provided by Mr Reynolds (who did not give evidence to the Tribunal on the issue[16]) wherein, although professing to have no specific recollection of receiving representations from Mr O'Callaghan, he suggested that any representation that he might have received would have been, most likely, about tax designation.

[16] On 30 July 2008, Mr Reynolds was determined by the Tribunal to be medically unfit to give evidence. Prior to that date, on Days 478 and 633, Mr Reynolds had given evidence, and was due to be recalled as a witness.

1.44 Mr O'Callaghan, Mr Dunlop, Mr Kelly and Mr Lawlor met on 28 May 1992, following which Mr O'Callaghan wrote to Mr Dunlop under the heading *'Action to be taken on Stadium after our meeting on 28th last.'*[17]

1.45 Mr O'Callaghan directed as follows:

1. *AFK to proceed with outline permission and to be in a position to lodge by mid July.*
2. *FD to get as much information as possible from Minister.*
3. *We meet Kieran Mulcahy at 10:30am in Mount Street on Thursday 4th June to progress Feasibility.*
4. *While Feasibility is being undertaken, we arrange to meet Flannery—Neal, etc., and update them with a view to using their names when the Project is officially announced and to get a feel from them as to what involvement they see themselves having in the project and where we come in.*
5. *When Feasibility is completed we meet again with Neal, etc., and tell them what involvement we require in the project.*
6. *Our involvement to include the group of four who met and discussed this at 6:30pm on Thursday 28th May.*
7. *To ensure that the opposition does not get an opportunity to play down the Project we must do the following:*
   (a) FAI – FD – AFK and OO'C meet Connolly on 10th June. AFK to ensure that this meeting takes place.
   (b) FD at the appropriate time to brief Minister and Government Press Office.
   (c) FD to have 'suitable' press release with Houston Sports and Leisure Management etc., to the fore and O'CP somewhere in the background.
   (d) Inform in advance selected Councillors.
8. *AFK and FD to meet DS regarding additional land.*

   P.S. Quarryvale

   We meet as many Councillors as we can on Wednesday and Thursday afternoon.

   We must ensure at all costs that our zoning decision does not come up until September.

   c.c. AFK

1.46 With regard to item 6 *'Our involvement to include the group of four who met and discussed this at 6:30pm on Thursday 28th May'*, the evidence established that this referred to the proposal which, the Tribunal was satisfied,

[17] This document came to the Tribunal from discovery by Mr Lawlor—it was not discovered by either Mr O'Callaghan or Mr Dunlop.

was being mooted by mid 1992, whereby Mr O'Callaghan, Mr Dunlop, Mr Lawlor and Mr Kelly intended, via the corporate entity Leisure Ireland Ltd/Leisure West Ltd, would acquire the Neilstown lands on which the *'All-Purpose National Stadium'* was to be built, with a view to these lands passing into their ownership prior to any agreement being entered into at national level regarding the stadium.

1.47 Mr Dunlop's diary for 3 June 1992, recorded a meeting with Mr Kelly, Mr Lawlor and Mr O'Callaghan, at which the proposed involvement of Mr Dunlop, Mr Kelly and Mr Lawlor in the stadium project was likely to have been discussed.

1.48 Prior to furnishing his un-redacted diaries to the Tribunal, Mr Dunlop attempted to conceal the reference to Mr Lawlor's attendance at this meeting.[18] When Mr Dunlop furnished his redacted diaries to the Tribunal in July 1999 and April 2000, in purported compliance with the Tribunal's request that he disclose all diary entries relevant to Quarryvale relative to specific periods of time, he also failed to disclose diary entries in relation to his meetings in the period 1991 to 1993 with politicians, including Mr Reynolds, Mr Ahern and Mr Flynn. Mr Dunlop's initial discovery to the Tribunal of his redacted diaries likewise failed (save in one instance) to disclose diary entries relating to meetings he had with Mr Lawlor, either alone or with others. Mr Dunlop did discover diary entries relating to the stadium project generally, including meetings he had with Mr O'Callaghan and Mr Kelly. Subsequently, when his un-redacted diaries were furnished to the Tribunal in 2001, the extent of his contact with senior political figures became evident.

1.49 The Tribunal was satisfied that Mr Dunlop's failure, in July 1999 and April 2000, to disclose diary entries relating to such meetings with senior political figures which concerned, in part at least, the stadium project was a deliberate act on his part to conceal this information from the Tribunal.

1.50 Mr Dunlop's diary for 15 June 1992 suggested that Mr Bill O'Connor was in Ireland at that time in connection with the stadium project.

1.51 On 3 July 1992, Mr O'Callaghan wrote to Mr Flannery (and faxed a copy to Mr Lawlor) with regard to the stadium project advising him, *inter alia*, that *'The Minister for Sport and the Taoiseach himself are both anxious that we proceed with haste, and indeed we find ourselves under some pressure to perform.'*

[18] See the Chapter Fifteen entitled 'Frank Dunlop' in relation to Mr Dunlop's deliberate obliteration of information recorded in his diaries.

1.52 In his letter, Mr O'Callaghan noted Mr Flannery and Mr Gunn's concern for a meeting with him, Mr Dunlop, Mr Kelly and Mr Lawlor in mid July 1992. Mr O'Callaghan also advised that he had appointed Mr Dunlop as coordinator for the stadium project. In his evidence, Mr O'Callaghan acknowledged having met with Mr Reynolds prior to sending this letter to Mr Flannery, but denied that he had come under any pressure from Mr Reynolds to progress the project.

1.53 The meeting with Mr Flannery and others, anticipated in Mr O'Callaghan's 3 July 1992 letter, duly took place on 21 July 1992. In advance of that meeting Mr Kelly prepared an agenda with the following items for discussion:

(*a) Owners of Site*
(b) Stadium Management Agreements
(c) Design Technology and Architects
(d) Board of Management
(e) Legal Stadium Owners.
Other business.

1.54 The Tribunal had sight of the minutes of the meeting of 21 July 1992 from Mr Lawlor's discovery.[19] Attendees at the meeting included Mr Dunlop (described as Chairman), Mr Owen O'Callaghan (MD, O'Callaghan Properties Ltd), Mr Flannery, Mr Kelly and members of his staff, Mr Lawlor, Mr Bowen of Deloitte & Touche and other members of that firm, Mr Gunn, and other individuals involved in the proposals to finance the project. The minutes recorded that the purpose of the meeting was *'a) to identify with one another; b) to establish the necessary synergies for the speedy implementation of the project.'*

1.55 Mr O'Callaghan was recorded in the minutes as apprising those present that:

> *Meetings had already taken place on the matter at the highest levels of Government and there was now an urgent requirement for progress. Top level secret discussions have also taken place with the national soccer authority (FAI) and potential end-users such as entertainment organisers. Discreet contacts have also been established with the planning authorities.*
>
> *To underline his commitment to the project Mr O'Callaghan told the meeting that it was his intention to lodge for planning permission for a Stadium on the North Clondalkin site in early September '92.*

[19] Neither Mr Dunlop nor Mr O'Callaghan made discovery of this document.

1.56 Mr Kelly updated the meeting on the design plans for the stadium and copies of a Deloitte & Touche document were distributed. Mr Lawlor was recorded as giving *'an overview of the West Dublin area from a socio-economic and planning viewpoint.'* He was also recorded as giving:

> *...a presentation of the infrastructural developments in the West Dublin area over the past 4/5 years with specific reference to the road network and the proposed rail link for North Clondalkin. He also indicated that the present Government was enthusiastic about the provision of a Stadium and this was indicated by the feasibility study undertaken two years ago for a location in the Custom House Docks area of the City. This location proved unviable and the requirement for an alternative site remains. He stated that in his view the North Clondalkin site was ideal and would receive the approval of both Government and Local Authority.*

1.57 The '*Preliminary Feasibility Report*', prepared by Deloitte & Touche, appeared to have been issued to Mr O'Callaghan in August 1992. It provided under the heading *'TAXATION INCENTIVES AND NATIONAL LOTTERY FUNDING' inter alia*, as follows:

> *Based on the preliminary market and financial feasibility study, the proposed National Stadium could generate an operating surplus of approximately £.255m per annum before debt service costs.*
>
> *If the development costs of IR£50m.were 100% debt financed through a 30 year commercial mortgage at 9%, the annual repayment would be £4.867m. The annual cash deficit, net of the operating surplus required to meet the annual mortgage payment, would be IR£4.612m.*
>
> *The Developer would need a contribution from the State of IR£4.612m. per annum over the term of the mortgage to undertake the development of the Stadium. This contribution could be made by a direct payment of this amount from the National Lottery.*
>
> *An alternative approach would be for the Government to grant Designated Area Tax Status to the proposed Stadium site on a similar basis to the Temple Bar area. This would allow the Developer to seek an investor to utilise the taxation allowance and reduce the amount of the development cost to be funded on a long term mortgage. The Developer would still require a contribution from the National Lottery to meet the annual mortgage payment.*
>
> *For the purposes of illustration, if the Developer was able to secure an investor for the capital allowance with a 40% Corporation Tax rate, the allowances would have a value of IR£20m.*
>
> *An investor would discount the value of IR£20m. in allowances to a lesser figure to allow for interest until it was in a position to utilise the allowances and a return on its investment. For the purposes of this*

illustration, we have assumed that an investor would be prepared to pay IR£17m. This would have the effect of reducing the net investment to be funded by long term mortgage to IR£33m.

A mortgage for £33m. over 30 years at 9% would be IR£3.212m per annum. On the basis of an operating surplus of £255m before interest costs, the annual subsidy required from the Lottery to meet the annual mortgage payment would be reduced to IR£2.957m.

It is the Developer's intention that in return for the requested level of Government assistance, the proposed National Stadium would return to State ownership at an agreed future date.

1.58 A meeting appeared to have taken place on 13 August 1992 between Mr Dunlop, Mr O'Callaghan, Mr Kelly and Mr Lawlor. It was likely to have concentrated, in part, on the stadium plans and the proposed involvement of all four in that project.

1.59 Following what the Tribunal believed was an intensive lobbying campaign at senior Government level, the proposal to build an *'All-Purpose National Stadium'* was launched in public on 10 September 1992. An Irish Times article made reference to the Taoiseach, Mr Reynolds, as being reportedly *'very positive'* about the project. A letter written by Mr Dunlop to the Secretary of the Department of the Taoiseach on 11 September 1992, suggested that on 9 September 1992, Mr Reynolds was briefed on the stadium project at Government Buildings by Mr Dunlop and Mr O'Callaghan. Mr Dunlop believed that the question of state funding for the stadium was discussed, although he did not believe that the issue of tax designation formed part of that discussion. Mr Dunlop acknowledged, however, that the stadium project would not have been launched in September 1992, in the absence of encouragement from senior figures at Government level that state financial support for the scheme was forthcoming. Mr Dunlop met Mr Ahern on 10 September 1992[20]. Mr Ahern told the Tribunal that this meeting was concerned with National Toll Roads, and he acknowledged the possibility that Mr Dunlop may have mentioned the stadium project.

1.60 On 14 October 1992, Mr Dunlop, Mr O'Callaghan, Mr Lawlor, Mr Kelly and Mr Deane met and probably discussed the stadium project and the proposed beneficial interest of Messrs Dunlop, Lawlor and Kelly in the venture.

1.61 Application for planning permission for the stadium project was made to Dublin County Council on 19 October 1992 by Merrygrove Ltd. On 17

[20] Mr Ahern's diary for 4 September 1992 also recorded a meeting with Mr Dunlop.

November 1992 (in the course of the general election campaign), Mr O'Callaghan, under cover of a letter to Mr Reynolds, made an election contribution of IR£5,000 to Fianna Fáil.[21]

1.62 Following the General Election of 25 November 1992, the Fianna Fáil/Labour Programme for Government included a capital project to *'support the building of an indoor National Sports Stadium'*, although no particular location for the stadium was identified.

1.63 The Tribunal was satisfied that the progress of the *'All-Purpose National Stadium'* proposal by December 1992 was such, that one of its initial objectives (i.e. to have in place a viable alternative use (to retail development) for the Neilstown lands, by the time the second Quarryvale vote arose for consideration by the County Council on 17 December 1992) had been achieved. The Tribunal was further satisfied that the existence of a stadium proposal in all probability played a part in persuading councillors (who might otherwise not have supported Quarryvale) to support the confirmation of a town centre type zoning on the Quarryvale lands, albeit scaled back to a permitted retail use of 250,000 square feet.

1.64 Contact regarding the stadium project at senior political level by Mr Dunlop and Mr O'Callaghan continued throughout 1993. Mr O'Callaghan wrote to Mr Reynolds on 28 January 1993 as follows:

> *Dear Taoiseach,*
>
> *Hope you are keeping well.*
>
> *Frank Dunlop told me you were enquiring about the National Stadium and asked me to contact you.*
>
> *We have run into some difficulties, short-term I hope, with the Roads Department of Dublin County Council. The Traffic Engineers are concerned with the road network leading to the Stadium site.*
>
> *When we discussed the Stadium with them originally they did not see any problem. However, when we made a detailed Planning Application, this concern arose.*
>
> *I am in contact with them daily and, in fairness to them, they are trying to solve the problem. Both themselves and the Planners are very enthusiastic about the project. I should know where I stand in the next 3 weeks, and will then explain the situation to you, if you can spare me 15 or 20 minutes. I will ring your secretary to make an appointment.*

[21] This letter is considered in greater detail elsewhere in the Report.

1.65 By 12 February 1993, Mr O'Callaghan was in a position to advise Mr Bowen of Deloitte & Touche as follows:

> *The Taoiseach has now got himself directly involved in this and at the opening of the national Basketball Stadium recently, announced that the Stadium would commence in the near future, and publicly asked the County Manager to speed up the Planning Process. This of course has caused all kinds of problems resulting in me having to meet the County Manager on Wednesday 24th of February and report back to the Taoiseach thereafter. The Minister for the Environment has also been asked by the Taoiseach to report to him on the project.*
>
> *I have also spoken to the Taoiseach in the past few days and he has repeated to me his support for the project.*

1.66 In the same communication Mr O'Callaghan stated that:

> *Overall I am reasonably confident that the project will proceed. There is a very strong will and commitment for it to proceed, and as you know, it is in the Government's 'Programme for Government' a fact that the Taoiseach has mentioned to me on a number of occasions*.

1.67 Mr Reynolds' diary for 5 March 1993, recorded a meeting with Mr Dunlop, and it was likely that Mr Dunlop used the occasion to raise the stadium project with Mr Reynolds.

1.68 It was apparent to the Tribunal that, by mid 1993, the issue of how the *'All-Purpose National Stadium'* would be funded continued to be a matter of discussion as between Mr O'Callaghan and his advisors, Deloitte & Touche. On 17 June 1993, in response to a request from Mr O'Callaghan concerning the level of funding which would be required from the Government in order to proceed with the sports stadium, as well as the manner in which the Government could make such funding available, Deloitte & Touche informed Mr O'Callaghan, *inter alia*, that the possible sources of Government funding would be EC Structural Fund grants, National Lottery grants and Designated Area tax status.

1.69 The decision to grant planning permission for the stadium was made on 23 August 1993, and the permission was granted on 7 October 1993.

1.70 In a letter written by Mr Dunlop to his solicitors, Arthur Cox[22] on 6 September 1993 Mr Dunlop referred to *'strong backing'* from the Government for the stadium project.

[22] See Chapter 2, Part 6, Section B, 'Big One'

On 10 September 1993, a memorandum prepared by Mr Dunlop's solicitors recorded that the project had a Government commitment of IR£5m for ten years with funding to come, it appeared, from the National Lottery. While Mr Dunlop disputed the accuracy of that record, the Tribunal was satisfied that it indeed accurately recorded what Mr Dunlop had advised his solicitors Arthur Cox, at the time.

1.71 On 7 September 1993, Mr Kevin Burke, Senior Vice President of Chilton & O'Connor Inc wrote to a potential investor in the stadium project as follows:

> *The Stadium was permitted and the site approved by the Dublin Council on August 24. We have been formally retained by the developer to senior manager this transaction. The Taoiseach (Prime Minister) Mr Reynolds, was recently in our offices here in Los Angeles and we are very confident that the level of support which the Republic of Ireland has committed will create a very attractive security*.

1.72 Detail made available to the Tribunal regarding the timing of Mr Reynolds' visit to Chilton & O'Connor indicated that it took place in March 1993. Mr Dunlop stated in evidence that he knew that Mr Reynolds had met with Mr Bill O'Connor in the US. On 4 March 1993, Mr Niall Lawlor, at the behest of Chilton & O'Connor, had communicated with the Irish Consulate in Los Angeles for the purpose of adding Mr O'Connor's name to the guest list for a reception to be hosted for Mr Reynolds.

1.73 A memorandum compiled by Mr O'Farrell of AIB on 16 September 1993 made reference, *inter alia*, to Mr Deane having *'indicated that Owen has been in discussions with the Taoiseach and the Minister for Finance in relation to same'* (the national stadium). Mr O'Farrell also noted Mr Deane relaying the following:

> *It could be that the State would be willing to inject a IR£5 million annual subvention to the project on a running cost basis. Based on projections, they believe that the final debt excluding the above subvention, could be around IR£12m. There (sic)strategy remains not to get directly involved in same but if something is going to happen to ensure that they can get some kind of a project manager fee or a finders fee out of same.*

1.74 In the course of his evidence, Mr Deane disputed the accuracy of Mr O'Farrell's note insofar as it recorded that Mr Deane had advised AIB that Mr O'Callaghan had been talking to Mr Ahern in 1993 about the stadium project.

1.75 The Tribunal was satisfied that for the most part, throughout the period 1992 to 1994, Mr O'Callaghan concentrated on lobbying Mr Reynolds to support the stadium project, while Mr Dunlop concentrated on lobbying Mr Ahern. A memorandum compiled by Arthur Cox, Mr Dunlop's solicitors, dated 6 October 1993, referred to envisaged contact with Mr Reynolds and Mr Ahern. It read:

> *I confirm that I spoke with Frank Dunlop on the phone on a number of occasions over the last couple of weeks. A meeting was scheduled to take place yesterday 5th October 1993 with Albert Reynolds in relation to the project but I understand that the meeting was cancelled. A meeting has now been scheduled for 8th October 1993 with Bertie Aherne and further meetings are planned with Albert Reynolds, and the Minister for Sport later next week. Frank Dunlop said he will contact me late next week for the purposes of updating us on how matters are progressing.*

1.76 No meeting apparently took place with Mr Ahern at that time. Mr Ahern maintained to the Tribunal that his knowledge of Mr O'Callaghan's stadium proposal as of October 1993 was limited to what was in the public domain, save that he conceded that the matter could have been mentioned at Cabinet.

1.77 On 28 October 1993, Mr Dunlop met with Mr Ahern. The meeting was recorded thus in Mr Dunlop's diary: *'Call to see BA'*. Mr Dunlop accepted that the stadium project was possibly discussed by him at that meeting. Mr Dunlop's diary for November/December 1993 recorded at least two further meetings with Mr Ahern and an attendance by Mr Dunlop on 15 December 1993 at *'Bertie's reception.'*

1.78 It appeared that Mr Dunlop had lobbied Mr Ahern about the issue from the content of his letter to Mr Ahern of 1 December 1993, which was in the following terms:

> *Dear Minister,*
>
> *You will recall that I spoke to you recently with regard to the proposed National All-Purpose Stadium at Neilstown, Clondalkin, Dublin 22.*
>
> *To avoid adding to the pressures on your schedule by seeking to arrange a meeting with Owen O'Callaghan and myself I have collated the relevant material on the matter for your personal perusal.*
>
> *Included in the documentation is a Deloitte & Touche 'Market & Financial Feasibility Study' commissioned by Owen O'Callaghan with regard to Stadium support options. The relevant sections are at page 1 to 4 inclusive.*
>
> *Obviously, when your time permits Owen O'Callaghan and myself would greatly appreciate a meeting to discuss the matter in greater detail.*

Meanwhile if there is any further information you require in this matter please don't hesitate to call me.

1.79 Commenting on this reference to Mr Dunlop having spoken to him *'recently'* with regard to the stadium, Mr Ahern told the Tribunal:

'I'd say all that was when he was in on other things he might have mentioned he was going to send in this feasibility study, but in fact the feasibility study went into the department during December 1993, and the note that was done in the department, the one I referred to earlier, which was dated by Mr O'Sullivan, who was the relevant official, was the 23rd December 1993.'

1.80 However, the Tribunal was satisfied that in the period immediately prior to 1 December 1993, Mr Dunlop and Mr Ahern discussed the stadium project.

1.81 Asked why he had not made reference in his statements to the Tribunal to contact with, or from Mr Dunlop in relation to the stadium issue in 1993, Mr Ahern stated:

'My diary shows I had no meeting with Mr Dunlop on that issue in 1993, despite what that letter says, and based on the Department of Finance. It also shows while he was offering a meeting with Mr O'Callaghan about the stadium at that time I didn't take up that meeting, I didn't have the meeting. And the document that was sent in, like thousands of other documents, would have went to the officials of the department and they did a note on the document, so I mean I wouldn't—if you are asking when I was doing my first issue, that I remember every document that was put in, I remember the issues where it was recorded in my diaries where I had meetings with Mr O'Callaghan and Mr Dunlop and that meeting was a meeting that took place in October 1994.'

1.82 The enclosure with Mr Dunlop's 1 December 1993 letter to Mr Ahern, was probably a document compiled for Mr O'Callaghan by Deloitte & Touche in September 1993, entitled '*Private & Confidential National Sports Stadium Options for Government Financial Support.'*

1.83 The state support, as envisaged by Deloitte & Touche, included the assumption that *'The Stadium site will be granted Designated Area Status on a basis similar to Tallaght.'* The document also referred to the feasibility of the project being:

. . . dependant on receiving sufficient Government support to reduce the level of borrowing required for the project to the point where it can service and repay the outstanding borrowing over a period of time from operating profits.

The structure and timing of the Government support package are critical factors affecting the total level of support required to reduce borrowing to a level which can be sustained and repaid from the operating revenues generated by the Stadium.

Based on the assumption of a capital cost of IR£60m, net operating profits of IR£1.5m annually and an interest rate of 9.5% per annum, Government support would need to be sufficient to reduce the level of borrowing on the project to approximately IR£12m to enable the outstanding debt to be serviced and repaid over 15 years.

1.84 On the same day as Mr Dunlop wrote to Mr Ahern, Mr O'Callaghan wrote in similar terms to Mr Reynolds, enclosing the same portion of the Deloitte & Touche study, as provided by Mr Dunlop to Mr Ahern. Mr O'Callaghan's letter stated:

Dear Taoiseach,

I am very much aware of the tremendous pressures under which you are working currently. I had asked Frank Dunlop some weeks ago to try and arrange a meeting with you so that we could brief you personally on our proposed National All-Purpose Stadium. I fully understand that time is a precious commodity for you at the best of times but even more so at the moment. Therefore, to avoid adding further burdens to the heavy schedule you are already working to Frank and myself have decided to send you the attached material under confidential cover with a view to discussing the matter with you when time allows.

Central to the documentation is the Market and Financial Feasibility Study prepared for me by Deloitte & Touche. This Study outlines the options for supporting the proposed Stadium. The relevant detail is provided at pages 1 to 4 inclusive of this Study which is attached for your perusal.

Taoiseach, I am convinced that this is not only a viable project but one which will also benefit the country enormously and provide us with a facility which will be second to none internationally. Likewise, this Stadium will be seen publicly as the fulfilment of the undertaking in the Programme for Partnership Government, 1993–1997 to support the building of a national sports stadium.

With every good wish in your endeavours to achieve a peaceful solution to the national problem.

Yours sincerely

Owen O'Callaghan

1.85 On 30 November 1993, Mr O'Callaghan also wrote to the then Minister for the Environment, Mr Smith, enclosing documentation relating to the *'National All-Purpose Stadium'* being proposed for the Neilstown lands.

1.86 The meeting requested by Mr O'Callaghan apparently took place on 13 December 1993. The evidence given by Mr O'Callaghan and Mr Dunlop was that Mr Reynolds was supportive of their stadium proposal.[23]

1.87 There was apparently no note or memorandum of this meeting, or indeed of other meetings which took place between Mr O'Callaghan and Mr Reynolds. According to Mr O'Callaghan, for the most part such meetings took place in the absence of any civil servant or other public official. Mr Dunlop likewise testified that no note or memorandum existed with regard to meetings he had with Mr Ahern, or indeed with other senior political figures. Mr Dunlop indicated to the Tribunal that it was a conscious decision on his part not to make a note of such meetings.

1.88 Mr Ahern's response, when it was suggested to him that it was probable that he had considered the documentation furnished with Mr Dunlop's letter of 1 December 1993, was that there was not a *'chance in hell'* that he had considered the document sent to him by Mr Dunlop, and he maintained that as Minister for Finance he would, in any event, have received hundreds of documents and submissions on an ongoing basis.

1.89 Having regard to the fact that Mr O'Callaghan wrote to Mr Reynolds and Mr Dunlop wrote to Mr Ahern on 1 December 1993, and having regard to the contents of Mr Dunlop's letter to Mr Ahern, the Tribunal believed it likely that in December 1993, Mr Ahern would have considered the document provided by Mr Dunlop, to some extent at least. It appeared to be the case that the document was passed on to the Department of Finance.

1.90 Notwithstanding Mr Dunlop having sought a meeting with Mr Ahern on Mr O'Callaghan's behalf in his 1 December 1993 letter, and notwithstanding the reference in Mr O'Farrell's memorandum of 14 December 1993, which suggested that Mr O'Callaghan was meeting Mr Ahern at that time, Mr Ahern maintained that he had no such meeting with Mr O'Callaghan, evidence with which Mr O'Callaghan agreed. Mr Ahern told the Tribunal he had no recollection of Mr Reynolds speaking to him about the matter in December 1993.

[23] Mr O'Callaghan and Mr Dunlop's meeting with Mr Reynolds was followed shortly afterwards by a meeting between Mr O'Callaghan, Mr Dunlop and Mr Lawlor, as evidenced by Mr Dunlop's diary. See Chapter 2, Part 6, Section B, 'Big One'. Mr O'Callaghan maintained, however, that this meeting was unconnected to the 13 December 1993 meeting referred to above.

1.91 A memo dated 14 December 1993 compiled by Mr O'Farrell of AIB, following discussion with Mr O'Callaghan, noted as follows:

> *He* [Mr O'Callaghan] *went on to indicate that he is meeting Albert Reynolds and Bertie Aherne later today in connection with the Sports Stadium. I expressed surprise at this. He indicated that he has no real option but to continue his discussions in relation to the Stadium in that there is enormous political interest in same. He will not be moving forward unless there is significant state subsidies—he mentioned IR£5m per annum. He mentioned that the project could work but obviously it is at fairly early stages.*[24]

1.92 Overall, the contemporaneous documentary trail available to the Tribunal suggested that there was a significant level of ongoing contact between Mr O'Callaghan and senior Government personnel throughout 1993 as part of an effort to secure state support and funding for the All-Purpose National Stadium project. Much of the contemporaneous documentation available to the Tribunal suggested that Mr O'Callaghan firmly believed that he had support at senior political level for his stadium project and a promise of state funding for the project.

1.93 Although there was inconclusive evidence that Mr O'Callaghan met with Mr Ahern in 1993 in relation to the stadium project (although the Tribunal noted Mr O'Farrell's note of 14 December 1993 where reference was made to Mr O'Callaghan meeting Mr Reynolds and Mr Ahern *'later today'*—a record disputed by Mr Deane), the Tribunal was satisfied that in 1992, and throughout 1993, Mr Ahern was briefed in meetings with Mr Dunlop in relation to the project to build an *'All-Purpose National Stadium'* on the Neilstown lands, and the Tribunal was satisfied that Mr Ahern's support for such a project was being actively sought by Mr Dunlop.

1.94 Mr Ahern told the Tribunal that he did not recall meetings or discussions with Mr Dunlop regarding the stadium project in 1992 or 1993, but acknowledged that from 1992 onwards he was likely to have been aware that Mr O'Callaghan was actively seeking a commitment for state funding for his project, Mr Ahern asserted that he had not been spoken to Mr O'Callaghan about the matter until 1994. Mr Ahern professed himself unaware of any assurances having been given to Mr O'Callaghan by Mr Reynolds with regard to National Lottery funding. When questioned about a meeting with Mr Ahern on 7 May 1993, Mr Dunlop stated that while he could not recall the purpose of that meeting, the likelihood was that he did use that occasion to mention the Stadium

[24] It is probable that this memo was compiled following a telephone discussion between Mr O'Callaghan and Mr O'Farrell on 13 December 1993.

to Mr Ahern, as on the occasions that he met Mr Ahern he would have taken the opportunity to raise the issue of the stadium proposal with him, even though a particular meeting might not have been arranged for that purpose. Having regard to the vested interest[25] Mr Dunlop had in the project, the Tribunal was satisfied that the stadium issue was discussed at meetings between the two men. The Tribunal noted that Mr Ahern conceded the possibility that Mr Dunlop had mentioned the matter of the stadium to him prior to 1994.

1.95 As a matter of probability the Tribunal believed that between December 1993 and March 1994, Mr O'Callaghan was endeavouring to meet with Mr Ahern as a matter of urgency. A note compiled by Mr O'Farrell of AIB and dated 4 January 1994 records, *inter alia*, Mr O'Callaghan advising him that:

> *As regards the stadium, he had a meeting with Albert Reynolds recently who was very keen. They had been seeking £5m per annum subvention and he is meeting Bertie Ahern on this issue in the next two weeks. If such subvention comes through, he believes the product is viable – however it will all hinge on his discussions with Bertie Ahern. He feels that he has no choice but to keep this project alive in view of his previous commitments in relation to same and to retain his credibility with the politicians and in the local area etc.*

1.96 On Day 895 Mr Ahern was questioned as follows:

Q. 238 *'Now, can you say therefore what your knowledge of the project, that is the Neilstown stadium project would have been at the beginning and in the first months of 1994? Did you have sufficient information in relation to it, for example to know what its financial imposition on the State would be in the event that the State wanted to become involved in the project, which was claimed to be a national project?'*

A. *'Well, I have no recollection of it and I don't think it was discussed, and insofar as I can, I have gone back into the detail at the beginning of 1994, or the end of 1993 and at that stage I was working on the stadium project and put in a lot of time on the stadium project, but it was to give the first tranche of money to Croke Park which I did, and caused hell and high water of course by all the nay sayers who now think it's a brilliant idea. So that was the stadium I was dealing with in January of 1994, and in the budget of 1994, at the end of January 1994, I did give the money to Croke Park.'*

1.97 Mr O'Callaghan duly met with Mr Ahern on 24 March 1994.

[25] See 'Big One' (Chapter 2, Part 6, Section B) which deals with Mr Dunlop's proposed beneficial interest in the stadium project.

1.98 Prior to this meeting, however, Mr Ahern had probably been apprised of the *'All-Purpose National Stadium'* proposal by Chilton & O'Connor. This encounter between Mr Ahern and principals of Chilton & O'Connor took place on 11 March 1994 in Los Angeles, in the course of a visit to the US by Mr Ahern relating to the festivities of St Patrick's Day.

1.99 Mr Ahern maintained that this US meeting had arisen after Mr Burke of Chilton & O'Connor contacted the Irish Consulate in Los Angeles and asked if Mr Ahern would meet them. Mr Ahern agreed, and he duly met with representatives of Chilton & O'Connor. Mr Ahern explained the purpose and the circumstances of the Los Angeles meeting the following terms:

> *'But this wasn't a meeting about the national stadium, Mr O'Neill,*[26] *this was the Irish consulate being contacted by a company which the IDA had been involved in, and about opening up a licence for the financial services centre and where, to the best of my knowledge, the only reference that was made about the national stadium was that they were working on a submission, I don't think there was any other discussion. In fact my recollection of the meeting, insofar as I have a recollection of it, because it was a hurried meeting in the airport, arranged by the consulate, IDA in attendance, it was probably more likely to be about the IFSC, which was my business, because I worked on the IFSC issues. Now, they did mention, they did mention that they were engaged in preparing a proposal on the stadium, but that's—and they also raised the issue about them funding projects and my department officials were there, the IDA were there, it was arranged by the consulate and what the Secretary General, not the secretary, the ambassador in New York stated the reason I was meeting them at all was they met Mr Reynolds the previous year and they knew who they were.'*

1.100 Mr Ahern took the view that his meeting with Chilton & O'Connor concerned the IFSC, and the issue of a licence to Chilton & O'Connor in relation to the centre. However, the Tribunal was satisfied that a specific purpose of Mr Ahern's meeting with principals of Chilton & O'Connor in Los Angeles on 11 March 1994 related to the *'All-Purpose National Stadium'* project being promoted by Mr O'Callaghan.

1.101 The documentary trail available to the Tribunal suggested the following chain of events. Prior to Mr Ahern's visit to the USA on 3 March 1994, Mr Burke of Chilton & O'Connor Inc wrote to the Consulate General of Ireland in San Francisco regarding the *'forthcoming visit of Minister Mr Bertie Ahern'* as follows:

[26] Counsel for the Tribunal.

I would greatly appreciate the opportunity to discuss the possibility of organizing a meeting with Minister Ahern. Chilton & O'Connor, Ltd which is a member of the International Financial Services Center in Dublin is currently evaluating various financing options for the Irish National All-Purpose Stadium.

As you are aware, An Taoiseach, Mr Albert Reynolds visited our offices during his last visit to California to discuss the many benefits of various financing structures. Chilton & O'Connor, Inc. has underwritten over $3 billion in local government / municipal financings since its inception in 1983. I am aware Minister Ahern will be on a tight schedule, however, I will accommodate any changes convenient to Minister Ahern.

1.102 Mr Burke's request for a meeting with Mr Ahern was communicated to Mr Ahern's private secretary in Dublin by fax on 4 March 1994, attaching Mr Burke's letter. The handwritten note from the Irish Consulate, as faxed to Mr Ahern's private secretary, included the following information: *'Deputy Liam Lawlor's son who lives in LA (he will be at the reception for the Minister) is involved with this company in some way.'*

1.103 Mr Ahern stated that, given that his Department had received this communication on 4 March 1994, and that there was a reference in it to Mr Reynolds having been in the offices of Chilton & O'Connor in March 1993, it was likely that contact was made by his officials with officials in the Department of An Taoiseach.

1.104 On 9 March 1994, Chilton & O'Connor sent a letter to Mr Dunlop headed *'March 11th meeting with Minister Bertie Ahern in Los Angeles'* and addressed to '*Mr Frank Dunlop, Leisure West Limited.'* The letter stated as follows:

Dear Frank,

As you are probably aware the above meeting has been arranged for this coming Friday. Obviously I will need to talk with you, Mr Ambrose Kelly or Mr O'Callaghan prior to meeting with Minister Ahern. It would also be imperative to hear the result of the pending meeting this Thursday 10th with Minister Aylward.

I will need an update with reference to any recent discussions with the FAI and Deloitte & Touche. Currently being forwarded to me are the recently published National Lottery Annual Report and Finance Ministry documentation. Also it would be most useful going into this meeting with Minister Ahern to have some indication of the role the board of Leisure West Ltd anticipates for Chilton & O'Connor Limited.

I look forward to discussing all of the above and hopefully ironing out the funding details for this important project sometime soon in Dublin.

1.105 The letter indicated that copies of it were to be sent to Mr Ambrose Kelly and Mr O'Callaghan.

1.106 Curiously, on the evening of 8 March 1994, Chilton & O'Connor may have faxed to Mr Dunlop an almost identical version of the afore-mentioned letter. The document faxed on 8 March 1994, was again dated 9 March 1994 and was addressed to Mr Dunlop, Leisure West Ltd. It had the same heading as the above letter and, save for one addition, the same contents as the letter faxed on 9 March 1994.

1.107 While the second paragraph of the document addressed to Mr Dunlop on 9 March 1994 commenced with the sentence *'I will need an update with reference to any recent discussions with the FAI and Deloitte & Touche',* the first sentence of the second paragraph of the letter faxed on 8 March 1994, to Mr Dunlop read as follows: *'I will need an update with reference to any recent discussions with the FAI, Deloitte & Touche and the proposed Phoenix Park development.'*[27]

1.108 It appeared to the Tribunal that for some reason Chilton & O'Connor made a decision to forward to Mr Dunlop, and to whomever else the letter was faxed, a second version of their 9 March letter, omitting the reference to *'the proposed Phoenix Park development'*.

1.109 When it was suggested to Mr Ahern by Tribunal Counsel that the contents of the letter of 9 March 1994 indicated that one of the intended items of discussion between himself and Chilton & O'Connor was the '*All-Purpose National Stadium'*, Mr Ahern responded:

'Well, I don't know if it's right or not. All I can tell you is I was asked by the Irish consulate to have a meeting because the schedule was tight we could only meet at the airport and to the best of my recollection I think it's true some of my officials were still around, we were late, Mr Gallagher of IDA accompanied us, we had a brief meeting, I think it is recorded that we

[27] Tribunal's emphasis. The reference to '*Phoenix Park development'* was likely to an alternative proposal then in being (spearheaded by Mr Norman Turner/Ogden Developments) to develop a stadium and casino on the Phoenix Park racecourse lands—a potential rival to the *'All-Purpose National Stadium'* being proposed by Mr O'Callaghan. In 2000 Mr Lawlor told the Fianna Fáil Inquiry of a request made by an unnamed individual to him in the Berkeley Court Hotel to act as a consultant for the Phoenix Park racecourse project, in return for which Mr Lawlor was offered IR£100,000, an offer Mr Lawlor claimed he rejected.

were talking about the licence, which obviously you confirmed why that would have been, because they hadn't taken up the licence.

They did state that they were going to provide a detailed statement on the stadium or assessment on the stadium, and they did raise the issue that they were investing in various countries, of money to help local authority and State projects. So that—that's as far as the record goes with me.'

And

'My memory it was a short—they only asked for the meeting, they only asked for the meeting in writing, it's recorded in the consulate, this came up last year in one of the newspapers. It was checked by my civil servants and it was recorded, the request was recorded, who attended the meeting was recorded, it was known by the main embassy in Washington and the senior officials from the IDA who is the number one IDA official in America attended the meeting, which seemed to me was on IFSC business, because he wouldn't be attending anything else.'

1.110 Mr Ahern told the Tribunal that he did not recall the plans for the development of the Phoenix Park racecourse as having been a matter of discussion at his meeting with Chilton & O'Connor on 11 March 1994.

1.111 While Mr O'Callaghan accepted that a meeting took place between Mr O'Connor and Mr Ahern in Los Angeles on 11 March 1994, (Mr O'Callaghan having previously stated his belief that no such meeting had taken place) he said he could not assist the Tribunal as to the likely import of Mr Ahern's discussions with Mr O'Connor. On Day 894 Mr O'Callaghan stated:

'Yes, I was aware that when the Minister for Finance was going to the States he was going to meet Chilton O'Connor. That's why we've got the correspondence then there and we briefed Mr O'Connor the best we could about this. But nothing ever happened. We heard no more about it actually. And I cannot recollect us asking Chilton & O'Connor what the result of the meeting was. I'm surprised if there was anything positive about it we would have been told within 24 hours. We got nothing back about it actually.'

1.112 The thrust of Mr O'Callaghan's evidence vis-à-vis Mr Ahern's meeting with Chilton & O'Connor was that he had been left in the dark about it and had received no follow-up information from that meeting, from any source.

1.113 Mr Dunlop claimed in his evidence not to know how Mr Ahern came to meet Mr O'Connor on 11 March 1994 other than suggesting that it was possibly Mr O'Callaghan or Mr Lawlor who had arranged for the meeting to take place. Mr Dunlop stated that while he did not believe it to have been the case, he could

have set up the meeting. He said that he was probably aware that the meeting was taking place. Mr Dunlop believed that he could have received a verbal report of the visit from Mr Lawlor, or his son Mr Niall Lawlor.

1.114 Mr Ahern testified that he did not know in March 1994 that Mr Niall Lawlor worked for Chilton & O'Connor. He stated that Mr Niall Lawlor was not at the meeting he had with Mr O'Connor on 11 March 1994. Mr Ahern acknowledged that he may have met Mr Niall Lawlor at a reception in Beverly Hills some days later, but had no specific recollection of so doing.

1.115 Mr Ahern stated that he had had no meeting with Mr Liam Lawlor about his visit to Chilton & O'Connor either prior to, or subsequent to, that visit, save that he may have mentioned to Mr Lawlor at some point that he had met his son. Mr Ahern said that he was '*totally totally*' surprised to learn, via the Tribunal, of Mr Lawlor's possible beneficial interest in the '*All-Purpose National Stadium*' in respect of which Government financial support had been sought in and prior to 1994. Mr Ahern stated that this was something he would not have approved of had he known of it.

1.116 The Tribunal was satisfied that Mr Niall Lawlor was involved to some extent in arranging the meeting between Mr Ahern and Mr O'Connor. The Tribunal's conclusion in this regard was reinforced by a briefing note which, it appeared, was sent by Mr Lawlor to Mr Niall Lawlor on 10 March 1994, updating his son on a number of aspects regarding the proposed national stadium. Mr Lawlor advised his son as follows:

> *1. Attached is an article from today's Irish Times, re Bond Issues.*
>
> *2. Brief note re meeting with Bertie Ahern regarding the National Stadium.*
>
> *Government reaction to submission is awaited.*
>
> *The promoters, O'Callaghan Properties, have submitted comprehensive proposal and they are pursuing negotiations with the Minister for Sport, Mr Liam Aylward.*
>
> *Full planning permission has been granted, complete with environmental impact study, etc.*
>
> *Construction could commence if agreement between Government and promoter is forthcoming.*

1.117 Mr Ahern acknowledged that the import of Mr Lawlor's briefing note to his son suggested that the purpose of Chilton & O'Connor's forthcoming meeting with himself was to seek a decision from the Government on the financing proposals regarding the stadium. Mr Ahern emphasised however, that it was his belief that the meeting related to IDA business, and not the Neilstown stadium

proposal. He stated also that any such meeting to discuss the stadium proposal would have been premature because *'the comprehensive proposal was only submitted through Mr Dunlop in August of 1994.'*

1.118 The Tribunal was satisfied that Mr Ahern was probably aware, prior to his trip to Los Angeles on 11 March 1994, of Mr Niall Lawlor's association with Chilton & O'Connor, having regard to the specific reference to that connection in the documents faxed from the Irish Consulate in Los Angeles to Mr Ahern's private secretary on 4 March 1994. The Tribunal believed it most unlikely that Mr Ahern would not have been fully advised on the content of the Consulate's memorandum of 4 March 1994, including the specific reference to Mr Lawlor's son, and his expected attendance at the planned reception for Mr Ahern.

1.119 The Tribunal also rejected Mr Ahern's evidence that the *'All-Purpose National Stadium'* project had not been a principal topic of discussion between himself and Mr O'Connor on 11 March 1994. Mr Ahern sought to maintain this position, notwithstanding the clear and unambiguous terms of Mr Burke's letter of 3 March 1994 to the Irish Consulate. On Day 896 Mr Ahern stated as follows:

> *'Well, that isn't how I would interpret it even looking at it now. What it's saying they are a member of the International Financial Services Centre, that was my department and the IDA that looked after that. They are currently, the second point is they are currently evaluating various financial options and I stated yesterday my view of that is that they told me they were. Thirdly, they make the point, which is really the main point why Albert Reynolds met them in the second paragraph to discuss the many benefits of various financing structure that they are involved and the fact that they had underwritten 3 billion of public/municipal finances so. They are the three points that come out in the letter very clearly.*'

1.120 The Tribunal also rejected Mr Ahern's evidence in this regard having regard to the content of a letter written by Mr Kevin Burke of Chilton & O'Connor on 21 March 1994 to Mr Jim Lacey, then Chief Executive of National Irish Bank. That letter specifically referred to Mr Ahern's visit to Los Angeles, and his meeting with representatives of Chilton & O'Connor, and more particularly to their discussion with Mr Ahern of two *'specific projects',* namely the *'Irish National Stadium*' and the '*Liffey Tunnel'*. It read:

> *Dear Mr Lacy*
>
> *It has been recommended to Chilton & O'Connor that we contact you with regard to discussing a number of projects which we are currently pursuing in Ireland. Chilton & O'Connor Ltd is a member of the International Financial Services Centre in Dublin. We are very interested in local government finance in Ireland and have considerable expertise in*

this area. In California, Chilton & O'Connor, Inc. has underwritten over $3 billion in local government/municipal financings since its inception in 1983.

Bill O'Connor, our President, and I recently met with the Minister for Finance, Mr Bertie Ahern on his recent visit to Los Angeles. We discussed two specific projects which we are currently evaluating, namely the Irish National Stadium and the proposed Liffey Tunnel. We also discussed with Minister Ahern various funding mechanisms to leverage matching fund grants from the EC for planned infrastructure projects.[28]

We would like to take an opportunity to meet with you to discuss potential mutual areas of interest. Bill O'Connor will be in Dublin during the first week of May and would be appreciative if you could facilitate a meeting during this time. I look forward to discussing these matters further with you.

1.121 When asked about the content of this letter, Mr Ahern appeared to challenge the clear reference therein to a discussion with him about the stadium project having taken place. The Tribunal considered it unlikely that such a reference would have been made by Mr Burke if, as appeared to have been suggested by Mr Ahern, the stadium project had only been briefly referred to, if at all.

1.122 While the reference in Mr Burke's letter to the *'Irish National Stadium'* was non-specific, the Tribunal was satisfied, having regard to Chilton & O'Connor's involvement with Mr O'Callaghan, that the reference related to Mr O'Callaghan's *'All-Purpose National Stadium'* project and that the stadium project was specifically discussed between Mr Ahern and principals of Chilton & O'Connor on 11 March 1994. While Mr Ahern doubted that he had provided Mr Lacey's name to Chilton & O'Connor, he nevertheless acknowledged that he may possibly have recommended Mr Lacey to Chilton & O'Connor, in the event that they were seeking contact with an '*aggressive bank.'*

1.123 The Tribunal rejected as not credible Mr O'Callaghan's evidence that, although probably aware of the fact that Mr Ahern was meeting Chilton & O'Connor on 11 March 1994, in Los Angeles, he remained unaware of the outcome of such a meeting. The Tribunal was satisfied that in all probability Mr O'Callaghan was briefed on this meeting by either Chilton & O'Connor or by Mr Lawlor, and perhaps by Mr Ahern himself on 24 March 1994.

[28] It would appear that this letter was written to Mr Lacey with a view to Chilton & O'Connor meeting with him in early May 1994 to discuss mutual areas of interest.

1.124 On the day Mr Ahern met with Chilton & O'Connor in Los Angeles, Mr O'Callaghan met with Mr Reynolds at a private fundraising dinner for Fianna Fáil in Cork, an event which Mr O'Callaghan together with others was instrumental in organising.[29]

MR O'CALLAGHAN'S MEETING WITH MR AHERN ON 24 MARCH 1994

1.125 On 24 March 1994, some thirteen days following Mr Ahern's meeting with Mr O'Connor in Los Angeles, Mr O'Callaghan and Mr Ahern met, a meeting which was probably organised by Mr Dunlop. While he acknowledged that, by reference to a reference in his diary for 24 March 1994, he met with Mr O'Callaghan, Mr Ahern could not recall what was discussed at the meeting.

1.126 Mr O'Callaghan told the Tribunal that the primary reason for his meeting with Mr Ahern in March 1994 was his concern that the Blanchardstown Town Centre project might be awarded tax designation status. Mr O'Callaghan stated that his concern was heightened by the fact that Mr Ray McSharry had been appointed to the board of Green Property Plc. Mr O'Callaghan maintained that he told Mr Ahern in the course of his meeting with him that although neither Blanchardstown nor Quarryvale required tax designation status, and both developments could '*stand on their own two feet'*, if it was the intention of the Government that Blanchardstown was to get tax designation status then a similar tax status should apply to the Quarryvale development. Mr O'Callaghan told the Tribunal that during the course of the meeting he may have mentioned the stadium project, and his plans for it, in passing to Mr Ahern and he stated that they had also discussed the political situation in Cork. Mr O'Callaghan put it thus:

> *'The main reason for meeting him was that around about that time Ray MacSharry had been appointed to the board of Green Properties and I was concerned because of that, that Green would possibly, that Green Properties would possibly get tax designation. And I decided I better go and see the Minister for Finance about it. And the appointment was made for me.*
>
> *And I met him and discussed it with him and my attitude was that quite simply, was and maybe a bit cheeky in my part. But my attitude was that I felt that Blanchardstown or Quarryvale did not need tax designation, that there was no need for it, both developments could stand on their own two feet and that the local authorities needed whatever money was available to develop the new counties that were now in possession since the 1st of March or the 1st of January '94.*

[29] See *'the Cork private dinner'*.

And I suggested that if he intended to give—if the minister intended to give tax designation to Blanchardstown that I felt that Quarryvale should have got the same thing. He told me very quickly that neither Blanchardstown or Quarryvale were getting tax designation. The second point was, I mentioned to him how we were developing a stadium and putting it together and what we were doing and what our proposals were. I outlined it to him in about five minutes without any plans or drawings but verbally. He listened to me and said okay. I think the third subject he asked me about the political situations in Cork, and that was it.'

1.127 On 2 March 1994, following a telephone conversation with Mr O'Callaghan, Mr O'Farrell of AIB noted as follows:

I raised the matter of designation with him (Mr O'Callaghan). *He indicated that he is aware that Blanchardstown had been seeking designation. He has indicated in political circles, that he is not seeking designation for Quarryvale on the basis that same is not forthcoming for Blanchardstown either. He believes that he is well ahead of Blanchardstown in terms of anchor interest and the introduction of designation to both sides would level the playing pitch and he would loose his advantage. He is happy that designation for Blanchardstown is not on the agenda. A further factor in this regard would be the financial pressure that the various Councils are under—designation would of course reduce revenues available to the Councils over the next 10 years because of rates remission.*

The content of the above memorandum suggested that the issue of tax designation for Blanchardstown and/or Quarryvale was discussed by Mr O'Callaghan in *'political circle'* prior to Mr O'Callaghan's meeting with Mr Ahern on the 24 March, 1994.

1.128 In his evidence, Mr Ahern professed to have no recollection of what had been discussed at the meeting of 24 March 1994 but accepted that, in relation to the tax designation issue, he may well have confirmed to Mr O'Callaghan that neither Blanchardstown nor Quarryvale was going to receive tax designation status, by way of restating Government policy on the matter. Mr Ahern told the Tribunal that he could neither recall nor confirm what was said at the meeting.

1.129 Mr Ahern acknowledged that on the basis of the account given in evidence by Mr O'Callaghan, on 24 March 1994 he, as Minister for Finance, met with an individual who was raising an issue about the tax designation of someone else's property, namely Green Property Plc. Mr Ahern stated:

'*if what Mr O'Callaghan states is that he came in and asked what is the policy on these areas, because what he is saying is that Ray MacSharry was appointed to the board of Green and he thought that that would change the policy, I would have restated the government policy, which is what he is saying. I would have restated and said we are not designating anything other than what we had already done, which was Tallaght and we were not going to designate Blanchardstown, we were not going to designate Clondalkin'.*

1.130 The following exchange took place between Tribunal Counsel and Mr Ahern:

Q. 91 *'Do you agree or is it a matter that you dispute, but that the concern which Mr O'Callaghan is expressing in relation to the tax designation arose from the fact that Mr Ray MacSharry, who was formally a government Minister, formerly a member of cabinet, formerly an EU Commissioner now in his departure from public life in that sense, was in a position where he was on the board of Green Properties, a rival company to Mr O'Callaghan's and it was that appointment of Mr MacSharry to that position which was causing him concern in the context of tax designation, would you accept that that is a fair summation?'*

A. *'I would accept that. I can understand maybe he thought that we would change our mind or a former colleague might change our mind, but I have to quickly add, I don't think Ray MacSharry, in anyway, I am quite certain, never contacted me about any of these issues or about changing the position.'*

Q. 92 *'Certainly one—can one assume that the concern of Mr O'Callaghan's, expressed here is that there was now an uneven playing pitch as regards the Green Properties position and the Quarryvale position, in that he was suggesting that because of Mr MacSharry's involvement things might go a bit more the way of Blanchardstown rather than that?'*

A. *'Yes.'*

Q. 93 '*And it was that concern he sought to address with you?*'

A. *'Yes.'*

1.131 Mr Ahern told the Tribunal that he did not think that the stadium project featured as part of his discussions with Mr O'Callaghan on 24 March 1994.

1.132 In his statement to the Tribunal of the 10 December 2003, under the heading *'Mr Owen O'Callaghan and Mr John Corcoran'*, Mr Ahern had advised, *inter alia*, as follows:

My diary confirms that I met Mr Corcoran on 13 July 1993. My recollection of this meeting is that he briefed me about Green Property's plans for future investment in the country. From my diary records I can confirm that I met Mr O'Callaghan on 24 March 1994, although I do not recall what was discussed. While I know there have been some references in the media to tax designations relating to shopping centres being developed at Quarryvale and Blanchardstown, I have no specific recollection of discussing this topic with either Mr O'Callaghan or Mr Corcoran. In any case, neither project was designated.

1.133 In a later statement provided to the Tribunal and dated 4 November 2004, Mr Ahern said, as follows:

So far as I am concerned, I did not at any time discuss designation for Blanchardstown with Mr O'Callaghan.

And

In relation to the proposed National Stadium at Neilstown the position is as follows. In correspondence dated 18th November 2003, the Tribunal requested that I provide a narrative statement that dealt with, inter alia, 'all dealings, meetings, written or telephonic communications' I had with Mr Owen O'Callaghan between the years 1988 to 1997. In my response dated 10th December 2003 I informed the Tribunal that on two occasions in this period (on 10th November 1994 and again in early 1996) Mr O'Callaghan updated me on his stadium proposal in West Dublin.

I also recollect that Mr O'Callaghan called to my constituency office in May 1998. My recollection is that on this occasion Mr O'Callaghan was accompanied by Mr Frank Dunlop. Mr O'Callaghan wished to brief me on his latest plans regarding his stadium. I told Mr O'Callaghan that it was my plan to build a National Stadium elsewhere that would remain totally under the control of the State and be available to all sectors of the community. Hence I was not in support of his proposal.

1.134 The Tribunal was satisfied that the topics discussed at the meeting of 24 March 1994, were Mr O'Callaghan's concerns regarding the Blanchardstown tax designation issue and his plans for the *'All-Purpose National Stadium'*. The Tribunal was satisfied that in all probability Mr O'Callaghan lobbied Mr Ahern for Government support and funding for the stadium project. It was inconceivable that such discussion would not have taken place, having regard to Mr Dunlop's letter of 1 December 1993 to Mr Ahern wherein a meeting was sought for Mr O'Callaghan with Mr Ahern regarding the stadium, and having regard to the fact that, as of 1 December 1993, Mr Ahern was in possession of documentation relating to the stadium project which had been enclosed by Mr Dunlop in

correspondence with him. Moreover, it appeared to the Tribunal extremely unlikely that the issue of the stadium project and its funding would not have been discussed between Mr O'Callaghan and Mr Ahern, having regard to the fact that Mr Ahern had met with Chilton & O'Connor on 11 March 1994.

1.135 Mr O'Callaghan maintained that on 24 March 1994 neither he nor Mr Ahern had alluded to the fact that Mr Ahern had met with Chilton & O'Connor in Los Angeles some thirteen days earlier. Mr O'Callaghan agreed with the suggestion of Tribunal Counsel that Mr Ahern's failure (as claimed by Mr O'Callaghan) on 24 March 1994 to mention his meeting with Mr O'Connor on 11 March 1994 was rendered all the more surprising given that on 29 March 1994, in response to a Dáil question from the Opposition, Mr Ahern was in a position to state that he had met with Chilton & O'Connor while in Los Angeles. The Tribunal was satisfied, however, as a matter of probability, that in the course of Mr O'Callaghan's discussions with Mr Ahern on 24 March 1994 Mr Ahern's meeting with Chilton & O'Connor some thirteen days earlier was a topic of discussion between them.

1.136 The Tribunal was also satisfied, as a matter of probability, that in the course of Mr O'Callaghan's lobbying of Mr Ahern on 24 March 1994 with regard to the proposed *'All-Purpose National Stadium'* Mr O'Callaghan sought to urge the merits of his stadium project over that of the then rival project being promoted by Ogden Developments. Mr O'Callaghan, in evidence, acknowledged having spoken to Mr Lawlor and Mr Dunlop about the Ogden proposal for a stadium development at the Phoenix Park racecourse and having relayed his concerns about that proposal to Mr Dunlop. In those circumstances it appeared inconceivable to the Tribunal that Mr O'Callaghan would not have urged upon Mr Ahern the merits of his proposal over that of a potential rival. That the possibility of a rival Stadium being developed was (and remained) a concern of Mr O'Callaghan's was documented in a note made by Mr Dunlop's solicitors Arthur Cox on 29 September 1994 wherein Mr Dunlop was recorded as having apprised his legal advisors of the rival Phoenix Park proposal, a proposal which, it was recorded, *'has frightened O'Callaghan'*.

1.137 By the time Mr O'Callaghan and Mr Ahern met face to face on 24 March 1994 Mr Ahern had been sent, via Mr Dunlop on 1 December 1993, a portion of the market financial feasibility study commissioned by Mr O'Callaghan which contained detailed proposals as to the level and manner of state funding being sought by Mr O'Callaghan for the stadium project.[30]

[30] The Taoiseach, Mr Reynolds, was also sent this material on 1 December 1993 under cover of a letter from Mr O'Callaghan.

1.138 By the time of the 24 March 1994 meeting at which Mr O'Callaghan discussed the Blanchardstown tax designation issue with Mr Ahern, and also lobbied him for Government support for the stadium project, Mr O'Callaghan had had several meetings with the then Taoiseach Mr Reynolds, and Mr Dunlop had had meetings with Mr Ahern at which he raised the stadium project, and, in September 1993 Mr Reynolds and Mr Ahern had written to Mr O'Callaghan, seeking a substantial donation to the Fianna Fáil Party.[31]

1.139 Moreover, following that September 1993 letter to Mr O'Callaghan, Mr Ray MacSharry had approached Mr O'Callaghan to follow up the Reynolds/Ahern request for a substantial donation. According to the evidence of Mr MacSharry and Mr O'Callaghan, in or around Christmas 1993 Mr O'Callaghan committed to paying a sum of IR£100,000 to the Fianna Fáil Party.

1.140 Mr Ahern was questioned by Tribunal Counsel on the state of affairs regarding the stadium as of 24 March 1994, in the following terms:

> *'I am looking at this in the context at the moment, Mr Ahern, of the positions of yourself and Mr O'Callaghan, when it came to this meeting in the 24th of March 1994. On the one hand Mr O'Callaghan is a person who is seeking State finance to the extent of about 3 to 5 million pounds, depending on the feasibility study and its stages, at various stages throughout this process, from the government, and on the other hand the Fianna Fáil party is looking to him for 100,000 pounds to finance its debt, isn't that so?'*

Mr Ahern agreed that this was the factual situation as of 24 March 1994.

1.141 Following his 24 March 1994 meeting with Mr Ahern, Mr O'Callaghan's pursuit of state support and subvention for the stadium project continued. Mr O'Callaghan and Mr O'Connor met with Mr Reynolds on 6 May 1994 following which, on 11 May 1994, Mr O'Connor wrote to Mr Reynolds as follows:

> *Taoiseach*
>
> *I would sincerely like to thank you for allocating so much of your valuable time to schedule a meeting with Owen O'Callaghan, of Leisure West (Ireland) Ltd and myself on Friday the 6th. We are making vigorous efforts to finalize the financing of the National All–Purpose Stadium project as outlined to you. To briefly recap, Leisure West Ltd has given very specific commitments to this project by:*
>
> *(a) Contracting with Dublin Corporation for the necessary land;*

[31] This matter is considered in more detail elsewhere in the Report.

(b) Appointing a National and International design team for this project that has already been granted full building approval by Dublin County Council;

(c) Chilton & O'Connor Inc. will act as senior investment banker to arrange the financing requirements on behalf of the issuing entity. Deloitte & Touche will act as financial / feasibility advisor to put forward a detailed and thoroughly researched financial package.

We are conscious of the need to extend the repayment scheme over the longest possible period at competitive interest rates. Therefore, the raising of funding of long term bond issuance is the most competitive approach for this major National Sports Facility.

Following our meeting with you Owen O'Callaghan and I discussed the entire matter and he has undertaken to provide me with the comprehensive financial/feasibility data which Deloitte & Touche carried out on behalf of Leisure West Ltd. You will appreciate, as does Owen O'Callaghan, that a proper modeling exercise with a view to funding the stadium cannot be completed without this data.

On completion of the funding analysis I will make contact with your office to arrange a further meeting at your convenience to outline the completed scenarios. Once again my sincere appreciation for meeting with us on such short notice.

1.142 It appeared that Mr O'Connor's direct communication with Mr Reynolds did not find favour with Mr O'Callaghan, having regard to the contents of his 17 May 1994 letter to Mr O'Connor, wherein he took issue with Mr O'Connor for having corresponded with Mr Reynolds without having first checked with him. In the same letter Mr O'Callaghan made reference to, and agreed with, Mr O'Connor that there was a need for the matter to be progressed *'as urgently as possible'* for *'political and creditability reasons.'*

1.143 Mr Dunlop met again with Mr Ahern on 11 May 1994. Mr Dunlop's diary referred to the meeting as *'BA breakfast in Burlington'*. Mr Ahern's diary also referred to this meeting.

1.144 Mr Dunlop's diary for the first week of May 1994 recorded meetings with Mr O'Connor on 3 and 4 May 1994. Mr Dunlop's diary also noted a meeting on 5 May 1994 when Mr Dunlop and Mr O'Connor met with Mr Lacey at the Berkeley Court Hotel. On 6 May 1994, Mr Reynolds' diary recorded a meeting with Mr O'Callaghan and Mr O'Connor. Mr Dunlop said he had no recollection of any involvement on Mr Lacey's part with the stadium project, Mr O'Callaghan speculated that if the meeting with Mr Lacey had been related to the stadium project, he would have been involved, and he was not.

1.145 By 2 June 1994 Chilton & O'Connor were in possession of the further Deloitte & Touche financial feasibility study commissioned in relation to the stadium project. On that date Mr Kevin Burke wrote to Deloitte & Touche seeking additional detail with regard to the financing plan, and he advised them that *'An Taoiseach, Albert Reynolds has asked us to prepare a financing plan for the Irish National Stadium.'*

1.146 On 8 June 1994 Chilton & O'Connor contacted Mr Ambrose Kelly by letter advising him that it had *'completed a financing analysis'* for the stadium project and directed to him a series of questions for which they required clarification, one of which (question xi) was *'Will the Authority pay property or other taxes, if so how much (As a percent of value of facility, concessions, merchandising, payroll etc).'*

1.147 On 10 June 1994 Mr O'Callaghan furnished Mr Kelly with his responses to certain of the questions posed by Chilton & O'Connor, for transmission to them. Mr O'Callaghan's reply to question xi was *'The Authority (Leisure Ireland) will not pay property taxes as we expect to have the site tax designated.*'

1.148 The substantial financial contribution to the Fianna Fáil Party sought by Mr Reynolds and Mr Ahern from Mr O'Callaghan in September 1993 in respect of which he had agreed to pay IR£100,000, was duly paid. On 21 June 1994, Mr O'Callaghan paid Fianna Fáil the sum of IR£80,000, having discounted from the agreed sum of IR£100,000 a sum of IR£10,000 paid by him to Fianna Fáil on 11 March 1994 at the Cork private dinner and a political contribution of IR£10,000 paid in May 1994 to the European election campaign of Mr Brian Crowley. Mr O'Callaghan received both verbal and written acknowledgment of his IR£80,000 cheque from Mr Ahern in July 1994.

1.149 In the course of their respective testimonies Mr O'Callaghan and Mr Ahern denied that during their telephone discussion in July 1994 there had been any reference to the issue of tax designation (the issue which Mr O'Callaghan claimed was the main topic of discussion at his 24 March 1994 meeting with Mr Ahern) or that any reference was made to the stadium project.

1.150 By 30 June 1994 Mr Dunlop was in possession of an '*Executive Summary'*, prepared by Chilton & O'Connor, in contemplation of an expected meeting with Mr Reynolds. In a draft congratulatory letter intended, it appeared, to be sent to Mr O'Connor on 30 June 1994, Mr Dunlop made reference to the '*Executive Summary'* as an *'enormously impressive piece of work'.* Mr Dunlop advised that he felt *'tremendously confident that the Taoiseach, given his*

already stated commitment to this project, will react in similar fashion and push it over the line to finalisation'. Mr Dunlop duly advised Mr O'Connor as follows: *'I met with Owen O'Callaghan at my office yesterday (29th June) and he is gung-ho about the project and equally complimentary of the work carried out by you and your team.'*

1.151 In his letter to Mr O'Connor Mr Dunlop requested that Mr O'Connor provide him with dates on which he would be in Dublin over the following two months so that he could proceed to arrange a series of meetings with a number of organisations and individuals, including the Taoiseach.

1.152 On 30 June 1994 Mr Dunlop also wrote to his solicitor, Mr John Walsh of Arthur Cox, with regard to the progressing of his shareholding in Leisure Ireland Ltd.[32]

1.153 On 11 July 1994 Mr Dunlop wrote to Mr Reynolds in the following terms:

> *You will recall meeting with Bill O'Connor and Owen O'Callaghan some time ago in connection with the proposed All-Purpose National Stadium in North Clondalkin. As a result of the meeting Bill O'Connor undertook to carry out a detailed financial feasibility report. This is now virtually complete and Bill intends coming to Ireland again in the latter part of this month.*
>
> *Owen and he have asked me if it would be possible to arrange a meeting with you on a date and a time convenient for your diary beginning Monday, July 18th onwards. Bill is quite flexible with regard to dates but he and Owen would very much like to submit the financial report to you personally.'*

1.154 Some ten days later, on 21 July 1994, Mr O'Callaghan, in the company of Mr Niall Welch,[33] met Mr Reynolds.

1.155 Mr O'Connor's promise to make further contact with Mr Reynolds was made good on 28 July 1994 during the Galway Racing Festival when Mr O'Callaghan, accompanied by Mr Kevin Burke of Chilton & O'Connor (Mr O'Connor being ill) met with Mr Reynolds at the Connemara Coast Hotel. References to this meeting were recorded in both Mr Reynolds' and Mr Dunlop's diaries. At the meeting Mr Reynolds was presented with the Chilton & O'Connor

[32] See Chapter 2, Part 6, Section B 'Big One'

[33] Mr Welch was a Cork-based businessman and was one of the organisers of the fundraising private dinner in Cork in March 1994 attended by Mr Reynolds.

document, which was accompanied by a letter dated 28 July 1994, signed by Mr O'Connor and Mr Burke, which read as follows:

> *An Taoiseach:*
>
> *In response to your invitation during our May 7th, 1994 meeting, Chilton & O'Connor is pleased to present our plan for financing the Irish National All–Purpose Stadium in conjunction with the Leisure Ireland Ltd/Owen O'Callaghan Properties development plan. We have proposed a plan which most efficiently finances and constructs a first class stadium for the Irish people and creates a sound public Authority to care for this facility into future generations.*
>
> *We are proud to announce that our team includes Bankers Trust International Plc, thus providing you with substantial capital, trading and banking capabilities in Dublin, Los Angeles, New York and London. The professionals assigned to this financing have personally financed billions of dollars of projects for states and other governments including California, New York, Michigan, Tennessee, Republic of France and the United States.*
>
> *We believe our two year research into this proposed financing structure has uncovered every conceivable alternative to produce the best possible plan. The financing includes 7.8 million for surrounding infrastructure improvements by County Dublin. The executive summary and term sheet succinctly describe the financing program. The remaining sections of the presentation are much more detailed and directed toward legal and finance professionals. We are honored to have been invited to propose a financing plan and look forward to working with you.*

On the same date, 28 July 1994, Mr Dunlop's office telephone records indicated that Mr Niall Lawlor (Mr Lawlor's son) telephoned Mr Dunlop's office seeking information as to the outcome of the Connemara Coast Hotel meeting.

1.156 Chilton & O'Connor's' vision for the stadium project was encompassed in its *'Executive Summary'* furnished to Mr Reynolds. It read:

> *Chilton & O'Connor recommends the establishment of a public entity, e.g. ('National Stadium Authority') with board members who oversee the activity of the parties involved in the creation of the Irish National Stadium. The proposed Authority will lease the stadium and grounds from the National Lottery Company and operate the facility for twenty years. The stadium will be deeded to the Republic of Ireland when the lease expires.*
>
> *The stadium can be constructed in 30 months for an estimated cost of approximately £59.5 million. This can be financed over 20 years at an initial annual cost of 6.3 million, declining thereafter, to the surplus of the*

National Lottery Company. (See section 5). The financing will be denominated in Punts. The National Lottery Company will be partially reimbursed from various stadium operations including ticket sales, concessions, advertising, parking, hospitality, suite rentals and merchandising. The stadium is projected to produce a surplus from operations which grows from approximately £877,000 to over £1 million annually during its first five years of operation. (See section 5). The financing should produce interest rates, including all fees and costs, about .65% above the relevant outstanding Irish Gilt securities. The proposed financing will only have recourse to the stadium revenue and the National Lottery Company and will not be an obligation of the Republic of Ireland and all documentation and representation will expressly deny any such implication.

Chilton & O'Connor has produced five long-term financing scenarios for funding the project. In each scenario, the debt is retired in the 20th or 25th year and the stadium is then deeded to the Republic of Ireland. The first four scenarios have fixed interest rates providing simple budgeting for the project. The fifth scenario is a LIBOR (30 day) floating rate financing which has a final maturity of 20 years.

1.157 It was clear from this document that what was being sought was National Lottery funding on an annual basis over either a 20- or 25-year period, or over a 20-year *'LIBOR floater'*.

1.158 The following alternatives were suggested:

- Over a 20-year period the *'Average Lottery Requirement'* was estimated at approximately IR£4.4m, this figure amended to IR£2.7m approximately, in the event that tax designation status was to be given to the project.
- Over a 25-year period the requirement was for circa IR£3.9m, this figure amended to almost IR£2.4m in the event of tax designation being obtained.
- On foot of the 20-year *'LIBOR floater'* the *'Average Lottery Requirement'* funding was pitched at almost IR£2.8m.

1.159 On 2 August 1994, five days after Mr O'Callaghan, Mr Dunlop and Mr Burke's meeting with Mr Reynolds in Connemara, Mr Dunlop wrote a letter to Mr Ahern marked *'Strictly Private & Confidential'*, in the following terms:

Bertie,

At a meeting with the Taoiseach in Galway on Thursday last (28th July) Owen O'Callaghan, Kevin Burke, Senior Vice President of Chilton & O'Connor, Investment Bankers, Los Angeles (whom I think you met when

you were in the USA earlier this year) and myself presented him with the attached Proposal to finance the National All–Purpose Stadium. He specifically asked me to give you a copy. I know you are away on a well–deserved break so I am giving the proposal to Mick Moran in your office for safekeeping until your return. I wouldn't mind sitting down with you for ten minutes to discuss the matter before it progresses further.

1.160 A manuscript notation on Mr Dunlop's 2 August 1994 letter to Mr Ahern suggested (as acknowledged by Mr Ahern) that by 30 August 1994 Mr Ahern was in possession of the financial feasibility proposal for the stadium and that he had requested personnel within the Department of Finance to prepare a report on it for him.

1.161 By 7 September 1994 the Department of Finance had carried out the review requested and the Department's *'Note on National All–Purpose Stadium'* set out the following:

1. The proposal may be summarised as follows:

(a) A 40,000 seat stadium, with retractable roof and floor to provide all-weather facilities, will be provided at a cost of £59.5m including £7.58m to Dublin County Council for surrounding infrastructural works, at Neilstown, Clondalkin.

(b) The funding will be raised by way of a 20 year loan at an interest rate estimated at 0.65% above the Irish Gilt rate and will be subject to an investment banking fee of £1.4m, bond insurance of £1.7m and insurance costs of £0.5 These additional costs raise the effective margin over the Gilt rate from 0.65% to 1.32%.

(c) The debt will be amortized over 20 years and the annual debt service – estimated at £6.34m – will be paid from National Lottery funds; the cost to the National Lottery will be offset by operating surpluses from the Stadium estimated ('conservatively') at £1.4m in 1997 arising to £2.8m by 2014.

(d) A National Stadium Authority (effectively a State- sponsored body) will be set up to oversee the development of the stadium and operate it for 20 years at which stage it would be 'deeded' to the State (if the debt is fully paid off).

(e) The Authority will enter into an agreement with the Developer, Leisure Ireland Ltd / O'Callaghan Properties Ltd, to build the facility including site acquisition, design, construction etc and the Developer will be compensated for such activity.

1.162 The Department of Finance's note commented on the stadium proposal as summarised at paragraphs (a) to (e) above. The Department

personnel's view of the proposal was palpably negative. The Department's conclusions, *inter alia*, stated:

> *In summary the advice of this Department is that there are other more pressing needs to be met from Lottery funds in the sports area and elsewhere than earmarking potentially £120m over 20 years to provide a new National Stadium.*

1.162 The Department also noted that:

> *It may also be useful to know that there is another proposal on the cards for a national stadium—in the Phoenix Park racecourse. According to the attached press cutting the promoters of that project also expect substantial public funding in the form of EU Structural Funds.*

1.164 The review undertaken by the officials of the Department of Finance resulted in their recommending a rejection of all of the financing proposals proposed for the *'All-Purpose National Stadium'*. A note on the Department's Report made a reference to Deloitte & Touche assisting with the revenue projections.

1.165 The Department took issue in particular with the proposed stadium's projected revenue, the negative effect on the National Lottery's funding of sporting and other causes if it was required to fund the new stadium to the extent of IR£6.3m per annum for 20 years, and the need for a national sports stadium in the first instance. The memorandum also noted media reports of a proposal to develop a national stadium in the Phoenix Park Racecourse, and its promoter's expectation of public funding.

1.166 Mr Ahern told the Tribunal that he recalled discussing the issue with his officials, within a month or so (from 5 September 1994), and he assumed that he was aware of the contents of the Department's memorandum.

1.167 Asked to state the reason why the contact between himself and Mr Dunlop and others in 1993 and 1994, which was clearly established by the documentary trail made available to the Tribunal, had not been alluded to by him in his prior statements to the Tribunal, Mr Ahern stated:

> *'I think there are three issues in that. I have no recollection of Mr Dunlop raising this issue with me in the meetings and I don't think I met him in 1994 at all according to my diary. So when we would have checked these things—he was hardly pressing me with meetings about them, there might have been one meeting about toll roads. I do not have any recollection, I don't believe he had a meeting with him, so he couldn't have been pushing with me.*

The second one is that report in September of 1993, that report was not considered to be a proper report in the department and whether Mr Dunlop sent it in or not I do not think it would have been one brought to my attention and from the department records I am not even sure that December note was looked at, but in fairness I would imagine when we were discussing what I was pressing at that stage, the commencement of the development that is now the new Croke Park, I put in the money and gave the resources in January '94, I ensure I am sure the department would have brought to my attention that proposal stage.

So the only one that I really remember was the discussions near the end of this issue, and there was three proposals, well there was four proposals; FAI had a proposal, there was this Neilstown proposal, there was the Phoenix Development and there was the Croke Park development, the only one of the those I supported was the Croke Park development, that's the one I brought to government.'

1.168 On Day 895 Mr Ahern agreed that the contents of the statements furnished by him indicated to the reader thereof that his involvement with Mr O'Callaghan's stadium project was '*peripheral.'*

1.169 On Day 895 Mr Ahern was questioned as follows:

Q. 49 *'If you read those statements would you agree with me that the proper inference to have drawn from them was that whilst you had two meetings, one in 1994, at which you are apprised of the project, one in 1996 and you were updated as leader of the opposition. It wasn't until 1998 that there is any indication of you having rejected whatever proposals were advanced to you by either Mr O'Callaghan or the gentleman with him, Mr O'Connor in the first instance and Mr Dunlop in the second, isn't that so?'*

A. *'Well I can't, I mean I don't to be frank remember too much about the meeting in 1994, or the 10th November 1994. But the fact the department didn't give the go ahead, I mean the stadium was to be built in '95/'96 I think I now know the stadium was to be built in 18 months, I don't think that ever would have happened quite frankly, but there was no support in the Department of Finance for the Chilton O'Connor proposal. There was no support in the department from their later proposal either, so that's the fact.'*

1.170 Discovery by Mr Liam Lawlor to the Tribunal revealed that Mr Niall Lawlor faxed a draft letter to Mr Lawlor dated 5 October 1994 which was intended, it appeared, to be sent to Mr Gerry Hickey, Mr Ahern's then programme manager in the Department of Finance. The draft letter was to be signed by Mr

O'Connor. It was seeking a *'dialogue'* with Mr Hickey, in advance of a forthcoming meeting between Mr O'Connor and Mr Ahern.

MR O'CALLAGHAN'S MEETING WITH MR AHERN ON 10 NOVEMBER 1994

1.171 Mr O'Callaghan, in the company of Mr O'Connor, duly met with Mr Ahern on 10 November 1994, a meeting which may have been arranged by Mr Dunlop. Mr Dunlop's office telephone records for September 1994 recorded an enquiry being made on 15 September by Mr O'Callaghan—*'did FD arrange any meeting with Bertie Ahern for next week'*—a query which was probably made in the context of Mr Ahern having been furnished with documents on 2 August 1994 by Mr Dunlop. Mr Dunlop and Mr Ahern subsequently met on 26 October 1994, albeit in relation to a different matter.

1.172 In the course of his evidence to the Tribunal about the 10 November 1994 meeting Mr O'Callaghan was questioned as follows:

> Q. 538 *'And that meeting had to be in connection with the stadium, isn't that right?*'
>
> A. *'Completely, yes.'*
>
> Q. 539 *'Now, what happened at that meeting?'*
>
> A. *'That was the meeting the lasted probably oh, I said ten* [. . . .]*. Probably less than ten minutes in total. Bill O'Connor and myself went along to meet the Minister for Finance at 11:00 in his offices and we brought our presentation with us and I initially outlined what we intended to do and Bill O'Connor very briefly confirmed that he was in a position to raise funding for it, etc. And before we had time to finish really what we were saying we were told by the Minister for Finance that the government were not going to support the stadium proposition at all and that there was no lottery funding available to do what we were suggesting that it would do. And that basically there was no support for it and we were wasting our time. I asked him why that was and he said that for start our location was on the wrong side of the Liffey. And that no business discussing it any further, it was not going to be supported by government and that was it.'*
>
> Q. 540 '*Who was at that meeting, Mr O'Callaghan?*'
>
> A. *'Three people.'*
>
> Q. 541 *'Pardon?'*
>
> A. *'Three people. The Minister for Finance, Bill O'Connor and myself.'*
>
> Q. 542 *'Did you keep a note at all or a record of that meeting?'*
>
> A. *'No, it was so brief I didn't have to. And I will never forget it.'*
>
> Q. 543 *'Yes?'*

A. *'We left the meeting within, I have said ten minutes. That's a slight exaggeration.'*

1.173 Mr O'Callaghan's evidence was to the effect that at this meeting (as suggested to him by Tribunal Counsel based on his understanding of Mr O'Callaghan's evidence) he received *'short shrift'* from Mr Ahern and that the latter had made it clear to him that he did not support a stadium project at Neilstown. Mr O'Callaghan stated that he was surprised at Mr Ahern's dismissive attitude.

1.174 Mr O'Callaghan maintained that at the meeting with Mr Ahern he had been left with the impression that Mr Ahern and Mr O'Connor were unknown to one another prior to that meeting. The Tribunal rejected Mr O'Callaghan's impression in this regard as not credible, having regard to Mr Ahern's previous contact with Mr O'Connor.

1.175 Mr O'Callaghan acknowledged that by the time of his 10 November 1994 meeting with Mr Ahern he had delivered on his agreement to donate IR£100,000 to Fianna Fáil, (which he had done with his 11 March 1994 IR£10,000 donation to Fianna Fáil, the IR£10,000 donation made in May 1994 for Mr Crowley's campaign and the IR£80,000 donated on 21 June 1994). Mr O'Callaghan stated that on 10 November 1994 he had not expected any decision that might be made by Mr Ahern in relation to state subvention for the stadium project to be based on his IR£100,000 contribution to Fianna Fáil. Mr O'Callaghan maintained that *'that contribution was made to Fianna Fáil to reduce the party debt not for any favours.'*

1.176 Mr Dunlop claimed that following Mr O'Callaghan and Mr O'Connor's meeting with Mr Ahern he had been informed by Mr O'Callaghan that Mr Ahern was not supporting the stadium project. Mr Dunlop described Mr O'Callaghan as being annoyed at this turn of events, and by the manner in which Mr Ahern had dismissed the proposal. Mr Dunlop said that he was told *'two things'* by Mr O'Callaghan *'One that* [Mr Ahern] *had been dismissive and that Mr O'Connor was highly offended at the treatment that he had received.'* Similarly Mr Deane, in evidence, told the Tribunal that he had been advised by Mr O'Callaghan, following the meeting with Mr Ahern, that Mr Ahern was not supportive of the stadium project.

1.177 It was therefore the view of both Mr O'Callaghan and Mr Dunlop that Mr Ahern's lack of support for the stadium project, as communicated to Mr O'Callaghan and Mr O'Connor on 10 November 1994, effectively put paid to the proposal for an *'All-Purpose National Stadium'* at Neilstown.

1.178 In his December 2003 statement to the Tribunal Mr Ahern stated:

> 'My diary confirms that I met Mr O'Callaghan on 10 November 1994 at the Department of Finance. I recall that Mr O'Callaghan was accompanied by a gentleman from an American financial company who I believe was called Mr William O'Connor. In the light of the request in your letter to refer to discussions in respect of certain lands in West Dublin, I wish to state that at this meeting Mr O'Callaghan apprised me of his plans to build a stadium in Clondalkin for which he was hoping to obtain government support.'

1.179 Mr Ahern's position in relation to the 10 November meeting, as stated to the Tribunal in evidence, was that while he could not recollect the meeting, it was his belief that he would have conveyed to Mr O'Callaghan and Mr O'Connor at that meeing his Department's view that the stadium proposal should not be afforded State support. When asked to comment on Mr O'Connor's letter to him eighteen days after the meeting, (and which conveyed an impression that the stadium project had not, just over two weeks earlier, been completely rejected by Mr Ahern), Mr Ahern said, '*Well, he clearly would have knnwn what my view and the department's view [was].'*

1.180 In the course of his evidence Mr O'Callaghan rejected any suggestion inherent in Mr Ahern's 4 November 2004 statement and in his evidence that he rejected Mr O'Callaghan's stadium proposals at a much later date than 1994 (1998). Mr O'Callaghan suggested again that Mr Ahern had rejected the stadium project on 10 November 1994 and he stated: *'He got this mixed up actually. It's easy for me to talk, he had a lot of things on his mind. He told me in November 1994 that the All-Purpose stadium idea was out. He got it slightly mixed up with the Wimbledon thing.'*

1.181 The Tribunal rejected the evidence of Mr O'Callaghan and Mr Dunlop that on 10 November 1994 Mr O'Callaghan's stadium proposal was dismissed or rejected by Mr Ahern in the manner they described. The Tribunal rejected their evidence notwithstanding the fact of the Department of Finance's negative appraisal having been given to the stadium proposal on 7 September 1994.

1.182 In arriving at this determination, the Tribunal took particular note of the contemporaneous documentation relating to the meeting of 10 November 1994 which was made available to the Tribunal, and which suggested that, subsequent to his 10 November meeting with Mr Ahern, Mr O'Callaghan had spoken of the project as if it were clearly still live.

1.183 A memorandum by Mr O'Farrell of AIB of a meeting between himself and Mr O'Callaghan on 24 November 1994, some two weeks following Mr O'Callaghan and Mr O'Connor's meeting with Mr Ahern, recorded a discussion Mr O'Callaghan and Mr O'Farrell had on the *'Stadium'* as follows:

> *We discussed this briefly. He indicated that he has had meetings with various politicians who are keen on the concept—although there may be an issue in relation to the location. He has had American financiers over to meet the relevant minister and he agreed that he would give me a copy of the submission made to them. He believes the FAI and the I.R.F.U. will commit to the Neilstown site. He is convinced that the proposed Phoenix Park site will not proceed in view of the difficulties in getting a casino licence.*

1.184 There was no hint or suggestion in Mr O'Farrell's memorandum that he had been advised by Mr O'Callaghan that *'the relevant Minister'* (the Tribunal was satisfied this referred to Mr Ahern) had dismissed or rejected Mr O'Callaghan's stadium proposals. Mr O'Callaghan said that he believed that the information he gave to AIB was a '*bit darker'* than that recorded in Mr O'Farrell's memorandum. He said that he did not convey the full picture (namely, Mr Ahern's outright dismissal of the project) to the bank, because that would have been news that AIB wanted to hear.

1.185 Moreover, on 28 November 1994, Mr O'Connor, in a letter addressed to *'Mr Bertie Ahern T.D. Tánaiste & Minister for Finance, Merrion Street, Dublin 2, Ireland',* stated as follows:

> *Dear Tánaiste,*
>
> *I would like to congratulate you on your recent unanimous election as Leader of Fianna Fail. Also, thank you for allocating the time to meet with Mr's. Owen O'Callaghan, Frank Dunlop and myself on the financing plan for the National All-Purpose Stadium.*
>
> *We wish you every success on the crucial talks you are embarking upon and we hope to be in contact in the near future to progress the project*.

1.186 Mr O'Connor was unlikely to have written a letter in those terms to Mr Ahern if, in truth, Mr Ahern had rejected the stadium concept at the 10 November 1994. Mr Ahern professed to have no recollection of receiving Mr O'Connor's letter. The evidence established, however, that Mr O'Connor's letter was acknowledged on 30 November 1994. The acknowledgment (which Mr Ahern said was sent by his Department with a *'poor forgery'* of his signature) read as follows:

Dear Bill,

I am writing to thank you for your message of good wishes on my selection as leader of Fianna Fail. I very much appreciate your doing so.

It is indeed a great honour and privilege to be chosen as the sixth leader of the Party. I am mindful of the great responsibility and challenges which lie ahead, and it is very heartening to know that I have good wishes of people like yourself in facing into that future.

1.187 Mr Ahern accepted that the correspondence between Mr O'Connor and himself in the month of November 1994 was extraordinary if, as maintained by Mr O'Callaghan to the Tribunal, Mr O'Connor had left the November 1994 meeting in an aggrieved and disappointed state of mind because Mr Ahern had dismissed the stadium project.[34] Mr O'Callaghan told the Tribunal that Mr O'Connor had told him that he wrote the letter to Mr Ahern, because it suited him to do so. Mr O'Callaghan suggested that the content of Mr O'Connor's letter was not '*truthful.*'

1.188 The Tribunal was satisfied that, as of 10 November 1994, contrary to evidence given by Mr O'Callaghan and Mr Dunlop, (and, also, notwithstanding Mr Ahern's evidence) there remained on the part of Mr O'Callaghan and Mr O'Connor, and indeed of Mr Dunlop, every expectation that they would further progress their stadium proposals in subsequent contact with Mr Ahern.

1.189 It was common case that Fianna Fáil left Government in late 1994/early 1995, following the failure of Mr Ahern's negotiations with the Labour Party to form a new coalition Government.

MR DUNLOP'S TRIP TO NEW YORK

1.190 Some six days prior to Mr O'Callaghan and Mr O'Connor's meeting of 10 November 1994 with Mr Ahern, Mr Dunlop met with Mr O'Connor in New York. Mr Dunlop's diary entries suggested that he travelled to New York on 3 November and that he returned to Ireland on 6 November 1994. His diary also indicated only one scheduled appointment in New York, namely a meeting between himself and Mr O'Connor on 4 November 1994. The diary indicated no other purpose for the trip. Prior to his departure for New York, Mr Dunlop's office

[34] Mr Ahern accepted that, following Mr Reynolds's resignation on 17 November 1994 as leader of Fianna Fáil, and having regard to the negotiations that were then ongoing between Fianna Fáil and the Labour Party, he expected that, following Mr Reynolds vacating the office, he would become Taoiseach, an expectation Mr Ahern held until 5 December 1994. Likewise, Mr Ahern accepted that anyone at the political epicentre in November 1994 would have known that, if the political negotiations with the Labour Party were successful, he would become Taoiseach. Mr Reynolds resigned as leader of Fianna Fáil on 17 November 1994, and acted as 'caretaker' Taoiseach until 15 December 1994.

recorded contact from both Mr Ahern (24 October 1994) and Mr Ahern's office (28 October 1994). On 26 October 1994 Mr Dunlop met with Mr Ahern, a meeting noted in Mr Dunlop's diary as follows: '*IHBA meeting breakfast with Bertie/Davenport.'* This meeting was also noted in Mr Ahern's diary as follows: '*F. Dunlop 8.30 Breakfast Davenport.'*

1.191 In his evidence to the Tribunal, Mr Dunlop claimed that he could not recollect the content or purpose of his meeting with Mr O'Connor on 4 November 1994 in New York. Mr Dunlop suggested that his primary purpose in visiting New York may have been to attend a Fianna Fáil fundraising event there. He provided no further details of this event, or of what fundraising activities he might have been engaged in while in New York. Nor could he say whether or not Mr O'Connor might have attended whatever fundraising event Mr Dunlop believed he had attended in New York. Mr Dunlop suggested to the Tribunal that his scheduled meeting with Mr O'Connor may have arisen simply because he happened to be in New York for another purpose. Mr Dunlop stated that it was likely that he and Mr O'Connor discussed the stadium project.

1.192 Mr O'Callaghan initially maintained to the Tribunal that, in November 1994, he was unaware of Mr Dunlop's New York visit but later accepted that such a visit did take place. However, he professed himself unable to identify or explain the purpose of Mr Dunlop's meeting with Mr O'Connor. Mr O'Callaghan acknowledged that Mr Dunlop's trip to New York took place at a time when he and Mr Dunlop were preparing to make a presentation (together with Mr O'Connor) to Mr Ahern as Minister for Finance (the 10 November meeting), and he accepted that Mr Dunlop must have discussed the purpose of the trip with him prior to departure. He ventured to suggest that Mr Dunlop may have simply paid a courtesy call on Mr O'Connor. Mr O'Callaghan expressed the view that if it was intended that a discussion take place in relation to the stadium project with Mr O'Connor, that discussion would have had to involve himself, Mr O'Callaghan.

1.193 On Day 899, Mr O'Callaghan appeared to suggest to the Tribunal that he recollected Mr Dunlop having mentioned travelling to New York for a Fianna Fáil fundraising event, and he appeared to suggest that he had not been told in advance of Mr Dunlop's trip, nor, upon Mr Dunlop's return, had he been told of Mr Dunlop's meeting with Mr O'Connor. Mr O'Callaghan appeared to suggest that he had been left in the dark as to the purpose of Mr Dunlop's visit to New York, both by his lobbyist and indeed *putative* partner in the Stadium Project, Mr Dunlop, and by his banker, Mr O'Connor.

1.194 The Tribunal did not accept as credible the evidence of either Mr Dunlop or Mr O'Callaghan on the issue of Mr Dunlop's trip to New York. The Tribunal was satisfied that the New York visit by Mr Dunlop was, as a matter of probability, primarily related to the stadium project and that both Mr Dunlop and Mr O'Callaghan at the time of the visit knew of and agreed its purpose. Equally, the Tribunal was satisfied that at the time of their evidence to the Tribunal both Mr Dunlop and Mr O'Callaghan had knowledge of the purpose of Mr Dunlop's visit to Mr O'Connor on 4 November 1994, and consequently it did not accept the vague and imprecise recollection on the part of both Mr O'Callaghan and Mr Dunlop in relation to this matter to have been genuine.

1.195 With regard to Mr Dunlop's meeting with Mr O'Connor in New York on 4 November 1994, the Tribunal was led to the conclusion that some aspect of the progressing of the *'All-Purpose National Stadium'* project was of such importance as to oblige Mr Dunlop to make a whirlwind visit to New York to meet Mr O'Connor. Curiously, within four days of Mr Dunlop's New York meeting with Mr O'Connor, Mr O'Connor himself was back in Ireland, presumably to accompany Mr O'Callaghan to the scheduled meeting with Mr Ahern on 10 November 1994. Mr Dunlop's diary recorded that Mr Dunlop met with Mr O'Connor on 8 November 1994 at the Berkeley Court Hotel in Dublin.

MR O'CALLAGHAN'S STADIUM PROJECT DEALINGS IN THE YEARS 1995 TO 1997

1.196 Mr O'Callaghan advised the Tribunal that during the currency of the Fine Gael/Labour/Democratic Left ('Rainbow') Coalition between 1994 and June 1997, no approach was made by him to the Government in relation to the stadium proposal. Mr O'Callaghan recalled, however, a *'minimal'* approach being made to him at Government level inquiring whether he intended to proceed with the project and Mr O'Callaghan had advised that he did not.

1.197 Mr O'Callaghan said that he called to see Mr Ahern in 1996, when he gave him an update on what was happening politically in Cork. Mr O'Callaghan described Mr Ahern's description of that meeting as set out in his November 2003 statement as incorrect, as Mr O'Callaghan's *'All-Purpose National Stadium'* project was *'dead in the water'* at that stage. Mr O'Callaghan and Mr Ahern both stated that they next met in November 1996, during Mr Ahern's tour of the West Dublin constituency, on the occasion when Mr Ahern called in to the Quarryvale site.

THE 1997–8 WIMBLEDON FOOTBALL STADIUM PROPOSAL

1.198 The third proposal to build a stadium on the Neilstown lands — the Wimbledon Football Stadium — was promoted by Mr O'Callaghan and others between 1997 and 1998. Mr O'Callaghan envisaged a type of joint venture with Wimbledon Football Club (then a participant in the English Premier Division) with that club relocating to Dublin and a football stadium being built to accommodate the needs of that club, while at the same time the stadium would serve as a national football stadium. Mr O'Callaghan retained the services of the broadcaster and journalist Mr Eamon Dunphy[35] to assist him in negotiating with the FAI regarding the Wimbledon proposal.

1.199 Mr O'Callaghan's proposed partners in this venture were the Hamman brothers, one of whom was then Chairman of Wimbledon Football Club. Mr O'Callaghan plan's required the agreement/cooperation of the FAI. It appeared that in 1997 Mr O'Callaghan was not receiving the cooperation from that body necessary to progress the Wimbledon proposal. Mr O'Callaghan also needed to circumvent or otherwise deal with specific EU legal difficulties affecting his proposal (the *'Bosman Ruling'*). To this end, in mid 1997 Mr O'Callaghan invoked the assistance of Mr Brian Crowley MEP in arranging a meeting with the then EU Commissioner, Mr Padraig Flynn in Brussels. On 24 October, Mr O'Callaghan and Mr Hamman duly met Commissioner Flynn in Brussels. A letter written by Mr O'Callaghan to Commissioner Flynn on 29 October 1997, following that meeting, suggested that Mr O'Callaghan and Mr Hamman had been advised not to pursue a *'legal route'* to circumvent the problems apparent to them at that time.

1.200 The Wimbledon proposal envisaged a national football stadium being provided in the absence of state funding or state subvention of any kind.

1.201 On 25 May 1998, while endeavouring to progress the Wimbledon proposal, Mr O'Callaghan met with the then Taoiseach, Mr Ahern.[36]. The next day, Mr O'Callaghan followed up this meeting with a letter to Mr Ahern in the following terms:

> *Dear Taoiseach,*
>
> *Thank you for giving me time out of your busy schedule on Monday last.*
>
> *Briefly—Wimbledon are prepared to provide to the following, if allowed:*
>
> *1. A National Football Stadium—cost IR£55 m.*

[35] Mr Dunphy's evidence to the Tribunal is considered in part 10 of this Chapter.
[36] Mr Ahern had been elected Taoiseach some months previously.

2. £10 million stg. —£5m stg. to be provided equally between National League Clubs the 22 National League Clubs and £5m. stg. to be divided between Schools of Excellence and the Schoolboys Leagues.
3. The FAI can use the Stadium, free of charge, for all their international games.

4. The FAI and the National League need have no fear that Wimbledon will usurp their authority in this country.
The English Premiership and the F.A. are in favour of Wimbledon locating in Dublin.
To the best of my knowledge, only Shels, Pats and U.C.D. are against this proposal. The other 19 clubs are in favour. The Gardaí have absolutely no difficulty.
All we are asking for is that the FAI and National League sit down with us and have a constructive meeting, and that both of us discuss our problems and fears, and hopefully resolve them to each other's mutual benefit.
The FAI need a Stadium in the interest of Ireland's future in international football. We will provide it for them.
If anybody can get us together, you can.
Kind regards
Yours sincerely
Owen O'Callaghan

1.202 Mr Ahern's account of his May 1998 meeting with Mr O'Callaghan was initially provided by him to the Tribunal in the course of his 4 November 2004 statement where he set out as follows:

I also recollect that Mr O'Callaghan called to my constituency office in May 1998. My recollection is that on this occasion Mr O'Callaghan was accompanied by Mr Frank Dunlop. Mr O'Callaghan wished to brief me on his latest plans regarding his stadium. I told Mr O'Callaghan that it was my plan to build a National Stadium elsewhere that would remain totally under the control of the State and would be available to all sectors of the community. Hence I was not in support of his proposal.

1.203 In his later evidence, Mr Ahern confirmed to the Tribunal that the approach taken by him to Mr O'Callaghan in 1998 was as indicated in his statement.

1.204 On Day 899, Mr O'Callaghan was asked if Mr Ahern's account of his 25 May 1998 meeting with him and Mr Dunlop accorded with his own recollection of the meeting which had taken place in St Luke's, Mr Ahern's constituency office.

Mr O'Callaghan stated that it was his belief that Mr Ahern had conflated this 1998 meeting with their earlier meeting on 10 November 1994. It was his belief that the May 1998 meeting was about Wimbledon FC relocating to Dublin, and not about the stadium project, per se. Mr O'Callaghan stated:

> *'Yes, he told me about, as I said to you, the very same thing I said before I seen this. He did agree, did he tell us that he was interested in providing the stadium, but he also said that he would like to see Wimbledon coming to Dublin because he understood how the whole Premiership thing worked, but they would have to have their own Stadium etc. Which at that stage he knew we would be providing for them. It wouldn't affect the Government or him in any way and he felt it was a good idea to see an English Premiership team playing in Dublin and based in Dublin, he had no problem with that. That's exactly what he told me.'*

1.205 Earlier in his evidence, on Day 899, Mr O'Callaghan stated that the whole purpose of his going to Mr Ahern was to ascertain if he would speak to the FAI. Mr O'Callaghan said:

> *'That was the whole purpose, to speak to the FAI. It was nothing to do with the stadium at this stage because the stadium could have been developed and built itself if we had Wimbledon coming into Dublin, what I wanted him to do was, if he could and it was a very, very long shot, was to speak to the FAI to see if they would accept Wimbledon coming in, basically.'*

1.206 With regard to the issue of funding for the proposed stadium, Mr O'Callaghan stated that no Government finance or funding was required in relation to the Wimbledon stadium proposal. Mr O'Callaghan stated: *'We'd have built it ourselves privately. We wouldn't need any government support or government grants or lottery or anything at all.'*

1.207 Mr O'Callaghan was questioned as follows on Day 899:

> Q. 584 *'But you needed a change, effectively in the European legislation, and you needed an acceptance by the FAI in order to get, that Wimbledon would be permitted to transfer to Dublin, is that right?'*
>
> A. *'What we really needed was, if we got the permission of the FAI we would have been okay, because we had received the permission of the English FA from the 19th Chairman of the English Premiership had accepted a move to Dublin, and if the FAI had accepted as well, UEFA the governing body would have accepted the whole thing. But because the FAI were not on side and didn't want us in, didn't want Wimbledon in, in case it would affect two or three clubs here in Dublin, we had to try and go through the European Parliament and use what's known as the*

'Bosman Ruling'. This is where Minister Flynn and Commissioner Van Miert came into it.'

1.208 According to Mr O'Callaghan, he had engaged Mr Dunphy to assist in seeking to overcome the resistance of the FAI to the Wimbledon proposal, but his retention did not achieve this end and it was then decided to approach the then Taoiseach, Mr Ahern, because of Mr Ahern's enthusiasm for sport.

1.209 Also according to Mr O'Callaghan, it was his belief, notwithstanding Mr Ahern's November 2004 statement, that Mr Ahern had not rejected or dismissed his Wimbledon stadium plans. Mr O'Callaghan stated that Mr Ahern

'...did favour Wimbledon coming to Dublin, that was in 1998, provided we would not interfere with or what he was intending to do himself. We were not doing that because the stadium for Wimbledon would have been a completely separate, private stadium, funded by the whole Wimbledon operation.'

1.210 In response to the question

'*You say when you met with him in May of 1998, while he told you he was going to build his own stadium, which I think subsequently became known as the 'Bertie Bowl' he was nonetheless in support of a transfer of the Wimbledon Football Club to Dublin?'* Mr O'Callaghan said *'Provided we did not interfere with his own plans, that's correct.'*

1.211 It was noteworthy that Mr O'Callaghan's letter of 26 May 1998 to Mr Ahern following his meeting did not suggest that Mr Ahern had dismissed his Wimbledon proposal, given that in his letter Mr O'Callaghan provided Mr Ahern with details of the proposal.

1.212 Mr O'Callaghan told the Tribunal that following his letter to Mr Ahern on 26 May 1998, he believed that Mr Ahern had spoken to at least two Dublin football clubs but their response had been negative and, according to Mr O'Callaghan*, 'the opposition from two or three of the League of Ireland clubs in Dublin was too strong and they were completely against the whole Wimbledon idea. They were afraid that Wimbledon would become too dominant in the Irish scene and take over football in Ireland.'*

1.213 In June 1998, Mr O'Callaghan met with the then Tánaiste Mary Harney and subsequently wrote to her in similar terms as he had to Mr Ahern.

1.214 Ultimately, as confirmed by Mr O'Callaghan in evidence, the Wimbledon stadium project failed in 1998. Mr O'Callaghan agreed that he and Mr Deane, via Merrygrove Ltd, were then left with some 61 acres of lands.

1.215 Mr O'Callaghan agreed that in 2002 these total lands at Neilstown were disposed of by Merrygrove Estates Ltd, generating a profit of some IR£12m.

THE PAYMENT BY MR O'CALLAGHAN OF IR£80,000 TO FIANNA FÁIL IN 1994

1.216 The September 1993 letter to Mr O'Callaghan from the office of the National Treasurers of Fianna Fáil, signed by Mr Reynolds, as Taoiseach and President of Fianna Fáil, and by Mr Ahern, as Minister for Finance and Chairman of the National Finance Committee, read as follows:

> *Dear Owen,*
>
> *For over seventy years now Fianna Fáil has through its political involvement played a major role in Irish life. Across the entire spectrum of the national community Fianna Fáil has given practical expression to the dreams, ideals and priorities of our people by innovation, by consensus and by effective Government. It is a proud tradition of practical patriotism which has changed the face of Ireland in education, health, agriculture, industrial development, social caring, involvement in the EC as well as constant support and encouragement for our cultural and national identity.*
>
> *The costs of administering to the needs of the biggest political party in Ireland have escalated sharply over recent years. These costs, accumulated with the enormous expenses of major election campaigns, have left us with a Party debt that demands urgent redress.*
>
> *When we have put a national recovery plan in place to tackle the Party's debt. This involves substantial cost reductions and a co-ordinated fund raising campaign. We must pursue this programme rigorously to contain and reduce a total Party debt of IR£3,150,000, comprising bank loans of IR£2,350,000 and creditors of IR£800,000. It is a formidable challenge that can only be met by single-minded resolution and generous response.*
>
> *We ask you to assist us at this critical time by making a significant financial contribution. It is an exceptional situation and we ask you to consider this request favourably in the context of these straitened circumstances. A senior representative of the National Treasurers Committee will be in touch with you personally in this regard in the near future. Thank you for your valuable support in the past which was of great assistance to the Party.*

1.217 In his evidence to the Tribunal, Mr Ahern agreed that in the period commencing approximately March/April 1993, he was instrumental in the establishment of the *'Office of the National Treasurers'* which from mid 1993, operated out of room 317 in the Berkeley Court Hotel. This office was headed by Mr Des Richardson who had the title of Chief Fundraiser. Its function was to target the electorate and party supporters with the aim of reducing the substantial Fianna Fáil debt. A number of strategies was adopted, including one of seeking contributions of IR£100,000 each from approximately ten high net worth individuals. In 1993, following his return from the post of European Commissioner in Brussels, Mr Ray MacSharry was enlisted to assist with this task. Mr O'Callaghan was one of the ten high net worth individuals identified by Fianna Fáil to be approached with a request to make a donation of IR£100,000.

1.218 The evidence established that, on a date between the issuing of the September 1993 letter to Mr O'Callaghan and December 1993, Mr MacSharry contacted and met with Mr O'Callaghan at a Dublin hotel. Both Mr MacSharry and Mr O'Callaghan testified that at their meeting Mr MacSharry requested a donation of IR£100,000 from Mr O'Callaghan and it was the evidence of both that Mr O'Callaghan indicated to Mr MacSharry that he was favourably disposed to make the requested donation. However, Mr O'Callaghan told the Tribunal that while he gave such an indication to Mr MacSharry he had required time to consider the matter fully. Mr O'Callaghan said that by Christmas 1993, he had agreed to pay the IR£100,000.

1.219 In advance of his meeting with Mr O'Callaghan, Mr MacSharry was provided with a copy of the September 1993 letter which had issued from the office of the National Treasurers to Mr O'Callaghan and which had been signed by Mr Reynolds and Mr Ahern. In the course of his evidence, Mr MacSharry denied that when he met with either Mr Ahern or Mr Reynolds, in advance of approaching the high net worth individuals, the names of such individuals had been discussed.

1.220 On 21 June 1994, Mr O'Callaghan wrote a cheque payable to the Fianna Fáil Party for IR£80,000 which was drawn on the bank account of Riga Ltd. Mr O'Callaghan's cheque was probably provided to Mr Richardson. A receipt for the Riga cheque was duly issued by Fianna Fáil on 23 June 1994. Mr O'Callaghan told the Tribunal that he had probably not paid the IR£100,000 requested of him in December 1993, or within the weeks thereafter, because his firm might not have been *'all that flush at the time'*. Explaining why, in June 1994, he had provided a cheque for IR£80,000, as opposed to the IR£100,000 donation which had been requested and agreed, Mr O'Callaghan stated that in the period between December 1993 (when he had met Mr MacSharry) and the

provision in June 1994 of the IR£80,000 cheque to Mr Richardson, he had made a contribution of IR£10,000 to Fianna Fáil at the *'Cork private dinner'*[37] on 11 March 1994, and on 13 May 1994 he had made a contribution of IR£10,000 to Mr Brian Crowley's European election campaign.

1.221 Mr O'Callaghan told the Tribunal that he had been approached by Mr Flor Crowley,[38] father of Mr Brian Crowley, whom he knew well, seeking a donation for his son's election campaign. Mr O'Callaghan said that Mr Flor Crowley had confirmed to him that it was in order that the contribution of IR£10,000 to Mr Brian Crowley's campaign could be credited against the promised IR£100,000 donation to the Fianna Fáil Party. Mr O'Callaghan also stated that having made a IR£10,000 payment to Mr Richardson at the Cork private dinner on 11 March 1994, he had asked Mr Richardson if it might be credited against his promised IR£100,000 donation, and Mr Richardson agreed.

1.222 Mr O'Callaghan's IR£80,000 cheque was drawn on Riga Ltd's Bank of Ireland account at South Mall, Cork and was made payable to '*Fianna Fáil'.* Mr O'Callaghan acknowledged that the financial constraints which had prevented him in December 1993 from making good his promise to make a substantial contribution to Fianna Fáil continued as of 21 June 1994. An analysis of Riga Ltd's current account established that when Mr O'Callaghan promised the IR£100,000 to Mr MacSharry in December 1993, the account was in credit to the tune of IR£30,000 rising to IR£51,000 in January 1994. However, immediately prior to the drawing of the IR£80,000 cheque to Fianna Fáil the account was overdrawn by almost IR£18,000. The debiting of the IR£80,000 cheque pushed the overdraft to in excess of IR£97,000.

1.223 Asked to explain why he had made the IR£80,000 payment at a time when Riga's financial position was apparently in a much more precarious position than it had been some months earlier, Mr O'Callaghan stated that he paid it

> *'. . . because I had got a reminder. I had been reminded about it actually, I promised it at Christmas. First of all, when I was asked about this payment in late '93 I suggested that I would think about it. At Christmas time I confirmed I would do it. I didn't say when, and I didn't do it until I was asked, reminded again. So I just wasn't throwing money around until I was asked a second time for it, then I decided to pay it, if I was left alone for another three or four months, I wouldn't have paid either, I just would have dragged it out for the rest of the year. I made the payment when I*

[37] For a consideration of this issue see elsewhere in this Chapter.

[38] Now deceased.

was put under pressure to me, I was put under pressure to honour my commitment, it had nothing to do with the bank statement, or bank accounts or current position.'

1.224 By the time Mr O'Callaghan paid over the IR£80,000 he had already provided IR£10,000 to the Cork private dinner fund and IR£10,000 to Mr Crowley's election campaign — substantial donations by any standard. Mr O'Callaghan told the Tribunal that it had not occurred to him in June 1994 to apprise either Mr Richardson or Mr MacSharry of Riga's precarious financial situation. Mr O'Callaghan stated that he believed that, having been chosen as one of ten people to be requested to make a substantial contribution, he felt he should play his part and pay the money.

1.225 Mr O'Callaghan acknowledged the enormity of the IR£100,000 donation in total which he had provided to Fianna Fáil by 21 June 1994. The donation was five times greater than the then net salary of a TD, or the equivalent of the cost of two to three houses that Mr O'Callaghan, as a developer, was building at that time.

1.226 Mr O'Callaghan acknowledged that in 1994, sums of IR£5,000 and IR£10,000 would be regarded as substantial donations, and agreed that in 1994 a sum of IR£100,000 was a *'fortune'*. Mr O'Callaghan told the Tribunal that this donation was the biggest political donation he had ever made and was thus a significant event in his life. He said that the payment of the money had caused him some heart searching, and that he had delayed making the donation until *'compelled'* to do so in June 1994.

1.227 Mr O'Callaghan acknowledged that what was a '*momentous'* event for him had had the effect of substantially increasing Riga's overdraft from almost IR£18,000 to almost IR£100,000.

1.228 In the course of his evidence on Day 898, it was suggested to Mr O'Callaghan that a person making such a large payment to a political party might have expected to be looked upon with favour by that party. Mr O'Callaghan responded as follows:

'Could you say that. You could say that, yes. You could say that but that's not what I was looking for, believe you me. Basically the party that I support and the party that I wanted to stay in power had serious financial difficulties and they asked ten people, approximately ten people and, between people and companies, to help them reduce their debt. I felt that's something I should do. It was a very large amount of money and that's why it took me so long to get around to paying it. But I felt that I had

to do it and I was—I suppose in no small way probably slightly honoured I was even asked to do it.'

1.229 Mr O'Callaghan's contribution was acknowledged on 30 June 1994 by Mr MacSharry in the following terms:

Dear Owen,

I have been informed by Des Richardson of your most generous and positive response to Albert and Bertie's request for support.

I very much appreciate your delivery of the undertaking which you gave to me at our recent meeting.

The assistance you have given will go a long way in helping us in the difficult task ahead of rectifying Party finances. Your support is greatly appreciated and I am pleased that you felt the efforts of the Party in Government were important and warranted such a generous response . .

1.230 This acknowledgement was followed by a letter to Mr O'Callaghan from Mr Ahern dated July 1994, which read as follows:

Dear Owen,

Further to our conversation this morning I wish to express my sincere thanks for your most generous and positive response to our request for support.

Your support is greatly appreciated and I am pleased that you felt our cause was an important one which warranted such a generous response.

May I take this opportunity to convey to you my best wishes and kindest regards.

1.231 The letter was signed *'Bertie''* and was written on the notepaper of the office of the National Treasurers headed *'Bertie Ahern T.D. Minister for Finance (Chairman National Finance Committee.'*

MR O'CALLAGHAN'S PRIOR DONATIONS TO FIANNA FÁIL

1.232 The political donations to political parties, including Fianna Fáil, made by Riga Ltd and O'Callaghan Properties Ltd, as recorded in the books of those companies, suggested that, for 1989, the two companies expended a total of just IR£1,400[39] on five donations, including the sum of IR£1,000 paid towards a secondary school project, and referable to Mr Micheál Martin TD. (The figure for 1988 was only IR£200).

[39] While this figure, IR£1,400 was put to Mr O'Callaghan as the political donation figure for 1989, the correct figure, based on documentation discovered to the Tribunal, was IR£1,500.

1.233 In November 1990, Riga Ltd recorded a political donation of IR£10,000 to Fianna Fáil (in relation to the late Mr Brian Lenihan's Presidential Election campaign) and two further donations on 3 and 18 December 1990 of IR£100 and IR£200 respectively. On 21 June 1991, Riga Ltd made a political contribution of IR£5,000 to Mr Micheál Martin's Local Election campaign. While the company's books also recorded a payment of IR£5,000 made on 18 November 1991 which, according to a schedule of payments prepared by Mr O'Callaghan for the Tribunal, was a political donation to Mr Liam Lawlor, the Tribunal was satisfied that this IR£5,000 was wrongly attributed to Mr Lawlor in Riga's books. However, Mr Lawlor was the recipient of an IR£10,000 payment from Mr O'Callaghan in October 1991

1.234 The records of O'Callaghan Properties Ltd documented a total expenditure of IR£7,600 in 1992 by way of political contributions, including a cheque for IR£5,000 sent to Mr Reynolds, then Taoiseach, on 17 November 1992.

1.235 In July 1993, O'Callaghan Properties Ltd made a payment of IR£5,000 to the Atlantic Pond Fund, a charitable purpose, at the request of Mr Micheál Martin.

1.236 Riga Ltd's books and accounts for the years 1992 and 1993 documented a number of payments made to individual politicians at senior and local level.[40]

1.237 Although he was a strong supporter of the Fianna Fáil Party Mr O'Callaghan acknowledged that he could not recollect, prior to January 1989, making any single donation greater than IR£100 to any politician or to any political party.

1.238 Mr O'Callaghan suggested that it was possible that he had made undocumented political donations of between IR£1,000 and IR£5,000 to Fianna Fáil, through some other company. The Tribunal believed, however, that this was unlikely because, in its view, had such donations been made, they would almost certainly have been documented or recorded by such companies given that Riga Ltd and O'Callaghan Properties Ltd had gone to the trouble in 1988 and 1989 of recording donations for as little as IR£100 or IR£200.

[40] These payments are considered elsewhere in this Chapter.

MR AHERN'S EVIDENCE ON THE REQUEST MADE TO MR O'CALLAGHAN FOR IR£100,000

1.239 Mr Ahern was questioned as to his knowledge of the circumstances in which a decision had been made within Fianna Fáil to approach Mr O'Callaghan and seek a substantial donation for the Party.

1.240 Mr Ahern told the Tribunal that, although he was instrumental in 1993 in setting up the office of the National Treasurer which was charged with the task of reducing Fianna Fáil's debt of IR£3m, he was unaware that Mr O'Callaghan was one of the ten high net worth individuals identified by that office for the purposes of being approached for a payment of IR£100,000.

1.241 He acknowledged that it was Fianna Fáil's strategy at the time to target wealthy individuals for IR£100,000 donations, and that Mr MacSharry had been recruited to assist in this task. It was Mr Ahern's belief that in 1993, Mr O'Callaghan was identified as a potential donor by a member of the Finance Committee of Fianna Fáil, although Mr Ahern could not identify the individual/s who might have suggested that Mr O'Callaghan be approached. Mr Ahern stated:

> *'There was usually about twenty people on the financial committee, that would be on a regional spread. Who would actually pick who, I don't know. Just to—I understand conspiracy theories, but just to make it absolutely clear, Mr O'Neill, there is not a relationship between the Taoiseach, Minister for Finance and Cabinet Ministers around the table, that you list out people that you then check with for financial contributions for the party. That just does not happen. There is as good as ever Chinese walls between what happens in Cabinet decisions of every nature, and what the party political system. The way Fianna Fáil works, while there is national treasurers that have responsibilities to the Ard Fheis to report accounts, the National Finance Committee, who are usually high profile people, they make the decisions, in those days, of who to contact. Now it's a different system because of the guidelines, it's mainly smaller fundraisers now. And the National Finance Committee would ask certain individuals will they participate in having a dinner, that would still happen they would still try to organise dinners.'*

1.242 Mr Ahern also told the Tribunal that he was unaware, at the time, that Mr O'Callaghan had paid IR£10,000 to Fianna Fáil at the Cork private dinner, although he acknowledged that he knew then of the event itself. Mr Ahern stated that he was not, at that time, aware that Mr O'Callaghan had agreed with Mr Richardson that this IR£10,000 sum could be set off against the promised IR£100,000 to Fianna Fáil.

1.243 Mr Ahern acknowledged that his meeting with Mr O'Callaghan on 24 March 1994 took place against the backdrop of Mr O'Callaghan's endeavours to progress his *'All-Purpose National Stadium'* project and at a time when Mr O'Callaghan was actively seeking state subvention of between IR£3m and IR£5m per annum for the project. He acknowledged also that the meeting took place against the backdrop of the Fianna Fáil Party's request to Mr O'Callaghan for a contribution of IR£100,000 towards reduction of its debt.

1.244 Moreover, Mr Ahern acknowledged that, even on Mr O'Callaghan's account of his meeting with him on 24 March 1994, Mr O'Callaghan's entreaty to him concerning Blanchardstown and tax designation had been made against a backdrop whereby Mr O'Callaghan had effectively committed himself to paying over IR£100,000 to Fianna Fáil, a commitment which, by 24 March 1994 he had commenced to make good, with the provision of a cheque for IR£10,000 to Mr Richardson during or after the Cork private dinner held on 11 March 1994.

1.245 As already set out, although he professed to have no particular recollection of the meeting, Mr Ahern neither confirmed nor disputed Mr O'Callaghan's evidence that the tax designation or non tax designation of the Green Property plc site at Blanchardstown was a subject he and Mr O'Callaghan had discussed on 24 March 1994, and in respect of which Mr O'Callaghan told the Tribunal he was told *'very quickly'* by Mr Ahern that neither Blanchardstown nor Quarryvale would receive tax designation status.

1.246 The Tribunal found[41] that the issues for discussion between Mr O'Callaghan and Mr Ahern on 24 March 1994 were Mr O'Callaghan's stadium project, and his request for state funding for the project (by way of National Lottery funding and/or tax designation) as well as Mr O'Callaghan's concern that the Blanchardstown Town Centre site might be favoured with tax designation status.

1.247 Mr Ahern accepted that his telephone call to Mr O'Callaghan in July 1994, during which he thanked him for his generous contribution to Fianna Fáil, could only have been in the context of his knowledge of Mr O'Callaghan's significant contribution of IR£80,000 to Fianna Fáil, although he claimed not to have a recollection of that telephone conversation with Mr O'Callaghan. Mr Ahern could not recollect whether or not Mr O'Callaghan had made reference, during the course of that telephone conversation, to his stadium project which had been the subject of discussions Mr O'Callaghan had had with the then Taoiseach, Mr Reynolds, some weeks beforehand.[42]

[41] See above.

[42] On 6 May, Mr O'Callaghan and Mr O'Connor met with Mr Reynolds, following which, also on 6 May, Mr O'Connor wrote directly to Mr Reynolds.

1.248 Mr Ahern was asked on Day 896 whether there was:

'*...any question of this payment of £80,000 or indeed £100,000 by Mr O'Callaghan being conditional upon continued support being given to him by either yourself or Mr Reynolds in connection with the ongoing project of Neilstown, which was the subject of the conversations and meetings between them, to your knowledge?'*

He responded:

'No, Mr O'Neill, either to my knowledge or without my knowledge. You know, that implies—we had this this morning again, but that implies that when somebody makes a contribution to a political party, in this case the political party I was honoured to be President and Leader and Vice President and Treasurer and probably nearly every other position over 35 years, that there is some fix that you get help or assistance that if you contribute to that party. I mean, that is not the way democratic politic has worked in my long experience, I have been in ten Dáils at cabinet tables for over 25 years, that's not the way it works.

It's not a list going around by the leader of the party or senior ministers or office holders in the party saying we'll help Joe Bloggs or Mary Bloggs because they have given us money and we'll help them even more if they give us more money, that does not happen, didn't happen, never saw anything like it, nothing connected with it. And I know your job is to ask the questions and my job is to answer them, if you are trying to put forward a conspiracy, that Ministers and Government that work under the constitution of this country play that kind of game. No they don't.'

1.249 Mr Ahern was further questioned as follows:

Q. *'As far as you are concerned it never happened at any time?'*

A. *'In my life.'*

Q. *'In your life. I am not talking only about you, but you have made a general statement about politics and the fact that politics has always been clean and that no politician has ever taken money in ministerial roles where it was inappropriate to do so, that's your evidence here today?'*

A. *'That's my evidence. I never saw it linked up and other people have been in trouble over other things, but it has never been linked back. We have had previous Tribunals it has not been linked back to favours and in this case I have never seen a Government decision predicated on the fact that somebody was squirreling money into their party or into their own pocket either for that matter.'*

A COMPARISON BETWEEN THE CIRCUMSTANCES IN WHICH MR O'CALLAGHAN PAID IR£80,000 TO FIANNA FÁIL IN 1994 AND THE CIRCUMSTANCES IN WHICH MR GILMARTIN GAVE IR£50,000 TO MR PADRAIG FLYNN (INTENDED FOR FIANNA FÁIL) IN 1989

1.250 The similar features were as follows*:*

In both instances:

- The sums of money in question were substantial.
- Senior party members made/promoted the request for a substantial donation.
- Recent, and/or current contact with one or more senior Government Ministers had taken place with the donors in relation to their business interests.
- The donors were involved in promoting their respective business interests and were seeking Government support in relation thereto.
- There was an element of perceived or actual pressure on both donors to make substantial donations, albeit for different reasons and to varying degrees.

1.251 The distinguishing features were as follows:

- Mr O'Callaghan was a known supporter of, and financial donor to, the Fianna Fáil Party prior to the 1994 IR£80,000 donation, albeit of significantly smaller amounts than IR£80,000[43] whereas prior to June 1989, Mr Gilmartin was not a contributor to the Fianna Fáil Party, nor was he known to be a supporter of the Party.
- Mr O'Callaghan had no difficulty in principle with a request from the Fianna Fáil Party for a donation, nor with complying with that request, save that at the time he perceived the substantial nature of the amount to be a strain on his company's finances whereas Mr Gilmartin, as the Tribunal found, made his donation of IR£50,000 to Fianna Fáil in particular circumstances. The Tribunal was satisfied[44] that Mr Gilmartin acceded to a request from Mr Flynn for a *'substantial contribution'* for the Fianna Fáil Party in circumstances where Mr Flynn had suggested to him that the making of such a donation *'might help curb'* certain activities then being complained of by Mr Gilmartin to Mr Flynn and others. The Tribunal found**,** as a matter of fact, that the activities in respect of which Mr Gilmartin was being advised might be curbed by such a donation, were corrupt demands for money made of him by three individuals in the early months of 1989, two of whom

[43] See elsewhere in the Report for details of earlier FF contributions

[44] See elsewhere in the Report.

were members of Fianna Fáil.[45] Mr Gilmartin made his payment reluctantly and with a degree of desperation.

- Mr O'Callaghan's donation of IR£80,000 was paid into the Fianna Fáil bank accounts used for political purposes whereas Mr Gilmartin's IR£50,000, although intended by him for the Fianna Fáil Party, was in fact kept by Mr Flynn and used by him (for the most part, at least) for personal/family purposes.[46]

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE REQUEST MADE OF MR O'CALLAGHAN TO PAY A SUBSTANTIAL DONATION TO THE FIANNA FAIL PARTY

i. The Tribunal was satisfied that at the time Mr Reynolds and Mr Ahern wrote their September 1993 letter to Mr O'Callaghan seeking a substantial donation to the Fianna Fáil Party, it was against the backdrop of consistent lobbying by Mr O'Callaghan and Mr Dunlop at Government level for State subvention for the *'All-Purpose Stadium'* project.

ii. The Tribunal was satisfied that Mr O'Callaghan felt himself compelled to make this substantial payment to the Fianna Fail Party in circumstances where his company was obliged to use borrowed funds in order to do so, because of his concern, (be that perceived or real), that a failure on his part to so contribute would impact negatively on his efforts to secure Government support and financial assistance for the Stadium project.

iii. Having regard to the evidence heard by it, the Tribunal did not deem it appropriate in the circumstances to determine that this payment to the Fianna Fail Party, and in particular the request made to Mr O'Callaghan by Mr Reynolds and Mr Ahern for a substantial payment, was corrupt. The Tribunal nevertheless considered that the concept whereby senior Ministers, together with a former Government Minister and EU Commissioner closely associated with that party, would actively engage in (what amounted to in reality) pressurising a businessman, then involved in lobbying the Government to support a commercial project, to pay a substantial sum of money to that political party, was entirely inappropriate and an abuse of political power and Government authority.

[45] See elsewhere in the Report.

iv. The similarity noted by the Tribunal to have existed in many important aspects as between, on the one hand, the request made of Mr Gilmartin by Mr Flynn, then a Government Minister, for a substantial donation to the Fianna Fail Party in 1989; and on the other hand, the request made of Mr O'Callaghan by Mr Reynolds and Mr Ahern (then Taoiseach and Minister for Finance respectively) in 1993 were, the Tribunal believed, remarkable. In both instances, individuals who were engaged quite legitimately in promoting their interests with members of Government were subjected to requests for substantial financial donations to the political party with whom those Ministers were affiliated, and in circumstances where those individuals felt themselves to have had little choice but to comply (albeit for different reasons and in markedly different circumstances) with such requests.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 6 - SECTION B : 'BIG ONE'

2.01 Between January 1993 and June 1994, a number of entries in Mr Dunlop's diaries made reference to 'Big One'. The dates and relevant entries in the diary were as follows:

- 27 January 1993. '*4.00 OO'C re big one*'.
- 16 March 1993. '*OOC to revert re big one*'.
- 29 July 1993. '*Spoke to OO'C re Big One AGAIN!! Yes Yes*'.
- 3 August 1993. '*Spoke to OO'C re Big One AGAIN!! Yes Yes*'.
- 30 September 1993. *'OO'C report re Big One'.*
- 13 December 1993. '*5.00 OO'C & LL -> Discussion re Big One. When? If deal comes thru. 'Private' deal. When? Leave it to FD.'*
- 1 June 1994. '*OO'C in FDA's. Spoke re Big One. OO'C said he hoped to have whole situation fixed up by end of month.*'

2.02 Mr Dunlop swore his first Affidavit of Discovery on 7 July 1999, in response to a Tribunal Order made in February 1999, and which required him to discover, *inter alia*, all records relating to any business dealings or transactions as between himself and Mr O'Callaghan. This Order clearly included diary entries which included any such references or information for the period 1 September 1991 to 1 September 1993. A second Order for Discovery made in March 2000, required Mr Dunlop to make similar discovery for the period 1 January 1990 to 1 September 1991, and also from 1 September 1993 to 30 December 1993.

2.03 The first four '*big one*' entries in Mr Dunlop's 1993 diary were required to be discovered by him on foot of the February 1999 Discovery Order, and the latter two 1993 entries were covered by the March 2000 Discovery Order.

2.04 However, in neither of the Affidavits sworn by Mr Dunlop on foot of the aforesaid Orders, was there any reference to any such diary entries.

2.05 The Tribunal first became aware of concealed '*big one*' entries, when in 2001, Mr Dunlop furnished his entire unredacted diaries, following a request from the Tribunal to do so.

2.06 Mr Dunlop admitted that prior to furnishing to the Tribunal the copies of his diaries in 1999 and 2000, in their redacted version, he concealed the '*big one*' entries, as well as other information in the diaries.

2.07 In the course of his evidence, Mr Dunlop agreed that he went to considerable lengths to keep the '*big one*' entries which related to, as admitted by him, discussions of certain financial dealings/transactions as between himself and Mr O'Callaghan, concealed from the Tribunal. Mr Dunlop claimed that he could not recollect why he had concealed the diary entries in question. The Tribunal was, however, satisfied that in concealing these diary entries Mr Dunlop's purpose, *inter alia*, was to keep from the Tribunal the existence of a significant financial matter which in 1993 and 1994, was the subject of negotiation, or had been agreed between himself and Mr O'Callaghan, and that he had not forgotten this reason when questioned by the Tribunal.

2.08 The Tribunal sought to establish, if, as contended by Mr Dunlop, '*big one*' was a reference to an agreement whereby Mr Dunlop was to be paid a success fee in relation to Quarryvale, contingent upon the happening of a certain event (namely the lifting of the retail cap on Quarryvale) was correct, or whether in fact the designation '*big one*' related to some other arrangement, either then under negotiation, or already agreed, between Mr Dunlop and Mr O'Callaghan.

2.09 Mr Dunlop and Mr O'Callaghan both acknowledged that in the period 1992 to 1994, there was an agreement in principle whereby Mr Dunlop, Mr Lawlor and Mr Kelly, together with Mr O'Callaghan, would, in some shape or form, have an interest in the '*All Purpose National Stadium*', the project which was being promoted by Mr O'Callaghan at local and national level, as an alternative use for the Neilstown/Clondalkin lands.

2.10 The Tribunal was satisfied that such agreement, in principle, was probably being discussed in May 1992, when a document entitled '*Action to be taken on Stadium after our meeting on 28th last',* was furnished by Mr O'Callaghan to Mr Dunlop. This document, *inter alia*, made reference to '*Our involvement to include the group of four who met and discussed this at 6:30pm on Thursday 28th May'.* Mr Dunlop's diary also noted a meeting between Mr O'Callaghan, Mr Kelly, Mr Lawlor and himself on 29 April 1992.

2.11 Mr Dunlop, Mr O'Callaghan, Mr Kelly and Mr Deane all agreed that by approximately mid 1992, it was being proposed that Mr O'Callaghan, Mr Dunlop, Mr Lawlor and Mr Kelly would become shareholders in an entity, Leisure Ireland Ltd/Leisure West Ltd and that it had been agreed that each would have a 25% shareholding in the company, with Mr Lawlor's shareholding to be held in trust for him by Mr Dunlop. There was probably a general view by

most, if not all, of those involved in the project at the time that it was not in the interest of the project to have Mr Lawlor's involvement disclosed.[1]

2.12 Mr O'Callaghan accepted that what had been proposed and/or agreed was that Leisure Ireland Ltd/Leisure West Ltd would acquire the Neilstown lands, (in respect of which Merrygrove Ltd had an option to purchase), and that it would also acquire a further 28 acres of adjoining lands, (in respect of which, from 1993 onwards Merrygrove Ltd was negotiating with Dublin Corporation).

2.13 Mr Kelly agreed that there was a proposal whereby he was to become a shareholder in a company involved with the Stadium project and which '*Frank was taking charge of*'. Mr Kelly maintained, however, that his proposed participation involved '*putting up capital'* which he did not then have, and hence, he did not actually become involved. Mr Kelly professed not to know whether the company had ever been established, as Mr Dunlop '*never came back to me on it'* and had '*never produced any documentation*' to him.

2.14 Mr O'Callaghan, Mr Kelly and Mr Deane maintained that Mr Dunlop, Mr Kelly and Mr Lawlor's participation in this venture, through Leisure Ireland Ltd /Leisure West Ltd required a financial input, on the part of each, of £250,000.

2.15 When asked, on Day 816, to identify what he was '*bringing to the table in terms of getting 25 per cent interest of the Stadium company'* Mr Dunlop explained:

> '*Well I wasn't giving anything in the context. I was a participant with the other three in the generation of the idea, notwithstanding the fact that I have already told you that the genesis of the idea, as far as I recollect it from the outset, came from Mr. Liam Lawlor. And that this was regarded, if it succeeded, would have been regarded as a very, very successful, desirable project and that it would could possibly be extremely profitable.'*

2.16 An analysis of Mr Dunlop's '*big one*' diary entries revealed that, to a significant degree, the entries mirrored certain actions, (in 1993 and 1994), on the part of Mr Dunlop and Mr O'Callaghan and others, connected to the aforementioned Stadium project.

2.17 Notwithstanding this apparent coincidence in time between Mr Dunlop recording in his diary his expectations with regard to '*big one*', and events which were taking place with regard to the progressing of the proposed involvement of Mr Dunlop, Mr Lawlor and Mr Kelly in the proposed Stadium project, Mr Dunlop

[1] Mr O'Callaghan recognised a potential negative effect for Quarryvale if it became publicly known that Mr Lawlor was associated with it. Mr Dunlop had a similar view.

continued to maintain, for the most part, that his '*big one*' diary entries referred to his putative Quarryvale '*success*' fee, and not his anticipated participation as an owner/profit sharer in the proposed '*All Purpose National Stadium.*'

2.18 Both Mr Dunlop and Mr O'Callaghan maintained that the only significant financial matter discussed between them in 1993, related to their discussions about the payment of a future success fee to Mr Dunlop regarding Quarryvale, contingent upon the removal of the retail cap which had been put in place in December 1992 (and which was confirmed in the 1993 Development Plan).

2.19 Mr O'Callaghan told the Tribunal that he did not know what the reference '*big one*' referred to. He stated that it *'probably'* referred to a success fee, but also accepted that it could have been a reference to a shareholding in the Stadium project.

2.20 Contrary to Mr Dunlop's assertion that the 1993/1994 '*big one*' entries related to a success fee for Mr Dunlop, as then unquantified, and payable at a future date contingent on the lifting of the Quarryvale retail cap, the Tribunal was satisfied that no such agreement was concluded between Mr Dunlop and Mr O'Callaghan by January 1993. The Tribunal was satisfied that Mr Dunlop, in the period 1992 to 1994, anticipated his reward and/or his success fee for his Quarryvale and Stadium endeavours by way of his expected participation, together with Messrs O'Callaghan, Kelly and Lawlor, in the '*All Purpose National Stadium*' project.

2.21 The Tribunal noted in particular two '*big one*' entries which appeared in the diaries in mid 1993. On 29 July 1993 Mr Dunlop noted the following:

> '*Spoke to OO'C re 'Big One' AGAIN!! Yes, Yes'*

This notation was followed, on 3 August 1993 with:

> '*Spoke to OOC re Big One AGAIN!! Yes, Yes'*

2.22 The Tribunal believed that these diary entries reflected discussions then underway between Mr Dunlop and Mr O'Callaghan about the former's involvement, on an ownership basis, in the Stadium project.

2.23 The Tribunal was satisfied that, the manner in which the results of Mr Dunlop's and Mr O'Callaghan's discussions were being recorded by Mr Dunlop, was indicative of the fact that in his negotiations with Mr O'Callaghan, Mr Dunlop believed that considerable progress was being made with regard to whatever interest Mr Dunlop was to receive.

2.24 On 31 August 1993,[2] having collected Mr O'Callaghan from the airport, Mr Dunlop and Mr O'Callaghan, in the company of Mr Lawlor, met at Mr Dunlop's Co. Meath home that afternoon. Mr Dunlop maintained that this meeting was likely to have been a '*strategy*' meeting relating to Quarryvale, and the general Stadium project. A reference to this meeting was noted in Mr Dunlop's diary, ('*3:00 meet LL/OO'C at home*'). However, this particular entry was deliberately concealed from the copy of the diary extract originally provided by Mr Dunlop to the Tribunal. When questioned as to why the said reference to Mr Lawlor and Mr O'Callaghan attending a meeting together had been concealed by Mr Dunlop in this way, Mr Dunlop was unable to give any cogent reason. Mr Dunlop accepted the likelihood that the respective shareholdings in Leisure Ireland Ltd/Leisure West Ltd were agreed at this meeting.

2.25 The Tribunal believed it was likely that one of the topics of discussion at this meeting was Mr Dunlop's, Mr Lawlor's and Mr Kelly's proposed shareholding/interest in the Stadium project, and that this discussion prompted Mr Dunlop's letter to Mr James O' Dwyer of Arthur Cox, Solicitors on 2 September 1993, in which he referred to himself being a 25% shareholder, and of holding another 25% shareholding '*in trust*' in Leisure Ireland Limited. His letter read as follows:

> *Dear James,*
>
> *I mentioned the proposed National Stadium to you during our telephone conversation on Tuesday last. I act professionally for the promoter of the Stadium, Owen O'Callaghan of O'Callaghan Properties Limited, Cork. I am also a 25% shareholder, and I hold another 25% in trust, in the company which will promote and project manage both the funding and construction of this facility. The name of this company is Leisure Ireland Limited.*
>
> *I would like Arthur Cox to advise Leisure Ireland Limited on all the legal aspects and requirements of this project and would be grateful if you would nominate the appropriate person with whom I can liaise.*

2.26 Questioned as to the reason why Mr Lawlor's share was to be held in trust, Mr Dunlop stated:

> '*Because Mr. Lawlor, two things. One Mr. Lawlor apparently wanted it that way. And secondly, I think the other participants Mr. O'Callaghan myself and Mr. O'Callaghan, Mr. Kelly and myself viewed it as easier, an easier matter to deal with without having Liam Lawlor's name attached.'*

[2] Mr Dunlop's diary for 30 August 1993, recorded a meeting between himself, Mr Kelly and Mr Lawlor at the Berkley Court Hotel, at 7:30am. Mr Kelly expressed surprise that he would have attended any meeting at such an early hour, but did not deny that it could have taken place.

2.27 When asked whether Mr Lawlor's participation in the project would have affected applications then being made for assistance from the Government, Mr Dunlop stated:

> '*Well I don't know how it would have had effect from assistance from the government because that would be a matter of the representatives of the government to make a decision appropriate. But I can answer your question by saying sadly. I believe that it would have had a negative effect in that people's perception of the matter might have been skewed by virtue of the fact that Liam Lawlor was attached.'*

2.28 Mr Dunlop proceeded to advise his solicitors on 6 September 1993 that the Stadium project had '*...planning permission together with strong backing from the Government.....'.* Mr Dunlop was asked to explain the basis on which he had made this assertion to his Solicitor. He stated:

> *'I base the assertion on the stated and repeated support given by Albert Reynolds as Taoiseach to both Mr. O'Callaghan and myself in relation to the ...to the... to the project. The fact that a National Stadium was now a national objective as it were and had been listed as such by the government and representatives of the government. And to all intents and purposes it was an issue in relation to the possibility of government funding that just had to be tied down.'* Mr. Dunlop also said '*...the impression persisted that from the moment that the idea of a National Stadium was presented to the government as a possibility, and a request for funding in whatever format it would be given, was made, that the attitude was positive.'*

2.29 Mr Dunlop met with Arthur Cox, Solicitors, on 10 September 1993. On that occasion, as variously noted by the three solicitors with whom he spoke, Mr Dunlop advised them that he, together with Mr O'Callaghan and Mr Kelly, as 33.3% shareholders in a company Leisure Ireland Ltd wished to enter into an agreement with Merrygrove Ltd[3] to acquire 33 acres of land held by Merrygrove Ltd near Quarryvale, with the object of developing a Stadium on the lands. Mr Dunlop was in a position to report to his legal advisors that planning permission had been obtained for these lands[4], and that Deloitte & Touche had undertaken a Feasibility Study on the project. Moreover, Mr Dunlop advised his solicitors that there was a Government commitment to a grant of £5 million per annum for the project for a period of 10 years, commencing in 1996.

[3] By this time Merrygrove Ltd was a wholly owned subsidiary of Barkhill Ltd.

[4] A decision to grant Planning Permission was made on 23 August 1993. The Planning Permission was granted on 7 October 1993.

2.30 Notwithstanding Mr Dunlop's denial, the Tribunal was satisfied that on 10 September 1993, Mr Dunlop advised his solicitors that the project had received a Government commitment for State funding, and that Mr Dunlop, on the date in question, was instructing Arthur Cox to put matters in train so as to give effect to the proposal to transfer the Neilstown lands to Leisure Ireland Ltd.

2.31 The instructions given by Mr Dunlop on that date were encapsulated in a letter written by Mr Dunlop to Mr O' Dwyer, of Arthur Cox, Solicitors, on the 15 September 1993, wherein Mr Dunlop stated, under the heading '*Leisure West Limited Re National Stadium'* as follows:

Dear James,

We met at your office on Friday, 10th inst. in relation to the above. I thank you for your valuable advice in the matter and for the expeditious manner in which the meeting was organised.

You asked me to write to you with my recommendations regarding the ownership of the lands on which the Stadium is to be built and the transfer of same to Leisure West Limited.

Put simply, legal effect is now required for the transfer of the 33 acres of land in the ownership of Merrygrove Limited., at Cappagh, Neilstown, Clondalkin, Dublin 22 and similarly for the transfer of the option which Merrygrove Limited. holds on the adjoining 28 acres to Leisure West Limited.

Agreement in principle has been reached regarding such a transfer between the owners of Merrygrove Limited, chief of whom is Mr. Owen O'Callaghan, and the shareholders and directors of Leisure West Limited, represented by myself.

Regarding the financial aspect it is agreed that the costs associated with this transfer will be the exact original purchase price paid for the 33 acres, together with the accumulated costs to date, duly receipted.

I hope this gives you an idea of what is involved. I know it appears simple but no doubt I've forgotten important points. Perhaps we could meet again to discuss. I am under some pressure from Chilton & O'Connor, Investment Bankers (1901 Avenue of the Stars, Suite 300, Los Angeles, CA 90067) to appoint them, on a no foal/no fee basis as funding facilitators for the project. I would be grateful for your guidance in this regard also.

2.32 Mr Dunlop agreed that there was no ambiguity about the contents of that letter. He acknowledged that, had the transfer of the option on the lands taken place, as envisaged in his letter, then Leisure West Ltd would have become the owner of the option, an event which, for Leisure West Ltd would have been, in effect, a multi million pound transaction.

2.33 Notwithstanding this acknowledgment, Mr Dunlop continued to maintain to the Tribunal that his '*orientation'* in terms of the interest he was to receive in the project, had always been an interest in the operational aspect of the proposed Stadium rather than in the lands on which it was to be built. Mr Dunlop explained his 15 September 1992 letter as having been written to galvanise Mr O'Callaghan into action, on foot of the verbal agreement which had been reached with Mr O'Callaghan. Mr Dunlop stated:

> *'I think perhaps and I am not saying this definitively, but perhaps it was to push Mr. O'Callaghan into an agreement in relation to the setting up of Leisure West and a division of the 25 per cent each in relation to the operation of the Stadium. I never, to this day, even reviewing that document in the brief or otherwise, to this day I have never believed and there was never any agreement with Mr. O'Callaghan for the transfer of any lands to Leisure West.'*

2.34 Mr Dunlop maintained that he wrote the letter '*Because, Mr. Lawlor and myself are pushing the solicitors to get on to John Deane who is the solicitor to Mr. O'Callaghan, to effect an arrangement to effect an agreement of some sort in relation to the Stadium'*. Asked to explain the agreement which he claimed had been entered into with Mr O'Callaghan by 15 September 1993, Mr Dunlop stated the following:

> *'My understanding has always been that Mr. O'Callaghan and I with Ambrose Kelly and Liam Lawlor agreed that in relation to the Stadium in general, that there would be a 25 per cent interest held by each of us and one of us would hold the 25 per cent for Mr. Lawlor and it was related to the Stadium. Notwithstanding any technicalities in relation to the land that the Stadium was built on, to this day I would have said that it was absolutely futile for anybody to suggest to Mr. O'Callaghan that he would transfer his interest in the land at Merrygrove – held by Merrygrove to a new company called Leisure West. I don't think that was ever in the offing.'*

2.35 Mr Dunlop agreed that in his dealings with Arthur Cox, he was, in effect, representing himself, Mr Kelly and Mr Lawlor, and possibly Mr O'Callaghan.

2.36 Mr Dunlop acknowledged that the contents of his letter suggested an awareness on his part of the fact that Mr O'Callaghan was not the sole owner of Merrygrove Ltd. Mr Dunlop was aware of Mr Gilmartin's interest in Merrygrove.[5]

2.37 On 21 September 1993, Arthur Cox, Solicitors, contacted Mr John Deane, Merrygrove's solicitor, following Mr Dunlop's instructions. Mr Walsh of that firm wrote as follows:

SUBJECT TO CONTRACT

I refer to our telephone conversation and understand that agreement in principle has been reached regarding an option in favour of Leisure West Limited to purchase 33 acres of land held by your client coupled with a transfer of an option over an adjoining 28 acres. I also understand that the proposed purchase price if the option is exercised will equal the original purchase price paid for the 33 acres with accumulated costs to date duly vouched.

I look forward to hearing from you as soon as possible with copies of your client's title and the option over the adjoining lands together with details of the costs to date in relation to the 33 acres.

2.38 Mr Deane, on behalf of Merrygrove Limited responded to Arthur Cox, Solicitors, on 27 September 1993, in the following terms:

Dear John

Thank you for your fax of the 21st September. Perhaps you could also confirm to me your understanding as to the shareholding in Leisure West Limited. Once I hear from you on this point I shall have a consultation with my client and revert to you.

2.39 There was no suggestion in Mr Deane's letter that the underlying premise of Arthur Cox, Solicitors' 21 September 1993 letter to Mr Deane, namely that an agreement had been reached in principle between Leisure West Ltd and Merrygrove Ltd for the transfer of the Option on the Neilstown lands to Leisure West Ltd, was being queried or refuted. On 27 September 1993[6], Arthur Cox, Solicitors, wrote again to Mr Deane clarifying their understanding that the three shareholders in Leisure West Ltd would each hold a one third share[7].

[5] Mr Gilmartin's interest in Merrygrove was through his shareholding in Barkhill.
[6] On the 30 September 1993, (three days after this letter was written) Mr Dunlop's diary included the following information 'OO'C Report re Big One'.
[7] Arthur Cox, Solicitors were never advised of Mr Lawlor's proposed secret shareholding.

2.40 On 6 October 1993, Mr Walsh of Arthur Cox, Solicitors wrote to Mr Dunlop urging him to request Mr O'Callaghan to give the necessary instructions to Mr Deane, so that the Merrygrove Limited's Option '*can be put to bed before any major benefit accrues to the site arising from your forthcoming discussions.*[8]*'*

2.41 Between September and December 1993, there were ongoing discussions between Arthur Cox, Solicitors, and Mr Deane, Solicitor, representing Merrygrove Ltd in relation to Leisure Ireland Ltd These discussions, in all probability, culminated in a letter from Mr Deane to Arthur Cox, Solicitors, on 7 December 1993[9], which set out the background to Merrygrove Estates Ltd. becoming the owner of the Option to purchase 33 acres of lands, and of the fact that Merrygrove Estates Ltd was, in 1993, negotiating to acquire an additional 28 acres of land from Dublin Corporation. Mr Deane advised Mr Walsh as follows:

> *'As you will see from the foregoing, the legal frame work to secure the site may be a little indefinite. There is no doubt that there is very substantial goodwill on the part of Dublin Corporation to see the stadium project proceed and on this basis, Owen does not see any difficulty with Dublin Corporation in relation to this entire site.*
>
> *Owen is happy to grant the option referred to in your letter. In the event of the option being exercised, then not only must the expenses referred to in your letter be reimbursed, but also the deposit of £300,000 paid by Merrygrove. In relation to the sum mentioned in your letter for expenses, this is a figure which Owen has agreed and is not to be subject to alteration or the production of vouchers and other verification.*
>
> *The shareholding as set out in your recent correspondence is agreed.*
>
> *It was also agreed that our firm would act for the new company in connection with the stadium project as we have been involved in the project since the inception of the stadium concept.'*

2.42 Notwithstanding the clear and unambiguous terms in which Mr Deane's letter was formulated, Mr Dunlop, on Day 817, continued to maintain that his '*abiding recollection*' was that he was to receive 25% of the Stadium, and not the land itself.

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[8] A likely reference to contact then anticipated to be made by Mr O'Callaghan and Mr Dunlop with the Taoiseach, Mr Reynolds. By August 1993, Deloitte & Touche had produced their financial feasibility study for the Stadium. A decision to grant planning permission had been made on 23 August 1993. See Chapter Two, Part 6, Section A, *'The Neilstown Stadium and Related Matters.'*

[9] Mr Deane's letter to Arthur Cox, Solicitors was written some six days after Mr Dunlop wrote to the Minister for Finance Mr Ahern and Mr O'Callaghan wrote to the Taoiseach, Mr Albert Reynolds – see Chapter Two, Part 6, Section A, *'The Neilstown Stadium and Related Matters.'*

2.43 However, the Tribunal was satisfied that by December 1993, Mr O'Callaghan[10] had reached some level of agreement with Mr Dunlop, Mr Kelly and Mr Liam Lawlor to the effect that all four were to be participants in Leisure Ireland/Leisure West, and that one of the first steps to be taken by that entity was to put in place a process to acquire from Merrygrove Ltd the lands on which the proposed Stadium was to be built.

2.44 On 13 December 1993, Mr O'Callaghan and Mr Dunlop met the Taoiseach, Mr Reynolds. Mr O'Callaghan, believed that this meeting concerned the Stadium project, and that it was his impression from the meeting that Mr Reynolds was supportive of it.[11]

2.45 The Tribunal was satisfied that, a meeting which Mr Dunlop had on 13 December 1993, with Mr O'Callaghan and Mr Lawlor, shortly after the meeting with Mr Reynolds, was probably for the purposes of discussing the progression of their and Mr Kelly's involvement as shareholders in Leisure Ireland/Leisure West, the entity which was to be the beneficiary of the commitment then being given at national level for the Stadium project.

2.46 Mr Dunlop noted in his diary on 13 December 1993, the discussion with Mr O'Callaghan and Mr Lawlor in the following terms:

> *'5.00 OOC & LL → Discussion re Big One. When? If deal comes thru. 'Private' deal. When? Leave it to FD.'*

2.47 Mr Dunlop claimed that he was unable to explain the reference to '*private deal*' in this diary entry but stated that the reference to '*big one*' was associated with the success fee. When pressed by Tribunal Counsel to explain the reference '*private deal*' in his diary entry for 13 December 1993, Mr Dunlop suggested that it might have related to a potential success fee, and was not related to the Stadium.

2.48 On Day 784, the following exchange took place between Tribunal Counsel and Mr Dunlop:

> *'Q. Isn't it much more likely, Mr. Dunlop, that the deal you were discussing in December of 1993 related to the National Stadium and the apparent agreement that existed between Mr. O'Callaghan, Mr. Lawlor, Mr. Ambrose Kelly and yourself for a 25 percent share each in the stadium?*

[10] There was no suggestion that either Mr Gilmartin or AIB (as shareholders in Barkhill Ltd and thus part owners, with Riga Ltd, of Merrygrove Ltd) were consulted in relation to the negotiations between Mr O'Callaghan and Mr Dunlop, Mr Lawlor and Mr Kelly. Mr Gilmartin's evidence to the Tribunal was that he evinced little or no interest in the plans proposed for the Neilstown lands.

[11] Mr O'Callaghan maintained that, as far as he was aware, Mr Reynolds had always been supportive and committed to the Stadium project.

A. I am loathe to say that that is the case, Ms. Dillon. There certainly was discussion between Mr. O'Callaghan, Mr. Lawlor, myself and Ambrose Kelly in relation to a shareholding, a 25 percent shareholding each in relation to the stadium. I cannot absolutely say that that is the reference to it now and the reason I cannot say that is because of the opening sentence relating to 'big one.'

Q. Yes. But if you were wrong about 'big one,' Mr. Dunlop, and if in fact 'big one' never related to a success fee at all, and always related while you were recording it in your diary to a share that you might get in the National Stadium, then this entry would make sense, isn't that right?

A. Well, in the way that you've just outlined it now, yes, it would make sense. But I have to point out to you that there was a separate discussion between Owen O'Callaghan, Liam Lawlor, Ambrose Kelly and myself in relation to a shareholding in the stadium. And in fact, well, as the Tribunal knows, things were put in place to establish an entity in which that shareholding would be held and that the shareholding of Mr. Lawlor would be held on a nominee basis by one of the other partners.

Q. This note that you have made on the 13th of December 1993 notes 'if the deal comes through.'

A. Yes.

Q. 'Then private deal.' So there was no final agreement in relation to whatever that deal was by the 13th of December 1993, isn't that correct?

A. That's correct.

Q. Right. So whatever you had been discussing in, on the 13th of December had not crystallised, it hadn't taken place, isn't that right?

A. It would appear so, yes.

Q. Because your note records that if the deal comes through then there'll be a private deal and it's to be left to you, isn't that right?

A. Correct, yes.

Q. That does not suggest or smack of a fixed agreement in relation to a success fee about lifting the cap in Quarryvale, Mr. Dunlop?

A. Yes, I agree, as you put it doesn't smack of that. But I have to say again I repeat what I said to you earlier, that any discussion that took place between Owen O'Callaghan, Liam Lawlor and myself in this particular instance although Ambrose Kelly was participant in other discussions he's not mentioned here, was related to the shareholding in the stadium. But I cannot say that that discussion refers to the stadium. I cannot absolutely say that it refers to the stadium.'

2.49 On Day 817, Mr Dunlop was further questioned as follows:

'Q. And at 10548, Mr. Dunlop, the entry in your diary for the 13th relates to T re Stadium?

A. *Yes.*

Q. *Isn't that right?*

A. *Correct.*

Q. *And at the bottom of that page, Mr. Dunlop, do you see the entry OOC and LL?*

A. *Yes.*

Q. *And do you see discussion re 'big one'?*

A. *Yes.*

Q. *When?*

A. *Yeah.*

Q. *If deal comes through private deal when leave it to FD?*

A. *Yeah.*

Q. *Now in December 1993, you will remember that on the 7th of December '93, that Mr. Deane had replied to Mr. Walsh's correspondence in relation to the option or proposed option over the Neilstown lands, isn't that right?*

A. *Yes.*

Q. *Now, is this, Mr. Dunlop, a reference to that agreement?*

A. *No I don't believe it is. I can absolutely assure you that it's not.*

Q. *Will you just explain precisely what it means?*

A. *Well I think it's. I've had a discussion with not with -- with Owen O'Callaghan in relation to the success fee and I'm -- I cannot specifically tell you what the reference is to private is or when. It is relating to the success fee and always has related to the success fee.*

Q. *Well if we just sort of break it down a little bit, Mr. Dunlop. It says discussion re 'big one'?*

A. *Yeah.*

Q. *Then it says when?*

A. *Yeah.*

Q. *And they were it says if deal comes through?*

A. *Yeah.*

Q. *So what deal were you talking about, Mr. Dunlop? What deal was in the pipeline in December 1993?*

A. *Well there was no deal in the pipeline in December 1993 because there was no deal in relation to anything else that I was concerned of with Mr. O'Callaghan at that time and that was the success fee.*

Q. *No, you are incorrect, Mr. Dunlop?*

A. *Uh-huh.*

Q. *Because there was a deal in progress which was the correspondence evidenced between the two solicitors which was current and which had not been -- if you just wait – responded to on the 7th of December 1993 isn't that right?*

A. *Did not relate to this.*

Q. *And it is clear, Mr. Dunlop, from the correspondence and Mr. Deane's reply that Mr. Deane is suggesting that there was agreement in principle, isn't that right but matters had to be worked out?*

A. *Yeah.*

Q. *Isn't that right. And I am suggesting to you Mr. Dunlop that that correspondence more accurately fits what you have recorded in your diary, isn't that right?*

A. *No, I don't agree and I have never so regarded it as such. I have always regarded 'big one' as being relating to the success fee.*

Q. *Yes, but the only deal that was current Mr. Dunlop in December 1993 was nothing about a success fee. The only deal that was going on or negotiation between yourself and Mr. O'Callaghan related to the Stadium, isn't that right?*

A. *There was the discussion and correspondence that you have outlined yes were taking place in or around this time but I can tell you that it did not relate to that.*

Q. *And Mr. Lawlor had no interest in discussing any success fee with you Mr. Dunlop because that was a totally private matter between yourself and Mr. O'Callaghan, isn't that right?*

A. *Correct, yes.*

Q. *But Mr. Lawlor was a silent 25 per cent proposed partner in the Stadium enterprise, isn't that right?*

A. *Correct.*

Q. *And would have had, I suggest to you, a very great interest in any discussion passing between yourself and Mr. O'Callaghan about the Stadium isn't that right?*

A. *And did so participate on many occasions.*

Q. *And I would suggest to you that according to the note that you say is contemporaneous and that you made and that Mr. Lawlor and Mr. O'Callaghan are present or in some way connected to the note that you have made isn't that right?*

A. *Yes, I have never discussed any success fee other than with Mr. O'Callaghan.*

Q. *You didn't listen to my question. I am suggesting to you that from the entry that's recorded in your diary that Mr. Lawlor was present with Mr. O'Callaghan when you were having your discussion with Mr. O'Callaghan about the 'big one', because the arrow comes from both Mr. Lawlor and Mr. O'Callaghan in your diary to the discussion about the 'big one', isn't that right?*

A. *I hear what you are saying and I see what you are suggesting and what I am saying to you is that I never had a discussion with Mr. O'Callaghan and Liam Lawlor in relation to a success fee.*

Q. And I am suggesting to you Mr. Dunlop that for reasons that you haven't disclosed to the Tribunal, that the entries in your diary in relation to 'big one' do not relate to a success fee. That they relate instead to some agreement that you thought you had in connection with the Stadium?

A. No, I disagree.'

2.50 Mr O'Callaghan said he did not know what was meant by Mr Dunlop's diary entry, but he acknowledged that his discussion with Mr Dunlop and Mr Lawlor, as noted by Mr Dunlop on 13 December 1993, could have related to the Stadium project. He also suggested that the '*big one*' reference could have referred to Mr Dunlop's success fee, but added that Mr Lawlor would not have been present if that matter was the subject of the discussion.

2.51 The Tribunal was satisfied that the reference to '*private deal*' and '*Leave it to FD'* were references to the fact that Mr Dunlop was to be the person, via his solicitors, who was to spearhead the process of ensuring that Leisure Ireland Limited/Leisure West ltd would acquire the Neilstown Option and adjoining lands, thus placing Leisure Ireland Ltd/Leisure West Ltd in prime position to enter the type of arrangement that might be concluded between it and the proposed '*National Stadium Authority'*, as envisaged by the Feasibility Study prepared by Chilton & O'Connor.

2.52 Mr Dunlop acknowledged that the Merrygrove Estates Ltd option over the Neilstown lands was, in reality, a very valuable asset, and although demurring that the reference to '*big one*' related to this subject, acknowledged that such a valuable asset was worthy of the appellation '*big one*'.

2.53 It appeared to the Tribunal that, in terms of correspondence at least, a hiatus of sorts occurred in the early months of 1994, in the efforts to progress Messrs Dunlop, Lawlor and Kelly's participation in the Stadium project. However, the Tribunal believed it likely that Mr Dunlop and Mr O'Callaghan spoke about the issue on 1 June 1994. On that date, Mr Dunlop noted the following in his diary:

> OO'C in FDA's. Spoke re Big One. OO'C said he hoped to have whole situation fixed up by end of month.

2.54 Both men met again on 29 June 1994, and the Tribunal was satisfied that whatever information was imparted by Mr O'Callaghan to Mr Dunlop on that occasion, it was sufficient to prompt Mr Dunlop to write to his solicitors on 30 June 1994, in the following terms:

> *I met with Owen O'Callaghan at my office yesterday. He reaffirmed our earlier agreement that the ownership of the lands at Neilstown, North Clondalkin, Dublin 22 (specifically the lands on which the proposed All*

Purpose National Stadium is to be built) comprising some 55 acres, is to be vested in Owen O'Callaghan 33 ⅓%, *Ambrose Kelly* 33 ⅓%, *Frank Dunlop* 33 ⅓%, *these three being the shareholders in Leisure Ireland Ltd.*

I would greatly appreciate it if you could expedite this matter as soon as possible with Mr. O'Callaghan's, solicitor, Mr. John Deane, as the matter of the stadium is now progressing speedily[12]

Mr O'Callaghan, when questioned about the content of this letter, stated that the letter did not represent the full extent of the agreement in question. It was silent, for example, on the requirement that the proposed shareholders provide capital, and that necessary guarantees be put in place.

2.55 On 12 July 1994, Mr Dunlop again requested his solicitors to expedite matters.

2.56 Mr O'Callaghan acknowledged that the agreement whereby himself, Mr Dunlop, Mr Kelly and Mr Lawlor were to become shareholders in Leisure Ireland Ltd and whereby that company was to acquire ownership of the Neilstown and adjoining lands was reaffirmed on 29 June 1994. He acknowledged that there was no reference in the letter of 30 June 1994 (to Arthur Cox, Solicitors), to Mr Dunlop's shareholding in Leisure Ireland Ltd/Leisure West Ltd being predicated/conditional on a financial input on his part, or a financial input from the other parties. Mr O'Callaghan agreed that the reference in Mr Dunlop's letter to Mr Walsh of Arthur Cox, Solicitors, of Mr Dunlop, Mr Kelly and himself holding, respectively, the 33.3% shareholding in the company included, within each respective shareholding, a provision for the shareholding of Mr Lawlor. Mr O'Callaghan however continued to maintain that each of the three, Mr Dunlop, Mr Lawlor and Mr Kelly, were required to provide a cash injection of £250,000, in return for their proposed participation in the Stadium project.

2.57 Insofar as Mr O'Callaghan had an overall opinion on the provenance of the '*big one'* entries in Mr Dunlop's diaries, he stated '*it can only be the success fee*'. Mr O'Callaghan could not understand why Mr Dunlop referred to the 'big one' so often in his diary. He maintained that while they had discussed a success fee on possibly two or three occasions, its amount was never agreed.

2.58 The Tribunal believed that the urgency expressed by Mr Dunlop in his letters of 30 June and 12 July 1994, in all probability, arose because by mid 1994, Chilton & O'Connor had completed a further Financial Feasibility Study

[12] Mr Dunlop furnished a copy of this letter to Mr O'Callaghan.

in relation to the Stadium project, and Mr O'Callaghan and Mr Dunlop anticipated presenting this Study to Mr Reynolds in person, as evidenced by the contents of a letter sent by Mr Dunlop to Mr Reynolds on 11 July 1994. That document was furnished to Mr Reynolds when Mr O'Callaghan, Mr Dunlop and Mr Reynolds met in the Connemara Coast Hotel in late July 1994.

2.59 By 12 July 1994, Mr O'Callaghan was in a position to write and advise Mr Dunlop that the '*Stadium proposal really seemed to be getting off the ground at last'*, although, according to Mr O'Callaghan, the legal status of Leisure Ireland Ltd remained in '*limbo'* and hence his advice to Mr Dunlop to arrange contact between Leisure Ireland's solicitors and his solicitor, Mr Deane.

2.60 While Mr O'Callaghan acknowledged that there was no reference or suggestion in any of the contemporaneous documentation of the proposed shareholding of Messrs Dunlop, Kelly and Lawlor being conditional upon cash injection being made by each, he maintained that he had made this clear in his verbal discussions with Mr Dunlop and '*to John Deane as well.'*

2.61 On 19 July 1994, Arthur Cox, Solicitors, wrote to Mr Dunlop and enclosed for his attention a draft agreement for the transfer of the Merrygrove Ltd option to Leisure West Ltd.

2.62 Mr Dunlop replied to Mr O'Callaghan's 12 July letter on 25 July 1994 in the following terms:

> *Dear Owen,*
>
> *Thank you for your letter of the 12th inst. in the above matter which I received this morning on my return. The content is not exactly as I foresaw. Having reviewed the correspondence between John Deane and John Walsh of Arthur Cox, together with copies of the contracts between Merrygrove Ltd., Merrygrove Estates Ltd., and Dublin Corporation I would like to outline what I now believe is necessary on foot of the original agreement between us, reiterated during our meeting at my office on Wednesday 29th June, 1994 and confirmed in your follow up letter of the 12th July 1994: (a) a letter from you specifying the agreement viz that you (Owen O' Callaghan) Ambrose Kelly and Frank Dunlop are shareholders in Leisure Ireland Ltd. with the following holdings: Owen O'Callaghan 25%, Ambrose Kelly 25%, Frank Dunlop 50% (b) John Deane and John Walsh to give effect to the necessary contractual documentation in this matter between Merrygrove Ltd. or Merrygrove Estates Ltd. and Leisure Ireland Ltd.*

These two matters are of urgency because the National Stadium Authority will have to be given a legally acceptable contract by Leisure Ireland to allow the stadium project to proceed.

I have forwarded a copy of your letter of 12th inst. and this letter to both John Walsh and John Deane. To expedite this matter I suggest a meeting between John Deane, John Walsh and myself soonest.

2.63 On 28 July 1994, a meeting took place between Mr O'Callaghan, Mr Dunlop, Mr Kevin Burke of Chilton & O'Connor and the Taoiseach, Mr Reynolds, at the Connemara Coast Hotel in County Galway.

2.64 Included in the Feasibility Study presented to Mr Reynolds in the course of this meeting, was a proposal to the Government for the establishment of a '*National Stadium Authority*', and for the funding of the said Authority to come from National Lottery Funds. Throughout 1994, this was the proposal that was being promoted, *inter alia*, by Mr O'Callaghan, Mr Dunlop and Mr O'Connor to the Taoiseach, Mr Reynolds, and to Mr Ahern, Minister for Finance, and to others.

2.65 It appeared that on 29 September 1994, Mr Dunlop (as noted by his Solicitor), was in a position to advise Arthur Cox, Solicitors, that the Financial Feasibility Study carried out by Chilton & O'Connor in the summer of 1994, had been given to Mr Reynolds and Mr Ahern, and that the '*Taoiseach'* was in favour of the project. The solicitor's note also recorded Mr Dunlop's awareness that Mr O'Callaghan's expenditure to date would have to be reimbursed. Internal correspondence between solicitors within Arthur Cox indicated as of 11 October 1994, that the firm continued to work on a draft Shareholders Agreement, for review by Mr Dunlop and the other proposed shareholders. Mr O' Dwyer's memorandum to his colleague read, as follows:

I recently had a meeting with Frank Dunlop to discuss a shareholders agreement in relation to the above mentioned company. At John's request I raised the issue of the proposed solicitors to Leisure Ireland Limited. Frank Dunlop assured me that it had been agreed with Owen O'Callaghan and Ambrose Kelly that Arthur Cox would act as independent solicitors for Leisure Ireland Limited. Apparently John Deane (Owen O'Callaghan's solicitor) was the preferred choice of Owen O'Callaghan but Frank assured me that he has prevailed on Owen O'Callaghan and Ambrose Kelly on his particular matter.

I am currently preparing a draft shareholders agreement for review by Frank Dunlop and the other shareholders. I will keep you advised of developments.

2.66 On 24 November 1994, Arthur Cox, Solicitors, wrote to Mr Dunlop, and enclosed a draft Subscription and Shareholders Agreement relating to Leisure Ireland Limited, for Mr Dunlop's perusal.

2.67 The contemporaneous correspondence and documentation, as considered by the Tribunal, suggested that, for the summer period of 1994, the emphasis, on the part of Mr Dunlop and Mr O'Callaghan, was on putting Leisure Ireland Ltd/Leisure West Ltd into a position where it could legally become the owner of the lands on which the '*All Purpose National Stadium*' was to be built. That entity, as the promoter of the Stadium development, would then enter into a contract with the proposed '*National Stadium Authority*', in the event of the creation of such Authority, and in the event that the provision of adequate funding therefor being given the green light by the Government. It was certainly the case, that both Mr O'Callaghan and Mr Dunlop expected, in 1994, that the Government would proceed in this direction.

2.68 Mr O'Callaghan and Mr Dunlop, in the course of their respective testimonies, maintained that, although the Stadium project was still live by mid 1994, the proposal whereby Mr Dunlop, Mr Lawlor and Mr Kelly were to have a 25% shareholding each in Leisure Ireland Ltd/Leisure West Ltd was no longer a reality. According to Mr O'Callaghan, both Mr Dunlop and Mr Kelly had themselves chosen not to become personally involved because of the requirement to invest IR£250,000 each into the project. Mr Lawlor had not accepted this requirement, and had, according to Mr O'Callaghan, continued to push for participation in the project. Mr O'Callaghan maintained that Mr Dunlop's 1994 correspondence relating to the proposed participation of himself, Mr Lawlor and Mr Kelly in the project was engineered by Mr Dunlop to ensure that Mr Lawlor believed that the project was moving towards fruition.

2.69 Mr Dunlop told the Tribunal that his 1994 correspondence with Arthur Cox was generated for the benefit of having Mr Lawlor believe that the proposal, whereby Mr Lawlor, Mr Dunlop and Mr Kelly were to become shareholders, was still a viable proposal. Curiously, Mr Dunlop, in the course of his evidence, made no reference to his proposed shareholding in Leisure Ireland Ltd/Leisure West Ltd being conditional on a cash injection of £250,000, nor did he suggest that he had ever been requested for this sum, or had ever communicated to Mr O'Callaghan his inability to provide such funding.

2.70 The Tribunal was satisfied that Mr Dunlop continued to instruct his Solicitors to progress the proposed acquisition by Leisure Ireland Ltd/Leisure West Ltd of the Merrygrove Ltd Option on the Neilstown lands. Mr Dunlop's dealings with his Solicitors in this regard belied his evidence that his 1994

correspondence was merely a ruse to give comfort to Mr Lawlor. Moreover, Mr Deane's correspondence with Arthur Cox similarly belied Mr O'Callaghan's contention that, by mid 1994 the proposed involvement of Mr Dunlop and the others in the Stadium project had been abandoned.

2.71 The Tribunal was satisfied that, at all relevant times, throughout 1993 and 1994, the progression of 'Big One' ran parallel to the progression of the '*All Purpose National Stadium*' project, a project which was being promoted at Government level by Mr O'Callaghan, with assistance from both his international and local advisors, (including Mr Dunlop).

2.72 An analysis of the contemporaneous documentation dealing with the proposed participation of Mr Dunlop, Mr Lawlor and Mr Kelly in the Stadium venture did not reveal that a financial contribution (as claimed by Mr O'Callaghan, Mr Kelly and Mr Deane, in evidence), was ever actually sought from Mr Dunlop, Mr Lawlor or Mr Kelly. It was however clear, from Mr Dunlop's instructions to his solicitors, that he had understood that Leisure Ireland Ltd/Leisure West Ltd, in the event that it was to acquire the Merrygrove Ltd option, would incur financial obligations, i.e. the discharge of Merrygrove Ltd's costs in acquiring the option in the first place, and any associated costs incurred by that company.

2.73 The Tribunal was satisfied that it was in the contemplation of all concerned that Leisure Ireland Ltd/Leisure West Ltd would have to incur financial obligations in order to pursue its objective. However, the Tribunal was also satisfied that the requirement for a cash injection of £250,000 each by Mr Dunlop, Mr Kelly and Mr Lawlor was never a pre-condition of their proposed participation in the Stadium project. As a matter of probability, their proposed shareholding in Leisure Ireland Ltd/Leisure West Ltd was, being acquired, as instructed by Mr Dunlop to his solicitors on the 10 September 1993, '*on value based on services being brought by each to the company*'.

2.74 The Tribunal therefore rejected the evidence of Mr O'Callaghan, Mr Deane and Mr Kelly to the effect that the proposed interest of Mr Dunlop, Mr Lawlor and Mr Kelly in the Stadium project was ever conditional on an investment by each of £250,000 and it rejected the contention that their proposed participation in the Stadium project ceased because of a failure on the part of those individuals to provide the £250,000 contributions.

2.75 The Tribunal also rejected Mr O'Callaghan and Mr Dunlop's evidence that the correspondence which passed between Mr Dunlop and Mr O'Callaghan, and between Mr Dunlop and Arthur Cox, and between Arthur Cox and Mr Deane, in

1994 was intended as a ruse to give comfort to Mr Lawlor to the effect that his participation in the Stadium project was still a reality.

2.76 The Tribunal was satisfied that the proposed participation on the part of Mr Dunlop and his colleagues only ceased to be a live proposal when the Stadium project itself, as promoted by Mr O'Callaghan to the Government, came to an end. As a matter of probability the '*All Purpose National Stadium*' project terminated in early December 1994, following the inability of Fianna Fail and the Labour Party to reach agreement on forming a new Government.

2.77 The Tribunal was satisfied that the '*big one*' was in fact a reference to Mr Dunlop's proposed 25% shareholding in Leisure Ireland Ltd/Leisure West Ltd. The last reference to the 'big one' was found in an entry in Mr Dunlop's diaries on 1 June 1994.

2.78 The Tribunal rejected Mr Dunlop's evidence to the effect that references to '*Big One*' in his diaries were references to a success fee payable to him when the retail cap on the Quarryvale development was lifted.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 6: SECTION C - THE STADIUM PAYMENTS MADE BY RIGA LTD

INTRODUCTION

3.01 In November 1992 and September 1993, Mr O'Callaghan paid a total of IR£95,000 to Mr Dunlop, on foot of two invoices which purported to be in respect of fees payable to Frank Dunlop & Associates Ltd in relation to the project to develop a Stadium on the Neilstown lands.

THE IR£70,000 PAYMENT ON 10 NOVEMBER 1992

3.02 On 10 November 1992, Mr Dunlop's AIB 042 '*warchest*' account was credited with the sum of IR£70,000 by a same-day value credit transfer from Riga Ltd's Bank of Ireland account at 83 South Mall, Cork. On the previous day, 9 November 1992, a Riga Ltd cheque for IR£70,000, drawn on the same account, had been presented at the branch and a giro credit transfer to Mr Dunlop's 042 account had been initiated as was evidenced by a debit of a cheque for IR£70,000 to Riga's account. However, because this payment process could not be completed within the day, the giro transfer was reversed on 10 November 1992, and the IR£70,000 was transferred by a same-day value credit transfer.

3.03 Evidence given by Mr O'Callaghan and Mr Aidan Lucey (Riga Ltd's Company Secretary and cheque signatory) satisfied the Tribunal that the likely sequence of events leading to the credit transfer was as follows:

- On 9 November 1992, Mr O'Callaghan travelled to Dublin but forgot to bring with him a Riga Ltd cheque dated 9 November 1992, which had been signed by him and by Mr Lucey and made payable to Frank Dunlop & Associates Ltd.
- On the same day, Mr Lucey, on the instructions of Mr O'Callaghan, instructed another Riga employee to present the Riga Ltd cheque to Bank of Ireland at 32 South Mall, Cork, for transfer by giro credit to Mr Dunlop's account.
- On 10 November 1992, the money not having reached Mr Dunlop's account and, in all probability, in the realisation that a number of days might elapse before it would do so, Mr Lucey was directed to transfer IR£70,000 from Riga Ltd's account to Mr Dunlop's account on a same-day value basis. This transfer was duly effected when Mr Lucey instructed Bank of Ireland to stop the transmission of the Riga cheque and replace it with the same-day value credit transfer.

3.04 On 10 November 1992, the day the IR£70,000 was transferred, Mr Dunlop withdrew IR£55,000 in cash at AIB College Street, Dublin. Also on that day, Frank Dunlop & Associates Ltd received IR£11,490 by bank draft, drawn on the Barkhill No 2 Loan Account, in discharge of an '*ongoing costs*' invoice dated 9 September 1992.

THE INVOICE FOR IR£70,000

3.05 Both Mr O'Callaghan and Mr Dunlop discovered to the Tribunal copies[1] of an invoice in the name of Frank Dunlop & Associates Ltd to Riga Ltd, dated 20 July 1992, for IR£70,000, and stated to be *'payment on account'.* The invoice stipulated: *'Re. All Purpose National Stadium. To professional services including media relations, presentation, interview preparation, consultations with design team and US advisors and investors: payment on account.'*

3.06 Mr Dunlop and Mr O'Callaghan maintained to the Tribunal that they had agreed a fee for Mr Dunlop for his work on the stadium project. Mr Dunlop acknowledged that there was no written record of this claimed agreement and that there was no note of such an agreement in his diary. According to Mr O'Callaghan the fee was to be IR£100,000; Mr Dunlop was uncertain as to the amount, variously referring to it in his evidence as IR£100,000, IR£150,000, IR£200,000 and *'in the order of'* IR£100,000.

3.07 Mr Dunlop gave evidence, that having agreed his stadium fee with Mr O'Callaghan, he issued the invoice of 20 July 1992, '*on account*'. This invoice was not numbered and made no reference to VAT (nor did the Shefran invoices). It was one of only two[2] Frank Dunlop & Associates Ltd invoices discovered to the Tribunal by Mr Dunlop which were not numbered.

3.08 Mr Dunlop dismissed any suggestion that the 20 July 1992 stadium invoice was issued subsequent to that date. Mr O'Callaghan told the Tribunal that he believed that he received the invoice prior to its payment.

3.09 Questioned on Day 781 as to what work he had carried out on the stadium project to merit the issuing of an invoice for IR£70,000 on account Mr Dunlop replied:

> *'In general terms, I cannot account now for absolute dates but certainly there had been quite a significant amount of discussion in relation to the possibility of building a stadium on the Neilstown site. There were various*

[1] Mr Dunlop's copy was initially provided to him by Mr O'Callaghan after the Tribunal had commenced its inquiries, as he had not retained a copy himself.
[2] The other was a Frank Dunlop & Associates invoice of 10 June 1993 for IR£25,000. See below.

things produced, brochures, there was various contacts made, there were meetings. Again, subject to correction I cannot absolutely say that all of these took place before the 20th of July 1992. But certainly there were extensive meetings with international representatives of various bodies, all of which took place in my offices, there were discussions with the representatives of Deloitte and Touche in relation to the provision of financing for the stadium. And it was agreed by Mr Callaghan and myself that in the context of the provision of a stadium on the Neilstown site, apart altogether from any other agreement that we had in relation to a shareholding, that I would be paid a fee and this fee, this invoice was issued on the basis of a payment on account.'

3.10 Mr Dunlop stated that a payment of IR£25,000 made by Riga Ltd in September 1993, was also a part payment of his agreed stadium fee. Thus, on the basis that his agreement with Mr O'Callaghan was for IR£100,000, Mr Dunlop's evidence suggested that he had been paid in total IR£95,000 (IR£70,000 plus IR£25,000), leaving a shortfall of IR£5,000.

3.11 On Day 781, the following exchange took place between Tribunal Counsel and Mr Dunlop:

Q. 'So when you issued the invoice you are looking for £70,000 out of a bigger sum?

A. 'Right.'

Q. 'What was the bigger sum?'

A. 'As I recollect matters now I cannot absolutely say to you that it was 100 or 150,000 or 200,000 but certainly it was a payment on account.'

Q. 'Okay. Is it your position, now, Mr Dunlop, that you can't tell the Tribunal looking at that now what figure you had agreed with Mr O'Callaghan as your professional fee in relation to the stadium?'

A. 'Yes. Because parallel to the work that I was conducting was the possibility of an arrangement whereby there would be four shareholders in any such stadium that arose.'

Q. 'The parallel agreement in relation to the shareholding, Mr Dunlop, was a separate matter to this payment, isn't that right?'

A. 'Yes, it was, yes.'

Q. 'So any suggestion that that lack of clarity in relation to any shareholding in Leisure West or the stadium is irrelevant to the claim that you are making against Mr O'Callaghan's company Riga for your professional fees in relation to the stadium?'

A. 'There are two issues relating to the one project.'

Q. 'So therefore when you issued this invoice on the 20th of July 1992 as a payment on account that you were seeking £70,000 was a portion of a

separate but bigger figure that you had agreed with Mr O'Callaghan, isn't that right?'

A. 'That's correct, yes.'

Q 'So what was the figure?'

A. 'That I cannot say to you definitively now as I sit here today.'

3.12 With regard to the services described on the 20 July 1992 invoice for IR£70,000, Mr Dunlop acknowledged that, as of that date, he had not undertaken any presentations or interview preparation, and apart from one meeting with Chilton O'Connor (a firm of international advisors retained for the stadium project), on 15 June 1992, he had had no face to face contact with the US investors. There had been no '*media relations*', as the stadium project had not, by July 1992, been launched publicly. Mr Dunlop testified that his work on the stadium comprised a series of meetings with Mr O'Callaghan, Mr Lawlor and Mr Ambrose Kelly. Mr Dunlop said he also arranged meetings for Mr O'Callaghan with the Taoiseach, Mr Albert Reynolds, and, possibly, Mr Liam Aylward (a former Government Minister), in relation to the stadium project.

EXPLANATIONS OF MR DUNLOP'S NEED FOR FUNDS IN NOVEMBER 1992

3.13 The Tribunal inquired of both Mr O'Callaghan and Mr Dunlop the reasons why the IR£70,000 payment was made on 10 November 1992, and why it was made in such a hurried manner, enabling Mr Dunlop to access the funds on that date.

3.14 Mr Dunlop and Mr O'Callaghan separately maintained that what led Mr Dunlop to seek payment of the IR£70,000 invoice was the calling of the General Election on 5 November 1992.[3]

3.15 Mr Dunlop told the Tribunal of his contact with Mr O'Callaghan in relation to the payment of the IR£70,000 as follows:

'I rang Mr O'Callaghan and drew his attention to the invoice. I had my own reason for ringing Mr O'Callaghan. I will deal with that in a moment. I rang Mr O'Callaghan, spoke to him in relation to the invoice and I think I used the language, something to the effect that I need it now.'

3.16 When asked why he had said *'I need it now'* Mr Dunlop responded:

'Well I, from my point of view I needed it now because I knew what was going to happen in the context of a General Election. That there were, I

[3] Voting took place on 25 November 1992.

think I've used the phrase before in this forum, that the telephone would walk off the desk with telephone calls from politicians looking for finance . . . the 70,000 was called in because I saw an opportunity to get the payment of 70,000 from Mr O'Callaghan at that stage and I gave him the details as to where to lodge it or where to transfer it to.'

3.17 Although Mr Dunlop gave evidence that in November 1992, he had told Mr O'Callaghan of the urgent need to have the July 1992 invoice discharged, he was unable to say if he had advised Mr O'Callaghan at that time that he needed the money for the General Election *per se,* although it was his belief that Mr O'Callaghan may have understood the urgency. Mr Dunlop put it thus:

'I cannot say definitively that I said because it's a General Election. I may well have used the phrase that you know the circumstances or whatever. I don't recollect having any detailed conversation with him. I would say I would put it from a realistic point of view that Mr O'Callaghan was living in the real world and if there was an outstanding invoice for £70,000 and I was ringing suddenly looking for payment of the £70,000 in the context of a General Election Mr O'Callaghan may well have put two and two together.'

3.18 Mr Dunlop stated that it was he who requested Mr O'Callaghan to have the money transferred by inter bank transfer. Asked why he could not have waited for the Riga Ltd cheque of 9 November 1992 to come into his account, Mr Dunlop told the Tribunal that he '*needed the money in my hand at that stage*'.

3.19 Immediately prior to Mr Dunlop's AIB 042 account receiving the IR£70,000 from Riga Ltd, on 10 November 1992, the credit balance on the account stood at IR£7,500.85.

3.20 Mr Dunlop maintained that he withdrew the IR£55,000 in cash on 10 November 1992, immediately following the transfer of the IR£70,000 into his account, '*in the context of the political situation that had developed.'*

3.21 Although he could not say definitively that he had a '*specific'* requirement for the IR£55,000, Mr Dunlop acknowledged that he withdrew the money in order to meet what he termed '*requirements'*. On Day 810 Mr Dunlop stated:

'. . . all I can say to you is I had a requirement. Obviously had some requirement in my head, I was dealing with—I wasn't only dealing with councillors at that particular time, even though he had been a previous councillor. For example I was dealing with Mr Liam Lawlor and that I had a requirement at that time for the use of some those funds yes.'

3.22 In response to the suggestion put to him by Tribunal Counsel that his need for the same-day value transfer of IR£70,000 meant that he had a specific requirement for the IR£70,000, and the withdrawal of IR£55,000 from it, Mr Dunlop said:

> *'Yeah, well no. There is no outstanding explanation, let me assure you of that, other than I had this invoice dated July. We have an election called. I see this as a facility which is available to me and I ring Mr O'Callaghan. He makes the arrangement and I do, as you have just outlined in relation to the transfer of the money and in relation to the withdrawal. Specifically other than saying I had in my mind a fairly predictable, what was going to happen, fairly predictably but specifically I do not recollect, I cannot now say that I had a specific intention in relation to the IR£55,000.'*

3.23 Mr Dunlop rejected any suggestion that he withdrew the IR£55,000 to provide either the whole sum, or a substantial portion of it, to any single individual. He maintained that the amount withdrawn was based on his belief as to his requirements having regard to the election campaign. Although Mr Dunlop acknowledged that he met senior politicians during the campaign, he denied making a substantial donation to any senior politician (save Mr Lawlor), or to the Fianna Fáil Party at that time (save for IR£1,000 provided to that party on 17 November 1992, by cheque drawn on the account of F & S Dunlop).

3.24 On 9 November 1992, Mr Dunlop encashed a cheque for IR£11,000 paid to him by Mr Christopher Jones Snr,[4] and retained IR£8,500 in cash. On 11 November 1992, Mr Dunlop was also in possession of a further IR£10,000 from Davy Hickey Properties[5], cashed by him some days later.

3.25 It therefore appeared likely to the Tribunal that, by mid November 1992, Mr Dunlop had at his disposal a minimum of IR£73,500 in cash.

CASH PAYMENTS MADE BY MR DUNLOP

3.26 In his evidence in this, and in other modules, Mr Dunlop claimed to have disbursed almost IR£50,000 from the minimum IR£73,500 cash he had available over the course of the 1992 General Election campaign. The thrust of Mr Dunlop's evidence was that, other than the individual disbursements he referred to in the course of his evidence, he could not recollect making any further cash disbursements from the cash fund available to him at that time. He claimed not to be able to account for the balance of the minimum IR£73,500 available to him, and he further stated that he was unable to confirm if some of

[4] See Ballycullen/Beechhill Chapter Four.
[5] See Baldoyle/Pennine Chapter Nine.

that balance was paid to politicians subsequently, and outside of the context of the General Election.

3.27 Mr Dunlop maintained that he retained the balance of his cash funds in his home and/or in his office, to use in the event that a '*need would arise.*'

3.28 On Day 810, the following exchange took place between Mr Dunlop and the Chairman of the Tribunal, in the context of it being suggested that it was likely that he had disbursed the balance of the IR£73,500 to other politicians:

Q. 'But we can take it that the balance almost certainly went to other politicians whose names we don't have?'

A. 'I cannot say that to you. I cannot say that I gave any other monies to any politicians during the course of the 1992 Election other than the monies that I have identified. I cannot say what I did specifically with the remainder of the money. I may well have used some of the money personally. I cannot say that to you specifically but certainly I would have retained the money in cash in the manner that I have outlined to Ms. Dillon but I cannot say other than contributions that I would have made to other politicians which would have been made by cheque.'

The Tribunal concluded that having put himself to the trouble of amassing at least IR£73,500 in cash in November 1992, Mr Dunlop proceeded to disburse most, if not all, of the entire of this fund to politicians within the period of the 1992 General Election.

3.29 The Tribunal's conclusions in relation to specific disbursements to named individuals made by Mr Dunlop during the course of the 1992 General Election campaign and otherwise are dealt with elsewhere in this Chapter, and in other Chapters of the Report.

MR O'CALLAGHAN'S ACCOUNT OF THE CIRCUMSTANCES IN WHICH RIGA LTD PAID THE STADIUM INVOICE OF IR£70,000 ON 10 NOVEMBER 1992

3.30 Mr O'Callaghan maintained that in late 1991 or early 1992, he made an agreement with Mr Dunlop to pay him a fee of IR£100,000 in connection with the stadium project. He described Mr Dunlop as the '*project coordinator*'. According to Mr O'Callaghan, sometime prior to July 1992, he and Mr Dunlop discussed Mr Dunlop's work on the stadium project, as a result of which Mr Dunlop had, in Mr O'Callaghan's words, '*banged in*' an invoice for IR£70,000, seeking a payment '*on account.*'

3.31 Mr O'Callaghan told the Tribunal that Mr Dunlop's IR£100,000 Stadium fee included reimbursement of his out of pocket expenses. Mr O'Callaghan acknowledged, however, that no documentation had been furnished to him by Mr Dunlop with regard to any such expenses.[6]

3.32 Mr O'Callaghan explained the arrangement he made with Mr Dunlop for the stadium project fee as follows:

> *'Well Mr Dunlop—my arrangement with paying him was that Mr Dunlop was the project coordinator for the stadium. Mr Dunlop was involved in the stadium from the first stadium from May '91 onwards. And at this stage when the second stadium was at a very advanced stage he was the project coordinator. He ran the whole operation really for me here in Dublin, the design team if you like and there was quite a large design team. It consisted of well over 20 people actually on from different parts of the States and Europe. And the coordinator of that was Frank Dunlop and that was his position. And I agreed with him probably around early '92 I'd say, I'm not sure of the date now, that he would be paid approximately £100,000 for his effort and his work. Which was not just lobbying or anything like that. It was actually coordinating the whole Stadium project for me.'*

3.33 Mr O'Callaghan explained, in similar terms to Mr Dunlop, that the IR£25,000 paid to Mr Dunlop on 14 September 1993, represented the balance (less IR£5,000) of the IR£100,000 fee agreement with Mr Dunlop for his role as the stadium '*project coordinator.*'

3.34 With regard to the timing of the payment of the IR£70,000 on 10 November 1992, Mr O'Callaghan stated that his understanding at that time was that Mr Dunlop had a pressing need for the payment in November 1992. He explained to the Tribunal his understanding of that need in the following terms:

> '*That pressing need as I said and I repeat it again, would be that I would have expected that Frank Dunlop in particular because of the all of the politicians that he knew, when there was a General Election called that he was going to be inundated for requests for political contributions.'*

3.35 In the course of his later sworn evidence, Mr O'Callaghan agreed to a suggestion put to him by Counsel for the Tribunal that '*the motivating factor'* in his decision to organise a same-day inter-bank transfer of IR£70,000 to Mr Dunlop on 10 November 1992, was an '*appreciation'* on his part that Mr Dunlop was '*going to have to pay national politicians.'*

[6] Mr Dunlop's evidence regarding his stadium fee did not allude to reimbursement for expenses.

3.36 Questioned as to why Riga Ltd clearly went to such elaborate lengths on 9 and 10 November to transfer IR£70,000 to Mr Dunlop, and why he had ensured a same-day value transfer of funds to Mr Dunlop, as opposed to allowing the giro transfer procedure initiated on 9 November 1992 to run its course, Mr O'Callaghan explained his decision as follows:

> *'Mr Dunlop asked, invoiced this cheque to Riga in July of '92 I had promised him the cheque on quite a few occasions. I was not in a position to pay it to him. I arrived in Dublin on the morning of the 9th of the 11th I think, and I did not have the cheque with me. I rang our office in Cork. Frank asked me where the cheque was and I was very upset because I didn't have the promised cheque for him. I told him it was in the post, which is what I intended to do actually. Because of his upset and he wasn't very happy because of all the work he had put into the stadium and again, I repeat that he was the Project Coordinator for the stadium. And he put a lot of work into this whole project. And I hadn't got the cheque with me. And I asked him, or he asked me what I was going to do about it. So I contacted our office and I asked Aidan Lucey to go to the bank and get the cheque for £70,000 posted up. That was not satisfactory to Frank. So I rang back again, cancelled that cheque and we got this second cheque for £70,000 posted up to him or sent up to him on the same day or allowed it to be cashed on the same day. The reason why Frank was so upset about this I think there was an election call at this time. And like anybody else Frank Dunlop, as I outlined in the Local Elections would be the very same as anybody else with General Elections of course, he was going to be asked for personal political contributions just like I would or anybody else would be in business. I'm sure he felt that pressure was coming on him and I hadn't paid him his fees.'*

3.37 Notwithstanding his awareness that Mr Dunlop was likely to make political contributions, Mr O'Callaghan professed himself not to have '*an idea*' as to what compelled Mr Dunlop to withdraw IR£55,000 in cash immediately following the transfer of the IR£70,000 to Mr Dunlop's 042 account. Mr O'Callaghan claimed not to know that Mr Dunlop had made such a withdrawal or for what purpose Mr Dunlop might have used the money, stating '*there is no way that Frank Dunlop would have told me.*'

3.38 On Day 892, Mr O'Callaghan was questioned as follows:

Q. *'And did Mr Dunlop explain to you when he was pressurising you for the IR£70,000 that he needed the money for the election?'*

A. *'No, he didn't explain it to me. There was an election call and I would have known of course that Frank Dunlop is going to come under political pressure for personal contributions for various politicians of course.'*

Q. 'And the election was called I think suddenly on the 5th of November 1992, isn't that right?'

A. 'I think so, yeah.'

Q. 'And I think that Mr Dunlop, it was one of those elections where Mr Dunlop I think, went in to work in Mount Street did you know that?'

A. 'Oh, I know that, yeah.'

Q. 'And I think that the election itself was the 25th of November?'

A. 'Yes.'

Q. 'Would you agree with that?'

A. 'I'm not sure yes, yes, yes.'

Q. 'Is it your appreciation or understanding of why Mr Dunlop urgently required a same day value transfer on the 10th of November 1992, was because he urgently required that money and it was your opinion he needed it in connection with the election?'

A. 'No, the reason for this was that I had promised him the cheque for weeks before that and I had failed him again. He was getting a bit fed up with it actually. And I don't blame him for that. This cheque was months overdue.'

Q. 'You misunderstand me, Mr O'Callaghan. Was the urgency expressed by Mr Dunlop or the payment connected in your mind with the fact that the election had been called and that Mr Dunlop would have to make payments or donations in the context of the election?'

A. 'Oh, yes he'd have had to make political contributions oh, yes of course, yes.'

3.39 On Day 903, Mr O'Callaghan elaborated as follows:

'When the election was called, prior to this Frank Dunlop had reminded me on a few occasions about that £70,000, and I delayed payment as much as I possibly could. When the election was called he looked for his cheque and demanded it because obviously it was very obvious to me without him spelling it out to me, that a person like him who is up front and meeting so many politicians on a daily basis was going to be asked for a lot of contributions for the election, and I am pretty sure he was asked for a lot of contributions to the election. £1,000, £2,000 and all this stuff, and he would have to—any fees that were due to him I was sure he was looking for them at that stage to have them there so he could make his contributions. If politicians who he knew well asked for a political contribution of £1,000 or £2,000 he had no choice I think but to give it. So I was aware of that, and that's one of the reasons why when he panicked a bit about this I understood his situation.'

THE TREATMENT WITHIN RIGA LTD OF THE IR£70,000 PAYMENT TO MR DUNLOP

3.40 An analysis of Riga's records indicated that the IR£70,000 payment to Mr Dunlop was allocated in Riga's books to '*sundries*' as a payment made on behalf of Barkhill Ltd. It was given the code '*5098'* indicating expenses incurred that were to be allocated to Barkhill Ltd. While the words '*Stadium fee*' appeared in Riga's Bank of Ireland cheque payments book, alongside the entry for the IR£70,000, it appeared to the Tribunal that that entry was made at a later stage than 9 November 1992, most likely at a time when Riga Ltd's Auditors were advised to attribute the IR£70,000 as a stadium payment in the books of account.

3.41 Mr Dunlop's IR£70,000 was one of three payments recorded in Riga's Bank of Ireland cheque payments book in November 1992, as having been made in furtherance of the Barkhill/Quarryvale project. The other payments coded 5098 were a payment of IR£10,000 to Mr O'Callaghan to reimburse him for a political donation of IR£10,000 he had made to Mr Batt O'Keeffe TD, and a payment by Mr O'Callaghan of IR£5,000 to Cllr G. V. Wright,[7] (which was also claimed by Mr O'Callaghan to be a political donation). This latter cheque was paid to Cllr Wright on or about 11/12 November 1992, when Mr O'Callaghan, in the company of Mr Dunlop, went to Councillor Wright's constituency office.

3.42 As was the case within Riga's books, all three of these payments coded 5098 were initially treated by the Auditors as Quarryvale/Westpark expenses.

3.43 As these payments had been entered in Riga Ltd's books initially as Barkhill Ltd/Quarryvale expenses, the Tribunal concluded that they would normally then have been posted to the Riga Ltd/Barkhill Ltd inter-company loan (an internal account within Riga which recorded all monies owed to it by Barkhill).

3.44 However, Ms Cowhig, Riga's Auditor, told the Tribunal that she had been informed by Mr Deane, that these payments properly belonged in the Riga stadium account, and on that basis she posted certain payments, which had been made by Riga Ltd on behalf of Barkhill Ltd, to Riga's '*Work in progress—Stadium*' account. Thus, in Riga Ltd's accounts, as audited for the year ending 30 April 1993, the IR£70,000 paid to Mr Dunlop was ultimately attributed as a stadium-related payment. The payments to Mr O'Keeffe and Cllr Wright were posted in the books under '*advertising and subscriptions.*'

[7] Although he and Mr Dunlop travelled together to Cllr Wright's office in Malahide for the purpose of enabling Mr O'Callaghan to give Cllr Wright the cheque for IR£5,000, Mr O'Callaghan denied any knowledge of Mr Dunlop's payment of IR£5,000 to Cllr Wright on that occasion.

3.45 The payments posted to Riga's '*Work in progress—Stadium'* account, included, together with other professional fees associated with the stadium project, the following:

- the IR£70,000 paid to Mr Dunlop on 10 November 1992,
- IR£64,897[8] paid on 21 January 1993 on foot of a Frank Dunlop & Associates Ltd invoice,
- IR£25,000 paid to Mr Dunlop, via Shefran, on 17 February 1993,
- payments totalling IR£15,500, made on diverse dates in the above accounting period to Cllr Seán Gilbride.

3.46 In the same accounting period ending 30 April 1993, Barkhill Ltd had already reimbursed Riga Ltd for a number of payments it had made to Frank Dunlop & Associates Ltd, including IR£10,253.27 paid on 22 June 1992, and IR£13,530.04, paid on 18 August 1992

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE IR£70,000 PAYMENT TO MR DUNLOP

3.47 The Tribunal did not accept that a '*Stadium'* invoice was furnished to Riga Ltd by Mr Dunlop in July 1992. The Tribunal believed it probable that this invoice was provided to Mr O'Callaghan in November 1992, in and around the time the money was transferred to Mr Dunlop's 042 '*warchest'* account. The Tribunal was satisfied that such an invoice was probably extant within Riga Ltd by early 1994 when Riga's Auditors were preparing accounts for the year ending 30 April 1993. The Tribunal was satisfied that Mr Dunlop back-dated this invoice.

3.48 The Tribunal was satisfied that, had the invoice been furnished as claimed in July 1992, and had there been an agreement for Mr Dunlop to receive a stadium fee of IR£100,000, the existence of this invoice and the reality of Mr Dunlop either being owed IR£100,000, or having invoiced for IR£70,000 '*on account',* would have featured in the discussions of the latter half of 1992 between AIB and Messrs O'Callaghan and Deane, when the latter were seeking funds from the Barkhill Ltd No 2 Loan Account to pay professional fees, both in relation to Quarryvale and the stadium. This issue did not appear to have featured in the discussions.

3.49 The Tribunal noted that Mr Michael O'Farrell recorded, in a memorandum of a discussion he had with Mr O'Callaghan on 16 September 1992, that Mr O'Callaghan, in making his case for additional funding for the Quarryvale project, '*argued strongly that the Sports Centre* [stadium] *plans are an integral part of*

[8] On 20 January and 16 June 1993 Mr O'Callaghan requested AIB that Barkhill Ltd discharge this invoice, a request declined by the bank.

obtaining the zoning' (for Quarryvale). Mr O'Callaghan was also noted as having argued that '*the fees related to the stadium which total IR£58k with a further IR£30k to go will have to be paid by Barkhill Ltd.'*

3.50 The '*IR£58k*' referred to stadium fees which were, as of 16 September 1992, largely outstanding to professionals engaged in the project. They included IR£19,064 due to Mr Ambrose Kelly, IR£29,000 due to Deloitte & Touche for its stadium feasibility study, and IR£10,000 due for payment in December 1992, for a planning application. There was no reference in this memorandum to a Frank Dunlop & Associates Ltd invoice for IR£70,000, (or any debt of IR£70,000) although Mr O'Callaghan claimed to have received that invoice in July 1992, some two months earlier.

3.51 In a memorandum prepared by Mr O'Farrell of a further conversation between himself and Mr O'Callaghan on 28 September 1992, reference was made to an agreement they had reached for payment of Mr Kelly's stadium fee of IR£19,064 as well as a number of Frank Dunlop & Associates Ltd invoices relating to Quarryvale. Again, however, there was no reference to any outstanding Frank Dunlop & Associates Ltd stadium invoice for IR£70,000.

3.52 The Tribunal believed it likely that, if Mr Dunlop had billed Riga Ltd through Frank Dunlop & Associates Ltd for professional services in connection with the stadium project in July 1992**,** the issue of such a substantial fee being outstanding would almost certainly have been raised by Mr O'Callaghan and Mr Deane with AIB in the period September to December 1992, in the same way as fees due to Mr Kelly and to Deloitte & Touche had been raised. The Tribunal did not accept Mr O'Callaghan's evidence that he did not raise the issue with Mr O'Farrell, or provide a copy of the IR£70,000 July 1992 invoice, prior to November 1992, because he expected a negative reaction by Mr O'Farrell to the request for such funds to be paid out of the Barkhill No 2 Loan Account. Mr O'Farrell had no recollection of ever seeing the July 1992 invoice, and no such invoice was amongst documentation discovered to the Tribunal by AIB.

3.53 Between June and October 1992, Frank Dunlop & Associates Ltd had issued the following four invoices addressed to Riga Ltd (excluding the '*Stadium'* invoice of 20 July 1992) namely, IR£13,530.04, IR£6,314.76, IR£11,490 and IRR£21,063.36 which totalled IR£52,398.16. The first invoice for IR£13,530.04 was paid directly by Riga for which it was subsequently reimbursed from the Barkhill No 2 Loan Account. The remaining three invoices were paid directly from the Barkhill No 2 Loan Account. This suggested to the Tribunal that AIB was quite prepared to discharge invoices from Frank Dunlop & Associates Ltd, although Mr O'Callaghan variously remarked that AIB did so *'always after a massive struggle', 'after a struggle….an embarrassing struggle.'*

3.54 Furthermore, it appeared unlikely to the Tribunal that by late 1992, Mr Dunlop would receive a fee from Mr O'Callaghan, whether '*on account'* or otherwise, for work on the stadium project, given that less than one year subsequent to the receipt of the IR£70,000, Mr Dunlop instructed his solicitors that his shareholding in the stadium project was being acquired on foot of '*services'* provided to the project. The Tribunal considered it unlikely that Mr Dunlop would have made such an assertion to his solicitors in September 1993, if in fact he had already received the IR£70,000 as fees for his stadium work. Moreover, the Tribunal was satisfied that Mr Dunlop's recompense for his stadium work was to be by the acquisition of a beneficial interest in the stadium project.

3.55 As to the purpose of Mr Dunlop being put in funds to the tune of IR£70,000 on 10 November 1992, the Tribunal was satisfied that Mr Dunlop advised Mr O'Callaghan that the immediate transfer of IR£70,000 on 10 November 1992, was necessary to facilitate him to make payments to politicians in the course of the November 1992 General Election.

3.56 The Tribunal was satisfied that Mr O'Callaghan was aware, based on information provided to him by Mr Dunlop, coupled with his own knowledge and experience of paying money to councillors[9] and other politicians, that Mr Dunlop intended to expend a large portion of the IR£70,000 in substantial payments to councillors to secure and consolidate their support for the then imminent Quarryvale vote in Dublin County Council.

3.57 The Tribunal was satisfied that, while the IR£70,000 paid to Mr Dunlop may have included an element of fees, its primary purpose and the greater percentage of it, was for payments to politicians associated with the Quarryvale project. Insofar as Mr O'Callaghan and Mr Dunlop intended that the IR£70,000 would fund Councillors who were likely to be candidates in the November 1992 General Election and the related Seanad Election, the Tribunal was satisfied that they were involved in an endeavour, the purpose of which was to compromise the required disinterested performance by Councillors of their duties in the making of a Development Plan, and as such the Tribunal was satisfied that the activities of Mr O'Callaghan and Mr Dunlop with regard to the IR£70,000 payment were corrupt.

[9] In the period close to 10 November 1992, Mr O'Callaghan himself disbursed substantial sums to councillors in Dublin County Council including IR£5,000 to Cllr G. V. Wright on 11/12 November 1992. By 10 November 1992, he had paid IR£3,500 to Cllr Sean Gilbride in two monthly payments. In September 1991, Mr O'Callaghan paid IR£10,000 to Mr Lawlor and in October 1991 he paid IR£10,000 to Cllr McGrath.

3.58 The Tribunal rejected Mr Dunlop's claim that he was unable to recollect the amounts of the payments and the identities of all those to whom he disbursed funds from the IR£55,000 withdrawn from his 042 bank account on 10 November 1992, and/or from the additional cash available to him at that time from other sources. The Tribunal was satisfied that Mr Dunlop withheld the identities of some of those whom he paid. The Tribunal believed it likely that those not identified by Mr Dunlop were public representatives.

MR O'CALLAGHAN'S REFERENCE TO HAVING 'INJECTED' IR£85,000 INTO THE QUARRYVALE REZONING PROJECT

3.59 On 23 November 1992, Mr O'Callaghan wrote to Mr O'Farrell enclosing a Frank Dunlop & Associates Ltd '*ongoing costs'* invoice for IR£21,063.36. This had been the subject, *inter alia*, of a telephone conversation between them on 20 November 1992. Mr O'Callaghan's letter was as follows:

> *Dear Michael*
>
> *Following Friday's telephone conversation, I enclose invoice on behalf of Frank Dunlop.*
>
> *I am anxious to get our own 'Election' going again next Friday/Monday. Hopefully the councillors will be settled down by then.*
>
> *As I mentioned to you, we have provided as much support as we could afford over the past few weeks. I will inform you of this when we meet.*
>
> *I would like to collect a cheque for this invoice from you on Monday/Friday next. I will ring you to arrange a suitable time.*

3.60 The date on which Mr O'Farrell and Mr O'Callaghan met, 1 December 1992, was some 20 days after Mr O'Callaghan made the IR£70,000 available to Mr Dunlop for his immediate use, and some sixteen days prior to the Quarryvale rezoning confirmation vote.

3.61 In his memorandum of the meeting on 1 December 1992, Mr O'Farrell noted a figure of IR£85,000 advised to him by Mr O'Callaghan. Mr O'Farrell noted the following:-

> *Date for the Quarryvale vote has been set for 17th and 18th December. He is confident a decision will be made one way or the other on that date. It is very tight. In response to my query, he confirms that the officials are thinking in terms or a compromise at this stage which will involve the Jim Mansfield Clondalkin Centre and a smaller centre for Quarryvale of approximately 250,000 sq. ft. The position will obviously will be clear in about two weeks. His lobbying continues and he indicated that he had injected IR£85,000 into the situation from O'Callaghan Properties.*

3.62 Mr O'Callaghan acknowledged that the figure of IR£85,000 (referred to in the above memorandum), comprised the IR£70,000 paid to Mr Dunlop on 10 November 1992, the IR£10,000 paid to Mr Batt O'Keeffe and the IR£5,000 paid to Cllr G. V. Wright.

3.63 The following exchange took place between Mr O'Callaghan and Tribunal Counsel:

Q. 'Right. Those three transactions total £85,000, isn't that right?'

A. 'Yes.'

Q. 'Did you subsequently tell the bank that you had injected £85,000 into the lobbying of Dublin County Council in relation to your Quarryvale projects?'

A. 'I said to the bank that we had paid a sum of £85,000, I think that we contributed that during the past couple of days or couple of weeks, couple of days I think actually, and that would have included those figures yes. And one of those figures which is probably the most, by far the largest figure, was a figure that we had to pay for the stadium which was fees due for over five months, that's where that £70,000, that statement from the bank came from.'

3.64 Mr O'Farrell told the Tribunal that he had no recollection of the 1 December 1992 meeting with Mr O'Callaghan. He accepted, however, that Mr O'Callaghan's reference to having '*injected'* IR£85,000 into the '*situation*' appeared to refer to the project to rezone Quarryvale. Mr O'Farrell said that he had no recollection of any explanation provided to him as to the composition of the IR£85,000 figure.

3.65 Mr O'Callaghan agreed in evidence that the sentence in his letter to Mr O'Farrell of 23 November 1992, to wit, '*we have provided as much support as we could afford over the past few weeks',* referred to political donations he had made in relation to the General Election campaign, then ongoing. Mr O'Callaghan was himself uncertain as to what he told Mr O'Farrell at the 1 December 1992 meeting in relation to his expenditure on politicians.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE IR£85,000 REFERRED TO IN THE AIB MEMORANDUM OF 1 DECEMBER 1992

3.66 The Tribunal was satisfied that the IR£85,000 referred to in the AIB memorandum of 1 December 1992, was comprised of the IR£70,000 hurriedly paid to Mr Dunlop on 10 November 1992, in addition to the IR£10,000 paid to Mr Batt O'Keeffe on 7 November 1992, and IR£5,000 paid to Cllr G. V. Wright in Malahide on 11/12 November 1992, when Mr O'Callaghan and Mr Dunlop visited Cllr Wright.

3.67 The Tribunal was satisfied that the *'situation'* referred to in the AIB memorandum was the imminent Quarryvale vote in Dublin County Council, and the lobbying process underway in relation to that motion.

3.68 The Tribunal was satisfied that Mr O'Callaghan's understanding, as of the date of his meeting with Mr O'Farrell (1 December, 1992), was that IR£70,000 (or at least most of it) had been paid to Mr Dunlop to fund payments to councillors (rather than merely facilitating Mr Dunlop doing so from his own earned fees), and, as already set out, the Tribunal was satisfied that the bulk of the IR£70,000 was not provided as fees to Mr Dunlop for his stadium work.

MR O'CALLAGHAN'S LETTER OF 17 NOVEMBER 1992 TO THE TAOISEACH, MR ALBERT REYNOLDS[10]

3.69 On 17 November 1992, prior to his meeting with Mr O'Farrell on 1 December 1992, Mr O'Callaghan wrote to the then Taoiseach, Mr Albert Reynolds, enclosing a cheque for IR£5,000 as a political donation for the Fianna Fáil Party in relation to the General Election then underway. A copy of this letter was discovered to the Tribunal by Fianna Fáil. Mr O'Callaghan's discovery to the Tribunal did not include the letter. The letter read as follows:

> *Dear Taoiseach,*
>
> *Thank you for your recent letter.*
>
> *It has always been my policy over the years to support individual candidates and in particular this time, both in Dublin and Cork.*
>
> *As you know, I have very close contact with candidates in both these areas and hope I have done the right thing in supporting candidates individually to gain those vital few seats.*
>
> *The total support is in excess of six figures but it is vital for the Country that we have a Fianna Fáil controlled Government.*
>
> *In acknowledgment of your own letter, I enclose a cheque for IR£5,000.*
>
> *I know the overall situation is not looking great at the moment, but as I write to you, there is already an upturn, and I am convinced it will all come right on the day.*
>
> *The very best on 25th, it means a lot to me as well...*

3.70 The Tribunal questioned Mr O'Callaghan on his reference to '*total support . . . in excess of six figures*', and it particularly sought to establish if this figure was likely to have included the IR£70,000 he had paid to Mr Dunlop on 10 November 1992, one week earlier.

[10] See also Part 9 of this Chapter.

3.71 Mr O'Callaghan told the Tribunal that the words '*total support . . . in excess of six figures*', was a reference to the approximate total sum paid by him in political donations to the Fianna Fáil Party over a substantial number of years. Mr O'Callaghan was adamant that the reference in the letter could not be reasonably interpreted, and did not in fact mean that he had expended in excess of IR£100,000 in political donations in the context of the 1992 General Election then underway, although he acknowledged that he could have made the position clearer in his letter to Mr Reynolds.

3.72 On 22 February 2008, Mr O'Callaghan provided the Tribunal with a written statement to clarify what he intended to convey in his letter. It included the following:

> *By the time this letter (dated 17th of November 1992) was written, I had made, or committed to, payments to politicians in the sum of £72,200.00 since 1989. These are outlined in my statements and include the monthly payments to Sean Gilbride of £10,500.00 which were started in September 1992 and the £5,000.00 paid to Fianna Fáil under cover of the letter to the Taoiseach. In addition, I would have made political contributions, the extent of which I am unsure in the period since I started business in 1969. When I stated in my letter to the Taoiseach that I had provided support of in excess of a six figure sum, I did not sit down and calculate exactly how much I had paid. My impression at the time was that payments made by me had been made in or about that order over the years.*

3.73 In arriving at his total of IR£72,200 Mr O'Callaghan included IR£10,500 of '*monthly payments to Seán Gilbride which were started in September 1992'.* In fact, these payments to Cllr Gilbride over the course of 1992/3 amounted to IR£15,500. By 17 November 1992 however, (the date of the letter to Mr Reynolds), Mr O'Callaghan had paid Cllr Gilbride only IR£3,500 of this total, (or IR£5,250 if IR£1,750, which Mr Dunlop said he paid Cllr Gilbride in September 1992, and later recouped from Mr O'Callaghan, is included).

3.74 In his evidence to the Tribunal, Mr O'Callaghan rejected absolutely any suggestion that the six figure sum indicated in his letter of 17 November 1992 to Mr Reynolds, included the IR£70,000 which was paid to Mr Dunlop on 10 November 1992.

3.75 A document prepared by the Fianna Fáil Party, prior to a written request to Mr O'Callaghan in September 1993 for a donation of IR£100,000, listed two

contributions made by Mr O'Callaghan to the Party by that time: IR£5,000 in 1992 [11] and IR£10,000 in 1990.[12]

3.76 The document included the following comment: *'I have also been informed that Owen made a number of significant contributions directly to candidates in the November Election.'* This reference was understood to be to the November 1992 General Election.

OTHER REFERENCES TO EXPENDITURE ON THE QUARRYVALE PROJECT

3.77 On 10 February 1993, Mr Deane wrote to Mr O'Farrell as follows:

. . . Riga Ltd has also incurred additional expense in the sum of £400,000 approximately in order to secure the Quarryvale zoning. This has been spent in two ways as follows: (a) £150,000 has been paid on various 'expenses' directly related to the Quarryvale project and for which Invoices have not been produced to the bank nor has the bank been requested to make any payment out of the Barkhill account.

(b) £250,000 has been spent in connection with the stadium project for the old Neilstown site.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO MR O'CALLAGHAN'S LETTER OF 17 NOVEMBER 1992 TO MR REYNOLDS

3.78 The Tribunal was satisfied that, contrary to what Mr O'Callaghan maintained, the reference in his letter of 17 November 1992, to '*support in excess of six figures'* was to a sum in excess of IR£100,000, and it included the IR£70,000 paid to Mr Dunlop on 10 November 1992, which was money used by Mr Dunlop, together with other funds available to him, to make disbursements to politicians in the course of the 1992 General Election campaign, and otherwise.

3.79 The Tribunal was satisfied that, the sum '*in excess of six figures'* referred to by Mr O'Callaghan included the IR£10,000 paid to Mr Batt O'Keeffe on 7 November 1992, and the IR£5,000 paid to Cllr Wright on 11/12 November 1992. The figure also probably included IR£3,500 paid to Cllr Gilbride[13] and IR£10,700 paid on behalf of Cllr Colm McGrath in May 1992. The figure also

[11] The contribution paid by Mr O'Callaghan to Fianna Fáil on 17 November 1992

[12] A donation made by Mr O'Callaghan to Fianna Fáil for the Presidential Election of 1990.

[13] In his evidence, Mr O'Callaghan acknowledged that monthly payments to Cllr Gilbride were included in the '*in excess of IR£100,000'* referred to in his letter to Mr Reynolds, and suggested that by 17 November, those payments had totalled IR£10,500. In fact, their total as of that date was less than IR£10,500. (By that time, Mr O'Callaghan had paid Cllr Gilbride IR£3,500, and Mr Dunlop had paid Cllr Gilbride IR£,750, and maintained that he recouped this outlay from Mr O'Callaghan). In total, Mr O'Callaghan (directly or indirectly) paid Cllr Gilbride IR£17,250.

included the IR£5,000 sent under cover of Mr O'Callaghan's letter to Mr Reynolds.

THE IR£25,000 PAYMENT TO MR DUNLOP IN SEPTEMBER 1993

3.80 In September 1993, Mr Dunlop received a cheque for IR£25,000 from Mr O'Callaghan drawn on the account of Riga Ltd at AIB Bank, in Cork. The cheque was dated 14 September 1993, and was encashed by Mr Dunlop on 17 September 1993. In Riga Ltd's cheque payments book indicated that the payment was made on behalf of Barkhill Ltd (through the allocation of the code '*5098*'), and was analysed under '*sundries*'.

3.81 Both Mr Dunlop and Mr O'Callaghan maintained that this was a part payment of Mr Dunlop's fee of IR£100,000 for stadium project work, of which, they claimed, IR£70,000 had already been paid on 10 November 1992.

3.82 The Tribunal has found that there was no agreement for a IR£100,000 fee for stadium work. The Tribunal also found that the IR£70,000 was essentially paid to Mr Dunlop to put him in funds for the purpose of making payments to politicians, particularly councillors, in order to ensure support for the rezoning of the Quarryvale lands.

3.83 Both Mr O'Callaghan and Mr Dunlop maintained that an invoice dated 10 June 1993, to Riga Ltd from Frank Dunlop & Associates Ltd, gave rise to the September 1993 payment of IR£25,000. This invoice, like the IR£70,000 invoice dated 20 July 1992 was not numbered and, like it and the Shefran invoices, did not provide for VAT. Mr Dunlop maintained that it issued following a discussion between himself and Mr O'Callaghan. Both Mr Dunlop and Mr O'Callaghan rejected any suggestion that the 10 June 1993 invoice had not been generated in June 1993.

3.84 The invoice stated that the IR£25,000 was for *'professional services including ongoing media relations and liaison with Heuston Sports & Leisure and also Chilton & O'Connor, Investment Brokers, USA.'*

3.85 Mr Dunlop could not assist the Tribunal as to what conversations he had had with Mr O'Callaghan in 1993 which had led him, as he claimed, to have issued an invoice in the name of Frank Dunlop & Associates Ltd on 10 June 1993. Mr Dunlop stated:

> *'The invoice dated the 10th of June, the payment is the 14th of September. So all I can say to you is that one, on the issuing of the invoice would have been discussed with Mr O'Callaghan. And two, it would be probable that I*

had a discussion with Mr O'Callaghan about the payment in relation to when it was going to be paid and you know why it wasn't being paid. That's all I can say.'

3.86 The Tribunal sought to establish the likely purpose for which Mr Dunlop received the IR£25,000. Mr Dunlop told the Tribunal that his work on the stadium had, by June 1993, essentially involved speaking to Mr Reynolds and Mr Ahern about the stadium project, overseeing the public launch of the project in September 1992, informing councillors that the project was genuine and discussing stadium related matters with Mr O'Callaghan and others.

3.87 Asked to identify what other work he had done Mr Dunlop responded:

'Not very much I have to say, other than in the constant discussion that took place between Mr O'Callaghan and others in relation to the stadium and organising any meeting that was required if they were so required. But just the normal part of what I would have considered a lobbying exercise in relation to a project.'

THE TREATMENT OF THE IR£25,000 PAYMENT BY MR DUNLOP

3.88 Although Mr Dunlop and Mr O'Callaghan claimed that the Riga cheque for IR£25,000 was issued in discharge of a Frank Dunlop & Associates Ltd's invoice of 10 June 1993, the cheque was made out to Mr Dunlop personally, and not to Frank Dunlop & Associates Ltd. Mr Dunlop encashed the cheque on 17 September 1993, at AIB (College Street branch) pursuant to his cheque cashing arrangement with Mr Ahern, the Branch Manager.

3.89 Receipt of the cheque was not recorded in the books of Frank Dunlop & Associates Ltd, nor were the encashed proceeds or any portion of them lodged to any account.

MR DUNLOP'S ACTIVITIES ON 17 SEPTEMBER 1993

3.90 Mr Dunlop's diary for 17 September 1993 recorded, *inter alia*, the following entry '*5:30 Powers Hotel*'. Mr Dunlop claimed to be unable to assist the Tribunal as to the individual/s he met in Powers Hotel on 17 September 1993. He conceded, however, that it was likely that he had with him the cash proceeds of the Riga Ltd cheque for IR£25,000. Asked if it was likely that he paid the cash to the person/s he met in Powers Hotel Mr Dunlop stated:

'No, I would say definitively not. What I cannot say to you is, I cannot recall what the purpose of my meeting in Powers Hotel, who I met in Powers Hotel or whether or not I gave money to anybody in Powers Hotel.

I have absolutely no recollection of ever doing so . . . At this stage I cannot recall who I met. There is no name it just says Powers Hotel, which I would say to you quite frankly is slightly odd if I was meeting somebody in Powers Hotel, the normal practice would be to identify who the person was. I mean, my diary, my diaries are replete with the names or the initials with people that I was meeting in various locations.'

3.91 In an attempt to ascertain why he might have needed cash funds of IR£25,000 on 17 September 1993, Mr Dunlop was questioned as follows:

Q. 'So what occasion arose after the 17th of September that required a disbursal out of that IR£25,000?'

A. 'I cannot say that to you. It could have been anything. It could have been personal, otherwise I cannot say.'

Q. 'Well you didn't buy a car with it because we've seen that you dealt by way of a bank draft for the dealing with the garage, isn't that right?'

A. 'That's correct, yes.'

Q. 'Did you buy paintings with it?'

A.'Well, I have bought paintings in my time but I don't believe I did.'

Q. 'Did you buy shares with it?'

A. 'I don't believe I did.'

Q. 'Did you invest it in stocks?'

A. 'No, I don't believe I did.'

Q. 'Did you put a deposit on an apartment?'

A. 'No, I don't believe I did. I have bought apartments but I don't believe I did ever use cash in relation to the purchase of an apartment.'

Q. ' Did you pay any outgoings in respect of your office out of it?'

A. 'No, I don't believe I did.'

3.92 Mr Dunlop maintained that his presence in Powers Hotel on the day in question was relatively unusual for him, although he volunteered the information that the hotel was regularly used by politicians, given its proximity to Leinster House.

3.93 Mr Dunlop acknowledged that, as of September 1993, his endeavours in relation to Quarryvale were focused on the upcoming County Council votes relating to the rezoning issue. He and Mr O'Callaghan expected that there would be renewed opposition by way of motions opposing Quarryvale being confirmed as a district/town centre under the Dublin County Development Plan; nevertheless, Mr Dunlop maintained that they were both confident of success. Mr Dunlop also acknowledged that as of September 1993, he was engaged in activities to progress the stadium project.

3.94 Apart from acknowledging that he encashed the IR£25,000 cheque on 17 September 1993, Mr Dunlop claimed not to have any further recollection in relation to the matter and described as a '*mystery*' what had happened to the cash. He stated:

> *'It is a mystery in the sense if you define the word 'mystery'. It's a mystery in the sense that I cannot explain exactly what I did with the £25,000. Obviously, as I have said previously, I used the money at some stage for purposes which I cannot now tell you. But certainly I don't have any specific recollection of using that money for any defined purposes in relation to what the Tribunal is investigating.'*

3.95 Mr Dunlop denied that he had elected not to tell the Tribunal what he had done with the IR£25,000 cash.

3.96 Mr Dunlop acknowledged that in September 1993 (prior to receipt of the IR£25,000 cheque), he himself was not without cash resources. Evidence to the Tribunal in relation to Mr Dunlop's INBS '*warchest'* account revealed that he had sums of between IR£30,000 and IR£45,000 on deposit in the months of August and September 1993. Given that he had received the IR£25,000 free of VAT, and that he had encashed the cheque, Mr Dunlop agreed that '*in my own mind yes*' he must have had a requirement for this cash.

MR O'CALLAGHAN'S POSITION IN RELATION TO THE SEPTEMBER 1993 PAYMENT OF IR£25,000

3.97 Mr O'Callaghan denied any connection between this payment of IR£25,000 to Mr Dunlop in September 1993, and payments made by Riga Ltd on 9 November 1993, of IR£20,000 and IR£5,000 respectively to Cllrs Colm McGrath and John O'Halloran.

3.98 It was suggested to Mr O'Callaghan that the September 1993 payment to Mr Dunlop, and the November 1993 payments to Cllrs McGrath and O'Halloran, had a number of features in common: they were all round-figure payments, they were (initially at least) attributed within Riga Ltd as made on behalf of Barkhill Ltd, and recoupment of them was never sought by Riga Ltd from Barkhill Ltd, notwithstanding the Barkhill Ltd attribution in Riga Ltd's books. Mr O'Callaghan responded:

> *'Well the IR£25,000 stadium one, even though in Barkhill was a stadium invoice and the banks would not pay that, I was well aware of that, even though it was in Barkhill there, it should not have been in Barkhill it should have been in the stadium, the invoice was clearly marked national all purpose stadium, the banks would not have paid it, no choice. IR£20,000 was a loan more or less to McGrath, which I did myself, and*

the IR£5,000 to O'Halloran was a contribution to help him get himself set up as an independent politician.'

3.99 Mr O'Callaghan's evidence, therefore, was that all three payments had been wrongly attributed for the year end 30 April 1994 within the books of Riga Ltd as Barkhill Ltd expenses.

3.100 Mr O'Callaghan professed to have no knowledge as to how Mr Dunlop dealt with the IR£25,000 paid to him by Riga in September 1993. Mr O'Callaghan stated that he did not know why Mr Dunlop had a need for IR£25,000 in cash at this time. He denied the suggestion that Mr Dunlop had received the money to pay someone on Mr O'Callaghan's behalf and he denied, notwithstanding, the similarities[14] the payment bore to the payments made to Cllrs McGrath and O'Halloran some weeks later, that the IR£25,000 cheque had been given to Mr Dunlop as a '*political payment*'. Mr Dunlop's telephone records indicated that having met with Mr O'Callaghan on 15 and 16 September 1993, when the IR£25,000 cheque was likely to have been handed to him, Mr O'Callaghan again made contact by telephone on 17 September 1993 and requested Mr Dunlop to '*call him in Cork'.*

THE TREATMENT OF THE IR£25,000 PAYMENT IN RIGA LTD'S BOOKS AND ACCOUNTS

3.101 Notwithstanding the assertions by Mr O'Callaghan and Mr Dunlop that the IR£25,000 payment was a *'stadium'* payment, it was noteworthy that in Riga Ltd's books, the payment was attributed to the Quarryvale/Barkhill project. Moreover, in the audit of Riga Ltd's accounts for the year ended 30 April 1994, the IR£25,000 payment to Mr Dunlop was treated as a Barkhill Ltd expense.

3.102 The IR£25,000 payment was one of a number of payments to Mr Dunlop recorded in the intercompany loan balance for the year ended 30 April 1994 as Barkhill/Quarryvale expenditure, the others which totalled IR£25,756.70 being payments from Riga to Frank Dunlop & Associates Ltd. These sums were ultimately recouped from Barkhill, but no such application was made for recovery of this sum of IR£25,000 and by year end 30 April 1995, had been posted to the Directors Loan Account within Riga. Mr O'Callaghan explained this decision by stating that it was an expense associated with the stadium project, but was unable to explain why the payment was not therefore attributed to the work in progress stadium in Riga's accounts.

[14] Including the manner in which the payments were treated in Riga's books. (Mr O'Callaghan believed that to have been a coincidence).

3.103 Other payments in addition to this IR£25,000 payment to Mr Dunlop, were recorded in the intercompany Loan Account for the year ended 30 April 1994, as Barkhill/Quarryvale expenditure but were transferred to the *'Directors Loan Account'* for the year end 1995 included;

- IR£10,000 (by way of reimbursement for general expenses) to Mr O'Callaghan on 24 September 1993
- IR£20,000 to Cllr Colm McGrath on 9 November 1993
- IR£5,000 to Cllr John O'Halloran on 9 November 1993.

3.104 Mr O'Callaghan told the Tribunal, that the Cllr McGrath payment of IR£20,000 was not claimed from the Barkhill Ltd Loan Account because he, Mr O'Callaghan, regarded it as *'a loan more or less'*, while the Cllr O'Halloran payment of IR£5,000 was not claimed because it was paid *'to help him get himself set up as an Independent politician'.* The Tribunal's analysis of these payments is considered elsewhere in this Chapter.

3.105 In all, reimbursement was not pursued for IR£60,000 recorded in the inter-company Loan Account for year end 1994, as Barkhill/Quarryvale expenditure and was transferred to the Directors Loan Account for year end 1995.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE IR£25,000 PAYMENT TO MR DUNLOP IN SEPTEMBER 1993

3.106 The Tribunal rejected the evidence of Mr Dunlop and Mr O'Callaghan that the IR£25,000 was a payment to Mr Dunlop for his work on the stadium project.

3.107 The Tribunal found that as of 1993, it was intended that Mr Dunlop would be remunerated for his stadium work by way of a beneficial interest in the stadium project.

3.108 The Tribunal rejected Mr Dunlop's claimed lack of recollection in relation to his requirement in September 1993 for IR£25,000 cash. Neither did it accept Mr Dunlop's claimed lack of recollection about the identity of the person or persons he met (for the purposes of disbursing money), in Powers Hotel on 17 September 1993. The Tribunal did not accept as credible, that Mr Dunlop could have forgotten the use to which he applied such a substantial cash sum, in circumstances where, shortly after receiving the cheque, he proceeded to encash it. The Tribunal was satisfied that Mr Dunlop chose not to disclose either the purpose for which a sum of IR£25,000 from Mr O'Callaghan which he effectively treated as cash, or the name(s) of the individual or individuals he probably paid

money to on 17 September 1993 in Powers Hotel, a premises close to Leinster House.

3.109 The Tribunal believed it probable that Mr Dunlop disbursed either the entire, or a significant portion of, the IR£25,000 cash to whomsoever he met in Powers Hotel on the 17th September 1993, and that, almost certainly, the beneficiaries were one or more politicians.

3.110 Mr Dunlop and Mr O'Callaghan, in effect, acknowledged that the September 1993 cheque for IR£25,000 from Riga Ltd, was the final large round-figure payment, without VAT, paid to Mr Dunlop by Riga Ltd/Barkhill Ltd, be it through Shefran/Sheafran or Frank Dunlop & Associates Ltd.

3.111 The Tribunal noted that the payments of these large round-figure, effectively 'cash' sums, to Mr Dunlop ceased at around the same time as the zoning of the Quarryvale lands was confirmed by Dublin County Council. The Tribunal also noted that Mr Dunlop was paid the IR£25,000 in September 1993, the same general timeframe in which Cllrs McGrath and O'Halloran (9 November 1993) were paid IR£20,000 and IR£5,000 respectively, by Mr O'Callaghan. The Tribunal also noted that this cash payment of IR£25,000, in effect, was paid to Mr Dunlop at a time when he was actively lobbying in support of the All Purpose National Stadium project.

3.112 During the Quarryvale rezoning campaign (May 1991 to October 1993) therefore, Mr Dunlop received large round-figure sums from Mr O'Callaghan totalling IR£270,000. None of these payments provided for VAT, and none were accounted for in Mr Dunlop's books.

3.113 On Day 815 the following question was put to Mr Dunlop:

> *'Why was it, Mr Dunlop, that you had entered into an arrangement that for the duration of the zoning campaign in Quarryvale you required to be paid in large round figure sums in most circumstances in which you cashed the money and had the money available to you in cash?',*

Mr Dunlop answered:

> *'It's because that was the arrangement that I arrived at with Mr O'Callaghan when I first met him in the context of Quarryvale and the in circumstances that I outlined to you vis-a-vis the concerns expressed to me by Mr O'Callaghan about Mr Gilmartin. That subsisted. That continued. The payments out of Frank Dunlop—to Frank Dunlop & Associates related to costs but at this time in or around this time it is obvious that a new relationship was evolved between us. I can't*

specifically say who generated it, why it was generated, whether Mr O'Callaghan said to me, you know, we have to develop a new relationship or whether I said we have to put this on a different footing. I cannot say that to you other than that it occurred.'[15]

3.114 Mr Dunlop was asked why, in September 1993, he ceased operating what had been up to then, on his account of events, (and indeed as found by the Tribunal), effectively a cash payment system agreed by himself and Mr O'Callaghan. Mr Dunlop stated:

'Well I don't want to continually repeat myself. But certainly a new arrangement was arrived at between Mr O'Callaghan and myself. I cannot say which of us generated it. Obviously it was mutually agreed in the context of what was occurring at the time in relation to Quarryvale. The [October 1993] *vote hadn't taken place, it was about to take place. As you quite rightly say, we were confident we would win the confirmation vote and thereafter to all intents and purposes other than outstanding issues in relation to the stadium the* [Quarryvale rezoning] *matter was concluded.'*

3.115 The Tribunal was satisfied that Mr Dunlop and Mr O'Callaghan's necessity for a cash payment system for Councillors ceased in September 1993, because to all intents and purposes the rezoning of the Quarryvale lands, the objective for which Mr Dunlop had been retained as a lobbyist in the context of the Development Plan review, had effectively been achieved.

RIGA LTD'S AUDIT ADJUSTMENT

3.116 It was common case that Riga Ltd made an audit adjustment within its books for the year ended 30 April 1995, whereby the Riga Ltd/Barkhill Ltd inter-company loan balance was credited with the sum of IR£60,000 and a corresponding sum of IR£60,000 was debited as Directors' drawings to the Directors Loan Account within Riga Ltd.

3.117 The IR£60,000 figure treated thus in Riga's books comprised the IR£25,000 paid to Mr Dunlop in September 1993, the IR£20,000 paid to Cllr McGrath in November 1993, the IR£5,000 paid to Mr O'Halloran in November 1993, and the repayment of IR£10,000 (for general expenses) by Riga Ltd to Mr O'Callaghan in September 1993.

[15] Mr Dunlop had been asked this question in the context of the retainer fees arrangement he arrived it with Mr O'Callaghan in late 1993, whereby his professional fees from thereon in were to be invoiced via Frank Dunlop & Associates.

3.118 On 29 January 1996, Riga's Auditors, Barber & Co, advised Barkhill's Auditor, Mr Fleming of Deloitte & Touche, that the inter-company loan balance as of 31 March 1995, should be amended to £2,262,923. This figure was some IR£60,000 less than the figure he had been given as the inter-company loan balance in August 1995. No explanation for this adjustment appeared to have been given to Mr Fleming. It was not indicated specifically to Mr Fleming that IR£60,000 was being credited to the Riga Ltd/Barkhill Ltd inter-company loan balance.

3.119 By 2 February 1996, however, Mr Fleming was alert to the difference between the figure given in August 1995, and the figure advised in January 1996, and an explanation was sought. On 9 February 1996 Mr Fleming received the following explanation from Riga Ltd's Auditors:

> *'We refer to your letter of 2nd February, 1996 in relation to the inter company account between Barkhill and Riga. The difference of £60,000 arises from a cost originally taken as Barkhill's, but was subsequently discussed and decided to be a Riga cost, hence the revised balance of monies owing from Barkhill to Riga of £2,262,923 at 31st March 1995.'*

3.120 Ms Cowhig, Riga's Auditor, explained Riga's decision to remove the payments totalling IR£60,000 which had been made to Mr Dunlop, Cllr McGrath, Cllr O'Halloran and Mr O'Callaghan from the inter-company loan balance, on the basis that they were deemed not to be recoverable from Barkhill Ltd. Ms Cowhig believed she had advised Mr Deane of the potential for difficulty with these entries in or about January 1996, when she was advised by him of the possibility of outside investors being brought into Barkhill Ltd.

3.121 According to Ms Cowhig, her discussion with Mr Deane had initially focused on a query about two payments, of IR£10,000 and IR£20,000, which had been made to Mr Lawlor in the accounting year ending 30 April 1995. These payments had initially been attributed in Riga Ltd's books as Barkhill/Quarryvale expenses. Ms Cowhig told the Tribunal that, as there were no invoices to support such payments, it was decided not to write them up to the Riga Ltd/Barkhill Ltd inter-company loan balance for the year ending 30 April 1995, but to attribute them to the Directors Loan Account within Riga Ltd. Ms Cowhig stated that in the circumstances the Directors Loan Account was the correct destination for these items without invoices.

3.122 Ms Cowhig told the Tribunal that because of a similar absence of invoices in relation to the payments which had been made in November 1993, to Cllr McGrath (IR£20,000) and to Cllr O'Halloran (IR£5,000) and in September 1993, to Mr O'Callaghan (IR£10,000), it had been decided, in December 1995

or January 1996, that these payments, together with the IR£25,000 paid to Mr Dunlop in September 1993, would be taken from the Riga Ltd/Barkhill Ltd inter-company loan balance and attributed, like Mr Lawlor's payments, to Riga's Directors Loan Account in the accounts for the year ended 30 April 1995.

3.123 According to Ms Cowhig, while Mr Dunlop's September 1993 payment had been made on foot of a Frank Dunlop & Associates Ltd invoice, it was decided to remove this payment from the inter-company Loan Account because it had been made in relation to the stadium project, and not Quarryvale. However, on its face, this appeared to the Tribunal to conflict with the fact that in the accounting year ended 30 April 1994, the September 1993 payment to Mr Dunlop had been written up in both Riga Ltd's books of prime entry and its audited accounts as a Barkhill Ltd/Quarryvale expenditure.

THE TRIBUNAL'S CONCLUSIONS RELATING TO RIGA LTD'S AUDIT ADJUSTMENT

3.124 The Tribunal was satisfied that by January 1996, Riga Ltd, possibly Mr O'Callaghan and certainly Mr Deane, were aware that, if a number of round-figure payments (including the IR£25,000 to Mr Dunlop in September 1993), for which there were no invoices, and on which VAT had not been charged or paid, were to be included in the Riga Ltd/Barkhill Ltd inter-company loan balance, such inclusion was likely to present difficulties in the course of any due diligence process embarked upon by potential investors in Barkhill Ltd.[16]

[16] From 1995/6 Barkhill Ltd was actively seeking outside investors in its bid to develop the Quarryvale lands as a district/town centre.

CHAPTER TWO – THE QUARRYVALE MODULE – PART 6

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18. Diary entry from Mr Dunlop's diary for 27 January 1993..... 803
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O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial
&
Commercial Developers

21/24 LAVITT'S QUAY,
CORK, IRELAND.
Telephone: (021) 275008
Telefax: (021) 275626

13th February, 1992.

Mr. Louis D. Kilcloyne,
Football Association of Ireland,
80, Merrion Square,
Dublin 2.

Re: Football Stadium

Dear Louis,

Frank Bowen told me that he had met you recently and that he was preparing a report for you.

The present Political situation may be even more favourable to our proposal than the past.

However, as you are aware, the G.A.A. are now proceeding along a similar route, and are also looking for grant support. It is important that we get our grant aid confirmed as soon as possible.

I would like to meet with you again as soon as is convenient, to enable us to finalise our proposal and make solid progress.

Looking forward to hearing from you soon.

Kind regards,

Owen O'Callaghan.

Return to report

1992-05-29 15:07 O'CALLAGHAN PROP.LTD.CORK 353 21 275626 P.02

O'Callaghan (Properties) Limited

PROPERTIES

Housing-Industrial
&
Commercial Developers

21/24 LAVITT'S QUAY,
CORK, IRELAND.
Telephone: (021) 275008
Telefax: (021) 275626

29th May, 1992.

Mr. Frank Dunlop,
Frank Dunlop & Associates,
25 Upper Mount Street,
Dublin 2.

Action to be taken on Stadium after our meeting on 28th last.

1. AFK to proceed with outline permission and to be in a position to lodge by mid-July.

2. FD to get as much information as possible from Minister.

3. We meet Kieran Mulcahy at 10.30 am in Mount Street on Thursday 4th June to progress Feasibility.

4. While Feasibility is being undertaken, we arrange to meet Flannery - Neal, etc., and update them with a view to using their names when the Project is officially announced and to get a feel from them as to what involvement they see themselves having in the project and where we come in.

5. When Feasibility is completed we meet again with Neal, etc., and tell them what involvement we require in the project.

...../...

2 of 17

O'Callaghan (Properties) Limited
Continuation Sheet No.

6. Our involvement to include the group of four who met and discussed this at 6.30 pm on Thursday 28th May.

7. To ensure that the opposition does not get an opportunity to play down the Project we must do the following:

(a) FAI - FD - AFK and OO'C meet Connolly on 10th June. AFK to ensure that this meeting takes place.

(b) FD at the appropriate time to brief Minister and Government Press Office.

(c) FD to have "suitable" press release with Houston Sports and Leisure Management etc., to the fore and O'CP somewhere in the background.

(d) Inform in advance selected Councillors.

8. AFK and FD to meet DS regarding additional land.

P.S. Quarryvale

We meet as many Councillors as we can on Wednesday and Thursday afternoon.

We must ensure at all costs that our zoning decision does not come up until September.

c.c. AFK

3 of 196

Return to report

FF.DR 1. 42 - 122

July 1994

Mr Owen O'Callaghan
O'Callaghan Properties Ltd
21 Lavitt's Quay
Cork

Dear Owen

Further to our conversation this morning I wish to express my sincere thanks for your most generous and positive response to our request for support.

Your support is greatly appreciated and I am pleased that you felt our cause was an important one which warranted such a generous response.

May I take this opportunity to convey to you my best wishes and kindest regards.

Yours sincerely

Bertie Ahern TD
Minister for Finance
(Chairman National Finance Committee).

50m @ 7% 3.5m% P.02
motorway 1977
Item - 5m.

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Mr. Padraigh O'hUiginn,
Secretary,
Roinn An Taoisigh,
Government Buildings,
Merrion Street,
Dublin 2.

11th September 1992

RE: Proposed All Purpose National Stadium

Dear Padraigh,

As you are aware, Owen O'Callaghan and myself gave a briefing to An Taoiseach regarding the proposed All-Purpose National Stadium on Wednesday last, September 9th., 1992.

It is important that you appreciate that the reason for the briefing was to ensure that An Taoiseach had knowledge of the proposal before it was publicly announced.

We retained Deloitte & Touche to prepare a preliminary feasibility study, relative to the sporting uses that could be catered for at the All-Purpose Stadium. That was the specific remit given to the consultants.

The first phase of the feasibility report is based on a capital cost of £50/55 million.

Now that the technical team have completed their design which details the commercial uses, the next financial planning stage is being undertaken to capitalise on the commercial and franchising funding inflows, so that the project can be funded to the maximum.

This information is only now available for submission to enable our financial consultants to carry out Phase 2 of the financial study. The financial servicing of the project, based on our consultation to-date with all purpose stadium users in Europe and the United States, highlights the commercial potential of advertising, television rights and franchising for all year uses in food and beverage, licensing and

entertaining. In our view these commercial uses will minimise any operating deficit.

As we outlined to An Taoiseach, it is possible that there will be a deficit - on a reducing scale - over a maximum of 8 years only, which may require Lottery Funding consideration.

We emphasise that the preliminary feasibility report was commissioned to establish the funding and total deficit, but **excluding** the commercial inflows which at the time were not available to the consultants.

We are now proceeding to the final feasibility study which will embrace a maximum of the commerciality of the project to minimise the operating deficit.

When this final financial information is completed we will be very happy to submit it to you.

The preliminary financial report is not a basis for final judgement as to the overall financing of the project. It was inadvertently provided to An Taoiseach and it represents an initial feasibility of the **sporting** uses only.

We appreciate your interest in this matter which mirrors that of An Taoiseach when we met him.

Yours sincerely,

Frank J. Dunlop
Managing Director

Return to report

Mr. Bertie Ahern, TD,
Minister for Finance,
Department of Finance,
Upper Merrion Street,
Dublin 2.

1st. December, 1993.

Dear Minister,

You will recall that I spoke to you recently with regard to the proposed National All-Purpose Stadium at Neilstown, Clondalkin, Dublin 22.

To avoid adding to the pressures on your schedule by seeking to arrange a meeting with Owen O'Callaghan and myself I have collated the relevant material on the matter for your personal perusal.

Included in the documentation is a Deloitte & Touche "Market and Financial Feasibility Study" commissioned by Owen O'Callaghan with regard to Stadium support options. The relevant sections are at page 1 to 4 inclusive.

Obviously, when your time permits Owen O'Callaghan and myself would greatly appreciate a meeting to discuss the matter in greater detail. Meanwhile if there is any further information you require in this matter please don't hesitate to call me.

With kind regards,

Frank Dunlop

Return to report

An Taoiseach,
Mr. Albert Reynolds, TD,
Government Buildings,
Upper Merrion Street,
Dublin 2.

1st. December, 1993.

Dear Taoiseach,

I am very much aware of the tremendous pressures under which you are working currently. I had asked Frank Dunlop some weeks ago to try and arrange a meeting with you so that we could brief you personally on our proposed National All-Purpose Stadium. I fully understand that time is a precious commodity for you at the best of times but even more so at the moment. Therefore, to avoid adding further burdens to the heavy schedule you are already working to Frank and myself have decided to send you the attached material under confidential cover with a view to discussing the matter with you when time allows.

Central to the documentation is the Market and Financial Feasibility Study prepared for me by Deloitte & Touche. This Study outlines the options for supporting the proposed Stadium. The relevant detail is provided at pages 1 to 4 inclusive of this Study which is attached for your perusal.

Taoiseach, I am convinced that this is not only a viable project but one which will also benefit the country enormously and provide us with a facility which will be second to none internationally. Likewise, this Stadium will be seen publicly as the fulfilment of the undertaking in the Programme for Partnership Government, 1993-1997 to support the building of a national sports stadium.

With every good wish in your endeavours to achieve a peaceful solution to the national problem.

Yours sincerely,

Owen O'Callaghan

AIBQ 24.4 - 34

FILE NOTE
MOF/LM/LFN7/7

BARKHILL

14th December 1993

Owen O'Callaghan phoned - he confirmed that the draft development plan for Dublin has been made and the Barkhill zoning is now confirmed. Any issues arising in relation to the square footage (i.e. net or gross) would arise as part of the planning process. They have been in discussions with the planners and it will be late January before any planning permission issues. He is not overly concerned with this process and less concerned about An Bord Pleanala process.

Ongoing discussions are taking place with Marks & Spencers, Quinnsworth and Penneys and he indicated that Roger Aldridge from Marks & Spencers now wants to meet the Quinnsworth and Penney people on the 3rd of February 1994 to discuss their mutual interests in Quarryvale.

The people involved in Quinnsworth and Penneys are Don Tidey and Arthur Ryan.

He went on to indicate that he is meeting Albert Reynolds and Bertie Aherne later today in connection with the Sports Stadium. I expressed surprise at this. He indicated that he has no real option but to continue his discussions in relation to this Stadium in that there is enormous political interest in same. He will not be moving anything forward unless there is significant state subsidies - he mentioned IR£5m per annum. He mentioned that the ~~Petrie's~~ Major could work but obviously it is at fairly early stages.

Michael O'Farrell,
Senior Manager,
Corporate Banking.

Return to report

CHILTON & O'CONNOR, INC.
INVESTMENT BANKERS

March 9, 1994

Mr. Frank Dunlop
Leisure West Limited
25 Upper Mount Street
Dublin 2,
Ireland

Re: March 11th meeting with Minister Bertie Ahern in Los Angeles

Dear Frank,

As you are probably aware the above meeting has been arranged for this coming Friday. Obviously I will need to talk with you, Mr. Ambrose Kelly or Mr. O'Callaghan prior to meeting with Minister Ahern. It would also be imperative to hear the result of the pending meeting this Thursday 10th with Minister Aylward.

I will need an update with reference to any recent discussions with the *F.A.I., and Deloitte & Touche.* Currently being forwarded to me are the recently published National Lottery Annual Report and Finance Ministry documentation. Also it would be most useful going into this meeting with Minister Ahern to have some indication of the role the board of Leisure West Ltd. anticipates for Chilton & O'Connor Limited.

I look forward to discussing all of the above and hopefully ironing out the funding details for this important project sometime soon in Dublin. I remain,

Very truly yours,

Kevin T. Burke
Senior Vice President

KTB:pe
cc: Mr. Ambrose Kelly
Mr. Owen O'Callaghan

Return to report

Tribunal Ref : LL.DISC 5(6) 98
Tribunal Ref : LL.DISC 5(6) 98
Page No: 232
Page No: 232

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I will need an update with reference to any recent discussions with the *F.A.I., Deloitte & Touche and the proposed Phoenix Park development.* Currently being forwarded to me are the recently published National Lottery Annual Report and Finance Ministry documentation. Also it would be most useful going into this meeting with Minister Ahern to have some indication of the role the board of Leisure West Ltd. anticipates for Chilton & O'Connor Limited.

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Very truly yours,

Kevin

Kevin T. Burke
Senior Vice President

KTB:pe
cc: Mr. Ambrose Kelly
Mr. Owen O'Callaghan

2 of 34

1901 AVENUE OF THE STARS, SUITE 300 • LOS ANGELES, CA 90067 • (310) 203-0966

207

Tribunal Ref : LL.DISC 5(6) 98
Page No: 233

TO: ***NIALL A LAWLOR***

FROM: ***LIAM A LAWLOR***

DATE: ***MARCH 10.1994***

1. ***Attached is an article from today's Irish Times, re Bond Issues.***

2. ***<u>Brief note re meeting with Bertie Ahern regarding the National Stadium.</u>***

Government reaction to submission is awaited.

The promoters, O'Callaghan Properties, have submitted comprehensive proposal and they are pursuing negotiations with the Minister for Sport, Mr Liam Aylward.

Full planning permission has been granted, complete with environmental impact study, etc.

Construction could commence if agreement between Government and promoter is forthcoming.

Liam Lawlor
lal/ay

35
208

AIBQ 27.2 - 56

MOF/DP/DFN27/66-67

[redacted]

24th November 1994

Meeting with Owen O'Callaghan at Bankcentre.

- He met recently with Frank Dunne - he has requested £100 per sq.ft. Dunne/Irving Drucker are are at £50/60 per sq.ft. His target is £85 per sq.ft. He indicated that he saw the agreement between Dunnes and Green which indicates that Dunnes are paying £48.50 per sq.ft. He is having a further meeting later today with Dunnes.

- He confirmed his meeting with Paul Cauwood last week together with John Deane - they have the full information pack at this stage to go back to British Land and Hammersons with.

- He confirmed the position viz a viz Ronson and would expect a proposal from them in 7/10 days. Charles Lee who is Chairman of Erdman Lewis, chartered surveyors and his no. 2 in that company - Mike Fowler are involved with Ronson - they are acting as professional advisors but O'Callaghan also believes that they will have an equity stake.

  I agreed that we would try and check out Ronsons current status - (Mary, can you please follow this up please).

- C&A have responded to the HOK flyer indicating that they are very interested in either the second or third anchor spot in Quarryvale comprising 30,000 sq.ft.

- He had a meeting with Vincent O'Doherty in relation to Superquinn getting involved - they are interested in Anchor 3 - 35,000 sq.ft. - and he indicated a price of £100 per sq.ft. to them. He is also pushing HOK to go after Sainsburys.

- In relation to Penneys and Quinnsworth he indicated that McMillan is not unhappy with £100 per sq.ft.

- Tenant interest in response to the HOK flyer has been very positive.

- Land Securities - Alf Strange is the name of the person involved - they will be sending them the pack next week without the financial figures.

- He also mentioned a Jim Kelly who is a UK developer who was introduced to them by HOK. He was formally an estates director of Sainsburys. He is interested in getting involved with property development and they are sending him the information pack also.

- They have no word back from IKEA yet but Owen continues to believe that it will be positive in the longer term.

Funding

This was the main reason for our discussions. They need cash to pay various bills, in particular Ambrose Kelly IR£75,000; Connell Wilson IR£25,000; HOK IR£20,000; Fire Cert IR£10,000; and IR£20,000 contingency. This would bring them up to the end of January 1995. In response to our earlier discussions in relation to the Carlow proceeds, he indicated that they would like IR£150,000 from the projected Carlow proceeds to be used to inject to Barkhill to fund these expenses. As the funds will not come through from Carlow until early next year, they would like bridging of this facility in Riga Limited. I indicated that we would be positive towards this - the implication of this is that the Riga Facility can only be reduced by IR£850,000 when the funds come through from Carlow. He went on further to indicate that he wanted to put us on notice that if they had not made tangible progress by the end of January they may be seeking further release from this IR£850,000 to fund ongoing Barkhill expenditure.

There was no debate in relation to themselves putting in these funds - they appear to have accepted our position that we are not funding any further spend in Quarryvale.

We agreed to liaise with John Deane in relation to the mechanics of drawdown and also to highlight to John Deane his need to ensure that this injection of funds into Barkhill Limited is reflected properly in relation to other shareholders.

Stadium

We discussed this briefly. He indicated that he has had meetings with various politicians who are keen on the concept - although there maybe an issue in relation to the location. He has had American financiers over to meet the relevant minister and he agreed that he would give me a copy of the submission made to them. He believes the FAI and the IRFU will commit to the Neilstown site. He is convinced that the proposed Pheonix Park site will not proceed in view of the difficulties in getting a casino licence.

Michael O'Farrell,
Senior Manager,
Corporate Banking.

CHILTON & O'CONNOR, INC.
INVESTMENT BANKERS

PRIVATE & CONFIDENTIAL

November 28, 1994

Mr. Bertie Ahern, T.D.
Tanaiste & Minister for Finance
Merrion Street
Dublin 2
Ireland

Dear Tanaiste:

I would like to congratulate you on your recent unanimous election as Leader of Fianna Fail. Also, thank you for allocating the time to meet with Mr.'s Owen O'Callaghan, Frank Dunlop and myself on the financing plan for the National All-Purpose Stadium.

We wish you every success on the crucial talks you are embarking upon and we hope to be in contact in the near future to progress the project.

Wishing you every success.

Very truly yours,

William J. O'Connor
President

WJO/sg

CC: Mr. Owen O'Callaghan, Leisure Ireland Ltd.
Mr. Frank Dunlop, Leisure Ireland, Ltd.

3 CIVIC PLAZA, SUITE 100 • NEWPORT BEACH, CA 92660 • (714) 717-2000 • FACSIMILE (714) 717-2020

Return to report

12/06/94 17:44 ☎714 717 2020 C & O, Inc. 003

OIFIG AN AIRE AIRGEADAIS
(OFFICE OF THE MINISTER FOR FINANCE)
BAILE ÁTHA CLIATH 2.
(DUBLIN 2)

30 November 1994

Mr William J O'Connor
President
Chilton & O'Connor Inc
Investment Bankers
3 Civic Plaza
Suite 100
Newport Beach
CA 92660
USA

Dear Bill

I am writing to thank you for your message of good wishes on my selection as leader of Fianna Fáil. I very much appreciate your doing so.

It is indeed a great honour and privilege to be chosen as the sixth leader of the Party. I am mindful of the great responsibility and challenges which lie ahead, and it is very heartening to know that I have the good wishes of people like yourself in facing into that future.

With very best wishes

Yours sincerely

Bertie

Bertie Ahern TD
Tánaiste and Minister for Finance

Return to report

Office of the National Treasurers

Fianna Fáil
THE REPUBLICAN PARTY

National Treasurers: Bertie Ahern, T.D.
Richie Healy

Address: **Room 317**
The Berkeley Court Hotel,
Lansdowne Road,
Dublin 4.

Telephone: 01-6683600/6683849
Fax: 01-6683885

30th June 1994

Mr Owen O'Callaghan
O'Callaghan Properties Ltd
21 Lavitt's Quay
Cork

Dear Owen

I have been informed by Des Richardson of your most generous and positive response to Albert and Bertie's request for support

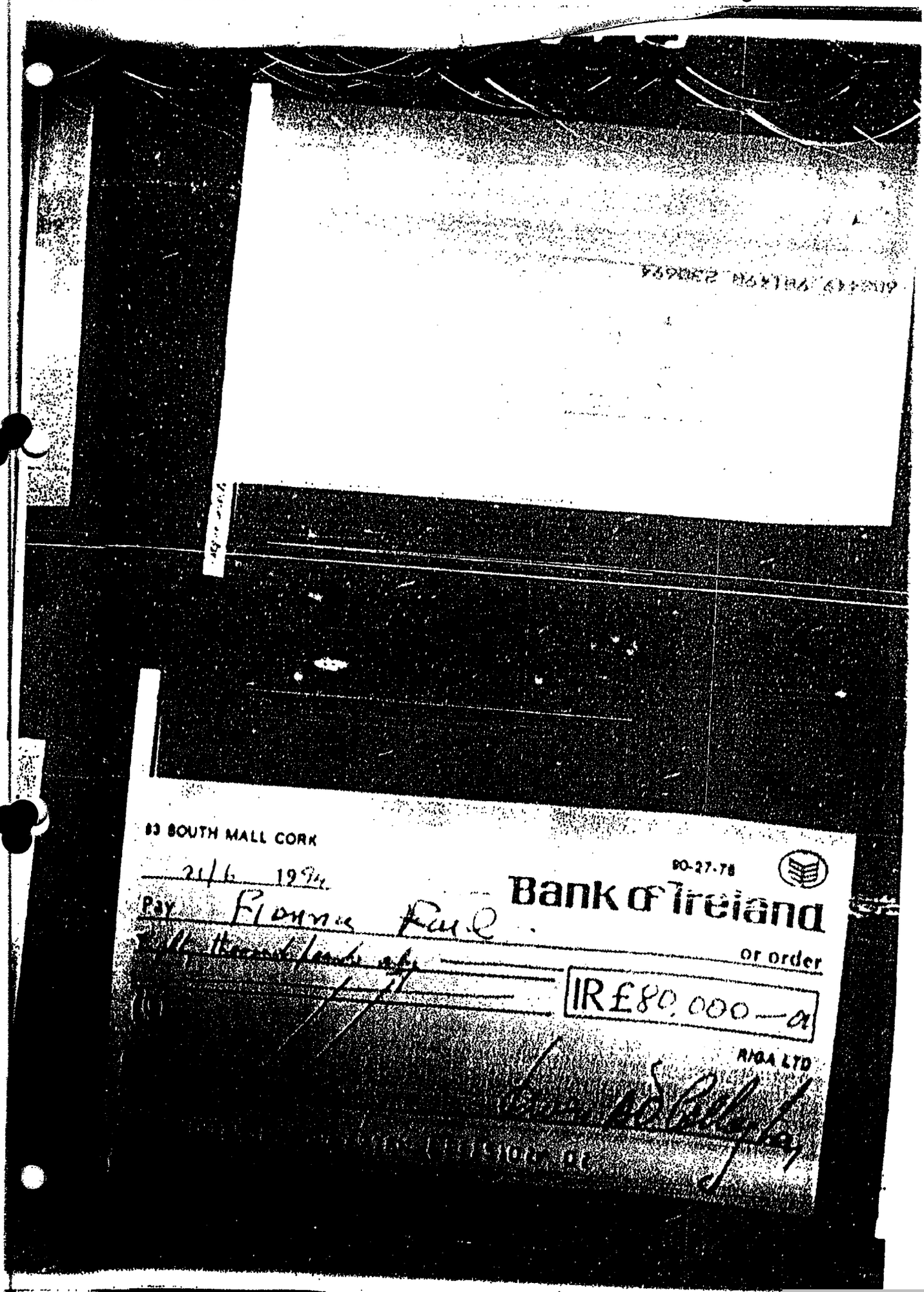
I very much appreciate your delivery of the undertaking which you gave to me at our recent meeting.

The assistance you have given will go a long way in helping us in the difficult task ahead of rectifying Party finances. Your support is greatly appreciated and I am pleased that you felt the efforts of the Party in Government were important and warranted such a generous response.

May I take this opportunity to convey to you my kindest regards and every good wish for the future.

Yours sincerely

Ray McSharry



Return to report

Office of the National Treasurers

Fianna Fáil
THE REPUBLICAN PARTY

National Treasurers: Bertie Ahern, T.D.
Richie Healy

Address: Room 317
The Berkeley Court Hotel,
Lansdowne Road,
Dublin 4.

Telephone: 01-6683600/6683849
Fax: 01-6683885

Private & Confidential

September 1993

Mr Owen O'Callaghan
O'Callaghan Porperties Ltd
21/24 Lavitt's Quay
Cork

Dear Owen

For over seventy years now Fianna Fail has through its political involvement played a major role in Irish life. Across the entire spectrum of the national community Fianna Fail has given practical expression to the dreams, ideals and priorities of our people by innovation, by consensus and by effective government. It is a proud tradition of practical patriotism which has changed the face of Ireland in education, health, agriculture, industrial development, social caring, involvement in the EC as well as constant support and encouragement for our cultural and national identity.

The costs of administering to the needs of the biggest political party in Ireland have escalated sharply over recent years. These costs, accumulated with the enormous expenses of major election campaigns, have left us with a Party debt that demands urgent redress.

We have put a national recovery plan in place to tackle the Party's debt. This involves substantial cost reductions and a co-ordinated fund raising campaign. We must pursue this programme rigorously to contain and reduce a total Party debt of £3,150,000, comprising bank loans of £2,350,000 and creditors of £800,000. It is a formidable challenge that can only be met by single-minded resolution and generous response.

We ask you to assist us at this critical time by making a significant financial contribution. It is an exceptional situation and we ask you to consider this request favourably in the context of these straitened circumstances. A senior representative of the National Treasurers Committee will be in touch with you personally in this regard in the near future. Thank you for your valuable support in the past which was of great assistance to the Party.

With every good wish,

We remain,

Sincerely yours,

Albert Reynolds TD
Taoiseach
(President, Fianna Fáil)

Bertie Ahern TD
Minister for Finance
(Chairman, National Finance Committee)

Return to report

Office of the National Treasurers

Fianna Fáil
THE REPUBLICAN PARTY

National Treasurers: Bertie Ahern, T.D.
Richie Healy

Address: **Room 317**
The Berkeley Court Hotel,
Lansdowne Road,
Dublin 4.

Telephone: 01-6683600/6683849
Fax: 01-6683885

July 1994

Mr Owen O'Callaghan
O'Callaghan Properties Ltd
21 Lavitt's Quay
Cork

Dear Owen

Further to our conversation this morning I wish to express my sincere thanks for your most generous and positive response to our request for support.

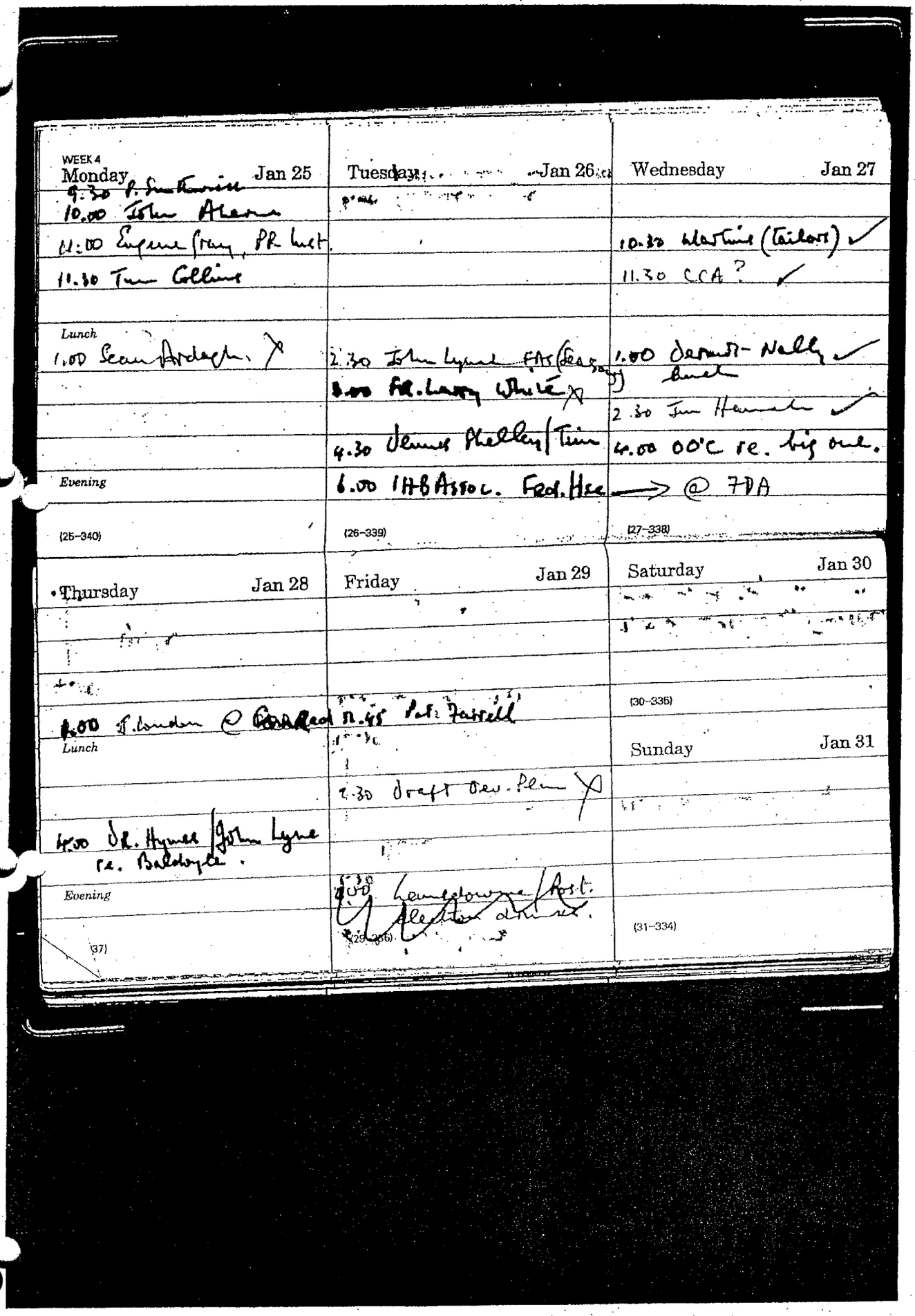
Your support is greatly appreciated and I am pleased that you felt our cause was an important one which warranted such a generous response.

May I take this opportunity to convey to you my best wishes and kindest regards.

Yours sincerely

Bertie

Bertie Ahern TD
Minister for Finance
(Chairman National Finance Committee)

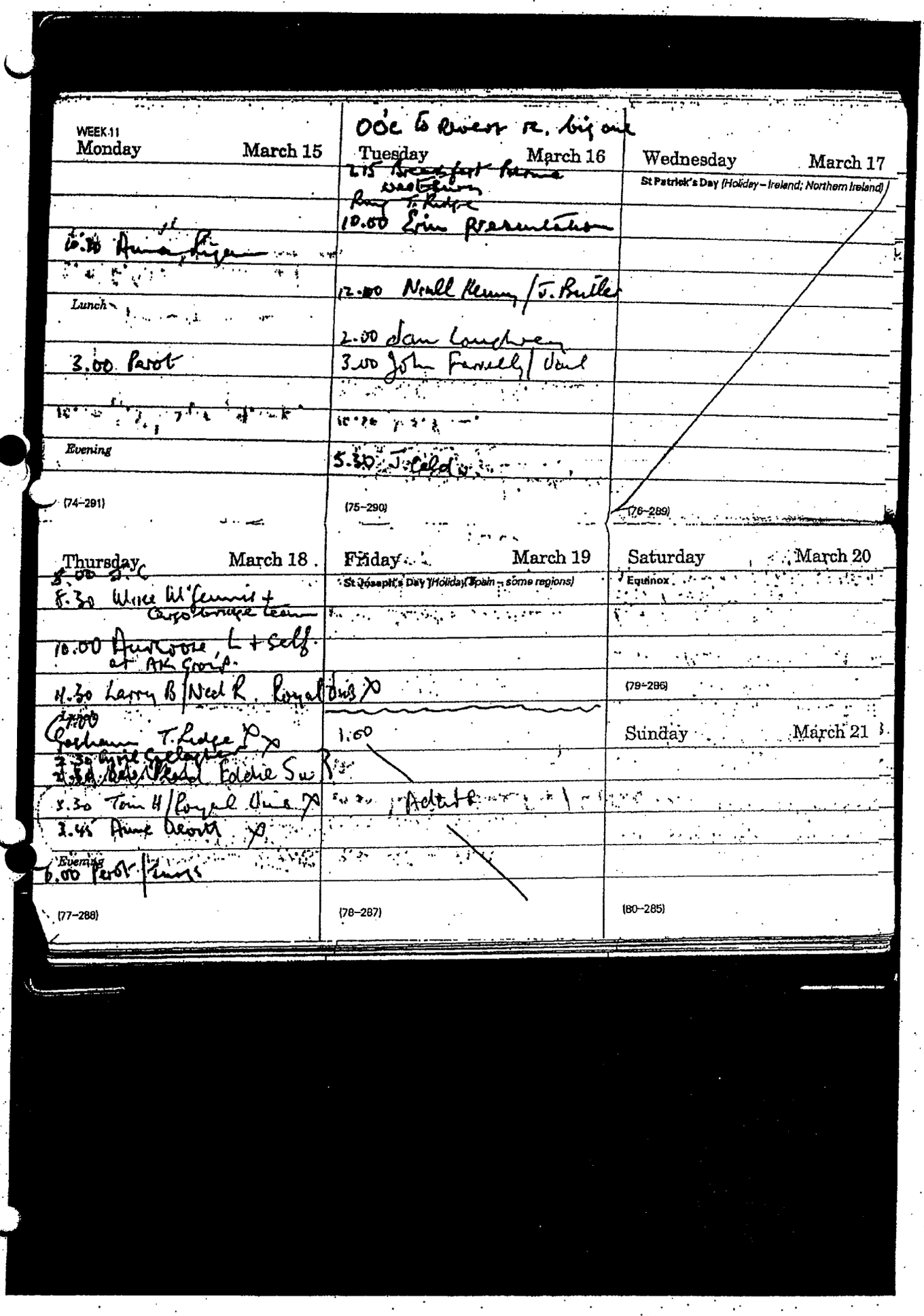


WEEK 4

Monday Jan 25	Tuesday Jan 26	Wednesday Jan 27
9.30 P. Smithwick 10.00 John Adams 11.00 Eugene Gray, PR Lect 11.30 Tom Collins		10.30 Martins (Tailors) ✓ 11.30 CCA? ✓
Lunch 1.00 Sean Ardagh. ✗	2.30 John Lynch FAS (Leas) 3.00 Fd. Larry White ✗ 4.30 James Phelan/Tim 6.00 IHB Assoc. Fed. Hse.	1.00 Dermot-Nally Lunch ✓ 2.30 Jim Hamilton ✓ 4.00 OOC re. big one. → @ FDA
Evening		
(25–340)	(26–339)	(27–338)

Thursday Jan 28	Friday Jan 29	Saturday Jan 30
8.00 T. London @ Conrad	11.45 Pat Farrell	(30–336)
Lunch	2.30 Draft Dev. Plan ✗	Sunday Jan 31
4.00 Dr. Hynes/John Lynch re. Baldoyle.		
Evening	7.00 Leaseholders/Asst. Secretary	
(37)	(29–336)	(31–334)

Return to report



WEEK 11

Monday March 15

10.30 Anna Lisa

Lunch

3.00 Parot

Evening

(74–291)

Tuesday March 16

00c to Rivers re. bijoux

L15 Breakfast Rooms
Rory T. Ridge
10.00 Erin presentation

12.00 Niall Kenny / J. Butler

2.00 Sam Loughrey

3.00 John Farrelly / Paul

5.30 J. Cahill

(75–290)

Wednesday March 17

St Patrick's Day (Holiday – Ireland; Northern Ireland)

(76–289)

Thursday March 18

8.00 S.C

8.30 Wince Lil'Gennis + Cargo barge team

10.00 Aurcoore L + Self at AK Group

11.30 Larry B / Neal R. Royal Oaks X

12.00 Graham T. Ridge X

1.30 Byrne Gallagher

2.30 Bob / Rhoda Eddie Sue

3.30 Tom H / Royal Oaks X

3.45 Anne Acorn X

Evening

6.00 Parot / Times

(77–288)

Friday March 19

St Joseph's Day (Holiday/Spain – some regions)

1.00

Adelaide

(78–287)

Saturday March 20

Equinox

(79–286)

Sunday March 21

(80–285)

WEEK 30

Monday July 26	Tuesday July 27	Wednesday July 28
Lodge for QV this week.	X	
9.30 RRJ Water.		
9.30 A. Kelly. X		
12.00 Eddie (Mon)		
Lunch		12.45 Seam Sil. X
4.00 RSD		
Evening		Summer 92/93/94/95/96 X
(207–158)	(208–157)	(209–156)

Thursday July 29	Friday July 30	Saturday July 31
9.30 Michael Greene, Ken McDonald, Keith Boyce, Anne Rowe re. Inner city Manufacturing	8.30 David S / B. Hickey	
12.00 Noon	11.00 Eddie / Monaveen	
Lunch NTMA? ✓		(212–153)
Brian Britton 600 RRD.	2.30 IHB Assoc. (Michael Greene Andy Reynolds)	Sunday Aug 1
Space to DOE re Big One AGAIN!! Yes, Yes		
Evening		
(210–155)	(211–154)	(213–152)

WEEK 31

Monday Aug 2	Tuesday Aug 3	Wednesday Aug 4
Bank Holiday (Scotland)		8.00 Jenny Mc Guire Acc,
	11.30 Ambrose X	10.00 Funeral.
	Spoke to Doc re. Big Jim	12.00 A. Kelly's / Memorial
Lunch	AGAIN!! YES. YES	
		2.30 CCA / Blackhall Place
		4.00 Brian Allen
Evening		
(214–151)	(215–150)	(216–149)

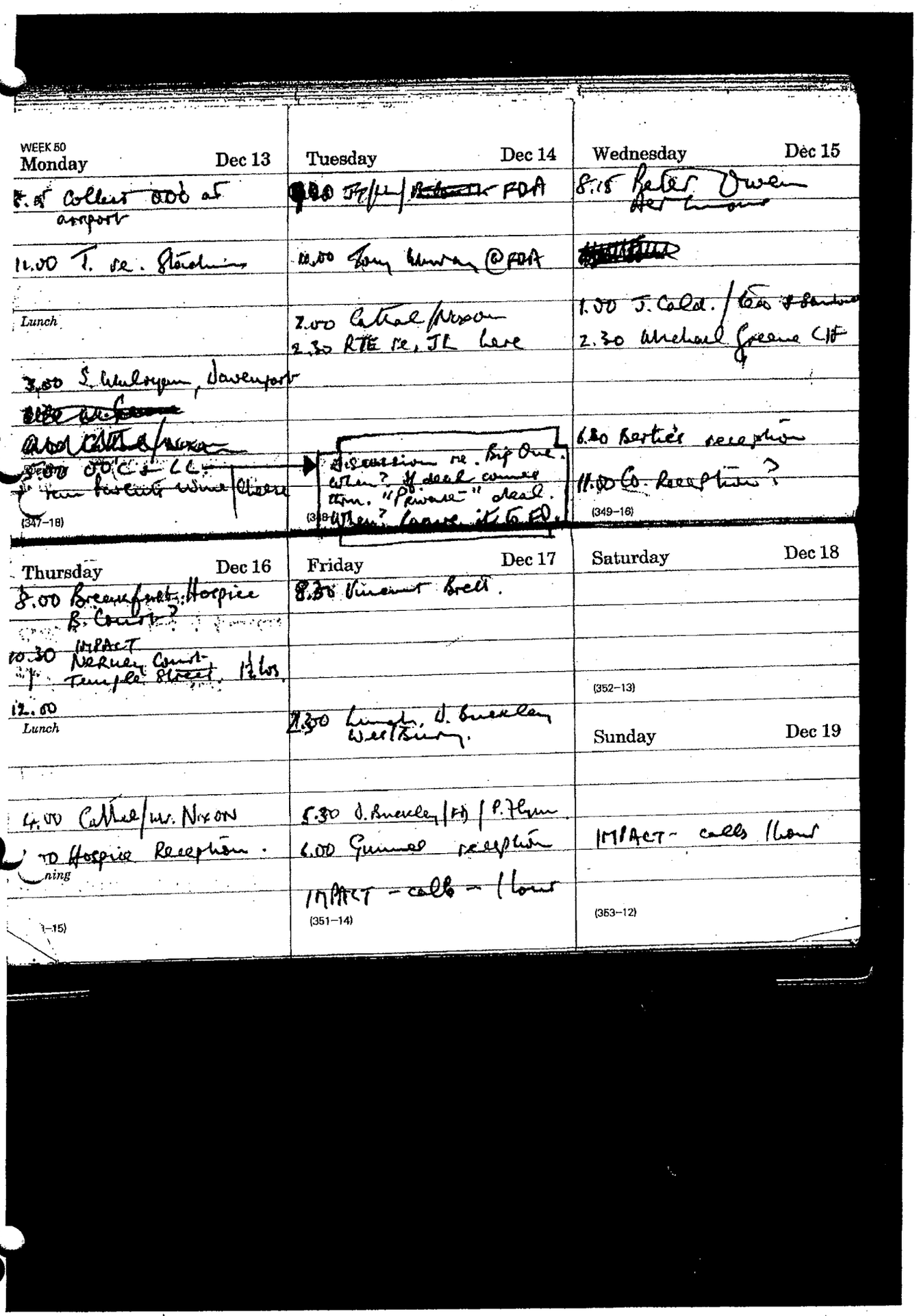
Thursday Aug 5	Friday Aug 6	Saturday Aug 7
		(219–146)
4.30 M.T. Cowan, R. Dun X		Sunday Aug 8
Lunch		
Evening		
(217–148)	(218–147)	(220–145)

WEEK 39

Monday Sept 27	Tuesday Sept 28	Wednesday Sept 29
	8.15 Monarch	Ring Mr Hoctor Todeo
10.00 Vincent Bell	Call Mr C. Ing Trust 5.00 Eve'g Star / Central.	10.00 HBA, Canal Road 11.00 Kevin Paul, ~~Road Hill~~
12.00 Nick Stassen.		12.45 Ivor Mc / B. Court
Lunch	2.00 Mister / Sheila	2.30 C. Jones / Ranch Hill
2.30 Dev. Plan	2.30 Dev. Plan	2.30 Dev Plan
		3.00 Rose Fleming
	3.30 Adam / Scott	
Evening 7.00 Agric Property Assoc.		6.30/9.00 H.C.
(270–95)	(271–94)	(272–93)

Thursday Sept 30	Friday Oct 1	Saturday Oct 2
DOE Appeal re: Big One,		
	11.00 Simon Upcraft B. Court.	
		(275–90)
Lunch	12.00 Simon O'Reilly Marina Terminals	Sunday Oct 3
2.30 Dev. Plan		Day of Unity (Germany)
Call Mr J.	3.00 John McCann	
Evening		
(273–92)	(274–91)	(276–89)

Return to report



WEEK 50

Monday Dec 13

F. of Collect ODB at airport

11.00 T. re. Glendimplex

Lunch

3.00 S. Mulcahy, Davenport

[redacted]

[redacted] Cattle Prices

5.00 OOC & LC

Tom Barrett Wine Store

(347–18)

Tuesday Dec 14

9.00 Tel/[redacted] FDA

10.00 Tony Hunter @ FDA

2.00 Cattle Person

2.30 RTE re. JL here

Discussion re. Big One. When? If deal comes then. "Private" deal. When? Leave it to FD.

(348–17)

Wednesday Dec 15

8.15 Peter Owen Aer Lingus

[redacted]

1.00 J. Cahill. / [redacted]

2.30 Michael Greene CIF

6.30 Bertie's reception

11.00 Co. Reception?

(349–16)

Thursday Dec 16

8.00 Breakfast: Hospice & Court?

10.30 IMPACT Nerney Court- Temple Street, 1½ hrs.

12.00

Lunch

4.00 Cattle/Mr. NIXON to Hospice Reception.

Evening

(350–15)

Friday Dec 17

8.30 Vincent Brett.

2.30 Lunch. D. Buckley Westbury.

5.30 D. Buckley/FD / P. Flynn.

6.00 Guinness reception

IMPACT - calls - 1 hour

(351–14)

Saturday Dec 18

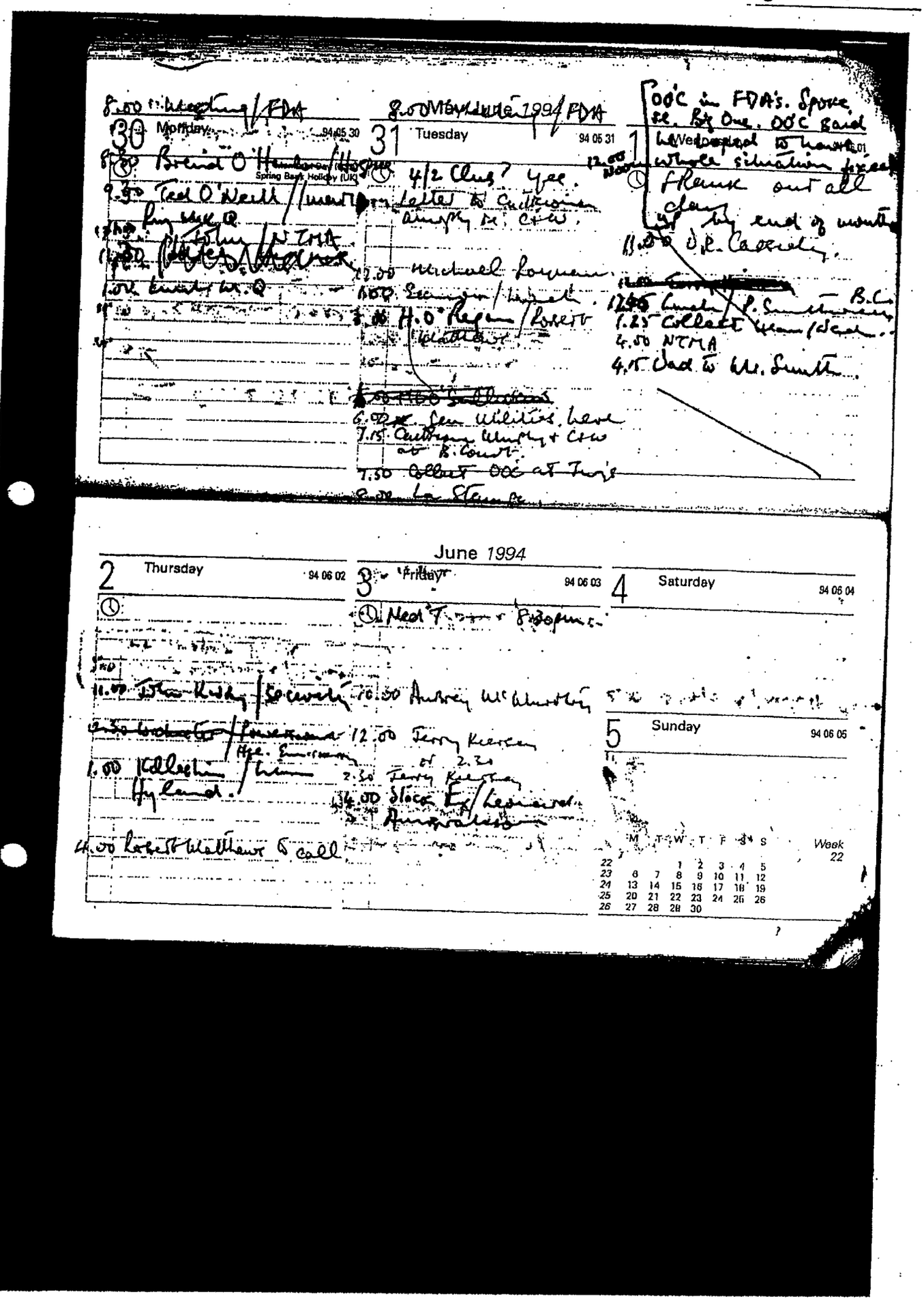
(352–13)

Sunday Dec 19

IMPACT - calls 1 hour

(353–12)

Tribunal Ref : FD.DIARY 1994
Page No: 31



Return to report

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Riga Ltd.,
21-22 Lavitt's Quay,
Cork.

20th July, 1992.

INVOICE

Re. All-Purpose National Stadium

To professional services including media relations, presentation, interview preparation, consultations with design team and US advisors and investors:

Payment on account: IR£70,000.00

PAID 9/11/92

Return to report

AIBQ 11 - 93

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial
&
Commercial Developers

21/24 LAVITT'S QUAY,
CORK, IRELAND.
Telephone: (021) 275008
Telefax: (021) 275626

23rd November, 1992.

Mr. Michael O'Farrell,
Senior Manager,
AIB Corporate,
BankCentre,
Ballsbridge,
Dublin 4.

Dear Michael,

Following Friday's telephone conversation, I enclose invoice on behalf of Frank Dunlop.

I am anxious to get our own "Election" going again next Friday/Monday. Hopefully the Councillors will be settled down by then.

As I mentioned to you, we have provided as much support as we could afford over the past few weeks. I will inform you of this when we meet.

I would like to collect a cheque for this invoice from you on Monday/Friday next. I will ring you to arrange a suitable time.

Regards,

Owen.



P.S. The contract with Cork Corporation has been signed for North Main Street. The Dunnes Stores contract has been completely agreed and will be signed by Dunnes Stores next Monday. John Deane will liaise with you or Mary on this.

Return to report

FF 18.5.04 - 13

O'Callaghan (Properties) Limited

PROPERTIES

Housing Industrial
&
Commercial Developers

21/24 LAVITT'S QUAY,
CORK, IRELAND.
Telephone: (021) 275008
Telefax: (021) 275626

17th Novmeber, 1992.

Personal & Confidential

Ref. 1955

£5,000 565

Mr. Albert Reynolds, TD
An Taoiseach,
13, Upper Mount Street,
Dublin 2.

Dear Taoiseach,

Thank you for your recent letter.

It has always been my policy over the years to support individual candidates and in particular this time, both in Dublin and Cork.

As you know, I have very close contact with candidates in both these areas and hope I have done the right thing in supporting candidates individually to gain those vital few seats.

The total support is in excess of six figures but it is vital for the country that we have a Fianna Fail-controlled Government.

In acknowledgement of your own letter, I enclose a cheque for £5,000.

.../

O'Callaghan (Properties) Limited
Continuation Sheet No.

FF 18.5.04 - 14

/...

I know the overall situation is not looking great at the moment, but as I write to you, there is already an upturn, and I am convinced it will all come right on the day.

The very best on 25th, it means a lot to me as well.

Regards,

Owen.

Return to report

AIBQ . 14 - 275

81, South Mall,
Cork.
Telephone (021) 277577
Telefax: (021) 270437

John W.T. Deane, B.C.L.
David B. Browne, B.C.L.
Michael A.G. Enright, B.C.L.

Bridget M. Hynes, B.C.L.
Patrick M. Ahern, B.C.L.

Your Ref:

Our Ref:
JD/MMcC

Date:
10 February 1993

Deane Enright & Partners
SOLICITORS

BY FAX & POST
Michael O'Farrell, Esq.,
AIB Bank,
Bankcentre,
Ballsbridge,
DUBLIN 4.

re: Riga Limited

Dear Michael,

Further to our meeting I wish to give you the additional information which you require. I attach a revised Cash Flow Statement from 1st January 1993 to the 31st December, 1993 together with audited accounts.

By way of background to the Cumberland House purchase, this was undertaken at a time when Riga Limited was in the middle of its transaction with Tom Gilmartin. Tom Gilmartin had agreed to pay Riga £3.5m for their interest in the Neilstown site. As part of the Agreement the £300,000.00 deposit which Riga paid on the site was to be refunded to Riga. Tom Gilmartin paid approximately £2.1m of this money to Riga and it was clearly envisaged that having paid a substantial amount such as this the balance then due of £1.7m would be paid.

On the basis of this forthcoming payment Riga Limited invested £2.5m by way of equity in the acquisition of the Cumberland House property. The balance of equity of £2.5m being put in by Consolidated Land and the remaining £8m required to complete the purchase was financed through AIB. So with a current borrowing level of £7.2m if the transaction had proceeded Riga as planned would also have a cash surplus of £1.7m which would be available for other projects or to reduce the loan of £7.2m.

cont/.

AIBQ . 14 - 274

-2-

At the time Cumberland House was purchased its average rent was approximately £7.75 per sq.ft. This rental was obtained in Cumberland House at a time when the top market rents which were being paid in Earlsfort Terrace were £9.20 per sq. ft. Consequently the discount at which Cumberland House was rented under the prime market rent at the time was in the order of 20%. At the time of purchase of Cumberland House, the quoting rents for new buildings were £14.00 per sq.ft. then passing to £16.00 per sq.ft. and ultimately rents being quoted for the new Ryde Development at Ballsbridge were in the order of £20/£22 per sq.ft.

Against this background it was envisaged that if rents went to £16 per sq.ft. and allowing for the same 20% discount, the rents in Cumberland House should rise to £13 per sq.ft. This would, on similar yields to the purchase price, increase the value of Cumberland House by approximately 70% to a value of £20m with the resulting profit per partner being approximately £3.5m on an investment of £2.5m. It was envisaged between the partners that Cumberland House be sold once the rent reviews had been undertaken.

In light of the current circumstances Riga's proposals for de-gearing are as follows:

a. The Units at North Main Street would be sold in preference to being rented to Purchasers interested in purchasing the Units. As explained to you a purchase package is being put together with a financial institution to assist Purchasers in buying the Units.

b. Notwithstanding the intention of the Partners to sell Cumberland House following the rent reviews, Riga has already initiated the process of endeavouring to dispose of its interest in the property. Two agents have been given instructions to seek a Purchaser for the building. Riga Limited has also been encouraging its partner Consolidated Land with a view to selling its interest to Consolidated Land. It is envisaged that the sale of the building will be easier to undertake once the rent reviews have crystallised which should be later in the year.

In addition to the foregoing Riga Limited has also incurred additional expense in the sum of £400,000.00 approximately in order to secure the Quarryvale zoning. This has been spent in two ways as follows:

a. £150,000.00 has been paid on various "expenses" directly related to the Quarryvale project and for which Invoices have not been produced to the Bank nor has the Bank been requested to make any payment out of the Barkhill account.

b. £250,000.00 has been spent in connection with the Stadium project for the old Neilstown site.

By way of background to the expenditure you will recall that the Neilstown site was the original site zoned for the town centre. Part of the Quarryvale problem was to obtain the moving of the zoning from Neilstown to Quarryvale. The City Manager made it

cont/.

AIBQ . 14 - 273

clear that he expected an alternative use to be found for the Neilstown site and that the site was not simply to be dumped and left there. With this in mind the Stadium project was conceived.

However to make the project seem a real project and not just a mythical scheme, it was necessary to prepare detailed and substantial drawings to such a standard that would lead to a detailed Planning application. Furthermore a working model with a sliding roof and moving floor was also prepared. International consultants in the leisure field were retained to vet the project and Deloitte and Touche, Accountants, were also retained to give a feasibility report for the entire project for the American financiers who were interested in providing the finance.

The introduction to the financiers was made by the Taoiseach Albert Reynolds to Owen when the financiers were in Dublin to meet the Taoiseach who was then Minister for Finance. In order to establish creditability for the stadium project it was necessary for the project to be seen as a viable workable project which would have the support of the Government, the F.A.I. and other sporting organisations who may use the project. Considerable work was done in this regard and consultants employed to ensure that the project was presented in the best possible light as a credible project for the site.

As you are aware a full Planning Application has been lodged for the stadium project prior to the zoning decision on Quarryvale. The standard of the drawings and work and effort put in connection with the Planning Application was such that it was viewed as a very real project by the Planners, Local Authority officials and indeed members of the Council. The fact that a viable project was being put in for the old Neilstown site was a material factor for a number of Councillors deciding to vote in favour of the retail zoning for Quarryvale. The stadium project also had a number of other advantages:

(a) It provided a new use for the existing site which was very important for the goodwill of the Local Authority and Councillors

(b) By lodging the Planning application, the Planning for the stadium obtained priority in relation to any other application for that particular area

(c) The Local Authority would not have any interest in disposing of the site to any other user until such time as the stadium project had run its course

(d) In the event Sharkey endeavoured to lodge a Planning Application for a retail scheme on the lands behind the stadium. It would be clear to any retailer that this land was not economically viable, particularly in view of the large stadium being built in front of it and effectively all that Sharkey was proposing to develop was a site at the rear of the stadium.

cont/.

AIBQ . 14 - 272

(e) Perhaps the most material factor was that the stadium would carry such large volumes of traffic that it requires the whole road network to be upgraded at a cost of approximately £36m. Consequently any other scheme for the adjoining lands including lands still zoned for a town centre will have to wait behind the stadium project and cannot be advanced until the road problems which must be solved in order to progress the stadium have in fact been resolved.

(f) The consequence of the foregoing is that the old Neilstown site is locked up for a number of years which will allow Quarryvale to progress without threat from the Neilstown site.

I trust the foregoing will be of some assistance to you. If you have any further queries please do not hesitate to contact me.

With kind regards,

Yours sincerely,

JOHN W.T. DEANE

Return to report

[redacted]

93 SOUTH MALL CORK

90-27-78

11/11 19 92

Bank of Ireland

Pay G. V. Wright or order

Five thousand pounds only

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AIB

12th Nov 19 92

93-10-71

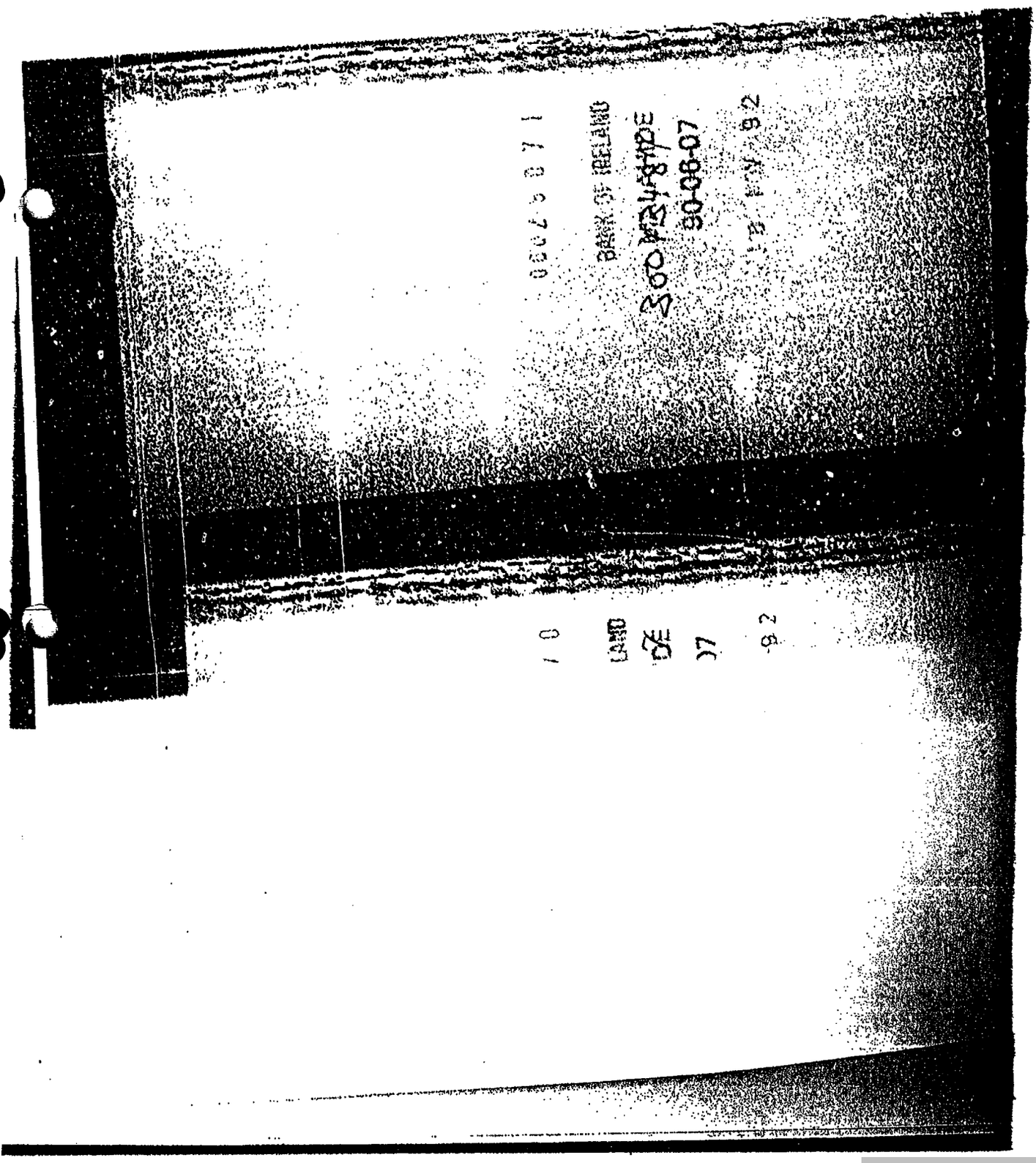
1 TERENURE RD EAST RATHGAR DUBLIN 6

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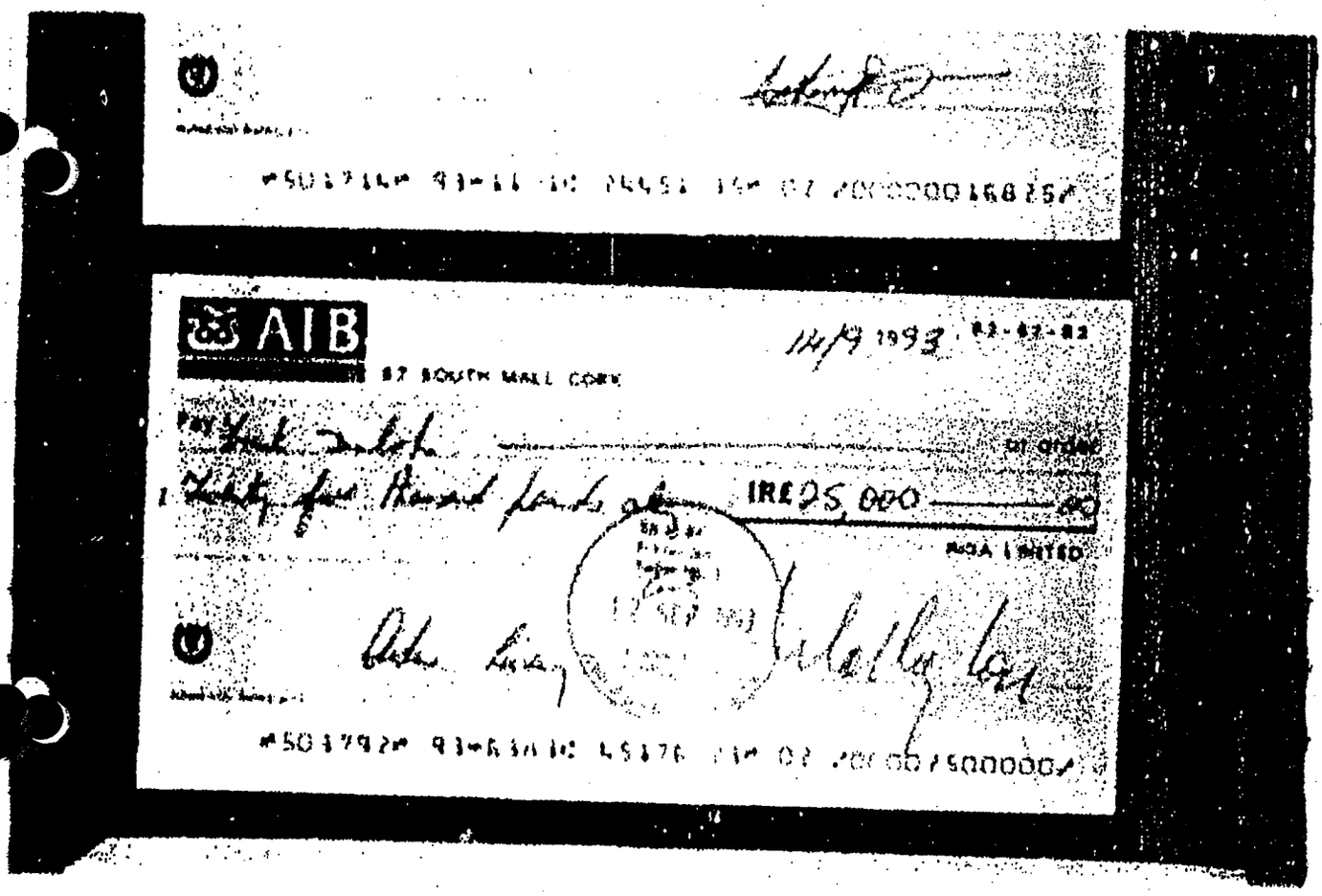
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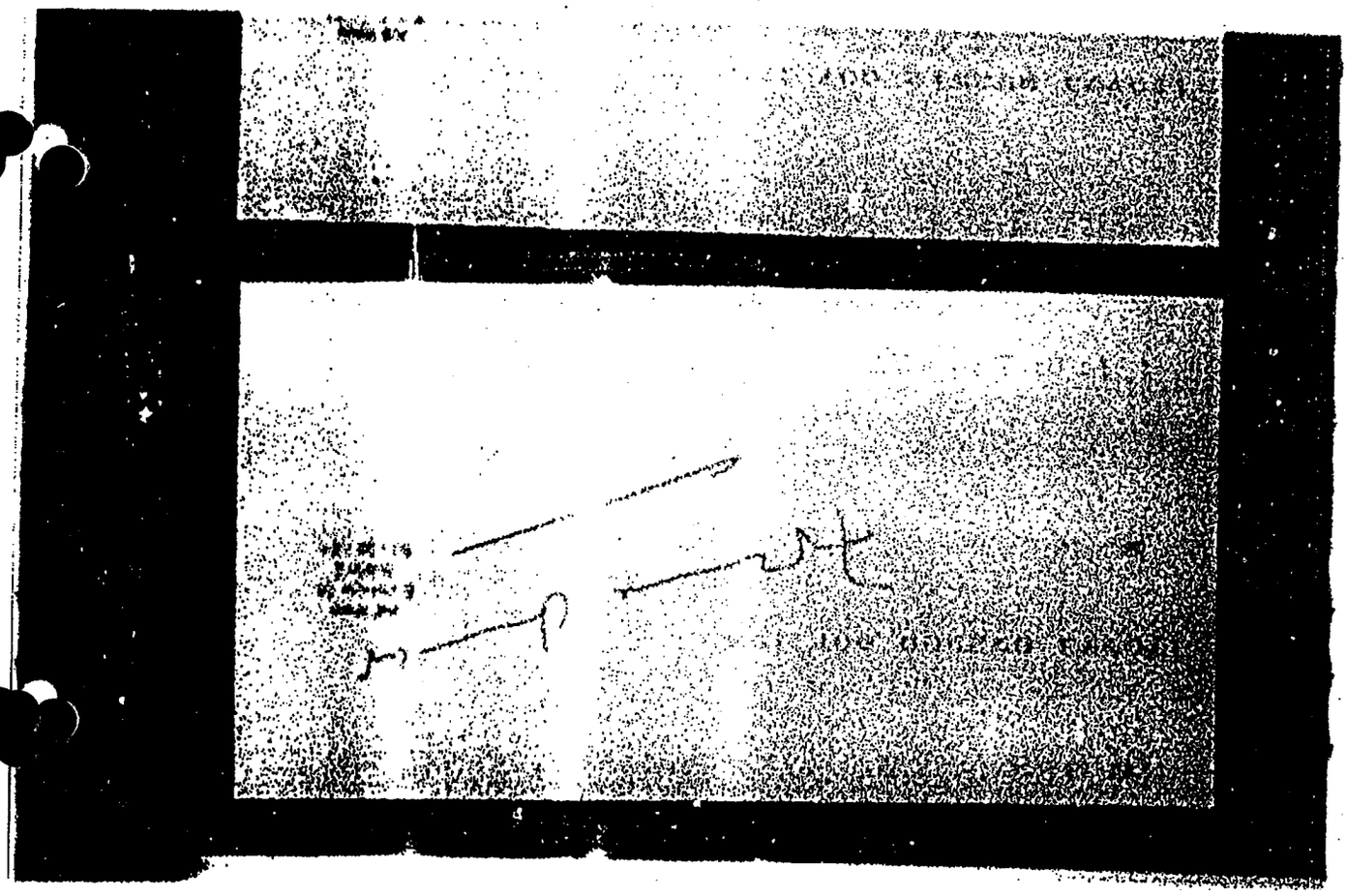

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14/9 1993
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OC 3.2 - 69

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Riga Ltd.,
21-22 Lavitt's Quay,
Cork.

10th June, 1993.

INVOICE

Re. All-Purpose National Stadium

To professional services including ongoing media relations and liaison with Heuston Sports & Leisure and also Chilton & O'Connor, Investment Brokers, USA ..... IR£25,000.00

PAID
4/9/93

WEEK 37

Monday Sept 13	Tuesday Sept 14	Wednesday Sept 15
	8.30 Eddie S.	8.15 Airport/OOC
Lunch		
1.00 Eamon O'Connor at FDA.	1.15 B.C. re. AL/M. McGennis	1.00 T.H /Kilcoe
		2.30 Dev. Plan
6.30 Fitz.	4.00 J. Butler/Tim Collins	5.30 JC.
Evening		
(256–109)	(257–108)	(258–107)

Thursday Sept 16	Friday Sept 17	Saturday Sept 18
Jewish New Year 5754		
8.00 Lunari/Waterford Hse	8.00 Eddie S.	
	10.00 am IHBA at Fed House.	
		(261–104)
Lunch		Sunday Sept 19
2.30 Dev Plan	2.30 Waterford/Gerry L O'K.	
3.00 OOC		
Evening	5.30 Bowers Hotel	
(260–105)		(262–103)

Return to report

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 – INTRODUCTION

THE INVOLVEMENT OF COUNCILLORS IN QUARRYVALE

1.01 Securing majority support amongst elected members of Dublin County Council was the key to the rezoning of the Quarryvale lands for commercial purposes. This was done through the practice of lobbying, in itself a perfectly legitimate activity.

1.02 In addition to lobbying councillors directly, the promoters of the Quarryvale project also recognised the importance of lobbying local residents and residents associations, both to obtain their support for the development, and in the hope that they would, in turn, encourage their local councillors to support the project. A campaign to lobby such local interest groups was particularly evident from the Autumn of 1991, and an example of it is considered in this part, under the heading '*The men in dark glasses*.'

1.03 While the lobbying of elected councillors to support the rezoning of Quarryvale commenced in late 1989 or early 1990, it began in earnest in 1991. It was undertaken by Mr Gilmartin (to a limited extent), by Mr O'Callaghan and more particularly by Mr Dunlop whose services as a lobbyist were retained by Mr O'Callaghan in early 1991. A small number of councillors themselves lobbied fellow councillors for their support for the rezoning of these lands.

1.04 On 14 May 1991 Mr O'Callaghan was recorded by AIB as expressing confidence that the rezoning of the Quarryvale lands would be achieved, having suggested only two weeks earlier that this project was '*very high risk',* and only had *'a 50/50 chance of success.'* It appeared that Mr Lawlor was at that time advising Mr Dunlop and Mr O'Callaghan that there was sufficient councillor support for the proposals to rezone the lands, but that the concerns of Mr Corcoran of Green Property Plc would have to be allayed. Mr Corcoran was concerned (as were many others), that the development of a large scale town centre at Quarryvale would adversely affect the proposed Green Property Town Centre development at Blanchardstown.

1.05 The Quarryvale lands were rezoned to D (major town centre), and E (industrial), by a majority vote of the councillors at a Special Meeting of the Council on 16 May 1991. This was the zoning shown on the 1991 Draft Development Plan, which went on public display.[1]

[1] See Part 1 of this Chapter.

1.06 Following on from this vote, the development of the Quarryvale lands and its potential or perceived threat to the development of a town centre in Blanchardstown became a central feature in the Local Election campaign in West County Dublin in May/June 1991. Mr O'Callaghan, and his agent, Mr Dunlop, had a vested interest in ensuring that the councillors who were supportive of the Quarryvale project would retain their seats in the Local Election.

1.07 The requirement on the part of Mr O'Callaghan and Mr Dunlop for the councillors' ongoing support for the Quarryvale project, while it commenced essentially in 1991, continued into 1992 and 1993. At a Special Meeting of the Council held on 17 December 1992 to review the objections and representations received on the 1991 Draft Development Plan, the Quarryvale zoning was revised to C (town/district centre) and E (industrial), and subjected to a 250,000 square feet retail space *'cap.'* The rezoning of the Quarryvale lands was confirmed by the County Council in 1993.[2]

1.08 Following the division of Dublin County Council on 1 January 1994, the Quarryvale lands fell within the functional area of South Dublin County Council. During the review of the 1993 Dublin County Development Plan by South Dublin County Council, Mr O'Callaghan campaigned to abolish the cap on retail space at Quarryvale.[3]

1.09 In this part of Chapter Two, the Tribunal considered the involvement of thirty one elected councillors[4] in the rezoning of Quarryvale. Most of these councillors supported the Quarryvale project. Many of these councillors also feature in other modules, the common denominator in most instances being their association with Mr Dunlop.

THE MODUS OPERANDI

1.10 While Mr Dunlop did not invent the system of corruptly paying councillors in return for their support for land rezoning, he undoubtedly embraced it to a very considerable extent in relation to Quarryvale and other land rezonings in County Dublin. In relation to Quarryvale, Mr Dunlop corruptly paid tens of thousands of pounds to councillors to garner and maintain their voting support for the rezoning of the lands from funds made available to him by Mr O'Callaghan in the period 1991 to 1993.

[2] See Part 1 of this Chapter.
[3] See Part 1 of this Chapter.
[4] Mr Lawlor's involvement in Quarryvale and payments made to him relevant to Quarryvale are considered separately in Part 9 of this Chapter. Mr Lawlor was an elected councillor in Dublin County Council (representing the Lucan Ward) between 1979 and 1991, and was one of a large number of councillors who lost their seats in the June 1991 Local Elections.

1.11 In particular, the Local Elections in June 1991, the General Election in November 1992, and the Seanad Election in early 1993 provided Mr Dunlop (and Mr O'Callaghan) with an opportunity to generously disburse money to councillors as so called 'political donations.'

1.12 Many councillors solicited money from Mr Dunlop and/or Mr O'Callaghan, while others simply received money in the absence of any such request. Undoubtedly, while some councillors expressly solicited money in return for their support for Quarryvale, others did so on that implied basis. Some councillors accepted payments without giving any consideration as to their intended purpose. In almost every instance, however, the councillors who accepted money from Mr O'Callaghan and Mr Dunlop (whether or not solicited) did so in the knowledge that the donor had an interest (as an owner or an owner's agent) in lands which they, as elected councillors, were considering for rezoning in the course of the review of the County Dublin Development Plan. In only a couple of instances were payments made or tendered by Mr Dunlop declined or returned.

THE FUNDS AVAILABLE FOR DISBURSEMENT TO COUNCILLORS

1.13 In 1991 to 1993, the crucial period for the rezoning of the Quarryvale lands, funds amounting to IR£275,000 were made available in large round figure sums to Mr Dunlop by Mr O'Callaghan, a substantial portion of which was quickly turned into cash for disbursement to councillors. Mr Dunlop was also at the time in receipt of substantial sums from other landowners or developers, some of whom had a similar purpose in mind.

1.14 In addition to participating indirectly in this corrupt activity by providing funds to Mr Dunlop, the Tribunal has found that Mr O'Callaghan also directly made corrupt payments to some councillors and politicians in relation to Quarryvale, amounting to at least IR£109,250.

1.15 In the period from April to June 1991 alone, Mr Dunlop had at least IR£165,000 in cash at his disposal, including at least IR£65,000 from Mr O'Callaghan (from IR£80,000 paid in cheques to Shefran). The balance of this IR£165,000 sum was made up of IR£80,001 (withdrawn from Mr Dunlop's 042 *'war chest'* account as follows: IR£16,001 on 18 April 1991; IR£1,000 on 25 May 1991; IR£3,000 on 31 May 1991; IR£25,000 on 7 June 1991 and IR£35,000 on 11 June 1991), and of the encashed proceeds of an IR£20,000 Shefran cheque paid to him on 6 June 1991 by Newlands Industrial Park Ltd.[5]

[5] See Chapter 9 (Baldoyle/Pennine).

1.16 In the period leading up to the November 1992 General Election and in advance of the second Quarryvale rezoning vote, Mr Dunlop had available to him at a minimum IR£73,500 in cash, most of which was sourced to the IR£70,000 which had been transferred by Mr O'Callaghan/Riga to his 042 *'war chest'* account on 10 November 1992.[6]

1.17 Most of these funds were used to make payments to councillors to ensure their support for the Quarryvale rezoning. The Tribunal considered that such payments were always corrupt from the perspective of Mr Dunlop and Mr O'Callaghan, and were often (although not always), corrupt from the perspective of the recipients. The Tribunal did not label such payments as corrupt on the part of the recipients unless satisfied on the balance of the strongest probability that they had been received (whether solicited or not), with a full appreciation on their part that the payment was made on the understanding and undoubted basis that they were agreeable (expressly or by implication) to support the Quarryvale rezoning at County Council meetings. The Tribunal accepted that this level of conscious awareness by councillors in receipt of payments was not always present. Furthermore, the Tribunal did not consider any less corrupt payments to councillors who claimed, truthfully or otherwise, that their support for Quarryvale was certain irrespective of their receipt of money.

1.18 The comments in the immediately preceding paragraph are also relevant to the other modules of inquiry undertaken by the Tribunal. In most of them the Tribunal was satisfied that identified (and in some instances unidentified) councillors received corrupt payments. In some modules, the Tribunal found that identified landowners/developers directly made corrupt payments to councillors or funded Mr Dunlop (or others) to do so on their behalf, in the knowledge that such corrupt payments would be made.

1.19 In relation to, in particular, the disbursements made by Mr Dunlop in May/June 1991 to candidates in the 1991 Local Elections, the Tribunal was satisfied that these were made corruptly because they were made for the purposes of persuading and influencing councillors to support rezoning projects being (or to be) promoted by Mr Dunlop, including Quarryvale. The Tribunal was also satisfied that the payments totalling IR£80,000 made to Shefran by Mr O'Callaghan in 1991 were corruptly made in order to facilitate Mr Dunlop in making the aforesaid disbursements. (See part 5 of this Chapter).

[6] The balance was made up of the encashed proceeds of an IR£10,000 Shefran payment (see Chapter 9 – Baldoyle/Pennine) and portion (IR£8,500) of an IR£11,000 cheque from Mr Christopher Jones (see Chapter 4 – Ballycullen/Beechill).

1.20 Notwithstanding the corrupt nature of such payments from Mr Dunlop's and Mr O'Callaghan's perspective, the Tribunal did not, in all instances where it established that such payments had been made, deem it appropriate to categorise the receipt (whether or not solicited) of such payments to have been corrupt. The following factors were considered by the Tribunal when making determinations in relation to such payments: the size of the payment, the circumstances in which it was solicited and/or paid, the relationship existing at that time between the donor, Mr Dunlop, and the recipient and the extent to which the recipient appreciated or understood the nature and/or intent of the payment. Furthermore, the Tribunal took into account, in general, the fact that there was no evidence that Mr Dunlop had previously made payments to any of the councillors in question.

1.21 In those instances, where the Tribunal established that Mr Dunlop or Mr O'Callaghan had made payments to councillors at the time of the 1991 Local Election, and where it did not deem it appropriate to categorise such payments as corrupt (from the recipients' perspective), it nevertheless endeavoured, where the evidence so permitted, to otherwise categorise such payments (e.g. by the use of the term 'improper' or 'inappropriate' etc), having regard to the evidence heard by it.

1.22 A small number of councillors, who were the subject of inquiry in this module (and indeed in other modules) were deceased at the time of the establishment of the Tribunal or died before having the opportunity to give sworn evidence to the Tribunal. Some of these councillors had limited contact with the Tribunal in its private inquiry stage and where, in those instances, any of them denied the receipt of money relating to their involvement in Quarryvale, the Tribunal has reiterated that denial in this Report.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR SEAN ARDAGH (FF)

2.01 Cllr Ardagh was a Fianna Fáil councillor in Dublin County Council from 1985 to January 1994 and of South Dublin County Council from January 1994 until 1999. Cllr Ardagh represented the Terenure Ward. He was a TD from 1997.

CLLR ARDAGH'S INVOLVEMENT IN THE QUARRYVALE REZONING

2.02 In response to queries posed by the Tribunal in December 1999 relating to his involvement with Quarryvale, Cllr Ardagh advised the Tribunal on 25 January 2000 that he:

- did not attend any public meetings in connection with the rezoning of Quarryvale;
- did not attend any private meetings in connection with the rezoning of Quarryvale;
- had not been requested to provide any assistance in connection with the proposal to rezone Quarryvale;
- had no recollection of being lobbied in connection with the rezoning of Quarryvale;
- was not requested to nor did he solicit the support of any other member of Dublin County Council in favour of the said zoning.

2.03 However, in his evidence to the Tribunal, Cllr Ardagh accepted that he probably had been lobbied to support Quarryvale by Mr Dunlop, as maintained by Mr Dunlop.

2.04 Mr Dunlop's diary for 9 September 1992 noted a meeting with Cllr Ardagh. Cllr Ardagh said he recalled a meeting, which he accepted might have taken place in September 1992, with Mr O'Callaghan and Mr Dunlop concerning the proposal to build a stadium on the Neilstown lands. Cllr Ardagh recalled being lobbied in relation to this matter but said he had no recollection of being lobbied in regard to the Quarryvale rezoning.

2.05 Cllr Ardagh was not recorded in the County Council minutes as having voted in relation to Quarryvale on 16 May 1991.

2.06 Voting *'scenarios'* prepared by Mr Dunlop in the lead up to 17 December 1992 Quarryvale vote listed Cllr Ardagh's support for Quarryvale as *'definite.'* Cllr Ardagh, in acknowledging that he could have been lobbied by Mr Dunlop in relation to Quarryvale (and other developments), stated as follows:

'Well I accept he (Mr Dunlop) *could have done that. We would have met like ships in the night and comments would be made, one would forget.'*

2.07 Cllr Ardagh's voting pattern on 17 December was supportive of Quarryvale. He voted against the motion to rezone the lands back to 'E' industrial, voted against the motion to zone the lands 'C1' at a 100,000 square feet retail 'cap', and voted in favour of reinstating Town Centre status on the Neilstown lands with a special objective to encourage the development of specialised commercial, recreational, industrial and residential uses in this area. He also voted in favour of the amendment tabled before the County Council on 17 December 1992 in the names of Cllrs McGrath, Devitt, Tyndall and O'Halloran, to restrict retail development on Quarryvale to 250,000 square feet.

2.08 Mr Dunlop's diary for 1993 records further contact with Cllr Ardagh. Mr Dunlop and Cllr Ardagh apparently met on 25 January 1993, a meeting which followed telephone contact by Cllr Ardagh to Mr Dunlop's office on 18 January. Cllr Ardagh believed that the meeting with Mr Dunlop (who Cllr Ardagh described as close to the Fianna Fáil leadership), on 25 January 1993 may have related to Cllr Ardagh's quest for political advancement by seeking a Taoiseach's nomination to the Seanad.[1] Mr Dunlop and Cllr Ardagh met again on 8 March 1993.

2.09 On 18 October 1993 Mr Dunlop's office record of telephone contacts indicated a telephone call from Cllr Ardagh requesting Mr Dunlop to call him and, on 19 October 1993 Mr Dunlop's office noted a further telephone call from Cllr Ardagh, stating:

'Sean Ardagh – OOC spoke to him'

2.10 While Cllr Ardagh stated that he had no recollection of these telephone calls, the Tribunal was nevertheless satisfied that such calls were made and that such contact as did occur between Mr Dunlop, Mr O'Callaghan and Cllr Ardagh in October 1993 concerned the Quarryvale rezoning confirmation Special Meeting, scheduled for 19 October 1993 and most probably concerned Mr Dunlop and Mr O'Callaghan seeking to ensure, in the face of motions opposing Quarryvale having been lodged, that Cllr Ardagh's hitherto support for Quarryvale remained firm.

[1] Cllr Ardagh was not a Taoiseach's nominee in January/February 1993

2.11 Cllr Ardagh continued to be lobbied by Mr O'Callaghan (as did other councillors on South Dublin County Council) in October 1997 and September 1998, at a time when Mr O'Callaghan was requesting councillors to support the lifting of the retail *'cap'* on Quarryvale.

2.12 On 28 March 1999 Cllr Ardagh provided the following documentation to the Tribunal, relating to payments to him by Mr Dunlop and Mr O'Callaghan:

1. A booking form headed *'Sean Ardagh Fianna Fáil General Election Campaign Lunch'* bearing, *inter alia*, the statement *'Sorry I cannot make it to the lunch, I enclose £250 towards the campaign'* and bearing the signature of Mr O'Callaghan;

2. A *'with compliments'* slip dated 19 April 1996 in the name of Frank Dunlop & Associates Ltd;

3. A copy cheque in the sum of IR£250 from Frank Dunlop & Associates Ltd payable to *'Friends of Sean Ardagh, T.D. Committee.'*

2.13 Cllr Ardagh told the Tribunal that in the years 1996, 1997 and 1998 both Mr O'Callaghan and Mr Dunlop were invited to attend fundraising lunches organised by his Election Campaign Committee. He said that Mr O'Callaghan had responded to the 1997 invitation by providing a cheque for IR£250. Cllr Ardagh stated that he did not know how Mr O'Callaghan had come to be on his invitation list, but suggested that it may have been the case that Mr Dunlop asked Mr O'Callaghan to contribute. The IR£250 contribution from Mr O'Callaghan was paid to Cllr Ardagh's Committee by a Riga Ltd cheque dated 10 February 1997. This payment was analysed in Riga's cheque payments book under '*sundries'* with a note stating '*1997 election committee.'*

2.14 Cllr Ardagh stated that Mr Dunlop responded to fundraising lunch invitations in the years 1996 and 1998 and that on each occasion a IR£250 cheque was received from him. Cllr Ardagh told the Tribunal that he had not retained a copy of the 1996 cheque, keeping in his possession only Mr Dunlop's '*compliment slip*', but he had retained a copy of the 1998 cheque.

2.15 The Tribunal was satisfied:

i. That Cllr Ardagh was considered by Mr Dunlop and Mr O'Callaghan as an important and valued supporter of the Quarryvale project from 1992 onwards. While Cllr Ardagh received relatively modest political contributions from Mr O'Callaghan and Mr Dunlop in the period 1996 to 1998, it was nevertheless the case that he invited them to contribute to fundraisers in the knowledge that both were associated with the Quarryvale rezoning project, and he did so at times when he was aware that Quarryvale would be subject to further

consideration by South Dublin County Council. As such, Cllr Ardagh's entreaties to Mr O'Callaghan and Mr Dunlop were inappropriate.

ii. That Cllr Ardagh, when responding to the Tribunal's request for information relevant to Quarryvale on 25 January 2000 was less than frank with the Tribunal as to the extent of his contact with Mr Dunlop and Mr O'Callaghan in relation to the Quarryvale project.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR MICK BILLANE (DL)

3.01 Cllr Billane was one of six Worker's Party councillors[1] elected to the County Council in June 1991. He was elected for the Tallaght/Rathcoole Ward. By the time of Cllr Billane's election Quarryvale had been rezoned 'D' (major town centre), and 'E' (industrial), following the 16 May 1991 vote in Dublin County Council.

3.02 On 17 December 1992 Cllr Billane voted against a proposal that the Quarryvale zoning revert to 'E' (industrial) and, following the defeat of that proposal, voted against a motion which sought a 'C1' (neighbourhood/local centre) zoning for Quarryvale with a retail cap of 100,000 square feet.

3.03 On the same date Cllr Billane voted in favour of the motion to limit retail development in Quarryvale to 250,000 square feet. This motion was brought in the names of Cllrs McGrath/Devitt/Tyndall/O'Halloran as an amendment to the 9 December 1992 motion which proposed the adoption of the County Manager's recommendation in his report of 2 December 1992, that Quarryvale should be zoned 'C' (town/district centre) and 'E' (industrial)[2].

3.04 In general therefore, Cllr Billane's voting pattern on 17 December 1992 was supportive of what was then being promulgated by those supporting the Quarryvale project.

3.05 Cllr Billane told the Tribunal that his decision to support Quarryvale with a retail cap of 250,000 square feet arose in the context of his belief, in 1992, that Clondalkin required infrastructure and shopping centres. Cllr Billane did not recall having been lobbied by anyone connected with Quarryvale in the lead up to the December 1992 vote. He stated that he did not have discussions with Mr O'Callaghan at that time. While accepting that the proposal to rezone Quarryvale would likely have been discussed by his party as a group, Cllr Billane did not recall the details of any such discussion.[3]

[1] In 1992, the Workers Party councillors joined a newly formed political party, the Democratic Left.

[2] This was not the Manager's primary recommendation – merely a fallback position if the councillors were not to accept his principal recommendation that Quarryvale revert to its 1983 zoning – mainly 'E' Industrial, but also 'A1' (Residential) and 'F' (open space / recreational amenities).

[3] On 17 December 1992 Cllr Billane's Democratic Left colleagues namely Cllrs Rabbitte, Tipping, O'Callaghan, Gilmore, and Cllr Breathnach (an Independent Left councillor) voted against the motion that Quarryvale be zoned 'C' and 'E' with a 250,000 square feet retail cap, and all voted to reverse the 16 May 1991 Quarryvale zoning back to 'E' industrial.

3.06 Notwithstanding Cllr Billane's lack of recollection of being lobbied prior to the December 1992 vote, the Tribunal was satisfied, as a matter of probability, that at some stage he met with and was lobbied by Mr Dunlop and/or Mr O'Callaghan. The Tribunal had access to documentation prepared by Mr Dunlop in 1992 wherein he mused on the likely voting patterns of councillors, and in portion of this documentation Cllr Billane's support for Quarryvale was listed as *'definite'*.[4] At a minimum therefore, regardless of the validity or otherwise of Mr Dunlop's assumption of Cllr Billane's support for Quarryvale, this suggested that some level of contact had in fact been made with him prior to December 1992.[5]

3.07 Furthermore in a letter dated 12 October 1992 written by Mr O'Callaghan to Mr John Fitzgerald, a Council Manager, Mr O'Callaghan claimed that he had met all 26 councillors in the South Dublin area – Cllr Billane was one such councilor. Mr O'Callaghan's recollection was that, in contrast with the position of the Worker's Party, Cllr Billane was supportive of Quarryvale.

3.08 In October 1993 Cllr Billane was a signatory (together with Cllrs Tipping, Breathnach, O'Callaghan and Gilmore) to three motions which were lodged with Dublin County Council, in advance of the Special Meeting of 19 October 1993.

3.09 Notwithstanding that, on their face, the three motions sought to have the zoning of Quarryvale revert to the zoning which had been proposed in the 1991 Draft Development Plan and thus were seeking a 'D' (major town centre) zoning with approximately 500,000 square feet of retail development for portion of the Quarryvale lands with two other portions of the lands zoned 'E' (industrial), the Tribunal was satisfied that the intention of the five councillors who signed these motions in October 1993 was in fact to undo the zoning achieved on 17 December 1992 and instead have the lands zoned as in the 1983 Development Plan – in effect mainly 'E' (Industrial), but also partly 'A1' (Residential) and partly 'F' (open space/recreational amenities).

3.10 In his evidence Cllr Billane confirmed that the intended objective in lodging the motions in October 1993 was to reverse the County Council decision of 17 December 1992. The motions did not proceed to a vote in the County Council.

3.11 Cllr Billane was asked by Tribunal Counsel as to why, in October 1993 he had put his name to the motions in question when, in December 1992, he had supported the zoning of Quarryvale with a 250,000 square feet retail

[4] In two such scenarios Mr Dunlop predicted Cllr Billane as voting for Quarryvale while in his *'worst'* scenario he was listed as voting against Quarryvale.

[5] This contact arose most probably sometime after June 1992 as Mr Dunlop's *'contact report'* indicated that as of 17 June 1992 Cllr Billane had not been contacted.

development. Cllr Billane was unable to recall why he had had a change of mind in this regard, some months later.

3.12 Following the break-up of Dublin County Council in January 1994 into three separate Councils, Quarryvale remained within the remit of Cllr Billane, in his capacity as a member of the newly established South Dublin County Council.

3.13 In the course of the making of the 1998 South Dublin County Council Development Plan (1997 to 1998) Mr O'Callaghan made submissions to that body urging the removal of the retail '*cap*' (of 250,000 square feet) which had been applied to Quarryvale in the 1993 Development Plan and also lobbied the councillors on that basis.

3.14 On 13 August 1998 the then Manager of South Dublin County Council circulated a report to councillors, wherein he recommended the removal of the retail '*cap*' on Quarryvale. Indeed, on the Draft Development Plan, as published by County Council officials on 9 February 1997, the Quarryvale lands were identified as zoned partly '*DC*' (district centre) and partly 'E' (industrial) without reference to any retail cap.

3.15 On 1 September 1998 a motion in the names of Cllrs O'Connell and Muldoon was lodged with South Dublin County Council, which, in effect, opposed the Manager's proposal to remove the retail '*cap*', and sought the reinstatement of the 250,000 square feet retail '*cap*' on Quarryvale, as had been provided for at paragraph 5.4.9 of the 1993 Written Statement.

3.16 The O'Connell/Muldoon motion was put to a vote at a Special Meeting of South Dublin County Council on 24 September 1998, a meeting chaired by Cllr Billane in his then capacity a Cathaoirleach of South Dublin County Council. At that Special Meeting the Deputy Manager (Mr Doherty) recommended that the retail '*cap*' not be reinstated. The O'Connell/Muldoon motion was lost by a margin of 14 votes, with Cllr Billane being one of 18 councillors voting against the proposal to reinstate the retail 'cap' on Quarryvale.

3.17 In the course of his evidence Cllr Billane told the Tribunal that while he may have met Mr O'Callaghan in the period 1997 to 1998, Mr O'Callaghan at no time discussed with him the removal of the retail '*cap*' on Quarryvale. The Tribunal believed it more likely however that in the probable event that they met during this period, the issue of the retail '*cap*' would have been discussed, particularly in the light of the submissions Mr O'Callaghan was making formally and informally to officials of South Dublin County Council at that time, and in light of the fact that the 1997 Draft Plan for South Dublin County Council would inevitably have to come before the councillors for consideration.

3.18 The Tribunal noted that by 10 October 1997 Mr O'Callaghan had written to the Manager of South Dublin County Council and advised him that he had met with some 13 of the 26 members of the County Council and that all of the councillors whom Mr O'Callaghan had met had raised with him the issue as to whether the Manager was prepared to lift the retail '*cap*' on Quarryvale. All the councillors approached supported the removal of the cap (including Cllr Billane), according to Mr O'Callaghan.

3.19 The Tribunal was satisfied that one of those councillors, whom Mr O'Callaghan had met by 10 October 1997 was Cllr Billane. The fact of their having met by that date was evidenced by a letter written by Mr O'Callaghan to Mr John Keogh on 10 June 1997. Mr Keogh was the co-ordinator of '*Citywise*', a registered charity which provided services to City Centre youth.

3.20 Cllr Billane himself accepted that a meeting had taken place between himself, Mr Keogh and Mr O'Callaghan following which Mr O'Callaghan provided 'Citywise' with a charitable donation of IR£10,000. Cllr Billane told the Tribunal however that he had no recollection of the meeting and only *'vaguely'* recalled his involvement in securing the IR£10,000 charitable donation from Mr O'Callaghan. Cllr Billane informed the Tribunal that he had a vague recollection of writing to Mr O'Callaghan seeking such a donation but agreed that it was more likely that he and Mr Keogh had met Mr O'Callaghan and raised with him the issue of a donation. Mr O'Callaghan told the Tribunal that he made the charitable donation at Cllr Billane's behest.

3.21 While Mr O'Callaghan discovered a copy of his letter of 10 June 1997 to Mr Keogh to the Tribunal, no letter from Cllr Billane to Mr O'Callaghan was discovered.

3.22 The Tribunal believed Cllr Billane's inability to recall the circumstances which led Mr O'Callaghan to make a IR£10,000 charitable donation to Citywise was not credible, particularly having regard to Cllr Billane's acknowledgment that he had never previously succeeded in getting such a substantial sum of money for a charitable cause, from any other individual.

3.23 The Tribunal believed as a matter of probability, that Cllr Billane's request to Mr O'Callaghan for a subscription to Citywise was made when Mr O'Callaghan made contact with him for the purposes of discussing the removal of the retail cap. To have made such a request, albeit for a charitable purpose, in such circumstances was inappropriate.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR CATHAL BOLAND (FG)

4.01 Cllr Cathal Boland was co-opted to Dublin County Council to represent the Swords area in 1983. He was subsequently elected to the Council in 1985 and 1991. He transferred to the newly established Fingal County Council in 1994 and was re-elected to that council in 1999.

4.02 Cllr Boland told the Tribunal that Mr Dunlop provided him with a contribution of IR£4,000 in cash in the course of his election campaign in November 1992, in which he was a Fine Gael candidate. On Day 670 (Cherrywood Module/Chapter Three), Cllr Boland testified that within a couple of days following the calling of the General Election, he met Mr Dunlop in the County Council Chamber and Mr Dunlop enquired of him if he intended to stand as a candidate in that Election. Cllr Boland told Mr Dunlop that he was not going to be a candidate, to which Mr Dunlop had replied that if he was to be a candidate he would organise some funds for him. Subsequently Cllr Boland was selected as a candidate following which he was contacted by Mr Dunlop who asked to meet him. Cllr Boland and Mr Dunlop arranged to meet in the Fine Gael room of Dublin County Council. After some small talk about the Election, Mr Dunlop handed Cllr Boland a sealed envelope stating that it contained an Election contribution for him, and that it had come from some four or five individuals who, according to Mr Dunlop did not wish to be identified. Mr Dunlop had said that he was not one of the contributors. Until that point in time, given that Mr Dunlop had previously raised the issue of a contribution, Cllr Boland had assumed that it was going to be funded by Mr Dunlop.

4.03 Judging from the size of the envelope handed to him by Mr Dunlop, Cllr Boland knew that he was not receiving a cheque from Mr Dunlop. He testified that when he opened the envelope approximately two hours later, his was '*quite surprised*' at the amount involved.

4.04 Cllr Boland told the Tribunal that he had been a candidate in the 1985 and 1991 Local Elections, and in the 1987 Seanad Election, but he had never in those campaigns received such a donation – the largest sum he had ever previously received was in the region of IR£500.

4.05 Cllr Boland accepted that, having regard to the entry in Mr Dunlop's diary for 11 November 1992, that date was most probably the occasion on which he had met with Mr Dunlop at Dublin County Council, and received the money.

4.06 In the course of his testimony on Day 670 Cllr Boland stated that he had no concerns about taking money from Mr Dunlop in November 1992 even though he knew him to be a lobbyist around Dublin County Council. Mr Dunlop was well known to him from the early 1980s from Mr Dunlop's time as Assistant Secretary in the Department of Education and particularly during the period when Mr Dunlop was press secretary to his brother Mr John Boland (deceased) who served as a Government minister in the late 1980s. Cllr Boland stated that he had always found Mr Dunlop to be upright and considered him a '*pillar of society.'*

4.07 While he acknowledged that Mr Dunlop was a '*feature'* in the lobbying of Dublin County Council during the course of the Development Plan Review, and was a lobbyist for a number of individuals, Cllr Boland maintained that Mr Dunlop never had detailed discussions with him about rezoning projects. Instead, Mr Dunlop's approaches to him on rezoning issues had been in the manner of '*see what he can do about that one*.' According to Cllr Boland, Mr Dunlop's approaches to him '*couldn't be treated in any fashion as a serious attempt to lobby for something*.' As a matter of probability the Tribunal believed that Cllr Boland was lobbied by Mr Dunlop.

4.08 In the course of his testimony on Day 653 (in the Cherrywood Module/Chapter Three), Mr Dunlop refuted Cllr Boland's contention of having been paid a IR£4,000 cash donation by him in November 1992. Mr Dunlop maintained that the only contribution he had made to Cllr Boland was in the region of IR£250 towards a political fundraiser. Mr Dunlop told the Tribunal:

> *'I have said I have no recollection of ever giving 4,000 pounds to MrCathal Boland. MrCathal Boland is in the unique position that he is the only Councillor to my knowledge that has ever stated publicly that he got money from me in cash. I did give contributions to Cathal Boland, small contributions to Cathal Boland on a number of occasions. I have no recollection of meeting Cathal Boland, either on the day or for the purpose of giving him money.'*

4.09 On Day 653 Mr Dunlop also stated:

> '*... I did not make that contribution to him. And secondly, the background is why would I make such a contribution to Cathal Boland? Cathal Boland never appeared on the radar screen, as far as I'm concerned, in relation to matters we are dealing with in this Tribunal. In fairness to him, he never asked for and I never gave him any money in relation to anything relating to the Development Plan in Dublin County Council.'*

4.10 On Day 668 it was put to Mr Dunlop by Tribunal Counsel that Cllr Boland attributed an IR£3,300 lodgement to his bank account on 13 November 1992 as being part of the cash donation received from Mr Dunlop. Mr Dunlop replied as follows:

> '*Well, simply. I don't know. I don't know. I'm not making any allegation to the contrary, other than to say that I have no recollection of giving Cathal Boland that substantial amount of money ever. And he never asked me for anything of that nature'.*

4.11 In his later evidence in the Quarryvale Module Mr Dunlop remained adamant that he had not provided an IR£4,000 cash donation to Cllr Boland in November 1992.

4.12 In the course of his testimony on Day 846 Cllr Boland reiterated his claim that he received IR£4,000 in cash by way of an Election contribution on 11 November 1992.

4.13 In a number of voting scenarios (four out of five) prepared by Mr Dunlop, most probably in the run up to the 17 December 1992 Quarryvale vote, Mr Dunlop had listed Cllr Boland as a councillor likely to abstain on the Quarryvale vote. Mr Dunlop's '*worse scenario*' had listed Cllr Boland as voting against Quarryvale. Cllr Boland refuted any suggestion to the effect that his non-attendance at the Special Meeting of 17 December 1992 had been at the behest of Mr Dunlop. Cllr Boland said that he had no recollection of ever having spoken to Mr Dunlop about Quarryvale. It was his belief that he had never met Mr O'Callaghan. Mr Dunlop testified that he did not ask Cllr Boland to abstain from voting at that meeting.

4.14 Cllr Boland was not present for Quarryvale related votes on 17 December 1992. He explained to the Tribunal that his non-attendance stemmed from the fact that he had been offered IR£500 by a third party, to oppose Quarryvale at that meeting and while he rejected that offer, he nonetheless believed himself to have been compromised.

4.15 Prior to his sworn testimony on Day 846 (6 February 2008) Cllr Boland had furnished a statement to the Tribunal in which, *inter alia*, he advised that on 16 May 2000 he had written to the Tribunal to say that he took issue with certain elements of a report due to be submitted to the Tribunal on behalf of the Fine Gael Party who had conducted its own enquiry in May 2000 into the conduct of certain Fine Gael councillors, following allegations made by Mr Dunlop to the Tribunal in April/May 2000. In this correspondence Cllr Boland advised that in or around the time of the November 1992 General Election campaign he was informed by a third party that it was intended that Cllr Boland would be the

recipient of a political contribution of IR£500 to assist him with his Election expenses. Later, that third party approached him and in the course of discussions had made a connection between the intended IR£500 political donation and a desire expressed by that third party that Cllr Boland might oppose the rezoning of Quarryvale. Cllr Boland told the Tribunal that as a result of these approaches he had felt *'compromised'* and that he had no option but to abstain/ stay away from voting on Quarryvale in December 1992. Cllr Boland advised the Tribunal that he had not taken up the offer of the IR£500 political contribution proffered in 1992 because of the connection which had been made with it to Quarryvale. In his statement to the Tribunal of 16 May 2000 Cllr Boland said that he did not view the financial assistance offered by the third party in November 1992 as a bribe.

4.16 The Tribunal rejected Mr Dunlop's denial of having paid a sum of IR£4,000 cash to Cllr Boland on 11 November 1992. The Tribunal was satisfied that he did so on the date in question, in the vicinity of the Fine Gael room in Dublin County Council. The Tribunal did not only have Cllr Boland's testimony in this regard but had also the benefit of Mr Dunlop's own diary record for 11 November 1992 which stated *'CB at DCC.'* The Tribunal was satisfied that that entry referred to one of a number of scheduled meetings which Mr Dunlop had diaried with councillors on the 10/11 November 1992, most of whom were candidates in the November 1992 General Election. In the course of his evidence on Day 358 Mr Dunlop testified that: *'At one o'clock I met a Councillor at Dublin County Council who ran in the election and to whom I made a payment.'* The councillor listed in Mr Dunlop's diary for that time was Cllr Boland. While the Tribunal noted that on Day 813 Mr Dunlop resiled from the evidence as given by him on Day 358, the Tribunal was nonetheless satisfied that Mr Dunlop's testimony in the course of the Cherrywood and Quarryvale Modules to the effect that he did not give a IR£4,000 cash donation to Cllr Boland was at best mistaken and at worst an attempt on his part, for whatever reason, to distance himself from the fact that he paid such a generous donation to Cllr Boland.

4.17 Cllr Boland identified a lodgement of IR£3,300 made to his bank account on 13 November 1992 as referable to the funds given by Mr Dunlop. Having regard to the amount of the lodgement in question and the proximity in time to Cllr Boland's meeting with Mr Dunlop, the Tribunal was satisfied to accept that the funds lodged on 13 November 1992 represented a portion of the monies given to him by Mr Dunlop.

4.18 It was a matter of record that Cllr Boland did not vote on the Quarryvale related Motions on 17 December 1992 and was not recorded as being present to vote on that day. The Tribunal accepted Cllr Boland's evidence that he absented himself because of his concern that he may have been compromised when he was offered an IR£500 contribution by a third party in circumstances where he was advised of a link between the offer of the money and the Quarryvale rezoning.

4.19 The Tribunal was satisfied that Cllr Boland had not absented himself from the Quarryvale vote because of a payment of money from Mr Dunlop and or any other third party.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR PETER BRADY (FG)

5.01 Cllr Brady was a Lucan based Fine Gael councillor, first elected to Dublin County Council in June 1991.

5.02 Mr Dunlop's 17 June 1992 *'Contact Report'* indicated that by that time contact had been made by Mr O'Callaghan and Mr Dunlop with Cllr Brady, presumably to lobby him for his support for Quarryvale. In any event it appeared that, as of June 1992 Mr O'Callaghan and Mr Dunlop understood Cllr Brady's position to be one of opposition to a Town Centre zoning (with a permitted retail development of 500,000 sq ft.) for Quarryvale.

5.03 Given his position as a councillor representing an area in close proximity to the Quarryvale lands, Cllr Brady's opposition to Quarryvale was understandably a matter of concern to Mr O'Callaghan and Mr Dunlop. Mr Dunlop's evidence, which was not disputed, was that it was Cllr Brady's Fine Gael colleague, Cllr Ridge, who recommended to Mr Dunlop that he speak to Mr Gerry Leahy, with a view to enlisting his assistance in lobbying Cllr Brady to support Quarryvale.

5.04 In 1992 Mr Leahy was employed by Gunnes Estate Agents at its Lucan office, having joined the firm as Managing Director of its Dublin West operation on 1 October 1989. Mr Leahy testified that in 1989 both he and Mr Fintan Gunne recognised the potential which the zoning of the Quarryvale lands would have in terms of property sales and lettings in the area. Mr Leahy was a known political supporter of the Fine Gael Party, and particularly, of Cllr Brady.

5.05 On 25 June 1992 a meeting took place between Mr O'Callaghan, Mr Dunlop and Mr Leahy at Mr Leahy's Lucan office. Mr Dunlop explained to the Tribunal the purpose of the meeting in the following terms:

> *'...the object of the exercise was to go to Mr Leahy on foot of a recommendation by Councillor Therese Ridge, who had said that Mr Leahy had a close relationship with Mr Peter Brady and he may well be of assistance to us in persuading Mr Brady, or affording Mr Brady the wider view of what he should or should not do in relation to the Quarryvale project. I drove Mr O'Callaghan to Mr Leahy's office, after the normal introductions, the three of us sat down and there was a long discussion about various industrial projects that both men were involved in or knew of, and updating one another as to a variety of issues relating to the property market. The issue about Peter Brady was raised, I cannot specifically say that it was raised by me or by Mr O'Callaghan. But certainly it was raised. And as I said to you yesterday, both MrO'Callaghan*

and I left that meeting in, from Mr Leahy, on the understanding that Mr Leahy and I hesitated to use the word 'guarantee'. Certainly it would be wrong to say that Mr Leahy guaranteed. But certainly Mr Leahy left Mr O'Callaghan and myself in little doubt that he would be able to influence Mr Peter Brady in the view that he took in relation to Quarryvale.'

5.06 The Tribunal was satisfied that a portion of a document entitled *'Note Of Meeting With O. O'Callaghan & F. Dunlop On 25th June 1992 – 6.00pm',* contributed to by Mr Leahy in 1994 as a briefing note for Mr Fintan Gunne, in relation to legal proceedings then being contemplated by Mr Gunne against Mr O'Callaghan and O'Callaghan Properties Ltd[1] reflected reasonably accurately the nature of the discussion that took place on 25 June 1992 between the three men relating to the then status of political support for the Quarryvale rezoning proposal, including the position being adopted at that time by Cllr Brady.

5.07 The document recorded, *inter alia*, the following:

Following a general discussion of the previous local elections we discussed the number of councillors who might support the proposal. Owen said that they were absolutely confident of success as FiannaFáil, Fine Gael, Progressive Democrats and most Independents were okay. I indicated that, that was not what I had heard and Frank more or less agreed that it was not all plain sailing. Owen said that G.V. Wright, B. Coffey and C. McGrath were in agreement and that Frank was organising the rest of FiannaFáil. The Progressive Democrats were being co-ordinated by G. Tyndall who was handling the insurance. Frank admitted that the F.G.'s were all over the place. Tom Morrissey was very wound up and Owen and Frank were working hard on him. Frank and Owen had recently met Austin Curry. Frank knew him from his time in the North and while he had no vote he was important and had listened to them. Therese Ridge was very strong in support.Owen however, was very worried about Peter Brady especially following recent lobbying of him from the traders in Lucan.

It was agreed that Peter was crucial. I said that I could talk with Tommy and Peter and that I would do my best. Owen emphasised the importance of Peter Brady not voting against and that while his support would be invaluable his vote against would be a killer blow.

[1] Mr Gunne sued Mr O'Callaghan claiming that Mr O'Callaghan had breached an agreement to engage Mr Gunne's company in relation to the Liffey Valley (Quarryvale) development. The litigation did not proceed.

5.08 With the exception of the reference to *'G. Tyndall' 'handling the insurance'*, Mr Dunlop, in the course of his evidence, largely agreed that the matters documented in the above quoted extract constituted an accurate reflection of the discussion which had taken place in Mr Leahy's office on 25 June, 1992.

5.09 Mr Leahy told the Tribunal that he did not recollect Cllrs Wright, Coffey and McGrath having been specifically referred to in the course of the meeting. Mr Leahy also denied that there was a reference made that *'Frank was organising the rest of Fianna Fáil.'* However, Mr Leahy expressed his view that Mr Dunlop so doing *'wouldn't have been an unreasonable assumption'* as *'Frank was a Fianna Fáil man'* and thus it *'wouldn't be earth shattering news to anyone'* (that Mr Dunlop was organizing Fianna Fáil).

5.10 It appeared likely to the Tribunal in any event, that in the context of the discussions that were taking place on 25 June 1992 in relation to political support for Quarryvale, specific references were probably made to Cllrs McGrath, Wright and Coffey, and to Mr Dunlop *'organising the rest of Fianna Fáil'*.

5.11 As to other individuals named in the document, Mr Leahy told the Tribunal that the document more or less reflected accurately what had been discussed, save that he did not recall any reference by Mr O'Callaghan to Mr Tyndall or specifically to Mr Tyndall *'handling the insurance.'* Nor did he recall Mr O'Callaghan referring to Cllr Brady's voting against Quarryvale would be a *'killer blow.'*

5.12 The Tribunal was entirely satisfied that the context of Mr O'Callaghan and Mr Dunlop's discussions with Mr Leahy on the date in question was the level of councillor support for Quarryvale, and, in particular, the concern on the part of Mr O'Callaghan and Mr Dunlop in relation to Cllr Brady's support which, as documented by, apparently, Mr Gunne, was perceived as *'crucial.'*

5.13 It was common case that at the 25 June, 1992 meeting, not only did the discussion between Messrs O'Callaghan, Dunlop and Leahy centre on the level of councillor support for Quarryvale, and on how Mr Leahy might assist in eliciting the support of Cllr Brady for Quarryvale, but it also concerned a discussion between the three men about the future involvement of Gunne Estate Agents as selling/letting agents for the Quarryvale development when completed.

5.14 In the course of their evidence in this module, Mr O'Callaghan and Mr Dunlop denied that any arrangement/agreement had been concluded on 25 June 1992, whereby Gunne Estate Agents were appointed as either selling or letting agents for the Quarryvale development.

5.15 Both Mr O'Callaghan and Mr Dunlop testified that what was discussed at the meeting on that issue was that, once the Quarryvale development got off the ground, consideration would then be given by Mr O'Callaghan to involving Gunne Estate Agents with the *'residential side'* of Quarryvale.

5.16 Mr Leahy, likewise, told the Tribunal that no firm commitment in that regard had been given to him by Mr O'Callaghan or Mr Dunlop on 25 June 1992.

5.17 In contrast with Mr Leahy's stated position in his evidence to the Tribunal, he acknowledged to the Tribunal that the *'note'* of the meeting to which he contributed in 1994 for Mr Gunne, as an *aide memoire* for contemplated legal proceedings, suggested that a firm commitment had been given by Mr O'Callaghan. The document recorded as follows:

> *I told Owen that Gunnes would be very keen to be appointed as selling agents and asked who would be the selling agents for the development when it went ahead. Owen recalled that he had known your father and knew you to talk to; in the past he had used Jones Lang Wooten or H.O.K. but that they had done nothing for him in this project and that if I could help him out there, there would be no problem. Frank said 'you can take it, Gerry, that you will be doing the business.*
>
> *I responded 'that's ok Frank, but when I get a tip I like it to come from the owner and not the jockey.'*
>
> *Owen interjected and said that Frank had his full authority and that what he said would be delivered. I then asked Owen directly what the position would be if the zoning went through. He said, 'Gerry, if this goes through you will be the agents, you have my word on that.'*

5.18 Mr Leahy described the discussion at the meeting as having been '*glossed*' up by Mr Gunne in order to strengthen the legal proceedings then being contemplated against Mr O'Callaghan. Mr Leahy said that having regard to the content of this, and other documents (in 1994), he advised Mr Gunne that he was not prepared to swear to the account of the agreement reached between Mr Leahy and Mr O'Callaghan, as recorded in that document.

5.19 Mr Leahy agreed that in the months of October and November 1994 (at the time of the dispute between Gunnes and Mr O'Callaghan) numerous contacts were made by Mr Leahy with Mr Dunlop for the purposes of securing from MrDunlop the latter's account of what had been discussed on 25 June 1992 in relation to Gunne's future involvement as selling/letting agents for Quarryvale.

5.20 To this end, Mr Leahy and Mr Dunlop met on 13 October 1994, and followed up by telephone contact between Mr Leahy and Mr Dunlop's office on 24, 25 and 26 October 1994, and on the 1, 2, 16, 17 and 21 November 1994, and, ultimately with another meeting between Mr Leahy and Mr Dunlop on 22 November 1994. At that meeting the following *'without prejudice'* letter was provided to Mr Leahy by Mr Dunlop.

> *Dear Gerry,*
>
> *You asked me to recollect the details of a conversation between Owen O'Callaghan, yourself and myself at your office in Lucan, Co. Dublin in or about 24th June, 1992. Specifically, you asked me to recollect the details of what you describe as a 'firm undertaking' by Owen O'Callaghan to appoint yourself, as a representative of Gunne Estate Agents, as agent for the proposed development at Quarryvale, Clondalkin, Dublin 22.*
>
> *Firstly, a meeting between Owen O'Callaghan, yourself and myself did take place at your office in or about the date aforementioned.*
>
> *Secondly, you undertook to liaise on Owen O'Callaghan's behalf with a particular individual whose support was generally agreed to be crucial,.*
>
> *Thirdly, to the best of my recollection a discussion took place specifically between Owen O'Callaghan and yourself regarding a quid pro quo which in essence left me with the impression that should the lands at Quarryvale be appropriately zoned, with the support of the individual concerned, that discussions would take place with Gunne Estate Agents, in the person of yourself, with a view to arriving at a decision regarding the letting agents for Quarryvale.*
>
> *Fourthly, you have informed me that Owen O'Callaghan wrote to you shortly after our meeting confirming that he would keep his 'end of the deal'. I have to say that until you apprised me of this letter I was not aware of its existence…*

5.21 Mr Leahy agreed that the reference in Mr Dunlop's letter to him, in June 1992, undertaking *'to liaise on Owen O'Callaghan's behalf with a particular individual whose support was generally agreed to be crucial'* was a reference to Mr Leahy having agreed to lobby Cllr Peter Brady.

5.22 Mr Leahy told the Tribunal that in October 1994 he had advised Mr Fintan Gunne that he was not prepared to stand over the contents of a draft letter which had been prepared in October 1994 by Gunne's legal representative to be sent to Mr O'Callaghan by Mr Leahy. That draft letter, *inter alia*, contained the following:

> *On the 25th of June, 1992 I met with yourself and Frank Dunlop, when the Quarryvale Project was discussed in detail. In particular, all aspects surround the proposal to seek a Material Contravention Order in respect of the lands were discussed in considerable detail. During our meeting, it emerged that there were difficulties with a number of Councillors and at your behest I undertook to deal with those Councillors on the explicit understanding that Gunne& Company would be appointed Sole Agents in respect of the entire Project. The appointment of Gunne& Company as Sole Agents was confirmed by you in the presence of Frank Dunlop.*
>
> *I am enclosing a copy of your letter to me of the 26th of June, 1992 and I quote: 'IF WE ARE SUCCESSFUL, I WILL KEEP MY END OF THE DEAL.'*

5.23 The Tribunal was satisfied that, insofar as Mr Leahy stated that he had told Mr Fintan Gunne that he was not prepared to stand behind the draft letter, Mr Leahy's resistance applied especially to what was contained in the draft letter on the issue of whether or not Mr O'Callaghan had given a firm commitment to appoint Gunnes as sole property agents for Quarryvale.

5.24 The Tribunal was satisfied that Mr Leahy did not have any reason to resist the reference in the draft letter to Mr Leahy agreeing to deal with, or lobby, councillors as, as Mr Leahy himself admitted to the Tribunal, such a matter had been discussed in some substance on 25 June 1992.

5.25 In his testimony, Mr O'Callaghan acknowledged that following his meeting with Mr Leahy on 25 June 1992 he had written him a courtesy letter, in which he indicated that Gunnes would be considered for appointment as property agents in relation to Quarryvale.

5.26 Legal proceedings against Mr O'Callaghan and O'Callaghan Properties were commenced by Gunnes. The Statement of Claim delivered on 5 February 1996 in the course of those legal proceedings made reference to the '*consideration*' being provided by Gunnes in return for their appointment by Mr O'Callaghan as sole selling agent for Quarryvale. There was no specific mention in the Statement of Claim to Mr Leahy, as agent of Gunnes, having undertaken to lobby councillors, including Cllr Brady, to support Quarryvale.

5.27 Irrespective of how the legal proceedings were formulated and irrespective of whether a binding agreement had in fact been concluded between Gunnes and Mr O'Callaghan on 25 June 1992 or indeed whether it was merely the case that in return for certain assistance to be provided by Mr Leahy, Mr O'Callaghan would give consideration to a future role for Gunnes in Quarryvale, the Tribunal was satisfied that at the core of Mr O'Callaghan's, Mr Dunlop's and Mr Leahy's meeting on 25 June 1992 was the issue of Cllr Brady's support for the Quarryvale project.

5.28 Having acknowledged that he had written a letter which Mr Leahy received on 26 June 1992, Mr O'Callaghan was asked on Day 911 to explain the *'deal'* that had been agreed on the occasion of his meeting with Mr Leahy. Mr O'Callaghan stated:

> *'My end of the deal was that I would be prepared to discuss the actual residential sales in Quarryvale when and if we would have them, with Gerard Leahy and I think that probably must have meant Gunne Estates because Gerry Leahy was working for Gunne at the time. That was the conversation we had at the time. I told him that in fact to this day even if we build, or if and when we do build residential units in Liffey Valley, we'll speak to the same Gerry Leahy because he is probably the best agent in the locality, best local agent from a residential point of view. The conversation we had that particular day, of course I went to see him to ask would he help to get Peter Brady on side, that was part of our discussion, but I wouldn't say one was subject to the other by any means.'*

5.29 The following exchange then took place between Tribunal Counsel and Mr O'Callaghan:

> *'Q. …you don't agree with the third paragraph of Mr Dunlop's letter, where he says that a discussion took place specifically between Owen O'Callaghan and Mr Leahy regarding a quid pro quo which in essence left me with the impression that should the lands at Quarryvale be appropriately zoned with the support of the individual concerned that discussions would take place about appointing Mr Leahy?*
>
> *A. No, that is not correct.*
>
> *Q. That is not correct. You don't agree with that as being an accurate statement of what happened at the time, is that correct?*
>
> *A. No, that's not completely accurate.*
>
> *Q. You do however agree, that at the meeting that took place at which you discussed the issue of appointing MrGunne or Gunne's or indeed Mr Leahy, to look after the residential aspect of it that that conversation took place in the context of securing Mr Brady's support for the Quarryvale rezoning, is that fair?*
>
> *A. It was in that context yes, but not conditional by any means.'*

5.30 Mr O'Callaghan response to the question *'what was Mr Leahy to get for you to ensure you would step in and keep your end of the deal?'* was as follows:

> *'My end of the deal was that I expected him to go an speak to Peter Brady if he could, I wasn't quite sure, nobody was sure what way Peter Brady would vote, Peter Brady was Lucan based. But my end of the deal with Gerry Leahy, I had been working with Gerry Leahy before this, Gerry Leahy had been assisting me in relocating some of the travellers from Quarryvale.'*

5.31 Mr O'Callaghan also maintained:

> *'I told Mr Leahy that we would certainly consider using Gunne's office and in particular himself in the sales or letting of the residential element of Quarryvale'* and in return Mr Leahy *'was to speak to Peter Brady.'*

5.32 As a matter of probability, the Tribunal was satisfied that insofar as Mr O'Callaghan gave a commitment to Mr Leahy that, either Gunnes were to be appointed his letting agents for Quarryvale or, that Mr O'Callaghan was to consider giving Gunnes some such role, such commitment was given entirely on the basis that Mr Leahy would proceed to lobby the support of Cllr Brady for the Quarryvale rezoning.

5.33 There was however no suggestion made to the Tribunal that Cllr Brady was either offered or sought financial inducement (or any other inducement), directly or otherwise, for his support for the Quarryvale rezoning vote of 17 December 1992.

CLLR BRADY'S INVOLVEMENT IN THE ZONING OF QUARRYVALE

5.34 Cllr Brady gave evidence that he attended public meetings concerning the Quarryvale issue and that he met Mr O'Callaghan at one such meeting in the Spa Hotel in Lucan, and at which Mr Leahy was also in attendance. Cllr Brady's recollection was that he had a ten minute discussion with Mr O'Callaghan at that time – a time when Cllr Brady was still opposed to the size of the proposed development in Quarryvale. Cllr Brady also gave evidence of meeting Mr O'Callaghan and Mr Dunlop in and around the offices of Dublin County Council. It was likely that from the Spa Hotel meeting, and possibly other meetings with Cllr Brady, that Mr O'Callaghan and Mr Dunlop became aware of his opposition to Quarryvale – opposition which prompted them to seek the intervention of Mr Leahy in June 1992.

5.35 Cllr Brady acknowledged that Mr Leahy lobbied him in support of the Quarryvale development. He also agreed that in his first communication to the Tribunal in February 2000, in response to queries posed in relation to Quarryvale, he did not avert to this fact. In a September 2004 communication with the Tribunal, after the Tribunal had written to him requesting him to outline any dealings he may have had regarding Quarryvale with a number of individuals, including Mr Leahy, Cllr Brady confirmed that he had been lobbied by Mr Leahy. In his written communications with the Tribunal, Cllr Brady did not disclose that Mr Leahy was a political supporter of his, and of Fine Gael, in 1992.

5.36 Cllr Brady told the Tribunal that he was not aware that a meeting took place between Mr Leahy, Mr O'Callaghan and Mr Dunlop on 25 June 1992, and he said that he had no knowledge of what might have been discussed at that meeting regarding his support (or otherwise), for Quarryvale. Cllr Brady stated:

> *'Every one's vote was crucial. With a number of councillors not supporting any development probably 30 percent of them. Every vote that was there had to be canvassed and tried to ensure that they would vote for the, that's what they wanted to get it through. I didn't play any major role. And I had no knowledge of what anyone was planning for my part in the vote. I had no, outside, Gerry would have canvassed me and the others would have canvassed but I made up my own mind. I was in no one's pocket and would not be led.'*

5.37 Mr Dunlop's diary for 24 September 1992 noted a meeting with Cllr Brady at Wynn's Hotel, Dublin. In the course of his evidence Cllr Brady stated that he did not believe that he had met Mr Dunlop prior to December 1992, but later acknowledged that he would not contradict the note of such a meeting written in Mr Dunlop's diary.

5.38 The Tribunal was satisfied that this meeting took place, and that it did so in the aftermath of Mr O'Callaghan and Mr Dunlop speaking to Mr Leahy, and in all probability following an approach made by Mr Leahy to Cllr Brady. Cllr Brady acknowledged having been lobbied by Mr Leahy regarding Quarryvale.

5.39 Documentation prepared by Mr Dunlop in the lead in period to the December 1992 vote (i.e. Mr Dunlop's voting *'scenarios'),* listed Cllr Brady as voting in support of Quarryvale in two such *'scenarios',* while in a third *'scenario'* entitled *'Likely Outcome'* Cllr Brady's name had moved from a position of from voting '*for*' to the '*abstain/missing*' column. In yet another document created in manuscript by Mr Dunlop, Cllr Brady's name, while appearing under the '*support definite*' column had a question mark and an asterix attached, an indicator, in respect of which Mr Dunlop, in evidence acknowledged meant that Cllr Brady was '*to be contacted.*'

5.40 Mr Dunlop's diary indicated that he and Cllr Brady met again on 9 December 1992, (the day on which Mr Dunlop also met with three of the four signatories to the 9 December 1992 motion). Cllr Brady told the Tribunal that he had no recollection of speaking with Mr Dunlop on 9 December 1992, but agreed that Mr Dunlop's diary entry suggested that he had done so, and that any such meeting would have been about '*Quarryvale II or some other development.*' He agreed that his voting pattern on 17 December 1992 was largely supportive of Quarryvale. He voted against a proposal to reverse the Quarryvale zoning back to 'E' (industrial) and against a proposal to zone Quarryvale 'C1' with a 100,000 square foot retail cap. He voted in favour of the proposal to restore the Town Centre status of the Neilstown lands and in favour of the amendment put forward by Cllrs McGrath, Devitt, O'Halloran and Tyndall, in order to amend the original 9 December 1992 motion, to limit retail development on Quarryvale to 250,000 square feet.

5.41 Cllr Brady told the Tribunal that from the outset, his objection to the Quarryvale zoning was the proposed scale of the development, and that once it was proposed to reduce the scale of retail development on the site he was happy to support the zoning proposed on 17 December 1992. In doing so, Cllr Brady explained that he had taken into account the need for development in the Quarryvale area, having regard to the high unemployment levels that then existed in that area.

5.42 Cllr Brady vehemently denied Mr Dunlop's claim that on 17 December 1992, immediately prior to his voting on the Quarryvale issue Cllr Ridge had said to Cllr Brady (urging him to vote in support of Quarryvale), *'for Peter for.'* He also rejected Mr Dunlop's claim that Mr Dunlop and Cllr Ridge could have *'orchestrated'* that Cllr Ridge sit beside Cllr Brady in the Council chamber on the day of the vote, and stated that there was no way any Council official would have let that happen.

5.43 Having voted for the rezoning of Quarryvale on 17 December 1992, on the basis of a reduced retail capacity, Cllr Brady acknowledged that in June 1993, he went on to support a proposal to revise the Draft Written Statement which had the consequence of making the 250,000 square feet retail 'cap' on Quarryvale, (imposed some six months previously), less restrictive.

5.44 Cllr Brady met Mr O'Callaghan, Mr Dunlop and Mr Leahy on 8 September 1993 in Wynn's Hotel, Dublin, a meeting which was noted in Mr Dunlop's diary. Cllr Brady initially testified that it was his belief that he had simply been brought along to that meeting by Mr Leahy to make up the numbers and that he recalled Mr O'Callaghan and Mr Leahy having a discussion on that occasion out of

earshot of himself and Mr Dunlop. Later in his testimony however, following sight of notes prepared by Mr Leahy in 1994, Cllr Brady acknowledged that he had had discussions with Mr O'Callaghan on that occasion regarding the possible provision of lands by Mr O'Callaghan to Palmerstown Football Club.[2]

5.45 Cllr Brady denied that there had been any discussion on 8 September 1993 in relation to his support for Quarryvale, as he maintained that by that time he was known to be a supporter.

5.46 The Tribunal was satisfied however that some discussion did take place in relation to Quarryvale on that occasion and that it probably took place in the teeth of the then forthcoming Quarryvale confirmation Special Meeting due to be scheduled in October 1993, an occasion which, in all probability, Mr O'Callaghan and Mr Dunlop anticipated would be used by opponents of Quarryvale to seek to reverse the zoning achieved on 17 December 1992.[3]

5.47 It was also probable that Mr O'Callaghan and Mr Dunlop received from Cllr Brady his permission to include, in a publication then being launched by Mr Dunlop, the *'Quarryvale Town Centre News,'* a quotation from him in support of Quarryvale. Cllr Brady was one of seven councillors quoted in the publication.[4]

5.48 An analysis of the minutes of the Special Meeting of 19 October 1993 indicated that it was Cllr Brady who proposed (seconded by Cllr Colm McGrath) the adoption of the Manager's Report which recommended that Quarryvale be zoned 'C' and 'E'. Cllr Brady told the Tribunal that he had done so at the behest of Mr O'Callaghan. The Tribunal believed it likely that Mr O'Callaghan made this request at the meeting of 8 September, 1993.

5.49 Cllr Brady reiterated to the Tribunal that he had never personally received or sought money from Mr O'Callaghan or Mr Dunlop. He acknowledged seeking charitable sponsorship from Mr Dunlop in the sum of IR£250 in 1995 for the Lucan St. Patrick's Day Parade (money which Frank Dunlop & Associates Ltd duly recouped from Riga Ltd),[5] and he acknowledged that Mr O'Callaghan had made a IR£100 donation to his local Fine Gael organisation in 1996.

[2] The Club did not get these lands, as Cllr Brady explained it made other arrangements subsequently.
[3] Such motions to reverse this zoning were duly lodged before the Council in October 1993 but did not proceed.
[4] Not all comments were in favour of Quarryvale. Cllr Guss O'Connell, an opponent of Quarryvale was quoted also.
[5] See Part 4

MR ALAN DUKES, NEWSPAPER ARTICLES IN 1995, AND HIS DISCUSSION WITH CLLR BRADY

5.50 Mr Alan Dukes was a Fine Gael TD between 1981 and 2002, and a Government Minister between 1981 and 1987. He was the Leader of the Fine Gael Party between 1987 and 1990.

5.51 In 1995 two newspaper articles carried reports of concerns on the part of Mr Dukes relating to corruption in the planning process. On 13 August 1995, in an article entitled *'Bribes paid says Dukes in plan row,'* the Sunday Independent Newspaper reported, *inter alia* as follows:

> *The former Fine Gael leader, Mr. Alan Dukes, has acknowledged that builders and developers have been forced to pay bribes to public officials to get planning permissions.... Mr. Dukes told the Sunday Independent last night he had 'specific knowledge' of cases involved 'four figure sums'. These involved cash being paid to secure the provision of water, sewage or similar services to a development.*

5.52 The article in question quoted Mr Dukes as stating *'people were told that if you want to get something done, this is the way to go about it'* and it reported Mr Dukes as saying that there was a *'kind of systematic operation'* in place.

5.53 On 14 August 1995 the Irish Times newspaper, in an article entitled *'Dukes calls for planning safeguards to eliminate bribery'*, reported as follows:

> *Mr. Alan Dukes, the former leader of Fine Gael, has called for 'reasonable safeguards' in the planning process to stop people taking bribes. Legislation providing immunity to prosecution for witnesses would not of itself be sufficient he said.*
>
> *Complaints had been made to him about abuses within the system by people who were not prepared to go to the Garda, Mr. Dukes continued. Even if they had, convictions might not have been secured because it would have been one person's word against another's.*
> *He instanced the following cases:*
>
> 1. *Strict planning conditions were attached to a development and the developer was advised by an official to go to a certain place and to pay X amount of money and he would get results. He did and the conditions were varied.*
>
> 2. *There was an involuntary hand-out by a developer to a county councillor operating in conjunction with a senior local authority official.*

3. In two instances substantial but unspecified offers of money were made to politicians by a developer in relation to a rezoning application. The offers were not accepted, but Mr. Duke's informant believed that other politicians had taken the money.

The complaints were made to him about three years ago, Mr. Duke's said. He had also heard rumours about planning decisions in other parts of the country, but they were generally linked to large centres of population…

5.54 Mr Dukes gave sworn evidence to the Tribunal on Day 737. In the course of that evidence he acknowledged that, in general, the newspaper articles in question accurately reflected concerns he expressed in August 1995 about matters which had been brought to his attention by Fine Gael councillors over a period of time, up to 13 August 1995. While the Sunday Independent article had reported that Mr Dukes' concerns in 1995 related to money being demanded by Council officials, Mr Dukes told the Tribunal that the Irish Times article of 14 August 1995 more accurately reflected the nature of his concerns of the time, namely that it had been reported to him, largely by Fine Gael councillors, that allegations of corruption in the planning process involved both Council officials and elected representatives.

5.55 Asked to repeat examples of possible instances of corruption about which he had instanced to the Irish Times journalist, as reported on 14 August 1995, Mr Dukes advised that on one specific occasion a developer had come to him with a complaint that he had been obliged to pay over money to secure services for a development that he was then undertaking. Mr Dukes confirmed what he had previously, in a private interview with the Tribunal on 30 March 1998, told the Tribunal of this event. Based on a note taken by Tribunal Counsel on that occasion, Mr Dukes:

…said that his recollection was that the development concerned related to an apartment block in Chapelizod. It was an apartment block consisting of ten or twelve apartments. He was informed by an Official as to what the contributions would be in respect of each Department for servicing the lands. He thought the figure mentioned was high and was told by the official concerned that if he put £10,000 into an envelope and left it with a firm of solicitors in Drumcondra – the name of which firm Mr.Dukes could not recall – that the amount of contributions would be reduced.

Mr. Dukes said that the amounts of contribution was subsequently reduced resulting in a saving of about £2,000 per apartment to the developer.

> *Deputy Dukes said that he believed all this happened in or about the period 1988 or 1989. He promised to look through his records to see if he could locate the name of the developer…*

5.56 Questioned about the report in the Irish Times newspaper that there had been *'an involuntary hand-out by a developer to a county councillor operating in conjunction with a senior local authority official'* Mr Dukes believed that this issue, insofar as he had been informed of it, was linked to a Chapelizod development, although Mr Dukes was unable to identify the individuals concerned.

5.57 In relation to a third instance of a demand for money, the Irish Times article stated as follows:

> *In two instances substantial but unspecified offers of money were made to politicians by a developer in relation to a rezoning application. The offers were not accepted but Mr. Duke's informant believed that other politicians had taken the money.*

5.58 Mr Dukes confirmed that the newspaper article accurately recorded what he had told the Irish Times journalist in August 1995. He told the Tribunal that his informant was a councillor, and not a developer, although he was not in a position to identify the councillor, other than that he assumed it had been a councillor from the Fine Gael Party.

5.59 Mr Dukes confirmed to the Tribunal that the councillor who had provided him with the information about offers of money being made in relation to a rezoning application had done so approximately three years prior to the publication of the Irish Times article. Mr Dukes agreed therefore that insofar as he had been apprised by (he assumed), a Fine Gael councillor of two instances where offers of money were made to politicians by a developer in relation to a zoning application, same had occurred during the currency of the review of the 1983 Development Plan.

5.60 Mr Dukes acknowledged that between 1992 and 1995 he did not take any steps arising from what he had been told by this councillor. It was his belief that he did not have any basis on which to take any step, as all he had was information of the nature referred to in media articles.

INFORMATION PROVIDED BY MR DUKES TO THE TRIBUNAL IN THE COURSE OF PRIVATE INTERVIEW ON 30 MARCH 1998

5.61 Tribunal Counsel's note of the interview with Mr Dukes on 30 March 1998 recorded, *inter alia*, the following:

> *He informed us that the only other specific allegation he was aware of was an allegation made to Mr. Dukes by Peter Brady, a [Fine] Gael County Councillor from the Lucan area who alleged that Brian Fleming[6], who was also a [Fine] Gael Councillor in the Lucan area, had been offered £100,000 if he (Fleming) could 'deliver' the [Fine] Gael vote to secure the rezoning of the Quarryvale lands.*
>
> *Mr. Dukes said he did not know the person by whom the offer had been made and asked that he should not be identified as the source of this information.*

5.62 Mr Dukes confirmed that Counsel's note was an accurate record of what he had told the Tribunal on 30 March 1998.

5.63 Asked to outline the circumstances in which Cllr Brady had relayed the aforementioned information to him, Mr Dukes replied:

> *'I can't recall at this stage the exact occasion on which Mr. Brady said this to me. I have been trying to recollect – that is a conversation that we had in 1998. I have been trying to recollect on which occasions I was in contact with Mr. Brady.*
>
> *Now, I knew Peter Brady quite well. And I had canvassed and had been involved in other constituency activity with him at various times from 1982 on. I can't remember on which occasion he said this to me. It was clearly sometime between 1995 and 1998. And so I would – I would guess and it's only a guess, that it could have happened during the course of an election campaign, when Peter and I would have spent time together canvassing. Because from time to time during elections I canvassed outside my own constituency. But I can't be more specific about it than that.'*

5.64 Mr Dukes acknowledged that Cllr Brady had made a serious allegation to him, namely that he had been told that another Fine Gael councillor (Cllr Fleming) had been offered IR£100,000 if he could *'deliver'* the Quarryvale vote.

[6] Cllr Fleming was a Fine Gael Councillor until June 1991.

5.65 Mr Dukes told the Tribunal that notwithstanding what he had learned from Cllr Brady, he had not contacted Cllr Fleming. Mr Dukes said that he *'didn't believe for a moment that Brian Fleming would have done anything of the kind.'*

5.66 Mr Dukes also acknowledged that insofar as Cllr Brady had relayed what he had to Mr Dukes, Cllr Brady had not stated or suggested to him that Mr Fleming had taken the money, and he acknowledged that therefore, there could have been no difficulty or problem from Cllr Fleming's point of view if someone had offered him money and he had refused the offer.

5.67 On Day 737, it was suggested to Mr Dukes by Tribunal Counsel that:

'they are circumstances are they not, Mr. Dukes, in which if you had gone to Mr. Fleming and he had confirmed the story, one could have gone to the Gardai with that information, isn't that right.'

5.68 To which, Mr Dukes replied:

'*No. I mean, it seems to me at the time that this was yet another one of a welter of rumours, many of which were absolutely without foundation, that were flying around at the time. As I say, I didn't believe for a moment that that was the kind of thing that Brian Fleming would have done or would even have dreamed of doing. And the only reason it came to mind was that the Tribunal team asked me if there was anything else I could recollect.'*

THE RESPONSE OF CLLR BRADY AND CLLR FLEMING TO MR DUKES' DISCLOSURE OF INFORMATION TO THE TRIBUNAL

5.69 On 4 April 2007 the Tribunal wrote to Cllr Brady's Solicitors, *inter alia*, as follows:

The Tribunal understands that your client may be in receipt of information regarding former Councillor Brian Fleming having been offered the sum of £100,000 if Mr. Fleming could arrange the Fine Gael vote to ensure the successful rezoning of the Quarryvale lands.

5.70 On 18 April, 2007 Cllr Brady's solicitors responded as follows:

I have spoken to my client as regards the allegation put to him in your letter regarding former councillor Fleming in which you ask that our client would comment as to the veracity or otherwise of such claim.

Mr. Brady has asked us to convey his shock at such an allegation. He has no information whatsoever in that regard and cannot add any information or recollection whatsoever to substantiate same. In fact, our client had

nothing but the highest of regard for councillor Fleming and is aware of no information whatsoever to corroborate the allegation which you have asked that our client would give a view.

Consequently, our client has asked that we would write to you on his behalf which we trust is in order and that a statement from him in the circumstances would not be required.

5.71 In his evidence Cllr Brady stated, *'I can say clearly that I did not discuss with Alan Dukes anything about Brian Fleming and I certainly can't be responsible for a statement that Alan Dukes makes.'*

5.72 As he had stated in his correspondence with the Tribunal, Cllr Brady strongly refuted that he had recited to Mr Dukes what Mr Dukes was quoted as having told the Tribunal in March 1998, and what Mr Dukes confirmed, in the course of his testimony, as having been said to him by Cllr Brady.

5.73 Cllr Brady acknowledged that Mr Dukes was an individual held in high regard by himself and by others. He also acknowledged that Mr Dukes was not a fanciful man or a '*Walter Mitty*' type character. However he could not speculate as to why Mr Dukes had said what he said, save that he surmised that it was a case of mistaken identity on the part of Mr Dukes.

5.74 Cllr Fleming gave evidence on Day 815. In respect of the issue to which Mr Dukes testified, the following exchange took place between Tribunal Counsel and Cllr Fleming:

'Q. Now first of all can I ask you insofar as you are concerned, Mr. Fleming, did you ever tell Mr. Brady or indeed anybody else of any such approach to you?

A. I told nobody of any such approach because there was no such approach. I didn't meet Peter Brady between 1989 and this date except on the street one day and I asked him how he was. I had no discussion with him whatsoever about Quarryvale or anything else.

Q. So if Mr Brady told Mr Dukes of this conversation he is mistaken in having the conversation with you?

A. Oh, he's telling lies, yeah.

Q. So in other words is it possible, what I am suggesting to you, if you are correct Mr. Fleming and you had no such conversation with Mr. Brady, is it possible that Mr. Brady might have mixed you up with somebody else?

A. I suppose it is. I don't know where he got this story but it certainly didn't involve me.

Q. Yes, I would suggest to you that Mr. Dukes is unlikely to have fabricated a story, isn't that right?

A. Well one of them fabricated it. So your guess is as good as mine after that.

Q. Mr. Brady has told the Tribunal that he never made any such allegation to Mr. Dukes and he never recounted any such allegation to Mr. Dukes. That's Mr. Brady's position and he has so told the Tribunal?

A. Okay.'

5.75 Thus, as far as Cllr Brady was concerned, there had been no discussion with Mr Dukes of the type described by Mr Dukes, and the position of Cllr Fleming was that he had had no conversation with Cllr Brady as such would have prompted Cllr Brady to convey to Mr Dukes any such information. In particular, it was Cllr Fleming's position that no offer of IR£100,000 to deliver the Fine Gael vote on Quarryvale had ever been made to him.

5.76 Cllr Fleming was a Fine Gael councillor up to June 1991, when he retired from politics. Although present in the Council chamber on 16 May 1991, he was not recorded as having cast his vote in relation to the issue of Quarryvale on that occasion. He testified that up to the time he retired from politics he had little involvement with the Quarryvale rezoning issue save that he recalled a telephone call in 1988 or 1989 from someone who introduced themselves as *'Tom Gilmartin'* and who had requested a meeting to discuss the issue of Quarryvale. Mr Gilmartin however had never followed up on his telephone call. Cllr Fleming also testified that he received a telephone call from a Fine Gael TD in late 1990 or early 1991 who recommended Mr O'Callaghan as a developer. Cllr Fleming understood that this call was made to him in the context of Mr O'Callaghan's involvement in Quarryvale. This TD however did not canvass him to support Quarryvale, Cllr Fleming told the Tribunal that in the course of this telephone conversation he advised the TD of his decision to retire from politics, and would not therefore be concerned in the future with the rezoning of Quarryvale. Cllr Fleming reiterated to the Tribunal that insofar as he had discussions about Quarryvale, such discussions had been with Mr Gilmartin and the Fine Gael TD and that he had had no discussions with Cllr Brady or with Mr Dukes on the subject.

5.77 Cllr Fleming stated:

'Nobody offered me anything, good, bad or indifferent money, benefit in kind, anything, bottle of whiskey, nothing in relation to Quarryvale.'

5.78 Cllr Fleming also stated that he had never been approached by Mr Dukes in relation to any issue concerning Quarryvale.

5.79 On the issue of conflict as between Mr Dukes and Cllr Brady, the Tribunal preferred Mr Dukes' evidence to that of Cllr Brady and was thus satisfied that Cllr Brady did relay to Mr Dukes, sometime between 1995 and 1998, that Cllr Fleming had been offered IR£100,000 to deliver the Fine Gael vote in support of Quarryvale.

5.80 The evidence given by Mr Dukes did not suggest, as a matter of probability or otherwise, that Cllr Brady was relaying something which itself had been relayed to Cllr Brady by Cllr Fleming. In any event, Cllr Fleming denied ever having been approached with such an offer and denied that he ever had a conversation with Cllr Brady about the subject matter described by Mr Dukes. Thus the Tribunal was left with evidence that on a date between 1995 and 1998, Cllr Brady relayed certain information to Mr Dukes, howsoever that information came into Cllr Brady's possession.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR LIAM T. COSGRAVE (FG)

6.01 Cllr Liam Cosgrave was first elected to Dublin County Council in the Local Elections in 1985. On 1 January 1994, he became a member of Dún Laoghaire-Rathdown County Council. Cllr Cosgrave was first elected to the Dáil in June 1981 and lost his seat in 1987 and ran again unsuccessfully in a number of subsequent Dáil elections. In 1993 Cllr Cosgrave was first elected to the Seanad. He also held a number of positions in the Seanad and was Cathaoirleach from November 1996 until he resigned in November 1997.

MR DUNLOP'S ALLEGATION THAT HE PAID IR£2,000 TO CLLR COSGRAVE

6.02 In his October 2000 statement Mr Dunlop stated as follows:

I gave Mr. Liam Cosgrave £2,000 in cash at the time of the 1991 local elections. I made this payment to Mr. Cosgrave specifically in respect of his support for Quarryvale…

6.03 In his December 2003 statement Mr Dunlop advised the Tribunal that:

The payment of £2,000 in cash to Mr. Cosgrave was made in the Royal Dublin Hotel shortly after the vote of Dublin County Council on 16th May 1991. There is no entry for a meeting with Cllr Cosgrave in my 1991 diary within the timeframe of the vote on the 16th May (may) and Polling Day, 27th June. However, I met him at that location by arrangement and paid him the sum stated…

6.04 In his evidence, Mr Dunlop claimed that he lobbied Cllr Cosgrave to support Quarryvale prior to, and subsequent to, the vote of 16 May 1991. Mr O'Callaghan and Mr Dunlop met Cllr Cosgrave prior to that vote. Mr Dunlop said that in a discussion with Cllr Cosgrave subsequent to the vote. Cllr Cosgrave confirmed to him his support for the Quarryvale project, and raised the issue of funding for the then forthcoming Local Election campaign. Mr Dunlop agreed to give him IR£2,000 which he duly paid over to Cllr Cosgrave. Mr Dunlop stated that his recollection of the payment to Cllr Cosgrave as having been made in the Royal Dublin Hotel and was '*referable to the arrangement to meet him during the course of a council meeting or after a council meeting*.' Mr Dunlop acknowledged that until his December 2003 statement there was no reference by him to the location at which he made the payment to Cllr Cosgrave. Mr Dunlop blamed this omission on the '*ongoing business basis on which the Tribunal has operated and the constant request for further updated more detailed statements.*'

6.05 Cllr Cosgrave, while he accepted that it was possible that Mr Dunlop and/or Mr O'Callaghan had spoken to him about the Quarryvale rezoning project, stated that he had no particular recollection of any such discussion with either of them in the period in question.[1] Cllr Cosgrave did accept that by June 1992, he had '*in all probability*' met Mr O'Callaghan. He said that he had known Mr Dunlop since the late 1970s.

6.06 Cllr Cosgrave conceded that Mr Dunlop was known to him in May/June 1991 as a lobbyist who was promoting a number of rezoning projects before Dublin County Council, and that Mr Dunlop had sought his support in relation to such matters.

6.07 Cllr Cosgrave denied that, as alleged by Mr Dunlop, he had spoken to Mr Dunlop in the run up to the Local Elections seeking financial support, and at the same time expressed to Mr Dunlop his support for the Quarryvale rezoning project. Cllr Cosgrave, while confirming his receipt of '*legitimate*' political donations from Mr Dunlop on occasions denied seeking or receiving a IR£2,000 cash donation from Mr Dunlop in May/June 1991.

6.08 The records of Dublin County Council indicate that Cllr Cosgrave was in attendance at the County Council at some point on the 16 May 1991, but he was not recorded as having voted in relation to either of the Quarryvale related motions on that date, or indeed, in relation to any other matter on that day's agenda.

6.09 Questioned as to why he paid IR£2,000 to Cllr Cosgrave to support Quarryvale in circumstances where Cllr Cosgrave did not participate in the Quarryvale vote on 16 May 1991, Mr Dunlop maintained that it was paid in relation to Cllr Cosgrave's '*commitment*' to support Quarryvale. Mr Dunlop said he had no recollection of raising the issue of Cllr Cosgrave's failure to vote on 16 May 1991 with Cllr Cosgrave subsequently.

6.10 In compiling his October 2000 and December 2003 Quarryvale statements Mr Dunlop did not avert to Cllr Cosgrave's failure to vote on 16 May 1991. Mr Dunlop said that he had no recollection of reviewing the voting records of councillors prior to providing his statements to the Tribunal.

[1] Mr O'Callaghan testified that he had met with Cllr Cosgrave by 16 May 1991.

6.11 In the course of his evidence on Day 771, Mr Dunlop stated:

'*Well I have many meetings with Mr. Cosgrave in relation to Quarryvale, of which he was a very enthusiastic supporter from day 1. He had spoken to me at the time prior to the May 16th vote, I spoke to him subsequent to the May 16th vote. During the course of the conversation with him in relation to the local elections the question of money arose and in the context of the support that he stated he was giving to Quarryvale I agreed to pay him money towards his election campaign, and that was 2,000 pounds.*'

6.12 Mr Dunlop acknowledged that Cllr Cosgrave's name was not included by him in his '*1991 local election contributions*' list prepared for the Tribunal on Day 147 but described this omission as an '*oversight*' on his part.

6.13 Mr Dunlop's diaries did not record any meetings with Cllr Cosgrave until 31 March 1992. Cllr Cosgrave expressed his suspicion that Mr Dunlop (or others) may have '*doctored or interfered with*' Mr Dunlop's diaries.

THE NOVEMBER 1992 PAYMENT OF IR£5,000

6.14 In addition to his claim to have given IR£2,000 cash to Cllr Cosgrave in the course of the 1991 Local Election campaign, Mr Dunlop also alleged that he paid IR£5,000 in cash to Cllr Cosgrave on 11 November 1992 during the November General Election campaign in which Cllr Cosgrave was a candidate. Mr Dunlop told the Tribunal that he had IR£55,000 cash available to him at that time which had been withdrawn from IR£70,000 transferred into his bank account by Mr O'Callaghan on 10 November 1992.[2] Mr Dunlop testified (as set out below) as to the specific circumstances in which he came to provide IR£5,000 cash to Cllr Cosgrave.

6.15 Cllr Cosgrave denied receiving IR£5,000 from Mr Dunlop in November 1992 in the circumstances claimed by Mr Dunlop, but acknowledged that he received IR£2,000 in cash from Mr Dunlop in Buswells Hotel as a political donation around that time. Cllr Cosgrave said that he did not solicit the payment, and that it was not made in connection with any rezoning issue.

6.16 Mr Dunlop told the Tribunal of a discussion he had with Cllr Cosgrave during which Cllr Cosgrave had requested that Mr Dunlop convey to Mr O'Callaghan Cllr Cosgrave's support for Quarryvale. Mr Dunlop stated:

[2] By 10 November 1992 Mr Dunlop had accumulated cash of IR£73,500.

'*…Quarryvale – the Quarryvale issue was raised because of the context in relation to an impending vote. Mr. Cosgrave's concerns obviously were a little more immediate, they were in relation to the General Election. And Mr. Cosgrave, as I previously outlined, repeated his support in relation to Quarryvale and asked me to tell Owen O'Callaghan that that was the case.'*

6.17 In the course of his evidence to the Tribunal (in another module), Mr Dunlop stated the following:

'Yes. I had a discussion with Cllr Cosgrave in early November of 1992 in the context of the announcement of an election and Senator Cosgrave sought financial help… After a discussion I agreed that I would give him £5,000. The discussion did not relate solely to the election. And he undertook to continue to support another development which we discussed and named and asked me to tell the promoter of that particular development that he was supportive and would be on side.'

6.18 Mr Dunlop identified the other development as Quarryvale, and its promoter as Mr Owen O'Callaghan.

6.19 Mr Dunlop claimed that at the time he handed over the sum of IR£5,000 to Cllr Cosgrave on 11 November 1992, Cllr Cosgrave specifically referred to Quarryvale (the second vote on the Quarryvale rezoning was scheduled to be held in December 1992), and that Cllr Cosgrave had asked him to advise Mr O'Callaghan that he, Cllr Cosgrave, was being supportive. Mr Dunlop thus linked the payment to Cllr Cosgrave to the latter's support for the Quarryvale rezoning.

6.20 Mr Dunlop dealt with the November 1992 payment to Cllr Cosgrave in his October 2000 statement as follows:

I gave Mr. Cosgrave £5,000 in cash in a large envelope at the time of the 1992 General Election. The payment was made on the street outside a church on Newtownpark Avenue prior to a funeral. He had asked for support and said he would be facing a tough campaign because of the difficulties internally in Fine Gael in Dun Laoghaire.

6.21 In the course of his December 2003 statement Mr Dunlop said:

'The payment of £5,000 in cash to Liam Cosgrave at the time of the General Election in 1992 was made on Wednesday 11th November, 1992 at Newtownpark Avenue, Blackrock, Co. Dublin.'

6.22 In another module, Mr Dunlop told the Tribunal that he and Cllr Cosgrave agreed to meet at Newtownpark Avenue in Blackrock *'on the sidewalk',* prior to a funeral. The location was suggested by Cllr Cosgrave. Mr Dunlop said he did not know whose funeral Cllr Cosgrave had referred to, or where it was to take place. Mr Dunlop suggested that Cllr Cosgrave intended to attend the removal part of a funeral. When it was pointed out to Mr Dunlop that his diary entry relating to the meeting with Cllr Cosgrave on that date indicated that the meeting was to take place at 2.30pm, and that this was an unusual time for a removal, Mr Dunlop agreed but said that it was his belief that while the arrangement was made for 2.30pm, the meeting did not actually take place until one or two hours later.

6.23 Mr Dunlop gave a detailed description of the meeting. He said that Cllr Cosgrave parked his car in the church car park on Newtownpark Ave, and walked towards him, and they met on the sidewalk. Mr Dunlop said he parked his car on the road. He said he gave Cllr Cosgrave the money in a large envelope, and said that Cllr Cosgrave said to him '*I must put this in the car before I go to the funeral.'*

6.24 Mr Dunlop agreed that it was possible that the funeral may have been at a different location to the church at Newtownpark Ave. He said that Cllr Cosgrave had never stipulated to him that the funeral was at that or any particular venue.

6.25 Mr Dunlop's diary entry on 11 November 1992 relating to Cllr Cosgrave stated the following:

'*2.30 LTC @ Newtownpark Ave'*

6.26 Mr Dunlop's diary on that date also recorded:

'*10.00 PR at home.*
11.00 T.H.at home
11.30 MJC Marine Hotel
1.00 C.B. at DCC
~~*2.30 Phil Monahan'*~~ (Struck through in Mr Dunlop's diary).

6.27 Notwithstanding that, similarly to the aforesaid individuals, Cllr Cosgrave's name was recorded in Mr Dunlop's diary for 11 November, however he strongly denied that he had met Mr Dunlop at Newtownpark Avenue on 11 November 1992. The main thrust of Cllr Cosgrave's denial related to the location claimed by Mr Dunlop for the payment, and its amount, as well as there being (according to Cllr Cosgrave) no reason for a meeting with Mr Dunlop at that location. Having regard to the claimed date of the payment, on Day 820 Cllr Cosgrave stated:

'*I don't know whether I met him on 11th. I know I met him during that campaign all right at some stage.*'

6.28 Inquiries by the Tribunal established that a removal of the late Dr Des Dillon was scheduled to take place at 5.30pm on 11 November 1992 at the Roman Catholic Church in Newtownpark Avenue. Cllr Cosgrave said he did not attend this funeral, and the funeral attendance/condolence book did not record Cllr Cosgrave's name.

THE JANUARY 1993 PAYMENT OF IR£1,000 AND THE ALLEGED PAYMENT OF IR£2,000

6.29 In his October 2000 statement Mr Dunlop stated the following:

Mr. Cosgrave received a cheque for £1,000 from me at the time of the 1993 Senate Election. The payment was made on 12th January 1993 (Appendix 1). I also gave him £2,000 in cash at that time…

6.30 Mr Dunlop told the Tribunal that he paid Cllr Cosgrave a further sum of IR£1,000 at Cllr Cosgrave's request, at the time of the January 1993 Seanad election campaign (Cllr Cosgrave was a candidate in that election), by way of cheque drawn on the bank account of Frank Dunlop & Associates Ltd, Mr Dunlop also paid Cllr Cosgrave IR£2,000 in cash.

6.31 Cllr Cosgrave acknowledged receipt of the IR£1,000 cheque payment made on 12 January 1993, but could not recall the circumstances in which it was paid. He denied receipt of any cash from Mr Dunlop at this time. Cllr Cosgrave commented to the effect that he would hardly deny receipt of cheque when the cheque was traceable by the Tribunal. Cllr Cosgrave believed that the source of a lodgement of IR£1,000 to his EBS Savings Account was Mr Dunlop's cheque.

6.32 Cllr Cosgrave could not recall if, upon the receipt of the IR£1,000 cheque from Mr Dunlop in 1993, he raised with him the earlier cash contribution given to him in November 1992 or if he had commented on the fact that Mr Dunlop was making the January 1993 contribution by cheque as opposed to cash.

6.33 Cllr Cosgrave told the Tribunal that insofar as his election campaigns of June 1991, November 1992 and January 1993 were concerned, no record had been kept by him of election contributions received, nor had he acknowledged the payment of IR£2,000 cash which he said he had received from Mr Dunlop in November 1992 or the IR£1,000 cheque received in January 1993. Cllr Cosgrave agreed however that in 1995 he personally acknowledged receipt of a IR£1,000 cheque given by Frank Dunlop & Associates for a Fine Gael fundraising event, and made payable to Fine Gael. Cllr Cosgrave said he acknowledged the 1995 payment of IR£1,000 because, unlike the 1992 and 1993 payments from Mr Dunlop, the 1995 payment was intended for the Fine Gael Party, and not himself.

6.34 One of 43 lodgements to accounts maintained by Cllr Cosgrave in the period May 1991 to February 1993 and queried by the Tribunal in 2004 was a lodgement of a cheque for IR£4,789.54 to an EBS account on 24 November 1992. When questioned as to the source of this cheque in the course of another module, Cllr Cosgrave was unable to provide relevant information, and undertook to investigate it further, but did not do so. In the course of his Quarryvale module evidence Cllr Cosgrave remained unable to advise the Tribunal as to the source of this lodgement, other than to state, that it probably represented election contributions received by him by cheque, together with county council expenses cheques received by him. He did not believe that, having regards to the amount, that the lodgement represented a single sum paid to him at that time. Cllr Cosgrave also said that he had no reason to believe that there was any cash element in this lodgement.

6.35 In another module, Cllr Cosgrave testified that he estimated the cost of his election expenditure to have been approximately IR£12,000 (IR£6,000 for the Dáil Election in November 1992 and IR£6,000 for the Seanad Election in January 1993). In this module he reiterated his claim not to know how much exactly he had expended in the course of his November 1992 and January 1993 election campaigns.

6.36 On 11 February 2003, Mr Dunlop listed Cllr Cosgrave as one of the individuals with whom Mr Dunlop had discussions after the establishment of the Tribunal. Cllr Cosgrave, in the course of his response to Mr Dunlop's statements about meetings with him in 1998/1999, addressed the issue of donations received from Mr Dunlop and Mr Dunlop's claims in regard to these donations, in the following manner:

> *I now believe that one of the reasons why Frank Dunlop has attempted to implicate me in his false testimony is because he learned that I had no idea how much he had given to me during the conversation we had after my interview with Patricia Dillon.*[3] *This was a platform from which he was able to build up his lies. I believe they are designed to protect his financial interests from the Revenue Commissioners. I also believe that he needs to implicate people from Fine Gael as he believes his fabrications about widespread corruption would look better that way. He was probably also embarrassed about having stolen money from his paymasters…something that would have remained undetected except for the fact that my legal team exposed it. By pretending that I and others had received the money he had stolen, he was also trying to limit the damage to his reputation. I believe that these and other factors are the*

[3] Counsel for the Tribunal.

motives which underline his decision to destroy my character. (Extract from Cllr Cosgrave's 3 March 2003 statement to the Tribunal)

6.37 The first sentence of this statement was a tacit acknowledgement by Cllr Cosgrave that he had, as claimed by Mr Dunlop, discussed the subject of payments to him from Mr Dunlop following the establishment of the Tribunal in 1997. Cllr Cosgrave, in his sworn evidence said that he could not recollect any such discussions that might have taken place.

CLLR COSGRAVE'S INVOLVEMENT IN THE QUARRYVALE RELATED VOTES OF 17 DECEMBER 1992

6.38 On 17 December 1992 Cllr Cosgrave voted against the motions proposed by Cllrs Burton and Ryan to reverse the Quarryvale town centre zoning to 'E' (industrial) as it had been in the 1983 Development Plan. Likewise, he voted against a proposal to cap the retail area of Quarryvale at 100,000 square feet. Cllr Cosgrave supported the motion to amend the retail cap on Quarryvale to 250,000 square feet and he supported the Manager's Recommendation to '*approve the C&E zoning on the Quarryvale site as recommended by the Manager to ensure the provision of a suitable centre to meet the overall needs of the area and to restrict the retail shopping to 250,000 sq. ft.'* Cllr Cosgrave also supported the restoration of the town centre 'D' zoning to the Neilstown lands.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO PAYMENTS MADE TO CLLR L T COSGRAVE BY MR DUNLOP

THE 1991 PAYMENT

i. The Tribunal was satisfied that Mr Dunlop gave IR£2,000 to Cllr Cosgrave in the period May/June 1991, and that this payment was in all probability solicited by Cllr Cosgrave, in the course of his being lobbied by Mr Dunlop in the period leading up to the Quarryvale rezoning vote. As a matter of probability, the funds were provided to Cllr Cosgrave at some point between the 17 May and the end of June 1991 a time when Mr Dunlop was in possession of considerable cash funds. It was a matter of fact that Cllr Cosgrave did not vote on 16 May 1991 but, as already referred to, the Tribunal was satisfied that he was lobbied by Mr Dunlop prior to that date to support Quarryvale. The Tribunal was satisfied that at the time of his soliciting and acceptance of the election contribution Cllr Cosgrave was aware of Mr Dunlop's ongoing role in relation to Quarryvale. In those circumstances the soliciting and acceptance of an election contribution compromised his required disinterested performance of his obligations, as an elected councillor in the making of a Development Plan, and was improper.

THE NEWTOWNPARK AVENUE ALLEGATION

i. Notwithstanding the fact that there was no evidence given to the Tribunal which established that Cllr Cosgrave met with Mr Dunlop at a time when Cllr Cosgrave was in fact attending a funeral at a church in Newtownpark Avenue or at any other specific location, the Tribunal was satisfied that, as a matter of probability, Mr Dunlop's account of his meeting Cllr Cosgrave on that occasion, and at that venue, was true.

ii. In particular, the Tribunal accepted that Mr Dunlop's diary entry which indicated that a meeting with Cllr Cosgrave was scheduled for that location on 11 November 1992 was genuine, and had not been forged (or otherwise altered) in order to mislead the Tribunal). Equally, the Tribunal was satisfied that the other entries for the same day identifying meetings with other councillors were genuine.

iii. The Tribunal took the view that it would have been unnecessary, and indeed, quite bizarre, for Mr Dunlop to have identified a most unlikely meeting place, such as Newtownpark Avenue in Blackrock, as a location for a meeting between himself and Cllr Cosgrave, if in fact such a meeting had never taken place. Evidence was given to the Tribunal by both Mr Dunlop and Cllr Cosgrave, that meetings took place between them in a variety of locations including hotels, Mr Dunlop's office, Leinster House and Dublin County Council offices, and accordingly, if Mr Dunlop had wished to mislead the Tribunal in relation to his meeting with Cllr Cosgrave on 11 November 1992, he could have merely identified one of the aforesaid locations as the location of their meeting.

iv. The Tribunal established that on 11 November 1992 Mr Dunlop gave cash donations of IR£2,000 (later returned), and IR£4,000 respectively to Cllrs Pat Rabbitte and Cathal Boland, two of the individuals named in his diary on that date.

v. The Tribunal was also satisfied, as a matter of probability, that Cllr Hand, although not an election candidate, was a likely recipient of money from Mr Dunlop on that date. On 10 November 1992 Mr Dunlop provided IR£2,000 cash to Cllr McGrath and IR£500 cash to Cllr Mitchell, whom he met individually on that date, as listed in his diary.[4]

[4] Mr Dunlop, during the period of November 1992 election campaign, made further cash disbursements to Mr Lawlor (IR£25,000), Cllr John Hannon (IR£500 or IR£1,000), Cllr Ridge (IR£1,000), Cllr G.V Wright (IR£5,000), and Cllr Cathal Boland (IR£4,000).

vi. While the fact that Mr Dunlop made disbursements to a number of individuals over the course of 10 and 11 November 1992 did not, of itself, prove that money was paid to Cllr Cosgrave specifically on 11 November 1992, it established that Mr Dunlop was heavily engaged at this time in the disbursement of cash to a number of individuals, most of whom, like Cllr Cosgrave, were election candidates.

vii. Thus the Tribunal was satisfied that on 11 November 1992 at Newtownpark Avenue, Cllr Cosgrave was provided with a cash sum by Mr Dunlop. The Tribunal believed there to have been no credible reason for Cllr Cosgrave's name to have been in Mr Dunlop's diary for 11 November 1992 (and which the Tribunal believed was an authentic diary entry), unless, as was the case with the other councillors, an arrangement had been made for Mr Dunlop to meet him. The Tribunal was also satisfied, as a matter of probability, that the cash sum provided to Cllr Cosgrave was IR£5,000 and not IR£2,000, which Cllr Cosgrave maintained he received at a location other than Newtownpark Avenue at around this time.

viii. The Tribunal was further satisfied that Cllr Cosgrave solicited the November 1992 payment from Mr Dunlop and that he found, in Mr Dunlop, a willing provider of such funds. Mr Dunlop has testified that at the time the IR£5,000 was handed over to Cllr Cosgrave, Cllr Cosgrave requested that Mr Dunlop convey to Mr O'Callaghan that he was supportive of Quarryvale. As a matter of probability, notwithstanding Cllr Cosgrave's denial, the Tribunal accepted that words to that effect were spoken by Cllr Cosgrave and was thus satisfied that Cllr Cosgrave, while not only accepting the money from a known lobbyist, linked the IR£5,000 election contribution to Mr O'Callaghan, and the forthcoming Quarryvale council vote.

ix. The soliciting and acceptance of money in such circumstances not only compromised Cllr Cosgrave's required disinterested performance of his duties as a councillor, but was, in the circumstances, corrupt.

THE PAYMENT OF IR£1,000 IN JANUARY 1993

i. In relation to the Frank Dunlop & Associates cheque payment of IR£1,000 on 12 January 1993 to Cllr Cosgrave's Seanad campaign, Cllr Cosgrave had knowledge of Mr Dunlop's role as a lobbyist in relation to zoning proposals which remained before the Council for consideration, not least of which was Quarryvale. Thus the acceptance of this payment compromised Cllr Cosgrave in the performance of his duties as a councillor, and was improper.

THE ALLEGED PAYMENT OF IR£2,000 IN 1993

i. In relation to the evidence tendered by Mr Dunlop of a further cash payment of IR£2,000 having been made to Cllr Cosgrave at the time of the 1993 Seanad Election, the Tribunal was not satisfied that such a payment was made.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR MICHAEL J. COSGRAVE (FG)

7.01 Cllr M. J. Cosgrave was a Dublin County Councillor (representing the Howth Ward) from 1985, and from January 1994 was a Fingal County Cllr for the same area. He was elected to Dáil Eireann in 1977, 1981, 1982, 1987, 1989 and 1998. He was an unsuccessful candidate in the January 1993 Seanad Election.

7.02 In the course of his evidence Cllr Cosgrave acknowledged that he was lobbied by Mr Dunlop, and by Mr O'Callaghan, in relation to Quarryvale, both prior to 16 May 1991, and subsequently. Cllr Cosgrave's recollection was that he was lobbied in the environs of Dublin County Council, the Royal Dublin Hotel and Conway's Public House in O'Connell Street, Dublin.

7.03 Cllr Cosgrave was not recorded as having voted on 16 May 1991 on any Quarryvale related vote. He stated that had he been in attendance for the votes, he would have supported the Quarryvale position, as he did on 17 December 1992. An analysis of Mr Dunlop's voting '*scenarios',* compiled in advance of the December 1992 vote, indicated that as far as Mr Dunlop was concerned, the support of Cllr Cosgrave for Quarryvale was never in doubt. In the course of a number of modules[1] Cllr Cosgrave testified to having, almost without exception, supported rezoning proposals promoted by Mr Dunlop during the making of the 1993 County Dublin Development Plan (and subsequent Development Plans).

FINANCIAL SUPPORT FROM MR DUNLOP

7.04 In a response of 30 June 2001 to Tribunal queries, seeking details of all payments made by Mr Dunlop and/or his companies to him in the period 1990 to 1998, Cllr Cosgrave stated as follows:

> *Prior to the General Election of November 1992 Mr. Dunlop discussed with me the possibility of a donation towards the cost of that election. This discussion to the best of my recollection took place in the offices of Dublin County Council in O'Connell Street. I cannot give the exact dates and times as I did not keep diaries during this period but I believe the discussion occurred 4 to 5 weeks before the Election. I did not receive a donation from Mr. Dunlop or any of his companies prior to the election. I lost my Dáil seat in this General Election.*

[1] The Ballycullen/Beechhill, Cloghran and Cargobridge Modules.

I received a nomination from Fine Gael to contest the Senate Election on the Labour Panel and canvassed the 26 counties visiting as many Councillors as possible during the months of December 1992 and January 1993. I was not successful in this election.

As I had lost my Dáil seat in November 1992 by such a small margin of votes and following discussions with my family and supporters, it was agreed that I should devote as much time as possible to political work in Dublin North East in an effort to regain the seat.

I again met Mr. Dunlop around the end of January 1993 or early February 1993 when he gave me a donation of £1000. From my recollection it was by cheque. I understood that this donation was towards the cost of the Senate Election and was given to me by Mr. Dunlop at Dublin County Council offices in O'Connell Street. Again from my recollection, the money with other monies that I received from the Dept. of Finance was lodged into a savings account in the Bank of Ireland in Coolock around the 2nd week in February 1993.

I understood that the donation was towards the cost of the Senate campaign and the General Election campaign. The costs of the General Election campaign i.e. printing, electioneering, canvassing, and in the Senate campaign, overnighting in hotels throughout the country, were costly and this donation from Mr. Dunlop was for these purposes.

I also received a donation by way of cheque for £250; from my recollection towards the costs of the 1997 General Election for printing, canvassing and other election costs. I believe that this cheque would have been lodged into the Bank of Ireland in Killester.

7.05 On Day 146 (18 April 2000), Cllr Cosgrave's name featured in Mr Dunlop's '*preliminary list'* of the councillors whom Mr Dunlop was then stating or suggesting had requested, and received, political contributions from him.

7.06 In his October 2000 statement Mr Dunlop stated:

I gave Mr. Cosgrave a cheque for £1,000 at the time of the Senate Election in 1993 (Appendix 1). He had been a TD but lost his seat in the November 1992 General Election. The payment was made following a request for support. Mr. Cosgrave always supported Quarryvale.

7.07 In the course of his sworn evidence Mr Dunlop repeated his assertion that Cllr Cosgrave was the recipient of a IR£1,000 cheque from Frank Dunlop & Associates on 12 January 1993, which he said he paid him in connection with his Senate campaign. An analysis of the cheque payments book of Frank Dunlop &Associates Ltd for the month of January 1993 showed that Cllr Cosgrave was one of four[2] councillors who each received IR£1,000 in the course of their Seanad Election campaigns.

7.08 Cllr Cosgrave acknowledged receipt of the IR£1,000 cheque from Mr Dunlop in January 1993 and he told the Tribunal that it had in effect been solicited by him.[3] Cllr Cosgrave also testified that while he believed that the issue of an election contribution from Mr Dunlop did not take place until he had secured a Seanad nomination, he acknowledged that it was however '*possible*' that such a discussion could have taken place at the time of the November 1992 General Election.[4]

7.09 Mr Dunlop's diary recorded a meeting with *'MJC*' and others on 6 November 1992, the day following the calling of the General Election. Cllr Cosgrave acknowledged that he probably met Mr Dunlop on that date, and indeed acknowledged that he had several meetings and lunches with Mr Dunlop at around that time.

7.10 In the course of his testimony Mr Dunlop was questioned in relation to an entry in his diary for 11 November 1992 relating to Cllr Cosgrave, which stated '*MJC Marine Hotel*.' Mr Dunlop told the Tribunal that he had met and paid contributions to a number of councillors on that date, but could not say if, he in fact met Cllr Cosgrave at the Marine Hotel at 11:30am on 11 November 1992, but believed he had not done so for logistical reasons.

7.11 Cllr Cosgrave's evidence, when questioned about the entry in Mr Dunlop's diary regarding himself for 11 November 1992, was to the effect that although he could not recall such a meeting he was prepared to accept that one had taken place, if an entry to this effect was recorded in Mr Dunlop's diary.

7.12 Cllr Cosgrave told the Tribunal that Mr Dunlop had never at any stage given him a cash donation.

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[2] The others being Cllrs Liam T Cosgrave, Lydon and Ormonde.

[3] In 2000 Mr Cosgrave told the internal Fine Gael Inquiry that the IR£1,000 cheque from Mr Dunlop had been unsolicited.

[4] Indeed Cllr Cosgrave's own 2003 statement asserts that the discussion took place at that time.

CLLR COSGRAVE'S CONTACTS WITH MR DUNLOP POST THE ESTABLISHMENT OF THE TRIBUNAL

7.13 Both Mr Dunlop and Cllr Cosgrave agreed that they were in contact and met after the establishment of the Tribunal. On 5 February 2003 Mr Dunlop listed Cllr Cosgrave as one of thirteen individuals with whom he had discussions about the Tribunal. Cllr Cosgrave informed the Tribunal that post the establishment of the Tribunal he and Mr Dunlop did not meet as frequently as previously, and that as far as such meetings/contact were concerned, discussion about the Tribunal was confined to what was in the public domain.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO A PAYMENT TO CLLR M. J. COSGRAVE FROM MR DUNLOP[5]

i. The Tribunal was satisfied that Cllr M. J. Cosgrave solicited and received a payment of IR£1,000 at the time of his January 1993 Seanad Election campaign, and that he did so in circumstances where Mr Dunlop had lobbied him and would again actively lobby him for his support for projects, including Quarryvale, on which he, Cllr Cosgrave, would or might be expected to exercise his vote at County Council meetings.

ii. The said request for money, and its acceptance by Cllr Cosgrave compromised his required disinterested performance of his duties as an elected public representative, and was improper.

[5] Please see Chapter Fifteen for the Tribunal's consideration of evidence relating to the circumstance in which certain statements provided to the Tribunal by Cllr Cosgrave were prepared with Mr Dunlop's assistance.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR LIAM CREAVEN (FF)[1]

8.01 Cllr Creaven was a Fianna Fail Councillor (for the Howth ward), having been elected in 1985, and re-elected in June 1991.

8.02 In the course of his evidence Cllr Creaven acknowledged that from May 1991 onwards, he voted in support of the rezoning of Quarryvale. He acknowledged having been lobbied by Mr Dunlop, and stated that he had been lobbied both for, and against, the rezoning. As was the case with Cllr Michael J. Cosgrave, Mr Dunlop's pre-December 1992 voting '*scenarios*' listed Cllr Creaven as supportive of Quarryvale. Cllr Creaven acknowledged that he invariably supported Mr Dunlop's lobbying endeavours. There was contact between Cllr Creaven and Mr Dunlop in the months of October and November 1992 and Mr Dunlop's diaries recorded two meetings with Cllr Creaven in the month of November 1992. Cllr Creaven's response on 13 April 2000 to the Tribunal's inquiries as to whether or not he had received any payments or benefits in relation to Quarryvale was to the effect that he had received a '*hamper*' from parties involved in the Quarryvale Shopping Centre. A Frank Dunlop & Associates Ltd invoice of 21 December 1992 for IR£64,897.78 sent to Riga included a claim for IR£15,636.77 partly spent by Mr Dunlop on Christmas gifts.

[1] Please see Chapter Fifteen for the Tribunal's consideration of evidence relating to the circumstance in which certain statements provided to the Tribunal by Cllr Creaven were prepared with Mr Dunlop's assistance.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR JIM DALY (FF)

9.01 Cllr Jim Daly was co-opted onto Dublin County Council in 1990 to represent Tallaght/Rathcoole. He lost his Council seat in 1991, and was re-elected to the Council in 1999.

9.02 Mr Dunlop paid IR£2,000 in cash to Cllr Daly in June 1991, a fact acknowledged by Cllr Daly to the Tribunal. On Day 147, Cllr Daly's name appeared on Mr Dunlop's 1991 Local Elections list as the recipient of money, and he was likewise named in Mr Dunlop's October 2000 statement.

9.03 Both Mr Dunlop and Cllr Daly agreed that IR£2,000 was paid to Cllr Daly at the latter's home sometime in June 1991. Mr Dunlop stated that as he was speaking with Mr Daly on the day in question he left the money on a settee in Cllr Daly's sitting room. In a minor conflict of evidence however, Cllr Daly stated that it was he who had placed the envelope containing the money on the settee after being handed it by Mr Dunlop.

9.04 In evidence Mr Dunlop explained the reason for his payment to Cllr Daly in the following terms:

> '*Yes. Well in the specific, when I met Mr. Daly in relation to the payment. I had met Mr. Daly, Mr. Daly was a replacement councillor on Dublin County Council, by that I mean that either somebody had died or had resigned from the Council and he was appointed. He hadn't been elected at that stage. And I was introduced to him by Mr. Liam Lawlor at an early stage and I canvassed him in relation to the Quarryvale matter and he said he would support it. The local elections were coming up, he had never stood in a local election and a conversation ensued in which I undertook to give him a contribution towards the local elections in the context of his support for Quarryvale.*'

9.05 Questioned as to whether the contribution requested by Cllr Daly was specifically for Quarryvale, Mr Dunlop stated:

> '*Yes. I discussed it with him, we discussed Quarryvale and I discussed it with him and I made the contribution before the local elections.*'

9.06 In his evidence, Cllr Daly denied having ever been lobbied by Mr Dunlop in relation to Quarryvale, and he implicitly denied that Mr Dunlop and he had discussed Quarryvale on the occasion Mr Dunlop visited his home. Cllr Daly specifically denied that Mr Dunlop gave him the IR£2,000 donation in the context of his supporting Quarryvale.

9.07 In a statement provided to the Tribunal on 5 March 2001 Cllr Daly outlined his dealings with Mr Dunlop in the period 1990/1991 as follows:

> *I James Daly recall discussing with Frank Dunlop the proposed business park at Citywest. Frank Dunlop was acting as PRO for and on behalf of the developers. These discussions took place in mid 1990. A trip was subsequently organised in late 1990 to Bristol by the developers in order to view a similar type development there. Myself and a number of other councillors and Council officials attended on this trip. This proposed development was in my Council area and of direct interest to myself and constituents. At no time was any financial inducement offered to me by or on behalf of Frank Dunlop or the developers of Citywest and at no time did I seek any such inducement.*
>
> *I recall subsequently approximately a sum of two thousand pounds (£2,000) being paid in cash by Frank Dunlop to me at my home during the 1991 local elections. An envelope containing the cash was handed to me by Frank Dunlop who, as I recall, stated that the monies were towards election expenses. This was the one and only payment ever made to me by or on behalf of Frank Dunlop. I did not seek payment from Frank Dunlop nor did Frank Dunlop specify any particular reason for the payment, save and except that same was made in contemplation of election expenses.*
>
> *The monies were used directly by me in relation to election expenses. I did not lodge same to any account, but used the cash on an ad hoc basis for payment of meals, leaflets, printing and distribution expenses etc.*
>
> *I issued no written acknowledgment or receipt to Frank Dunlop in respect of the monies. The monies were not paid directly or indirectly in a planning or rezoning context, nor did I seek any such payment directly or indirectly in a planning or rezoning context.*

9.08 In further correspondence with the Tribunal on 20 July 2001 Cllr Daly advised, *inter alia*, as follows:

> *(a) I did not attend any public meetings in connection with the re-zoning of Quarryvale save meetings of South Dublin County Council.*
>
> *(b) I did not attend any private meeting with any party or parties in connection with re-zoning of Quarryvale.*
>
> *(c) I was not requested by any party or parties to provide any assistance in connection with the proposal to re-zone Quarryvale.*
> *(d) I was not lobbied in connection with the re-zoning of Quarryvale.*
>
> *(e) I was not requested nor did I solicit the support of any other the support of any other members or Dublin County Council for the rezoning of Quarryvale.*
>
> *(f) I received no payments, donations or benefits of any kind, nature or description* from *any party or parties who were involved in the development of Quarryvale shopping centre save as disclosed above…*

9.09 Cllr Daly went on to advise in that statement that at that time he did not meet with Mr Frank Dunlop, Mr Owen O'Callaghan, Mr Ambrose Kelly, Mr Liam Lawlor, Mr Padraig Flynn, Mr Tom Gilmartin or anyone on behalf of Mr O'Callaghan in relation to the Quarryvale rezoning.

9.10 This position was maintained by Cllr Daly in his evidence, although he conceded the possibility that he had been approached by other councillors to support Quarryvale but had no recollection of any such approach.

9.11 Cllr Daly acknowledged that he was lobbied by Mr Dunlop in relation to the Citywest development project in respect of which there had been a vote for a material contravention of the Development Plan in March 1991. Cllr Daly stated that he only learned of Mr Dunlop's personal interest in the Citywest project after the establishment of the Tribunal. He acknowledged that he himself had been centrally involved in the Citywest material contravention vote, a project he fully supported, as he was a representative for the Saggart/Rathcoole area where the development was located.

9.12 Cllr Daly maintained that he first met Mr Dunlop, by appointment, at Mr Dunlop's office sometime in the latter half of 1990 to discuss Citywest. Subsequently a meeting, again in relation to Citywest, took place in the vicinity of

the Mansion House, Dublin. Cllr Daly denied that he had been introduced to Mr Dunlop by Mr Lawlor.

9.13 Cllr Daly acknowledged that he received the IR£2,000 payment from Mr Dunlop some three months after the Citywest material contravention vote. Cllr Daly admitted that, at the time of the receipt of the IR£2,000 from Mr Dunlop it had crossed his mind that the money might have come from a party connected to the Citywest venture.

9.14 Asked if his suspicions that the IR£2,000 might be connected to the Citywest project gave him pause for thought Cllr Daly responded as follows:

> *'Yeah but it was after the vote and let me also tell you that I wasn't that familiar with donations for elections that was the first election I ran in, I was co-opted before that, and if it was, at the time when I got the envelope I didn't know what was in it, I knew afterwards, there is no point in saying different. But let's put it this way, if it was a donation for my election as Mr. Dunlop said, to help me in my election, well I had no problem with that. It was an election donation and that was for me campaign and that was that. That's the way I looked at it.'*

9.15 Cllr Daly acknowledged to the Tribunal that he saw Mr Dunlop in and around the Council chambers and acknowledged that he probably knew Mr Dunlop was acting for clients other than Citywest. While he said that he may have seen Mr Dunlop with Mr O'Callaghan, he said had no recollection of knowing that Mr O'Callaghan was Mr Dunlop's client.

9.16 Council records show that Cllr Daly voted on 16 May 1991 in favour of the amending motion to cap the retail development on the Quarryvale site although he was not recorded as having voted on the substantive Quarryvale motion. Cllr Daly lost his Council seat in the June 1991 election.

9.17 The Tribunal was satisfied that Cllr Daly was lobbied by Mr Dunlop in relation to Quarryvale. Indeed it would be curious had he not been, given that he had been lobbied in relation to the Citywest material contravention. Notwithstanding his denial of soliciting the contribution, it was probable that in the course of Mr Dunlop's lobbying in support of Quarryvale, Cllr Daly requested an election contribution, given the imminence of the Local Election. In any event, regardless of whether or not Cllr Daly solicited the contribution, it was the case that he accepted it in the knowledge that Mr Dunlop was a lobbyist for Quarryvale. Acceptance of the payment in such circumstances compromised Cllr Daly's disinterested performance of his duties as a councillor, and was improper.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR PAT DUNNE, DECEASED (FF)

10.01 Cllr Pat Dunne was elected to Dublin County Council in 1985 for the Malahide ward. He lost his seat in 1991 at which time he was the whip of the outgoing Fianna Fail members of the Council. Cllr Dunne died in 1994.

10.02 On Day 147 Mr Dunlop identified Cllr Dunne in his 1991 Local Election contributions list as the recipient of IR£15,000. In his statement of October 2000 Mr Dunlop described the circumstances of the payment as follows:

> *I paid the sum of £15,000 to Mr. Pat Dunne after a Council meeting in Dublin County Council during the lead in to the local elections of 1991. The payment was made in respect of the support which Mr. Dunne had given to the Quarryvale project and to ensure that Mr. Dunne would continue to be supportive if I requested his assistance in the future. At the time Mr. Dunne requested the sum of £15,000 he reminded me of how he had been supportive of Quarryvale.*

10.03 Later, in the same statement, he said:

> *Mr. Dunne was the Whip of the Fianna Fail group in Dublin County Council.*
>
> *While I knew him from Fianna Fail circles I was not directly acquainted with him until he contacted me by phone at my home on a Friday evening in late 1990 having discovered that I had made significant progress with a particular development in West Dublin without specific reference to him. In graphic language he asked me what the f** did I think I was doing. He was annoyed that, up to that point, I had not discussed the development proposal with him. He said that the only way a proposal to rezone 300 acres by way of material contravention could be done was via him. I told him that the proposal related to the West side of the County, he was based on the Northside and essentially the councillors in the area were 100% in favour of the proposal. Having secured widespread commitments in favour of the project I later introduced him to the promoters of the project. He met them on at least two, if not three occasions, in and around February/March 1991. Mr. Dunne lost his seat in the 1991 Local Elections.*
>
> *Mr. Dunne was quite specific. Everything must go through him and the sooner I learned that the better.*

The sum paid was the sum requested. At the time the request was made Mr. Dunne reminded me how he had been supportive of Quarryvale. The request was made in Conway's pub. I was not surprised by the quantum of the sum requested. The money was paid after a Council meeting in Dublin County Council during the lead in to the Local Elections of 1991. The payment was made in respect of the support Mr. Dunne had given to the Quarryvale project and to ensure that Mr. Dunne continued to be supportive if I required his assistance in the future.

10.04 In the course of his testimony on Day 771, Mr Dunlop elaborated on Cllr Dunne's role as Fianna Fail whip of the Council as follows:

'...Mr. Dunne was to all intents and purposes sometimes formerly recognised as such and sometimes not, as the whip of the group in Dublin County Council, of the Fianna Fail group I should say. And I had known him from general Fianna Fail circles and I had had contact with him in relation to a previous development. He said that he was in favour of the Quarryvale project. I had a view as to the role Mr. Dunne was playing in Dublin County Council, from very early on.

In fact I had my own view and I had the statements and views of others as well in relation to it. I knew that he was a significant person in the context of whipping of councillors for votes. He told me, on canvassing, that he was supportive...of Quarryvale, and that in the context of the 1991 local elections that he requested a payment, specifically in the context of the Quarryvale project and how helpful and useful he would be to the project. And I made that payment in that context notwithstanding the fact that at the time I was, I readily admit to being loathe to having, to making the payment, I did make the payment to him in the context that I have outlined. As you went on to say he subsequently lost his seat in the 1991 election and was of no relevance thereafter in the context of any votes.'

10.05 Mr Dunlop testified that:

'It was known that Mr. Dunne as the whip of the group, Fianna Fail group seemed to have a permanent presence in Dublin County Council and seemed to have an ability to control votes, either in favour or against particular developments. Anecdotally, and I stress it anecdotally only there were comments about the possibility of Mr. Dunne receiving payments from developers in Dublin County Council on foot of applications. I never had any evidence of that, the only other context in which I had met Mr. Dunne was in relation to Citywest. Mr. Dunne latterly became aware of the widespread support that I had garnered in relation

to Citywest, and I had an argument with him about that and on one occasion, but on that occasion he never sought money.'[1]

10.06 Mr Dunlop told the Tribunal that he paid the IR£15,000 in cash to Cllr Dunne in Conways public house on a date shortly after the Quarryvale vote on 16 May 1991, and prior to 27 June 1991 (the Local Election polling date).

10.07 An analysis of the late Mr Dunne's banking records (including banking records of companies operated by him), did not identify a IR£15,000 cash lodgement in the period May/June 1991. Lodgements made during that period were in the region of IR£100 to IR£500, with one lodgement of IR£1,000.

10.08 County Council records indicated that on 16 May 1991 Cllr Dunne voted both in support of the Quarryvale amending motion and the substantive Quarryvale rezoning motion. Mr Dunlop's diary recorded meetings with Cllr Dunne on 19 September, 9 October, 21 November, 23 November, 26 November 1990, and 9 and 28 January 1991.

10.09 Mr Dunlop told the Tribunal that a reference to Cllr Dunne in his diary for 20 November 1991 related to an occasion when Mr Dunlop met Cllr Dunne at the latter's request at the Harcourt Hotel, Dublin. Mr Dunlop believed Cllr Dunne's purpose in seeking the meeting was to persuade Mr Dunlop that, while he may have lost his County Council seat in the June 1991 election, he could still prove helpful to Mr Dunlop (in some capacity or another, as a consultant), an offer which Mr Dunlop stated he did not take up. No money passed between them on that date. A cheque for IR£1750 written on Mr Dunlop's INBS account on 20 November 1991 and partly encashed[2] by Mr Dunlop at AIB College Street on the same date was not, according to Mr Dunlop, related to his meeting with Cllr Dunne.

10.10 Mr Dunlop's diary for 3 March 1992 recorded '*P. Dunne re Newlands',* (a reference to Citywest).

10.11 Mr Dunlop's office telephone records indicated further telephone contact by Cllr Dunne with Mr Dunlop's office on 1 April 1992. Mr Dunlop stated that a cash lodgement of IR£5,000 on 15 April 1992 to an account of Cllr Dunne was unconnected to Mr Dunlop's March/April 1992 contact with him.

[1] In the course of giving evidence in another module Mr Dunlop listed Cllr Dunne as one of the councillors who controlled matters within the Fianna Fail Party up to the Local Elections of June 1991.

[2] Mr Dunlop withdrew IR£250 in cash, and transferred the remaining IR£1,500 into an AIB account.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO A PAYMENT OF £15,000 TO CLLR DUNNE BY MR DUNLOP

i. The Tribunal was satisfied that Cllr Dunne solicited money from Mr Dunlop for the 1991 Local Election campaign and that he did so in the context of support he had given, *inter alia*, to the Quarryvale rezoning motion. The Tribunal accepted Mr Dunlop's evidence that the sum paid to Cllr Dunne was IR£15,000. The Tribunal was satisfied to accept Mr Dunlop's evidence that in the course of an encounter with Cllr Dunne, the latter outlined his importance as a councillor to Mr Dunlop and that Cllr Dunne solicited and received IR£15,000 from him.

ii. The Tribunal was satisfied that having regard to, in particular the very substantial size of the payment (IR£15,000), its receipt by Cllr Dunne was corrupt.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR MARY ELLIOTT (FG)

11.01 Cllr Elliott was first elected as a Fine Gael representative for the Dundrum Ward of Dublin County Council in 1985 and was re-elected in June 1991. While County Council records indicated that Cllr Elliott was present at some point in the course of the Special Meeting of Dublin County Council on 16 May 1991 there was no record of her having voted on the Quarryvale rezoning motions.

11.02 On 17 December 1992 Cllr Elliott voted against the proposal to reverse the Quarryvale zoning to 'E' (industrial), and voted against a motion to zone Quarryvale 'C1' with a retail '*cap*' of 100,000 square feet. Cllr Elliott voted in support of the proposal to reinstate a 'D' (town centre) zoning on the Neilstown lands with specific objectives, and she duly voted for the amendment sought by Cllrs McGrath, Devitt, Tyndall and O'Halloran to the original motion of 9 December 1992, (to 'cap' retail development on Quarryvale to 250,000 square feet). Thus, Cllr Elliott's voting pattern on 17 December 1992 was largely supportive of the Quarryvale project.

11.03 On 17 February, 2000, following a request for information from the Tribunal, Cllr Elliott provided the following statement:

> *With regard to your request for a statement regarding the Quarryvale rezoning I wish to state that:*
>
> *(a) I did not attend any public meetings in connection with the re-zoning of Quarryvale other than Council meetings.*
>
> *(b) I met with Mr. O'Callaghan, this meeting was organised by Mr. Frank Dunlop and at this meeting the proposals of the Quarryvale Shopping Centre was outlined to me.*
>
> *(c) I was not requested by any party or parties to provide any assistance in connection with the re-zoning of Quarryvale.*
>
> *(d) I was lobbied by local organisations seeking my support for and against the proposal.*
>
> *(e) I was not requested nor did I solicit the support of any member of Dublin County Council.*

(f) I did not receive any payments or donations from any parties who were involved in the development of the Quarryvale Shopping Centre or from any person or company acting on behalf of the developers.

11.04 In her evidence to the Tribunal, Cllr Elliott could not recall where her meeting with Mr O'Callaghan had taken place. She recalled meeting Mr Dunlop on occasions. Cllr Elliott did not recall, as was suggested in Mr Dunlop's '*Contact Report'* of 17 June 1992 if Cllr Ridge had made contact with her specifically about the Quarryvale project.

11.05 After Cllr Ridge's evidence that she sought Cllr Elliott's support for Quarryvale was put to her, Cllr Elliott acknowledged that she may well have spoken to Cllr Ridge in relation to the Quarryvale rezoning issue, although she did not believe that Cllr Ridge had asked her specifically to vote in support of Quarryvale.

11.06 The Tribunal was satisfied from documentation provided to it by Mr Dunlop, that at some point after 22 June 1992 Mr Dunlop established contact with Cllr Elliott. Mr Dunlop's diary for that date recorded a reminder to *'ring Mary Elliott'.* In the lead up to the December 1992 vote, in notes prepared by him, Mr Dunlop documented Cllr Elliott's support for Quarryvale as *'definite'* – an indication in the Tribunal's view that Cllr Elliott had conveyed her support for Quarryvale to Mr Dunlop.

11.07 It was also apparent that in the latter part of 1992 social functions were arranged by Mr Dunlop which included Cllr Elliott. Mr Dunlop's diary for 6 November 1992 noted plans for a dinner engagement with Cllr Ridge, Cllr Mitchell and Cllr Elliott and Mr Owen O'Callaghan.[1] On 8 December 1992 (the day prior to the lodging of the McGrath/Ridge/Tyndall/O'Halloran Quarryvale motion), Mr Dunlop's diary noted a dinner engagement at Le Coq Hardi Restaurant with *'Therese, Olivia, Mary, Ann, Owen O'C.'* Cllr Elliott told the Tribunal that she could not recall the occasion in question. Nor had she any recollection of being in the company of Mr Dunlop and Mr O'Callaghan with Cllrs Ridge, Mitchell and Devitt for dinner engagements on 24 March or the 28 July 1993, as also noted in Mr Dunlop's diary. A note of a telephone contact by Cllr Ridge to Mr Dunlop's office on 23 November 1993 suggested that Cllr Elliott was again an intended guest at a lunch of the '*2 x 4 club*' but was unable to make that engagement which according to Mr Dunlop's diary took place on Thursday 2 December 1993.

[1] This dinner engagement may not actually have gone ahead.

11.08 Mr Dunlop explained to the Tribunal that the *'2 x 4 club'* was the name given to the occasional lunch meetings which were attended by himself, Mr Owen O'Callaghan, the 'Fine Gael Ladies' (a reference to Cllrs Ann Devitt, Mary Elliott, Therese Ridge and Olivia Mitchell), and, on occasion Cllr Liam T Cosgrave.

11.09 Although she had no recollection of the specific events in question, Cllr Elliott did not dispute that she had dined in the company of Mr Dunlop, Mr O'Callaghan and her fellow Fine Gael councillors, Cllrs Ridge, Mitchell and Devitt. Asked on Day 847 if Quarryvale had been discussed with Mr O'Callaghan on these occasions, Cllr Elliott replied:

> *'We would have discussed it but I know there wouldn't have been any representation, asking for votes or anything like that at it, I suppose it would have been discussed alright.'*

11.10 Cllr Elliott acknowledged to the Tribunal that in May 2000, when assisting the Fine Gael internal Inquiry she told the Inquiry that she *'attended one dinner hosted by Frank Dunlop in Roly's Restaurant.'* Cllr Elliott did not make any reference in her disclosure of information to the Inquiry of having dined on occasions in the company of Mr O'Callaghan.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR JIM FAHEY (FF)

12.01 Cllr Jim Fahey was elected to Dublin County Council in 1985 representing the Mulhuddard ward. He lost his seat in 1991.

12.02 Cllr Fahey's name appeared at No. 7 on Mr Dunlop's 1991 Local Election contributions list provided to the Tribunal on Day 147. In October 2000 Mr Dunlop provided the following information:

> *I paid the sum of £2,000 to Mr. Jim Fahey in a pub in Middle Abbey Street in and around the time of the Quarryvale vote. While the payment was made at a time which coincided with the 1991 local election campaign it was specifically made for his support for the Quarryvale motion – a fact which he reminded me of during the course of our discussion. Mr. Fahey supported Quarryvale and it was with this support that the payment was made.'* Later in the same statement Mr Dunlop averred *'I came to know Mr. Fahey through my association with Fianna Fail. He was an active member of the organisation in West County Dublin and was elected to Dublin County Council for the Mulhuddart Ward. It is my belief that occasionally Mr. Fahey was asked to sign Motions for developers who thought they might have had difficulty getting other councillors to sign them.*
>
> *The sum paid was the sum requested […]'*
>
> *Mr. Fahey was under pressure from both Green Property and the Lenihan faction of Fianna Fail in West Dublin who were against Quarryvale. He supported Quarryvale and it was for this support that the payment was made.*
>
> *He lost his seat in the 1991 Local Elections.*

12.03 In his December 2003 statement Mr Dunlop elaborated on the circumstances of the payment as follows:

> *The payment of £2,000 in cash to Councillor Jim Fahey was made on a date after the vote on Quarryvale in Dublin County Council on 16th May 1991. I was contacted by Councillor Fahey by telephone a number of times after the vote with a view to a meeting. I eventually met him in Buswells Hotel at 1.50pm on Thursday 6th June 1991 and it was at this meeting that he made a request for money for the election and reminded me that he had been supportive of the Quarryvale motion and would be so again. He said that he was facing a hard fight locally to retain his seat but had good hopes of doing so. I specifically asked him for the amount*

he had in mind and he said 'a couple of grand.' I agreed and made an arrangement to meet him again the following day, Friday 7th June, at a pub which he nominated, the name of which I have now forgotten, but which is located near the intersection of Liffey Street and Abbey Street. I met him there at lunch time, bought him a drink, handed over the money in an envelope and left. The money used to pay Councillor Fahey was drawn from the amounts of money available to me from various sources at this time.

12.04 Mr Dunlop confirmed the aforementioned content of his written statements in the course of his evidence to the Tribunal.

12.05 Cllr Fahey acknowledged receipt of a IR£2,000 political donation from Mr Dunlop in 1991, but denied any connection between this payment and the Quarryvale rezoning issue. Cllr Fahey claimed that he did not know Mr Dunlop was involved with Quarryvale. Moreover, Cllr Fahey disputed Mr Dunlop's evidence regarding the manner and location of the payment.

12.06 Cllr Fahey denied that he ever met Mr Dunlop in Buswells Hotel, Dublin for the purposes outlined by Mr Dunlop. He also denied that he had telephoned Mr Dunlop seeking financial assistance, but stated that it may have been the case that Mr Dunlop was the recipient of a letter issued by him to a number of firms in and around the time of the Local Election campaign requesting financial support.

12.07 Cllr Fahey's account of his encounter with Mr Dunlop was as follows: in the course of the election campaign, on an occasion when he was returning to his office in Mulhuddart following canvassing, he encountered Mr Dunlop outside his office. Mr Dunlop handed him a cheque. Although not completely certain of the amount, Cllr Fahey believed that the cheque given to him was for IR£2,000. Cllr Fahey stated that he did not ponder the reason for the payment by Mr Dunlop of this money and he had surmised that Mr Dunlop had done so probably because he had been the recipient of a letter from Cllr Fahey seeking financial support. Cllr Fahey was adamant that what he received from Mr Dunlop was a cheque, and he believed that it was either from one of Mr Dunlop's companies, or perhaps, a third party cheque provided to Mr Dunlop and passed on to Mr Fahey. He said he cashed the cheque in a local public house.

12.08 The Tribunal's analysis of the bank accounts of Mr Dunlop and the companies associated with him did not reveal any cheque debit of IR£2,000 in the period in question.

THE SEQUENCE OF CLLR FAHEY'S DISCLOSURE TO THE TRIBUNAL IN RELATION TO THE RECEIPT OF IR£2,000 FROM MR DUNLOP

12.09 On 20 December 1999 the Tribunal wrote to Cllr Fahey seeking details of his involvement, if any, in relation to the rezoning of Quarryvale. Among the questions posed by the Tribunal was:

> *whether you were, at any time and for any purpose, in receipt of any payment(s), donation(s) or benefit(s) (including any form of gift, assistance, service, facility, entertainment or any other benefit of a non monetary nature) from any parties who were involved in the development of the Quarryvale Shopping Centre or from any person(s) or company(ies) acting on behalf of the developers.*
>
> *The parties which were involved in the development of Quarryvale appear to have been Barkhill Ltd., Riga Ltd., O'Callaghan Properties Ltd., Owen O'Callaghan and Thomas Gilmartin. The parties which appear to have acted on behalf of the developers are Frank Dunlop & Associates Ltd., Shefran Ltd., and Frank Dunlop.*

12.10 The import of Cllr Fahey's response on 14 March 2000 to the above queries was that he had no involvement with the Quarryvale rezoning. Moreover, Cllr Fahey added the following postscript to his response:

> *I have checked with Dublin Co. Co. and they told me that this rezoning took place in 1993. I was elected from 1985 – 91.*

12.11 In a letter dated 14 June 2001, the Tribunal advised Cllr Fahey that the following information had come to its attention:

> *a. That during the course of the making of the 1993 Development Plan you received amounts of money totalling approximately £2,000 from Frank Dunlop :*
>
> - *that part of the sum of money mentioned at (a) above was given to you for your support for the re-zoning of land in Quarryvale, Lucan, County Dublin.*

12.12 Cllr Fahey's written response to that letter of 27 June 2001 stated:

> *With refer to paragraph (a) thereof, as advised in my letter to you of 11th June, I recently obtained statements of a Donations Account from the Bank which I am presently in the course of researching. However, you mention in this paragraph that sums of money totalling approximately £2,000 were received by me from Frank Dunlop during the 1993 Development Plan. I did not receive amounts of money from Frank Dunlop or indeed anyone else during this period. However, during the election campaign of June 1991 I did receive a political donation from Frank*

Dunlop of £2,000. This was by way of a cheque but I cannot remember the Company name. No part of this cheque was for support re re-zoning but was given as a donation on foot of a letter circulated to Firms requesting their support to fight a political campaign. The cheque was issued during the campaign.

When I was first interviewed by the Tribunal's solicitor Maire Anne Howard, this question arose. I stated at that time that I was not sure about a donation from Frank Dunlop. After the meeting I rang Frank Dunlop to confirm with him and he told me he gave me no money. Some weeks later I got a phone call from Tribunal Solicitors asking me about a donation from Mr. Dunlop and based on what I was told, I advised her I had got no funds from him. Hoping this now clarifies the matter.

However, in relation to the above I would like to mention that I did not vote for the re-zoning of Quarryvale as I was not a member of the Council then. My vote on Quarryvale was to put it on public display (Map). Also during my campaign I issued statements that I would not be supporting the Quarryvale re-zoning as it had become a big issue during the campaign.

12.13 On the same date, Cllr Fahey also wrote, in response to other queries raised by the Tribunal on 14 June 2001, separately, as follows:

With reference to your letter of 14th June 2001, I wish to state that I do not hold in my possession any records, diaries or other material relating to the Quarryvale development.

With reference to the second paragraph of your letter, I also wish to state the following

1. *Frank Dunlop – known to me for moving in Council circles. I had no meetings with him.*
2. *Owen O'Callaghan. I had no meetings with him.*
3. *Advisors or representatives of Owen O'Callaghan. I had no meetings with them.*
4. *Ambrose Kelly. I had no meetings with him.*
5. *Liam Lawlor – known to me as a T.D. in my Constituency. I had no meetings with him regarding Quarryvale.*
6. *Padraig Flynn. I had no meetings with him.*
7. *Tom Gilmartin. I had no meetings with him.*

12.14 On Day 817 it was put to Cllr Fahey that his acknowledgement to the Tribunal in 2001 of the receipt of IR£2,000 from Mr Dunlop in 1991 was a reversal of the position previously adopted by him, namely that he had received

no money from Mr Dunlop. In seeking to explain his earlier position, Cllr Fahey told the Tribunal that the question of whether or not he had received any donation from Mr Dunlop had arisen in the course of his initial contact with the Tribunal, following upon which he telephoned Mr Dunlop to query whether in fact he had received a donation. Cllr Fahey described his approach to Mr Dunlop in the following terms:

> '*Yes. After being initially interviewed by the Tribunal, which it was mentioned to me about Frank Dunlop. I rang Mr. Dunlop in regard to it and the first thing he said to me, this is my first phone call, is that I received nothing from him. That I might have received drink from him sometime in Conway's pub or one of the local pubs, which I don't even remember being in his company ever. I subsequently got a call from the Tribunal some weeks later after being in and advised that I had got nothing based on what he had told me that I had got nothing from him. And then I became aware that he had talked about through the media, that he had talked about a sum of 2,000 pounds.*
>
> *So I done some checking and I realised and it was brought to my attention that in fact he did come up to, he did come to my office. But I rang Mr. Dunlop the second time in regards to it and, yeah, he confirmed that he gave me 2,000 pounds. I had said yes, Frank , I do remember I have now done some research and you came up to my office I said what I don't remember is, what company because I have a feeling it was some company cheque in his reply to me was oh, it would be one of my companies. He said to me to, he'd get back to me on the matter. This was at the weekend that I rang him. He didn't and I rang him again on the Tuesday and he informed me that he couldn't talk about the matter. And that the Tribunal wouldn't be happy if they knew I was ringing him.*
>
> *I think my reply to that was I didn't mind who knew I was ringing him, I just wanted the facts and that's where it stood. He said that he had been advised by his solicitor not to talk to me. That was the third phone call. The last time I spoke to Mr. Dunlop and all three calls were to his home, not to his mobile.'*

12.15 Cllr Fahey took issue with the purpose of his contact with Mr Dunlop as was attributed by Mr Dunlop in a statement made by him. Cllr Fahey denied that he had the type of conversation with Mr Dunlop, as described by Mr Dunlop in his statement of 11 February 2003. Mr Dunlop stated as follows:

> *Jim Fahey rang me twice, once at my home and once I believe on my mobile to say that he knew he 'got something' from me but could not remember how much. These telephone calls are of recent origin –*

sometime in 2001. I told him I could not really talk to him about these matters and I did confirm for him that he received £2,000 from me in 1991. He said that was OK because it was for the Local Elections. I intimated to him that that was not so and his reply was that there would be no problem because both of us would agree that it was legitimate. I reminded him that he had to say whatever he believed and I would be telling the Tribunal what I knew. These two telephone conversations ran along similar lines and I have not heard from, or met him, since.

CLLR FAHEY'S INVOLVEMENT IN THE QUARRYVALE REZONING

12.16 Notwithstanding Cllr Fahey's denial of having engaged in one to one meetings with Mr Dunlop in 1991, and his insistence that he would only have casually met Mr Dunlop in and around the Council, the Tribunal was satisfied that Cllr Fahey and Mr Dunlop did meet on a one to one basis while Cllr Fahey was a councillor, in relation to Quarryvale, and perhaps in relation to other matters. Thus, the Tribunal was satisfied that, at the very least, as recorded in Mr Dunlop's diary, he and Mr Fahey met on 15 February 1991, and on 6 June 1991.

12.17 Mr O'Callaghan acknowledged meeting Cllr Fahey on a few occasions prior to the Quarryvale vote of 16 May 1991, and he told the Tribunal that Mr Fahey had informed him that he would support Quarryvale. Cllr Fahey denied that he ever met Mr O'Callaghan. The Tribunal however preferred Mr O'Callaghan's evidence in this regard.

12.18 Cllr Fahey was present for the two Quarryvale motions of 16 May 1991 and the records indicated that he voted in favour of the amendment to the original motion to cap retail development on Quarryvale, and that he also voted in favour of the substantive Quarryvale motion.

12.19 It was common case that the Quarryvale rezoning success of 16 May 1991, in the teeth of strong opposition from Green Property Plc became a contentious issue in the course of the Local Election campaign, a fact recognised by Mr O'Callaghan.

12.20 Documentation provided to the Tribunal by Riga indicated that on 6 August 1991 Mr Dunlop billed Riga for, *inter alia*, the '*cost of distributing leaflets in the Blanchardstown, Clonsilla, Castleknock and Mulhuddart areas*' as well as '*the design and printing of leaflets and advertisements.'* The leaflets were ordered by Mr Dunlop and bore the Fianna Fail logo, and were paid for by Mr O'Callaghan. These leaflets were entitled '*Blanchardstown Town Centre the truth and the facts.*'

12.21 The leaflets sought to counter the opposition of Green Property to the Quarryvale development and took issue with the manner in which Green Property were progressing their town centre development at Blanchardstown. The electorate was urged to: '*Support your Fianna Fail team Fahey, Leahy, McGennis*.'

12.22 Cllr Fahey told the Tribunal of his contact with Mr Corcoran of Green Property prior to the Quarryvale rezoning vote of 16 May 1991 and who expressed his dissatisfaction *'with the whole thing of Quarryvale.'*

12.23 Notwithstanding having voted in favour of rezoning Quarryvale 'Town Centre', albeit with limited retail space, Cllr Fahey subsequently explained in a circular his position *vis-à-vis* Quarryvale to the effect that he had voted only on a '*proposal*' to:

> *…include Quarryvale in the Draft Development Plan*' as a '*first step in order to allow for objections from the public*.

The circular further stated that:

> *…when the Council moves on to the 2nd step, that is, to consider these objections, and to discuss the re-zoning of the 180 acre site at Quarryvale, Jim Fahey will object and vote against*.

12.24 Cllr Fahey did not get the opportunity to implement this electoral promise as he lost his seat in the Local Election. Having regard to the Green Property opposition to Quarryvale in the course of the Local Election campaign, it appeared that Cllr Fahey's support for Quarryvale contributed to his electoral demise. Indeed, Cllr Fahey acknowledged that because his electoral area was Mulhuddart, it had been expected that he would have supported the nearby Blanchardstown (Green Property) development.

12.25 Cllr Fahey told the Tribunal that he only voted in favour of Quarryvale after he was '*prevailed upon and persuaded to do so by the Party Whip.*' Cllr Fahey provided quite a graphic description of the role played by Cllr Pat Dunne, as the Fianna Fail Party whip, on the day of the Quarryvale rezoning vote. He told the Tribunal that after casting his vote on the amending motion to limit retail development on Quarryvale, as he moved to exit the Council chamber prior to the vote on the substantive Quarryvale motion, Cllr Dunne ran after him. Cllr Fahey described the incident in the following terms:

> *'I was in the corridor of the chamber at the time on my way out, who was there. There would have been to and fro we're talkin about a 78 member chamber with a gallery full so I wouldn't know. He just asked me. I walked out. He ran out after me. Everybody in the chamber had voted at this*

stage. I'm sure Mr. Dunlop being a man of numbers will remember very well that I recorded my vote after everybody had voted in the chamber. I asked for my vote then to be recorded.'

12.26 Cllr Fahey said he believed that Cllr Dunne had followed him out of the chamber because he '*was looking at a situation where other councillors in the particular wards, vis-à-vis Castleknock and Mulhuddart wards, Fianna Fail councillors voted for and he probably wouldn't want me be being a sole member out.'*

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE PAYMENT OF £2,000 TO CLLR FAHEY BY MR DUNLOP

i. The Tribunal was satisfied that Mr Dunlop paid IR£2,000 to Cllr Fahey at the time of the 1991 Local Election, in which Cllr Fahey was an unsuccessful candidate, and that this payment was in cash and not a cheque, as suggested by Cllr Fahey. In preferring Mr Dunlop's evidence in this regard the Tribunal took account of the fact that on the day Mr Dunlop believed he had paid Cllr Fahey (7 June 1991), Mr Dunlop withdrew IR£25,000 in cash from his 042 account. Moreover, by that date, Mr Dunlop had received cheques from Riga Ltd, payable to Shefran in the amount of IR£80,000.

ii. The Tribunal rejected Cllr Fahey's evidence that he had not been actively lobbied on a one to one basis by Mr Dunlop to support Quarryvale.

iii. The Tribunal was satisfied that Cllr Fahey, solicited the payment of IR£2,000. Furthermore, the Tribunal was satisfied that at the time of the handing over of the money Cllr Fahey probably did allude to the support he had given to the Quarryvale project. The soliciting and acceptance of money from Mr Dunlop in all the circumstances compromised the requirement that Cllr Fahey carry out his duties as a councillor in a disinterested fashion, and was improper.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR TONY FOX (FF)

13.01 Cllr Tony Fox was elected to Dublin County Council in 1985, and again in 1991. He transferred to South Dublin County Council in 1994, and was re-elected to that council in all subsequent elections. Cllr Fox was a tailor by profession.

13.02 Cllr Fox was identified by Mr Dunlop on Day 147 (19 April 2000) as a recipient of IR£2,000 cash during the 1991 Local Election campaign.

13.03 In October 2000 Mr Dunlop advised the Tribunal as follows:

> *'I gave Mr. Tony Fox a sum of £2,000 in cash at the time of the local elections in 1991. Mr. Fox and I discussed the Quarryvale project generally. We agreed that Mr. Fox's support would be necessary in respect of Quarryvale and other developments. Mr. Fox also reminded me of the need for his support on subsequent occasions. The sum paid to Mr. Fox was paid at his home in Rathfarnham in the evening time.'*

13.04 In his December 2003 statement Mr Dunlop elaborated on the circumstances of the 1991 payment to Cllr Fox as follows:

> *The payment of £2,000 in cash to Cllr Tony Fox was made at his home on Tuesday 4th June 1991. I had arranged to meet him there at 8.00pm. Initially he was accompanied by a friend/party supporter, a Mr. Paddy Curry, who left to continue canvassing. I paid the money to Cllr Fox in an envelope. I met his wife while I was there and on a subsequent occasion when I brought Mr. O'Callaghan to canvass him during the run up to the second vote in December 1992. The monies used to pay Cllr Fox on this occasion were drawn from the monies I had available to me from various sources at this time.*

13.05 Prior to providing this statement Mr Dunlop had not averted to either the date of the payment or to the presence of Mr Curry at Cllr Fox's home. Mr Fox had, prior to December 2003, referred to his connection with Mr Curry in the course of a public hearing in relation to another module.

13.06 In the course of his evidence in the Quarryvale module, Mr Dunlop stood over his claim that he paid IR£2,000 cash to Cllr Fox on 4 June 1991, and he confirmed that he had encountered Mr Curry on that occasion. Asked by Tribunal Counsel on Day 771 how he had come to recollect the date of the payment and the presence of Mr Curry, Mr Dunlop replied:

'*Well, in relation to Mr. Curry, I had met Mr. Curry before when I was doing my new narrative statement or more detailed narrative statement at the request of the Tribunal. I endeavoured to recollect as much as I possibly could as to the circumstances of what had occurred, and as I said, I had met Mr. Curry before and during another issue that I was dealing with, with Mr. Fox, but Mr. Curry left. I also met Mr. Fox's wife, but that's not relevant. And then in attempting to come to terms with the date of the payment I had to look at my diary and see when did I actually have a contact with Mr. Fox.*

Now I had lots and lots of contacts with Mr. Fox. Both scheduled and unscheduled.'

13.07 And Mr Dunlop went on to state that:

'And in the context of the Quarryvale vote on the 16th and Tony Fox's request for money, for the local elections on foot of his support for Quarryvale, I do recollect travelling to his home and paying him the money.'

13.08 Mr Dunlop's diary for 4 June 1991 recorded the following:

8 o'clock P. Curry
Tony Fox

13.09 Mr Dunlop testified that prior to 4 June 1991[1] he had met Mr Curry with Cllr Fox in connection with the Texas Homecare material contravention vote, a project in respect of which Mr Dunlop had lobbied Cllr Fox. Mr Dunlop told the Tribunal that he '*probably*' knew on 4 June 1991, when going to see Cllr Fox, that Mr Curry was going to be present '*for one reason or another*.' In the course of his evidence Mr Dunlop denied that he had used an entry in his diary for '*P. Curry Tony Fox*' on 4 June 1991 as a convenient date to support his claim of having travelled to Cllr Fox's home during the course of the Local Election campaign in 1991 to give him money. Mr Dunlop stated that he had:

'*a vivid recollection of being in Mr. Fox's house in Mountain View Road, Mountain- I can't exactly remember the address now, but I mean I know where it is. And the circumstances in which I went there and the circumstances in which Mr. Paddy Curry was present. Mr. Curry was not present when I gave money to Mr. Fox, but the reason I went there was with the view to paying Mr. Fox 2000 pounds as agreed.'*

[1] Documentation provided to the Tribunal indicated that meetings between Cllr Fox, Mr Curry and Mr Dunlop took place in September/October 1989.

13.10 Mr Dunlop agreed that despite his '*vivid recollection*', he had been unable to give details of the date of the payment and of Mr Curry's presence at Cllr Fox's home until December 2003. In reply to questions posed in cross-examination by Cllr Fox's Counsel, Mr Dunlop stated that when, in 2003, the Tribunal sought further details from him, it was possible that he had checked his diary and that he had noted an arrangement to meet Mr Curry and Cllr Fox at '*8 o'clock*' on 4 June 1991. Accounting for his failure to include this detail in his October 2000 statement, Mr Dunlop described that statement as an *'overarching statement in relation to the totality of what had taken place in Dublin County Council and my involvement in it and with whom.'* He said that on a number of occasions, subsequent to the provision of that statement, the Tribunal had reverted seeking further information, documentation and detail from him. Other than possibly having had recourse to his diary, Mr Dunlop said he did not know how he had come to recall the detail he provided in his December 2003 statement.

13.11 Mr Dunlop could not say why, on 4 June 1991, Mr Curry's name featured in his diary if Mr Dunlop's purpose at that time was to meet Cllr Fox, but he suggested the following:

> '*...I cannot give you an explanation other than to say that I would have known that Mr. Curry was going to be there. The only person who could have told me that Mr. Curry was going to be there was Mr. Fox. I don't think that I ever had any direct dealings with Mr. Curry, other than in his capacity as Chairman of the Resident's Association, in relation to a completely separate matter.'*

13.12 Mr Dunlop, although he admitted to the Tribunal that he altered his diaries on occasions by obliteration and heavy over-writing, denied that he had tampered with the 4 June 1991 entry. He also maintained that Cllr Fox's and Mr Curry's names had been written in the diary at the same time. [2]

13.13 Mr Curry testified to the Tribunal that, in his capacity as Chairman of the Mountain View Resident's Association, he believed he met with Mr Dunlop in the period 1990/1991, while Mr Dunlop was lobbying on behalf of Texas Homecare – a retail business which was seeking planning permission for a development in Mr Curry's locality. Mr Curry and Cllr Fox, being a local councillor, had worked together on the Association for a number of years. Mr Curry stated that he had met Mr Dunlop in relation to the Texas Homecare

[2] While it was certainly the case that the name of Mr Curry first came to the attention of the Tribunal during Mr Fox's testimony in April 2003 thereby allowing Mr Dunlop to use his name subsequently, there can be no circumstances whereby Mr Dunlop could have altered his original diary after 30 October 2001, as by that date Mr Dunlop had furnished his entire unredacted 1991 diary to the Tribunal.

issue in the local Youth Club, and also at the Texas Homecare site. He could not say whether one of their meetings took place on 4 June 1991. While Mr Curry admitted to having been a visitor to Cllr Fox's home on occasions, he was certain that he never met Mr Dunlop there, and he further denied that he had ever canvassed on behalf of Cllr Fox at election time.

13.14 Cllr Fox's stated position in the Quarryvale module (as in ten other modules) was that he had never at any point in time received money from Mr Dunlop, either by way of political contribution or otherwise. He described Mr Dunlop's evidence as a '*total fabrication.*' He also testified that neither Mr Dunlop nor Mr O'Callaghan had lobbied him for his support for Quarryvale prior to 16 May 1991 vote. Cllr Fox stated that insofar as he was lobbied in relation to Quarryvale, this had occurred by way of approaches from local Fianna Fail councillors, and he stated that the matter had been debated at Fianna Fail group meetings in Conways public house prior to County Council meetings.

13.15 County Council records indicated that Cllr Fox voted in favour of the Quarryvale amending motion and the substantive motion on 16 May 1991. Cllr Fox told the Tribunal that a quote attributed to him in a newspaper article during the currency of the 1991 Local Election campaign was probably an accurate representation of what he had told the paper at that time, namely that he was a '*loyal voter with the Fianna Fail block on the Council.*'

13.16 In the course of his testimony on Day 835, Cllr Fox acknowledged that Mr Dunlop and Mr O'Callaghan visited him at his home in September 1992 in order to lobby him to support Quarryvale. Both Mr Dunlop and Mr O'Callaghan confirmed their attendance with Cllr Fox in his home, but were uncertain of the date of that meeting. Cllr Fox first apprised the Tribunal of this fact in June 2001 when responding to a series of questions posed by the Tribunal, including a question as to whether he had met with Mr Dunlop, Mr O'Callaghan and others regarding Quarryvale.

13.17 Under the heading '*Frank Dunlop*' Cllr Fox wrote in his statement of June 2001:

> *Mr. Dunlop and Mr. O'Callaghan called to see me at my home in relation to Quarryvale. Thereafter Mr. O'Callaghan wrote to thank me for meeting him. I also recollect meeting Mr. Dunlop in the vicinity of the Co Council Offices. I presume I was given promotional literature by Mr. Dunlop.*

13.18 Under the heading '*Mr Owen O'Callaghan*' Cllr Fox stated in that statement:

As mentioned above I met Mr. Owen O'Callaghan with Mr. Dunlop called to see me at my home in relation to Quarryvale. I would have also met Mr. O'Callaghan in the vicinity of the Co Council Offices where he would have spoken to me…

13.19 Previously (on 24 January 2000), Cllr Fox had replied in the negative to all Tribunal inquiries relating to Quarryvale, including one which asked Cllr Fox if he had *'attended any private meetings with any party or parties in connection with the rezoning of Quarryvale and, if so, the nature, purpose, dates and venues of such meetings and the identity of the persons attending.'*

13.20 In the course of a private interview with the Tribunal in December 1998 Cllr Fox was asked if he had ever met Mr O'Callaghan. Cllr Fox stated that while he may have seen him and spoken to him in the County Council, he had not known him to be a developer. Cllr Fox explained the inconsistency of that position with his subsequent acknowledgment that Mr Dunlop and Mr O'Callaghan visited him in his home in September 1992, and sought his support for Quarryvale, by claiming that when providing information to the Tribunal in 1998, and again in 2000, he had not recollected their visit to his home.

13.21 Cllr Fox acknowledged that the purpose of that visit to his home in September 1992 was to solicit his support for the forthcoming Quarryvale vote. Such support was provided by Cllr Fox on 17 December 1992 when he voted in favour of confirming the 'C' (town centre) and 'E' (industrial) zoning of the Quarryvale lands, albeit with a retail cap of 250,000 square feet. Cllr Fox also acknowledged to the Tribunal that he had indicated his support to Mr O'Callaghan in September 1992. Cllr Fox described Mr Dunlop and Mr O'Callaghan's arrival at his home in September 1992 as having been unannounced.

13.22 As to whether or not Cllr Fox was canvassed for support by Mr Dunlop prior to 16 May 1991,[3] the Tribunal preferred Mr Dunlop's evidence to that of Cllr Fox. The Tribunal was persuaded to this view by virtue of the fact that in the first instance, Mr Dunlop's role in the lead up to the Quarryvale vote was to lobby councillors. It appeared unlikely to the Tribunal that Cllr Fox, with whom, on Cllr Fox's own admission, Mr Dunlop had an established relationship in relation to the Texas Homecare project, would not have been lobbied by Mr Dunlop. Moreover, the Tribunal was fortified in its conclusions in this regard by the fact that Cllr Fox featured on Mr Dunlop's 1992 contacts

[3] Mr O'Callaghan, in evidence, could not be definite as to whether he had met Cllr Fox prior to 16 May 1991.

lists, not just as someone who had been contacted by Mr Dunlop but also as someone who was a point of contact for other councillors. The Tribunal was satisfied that Cllr Fox was seen by Mr Dunlop (and correctly so), as a councillor likely to support projects requiring rezoning for development, and would therefore have been an obvious target for lobbying.

13.23 Notwithstanding Cllr Fox's categorical denial of having solicited, or received, IR£2,000 from Mr Dunlop in June 1991, and notwithstanding the absence of any documentary evidence of such payment, the Tribunal was satisfied to accept Mr Dunlop's evidence that Cllr Fox was among those who solicited and received money from him at that time.[4]

13.24 Furthermore, notwithstanding Cllr Fox's staunch denial that he received money from Mr Dunlop in 1991, the Tribunal was satisfied that such was indeed provided to Cllr Fox, most probably, as claimed by Mr Dunlop on the occasion of a visit to Cllr Fox's home on 4 June 1991, and that it was provided in cash as maintained by Mr Dunlop.

13.25 In the course of his testimony in this module, and indeed in a substantial number of other modules in which Mr Dunlop made allegations of payments to him connected with rezoning issues, Cllr Fox denied receipt of any money, on any occasion, from Mr Dunlop, by way of political donation or otherwise. Over the course of several modules, the Tribunal has rejected Cllr Fox's denials, preferring the evidence tendered by Mr Dunlop.

13.26 One factor which led the Tribunal to prefer Mr Dunlop's evidence was the Tribunal's finding (enunciated in Chapter Thirteen/St. Gerard's lands) that in the aftermath of the establishment of the Tribunal, Cllr Fox and Mr Dunlop came to an agreement that monies which had been provided by Mr Dunlop to Cllr Fox in course of the making of the 1993 Development Plan and the 1998 Dún Laoghaire-Rathdown Development Plan, would be designated by both as political donations in the context of their respective dealings with the Tribunal.

13.27 Cllr Fox's soliciting and acceptance of an election contribution from Mr Dunlop took place in the context of his having been lobbied by Mr Dunlop with regard to Quarryvale, and in the knowledge which Cllr Fox undoubtedly had, that Mr Dunlop would continue to promote Quarryvale during the course of the 1983 Development Plan review. As such, the soliciting and acceptance of the funds compromised Cllr Fox's required disinterested performance of his duties as a councilor, and was improper.

[4] Cllr Fox did on his own admission solicit a payment from Monarch in 1992. See Chapter Three (the Cherrywood module).

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR CYRIL GALLAGHER (DECEASED) (FF)

14.01 Cllr Gallagher was an elected councillor for the Swords Ward in North County Dublin from 1979 to 1993 and in Fingal County Council from 1994 to 1998. He died on 20 March 2000, and therefore did not give sworn evidence to the Tribunal, although he previously responded to a letter from the Tribunal and was privately interviewed by the Tribunal.

14.02 Cllr Gallagher's name appeared on Mr Dunlop's 1991 Local Election contribution list as a recipient of IR£1,000.

14.03 In his October 2000 statement to the Tribunal Mr Dunlop wrote:

> *I paid Mr. Cyril Gallagher a sum of £1,000 at the time of the 1991 local elections following a mutual discussion between us concerning the cost of elections. This payment was made in cash, either in Conway's pub or in the Grand Hotel in Malahide. I made this payment to Mr. Gallagher in recognition of the support which he had provided to Quarryvale.', and 'I came to know Mr. Gallagher through my association with Fianna Fail. He was a long serving member of the organisation in North Dublin and on occasion took a very independent line regarding the development of Swords.*
>
> *I always enjoyed a very good personal relationship with Mr. Gallagher and I had no hesitation in giving him £1,000 for the 1991 Local Elections when a mutual discussion took place vis-à-vis the cost of elections.*

14.04 Requested by the Tribunal to provide it with further details of his dealings with Cllr Gallagher in relation to Quarryvale, Mr Dunlop, in his December 2003 statement said as follows:

> *Councillor Cyril Gallagher came to see me at my offices at 25 Upper Mount Street, Dublin 2 at 11.00 am on Thursday, 30th May, 1991, by prior arrangement. At this meeting he raised the matter of election expenses. Mr. Gallagher and I enjoyed a very good relationship and I do not believe that he requested a contribution as a result of his support for Quarryvale, either in the past or for the future. He had asked for the meeting with me during a telephone conversation some short time after the vote on the Quarryvale issue in Dublin County Council on 16th May, 1991. I readily agreed to make an election donation to him and I offered £1,000 which he said would be very welcome. For whatever reason I did not pay him on that day and I arranged to telephone him some days later and meet with him for the purpose of giving him this money. The payment*

was made in cash and I cannot accurately recollect whether I gave it to him in Conway's Pub or in the Grand Hotel in Malahide, both of which were regular venues for our meetings together with a pub in Swords. There is no entry in my 1991 diary for a meeting with Councillor Gallagher i.e. between our meeting at my office on Thursday, 30th May and Polling Day on 27th June, 1991.

14.05 Mr Dunlop appeared to distinguish the approach to him made by Cllr Gallagher from the approaches made by the other councillors named by him, on the basis that Cllr Gallagher had asked for a political contribution *simpliciter* without alluding to support he had given, or would give, to Mr Dunlop regarding Quarryvale, or any other rezoning issue.

14.06 It was Mr Dunlop's evidence however that he himself, in making the payment to Cllr Gallagher may well have made reference to Cllr Gallagher's support for Quarryvale. Mr Dunlop put it thus:

'*I cannot absolutely say that there is no discussion about Quarryvale, there would be very little point in my meeting with Councillor Gallagher either in the context of the local election or in relation to lobbying him about a particular development without discussing something that was happening at Dublin County Council, either on an anecdotal basis or on what was going to happen in the future.'*

14.07 Again, when asked, if, in the course of paying Cllr Gallagher the IR£1,000 Quarryvale had been discussed, Mr Dunlop replied:

'*I cannot say definitively that I did or did not, but the only point I make to you is that this is not a list of names that I drew up and stuck a pin in them and said that's the person I am going to give a thousand pounds to. I gave 1000 pounds to Cyril Gallagher for his, in the context of the local elections for the support that he had stated that he would give to Quarryvale, that was my demeanour at that particular time.'*

14.08 And, later in the course of his testimony on Day 771 Mr Dunlop stated:

'*...He* (Cllr Gallagher) *requested, he was supportive of me on many occasions, but this is in 1991. He has asked me for an election contribution, which I am very ready to give him in the context of his stated support and in the context of future support that I was going to require from him.'*

14.09 Mr Dunlop told the Tribunal on Day 771 that insofar as he had testified on Day 420 (the Fox & Mahony module) that he and Cllr Gallagher had discussed Quarryvale on the same day he had discussed an election contribution with him,

such discussion was in the context of the Quarryvale issue having been raised by Mr Dunlop with Cllr Gallagher. According to Mr Dunlop:

> '*...It would be completely and totally unrealistic to imagine that I had a discussion with Mr. Gallagher and giving him a thousand pounds and not referring either to events that had occurred or were about to occur.'*

14.10 Dublin County Council records indicated that Cllr Gallagher voted in favour of the Quarryvale motions on 16 May 1991.

14.11 Mr O'Callaghan acknowledged having met and spoken to Cllr Gallagher about Quarryvale, possibly prior to 16 May 1991. He described Cllr Gallagher as a pro-development Cllr who had indicated to him his support for Quarryvale.

14.12 In the period between 29 May 1991 and 2 July 1991 the Tribunal identified a number of unexplained round figure lodgements to Cllr Gallagher's bank accounts as follows:

-	To an AIB account:	29 May 1991	IR£250
		17 June 1991	IR£800
		25 June 1991	IR£550
-	To an An Post account: (a savings certificate purchased with cash)	2 July 1991	IR£3,000

THE TRIBUNAL'S CONCLUSIONS

i. The Tribunal was satisfied that, as testified to by Mr Dunlop, Cllr Gallagher sought and received IR£1,000 from Mr Dunlop in the course of the 1991 Local Election campaign.

ii. Notwithstanding Mr Dunlop's testimony that there was no express link between the payment and Quarryvale, the Tribunal was satisfied, that Cllr Gallagher was aware in May/June 1991 of Mr Dunlop's role as a lobbyist for Quarryvale and thus, in those circumstances, was satisfied that the soliciting and acceptance of an election contribution from Mr Dunlop compromised the required disinterested performance expected of Cllr Gallagher in his role in the making of a Development Plan, and was improper.

iii. While the information available to the Tribunal in relation to these (or any) lodgements to Cllr Gallagher's bank/An Post accounts was insufficient to establish any definite or probable link between any of them and a payment from Mr Dunlop of IR£1,000 cash, the Tribunal could not exclude the possibility that money from Mr Dunlop contributed to one or more of the lodgements made by Cllr Gallagher on 29 May, 17 June, 25 June and 2 July 1991.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR SEAN GILBRIDE (FF)

CLLR GILBRIDE'S INTRODUCTION TO THE QUARRYVALE PROJECT

15.01 Cllr Gilbride was elected to Dublin County Council in 1985 and 1991. After January 1994, his Ward being Balbriggan, he became a member of Fingal County Council until 1999, when he did not seek re-election.

15.02 Cllr Gilbride was asked by Senator Willie Farrell to meet with Mr Gilmartin who was experiencing difficulties with a development in Dublin (the Quarryvale development). The three men knew each other as they had been neighbours in Sligo. Cllr Gilbride said he met Mr Gilmartin in 1990, but it is more likely to have happened prior to June 1989, as Cllr Gilbride said Mr Gilmartin was having problems purchasing land from Dublin Corporation at the time. Cllr Gilbride said he supported the Quarryvale project from the start and introduced Mr Gilmartin to Cllr McGrath. It was Cllr McGrath, who (being a local councillor) prepared the Quarryvale rezoning motion which was due to be lodged by 15 February 1991. When Mr O'Callaghan became involved in the Quarryvale project, he said he '*inherited'* Cllrs Gilbride and McGrath who *'were ardent supporters of the project'* and *'appeared to be Tom Gilmartin's main advisors on the political front.*'

15.03 The Tribunal was satisfied that having been duly '*inherited*' by Mr O'Callaghan from Mr Gilmartin, Cllr Gilbride lent his support to the former from February 1991 and, as stated in the section of this Part relating to Cllr McGrath, the Tribunal was satisfied that Cllr Gilbride telephoned Mr Gilmartin on 15 February 1991 to urge him to sign the second Heads of Agreement[1], and to warn him that if he did not do so, Cllr McGrath's motion to rezone Quarryvale would not be lodged.

EVENTS OF 16 MAY 1991

15.04 Mr Gilmartin testified that he travelled to Dublin on 14 May 1991, in advance of the scheduled Quarryvale rezoning vote of 16 May 1991. AIB had requested his presence in Dublin for the vote, although it was Mr Gilmartin's belief that he was only required for '*decoration*.'

[1] See Part 4

15.05 Mr Gilmartin testified that on the morning of 16 May 1991 he met Mr O'Callaghan in a room hired by Mr O'Callaghan in the Royal Dublin Hotel. At various times the room was occupied by himself, Mr O'Callaghan, Mr Deane, Mr Dunlop and Cllr Gilbride, with Mr Lawlor coming and going. In addition, throughout the day a steady stream of councillors came to the room to consult with Mr O'Callaghan and the others. Mr Gilmartin described the whole day as being '*orchestrated by Gilbride, Lawlor, Dunlop and O'Callaghan*.'

15.06 Mr Gilmartin told the Tribunal that at one point during the day, in the presence of Mr Deane, Mr Dunlop, Cllr Gilbride and, possibly, Mr O'Callaghan,[2] he announced his intention to call the '*Fraud Squad*.' He made that announcement because in his view the events of 16 May 1991 were being '*orchestrated by corrupt people*.' Mr Gilmartin stated that what he had in mind, in particular, was his knowledge of Mr Lawlor's and Cllr Finbarr Hanrahan's previous demands for money. It had been '*puzzling*' to Mr Gilmartin on 16 May 1991 to learn from Mr O'Callaghan, that Mr O'Callaghan was trying to '*get Hanrahan on side*' when, at the same time, Mr O'Callaghan was informing Mr Gilmartin that Cllr Hanrahan had accompanied Mr Corcoran of Green Property Plc, and Mr Corcoran's wife, to the County Council's offices where they were '*kicking up a hell of a stink*' in relation to the proposed Quarryvale rezoning. Mr Gilmartin said he could not understand '*why was Mr O'Callaghan telling me that Hanrahan was campaigning against us when he was, actually, as I understood, seconding the motion. So as I seen it, there was a … I was once again a patsy in the middle of all of this.*'[3]

15.07 Mr Gilmartin described the reaction of those present in the hotel room to his announcement that he was going to call the '*Fraud Squad*' in the following terms: '*Dunlop nearly fell off his chair*' and '*John Deane nearly had a heart attack.*' Mr Gilmartin also stated that Cllr Gilbride had begged him not to make the telephone call.

15.08 As matters transpired, Mr Gilmartin did not call the Fraud Squad because, he claimed, he had been reminded by Mr Dunlop and Cllr Gilbride that his earlier attempts (in 1989) to alert the authorities about corruption had not achieved anything and that it was likely therefore that his complaints in May 1991 would not be believed.

[2] On Day 737, Mr Gilmartin said that Mr O'Callaghan was not present when he threatened to call the 'Fraud Squad.' However, during his cross-examination on Day 763, he said Mr O'Callaghan was there.

[3] Cllr Finbarr Hanrahan together with Cllr Hand and Cllr Colm McGrath were the signatories to a motion which amended Cllr McGrath's original motion effectively limiting retail development on Quarryvale to 500,000 square feet approximately.

15.09 Both Mr Dunlop and Cllr Gilbride denied being present when Mr Gilmartin's claimed utterances about calling the Fraud Squad were made.

15.10 Mr Deane's account of events was as follows:

> '*..At that meeting Mr. Gilmartin, he and I were in a room together, the vote was being discussed and Mr. Gilmartin said at one stage that he could make a phone call and two or three of the other councillors would be arrested. And yes, I was totally shocked when I heard that. And I asked him why and he just said, 'I can do it.' And that conversation persisted backwards and forwards with me asking him why go do it, and he said people were opposed to the rezoning of Quarryvale and I asked him why wouldn't he make a phone call so if he could have these people arrested and just nothing happened.*'

15.11 According to Mr Deane, Mr Gilmartin had never used the phrase '*Fraud Squad*' but did indicate he would call the '*police*.' Mr Deane's belief was that only he and Mr Gilmartin had been present when Mr Gilmartin made his announcement. Mr Deane contended that while he had pressed Mr Gilmartin as to who and for what reason he would have anyone arrested Mr Gilmartin had not elaborated on the matter but had merely repeated that '*all I have to do is pick up the phone and ring*.' Mr Deane told the Tribunal that his interpretation of what was said by Mr Gilmartin was that a telephone call from him to the police could have led to the removal of councillors from the Council who were opposing the rezoning of Quarryvale.

15.12 Mr O'Callaghan gave evidence that some time subsequent to 16 May 1991, he learned from Mr Deane, that '*Tom Gilmartin passed some remarks* [...] *about having certain councillors arrested because they voted against Quarryvale and that he was going to call the Fraud Squad or something to that effect*.'

15.13 Later in his evidence, Mr O'Callaghan stated that he did not believe Mr Deane had made reference to the '*Fraud Squad*', stating that Mr Deane had recounted to him only that Mr Gilmartin had said he could '*have a number of councillors arrested.*'

15.14 Insofar as Mr Deane attested to Mr Gilmartin having made his utterances in a hotel room, Mr O'Callaghan told the Tribunal that Mr Deane's evidence (and indeed Mr Gilmartin's) was inaccurate in this regard. Mr O'Callaghan contended that insofar as Mr Gilmartin could have had any conversation with Mr Deane it must have been in a room in the County Council offices. It was Mr O'Callaghan's contention that while he indeed had hired a room in the Royal Dublin Hotel on 16 May 1991, only himself was present in it up

to the time of the Quarryvale rezoning vote. Subsequent to the vote a number of people, including Mr Gilmartin, a number of councillors and bank officials had gathered with Mr O'Callaghan, Mr Deane and Mr Dunlop in the hotel room.

15.15 The Tribunal was satisfied, as a matter of probability, that during the course of 16 May 1991 Mr Gilmartin was indeed present in a room in the Royal Dublin Hotel, hired by Mr O'Callaghan, together with number of individuals, including Mr Lawlor, Cllr Gilbride, Mr Dunlop and other councillors. There was no dispute as between Mr Gilmartin and Mr Deane that Mr Gilmartin intimated, at some point during the course of the day, that he would telephone the Gardai. There was a discrepancy in their respective evidence as to what may have triggered Mr Gilmartin's threatened action. The Tribunal preferred Mr Gilmartin's testimony to that of Mr Deane. The Tribunal was satisfied that Mr Gilmartin perceived something untoward afoot which led to his threat to involve the Gardaí. The Tribunal accepted Mr Gilmartin's contention that his unease on 16 May 1991 (whether well founded or not), was partly due to his knowledge of demands for money made by Mr Lawlor and by Cllr Hanrahan.

15.16 The Tribunal did not accept as credible Mr Deane's contention that Mr Gilmartin's purpose for involving the Gardaí was to remove councillors who '*opposed*' Quarryvale.

15.17 The Tribunal also accepted Mr Gilmartin's evidence that Mr Dunlop and Cllr Gilbride were present when he threatened to call the Fraud Squad and considered it probable that Mr Gilmartin was reminded that a previous Garda investigation into complaints made by him in 1989 had led nowhere. Notwithstanding Cllr Gilbride's denial that the 1989 Garda investigation had ever been discussed between himself and Mr Gilmartin, the Tribunal was satisfied that by 1991 Cllr Gilbride was aware of this investigation, as it had been widely reported by the media. Equally, the Tribunal was satisfied that Mr Dunlop was aware of the progression of that investigation, having regard to his admitted contact with Mr Gilmartin in 1989 and the fact that he provided Mr Gilmartin with press-cuttings concerning that investigation.

15.18 On 16 May 1991 Cllr Gilbride voted in favour of the Quarryvale rezoning motion. He also voted in favour of the amending motion in the names of Cllrs McGrath, Hanrahan and Hand which immediately preceded it. There was no suggestion, prior to his vote on 16 May 1991, that Cllr Gilbride was in receipt of financial inducement to support Quarryvale from Mr Dunlop, Mr O'Callaghan, or indeed from Mr Gilmartin.

CLLR GILBRIDE'S CONTINUED SUPPORT FOR THE QUARRYVALE PROJECT

15.19 Following the rezoning of Quarryvale on 16 May 1991 and having been re-elected as a councillor in June 1991, Cllr Gilbride continued to be a strong supporter of Quarryvale, and he was, by 1992, very much involved in lobbying other councillors for support of the rezoning. Mr Dunlop's '*Contact Report*' of 17 June 1992 listed Cllr Gilbride as the person designated to make contact with Fianna Fail Cllrs Cyril Gallagher, Betty Coffey and Seamus Brock, and Cllr Donal Marren of Fine Gael.

15.20 In terms of his relationship with Mr O'Callaghan, the '*remunerated*' phase of Cllr Gilbride's involvement with Quarryvale commenced in September 1992, and continued until April 1993 (see below).

15.21 There was substantial contact between Cllr Gilbride and Mr Dunlop in the latter half of 1992, particularly in the months of September to December. Mr Dunlop's record of telephone calls to his office for the month of December 1992 revealed that Cllr Gilbride made telephone contact with his office on at least eleven occasions. As those records only indicated Cllr Gilbride's attempts to make contact with Mr Dunlop, it was probable that there was a substantial level of actual contact between both men, and between them and Mr O'Callaghan in the period leading up to 17 December 1992 vote.

15.22 Cllr Gilbride acknowledged to the Tribunal that he was aware of the efforts being made by those who opposed the Quarryvale rezoning to have the town centre zoning, which had been achieved in May 1991, reversed. He also acknowledged that, as a supporter of Quarryvale, he spoke to fellow councillors in the lead up to the vote of 17 December, and urged them to support the Quarryvale project.

15.23 Cllr Gilbride refuted any suggestion that the payments he received from Mr O'Callaghan from September 1992 onwards had anything to do with his support for the Quarryvale project. Cllr Gilbride also told the Tribunal that he had not felt it necessary or appropriate to declare to the County Council, prior to casting his vote on 17 December 1992, that he was in receipt of regular payments from Mr O'Callaghan. Cllr Gilbride told the Tribunal that he did not see any need to inform his Fianna Fail Party colleagues of his receipt of payments from Mr O'Callaghan at the time he was seeking their support for Quarryvale.

15.24 Cllr Gilbride's contact with Mr Gilmartin had effectively ceased following the 16 May 1991 vote, until he received a telephone call from Mr Gilmartin on 16 December 1992, the eve of the second Quarryvale vote. The purpose of Mr Gilmartin's call was to urge Cllr Gilbride to '*collapse*' the Quarryvale vote.

15.25 On 17 December 1992, Cllr Gilbride voted in favour of the project to rezone the Quarryvale lands for retail development.

15.26 In June 1993 Cllr Gilbride (together with Cllr Tyndall) was instrumental in promoting a motion[4], proposing an amendment to the Quarryvale Written Statement. This motion which was passed on 4 June 1993, and had the effect of allowing for more retail development on the Quarryvale site than was envisaged in the original Written Statement.

PAYMENTS MADE TO CLLR GILBRIDE BY MR DUNLOP

15.27 Mr Dunlop told the Tribunal that in the course of the 1991 Local Election campaign he was approached by Cllr Gilbride who sought an election contribution from him. When making that request, Cllr Gilbride referred to his support for the Quarryvale rezoning. Mr Dunlop believed that Cllr Gilbride solicited the payment at a meeting between them on 28 May 1991. Mr Dunlop's diary on that date had an entry relating to Cllr Gilbride. Mr Dunlop claimed that Cllr Gilbride suggested that *'others would have to be looked after'*, and that Mr Gilbride having initially sought IR£15,000, they reached agreement on a payment of IR£12,000. Within a couple of days of the request, according to Mr Dunlop, he travelled to Cllr Gilbride's home in Skerries, Co. Dublin, where he paid the IR£12,000 in cash. Mr Dunlop maintained that, as he handed over the money to Cllr Gilbride, the latter commented to the effect that '*the boys will be pleased*', a comment which Mr Dunlop interpreted as Cllr Gilbride's indication that portion of the IR£12,000 would be passed on by him to other councillors. Mr Dunlop said he did not now know, nor had he inquired in 1991, if in fact Cllr Gilbride had paid any of the IR£12,000 to other councillors.

15.28 Mr Dunlop first identified Cllr Gilbride as the recipient of IR£12,000 in his 1991 Local Election list compiled on Day 147 (19 April 2000).

15.29 In his subsequent statements of October 2000 and December 2003, Mr Dunlop specifically linked the payment of IR£12,000 in 1991 to Cllr Gilbride's support for the Quarryvale project[5].

[4] This was a motion amending the initial motion signed by Cllrs O'Halloran, Ridge, McGrath and Tyndall.

[5] In the Fox & Mahony and the Ballycullen/Beechill modules, Mr Dunlop also linked this payment to Cllr Gilbride's support for Quarryvale. However, in a previous module Mr Dunlop said he paid IR£2,000 (not IR£12,000) to Cllr Gilbride prior to the Local Elections of June 1991.

15.30 Cllr Gilbride testified that he received a political contribution from Mr Dunlop in the course of the 1991 Local Election campaign but maintained that the sum received was IR£2,000 in cash, and that it was given to him by Mr Dunlop at Cllr Gilbride's home. Cllr Gilbride denied that he had ever sought IR£15,000, or that he had received IR£12,000 from Mr Dunlop, and he also refuted Mr Dunlop's contention that any political contribution he received at that time was paid to him in connection with the Quarryvale rezoning. Cllr Gilbride also denied suggesting to Mr Dunlop that some of the money would be used to pay off fellow councillors. Cllr Gilbride maintained that Mr Dunlop arrived at his home with a briefcase, and told him that he wished to give him something for the election, to which Cllr Gilbride had replied '*grand*.' Mr Dunlop then produced IR£2,000 in cash and an A4 sheet as a receipt for Cllr Gilbride to sign, which he duly signed. No such receipt was discovered to the Tribunal.

15.31 A cash lodgement of IR£2,000 on 1 August 1991 to a savings account in the names of Cllr Gilbride and his wife at National Irish Bank was described by Cllr Gilbride as the residue of political contributions received by him during the 1991 Local Election campaign. In the course of his testimony in the Fox & Mahony module (and reaffirmed by him on Day 819) Cllr Gilbride stated that the IR£2,000 lodged on 1 August 1991, included half of the IR£2,000 cash he had received from Mr Dunlop. While Cllr Gilbride acknowledged that for him to have been in a position to lodge IR£2,000 cash in August 1991, he must have had accumulated a sum greater than that during the 1991 Local Election campaign, he maintained that his overall election expenditure had been modest, hence the accumulated election contributions received by him (including Mr Dunlop's IR£2,000 cash and IR£1,000 received from his family in the immediate aftermath of the election campaign), had enabled him to lodge the surplus, and also to provide IR£1,000 to local clubs and organisations.

15.32 It was common case that prior to Mr Dunlop's alleged payment of IR£12,000 to Cllr Gilbride, the latter was an enthusiastic supporter of the Quarryvale project, a fact attested to by Mr O'Callaghan and Mr Dunlop, and indeed by Cllr Gilbride himself.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO PAYMENTS TO CLLR GILBRIDE BY MR DUNLOP

i) The Tribunal was satisfied that by 16 May 1991 Cllr Gilbride was considered by Mr Dunlop and Mr O'Callaghan (as also were Mr Lawlor and Cllr McGrath) as a key member of the strategy team for the Quarryvale project. Both Mr O'Callaghan and Mr Dunlop attested to this fact. Cllr Gilbride, while he acknowledged that he had close contact with Mr Dunlop and Cllr McGrath, denied being a member of

the Quarryvale strategy team. The Tribunal was however satisfied such was the case, and it was satisfied that Cllr Gilbride was therefore in a strong position to request and receive substantial monies from Mr Dunlop.

ii) On the issue of the amount of money sought by, and ultimately given to, Cllr Gilbride by Mr Dunlop in late May 1991, and on the issue as to why such a payment was made to Cllr Gilbride, the Tribunal preferred the evidence of Mr Dunlop to that of Cllr Gilbride. As a matter of probability, the Tribunal was satisfied that IR£12,000 was indeed paid by Mr Dunlop to Cllr Gilbride at his request during the 1991 Local Election campaign, in the knowledge of Cllr Gilbride's support for the proposal to rezone Quarryvale and in all probability to ensure Cllr Gilbride's ongoing assistance for the project. The soliciting and acceptance of such a substantial sum of money from Mr Dunlop not only compromised Cllr Gilbride's required disinterested performance of his duties as a councillor, but was in all the circumstances, corrupt.

(iii) The Tribunal was also satisfied that Cllr Gilbride's request of Mr Dunlop for substantial monies during the 1991 Local Election campaign, found, in Mr Dunlop, a willing provider of those funds. Mr Dunlop, by early June 1991, had substantial funds available to him (including IR£80,000 sourced from Riga) to disburse to councillors in the course of the local election campaign.

PAYMENTS MADE TO CLLR GILBRIDE BY MR O'CALLAGHAN

15.33 Between September 1992 and April 1993, Mr O'Callaghan made a series of payments to Cllr Gilbride. In the course of his testimony Mr O'Callaghan explained the purpose of those payments as follows:

> '*...I had got to know Councillor Gilbride quite well, he was a very, very good supporter of Quarryvale and as I said had been there for Tom Gilmartin's time. He said to me in September '92 that he actually wanted to take a sabbatical, he was a school teacher. And that he wanted to take six months off work and spend his time canvassing for himself. First of all to get the nomination, which I think he expected to get to stand for Fianna Fail in the election. And that he would, while he would be doing that of course that he would be also spreading the word for Quarryvale. And to do that he asked me would I support him, replace his salary really, his monthly salary was £1,750 per month, and would I replace that for six months. And I thought about it and I said I would. That's how that, those payments were paid.*'

15.34 Further explaining his arrangement with Cllr Gilbride, Mr O'Callaghan went on to say:

> '*[…] what was agreed was that while he was campaigning or doing a lot of work on the ground for himself to try and get himself nominated for the election No. 1 and to try and ensure that he would get elected if he got the nomination. That at the same time, he would what we would call that he would spread the Quarryvale gospel, that he would try and get people to support Quarryvale as well.*'

15.35 In his first statement to the Tribunal dated 12 April 2000, Mr O'Callaghan categorised the payments made to Cllr Gilbride as '*political contributions*', without elaborating further on the matter.

15.36 In a statement furnished on 3 May 2000 Mr O'Callaghan described the payments made to Cllr Gilbride in the following terms:

> *Between September 1992 and April 1993 I made a number of contributions to Councillor Sean Gilbride totalling £15,500. Councillor Gilbride requested the support as he was running for the General Election in November 1992. Councillor Gilbride informed me that he was making a very serious effort to get elected to either the Dail or failing that to the Seanad so much so that he told me he was taking six months unpaid leave from his teaching job to try to accomplish this. It was in those circumstances that he asked me for support. In view of the support which Councillor Gilbride had given to me and prior to that to Tom Gilmartin, I agreed to support him.*

15.37 In a letter from Cllr Gilbride to the Tribunal on 15 November 2004, he, *inter alia*, stated:

> *I took the academic year September '92 to June '93 off on leave of absence as I wished to spend the year devoting myself to politics and Owen O'Callaghan gave me political donations that year.*

15.38 In the course of his evidence Cllr Gilbride told the Tribunal that in June/July 1992, he had a discussion with Mr O'Callaghan about his proposed career break, and that in August 1992 he duly applied to his employers for leave of absence.

15.39 Giving evidence about how the arrangement with Mr O'Callaghan had come about, Cllr Gilbride stated:

> '*... As I said to you earlier, I would have met him four or five times and whether I phoned him or he phoned me, I forget but I had had general conversations with him regarding my political career and things like that and I had expressed a desire to devote part of my time to try to get a Dáil or a Senate seat and I would need time to start knocking on doors and meeting people and things like that and I said that I would like to be able to take some time off and he asked me would he be able to support me in political donations and he agreed.*'

15.40 Cllr Gilbride stated also:

> '*I asked him would he be able to support me for the six months I was off that I, as far as I remember, I told him what salary I was getting. I said that if I was able to get that, that I would be very happy that I would be able to spend my time getting ready for elections that I wanted to knock on a lot of doors and get myself generally ready.*'

15.41 Responding to Tribunal queries as to why he had not gone to Mr Dunlop who had provided him with, on his account to the Tribunal, the single largest political donation he had received (IR£2,000), Cllr Gilbride explained:

> '*I didn't... I didn't go back, it didn't go in to my head to go back to him. I was quite friendly with Mr. O'Callaghan. We had talked previously as I said about my 'would be' political career and he expressed an interest in seeing me advance and things like that. And then when I asked him, he was quite agreeable and he agreed to make me those political donations.*'

15.42 Cllr Gilbride told the Tribunal that Mr O'Callaghan was the only developer he had approached in 1992 to assist him in his political career. Prior to making his approach to Mr O'Callaghan, Cllr Gilbride believed he had met him possibly five or six times, having first been introduced to him in or around April 1991.

15.43 A General Election was called on 5 November 1992. Voting took place on 25 November 1992 and the linked Seanad Election took place in January/February 1993. This General Election was unexpected, although Cllr Gilbride claimed that because of political tensions at the time he anticipated that an election would be called. In any event, as matters transpired, Cllr Gilbride was not a candidate in either election.

15.44 Cllr Gilbride's arrangement with Mr O'Callaghan commenced in September 1992 and continued until April 1993, and encompassed the second Quarryvale rezoning vote of 17 December 1992. Mr O'Callaghan and Cllr Gilbride conceded that, save for knowledge that came to Mr Dunlop of the arrangement, neither publicised their financial arrangement. The Tribunal was satisfied that while, as Mr Dunlop stated in evidence, Cllr Gilbride's attention to the Quarryvale rezoning issue was a matter of comment, it was not otherwise known by Dublin County Council councillors, or generally, that Cllr Gilbride was on Mr O'Callaghan's/Riga Ltd's payroll over a period of seven months.

15.45 Documentation discovered by Riga Limited to the Tribunal identified seven payments made to Cllr Gilbride totalling IR£15,500. Records showed that the payments were made by cheque by either Riga Ltd or Mr O'Callaghan, with Mr O'Callaghan being duly reimbursed by Riga Ltd in respect of his payments. The payments were as follows:

30 September 1992 - IR£1,750 (made by Riga);
28 October 1992 - IR£1,750 (made by Mr O Callaghan);
1 December 1992 – IR£1,750 (made by Mr O Callaghan);
6 January 1993 - IR£5,000 (made by Riga);
8 February 1993 - IR£1,750 (made by Mr O Callaghan);
3 March 1993 - IR£1,750 (made by Mr O Callaghan); and
21 April 1993 - IR£1,750 (made by Mr O Callaghan).

15.46 Cllr Gilbride described the IR£5,000 payment made in January 1993 as an additional payment to the agreed period payments. It was made by Mr O'Callaghan after Cllr Gilbride had advised him of the expenditure he had incurred while canvassing for his party colleagues during the elections.

THE ROLE PLAYED BY MR DUNLOP IN THE GILBRIDE/O'CALLAGHAN FINANCIAL ARRANGEMENT

15.47 Documentation provided to the Tribunal by Mr Dunlop revealed a letter written to him by Cllr Gilbride on 18 September 1992 (on Dublin County Council notepaper) in the following terms:

Dear Frank,

The figure I mentioned to you £1,750 a month, made up of £1,500 & £250 which is made up of Pension, PRSI and Health Insurance.

Yours faithfully,

Sean Gilbride

P.S. I am off until end of March. Seven months.

15.48 Mr Dunlop testified that in September 1992, Cllr Gilbride had informed him of his arrangement with Mr O'Callaghan and that Cllr Gilbride told him that he had not received his monthly payment. Mr Dunlop had agreed to look into the matter, whereupon Cllr Gilbride wrote to him outlining the details. On receipt of that letter, and after checking with Mr O'Callaghan who confirmed the arrangement, Mr Dunlop himself duly made a payment of IR£1,750 to Cllr Gilbride, which he believed was probably recouped from Riga Ltd using a Frank Dunlop & Associates Ltd invoice[6]. While no documentary evidence of the payment by Mr Dunlop to Cllr Gilbride or, its recoupment by Mr Dunlop from Riga Ltd was provided to the Tribunal, the Tribunal was satisfied that such a payment was in fact made to Cllr Gilbride, and that it was likely to have been made in cash. The Tribunal was therefore satisfied that, in total, Cllr Gilbride received IR£17,250 on foot of his arrangement with Mr O'Callaghan.

15.49 While Cllr Gilbride did not dispute the receipt of IR£1,750 from Mr Dunlop, he denied having approached Mr Dunlop to inform him that he had not been paid by Mr O'Callaghan. Cllr Gilbride testified that in September 1992, Mr Dunlop asked him if he had received payment from Mr O'Callaghan and on hearing that he had not, volunteered to pay Cllr Gilbride. The Tribunal was however satisfied that it was Cllr Gilbride who probably initiated the approach to Mr Dunlop and sought the payment.

15.50 Mr Dunlop stated that Mr O'Callaghan had told him, in September 1992, that he had agreed to give Cllr Gilbride the equivalent of his teacher's salary for a period of time '*... in view of the fact that he had taken leave of absence and of the amount of work he was doing in relation to the Quarryvale project.*' Mr Dunlop testified that he did not recall Mr O'Callaghan referring to those payments to Cllr Gilbride as political contributions.

15.51 In the course of his testimony Mr Dunlop reaffirmed his understanding that in 1992 Cllr Gilbride had taken leave of absence on foot of '*an arrangement with Mr. O'Callaghan that Mr. O'Callaghan would defray, not defray, would recompense him in the context of the amounts of money he would be due if he remained teaching, on the basis that he was devoting his time to the Quarryvale project.*'

15.52 On Day 892 the following exchange took place between Tribunal Counsel and Mr O'Callaghan:

> '*Q 529: Was it well known, Mr. O'Callaghan, that Councillor Gilbride was working for the Quarryvale project?*

[6] Mr O'Callaghan agreed that it was recouped.

A: Oh yes.

Q 530: Right. That would mean that in 1992 that your two main supporters in Quarryvale, that is Councillor McGrath and Councillor Gilbride, one benefitted to the tune of 15,500 pounds and a chance at national politics and the other benefitted in total to a sum of 21,700 pounds from you. Would you agree with that Mr. O'Callaghan?

A: Yes.

Q 531: Right. And do you see anything untoward, Mr. O'Callaghan, in having two people who hold public office, working assiduously for your development in circumstances where their financial involvement is unknown to anybody else?

A: No, I don't really.

Q 532: So you think that it is perfectly in order for any developer to pay a Councillor money or indeed as with Councillor Gilbride, pay him a stipend every month and keep that secret and unknown to other people who will be voting on the development?

A: Yes.

Q 533: Right. So it's your position as a developer then that an elected County Councillor who is elected to represent the interests of the entire community is entitled to be paid a fee or a salary by a developer to promote that developer's interests in relation to matters which that councillor and others will vote on?

A: If he is working to promote that development for the developer, yes.

Q 534: Do you not think, Mr. O'Callaghan, that in fairness to everybody else on the Council, any such interest should have been disclosed?

A: I don't think so, no.'

15.53 The Tribunal considered Mr O'Callaghan's evidence in this regard as remarkable, and entirely inconsistent with his assertion on Day 899 that Cllr Gilbride was never *'on his payroll.'*

THE TREATMENT OF THE PAYMENTS MADE TO CLLR GILBRIDE IN THE BOOKS AND ACCOUNTS OF RIGA LTD.

15.54 The payments totalling IR£15,500 made to Cllr Gilbride were duly recorded in the cheque payment books of Riga Ltd as being for the benefit of Barkhill Ltd/Quarryvale. The payments however were not ultimately posted to the Riga Ltd/Barkhill Ltd inter Company Loan Account in Riga's books for the year end 30 April 1993.

15.55 While this was the case, the Tribunal was nonetheless satisfied that from the outset, Mr O'Callaghan considered the payments to Cllr Gilbride to have been made for the benefit of Barkhill Ltd/Quarryvale. Indeed, on 10 November 1992, Mr Lucey (Riga's Bookkeeper) included details of the (by then) two payments which had been made to Cllr Gilbride by Riga Ltd in a document furnished to Mr Fleming, Barkhill's Auditor, which detailed a series of seven payments Riga Ltd had made on behalf of Barkhill Ltd between September 1991 and 4 November 1992.

15.56 In compiling Riga Ltd's financial statements for the year end 30 April 1993, Ms Cowhig, Riga's Auditor, attributed a total sum of IR£425,332.59 to the '*Work in progress – Stadium*' account within Riga Ltd.

15.57 This sum of £425,332.59 comprised, *inter alia,* the following payments by Riga Ltd: IR£80,000 to Shefran (ie Mr Dunlop) in 1991; IR£70,000[7] to Mr Dunlop on 10 November 1992; IR£64,897.78[8] to Mr Dunlop on the 21 January 1993; IR£25,000[9] to Shefran (ie Mr Dunlop) on 17 February 1993; and IR£15,500 recorded in Riga's cheque payments book as paid to Cllr Gilbride from September 1992 to April 1993.

15.58 The three 1991 Shefran payments totalling IR£80,000 were ultimately reattributed to the Riga/Barkhill Inter Company Loan Account, following queries raised by Barkhill's Auditors.[10]

15.59 Of the balance of the expenses which remained in the '*Work in progress - Stadium*' account in Riga's books for the year ended 30 April 1993 (approximately IR£345,332) over half was made up of the payments which had been made to Mr Dunlop (IR£70,000, IR£64,897.78 and IR£25,000) and Cllr Gilbride (IR£15,500).

15.60 This sum of IR£345,332 was written off, in its entirety, within Riga's books (IR£150,000 was written off for the year end 30 April 1994 and the balance was written off for the year end 30 April 1995).

15.61 While Mr Fleming, Barkhill's auditor, had queried why the three Shefran payments totalling IR£80,000 had been excluded from the Riga balance, he never had cause to query the three aforementioned payments made to Mr Dunlop or the seven Cllr Gilbride payments, as none of these payments had been posted by Riga Ltd. to the Riga Ltd/Barkhill Ltd Inter Company Loan Account,

[7] See Part 5 of this Chapter
[8] See Part 5 of this Chapter
[9] See Part 5 of this Chapter
[10] See Part 5 of this Chapter

despite the fact that they were initially classified as Barkhill Ltd expenditure in Riga's cheque payments book.[11]

15.62 As a matter of probability, the Tribunal was satisfied that the reason why a decision was made not to include the payments to Cllr Gilbride (and indeed those to Mr Dunlop) in the Riga Ltd/Barkhill Ltd inter Company Loan Account was that Mr O'Callaghan and Mr Deane did not want to have to disclose to Barkhill's Auditors and to Mr Gilmartin, the purpose and the beneficiaries of these payments, especially since Mr Gilmartin had been questioning, from mid 1992 onwards, large payments to Shefran Ltd which Riga Ltd was seeking to recoup from Barkhill Ltd.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE PAYMENTS MADE BY MR O'CALLAGHAN TO CLLR GILBRIDE

i. While Cllr Gilbride undoubtedly had ambitions to further promote himself in politics, the Tribunal did not accept that this was the primary reason for the decision to take leave of absence from his teacher's post and place himself on Mr O'Callaghan's payroll.

ii. The Tribunal was satisfied that the primary purpose which prompted the unusual arrangement in question was to enable Cllr Gilbride devote himself on a near full time basis to promoting the Quarryvale project for Mr O'Callaghan.

iii. It was incredible, in the Tribunal's view, that it could be seriously suggested that the political ambitions of an elected councillor could properly be served by that councillor placing himself on the payroll of a developer at a time when the same developer was promoting the rezoning of lands, a process in which Cllr Gilbride, as an elected local representative, was intrinsically involved.

iv. The Tribunal was also satisfied that both Mr O'Callaghan and Cllr Gilbride sought to categorise their arrangement as political donations, in an attempt to deflect from the reality of the situation that pertained in 1992/1993, namely that Cllr Gilbride, an elected representative of Dublin County Council was in the paid employment of Mr O'Callaghan. The payments to Cllr Gilbride were not political contributions.

v. The Tribunal was satisfied that the disinterested performance of Cllr Gilbride's role and duty as an elected representative was entirely negated by his position as a paid employee of Mr O'Callaghan from September 1992 to April 1993. The agreement entered into between Mr O'Callaghan and Cllr Gilbride and the payments made on foot of this agreement clearly constituted corruption.

[11] It should be however noted (as mentioned above) that Mr Fleming had been apprised on 10 November 1992, of the two first payments to Cllr Gilbride.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR RICHARD GREENE (IND)

16.01 Cllr Greene was an Independent councillor in Dublin County Council from 1991 to 1999. He unsuccessfully stood for election to the Dáil in November 1992.

16.02 In his October 2000 statement Mr Dunlop stated the following concerning Cllr Greene:

> *I gave Mr. Greene £500 in cash at the time of the 1992 General Election November 1992 when he was a candidate in the Dublin South constituency. He made the request for support and I gave him £500. I cannot recall where I made the payment to him but I probably did so in the immediate environs of Dublin County Council. Mr. Greene supported Quarryvale. The payment was made to him, on foot of a request by him, on the basis that he had provided crucial support as an Independent for Quarryvale.*
>
> *I believe I also gave Mr. Greene £250 as a contribution, at his request, to an anti-abortion or pro-Christian campaign he was involved with at a later stage -at the time of a referendum in the early to mid-90s.*

16.03 Mr Dunlop made similar assertions in his December 2003 statement and in the course of his evidence.

16.04 Mr Dunlop's diaries recorded scheduled meetings between himself and Cllr Greene on 9 and 14 October 1992. Mr Dunlop's office telephone records indicated that Cllr Greene telephoned Mr Dunlop's office on 1 December 1992.

16.05 Cllr Greene furnished the Tribunal with a statement dated 4 March 2001 in response to queries posed by the Tribunal regarding the receipt of money from Mr Dunlop. In the course of that statement Cllr Greene set out as follows:

> *I served as a public representative (local authority) for a period of eight years (from 1991 to 1999). During that period I endeavoured to represent the Pro-Life, Pro-Family, Christian cause. I also ran as such a candidate in the 1992 General Election and there were 27 other such candidates. During the General Election Campaign I attended a meeting in Baggot Street[1] at a hostel then run by a religious order where supporters had gathered to arrange both financial assistance and election volunteers.*

[1] Cllr Greene advised the Tribunal, by letter of the 29 January 2004, that he wished to correct this matter as he attended a hostel in Lr. Mount Street, and not Baggot Street.

After the meeting I was walking to my car when totally unplanned and without any prior arrangement I met Owen O'Callaghan and Frank Dunlop who had both emerged from Mr. Dunlop's office. They enquired about my well-being. I informed them that I was standing as a Pro-Life, Pro-Family candidate in the forthcoming General Election. Mr. O'Callaghan indicated to me that the cause I was representing was a noble and worthy one and that he would like to make a contribution to my Pro-Life Work. I then or shortly thereafter received a cash payment of £250.00, which was a private charitable donation to my Pro-Life election campaign from Owen O'Callaghan. The money helped to pay election expenses incurred in running my campaign in Dublin South.

In view of the lapse of time and the intense and busy nature of the election campaign I cannot now be more specific about dates. The money was, however, used entirely for the purpose for which it was donated, namely, the support of my Pro-Life candidacy in the 1992 General Election.

16.06 Cllr Greene also averted in that statement to having at some stage received a cheque for IR£150 from Mr Dunlop in support of his '*pro-life*' campaigns, and which, according to Cllr Greene expended on a banner which he used in his Pro-Life campaign.

16.07 In a later statement dated 21 February 2005, Cllr Greene advised the Tribunal of the circumstances of the actual receipt by him of the 1992 Election contribution offered by Mr O'Callaghan. He stated:

Towards the end of an intense and exhausting election campaign, I received a message from Mr. Dunlop's office that a political donation was available for collection from his office. At the end of the campaign and I believe it was early in the week, I received a donation from the reception of Mr. Dunlop's office. I did not meet Mr. Dunlop or Mr. O'Callaghan. This is the reason why I assumed the donation was from Mr. O'Callaghan instead of Mr. Dunlop.

16.08 In his testimony Cllr Greene strongly refuted Mr Dunlop's contention that he had sought an election contribution from him, or that he had sought such contribution on the basis of his support for the Quarryvale rezoning. Cllr Greene disputed Mr Dunlop's figure of IR£500 cash (insisting that it was only IR£250), and Mr Dunlop's claim that the likely location of Cllr Greene's receipt of a political donation was the environs of Dublin County Council. Cllr Greene maintained that the circumstances in which, he believed, he had come to receive a IR£250 donation from Mr O'Callaghan were as set out in his 2001 and 2005 statements. In the course of his testimony he stated that the likely date for his

meeting with Messrs O'Callaghan and Dunlop was, Saturday, 7 November 1992, or, at the very latest, Saturday, 14 November 1992. Cllr Greene outlined in greater detail the circumstances in which he came to call to Mr Dunlop's office to collect the donation by stating that Mr Dunlop's office had telephoned to advise him that the donation was available for collection. Cllr Greene stated that he duly collected the IR£250 from Mr Dunlop's office.

16.09 Cllr Greene strongly denied any connection between the election donation offered to him by Mr O'Callaghan on either 7 or 14 November 1992 and his support for the Quarryvale rezoning project. Cllr Greene stated that, prior to being offered and accepting such a donation, he had been lobbied by Mr O'Callaghan and Mr Dunlop and their advisors with regard to Quarryvale, and on the occasion of that lobbying (14 October 1992) he had advised them of his support for Quarryvale. In his 2005 statement Cllr Greene put it thus:

> *On the 14th October 1992 in the Royal Dublin Hotel, I was lobbied by Mr. O'Callaghan and Mr. Dunlop and I believe two other men with maps and models of the proposed Quarryvale Project were present.* (Date and venue from Mr. Dunlop's statements)*. I agreed to support the project if it brought jobs and prosperity to the Dublin West area and in particular Ballyfermot and Clondalkin where most of the students in the school where I served and serve to this day as a Career Guidance Counsellor, live. Mr. O'Callaghan assured me and others present that that would be the case and I made it abundantly clear I would support the project for job reasons. I did not request a political donation in return for my vote. The election date was not decided and then I did not know I would be a candidate.*

16.10 Mr Dunlop's diary for 14 October 1992 recorded a meeting with Cllr Greene at the Royal Dublin Hotel. The Tribunal accepted the evidence of Cllr Greene, Mr O'Callaghan and Mr Dunlop that this was the date and location, on and at which, Cllr Greene was given details of the Quarryvale rezoning proposals. Mr O'Callaghan, in evidence, agreed that, at that meeting Cllr Greene had evinced his support for Quarryvale. Prior to such meeting it was probable that Cllr Greene was lobbied also by Cllr Sean Gilbride, although Cllr Greene disputed Mr Dunlop's assertion that he had a '*direct relationship'* with Cllr Gilbride.

16.11 Asked about the circumstances in which he claimed to have made a payment of IR£500 to Cllr Greene, Mr Dunlop stated:

> '*Yes, I cannot where, I cannot say to you specifically where I made the payment to him but the likelihood is that I made it to him in the environs of Dublin County Council. I cannot recollect that I ever knew or visited Mr. Greene in his home but I didn't have a great deal of contact with Mr.*

Greene but I did canvass him in relation to Quarryvale. And as I recollect matters there was a direct relationship between Mr. Sean Gilbride and Mr. Greene. And I made a contribution to him on foot of a request by him for an election contribution. I think this was the first time that he had stood in a General Election and I was happy to do so.'

16.12 Asked whether the donation was in any way contingent upon Cllr Greene's support for Quarryvale, Mr Dunlop stated:

'*There is absolutely no doubt that in any conversation that I would have had with Mr. Greene Quarryvale would have been mentioned. I cannot specifically say that he asked me for the, for a donation specifically because of his support for Quarryvale. Certainly in any discussion that I would have had with him and there were very few, Quarryvale would have been mentioned including in relation to the payment.'*

16.13 In response to being reminded by Tribunal Counsel, that in his December 2003 statement, Mr Dunlop had specifically tied Cllr Greene's request for an election contribution to his support for Quarryvale, Mr Dunlop responded:

'*What I am saying is as I have said in the statement that on contact by Mr. Greene to me in relation to a contribution, he would have reminded me of the support that he had given or was giving in relation to the Quarryvale project. Because as the statement says, he was an independent. He was an independent Cllr.'*

16.14 Cross-examined by Cllr Greene on Day 830 on the basis that, as Cllr Greene had by 14 October 1992 given his commitment to support Quarryvale there was no need for Mr Dunlop to pay Cllr Greene money to support the project, Mr Dunlop replied as follows:

'*You are obviously, you are obviously operating on two parallel universe tracts here. I never gave money to anybody unless I was asked. Point number one. And that includes you.*

Point number two. In relation to your support, you are quite right. I don't think I could even intimate that I ever had a doubt that you were a supporter, given what we had been told initially by Sean Gilbride, who obviously had a conversation with you in relation to the matter.' and he further stated, '*I have never had any doubt or did not have any doubt given the point of view that was expressed to me by Sean Gilbride in the first instance and that you were probably a supporter, I had never had any doubt that you were a supporter and I was not in the business of giving out money willy-nilly to people unless I was asked, end of story.*'

16.15 Mr O'Callaghan's sworn account of the circumstances in which he claimed to have made an election contribution to Cllr Greene was given on Day 904. On that day the following exchange took place between Tribunal Counsel and Mr O'Callaghan:

> '*Q. 28. Now, at that time, Mr. O'Callaghan did you make a donation to Mr. Richard Green?*
>
> *A. Yes, I think we did, yes.*
>
> *Q. 29. And can you just outline to the Tribunal the circumstances in which you made that donation?*
>
> *A. As far as I recall we met him on the street, I was with Frank Dunlop and we met him on the street outside Frank Dunlop's office, and he explained his campaign to us and what he was doing, I think he was on the – very much on the anti-abortion campaign at the time, a campaign like that, and I suggested to him actually that he didn't ask, I suggested to him that we would like to contribute to his campaign and we did, I think we gave him a sum of £500 afterwards I think.*
>
> *Q. 30. There was some dispute about the sum, I think Mr. Dunlop says and Mr. Richard Green agrees that it's a figure of, Mr. Dunlop thought it was £500 in cash, Mr. Greene says it was £250 in cash?*
>
> *A. As far as I know it was £500 and I offered it to him actually.*
>
> *Q. 31. And did you give it to him there and then or was he to pick it up?*
>
> *A. No, I asked him to call to Frank Dunlop's office for it, yes.*
>
> *Q. 32. And Mr. Greene has told the Tribunal that he received a telephone call after his meeting with you and Mr. Dunlop and he went to Mr. Dunlop's office and he got a sum of £250, you say it was £500?*
>
> *A. I am almost certain it was, yes.*
>
> *Q. 33. Was that a figure, a payment by Mr. Dunlop in cash on your behalf, which was subsequently reimbursed to Mr. Dunlop?*
>
> *A. Yes.*
>
> *Q. 34. Right. And Mr. Greene has told the Tribunal that the meeting took place, this accidental meeting, on a Saturday, either 7th November '92 or 14th November 1992. And on 7th November, Mr. O'Callaghan, just to assist you, at 8383 please, you will see that there is no entry in Mr. Dunlop's diary for 7th of November 1992, and to further assist you, you*

will recollect that that is the date on which you wrote the cheque for Mr. Batt O'Keeffe at 8423?

A. Yes, which means I was in Cork that day.'

16.16 In the course of his evidence Mr O'Callaghan contended that his meeting with Cllr Greene was on a weekday, and not on a Saturday, as maintained by Cllr Greene. Mr O'Callaghan told the Tribunal that Quarryvale was not mentioned during the encounter with Cllr Greene.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO PAYMENTS MADE TO CLLR GREENE BY MR O'CALLAGHAN AND/OR MR DUNLOP

i. The Tribunal accepted Cllr Greene and Mr O'Callaghan's evidence that on a date during the course of the November 1992 General Election campaign a chance encounter took place between Mr O'Callaghan, Mr Dunlop and Cllr Greene outside Mr Dunlop's offices, and that Mr O'Callaghan proffered an election contribution to Cllr Greene to be effected by Mr Dunlop. It was likely that Cllr Greene's encounter with Messrs O'Callaghan and Dunlop occurred on a weekday. Mr O'Callaghan maintained that his offer of an election contribution to Cllr Greene was unconnected to Quarryvale. However, given that he had provided Mr Dunlop with funds on 10 November 1992 with which to make disbursements to councillors during the 1992 General Election campaign (and in advance of the second Quarryvale rezoning vote), the Tribunal believed that Mr O'Callaghan's generosity to Cllr Greene was not unconnected to his zoning ambitions for Quarryvale.

ii. The Tribunal was satisfied that Cllr Greene received the cash donation from Mr Dunlop (and which was reimbursed to Mr Dunlop by Mr O'Callaghan). As a matter of probability, given Mr O'Callaghan's near certainty of the matter, the sum received by Cllr Greene was IR£500. The evidence of Mr O'Callaghan supported Cllr Greene's contention that the donation was collected by Cllr Greene at Mr Dunlop's office. Mr Dunlop's records of telephone calls made to his office included a telephone call from Cllr Greene on 1 December 1992. As a matter of probability the Tribunal believed that Cllr Greene made this call in response to Mr Dunlop's office having advised him by telephone that the election contribution was available for collection.

iii. Notwithstanding Cllr Greene's contention that his acceptance of the election contribution proffered by Mr O'Callaghan was unconnected to his support for the Quarryvale rezoning (he maintaining that he had promised that support at a meeting in October 1992, a time when an election date had not been decided

and at a time when he was unaware that he would be a candidate),[2] the Tribunal considered Cllr Greene's acceptance of the contribution to have been inappropriate, having regard to the fact that within weeks of receiving it he would be called on to exercise his vote in relation to a matter in which Mr O'Callaghan had a significant vested interest.

[2] The General Election was held on 25 November 1992. The date of the Order specifying the election date was 5 November 1992.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR TOM HAND[1] (FG)

MR DUNLOP'S ALLEGED PAYMENTS TO CLLR HAND RELATING TO QUARRYVALE

17.01 Cllr Tom Hand was elected to Dublin County Council in 1985, and again in 1991. He represented the Clonskeagh ward. He transferred to South Dublin County Council following its establishment in 1994. Cllr Hand died in 1996.

17.02 Mr Dunlop told the Tribunal that in mid May 1991 he was informed by Cllr McGrath that Cllr Hand had agreed to co-sign an amendment to Cllr McGrath's original 15 February 1991 motion which proposed to limit the scope of the retail development permissible on the Quarryvale lands.

17.03 This amending motion was adopted in an attempt to appease the concerns which Green Property Plc were then expressing with regard to the proposal to rezone Quarryvale for town centre use. On 13 May 1991 Mr Corcoran (and his planning advisor), met with Cllr Boland, the Chairman of the County Council, Mr Lawlor, Cllr Ned Ryan and Cllr Marian McGennis, and agreed that an amending motion would be lodged with the Council.

17.04 Although Cllr McGrath denied that he had secured Cllr Hand's agreement to co-sign the amending motion, the Tribunal was satisfied that he probably did so.

17.05 The amending motion was duly moved and passed by the County Council on 16 May 1991. Cllr McGrath's original motion, as amended, was then put to a vote and passed, with the result that the Quarryvale lands were zoned '*Town Centre*' with a retail capacity equivalent to that permitted by the 1983 Development Plan for the Neilstown/Clondalkin proposed town centre. Cllr Hand voted in favour of both the amending and the substantive motion, which he had both seconded. Subsequently, as indicated by County Council records, Cllr Hand remained a consistent supporter of the Quarryvale project.

17.06 Mr Dunlop told the Tribunal that having been advised by Cllr McGrath of Cllr Hand's willingness to sign the amending motion, he duly met him for that purpose. Mr Dunlop's diary for 15 May 1991 recorded a meeting with Cllr Hand in the '*Gresham.'* Mr Dunlop believed that Cllr Hand's signature was probably

[1] Cllr Hand was elected to Dublin Conty Council in 1985 and again in 1991 (Clonskeagh Ward). He died on the 29 June 1996.

obtained on that occasion.[2] Mr Dunlop told the Tribunal, that prior to obtaining Cllr Hand's signature, he reached an agreement with him whereby Cllr Hand, in return for his signature, would receive IR£20,000 from Mr Dunlop (IR£10,000 upon signing of the motion and IR£10,000 to be paid after the Quarryvale rezoning vote).

17.07 Mr Dunlop claimed that the first sum of IR£10,000 was paid in cash to Cllr Hand when he obtained the latter's signature for the motion and that the second sum of IR£10,000 was duly paid in cash to Cllr Hand at his home following the vote of 16 May 1991, during the course of the May/June 1991 Local Election campaign.

17.08 Questioned as to how he had funded the first IR£10,000 payment, Mr Dunlop agreed that it was unlikely that he had sourced this IR£10,000 from withdrawals from his 042 '*warchest*' account given that, as of 15 May 1991, the last recorded withdrawal (IR£16,001) had been made from that account on 18 April 1991. Mr Dunlop further agreed that as of 15 May 1991 he had not yet received the first of the Shefran cheques.[3] Mr Dunlop testified that he paid the first tranche of the money to Cllr Hand from cash resources he had available to him at the time.

17.09 Questioned as to when the second payment of IR£10,000 had been given to Cllr Hand, Mr Dunlop stated:

> '*Well the payment, I cannot say to you specifically where I got the money, but he was very anxious to receive the second payment, and as I say in my statement he made quite a significant number of telephone calls to me in relation to this payment and I arranged to go to his home and pay him the agreed balance, which I did.'*

17.10 Mr Dunlop was unable to state with certainty where he sourced the cash to pay the second instalment of IR£10,000 to Cllr Hand. Mr Dunlop believed it was '*likely*' that the cash was sourced to the withdrawals of IR£25,000 and IR£35,000 on 7 and 11 June 1991 respectively, from his 042 '*Warchest*' account. Mr Dunlop also had access to substantial cash amounts around this time from his encashment of Shefran cheques totalling IR£80,000 in the period 17 May 1991 to 7 June 1991. Mr Dunlop told the Tribunal that he did not advise Mr O'Callaghan of his two IR£10,000 payments to Cllr Hand, and Mr O'Callaghan denied any knowledge thereof.

[2] Mr Dunlop's October 2000 statement and his 2003 statement referred to his obtaining Cllr Hand's signature and paying him IR£10,000 at Cllr Hand's home.

[3] The first Shefran cheque for IR£25,000 was cashed by Mr Dunlop on 17 May 1991.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE PAYMENT OF IR£20,000 TO CLLR HAND

i. Notwithstanding the absence of bank documentation suggesting the receipt by Cllr Hand of IR£20,000 in May/June 1991, the Tribunal was nonetheless satisfied to accept Mr Dunlop's evidence that, within that period, he paid Cllr Hand IR£20,000 in cash in two tranches of IR£10,000 each. The Tribunal was satisfied that this sum was paid to Cllr Hand at his request and, as indicated by Mr Dunlop, specifically in return for his Quarryvale support. In assessing Mr Dunlop's credibility on this issue, the Tribunal took into consideration events (referred to below) relating to Mr Dunlop and Cllr Hand which took place in 1992 and 1993 and which assisted the Tribunal in giving credence to Mr Dunlop's claim of having paid Cllr Hand IR£20,000 in 1991.

ii. This payment was corrupt.

CLLR HAND'S ALLEGED DEMAND FOR IR£250,000

17.11 Mr Dunlop testified that subsequent to the rezoning vote of 16 May 1991 and in particular from 1992 onwards, he and Cllr Hand were in regular contact. Mr Dunlop described Cllr Hand contacting him repeatedly in light of the fact that the Quarryvale rezoning had become extremely contentious because of opposition to it from Green Property Plc, and in the context of the defeat in the 1991 Local Election, of a substantial number of Fianna Fail councillor candidates. Mr Dunlop stated that in those circumstances Cllr Hand (a Fine Gael councillor) saw his continuous support for Quarryvale as more valuable to Mr Dunlop than previously.

17.12 Mr Dunlop's diary indicated sixteen meetings with Cllr Hand in 1991 and twenty-five meetings with him in 1992. The Tribunal was satisfied that Cllr Hand and Mr Dunlop met and discussed a variety of zoning issues in the course of the making of the 1993 Development Plan, and that Quarryvale was a topic of discussion throughout most of that contact.

17.13 Mr Dunlop told the Tribunal that in the course of meetings with Cllr Hand in 1992 the latter requested payment of IR£250,000, in return for his support for Quarryvale. Cllr Hand also informed Mr Dunlop that he had been offered IR£100,000 by Green Property to vote against the Quarryvale rezoning. Cllr Hand had repeated his demand for IR£250,000 on a number of occasions.

17.14 Mr Dunlop testified that, in the course of one such meeting, Cllr Hand said he wished for the money to be lodged into an Australian bank account, and he provided Mr Dunlop with a piece of paper containing the details of an account in Cllr Hand's name in the Commonwealth Bank of Australia's Karrinyup (Western Australia) Branch. This piece of paper was duly provided by Mr Dunlop to the Tribunal.

17.15 The Tribunal established that in 1992, Cllr Hand was indeed the holder of two accounts at that branch of the Commonwealth Bank of Australia. Moreover, the Tribunal also established that a series of numbers, in manuscript on the document (and said by Mr Dunlop to have been on the document when it was given to him by Cllr Hand), constituted the number of a Term Deposit Account held by Cllr Hand at the said bank.

17.16 Asked for his understanding as to why it was that Cllr Hand had requested IR£250,000, a request Mr Dunlop described as '*outrageous',* Mr Dunlop stated:

> '*Well first of all he said he was, the two aspects to this, one is that he had signed the motion and that had been dealt with, but he was an ongoing supporter of Quarryvale, but in the context of what happened after the, in the June 1991 elections, and subsequently, and specifically that refers to the campaign run by Green Property, that he was going to be even more valuable, or more important in the context of anything that happened in relation to Quarryvale. And specifically that he had been offered 100,000 to vote against Quarryvale or to do everything in his power to ensure that any vote in relation to Quarryvale subsequently would fail.'*

17.17 Mr Dunlop testified that his response to Cllr Hand's repeated demand for IR£250,000 was to threaten him with its disclosure to Mr O'Callaghan. Mr Dunlop stated that Cllr Hand replied to the effect that he was prepared to meet Mr O'Callaghan, and to repeat his demand for IR£250,000 to him.

17.18 Mr Dunlop decided to inform Mr O'Callaghan of Cllr Hand's demand, and explained his decision to do so in the following terms:

> '*Well two things. One I was getting a little bit fed up of it because Mr. Hand was very persistent and regardless of anything I said he just continued on, and when I said to him that I would have to talk to other people about it, including Mr. O'Callaghan I hasten add, he evinced total lack of concern and I felt therefore that it was, I was obliged, having said to Mr. Hand that I would tell Mr. O'Callaghan that I had to do so, and I did so. And I did so on the basis that I thought it was an outrageous demand, I didn't know how Mr. O'Callaghan would react, but I also had indicated to*

a number of Mr. Hand's colleagues that there were untoward demands being made of me, and I was conscious of the fact that one or other of those might say something to Mr. O'Callaghan about this.'

17.19 Mr Dunlop also said that he was:

'*...concerned, quite simply using God given intelligence that if he is being offered 100,000 by Green Property to stop the vote on Quarryvale and we were refusing to give him 250,000 pounds, God alone knows what would happen. So we had to stop him in his tracks.'*

17.20 Mr Dunlop and Mr O'Callaghan both testified that in due course, on the 6 October 1992, at a meeting attended by Mr Dunlop, Mr O'Callaghan and Cllr Hand, Cllr Hand repeated his demand for IR£250,000 directly to Mr O'Callaghan.

17.21 Prior to the meeting, Mr O'Callaghan had been advised by Mr Dunlop of Cllr Hand's demand, but was not informed, according to Mr Dunlop, that Mr Dunlop had already paid two sums totalling IR£20,000 to Cllr Hand earlier in 1991 in relation to his support for the Quarryvale project. Mr Dunlop said he distinguished between the earlier payments, and the demand for IR£250,000, because of the substantial size of the latter demand, also because of Green Property Plc's alleged offer to pay Cllr Hand, and finally because Cllr Hand was continually besieging his office looking for the money.

17.22 Mr O'Callaghan acknowledged that he met Cllr Hand on 6 October 1992, and acknowledged that Cllr Hand had repeated to his face, the demand for a payment of IR£250,000. Mr O'Callaghan also informed the Tribunal that Cllr Hand advised him that he had been offered IR£100,000 by Green Property Plc to oppose the rezoning of Quarryvale. Contrary to Mr Dunlop's belief that he had informed Mr O'Callaghan of the fact that Cllr Hand had requested that the IR£250,000 be paid into an Australian bank account, Mr O'Callaghan stated that he had not been given this information. However the Tribunal considered it probable that Mr Dunlop did indeed relay to Mr O'Callaghan Cllr Hand's request to be paid via an Australian bank account, as there was no credible or logical reason, in the view of the Tribunal, for Mr Dunlop to have withheld the 'Australian' factor in the demand, given his decision to notify Mr O'Callaghan of the matter.

17.23 Mr O'Callaghan claimed to the Tribunal that he was dismissive of Cllr Hand's demand in the course of their meeting. He said that he had not treated the IR£250,000 demand seriously. Mr O'Callaghan recalled Cllr Hand as laughing throughout the encounter, and that Cllr Hand appeared to believe that *'the whole thing was very funny.'*

17.24 Notwithstanding the circumstances in which Mr Dunlop had brought Cllr Hand to meet him, Mr O'Callaghan claimed that he had not questioned Mr Dunlop if he had paid Cllr Hand, or other councillors, to support the Quarryvale project nor had he enquired if Mr Dunlop had received other requests for payments, although by this time, Mr O'Callaghan had not only personally witnessed Cllr Hand's demand for IR£250,000 for his support for Quarryvale, but had also, in 1989, been advised by Mr Gilmartin that another councillor (Cllr Hanrahan) had made a demand for IR£100,000[4] for a similar reason.

17.25 Mr Deane told the Tribunal that Mr O'Callaghan had informed him, subsequently, of Cllr Hand's demand. According to Mr Deane, Mr O'Callaghan appeared to him not to have taken Cllr Hand's demand seriously, and had regarded the demand as ludicrous and unbelievable.

17.26 In contrast to Mr O'Callaghan's description to the Tribunal of his response to Cllr Hand's request for IR£250,000, Mr Dunlop told the Tribunal that Mr O'Callaghan was *'outraged'* at Cllr Hand's demand. Mr Dunlop described Mr O'Callaghan's angry reaction when Cllr Hand repeated the demand to him to his face, and said that Mr O'Callaghan threatened Cllr Hand that he would report the matter to the then leader of the Fine Gael Party, Mr John Bruton, if he persisted with the demand. Cllr Hand, according to Mr Dunlop, retorted that such a threat did not bother him *'in the slightest.'*

17.27 The Tribunal rejected Mr O'Callaghan's contention that he did not consider Cllr Hand's demand in a serious fashion, particularly in light of the fact that Mr O'Callaghan was aware that Cllr Hand was willing to (and did) meet him for the purpose of repeating that demand. The Tribunal accepted as true, Mr Dunlop's evidence that Mr O'Callaghan was *'outraged'* on the occasion of his meeting with Cllr Hand.

17.28 The Tribunal believed that the meeting between Mr O'Callaghan and Cllr Hand on 6 October 1992 was acrimonious, and probably primarily so, because of the enormous amount of money involved. It was, almost certainly, the amount of the demand rather than the fact of a demand for money that angered and concerned Mr O'Callaghan. Indeed, by October 1992, in the course of the Quarryvale rezoning project, Mr O'Callaghan had been asked for, and had paid the following sums of money: IR£10,000 to Mr Lawlor on 23 September 1991; IR£10,000 to Cllr McGrath on 11 October 1991; IR£10,700 to Cllr McGrath on 21 May 1992. Furthermore, he had reimbursed Mr Dunlop for a IR£1,000 payment made to Cllr McGrath in May 1992. In September 1992, Mr

[4] This alleged demand for IR£100,000 by Cllr Hanrahan is considered elsewhere in this Report.

O'Callaghan had also embarked upon his arrangement with Cllr Gilbride to make him monthly payments of IR£1,750. Moreover, over the course of May/June 1991, he had provided Mr Dunlop with IR£80,000, the primary purpose of which was for distribution to councillors standing in the 1991 Local Election.

17.29 Thus, by this time, Mr O'Callaghan was well used to dealing with requests for money from councillors and Mr Lawlor, in the context of their support for Quarryvale, and well used to complying with such requests, albeit for individual sums considerably less than IR£250,000. Indeed, Mr Dunlop himself acknowledged that it was the amount of Cllr Hand's demand, and not the fact of his demand, that was problematic for him.

17.30 In arriving at this conclusion, the Tribunal took cognisance of certain utterances made by Mr Dunlop in the course of his private interview with the Tribunal on 19 May 2000. When being asked if Mr O'Callaghan was aware of a payment of IR£40,000 Mr Dunlop was claiming he made to Mr Lawlor, Mr Dunlop stated:

> '*No. Whether Callaghan suspected or knew he certainly never alluded to it. We had a number of discussions, Callaghan and myself, about political contributions. The major one subsequent to all that was in 1992 in relation to the Tom Hand thing which we organised. I told Callaghan. The reason I told Callaghan was because I was afraid of my life that Callaghan might think I was doing a double whammy on him. I told him about Mr. Hand. He asked me to arrange a meeting, which I did in my office. He tore into Hand at a rate of knots. He said 'Who the hell did he think he was'. Hand said 'He is right and he is due' and he had signed the original motion. He had been involved in the original motion with McGrath. Callaghan said something to the effect like 'If you don't cut this out I will report you to your party leader.'*

17.31 In evidence on Day 771 Mr Dunlop acknowledged that the use of the phrase '*double whammy*' in normal parlance meant '*hitting somebody twice*' (for money). Mr Dunlop's use of the phrase *'double whammy*' therefore in 2000, when discussing the reason why he had brought Cllr Hand to Mr O'Callaghan, suggested to the Tribunal that, at the time Mr Dunlop approached Mr O'Callaghan in October 1992 in relation to Cllr Hand, Mr O'Callaghan had probably some knowledge of the earlier payment of IR£20,000 made by Mr Dunlop to Cllr Hand in 1991. He at the very least, was aware that Cllr Hand had benefited in some shape or form from the funds provided by Mr O'Callaghan to Mr Dunlop via Shefran in May/June 1991.

17.32 Mr Dunlop testified that in the period October 1992 to May 1993, Cllr Hand had continued his quest for payment of IR£250,000 and he had telephoned Mr Dunlop in this regard prior to Mr Dunlop attending the Fine Gael fundraiser of 6 May 1993 (described below).

17.33 There was no evidence provided to the Tribunal which indicated that the IR£250,000 was paid to Cllr Hand, in Australia or anywhere else.

OTHERS INFORMED OF THE ALLEGED DEMAND FOR IR£250,000

17.34 Mr Dunlop told the Tribunal that he informed a number of other people besides Mr O'Callaghan about Cllr Hand's demand, including Mr Lawlor, Cllrs Olivia Mitchell, Mary Elliott, Therese Ridge, Anne Devitt, Colm McGrath and Marian McGennis, and the then leader of the Fine Gael Party, Mr John Bruton.

17.35 In his statement to the Tribunal on 29 March 2005, Mr Lawlor stated that Mr Dunlop had recounted to him a conversation he had claimed to have had with Cllr Hand where *'certain figures were exchanged.'* Mr Lawlor advised the Tribunal that, in his view, Mr Dunlop had not treated Cllr Hand's request seriously and maintained that Mr Dunlop, *inter alia*, had regularly referred to it as his *'fun'* conversation with Cllr Hand. Mr Lawlor also referred to Mr Dunlop's claim that he had informed Mr Bruton of the demand by Cllr Hand, and that, as recounted by Mr Dunlop to Mr Lawlor, Mr Bruton had replied: *'Frank, we know the world is not full of saints.'*

17.36 Cllr McGennis told the Tribunal that Mr Dunlop had mentioned Cllr Hand's demand to her at some stage after the establishment of the Tribunal, and that he had advised her that he would be bringing it to the Tribunal's attention.

17.37 Cllr Colm McGrath had no recollection of being told in 1992 or 1993 by Mr Dunlop of the demand, and had only a vague recollection of a rumour of such a story.

17.38 Cllr Liam T. Cosgrave told the Tribunal that Mr Dunlop had mentioned to him in late 1998 or early 1999 that the Tribunal would be informed of a demand for money made by Cllr Hand.

17.39 Mr Dunlop said that he had informed Cllrs Mitchell, Elliott, Ridge and Devitt of Cllr Hand's remand for IR£250,00 during the course of a lunch attended by the*'2x4 club.'*[5] Mr Dunlop recalled that these councillors suggested

[5] The *'2x4 club'* comprised Mr Dunlop and Mr O'Callaghan and Fine Gael councillors, Cllrs Ridge, Devitt, Mitchell, Elliott, and, on occasions, Cllr Liam T. Cosgrave. Mr Dunlop's diaries contained a number of references to such meetings, using the description *'2x4 club.'*

to him at the time that he inform the then leader of the Fine Gael Party, Mr John Bruton, of Cllr Hand's demand.

17.40 Cllr Elliott told the Tribunal that she had no recollection of ever being told about Cllr Hand's demand by Mr Dunlop.

17.41 In a written statement to the Tribunal Cllr Devitt[6] recalled *'a social dinner with Frank Dunlop, Owen O'Callaghan, Olivia Mitchell, Therese Ridge, Mary Elliott and myself'* when *'Mr. Dunlop mentioned that Cllr Hand had sought a large financial contribution from Mr. O'Callaghan.'*

17.42 She believed Mr Dunlop's story at that time to have been a joke or alternatively, that Mr Dunlop had misheard or misunderstood Cllr Hand. Cllr Devitt maintained that, consequently, she had dismissed Mr Dunlop's statement as merely a *'yarn.'*

17.43 Cllrs Mitchell and Ridge both acknowledged that they were told by Mr Dunlop of Cllr Hand's demand in the course of a social occasion, prior to Mr Dunlop going to Mr John Bruton, in May, 1993, in relation to the issue (see below). Cllr Mitchell recalled Mr Dunlop telling herself and Cllr Ridge that Cllr Hand felt that the money was due to him for his support for Quarryvale. Mr Dunlop had also referred to the fact that Cllr Hand had given him the number of a bank account in Australia. Cllr Mitchell recalled that during the course of their discussion, she inquired of Mr Dunlop if he had paid Cllr Hand, and advised him never to do so.

17.44 Mr Dunlop took issue with Cllr Mitchell's claim on this point, and denied that she had queried him or cautioned him in such terms.

THE RED COW INN FUNCTION

17.45 On 6 May 1993, Mr Dunlop attended a Fine Gael fundraising lunch at the Red Cow Inn in West County Dublin, at the invitation of Cllr Therese Ridge. The then Fine Gael leader, Mr Bruton, was in attendance at the function but sat at a different table to Mr Dunlop.

17.46 Mr Dunlop said that in the course of that event, and at the prompting of Cllr Ridge, he raised the issue of Cllr Hand's demand with Mr Bruton. Mr Dunlop said in that discussion with Mr Bruton he told him of Cllr Hand's demand for a '*substantial sum of money*', in return for his support for the Quarryvale project.

[6] Cllr Devitt did not give evidence in the Quarryvale module.

17.47 Mr Dunlop stated that he did not inform Mr Bruton that he had already paid IR£20,000 to Cllr Hand in 1991 in relation to Quarryvale, or that Cllr Hand had claimed that Green Property Plc had offered him IR£100,000 to oppose Quarryvale. Mr Dunlop also said that he did not advise Mr Bruton that Cllr Hand's demand had been made known to Mr O'Callaghan.

17.48 According to Mr Dunlop, Mr Bruton took a relatively relaxed approach to the information imparted to him, and his response to Mr Dunlop had been to the effect that, '*neither Fine Gael nor the world was populated by angel*s.' Mr Dunlop said that Mr Bruton did not indicate whether he intended to take any action on foot of what Mr Dunlop had told him, and that he did not pursue the matter further with Mr Bruton.

17.49 Mr Dunlop told the Tribunal that the reason he advised Mr Bruton of the matter was his hope that pressure might be brought to bear on Cllr Hand to desist from continuing to make the demand for the payment. He subsequently had advised Cllr Hand that he had informed Mr Bruton of the demand, and Cllr Hand's response to him was that he '*couldn't care less.'*

MR BRUTON'S COMMUNICATION WITH THE TRIBUNAL ON THE ISSUE

17.50 On 11 April 2000 (Day 145) while giving evidence in public Mr Dunlop had responded in the affirmative to a question posed by Tribunal Counsel as to whether any councillor had asked him for money in connection with Quarryvale. Mr Dunlop wrote the name of one councillor (Cllr Hand) on a piece of paper for the Tribunal. Cllr Hand's name was not at that time released into the public domain by the Tribunal.

17.51 On 14 of April 2000 an article in the Irish Independent newspaper reported, *inter alia*, as follows:

> '*Political lobbyist Frank Dunlop is expected to tell the Flood Tribunal that a Fine Gael county councillor asked him for money to vote for the rezoning of a giant shopping centre site.*
>
> *He will say he told FG leader John Bruton that one of his party's senior county councillors in Dublin had sought a substantial donation. […]*
>
> *Last night sources close to Mr. Bruton said the Fine Gael leader had no recollection of any meeting with Mr Dunlop at which such an allegation was discussed.*

It is understood that Mr. Dunlop will name the late Tom Hand, a Fine Gael councillor in south Dublin, as the only elected representative who ever solicited money from him in return for a vote.

Mr. Dunlop is expected to tell the Tribunal that the late Mr. Hand, a former chairman of Dublin County Council, asked him for IR£250,000 to support the rezoning of the Quarryvale site - now home of the Liffey Valley shopping complex. It is understood that Mr. Dunlop will give evidence that Mr. Hand gave him the address of a foreign bank and an account number into which he wanted the IR£250,000 paid.

If Mr. Dunlop says the late Mr. Hand sought the IR£250,000 donation in exchange for his support, he will be asked to hand over to the Tribunal the document given to him by the county councillor… '

17.52 On 18 and 19 April 2000 (Days 146 and 147) Mr George Bermingham SC, Counsel for Mr Bruton attended at the Tribunal to explain Mr Bruton's position in relation to the newspaper report, namely that Mr Bruton denied that he had been told by Mr Dunlop of an improper demand for money by a Fine Gael councillor.

17.53 Cllrs Mitchell and Ridge acknowledged that, in April 2000, following the publication of the article in the Irish Independent newspaper, they had compiled written accounts of their knowledge of Cllr Hand's demand, for the purpose of advising Mr Bruton, prior to the attendance at the Tribunal of Mr Bruton's Counsel on 18 and 19 April 2000.

17.54 The Tribunal became aware of the statements made by the two councillors on 18 April 2000, when Messrs Frank Ward & Co, the solicitors for the Fianna Fáil Party, advised the Tribunal that an employee of the Fianna Fáil Party had found a number of documents in the car park of Leinster House. The documents were handed over to Frank Ward & Co, who in turn furnished the documentation to the Tribunal, on the basis that one of the pages found by the individual bore the title *'Tribunal of Inquiry Questionnaire.'*

17.55 In a written statement to the Tribunal on 16 December 2003, while he referred to having had a conversation with Mr Dunlop at the Red Cow Inn on 6 May 1993, Mr Bruton stated that he had no recollection of the content of their discussion, and that this lack of recollection suggested to him that his conversation with Mr Dunlop had been '*inconsequential.*'

17.56 On Day 777 (18 October 2007), however, Mr Bruton advised the Tribunal as follows:

> '*Well as I said on an earlier occasion that I did not recollect the content of that conversation, other than making the assumption that it was inconsequential. I have had the opportunity over the last two days to scrutinise very carefully, the evidence that Mr. Dunlop gave over two days here last week and to, in particular his answers to a number of questions that he was asked by you and also by the Chairman.*
>
> *And I have also thought about the context of the event and spoken to one person who was with me as I was leaving the event and mentioned who was there.*
>
> *And as a result of going over and over that in my mind, in a, as detailed away as I could over the last two days, or over two days. I gradually came to the conclusion that firstly, the phrase 'There are no angels in the world or in Fine Gael or something like that' was a phrase that I could actually have used, it sort of rang a bell in my mind.*
>
> *Then I noted that in fact Mr. Dunlop wasn't claiming that he had mentioned 250,000 to me and I noticed also in questioning of him, in which he responded that he wasn't really expecting me to initiate an investigation or anything like that.*
>
> *All of those comments from him made me re-examine, in any way that wasn't, that I hadn't done previously and possibly, could not have done previously, my memory. And it gradually came back to me that in fact Mr. Dunlop had said something to me, that wasn't inconsequential [as I'd] previously used the term, but that he did say something about a councillor looking for money, either from him or from somebody else.'*

17.57 Mr Bruton's disclosure to the Tribunal on Day 777 was a departure from the position that had been conveyed to the Tribunal on his behalf on 18 and 19 April 2000, and by Mr Bruton himself on 16 December 2003.

17.58 While in the course of evidence on Day 777 Mr Bruton acknowledged that in May 1993 Mr Dunlop told him that a Fine Gael councillor was seeking money from him, he stated however that he did not recall the name of the councillor mentioned by Mr Dunlop. He could not however exclude the possibility that Mr Dunlop had made the complaint about Cllr Hand.

17.59 Mr Bruton told the Tribunal that as far as he could recollect, in 1993 he had been very much '*disinclined'* to believe Mr Dunlop and that in any event it was for Mr Dunlop to go to the Gardaí with his complaint, as political parties were not equipped to conduct criminal inquiries. Mr Bruton also stated that he had no recollection of Mr Dunlop's complaint having been related to the Quarryvale rezoning issue.

17.60 Mr Bruton acknowledged to the Tribunal that on 16 January 1992, some fifteen months prior to 6 May 1993, as leader of the Fine Gael Party, he had been written to by the Dublin West Retailers/Dublin West Action Group (a letter which was circulated by its author to all Fine Gael representatives both local and national). Mr Bruton acknowledged that the content of the letter suggested that the Quarryvale rezoning had been achieved corruptly. This letter, *inter alia*, described Quarryvale in the following terms:

> *'Quarryvale? A story of stroke rezoning activity of mega proportions. A story which is not yet fully been told – but which is guaranteed to creep out from the sewers as interested parties publicly put the pieces of the jig-saw together.'*

17.61 Following the conversation with Mr Dunlop, Mr Bruton acknowledged that he did not investigate the matter or make follow up enquiries in relation to it. Mr Bruton's explanation for the absence of any follow up by him was that he had found the story told to him by Mr Dunlop '*exceptionally hard to believe.'* Mr Bruton said he did not believe that there was anything much he could have done, given that the allegation was '*pure hearsay.'* Mr Bruton also said that he was, at the time, '*very wary'* of Mr Dunlop.

THE EVIDENCE OF GREEN PROPERTY PERSONNEL AND MR PAT KEATING WITH REGARD TO MR DUNLOP'S EVIDENCE OF CLLR HAND'S CLAIM OF BEING OFFERED IR£100,000 BY GREEN PROPERTY TO VOTE AGAINST QUARRYVALE

17.62 Senior executives of Green Property plc in 1991/1992, namely, Mr John Corcoran, Mr James McKenna and Mr David McDowell all told the Tribunal that they had no knowledge of the matters recounted by Mr Dunlop concerning Cllr Hand, or of any request by, or offer made to, Cllr Hand by Green Property of a sum of IR£100,000, in return for his opposition to the Quarryvale rezoning. Mr Corcoran stated that he had never spoken to Cllr Hand and that when he had sought to meet him to lobby him on behalf of Blanchardstown, Cllr Hand had refused to meet with him. Likewise, Mr Pat Keating, Green Property's Public Relations Representative in the period 1991 and 1992, told the Tribunal that there had been no discussion at any time between him and Green Property plc's principals relating to any offer of payment to Cllr Hand.

17.63 Mr Keating did however recount to the Tribunal a conversation he had with Cllr Hand, probably in mid 1992, on an occasion when Mr Keating was present in the County Council foyer. Cllr Hand had said to Mr Keating '*Are you looking after anybody?,'* a statement Mr Keating had interpreted as Cllr Hand inquiring if Mr Keating was looking after anyone '*financially*.' Mr Keating described the reaction he had at the time to Cllr Hand's query in the following terms:

> '*Are you looking after anybody and, you know, it was a very unusual comment for anybody to make. But instinctively or intuitively I felt that there was an implication there that it was to do with are you looking after anybody financially or whatever. And so I dealt with it on a total conversational piece, what are you talking about, are you talking about two, five or ten and he said, you know, that's only small money or whatever and there was nothing else ever said.*'

17.64 In his private interview with the Tribunal on 4 December 2003, Mr Keating recounted Cllr Hand as having responded to Mr Keating's reference to '*two, five or ten grand a vote*' as only '*bus fare money*.' In evidence, Mr Keating confirmed that this indeed had been the response of Cllr Hand. Mr Keating told the Tribunal that, save for the aforementioned encounter, he and Cllr Hand never had a discussion in relation to financial support for Cllr Hand.

17.65 The Tribunal was satisfied that the Mr Keating's interpretation of Cllr Hand's remarks to him in the County Council chamber, in all probability, reflected the reality of the situation, i.e. that Cllr Hand had asked Mr Keating if he was paying councillors to support Green Property's objectives in 1991/1992.

17.66 There was no evidence provided to the Tribunal that any money had passed between Green Property and Cllr Hand, or that any offer of money was made by Green Property to Cllr Hand, as had been alleged by Cllr Hand to Mr Dunlop. The Tribunal was however satisfied that, as recounted by Mr Dunlop and Mr O'Callaghan, Cllr Hand had alleged to them that he had been offered IR£100,000 by Green Property plc, probably in order to justify his request to them for IR£250,000.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE IR£250,000 DEMAND ALLEGATION

i. The Tribunal was satisfied that Cllr Hand did indeed, as alleged by Mr Dunlop, demand a payment of IR£250,000 from Mr Dunlop, a request repeated in the presence of Mr Dunlop and Mr O'Callaghan, in return for his continued support for the Quarryvale project. It was also satisfied that he provided Mr

Dunlop with details of a bank account in Australia into which the money was to be lodged. That request constituted a very serious act of corruption on the part of Cllr Hand.

ii. The Tribunal was satisfied that Cllr Hand was not paid a sum of IR£250,000 by Mr Dunlop or by Mr O'Callaghan.

iii. It appeared to the Tribunal that it was the very large amount of money demanded by Cllr Hand, rather than the fact of a demand for money, that angered both Mr Dunlop and Mr O'Callaghan. The Tribunal was equally satisfied that what prompted Mr Dunlop to approach Mr Bruton were the repeated requests being made by Cllr Hand for this enormous sum of money, rather than the fact that Cllr Hand had made a request for money.

MR DUNLOP'S AND CLLR HAND'S DEALINGS IN THE PERIOD OCTOBER 1992 TO DECEMBER 1993

17.67 Notwithstanding the events of 6 October 1992 and the threat to report Cllr Hand to the Fine Gael Leader, contact between Mr Dunlop and Cllr Hand subsequent to that date appeared to continue unabated. In October 1992, Mr Dunlop's diary recorded five meetings with him, and there were 32 recorded telephone contacts between Cllr Hand and Mr Dunlop's office. In November 1992, Mr Dunlop met Cllr Hand on two occasions, and six telephone contacts from Cllr Hand to Mr Dunlop's office were recorded in that month. In December 1992, Mr Dunlop's diary recorded a meeting with Cllr Hand at his home on 1 December 1992, and Mr Dunlop's secretary recorded 16 telephone contacts between Cllr Hand and Mr Dunlop's office.[7]

17.68 Included in Mr Dunlop's diarised scheduled meetings for the period in question was a diary entry for 11 November 1992 which stated, '*11.00 T.H. at home.*' Listed also on that date were the following:

'10.00 *P.R at home';*
'11.30 MJC Marine Hotel';
'*1.00 C.B. at DCC';*
'2.30 LTC @ Newtownpark Ave'

17.69 Mr Dunlop's diary also recorded on 10 November 1992: '*5.30 Ashtons Clonskeagh OM*' and '*8.00 Clondalkin.'*

[7] Mr Dunlop's 1993 diary recorded eight meetings with Cllr Hand and there were 85 recorded telephone contacts. In 1994 there were seven meetings and 46 telephone calls by Cllr Hand to Mr Dunlop's office.

17.70 The Tribunal established that such entries were a record of meetings between Mr Dunlop and Cllrs Pat Rabbitte, Cathal Boland, Liam T. Cosgrave, Olivia Mitchell and Colm McGrath for the purposes of making contributions to them at the time of the November 1992 General Election.[8] Cllr Rabbitte's contribution was subsequently returned to Mr Dunlop.

17.71 On Day 813, the following exchange took place between Tribunal Counsel and Mr Dunlop concerning Mr Dunlop's diary entries for 11 November 1992:

> '*Q. 84: And that the purpose of these meetings is primarily for the purposes of making payments to the people who are listed there. What I want you to explain to the Tribunal is the methodology you employed to select these people as being the recipients of money from you, do you understand?*
>
> *A. Yes, I accept that, I accept that perfectly. Either one, it was at the request of the individuals concerned or it was at my initiation, one or the other. And I can say to you in the context of Mr. Pat Rabbitte it was at my initiation. In the context of Tom Hand, a meeting with Tom Hand at home normally meant that Tom Hand was looking for me. If I had met Michael Joe Cosgrave at the Marine Hotel and there was such an arrangement it was probably at the instigation of Michael Joe Cosgrave. Similarly with Cathal Boland at DCC as I have said to you previously, I had very little contact with Mr. Cathal Boland. In fact I cannot recall too many occasions at which I initiated contact with Mr. Boland. And the final one, Mr. Cosgrave, met him at Newtownpark Avenue because that's where he specified. And obviously there was a conversation that took place either at Mr. Cosgrave's initiation or mine in relation to the General Election and a contribution.*
>
> *Q. 85. Yes. On the previous day on 10th November '92 you had made two payments, one to Ms. Olivia Mitchell of 500 pounds and one to Colm McGrath of 2,000 pounds, isn't that correct?*
>
> *A. That's correct.*'

[8] See the sections in this Chapter on Cllrs Boland, Liam T. Cosgrave, McGrath, Mitchell and Rabbitte.

17.72 As already set out in this Chapter, on 10 November 1992 Riga Limited transferred IR£70,000 to Mr Dunlop's 042 Account, a transfer, the Tribunal found, which was effected to place Mr Dunlop in funds for disbursement to politicians (including councillors) in the course of the General Election campaign then underway. Mr Dunlop withdrew IR£55,000 of this money in cash on 10 November 1992 and also had available to him by that date an additional sum of IR£8,500 in cash. [9]

17.73 Mr Dunlop told the Tribunal that although he believed he met Cllr Hand at the latter's home on 11 November 1992 he did not believe that he had given any money to him on that occasion.

17.74 Mr Dunlop provided this testimony to the Tribunal against the back drop of his own acknowledgement, on Day 784, that meetings with the late Cllr Hand '*at home*' were normally for the purposes of paying money to him.

17.75 An analysis of Cllr Hand's bank account for the month of November 1992 established that a sum of IR£10,000 was lodged to his NIB account on 16 November, 1992. This NIB account had been opened on 2 November 1992 with a lodgement of IR£22,000. On 3 November 1992 the account was credited with a further IR£3,000 which was followed on 16 November by the aforementioned IR£10,000 lodgement. These lodgements remain unexplained as to their source. Mr Dunlop denied that he was the source of this IR£10,000 lodgement.

17.76 The Tribunal believed, notwithstanding that Cllr Hand was not a General Election candidate in November 1992, that money did change hands between Mr Dunlop and Cllr Hand on 11 November 1992. In the course of his testimony in another module, in seeking to explain the entries in his diary for 11 November 1992, and in particular the 11 o'clock entry for '*TH at home*'[10], Mr Dunlop stated: '*At 11 o'clock I met a councillor at his home at which money was transferred, he was not a candidate.*'

17.77 Mr Dunlop acknowledged that his testimony in that module was a diametrically opposing account of his 11 November 1992 encounter with Cllr Hand, compared to the account given by Mr Dunlop in the course of his evidence in this module. Mr Dunlop explained:

> '*I cannot definitively say that I gave money to Mr. Hand on that particular occasion. I gave money to Mr. Hand on many occasions but I cannot*

[9] The IR£8,500 was portion of a cheque for IR£11,000 paid by Christopher Jones Snr. (Ballycullen/Beechhill module – see Chapter 4). By 19 November 1992 Mr Dunlop had a further cash sum of IR£10,000, being the proceeds of a cheque from Davy Hickey Properties Ltd (Pennine/Baldoyle module – see Chapter 9).

[10] Cllr Hand was not publicly referred to on Day 358.

definitively say that I did. I certainly did not give him money in relation to the General Election because he was not a candidate.'

17.78 The Tribunal was satisfied that Mr Dunlop's failure to disclose this payment to Cllr Hand was an attempt on his part to distance this payment from the meeting of 6 October 1992 at which Cllr Hand made a demand for IR£250,000 in Mr O'Callaghan's presence. The Tribunal believed that had Mr Dunlop acknowledged this payment it would have proved difficult for him and Mr O'Callaghan to maintain the fiction that Mr O'Callaghan was unware of Mr Dunlop's corrupt activity at that time.

17.79 As a matter of probability, the Tribunal was satisfied that Cllr Hand received money on 11 November 1992. The Tribunal believed that Mr Dunlop paid this money to secure Cllr Hand's support for the forthcoming Quarryvale vote, probably in the context of continuing demands being made by Cllr Hand. The Tribunal believed that this payment was corrupt.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR FINBARR HANRAHAN (FF)

18.01 Cllr Hanrahan was an elected Dublin County Councillor, for the Lucan Ward, between 1985 and 1994, and an elected South Dublin County Councillor from 1994 to 1999. He unsuccessfully stood as a candidate in the General Elections of 1989 (the Seanad), and 1992 (the Dáil). He was a school teacher by profession.

INFORMATION PROVIDED BY CLLR HANRAHAN TO THE TRIBUNAL PRIOR TO GIVING SWORN EVIDENCE

18.02 On 24 March 1998 Cllr Hanrahan responded to a questionnaire furnished to him by the Tribunal and on 9 October 1998 Cllr Hanrahan attended for private interview with the Tribunal.

18.03 In response to the Tribunal's letter to Cllr Hanrahan dated 14 June 2001 seeking documentation and information, specifically details of any meetings between himself and Mr Frank Dunlop, Mr Owen O'Callaghan (or his advisors), Mr Ambrose Kelly, Mr Liam Lawlor, Mr Padraig Flynn and Mr Tom Gilmartin, Cllr Hanrahan advised by letter dated 25 June 2001 that he had no documentation or records in his possession relating to Quarryvale and stated as follows regarding meetings:

> *Of the above, I had one meeting with Mr Gilmartin at his urging, details of which are recorded in the transcript of my meeting with the Tribunal legal team.*

18.04 The Tribunal again wrote to Cllr Hanrahan on 13 September 2001, and again requested that he provide a narrative statement relating to Quarryvale. In addition, he was asked to provide details on the extent to which monies received by him in respect of political donations were lodged to bank accounts and details of individual political contributions from any one source, in the amount of IR£1,000 or more, in the period 1985 to 2000. He was also asked to provide details of any monies received from Mr Dunlop or Frank Dunlop & Associates, either directly or indirectly, in the period 1985 to 2000.

18.05 Cllr Harahan provided a narrative statement to the Tribunal on 27 September 2001 in which he outlined the circumstances in which he met Mr Gilmartin in the late 1980s.

18.06 In relation to his involvement in the Quarryvale rezoning project, Cllr Hanrahan, *inter alia*, stated as follows:

> *The next time Quarryvale surfaced for me was in May '91 when it was due for discussion at the May planning meeting of the Co. Council. The Chairman of Green Properties issues a letter stating that he was happy with Quarryvale proceeding and the principals in Ronanstown had shown no interest in their own zoning proceeding. At the planning meeting I supported allowing the Quarryvale proposal to be entered on the maps for discussion and eventual decision at the final county development plan meeting. I just wished to allow the proposal to be debated and discussed.*
>
> *During the '91 Local Election Campaign Quarryvale became a huge issue and I realised that the public, the Lucan and Palmerstown small business, Brian Lenihan, Snr. T.D. and many more politicians were of the same opinion as myself that Quarryvale was not the proposal to be supported. Reflecting the very strong opinion in my Electoral area I resolved to support the Ronanstown original zoned site and not the Quarryvale proposal. I made my thoughts known among my political colleagues and a number of them were not very happy with this by that (sic) had to accept it as a fact of life.*
>
> *I tabled a motion for the final Development Plan meeting proposing that the Quarryvale lands be zoned 'E' – to provide for industrial and related uses. At the decision time the Chairman proposed and it was agreed that two motions similar to mine be taken together and dealt with first. These motions were defeated by 37 votes to 32 votes. I voted for the motions. My motion was then declared lost as it sought the same result.*
>
> *I voted for an amendment which sought to put 'C1' zoning (less than 'D') and a cap of 100,000 sq ft in the Quarryvale site and it too was defeated by 37 to 32. I knew then that Quarryvale would go through successfully.*
>
> *When the final proposal to rezone Quarryvale was put a retail shopping cap of 250,000 sq ft was put I knew the battle was lost and I abstained. The final vote was 39 for 28 against and 2 abstentions.*
>
> *Quarryvale was through and everybody knew that eventually the cap would be lifted as it inevitably is in these circumstances.*

18.07 Having regard to the Tribunal's request to provide details of political contributions from any one source in excess of IR£1,000 in the period 1985 to 2000 and details of any monies received from Mr Dunlop or Frank Dunlop & Associates Ltd in the same period, Cllr Hanrahan responded as follows: *'As I kept no records I cannot provide details about any monies lodged by me to my accounts.'*

18.08 Cllr Hanrahan also stated that he had no recollection of receiving any money from Mr Dunlop.

18.09 On 16 September 2002, Cllr Hanrahan provided a further narrative statement, dated 13 September 2002, in response to a number of queries (not all of which were connected to Quarryvale), posed by the Tribunal, including a request that he detail all requests/representations made to him by lobbyists, including Mr Dunlop. On that issue of lobbyists Cllr Hanrahan stated as follows:

> *I knew Frank Dunlop. I was aware of him from Fianna Fáil, where he had been General Secretary up to the General Election in 1977. Subsequently, he became head of the Government Information Service. In the period that I was a councillor, Frank Dunlop was well-known among councillors as a lobbyist acting on behalf of certain builders or developers. I was never close to Frank Dunlop. In fact, I did not approve of the way in which he appeared to have access to the Fianna Fáil room in the County Council offices. However, I had no personal dispute with Frank Dunlop and I merely kept my distance from him. While I have obviously read in the newspapers of contributions made by Frank Dunlop on behalf of builders and developers to members of the Council I do not recall receiving any money from Frank Dunlop. I believe that I would recall such an event, and for that reason, I believe that it did not occur. In addition, Frank Dunlop never sought my support in relation to any development plan matter. In the event that Frank Dunlop had an interest in how a particular vote went, he would let it be known how he wished councillors to vote. However, he never approached me and requested me personally to support any individual proposal,* and: *…I do not believe that Frank Dunlop every lobbied me in relation to any proposal in the sense that I do not believe that he ever approached me and asked for a vote in a particular way. I cannot, of course, exclude the possibility that Frank Dunlop could have described to me individually (or to a number of councillors gathered together either in the Council offices or in a nearby venue) the advantages of a particular proposal which he was advocating. I wish, however, to make it absolutely clear that at no stage did Frank Dunlop offer me money in return for my vote nor did I ever request any such payment.*

18.10 Cllr Hanrahan further advised the Tribunal as follows:

> *During the course of my political career, I believe that I received election contributions from a number of builders or developers… It is, of course, possible that during the course of the 14 years that I was on the County Council one or other of the developers who supported me may have asked me to support projects in which they were involved.*

Notwithstanding the time afforded to me to do so for the purpose of preparing this statement I have been unable to recollect any such instances apart from those which I have described in this statement. I have already informed the Fianna Fáil Committee on Standards in Public Life that I did receive donations from developers for election purposes, and I believe that none of these contributions were for more than £1,000.00 Should the Tribunal wish to have information in connection with these contributions, I will obviously supply it.

18.11 Cllr Hanrahan also said in his 13 September 2002 statement that no councillor had ever offered him any financial incentive to support, abstain or oppose any particular County Council vote or had ever made him aware of any financial incentive being available in the event that he was to take a particular stance on a particular issue. Interaction with councillors, he stated, took place in the ordinary course of business of the County Council where proposals then before the Council would be discussed among councillors in advance of voting.

18.12 On 15 December 2003 the Tribunal wrote to Cllr Hanrahan and requested him to provide details of any payments he may have received from Mr Pat Keating, Mr John Corcoran and/or Green Properties Limited for any purpose whatsoever within the period 1988 to 1994 and, that if any such payments had been received by him, to provide details thereof.

18.13 Cllr Hanrahan provided a narrative statement on these matters to the Tribunal on 19 January 2004. In the course of which he stated, *inter alia*, as follows:

2. To put the matter in context I believe it would be helpful if I explain how I met with Mr. John Corcoran and Mr. Pat Keating. As I have previously advised the Tribunal I did not keep records and accordingly I cannot be sure of the exact dates. However as I can recall I believe I first met with Mr. John Corcoran in late 1990/1991. I was introduced to him by the late Brian Lenihan TD. The late Brian Lenihan introduced Mr. Corcoran to me as a friend and supporter of his at a charity fundraising dinner hosted by Brian Lenihan Junior in either the Burlington Hotel or Berkeley Court Hotel. I recall that at the time there was a competition in the Castleknock area for the selection of a Lord Mayor. Whoever raised the most money for charity would be selected as Lord Mayor of Castleknock and Brian Lenihan Junior was a candidate. I was at the dinner because I was a supporter of the late Brian Lenihan TD.

3. At the time there were two Fianna Fail seats in the Dublin West constituency. The late Brian Lenihan and Liam Lawlor were the sitting Fianna Fail TDs. Like me, Mr. Liam Lawlor lives in Lucan. As a County

Councillor, I had aspirations of becoming involved in national politics. I was not a supporter of Mr. Liam Lawlor. This would have been known in the same way as it would have been known that I was a supporter of the late Brian Lenihan. Brian Lenihan was very supportive of me, I considered him my mentor.

4. At the charity fundraising dinner referred to at paragraph 2 when Mr. John Corcoran was introduced to me, the late Brian Lenihan suggested that Mr. Corcoran might be of help to me in the future.

5. At the planning meeting in May 1991 I supported the proposal to allow Quarryvale be entered on the maps for discussion in relation to the implementation of the County Development Plan. During the June 1991 local election campaign the major issue concerning the public in my area was Quarryvale. Whilst I had formed my own view that Quarryvale was not a proposal to be supported public opinion in my area was against the proposal and accordingly I resolved to support the original zoned site for a town centre at Ronanstown. The late Brian Lenihan TD spoke with me about the matter and directed that I was to oppose Quarryvale. As I had already formed a view that I was not in favour of Quarryvale and because the late Brian Lenihan was the senior politician in the constituency at the time and did not normally give directives, I was happy to oppose Quarryvale.

6. There was a general election in November 1992. I was selected on the Fianna Fail ticket to run in Dublin West with Brian Lenihan and Liam Lawlor. This was my first general election campaign as a candidate. Mr. Corcoran wanted Liam Lawlor defeated and offered to support my campaign. As he had been introduced to me by the late Brian Lenihan, I accepted his support.

7. I met with Mr. Corcoran on a number of occasions. I have no records of the dates of those meetings but I associate them with the general election campaign and therefore I believe they occurred over the latter half of 1992. I cannot recall the exact dates or venues of the meetings. I met him for lunch on one or two occasions. I met him at his club, the St. Stephen's Green Club on three or four occasions and there may have been a meeting in the Royal Dublin Hotel. At the meetings we would discuss my campaign and how I felt it was proceeding. Mr. Corcoran advised that he would put Mr. Pat Keating in contact with me to support my campaign. I understood Mr. Keating was a lobbyist for Green Properties Limited in relation to their development of a shopping centre at Blanchardstown as I had seen him around the vicinity of the County Council offices. Mr. Keating supplied a coach with a driver to me five

evenings a week over the two/three week election campaign period. Mr. Keating also gave me the name of a printing company and organised that a leaflet/campaign flyer be prepared for me. I did not have to pay for the coach or the leaflet. To the best of my recollection I did not receive any payments from Mr. Keating.

8. I received payments in cash from Mr. Corcoran at some of the meetings referred to in paragraph 7. I have no recollection of receiving a cheque from him. I cannot be precise as to the amounts received as I do not have records. I understood that the payments were from him personally and that he was a supporter of Brian Lenihan. As regards the money I did receive from him my belief is and was that it was not a donation from Green Properties Limited. The payments were made to assist me with my election campaign. I did not utilise all of the donations which I received for my campaign.

CLLR HANRAHAN'S INVOLVEMENT WITH QUARRYVALE IN THE PERIOD 1991 TO 1998

1991

18.14 The thrust of Cllr Hanrahan's evidence was that he was at all times opposed to the Quarryvale rezoning project. He was in favour of the Neilstown lands being developed, and he also appeared to support the development of the Blanchardstown lands. Cllr Hanrahan's stated position of opposition however to the Quarryvale project appeared to be inconsistent with the stance taken by him in relation to Quarryvale related motions which were on the agenda of the Special Meeting of the County Council on 16 May 1991.

18.15 At that Special Meeting on 16 May 1991, Cllr Hanrahan supported an amendment to motion 38, proposing that the development plan should include a statement to the effect that the area of Quarryvale to be rezoned should not exceed the town centre site designated for development in the 1983 Development Plan.

18.16 The effect of this amendment which Cllr Hanrahan co-signed, with Cllrs McGrath and Hand, if successful (as it was), would in effect, assist in persuading councillors to re-zone the Quarryvale lands for retail use. Cllr Hanrahan told the Tribunal that he signed this motion at Cllr McGrath's request. He did so, he stated, for the purposes of engineering a debate on the issue and not because he supported the proposal. He viewed the vote as a '*preliminary*' vote and not a final position, and had not at that time changed his earlier view that Neilstown was a more suitable site for the development in question.

18.17 Cllr Hanrahan claimed that his signature to the amendment to Cllr McGrath's motion was done '*in a moment.*' He recalled Cllr McGrath simply asking him to sign it. He stated that he could not recall whether or not Cllr Hand had signed the amendment prior to him. He believed his discussion with Cllr McGrath about the matter was a short one.

18.18 Cllr Hanrahan acknowledged that by May 1991 he knew Mr Gilmartin and acknowledged (as evidenced in his own statements), that he was also acquainted with Mr Corcoran of Green Property Plc.

18.19 Cllr Hanrahan claimed to have no knowledge of the fact that Mr Corcoran had met with the Chairman of the County Council (Cllr Boland), in addition to Cllrs Lawlor, McGennis and Ryan on 13 May 1991, although he acknowledged that, possibly, by 16 May 1991 he was aware of the letter furnished by Mr Corcoran to Chairman of the County Council on 15 May 1991 in which Mr Corcoran set out his belief as to what was expected to happen as a result of the meeting on 13 May 1991.

18.20 Cllr Hanrahan told the Tribunal that it '*didn't bother*' him that Green Property/Mr Corcoran were opposed to Cllr McGrath's original motion to rezone Quarryvale. He had had, according to himself, no discussions with Mr Corcoran about Cllr McGrath's original motion or the proposed amendment thereto on 16 May 1991. He did not recall whether or not he had seen Mr Corcoran in the Council building on the date of the vote. Nor, could he recall if he had seen Mr O'Callaghan or Mr Dunlop. He also did not recall seeing Mr Gilmartin on 16 May 1991 in the Royal Dublin Hotel.

18.21 Cllr Hanrahan however believed that he might have been in the Royal Dublin Hotel on that day. He did not recall that Mr O'Callaghan retained rooms there, and did not recall Mr O'Callaghan or Mr Dunlop approaching him on the day of the vote, to discuss either Cllr McGrath's original motion, or the amendment thereto.

18.22 When put to Cllr Hanrahan that the effect of Cllr McGrath's motion, as amended, having been passed on 16 May 1991 was that, effectively, the town centre zoning earmarked for the Neilstown lands in the 1983 Development Plan was being transferred to Quarryvale, he agreed that this was so. Cllr Hanrahan however justified the position he had adopted in the following terms:

> '*…my decision was to allow it to be put forward before the public to allow the debate for myself for clarification. But of course within a very short time of passing that motion I realised, when the Local Election took place, just shortly after that motion went through and I realised that in fact that*

the public in Lucan/Palmerstown the business people of the community and my senior colleague in the constituency, Deputy Brian Lenihan, were all very much against it.

So I've, I resolved to continue with my original belief that the Neilstown, it's called the Neilstown site, it was the site in the Ronanstown actually beside Neilstown, I resolved that that would be the site that I felt should be supported.'

18.23 While he could not recall having seen Mr Lawlor at the County Council on 16 May 1991, he accepted that he had been there. Cllr Hanrahan indicated that he was not involved in, or was aware of, the encounter, as claimed by Mr Corcoran, in which it was alleged that Mr Lawlor had shown Mr Corcoran the proposed amendment to Cllr McGrath's motion, at which Mr Corcoran, maintained did not accord with, what he believed, had been agreed on 13 May 1991.[1]

18.24 Cllr Hanrahan strongly disputed evidence given by Mr Gilmartin to the effect that, on the day of the vote, he came into Mr O'Callaghan's room in the Royal Dublin Hotel or, that he was present there with Messrs O'Callaghan, Deane, Dunlop and Cllr Gilbride. He acknowledged however that on the day in question he may have met Mr O'Callaghan, Mr Dunlop and, indeed, other councillors who were supportive of the proposal, including Cllr Gilbride. He had no recollection of meeting Mr Corcoran.

18.25 Cllr Hanrahan maintained that by the time he signed the amendment to Cllr McGrath's motion (and indeed voted on it), he had not changed his mind about his support for the Neilstown site for a town centre. He continued to reiterate that his actions on the day were simply to provide an opportunity for a public debate on the Quarryvale proposal. He said that he was not worried about the likelihood that limited retail development in Quarryvale might ultimately prove more attractive to a lot of councillors than would the proposed town centre in Neilstown.

18.26 In the course of his evidence Cllr Hanrahan acknowledged that when he responded on 25 June 2001 to queries raised by the Tribunal about any meetings he might have had with Mr O'Callaghan, Mr Ambrose Kelly, Mr Lawlor, Mr Flynn, Mr Gilmartin or Mr Dunlop, he had not, save that he acknowledged the meeting he had with Mr Gilmartin in 1989, adverted to any such meetings.

[1] For a further consideration of this issue see Chapter sixteen on Mr Lawlor.

18.27 Cllr Hanrahan was asked to comment on the entry in Mr Dunlop's diary for 6 June 1991 which recorded *'10.45 FINR H Co. Co.'* [2]

18.28 He could not say whether or not he had a meeting with Mr Dunlop on that date. Asked if he had ever met Mr Dunlop by prior arrangement at the County Council, he stated:

> *'I never had any formal arrangements to meet Mr. Dunlop at any time. Mr. Dunlop popped up so often around the place that I wouldn't have had to have an arrangement with him at the time. If I were in attendance – If I were actually in the party room for instance at the County Council and if I happened to be there on the 6th June, and if he walked in the door he could easily just say hello or something of that nature and he could actually write in his diary that he met me.'*

18.29 The Local Elections held shortly after the May 1991 Quarryvale vote saw a number of councillors lose their seats. However, Cllr Hanrahan retained his seat. During his election campaign, it became obvious, according to Cllr Hanrahan, that the community in his electoral base of Lucan were largely very much opposed to the Quarryvale proposal.

18.30 Cllr Hanrahan questioned the accuracy of an AIB memorandum dated 20 September 1991, (which documented his presence at a public meeting in Palmerstown), which suggested that at that time Mr O'Callaghan believed that he, Cllr Hanrahan, then supported Quarryvale, and he disputed any suggestion that he supported Quarryvale at that time. Cllr Hanrahan dismissed any contrary view, as may have been expressed by Mr O'Callaghan to AIB, as merely being Mr O'Callaghan's opinion.

18.31 Cllr Hanrahan apparently also attended a public meeting relating to Quarryvale in November 1991.

1992

18.32 Mr Dunlop's '*contact report',* furnished to Mr O'Callaghan on 17 June 1992, did not suggest that Cllr Hanrahan had been approached, either by Mr Dunlop or Mr O'Callaghan in the course of contacts being made with councillors from April 1992 onwards.

[2] On Day 769 Mr Dunlop stated that, as set out in his diary for the 6 June 1991, he met Cllr Hanrahan at the Council offices. Mr Dunlop did not suggest that he had met Cllr Hanrahan on that date for the purpose of making a payment to him.

18.33 However, in a number of '*scenarios*' (of likely voting patterns of councillors) suggested by Mr Dunlop in the latter half of 1992, Cllr Hanrahan was noted, for the most part, as being someone who opposed the Quarryvale proposal, save that in one such '*scenario*' he was described as someone who might support the proposal.

18.34 Asked if between May 1991 and December 1992 he had been lobbied by Mr Dunlop or Mr O'Callaghan in relation to Quarryvale, Cllr Hanrahan replied as follows:

> '*No doubt they did. I couldn't remember an actual detail, as I said, the type of person that Frank Dunlop was, was, he just popped up, turned up, would find you nearby if you weren't in the Council offices or if you weren't in your party room. So it's possible that I might have bumped into Frank Dunlop.'*

18.35 Cllr Hanrahan acknowledged in his statement to the Tribunal in September 2002 that '*In addition, Frank Dunlop never sought my support in relation to any development plan matter.'*

18.36 Cllr Hanrahan explained the inconsistency between that statement and his evidence on the basis that he had not specifically recalled Mr Dunlop canvassing him in relation to Quarryvale.

18.37 Mr Dunlop's diary for 9 October 1992 had the following entry:

> '*4.00 OOC to see F Han.'* [3]

Mr Dunlop's 9 October 1992 diary entry indicated that Mr O'Callaghan and Cllr Hanrahan were scheduled to meet. Cllr Hanrahan did not recollect any such meeting, but he accepted that he met Mr O'Callaghan at around this period.
In relation to the 9 October 1992 meeting, Mr Dunlop told the Tribunal that while he himself knew and had met Cllr Hanrahan, Mr O'Callaghan went to see Cllr Hanrahan alone on that occasion. Mr Dunlop also recounted that on one other occasion, during a break in the voting in Dublin County Council, Mr O'Callaghan had again spoken to Cllr Hanrahan on his own, the '*walk around the block'* meeting, see below.

18.38 Mr Dunlop's diary for the previous day (8 October 1992) recorded the following:

> '*OOC to organise B Cass, L Lohan; H Keogh F Hanrahan.'*
> *'DON L to call'*

[3] Mr Dunlop, when initially furnishing his diaries to the Tribunal (in their redacted format) disclosed this meeting with Cllr Hanrahan but redacted a reference to a meeting scheduled with Mr Lawlor on the same date.

This was likely a reference that Mr O'Callaghan/Mr Dunlop were to organise meetings with Cllrs Cass, Lohan, Keogh, and Hanrahan.

18.39 Mr Dunlop told the Tribunal that Mr O'Callaghan did not discuss with or inform him of the outcome of his meetings with Cllr Hanrahan, save to comment that Cllr Hanrahan '*was very difficult.'* Asked by the Tribunal if Mr O'Callaghan had ever suggested to him that Cllr Hanrahan had sought money in return for supporting Quarryvale, Mr Dunlop stated:

> *'He never suggested any – he never suggested such directly. There were stories circulating which slightly colours my recollection and my view on this matter. There were stories circulating, hypocriful or otherwise, anecdotal or otherwise, in relation to what had or had not taken place between Tom Gilmartin and Mr. Hanrahan and others but Mr. O'Callaghan never specifically said to me that after any meeting that he had with Finbarr Hanrahan. I can absolutely tell you what he told me in relation to his meeting with Mr. Hanrahan after he walked up and down O'Connell St. He said that he wasn't open to it. In relation to this particular meeting I have no recollection of Mr. O'Callaghan coming to me and telling me that Mr. Hanrahan was looking for money'*

18.40 Mr Dunlop testified that he had learned, through Mr Ambrose Kelly, of an encounter which Mr Gilmartin claimed he had with Cllr Hanrahan, and he stated that he had raised this matter with Mr O'Callaghan, and that Mr O'Callaghan '*was relatively non-committal about it but he did say that various incidents had taken place.'* Asked if Mr O'Callaghan had told him that Mr Gilmartin had complained that Cllr Hanrahan sought money from him, Mr Gilmartin, Mr Dunlop told the Tribunal:

> '*Oh, certainly again I cannot be date specific about this but certainly at some stage yes. Mr. O'Callaghan did confirm, in inverted commas, that what was circulating in relation to what Mr. Hanrahan allegedly demanded from Mr. Gilmartin at some meeting or other, that that in fact had occured.',* and '*I obviously asked him. I asked Mr. O'Callaghan. I cannot say when I did this but I do have a recollection of raising this issue with Mr. O'Callaghan at some stage during the course of my relationship with him. I cannot say when this occurred but certainly in the circumstances where, as I said there was – there were stories circulating about what had or had not occurred and what had or had not been demanded by Mr. Hanrahan and I believe I raised that matter with Mr. O'Callaghan and Mr. O'Callaghan said that there was some incident or occurrence at some stage and that there was – Mr. Gilmartin had told him that there was a demand for money.'*

18.41 It was put to Mr Dunlop that in his private interview with the Tribunal in 2000, he had said that it was Mr O'Callaghan who had told him about the Gilmartin/Hanrahan incident. In the course of that private interview, Mr Dunlop stated that Mr O'Callaghan had reported to him that Cllr Hanrahan had asked Mr Gilmartin for IR£100,000 in Buswells Hotel and that Mr O'Callaghan had so informed him of this on 17 December 1992, subsequent to '*the walk around the block'* by Mr O'Callaghan and Cllr Hanrahan on that date.

THE *'WALK AROUND THE BLOCK'*

18.42 Mr Dunlop agreed that in the course of his interview in 2000 with Tribunal Counsel, he had alluded to a '*walk around the block'* by Mr O'Callaghan and Cllr Hanrahan, in the following terms:

> '*The night of the motion O'Callaghan and himself disappeared. Walked around the block.'*

18.43 Mr Dunlop was asked if he knew what had happened on that occasion as between Mr O'Callaghan and Cllr Hanrahan, Mr Dunlop responded thus:

> '*To be honest with you I never discussed it with O'Callaghan. I suspect very strongly Hanrahan made demands of O'Callaghan and O'Callaghan refused.',* and '...yes. *nothing and when O'Callaghan suspected that the same moxy was going on, I do not know whether it was, I never discussed it with O'Callaghan. We kept well away from Hanrahan. I had one conversation on the telephone with Hanrahan. I think I mentioned this to you, in which he said something to the effect, the words are important I know but something to the effect is, yes, nothing can be done for nothing.'*

18.44 In his evidence to the Tribunal, Mr Dunlop elaborated further on that event, as follows:

> '*...When Mr. O'Callaghan came back to the Council Chamber on that particular evening after his famous walk around the block with Mr. Hanrahan, Mr. O'Callaghan was spitting fire. Mr. O'Callaghan is a sort of a very even tempered gentleman as I know him, but he was spitting fire on that particular occasion and I, there were others around, I just either asked him directly, verbally or looked at him quizzically and he, expletives deleted, he just told me what Hanrahan was going to do.'*

18.45 Mr Dunlop in the course of his evidence acknowledged that he had told the Tribunal that it was Mr O'Callaghan who had told him about Mr Gilmartin's encounter with Cllr Hanrahan.

18.46 In relation to the words '*when O'Callaghan suspected that the same moxy was going on,'* used by Mr Dunlop in the course of his private interview in 2000, Mr Dunlop confirmed that Mr O'Callaghan never directly told him that Cllr Hanrahan had requested money from him. Mr Dunlop commented:

> '*The fact that O'Callaghan was having private meetings with Mr. Hanrahan at which I was not present maybe wrongly led me to suspect or believe that there was something going on.'*

18.47 According to Mr Dunlop, Mr O'Callaghan referred to Cllr Hanrahan as a '*hard man.'* Mr Dunlop stated that it was his, Mr Dunlop's, belief that Mr O'Callaghan had suspected that during his encounters with Mr Hanrahan, he was being asked, albeit or possibly indirectly, for money.

MR DUNLOP'S ACCOUNT OF HIS OWN INTERACTIONS WITH CLLR HANRAHAN

18.48 In the course of his 2000 interview with the Tribunal, Mr Dunlop was recorded as stating, *inter alia*, (referring to a telephone conversation he had had with Cllr Hanrahan):

> '*I think I mentioned this to you in which he said something to the effect the words are important I know but something to the effect is yes nothing can be done for nothing.'*

18.49 Mr Dunlop agreed that he uttered those words in 2000 in the context of describing interactions between himself and Cllr Hanrahan during the course of the County Dublin Development Plan Review.

18.50 In the course of his evidence, Mr Dunlop testified as follows:

> '*…I think I had a number of telephone conversations with Mr. Hanrahan and that in the course – Mr. Hanrahan was a very difficult man to read in the context of what he might or might not do. He made his views known elliptically but he did on one occasion while I was seeking his support in relation to a vote for Quarryvale, I can't say which specifically, which specific vote it was but certainly it was an early vote in relation to Quarryvale and that a phrase of the nature nothing can be done for nothing was used.'*

18.51 Mr Dunlop stated that it was his understanding of the phrase *'nothing can be done for nothing'* was that Cllr Hanrahan may well have been indicating to him that he was seeking money, or that he would vote in return for money or, that he would vote in a particular way, if an arrangement was arrived at with him.

18.52 Mr Dunlop stated however that he did not pay money to Cllr Hanrahan. When asked why he had not done so, given his own admitted modus operandi, he replied '*It's very difficult to explain this Ms Dillon and without going into inter personal relations but I had a visual inherent distrust of Mr Hanrahan.'* Mr Dunlop stated that he considered Cllr Hanrahan as a man '*who might make exorbitant demands.'*

18.53 Mr Dunlop also told the Tribunal:

> '*… I had a discussion with him in relation to an election contribution and I gave him an election contribution but I never – I canvassed him on a number of occasions in relation to various proposals that were before Dublin County Council and these were very, very short meetings, short canvassing meetings. He would just say we'll see or I might or I'll see what I'll do.'*

18.54 Asked to explain why he had come to the view that Cllr Hanrahan was a man who might be expected to make exorbitant demands, Mr Dunlop stated that his:

> *'…view would have been largely coloured by comments that were made to me by Liam Lawlor for example because he was a constituency colleague of his and there were lots of anecdotal stories about what had and had not happened in the Lucan area in relation to, according to Mr. Lawlor, according to Mr. Hanrahan, relating Mr. Hanrahan. I have no evidence to put forward or to suggest that anything untoward took place, you have asked me the question. I discussed it with Mr. Lawlor.'*

18.55 Mr Dunlop agreed therefore, that independently of what Mr O'Callaghan had told him in relation to Mr Gilmartin's encounter with Cllr Hanrahan in Buswells Hotel, he had discussed with Mr Lawlor an issue concerning Cllr Hanrahan and a request for money, unconnected to Quarryvale.

CLLR HANRAHAN'S VOTING PATTERN ON 17 DECEMBER 1992

18.56 On 17 December 1992 – the day of the Quarryvale rezoning vote, Cllr Hanrahan voted in support of two motions proposing to rezone Quarryvale back to 'E' (industrial) (which were unsuccessful[4]). Cllr Hanrahan also voted in support of a motion which proposed limiting retail development in Quarryvale to 100,000 square feet (and which was also unsuccessful). In relation to the motion which proposed to cap retail development in Quarryvale at 250,000 square feet (which was passed with 39 voting in favour and 28 voting against), Cllr Hanrahan was one of two councillors who abstained.

[4] Cllr Hanrahan himself lodged a similar motion.

CLLR HANRAHAN'S EVIDENCE

18.57 Cllr Hanrahan was asked for his response to the evidence of Mr Dunlop to the effect that on at least one occasion, in the course of a telephone conversation when Mr Dunlop sought his support for a development, possibly Quarryvale, that he uttered words to the effect that '*nothing can be done for nothing*.' Cllr Hanrahan told the Tribunal that while he could not deny that he might have had a telephone discussion with Mr Dunlop, he denied that he uttered the remark attributed to him by Mr Dunlop.

18.58 When invited to comment on Mr Dunlop's evidence that Mr O'Callaghan had repeated Mr Gilmartin's allegation to him that Cllr Hanrahan had sought IR£100,000 for his support for Quarryvale, Cllr Hanrahan commented:

> '*Well, when I was before the Tribunal before on this particular issue I pointed out to the Tribunal that because somebody tells a lie to a number of people it doesn't make it a truth. So Mr. Gilmartin, if he said something to, if he did say it to Mr. O'Callaghan these words, then in fact he was repeating a lie.'*

18.59 Cllr Hanrahan acknowledged that he met with Mr O'Callaghan in relation to Quarryvale, and that on that occasion Mr O'Callaghan sought his support, both for the Quarryvale and the Neilstown projects.

18.60 Cllr Hanrahan recalled that he signed a motion dated 9 December 1992 which sought to revert the Quarryvale Town Centre to Industrial zoning. The motion he had proposed (there were other similar motions put forward at that time), ran counter to what Mr O'Callaghan and Mr Dunlop had advocated for the Quarryvale lands. Cllr Hanrahan stated that he prepared that motion because at that stage he had resolved to support the building of a Town Centre on the Neilstown lands. He acknowledged his awareness, at the time he submitted his motion to rezone Quarryvale to Industrial use, that the Neilstown site was *'O'Callaghan's site'* (Barkhill Ltd owned the Neilstown option on the lands). It was put to Cllr Hanrahan that at the time he submitted his 9 December 1992 motion, the Neilstown lands were proposed for Industrial zoning on the Draft Development Plan and that, moreover, there had been a planning application submitted to the Council for a Sports Stadium/National Stadium on those lands. It was suggested to Cllr Hanrahan that all these matters would have been known to him on foot of the Manager's Report which had been circulated to councillors in early December 1992.

18.61 Cllr Hanrahan stated that he had resolved himself to bring his own motion to remove the Town Centre zoning from Quarryvale and that no one had canvassed him to submit such a motion. The two motions were submitted in his name on 9 December 1992, one a motion which sought to reverse the Quarryvale zoning and the other, which sought that the Neilstown lands revert to Town Centre zoning.

18.62 Cllr Hanrahan acknowledged that, either on the day of the vote (17 December 1992), or very close to it, he had a conversation with Mr O'Callaghan. He and Mr O'Callaghan had walked together during a break in the County Council meeting. Cllr Hanrahan said that he did not recall their conversation in great detail. He acknowledged however that the discussion between himself and Mr O'Callaghan would have centred on Mr O'Callaghan's request for him to vote in support of the Quarryvale motion. Cllr Hanrahan's response to this request was to explain that as he had a proposal contrary to the Quarryvale motion before the County Council at that stage. He resolved to remain on the course on which he had already embarked (which was one of opposition to Quarryvale).

18.63 In response to Mr Dunlop's description of Mr O'Callaghan as '*spitting fire*' when he returned to the County Council after his discussion with him, Cllr Hanrahan told the Tribunal that Mr O'Callaghan '*didn't seem angry when I was talking to him.'* He agreed that Mr O'Callaghan had sought to persuade him to support Quarryvale.

18.64 Responding to Mr Dunlop's evidence that Mr Dunlop believed that Cllr Hanrahan sought money from Mr O'Callaghan, Cllr Hanrahan stated that '*there is no question of that*.'

MR O'CALLAGHAN'S TESTIMONY

18.65 Mr O'Callaghan acknowledged that in the run up to the December 1992 Quarryvale vote he had a discussion Cllr Hanrahan. In the course of that discussion Cllr Hanrahan had told him that he found it very difficult to support Quarryvale because doing so would result in him losing his seat as a councillor in the Lucan area.

18.66 Mr O'Callaghan acknowledged that by October 1992 he was aware of Cllr Hanrahan's opposition to Quarryvale, but he lobbied him nonetheless. Mr O'Callaghan stated that he never discussed money with Cllr Hanrahan, except on one occasion, on the night of the second Quarryvale rezoning vote. Mr O'Callaghan described his encounter with Cllr Hanrahan on that night in the following terms:

'…I walked around the block with Finbarr Hanrahan asking him to support Quarryvale, this was at the break in the meeting in the council chamber. He explained to me how and why he could not support Quarryvale, because it would cost him his seat in Lucan, simple as that, that was his situation always. Last thing he said to me was before he left, when the election comes up, the next election comes up, if he wanted a contribution to help him get elected could he approach me, I said of course he could, that was the extent of the conversation. I walked back into the council chamber, depressed he wouldn't support Quarryvale but that was the extent [of] it, that was his right, he was doing what he felt he had to do.'

18.67 Mr O'Callaghan disagreed with Mr Dunlop's evidence that he, Mr O'Callaghan was angry when he returned from the walk with Cllr Hanrahan, and he disagreed completely with Mr Dunlop's interpretation (as given in evidence by Mr Dunlop) of his demeanour on his return from the *'walk around the block.'* Mr O'Callaghan described Mr Dunlop's account of his demeanour as '*completely crazy.'*

18.68 Mr O'Callaghan was asked if Cllr Hanrahan had given him any indication of what level of financial support for future elections he would have considered appropriate, to which Mr O'Callaghan stated that he had not, and said, '*…the reality of that is that he never even followed it up, he never even asked me when election time came up, he never even asked me when the election came up, for support.'* [5]

18.69 Mr O'Callaghan told the Tribunal that prior to that discussion on 17 December 1992 he never had a discussion with Cllr Hanrahan on the subject of money. He acknowledged that at the time he met and spoke with Cllr Hanrahan in 1992, Mr Gilmartin had by then relayed to him his allegation that Cllr Hanrahan had sought IR£100,000 from him in return for his support for Quarryvale. Yet, Mr O'Callaghan did not raise that matter with Cllr Hanrahan in the course of their discussions.

18.70 Mr O'Callaghan acknowledged that the purpose of the '*walk around the block*' discussion with Cllr Hanrahan was to persuade Cllr Hanrahan to withdraw his opposition to the Quarryvale rezoning, or alternatively to persuade him to either not vote against Quarryvale or abstain.

[5] Cllr Hanrahan was a candidate in the Seanad Election January/ February 1993.

MR DUNLOP'S ALLEGED PAYMENT OF A POLITICAL CONTRIBUTION TO CLLR HANRAHAN IN NOVEMBER 1992

18.71 On Day 148 Mr Dunlop furnished his '*1992*' list to the Tribunal which included Cllr Hanrahan's name as the recipient of IR£2,500. In the course of a private interview with the Tribunal in May 2000, Mr Dunlop stated his belief that he had paid Cllr Hanrahan either IR£2,000 or IR£2,500 for the 1992 election. In the course of his written statement to the Tribunal in October 2000, Mr Dunlop put it thus:

> *Mr. Hanrahan was very unhelpful in relation to Quarryvale. I made a decision that it might bear some fruit if I made a contribution to his election campaign, (he was a candidate in Dublin West in the November 1992 General Election), bearing in mind that there was a vote to be held in December 1992. I don't believe I ever paid, or was asked for, money, by Mr. Hanrahan for his support for motions during the Development Plan.*

18.72 Cllr Hanrahan, in the course of his evidence, denied that he ever received money from Mr Dunlop. Cllr Hanrahan commented:

> '*... it would be much easier for me before the Tribunal here to actually acknowledge that if he had given it to me to acknowledge that he gave to me, that he gave me a sum of money during my 1992 campaign but I'm afraid he didn't and I have to say that he didn't.'*

18.73 Cllr Hanrahan also rejected the idea that Mr Dunlop gave him a donation of IR£2,500 (or any amount), on that basis that Mr Dunlop was a very close friend of Mr Lawlor who was a political rival of Cllr Hanrahan. He maintained that during that period of time politically within the Fianna Fail Party, people took sides and that,' *Frank Dunlop was on the side of Deputy Lawlor',* and *'it would have come as a surprise to me* (Cllr Hanrahan) *if he came over to me and handed me money for my campaign.'*

CLLR HANRAHAN'S DEALINGS WITH GREEN PROPERTY PLC IN THE PERIOD 1991 TO 1993

18.74 Cllr Hanrahan acknowledged that in the course of the Quarryvale rezoning process, he had met Mr Corcoran of Green Property Plc a number of times, and on occasions met Green's PR consultant, Mr Keating. Cllr Hanrahan acknowledged financial support from Mr Corcoran at the time of the General Election in November 1992, which he claimed did not exceed IR£300. This was his first General Election campaign. Cllr Hanrahan told the Tribunal that in the earlier Local Election (in June 1991) he had beaten Mr Lawlor, and that:

'...in '92, Mr. Lawlor would have been under a lot of pressure from my direction because it could have followed that I might have been successful in actually topping him once again. As it turned out I didn't top him again. But I'm sure people who were interested in defeating Mr. Lawlor, I took it that Mr. Corcoran would, if he was interested in defeating Mr. Lawlor would have approached myself because I was the person who had a chance of actually succeeding in that endeavour. I had actually defeated him at the convention as well even though I state in my statement that I was selected to go forward along with Brian Lenihan and Liam Lawlor. In fact, the night of the convention it was myself and Brian Lenihan who was selected to go forward.'

18.75 Mr Pat Keating told the Tribunal that during the course of the 1992 General Election campaign Green Property Plc expended a sum of IR£4,160 on election literature and other support for three councillors. Mr Keating stated that Cllr Hanrahan was one of these three candidates and he believed that each would have received support close to IR£1,500 out of the sum expended.

18.76 In his statement of 18 December 2003, Mr Keating described the reasons for the Green Property funded contributions made to Cllr Hanrahan as follows:

Cllr Hanrahan was Palmerstown based and in that area, there were concerns that Quarryvale would damage the Palmerstown Shopping Centre. In addition, he appeared set to make a bid to take Liam Lawlor's Dáil seat. He was keen to pick up anti Lawlor votes in the Blanchardstown area and also in the north Clondalkin area.

18.77 In addition to funding election literature, Cllr Hanrahan had also received support from Green Property Plc in the form of a loan of a rented mobile phone. He was one of eight councillors who received such assistance, at a total cost to Green Property of IR£955.

18.78 Mr Corcoran acknowledged that he met Cllr Hanrahan on a number of occasions during the November 1992 General Election campaign and that he offered to support Cllr Hanrahan financially, because he wanted Mr Lawlor defeated in the election. Mr Corcoran, however, claimed to have no recollection of having given a number of small donations to Cllr Hanrahan. Nor, did Mr Corcoran have any recollection that Mr Keating, on behalf of Green Property, had provided Cllr Hanrahan with a bus and driver during the course of the election campaign.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO PAYMENTS MADE TO OR REQUESTED BY CLLR HANRAHAN

i. The Tribunal accepted Mr Dunlop's evidence that in the course of a conversation he had with Cllr Hanrahan during the currency of the making of the Development Plan, he had been left with the impression that Cllr Hanrahan's reference to *'nothing can be done for nothing'* was an indirect request for money, was correct. The Tribunal however was further satisfied that Cllr Hanrahan did not make a specific request to Mr Dunlop for money connected to any support he might give to the Quarryvale rezoning.

ii. The Tribunal however was satisfied that Mr Dunlop, in the course of the 1992 General Election, in all probability paid Cllr Hanrahan a sum of either IR£2,000 or IR£2,500 in the circumstances, and for the reasons, as outlined by Mr Dunlop. The Tribunal was satisfied that the primary purpose of the payment was an attempt by Mr Dunlop to compromise Cllr Hanrahan's disinterested performance of his duty as a councillor in the context of providing future voting support for Quarryvale. The acceptance by Cllr Hanrahan of this money from Mr Dunlop in circumstances where he knew of Mr Dunlop's role as a lobbyist in relation to rezoning matters, was improper.

iii. The Tribunal was satisfied, notwithstanding Cllr Hanrahan's and Mr O'Callaghan's denials, that in the course of their *'walk around the block'* on 17 December 1992, Cllr Hanrahan solicited money from Mr O'Callaghan in return for his voting support for Quarryvale. This was a corrupt demand. The Tribunal, in arriving at the conclusion that money was requested by Cllr Hanrahan had particular regard to the following:

- Cllr Hanrahan had previously sought IR£100,000 from Mr Gilmartin in return for his support for Quarryvale, and was thus not averse to seeking money from developers. The Tribunal has found in the Report that such a demand was made, and that it was corrupt, and that this demand had been made known to Mr O'Callaghan almost immediately after it had been made.

- Mr Dunlop described Mr O'Callaghan as being angry on his return to the Council Chamber following his *'walk around the block*' with Cllr Hanrahan on 17 December 1992. The Tribunal was satisfied that Mr Dunlop's description of Mr O'Callaghan's demeanour, following his discussion with Cllr Hanrahan, was accurate. Having had ample opportunity to witness Mr O'Callaghan's demeanour over a prolonged period of time while giving

evidence at the Tribunal's public hearings, the Tribunal considered that Mr O'Callaghan was, in general, a person who exhibited a calm disposition, and was not easily angered. The Tribunal believed that, if Mr O'Callaghan's request to Cllr Hanrahan to vote in support of Quarryvale had simply been rejected by Cllr Hanrahan as suggested by both Cllr Hanrahan and Mr O'Callaghan, a more likely reaction on Mr O'Callaghan's part would have been disappointment, concern or anxiety, but not anger.

- The Tribunal believed it likely that Mr O'Callaghan's anger stemmed, not from the fact that Cllr Hanrahan made a demand for money, but rather because of the substantial size of that demand. By this time (December 1992), Mr O'Callaghan had already paid money to a number of politicians at their request, including IR£10,000 to Mr Lawlor, IR£21,700 to (or on behalf of) Cllr McGrath, and he had agreed to make monthly payments to Cllr Gilbride of IR£1,750. By this time also Mr O'Callaghan had paid IR£150,000 to Mr Dunlop (through Shefran Ltd), most of which was intended to be used by Mr Dunlop to make payments to councillors.

- Furthermore, Mr O'Callaghan had by 17 December 1992 *'injected'* IR£85,000 into the campaign to rezone Quarryvale in advance of the Council vote of 17 December 1992, portion of which was represented by the IR£70,000 provided to Mr Dunlop on 10 November 1992 for disbursement during the November 1992 General Election campaign, and included IR£5,000 paid to Cllr G. V. Wright on the 11/12 November 1992.

- There was no suggestion, either by Mr O'Callaghan himself or by anyone else, that the requests which had been made by Mr Lawlor and Cllrs McGrath and Gilbride had evoked in Mr O'Callaghan any appearance or expression of anger. However, as already set out previously in this Chapter, the Tribunal was satisfied that when confronted with a demand by Cllr Hand for IR£250,000, in return for his support for Quarryvale, Mr O'Callaghan's response was one of anger. Mr Dunlop described Mr O'Callaghan's reaction to Cllr Hand's request for IR£250,000 as '*very very angry'* and that Mr O'Callaghan was '*outraged*' by the request. The Tribunal noted that Mr Dunlop's description of Mr O'Callaghan's demeanour after his *'walk around the block'* with Cllr Hanrahan was not dissimilar to Mr Dunlop's description of his demeanour at the time of Cllr Hand's demand.

- The Tribunal believed that Mr O'Callaghan's anger on 17 December 1992 stemmed from the fact that Cllr Hanrahan had requested a sum of money in excess of a sum Mr O'Callaghan might have contemplated paying him, and which was more in line with payments made by him to other councillors in relation to Quarryvale.

- The Tribunal regarded with some incredulity Mr O'Callaghan and Cllr Hanrahan's evidence that Cllr Hanrahan, having rejected Mr O'Callaghan's request to support Quarryvale as made during the *'walk around the block',* would have then proceeded, in effect, to seek leave to solicit an election/political contribution from Mr O'Callaghan in the future. Mr O'Callaghan's evidence in this regard was rendered more incredible given his confirmation that Cllr Hanrahan did not subsequently solicit any such contribution, notwithstanding the fact that Cllr Hanrahan was a candidate in the Seanad Election which took place over the course of January/February 1993. Had there been discussion about possible financial support for Cllr Hanrahan for his election campaign, the Tribunal would have expected evidence from Mr O'Callaghan of a request for such electoral financial assistance from Cllr Hanrahan. The Tribunal in all the circumstances therefore did not accept Mr O'Callaghan's evidence that Cllr O'Hanrahan's reference to money in the course of their walk was to seek leave to solicit a political contribution in the future.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR JACK LARKIN (DECEASED) (FF)

19.01 Cllr Larkin was elected Town Commissioner in Balbriggan Town Council between 1960 and 1994. He was also elected councillor in Dublin County Council between 1985 and 1993, and transferred to Fingal County Council in 1994. Cllr Larkin died in 1998.

19.02 Mr Dunlop told the Tribunal he paid IR£1,000 to Cllr Larkin during the course of the 1991 Local Election campaign. Cllr Larkin's name appeared on Mr Dunlop's Day 147 list of contributions made in 1991.

19.03 In his October 2000 statement Mr Dunlop stated as follows:

> *I came to know Mr. Larkin through my association with Fianna Fail. He was an active member of the organisation in North Dublin and was elected to Dublin County Council on a number of occasions. Mr. Larkin was in receipt of £1,000 in cash during the immediate run-up to the 1991 Local Elections. The money was handed over in Conway's Pub a short time after the Quarryvale vote in May 1991. It was a payment made paid in recognition of his support for Quarryvale and as an indication of further payments for support for other issues during the course of the Development Plan. Mr. Larkin and I discussed the Quarryvale project generally and its timescale. We agreed that Mr. Larkin's support would be necessary, not only in respect of Quarryvale, but also in respect of other developments. Mr. Larkin repeated to me the need for his support on subsequent occasions.*

19.04 Mr Dunlop's later December 2003 statement did not provide any additional detail regarding Mr Dunlop's dealings with Cllr Larkin in relation to Quarryvale.

19.05 Mr Dunlop told the Tribunal that in the course of discussing the then forthcoming June 1991 Local Elections with Cllr Larkin, Cllr Larkin solicited a payment from him, and in doing so reiterated his strong support for Quarryvale. Mr Dunlop said that he paid Cllr Larkin IR£1,000 in that context, and that the payment was made in Conways Public House.

19.06 In his testimony in the Quarryvale module Mr Dunlop described Cllr Larkin as a very good supporter of any project Mr Dunlop brought to his attention. He maintained that throughout the Quarryvale rezoning process Cllr.

Larkin remained supportive, an observation noted by Mr Dunlop in a document compiled by him in 1992 entitled '*Likely voting pattern'* of councillors.

19.07 Cllr Larkin voted in support of Quarryvale on 16 May 1991. His voting record for 17 December 1992 and 4 June 1993 suggested that he continued to support the zoning of Quarryvale. Mr Dunlop's June 1992 '*contact report'* records Cllr Larkin as having been contacted by both Mr Dunlop and Mr O'Callaghan. Cllr Larkin also voted in favour of the adoption of the 1993 Development Plan on 10 December 1993.

19.08 Mr O'Callaghan in his evidence acknowledged having lobbied Cllr Larkin whom he described as a strong supporter of Quarryvale.

19.09 According to Mr Dunlop, scheduled meetings with Cllr Larkin were rare, as he was easily contactable in and around the vicinity of the County Council offices.

19.10 Cllr Larkin died on 6 May 1998, and did not give sworn evidence to the Tribunal. Prior to his death, on 23 March 1998, Cllr Larkin responded to a questionnaire from the Tribunal in which he denied the receipt by him of any improper payments.

19.11 The Tribunal established that in the period 15 May to 2 August 1991 a number of record figure lodgements were made to an AIB Cashsave account in Cllr Larkin's name. Cllr Larkin's family were unable to provide explanation for them. They were:

- 15 May 1991 IR£850.50
- 21 May 1991 IR£500
- 12 June 1991 IR£682.02
- 17 June 1991 IR£550
- 8 July 1991 IR£254.38
- 15 July 1991 IR£465.30
- 2 August 1991 IR£350.50

19.12 The information available to the Tribunal in relation to these (or any) lodgements to Cllr Larkin's bank account was insufficient to establish any definite association between any of them and a payment of IR£1,000 made by Mr Dunlop.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO A PAYMENT OF IR£1,000 TO CLLR LARKIN BY MR DUNLOP

19.13 The Tribunal was satisfied that, as alleged by Mr Dunlop, Cllr Larkin was the recipient of IR£1,000 in the period proximate to the 1991 Local Elections and that the request for the money was probably made by Cllr Larkin when he was being lobbied to support Quarryvale. The soliciting and acceptance of this money compromised Cllr Larkin's disinterested performance of his duties as a councillor, and was improper.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - THE INVOLVEMENT OF CLLR DONAL LYDON (FF)

20.01 Cllr Donal Lydon was elected to Dublin County Council in 1985 and 1991. He transferred to South Dublin County Council in 1994, and was re-elected to that Council in 1999. Cllr Lydon was also a member of Seanad Eireann.

20.02 Mr Dunlop told the Tribunal that he paid IR£1,000 cash to Cllr Lydon in the car park at the rear of the County Council's offices in O'Connell Street, Dublin, on a date between 16 May and 6 June 1991, in return for Cllr Lydon's future support for the Quarryvale rezoning project.

20.03 Mr Dunlop told the Tribunal that the IR£1,000 cash payment to Cllr Lydon in May/June 1991 was solicited by him as a contribution to his campaign in the Local Election in June 1991, but very much in the context of his support for the Quarryvale project.

20.04 In his October 2000 statements Mr Dunlop stated:

> *I recall giving Mr Donal Lydon a sum of £1,000 shortly after the successful Quarryvale rezoning motion in May 1991. I made this payment to Mr Lydon specifically for his support for Quarryvale, and*
>
> *In January1993 I gave Mr Lydon a cheque for £1,000 during the course of the Senate Election campaign . . . In the last Local Elections (1998) (sic) I gave him £400* [later established to have been £250]. *I do not recall giving him, or being asked for, money in the 1991 Local Election but I do recall giving him £1,000 shortly after the successful Quarryvale rezoning motion in May 1991.*

20.05 In his December 2003 statement Mr Dunlop set out the following regarding Cllr Lydon:

> *I paid £1,000 in cash to Mr Lydon within days of the vote on Quarryvale on 16th May, 1991. I paid him in the car park at the rear of the County Council offices at Upper O'Connell Street where I met him by arrangement prior to his going into a Council meeting. I recall this meeting with Mr Lydon because I had made a similar arrangement with another Councillor for the same location on a subsequent day, the 6th June. The date of the payment to Mr Lydon was prior to this. The payment was made therefore within the timeframe of Thursday, 16th May, 1991 and Thursday, 6th June, 1991. Given that I was out of town on the following Monday and Tuesday, the 20th and the 21st May respectively the payment could only*

have been made between Wednesday, 22nd May and Thursday, 6th June.

20.06 In his evidence, Mr Dunlop said that in the run-up to the Quarryvale May 1991 vote he canvassed Cllr Lydon for support for Quarryvale, and was assured that it would be given. Mr Dunlop described Cllr Lydon as someone who was supportive of his development plan lobbying efforts.

20.07 Mr Dunlop testified that when discussing Quarryvale with Cllr Lydon in the run-up to the May 1991 vote, Cllr Lydon had sought financial assistance from him for the then forthcoming Local Election. Inconsistent with this evidence was a reference in Mr Dunlop's October 2000 statement that he did not recall Cllr Lydon soliciting money from him at the time of the Local Election.

20.08 Mr Dunlop agreed that if, as he claimed, Cllr Lydon had sought financial support for the 1991 Local Election campaign, his name ought to have featured in Mr Dunlop's Day 147 *'1991 Local Election contributions'* list (Cllr Lydon's name did not appear on this list). As was the position with a similar omission of Cllr Liam T. Cosgrave's name, Mr Dunlop, in evidence, explained the omission as an '*oversight'* on his part.[1]

20.09 In response to cross-examination from Cllr Lydon's Senior Counsel, Mr Séamus Ó Tuathail SC, Mr Dunlop told the Tribunal that he had a clear recollection of having made the IR£1,000 payment to Cllr Lydon in relation to *'the location, the personality and the amount'*, notwithstanding his not having included Cllr Lydon on his *'1991 Local Election contributions*' list, or the fact that Cllr Lydon did not vote on the Quarryvale motion on 16 May 1991.

20.10 Cllr Lydon denied that he had sought or received monies from Mr Dunlop in 1991. He denied having spoken with Mr Dunlop about the Local Election in 1991, and he denied requesting an election contribution from Mr Dunlop, although he accepted that he could have met him at the County Council. Cllr Lydon specifically denied ever meeting Mr Dunlop in a car park for the purposes of being paid money. He repeated to the Tribunal that insofar as he received money from Mr Dunlop, all such monies had been paid to him as political contributions for election campaigns, and were unsolicited. Cllr Lydon admitted receiving IR£1,000 from Mr Dunlop in January 1993 when standing as a

[1] Cllr Lydon's name was on a list Mr Dunlop compiled on 18 April 2000, Day 146 of Councillors who, according to Mr Dunlop, requested monies from him. Cllr Lydon's name also featured on a list compiled by Mr Dunlop on Day 145 of Councillors who, Mr Dunlop stated, were lobbied by him in relation to Quarryvale

candidate in the Seanad Election, and he acknowledged receiving approximately IR£250 in 1999 for the Local Election held in that year.

20.11 Mr Dunlop acknowledged that a political donation of IR£1,000 was made to Cllr Lydon via a Frank Dunlop & Associates Ltd cheque in January 1993, and he acknowledged that he had given the donation of IR£250 to Cllr Lydon in 1999.

20.12 Cllr Lydon was not recorded as being in attendance, or as having voted in relation to any matter, including Quarryvale, on 16 May 1991. Thereafter, Cllr Lydon's voting pattern on motions which related to Quarryvale indicated his support for the project.

20.13 When questioned about Cllr Lydon's absence from the County Council Chamber on 16 May 1991, Mr Dunlop did not recall that fact, nor did he recall it being an issue when, as he claimed, he had paid IR£1,000 in cash to Cllr Lydon within the period 16 May to 6 June 1991, in return for Cllr Lydon's support for Quarryvale.

THE TRIBUNAL'S CORRESPONDENCE WITH CLLR LYDON REGARDING QUARRYVALE

20.14 On 20 December 1999 the Tribunal sought from Cllr Lydon details of his involvement in the rezoning of Quarryvale and requested, *inter alia*, that he provide details of the persons, if any, by whom he had been lobbied and whether he had been in receipt of any payments, donations or benefits from any of the parties who were involved in the development of Quarryvale, those parties being Barkhill Ltd, Riga Ltd, O'Callaghan Properties Ltd, Mr Owen O'Callaghan, Mr Thomas Gilmartin, Frank Dunlop & Associates Ltd, Shefran Ltd and Mr Frank Dunlop.

20.15 In his written response of 2 February 2000, Cllr Lydon replied to all the Tribunal's queries in, essentially, the negative save to state, when dealing with the issue of whether he himself had been lobbied, that he *'may have been asked by some of the lads from that area but I honestly don't know whether I was or not',* and that ,*'Another Councillor has told me that we were lobbied in the Royal Dublin where a model of Quarryvale was presented but I don't remember this so I probably missed that presentation.'*

20.16 Concerning the issue of the receipt of any payments, benefits or donations by him, Cllr Lydon stated:

The first time I heard of Thomas Gilmartin was on the Late Late Show *I have met Owen O'Callaghan in (in connection with a stadium that never materialized). I have known Frank Dunlop, for years and years. Frank gave me a donation for the Senate election in 1993. I have no record of this but I am almost certain it was £1,000. He also gave me a donation for the Local Government election in 1999. I'm not sure how much but it was under £500.*

20.17 It was, therefore, Cllr Lydon's stated position as of 2 February 2000, that he had received less than IR£1,500 in total from the companies and individuals identified to him by the Tribunal in its letter of 20 December 1999.

20.18 The Tribunal wrote again to Cllr Lydon in relation to Quarryvale on 14 June 2001 and requested, *inter alia*, a detailed account of all meetings which Cllr Lydon had with Mr Dunlop, Mr O'Callaghan and his advisors, Mr Ambrose Kelly, Mr Lawlor, Mr Flynn and Mr Gilmartin. Cllr Lydon responded on 28 June 2001 as follows:

I am pleased to respond to yours of June 14th 01, with regard to the above named place.
Firstly, I have no records or documents of any kind relating to Quarryvale.

Secondly, I have no recollection of Mr Dunlop ever meeting with me about Quarryvale or indeed speaking to me about it. If indeed he did meet me it would probably have been a cursory meeting in the hall of the council buildings, because like nearly all Fianna Fáil and Fine Gael Councillors I was in favour of development and he would nearly have taken my support for granted.

Thirdly, Mr O'Callaghan came to see me one time at my office at the hospital where I work and at this meeting he showed me plans for a big stadium that he planned to build. I think he may have been accompanied by Mr Frank Dunlop but I am not sure. I do not remember him mentioning Quarryvale and this was the only meeting I had with Mr O'Callaghan.
Fourthly, I never had any meetings about Quarryvale with any advisors to Mr O'Callaghan, nor with Mr Ambrose Kelly, Mr Liam Lawlor, Mr Padraig Flynn or Mr Tom Gilmartin.

I understand from Senator Ann Ormonde, that there was, one day, a presentation made on Quarryvale in the Royal Dublin but I have no recollection of ever attending such a presentation.

The only person who really lobbied me about Quarryvale was Mr John Corcoran of Green Properties who wanted me to oppose Quarryvale, because, as he put it, Quarryvale would detract from his development at

Blanchardstown. I had never visited either Blanchardstown or Quarryvale but I have heard from various people that both shopping centres are booming.

20.19 It was therefore Cllr Lydon's stated position as of 28 June 2001, that, (a) he had not been lobbied to support Quarryvale by either Mr Dunlop or Mr O'Callaghan, save for a possible '*cursory meeting*' with Mr Dunlop in Dublin County Council, and, (b) Mr O'Callaghan had approached him on one occasion in relation to the Neilstown Stadium project. In his evidence, Cllr Lydon acknowledged that he had probably been lobbied by Mr Dunlop regarding Quarryvale, in the course of the making of the 1993 Development Plan.

20.20 On 29 October 2004, the Tribunal sought an explanation from Cllr Lydon as to the source of a number of lodgements to accounts held in his and his wife's joint names, and to an account held in the sole name of Mrs Lydon. Some of these lodgements were in the period June/July 1991. In response, and while unable to give specific information, Cllr Lydon advised the Tribunal that some of the lodgements made in that period, including a lodgement of IR£900 on 14 June 1991, may have been election contributions received by him.

20.21 Asked to identify the date when Mr O'Callaghan called to his office in relation to the stadium project, Cllr Lydon told the Tribunal that he could not recollect the date, other than to say that the visit had been in connection with the Neilstown stadium proposal. Cllr Lydon acknowledged that Mr O'Callaghan would probably also have sought his support for Quarryvale on that occasion, although he had no recollection that he did so.

20.22 Mr O'Callaghan however testified that he lobbied Cllr Lydon extensively both in relation to Quarryvale and the stadium project. He said that he met Cllr Lydon on quite a few occasions, but could not recall the date on which they met prior to the 16 May 1991 Quarryvale motion.

20.23 An analysis of Mr Dunlop's diaries and of other documentation for 1992 indicated considerable contact between Cllr Lydon and Mr Dunlop. Mr Dunlop's diary for 23 April 1992 recorded as follows, *'Don Lydon/Stillorgan.'* Mr Dunlop was unable to say whether this was the occasion on which he had brought Mr O'Callaghan to meet Cllr Lydon, although he believed it unlikely that he had done so at that time, having regard to his June 1992 *'contact report'* which listed Cllr Lydon as having been contacted by Mr Dunlop alone at that stage.

20.24 Mr Dunlop's diary recorded scheduled meetings between himself and Cllr Lydon on 1 and 4 May 1992 (relating to, according to Mr Dunlop, another

rezoning project). Cllr Lydon denied that these meetings took place, and said that at the times of the meetings noted in Mr Dunlop's diary, he, Cllr Lydon was engaged at a conference, and on his hospital rounds[2] or in attendance at a funeral, respectively.

20.25 Mr Dunlop's office telephone records indicated efforts by Cllr Lydon to contact Mr Dunlop on one occasion in September 1992, and on six occasions in October 1992. Mr Dunlop had one recorded meeting with Cllr Lydon in his diary for September 1992, and two for October 1992.

20.26 An entry in Mr Dunlop's diary for 2 October 1992 referred to both Cllr Lydon and Cllr Hand. In his evidence in the Ballycullen/Beechhill module, Mr Dunlop said that it was his belief that these meetings were for the purposes of paying Cllr Lydon and Cllr Hand IR£2,000 each for their support for the Ballycullen/Beechhill rezoning.[3] Cllr Lydon said that he could have met Mr Dunlop as indicated, but did not recollect doing so.

20.27 In evidence on Day 810, Mr Dunlop agreed that in 1999, when he initially furnished his redacted diaries to the Tribunal in connection with his involvement with Quarryvale, he had attributed these meetings as having been Quarryvale related. Mr Dunlop stated, that notwithstanding that the 2 October 1992 meetings with Cllr Lydon and Cllr Hand had been for the purpose of paying them IR£2,000 each for their support for Ballycullen, he believed it probable that he had, at these meetings, taken the opportunity to lobby for Quarryvale, particularly in light of the then anticipated second Quarryvale rezoning vote.

20.28 Mr Dunlop's diary for 7 October 1992 recorded as follows: *'Call to Don L.'* Documented telephone calls to Mr Dunlop's office on the same date recorded '*Don Lydon—34 Clonmore Rd, Mount Merrion, Uptrees Rd., turn left'*—an address, as admitted by Cllr Lydon, of a house owned by him, although not being lived in by him at that time. Mr Dunlop and Cllr Lydon both testified that Mr Dunlop had never met Cllr Lydon at the latter's home. Mr Dunlop claimed that no money was given to Cllr Lydon on that occasion.

20.29 In his evidence relating to the Ballycullen/Beechill Module, Mr Dunlop told the Tribunal that he believed that he paid Cllr Lydon money (IR£2,000 in cash), on the morning of 2 October 1992 at Cllr Lydon's work place, in relation to the Ballycullen lands. Mr Dunlop's diary recorded a meeting between the two men on that date. Cllr Lydon did not dispute that a meeting took place on 2 October 1992, but denied that Mr Dunlop gave him money on that occasion.[4]

[2] Cllr Lydon was employed as a psychologist at St. John of God Hospital in Stillorgan, Co. Dublin.
[3] See Chapter Four
[4] This issue is the subject of consideration in Chapter Four.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO A PAYMENT OF IR£1,000 TO CLLR LYDON IN 1991

20.30 The Tribunal was satisfied that Cllr Lydon was lobbied by Mr Dunlop both prior to, and subsequent to, the Quarryvale rezoning vote of 16 May 1991 and that in the course of such lobbying Cllr Lydon sought an election contribution for the then forthcoming Local Election campaign. The Tribunal rejected Cllr Lydon's evidence that he did not solicit the payment, and in so doing the Tribunal took into consideration the fact that in the course of Cllr Lydon's dealings in 1992 to 1993 with Mr Christopher Jones Snr in relation to lands at Ballycullen, Cllr Lydon solicited, what he termed as political contributions from Mr Jones and was indeed paid.[5] In those circumstances, notwithstanding that Mr Dunlop's claim of having been solicited by Cllr Lydon for an election contribution occurred a year previously, the Tribunal was satisfied that Cllr Lydon sought an election contribution from Mr Dunlop in or about May 1991 and that it was paid to him on a date between 16 May 1991 and 6 June 1991, in the context of Cllr Lydon's support for the rezoning of the Quarryvale lands. Cllr Lydon's soliciting and acceptance of a payment in the circumstances in which he did grievously compromised the requirement on him as a councillor to act in a disinterested fashion in making a Development Plan, and was improper.

[5] See Chapter Four.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR MARIAN MCGENNIS (FF)

21.01 Cllr McGennis was elected to Dublin County Council in 1985 and again in 1991. In 1994, she transferred to Fingal County Council.

21.02 On 20 December 1999 the Tribunal wrote to Cllr McGennis seeking details of her involvement in relation to the rezoning of Quarryvale. In particular, the Tribunal sought, *inter alia*, details of any public or private meetings regarding Quarryvale attended by Cllr McGennis, details of any requests made to her to provide assistance in connection with the proposal to rezone Quarryvale and details of any payments, donations or benefits from any party who was involved in the development of Quarryvale (and including any person or company acting on behalf of the developers). The parties and/or their agents identified in the Tribunal's correspondence were; Barkhill Ltd, Riga Ltd, O'Callaghan Properties Ltd, Owen O'Callaghan, Mr Tom Gilmartin, Frank Dunlop & Associates Ltd, Shefran Ltd and Mr Frank Dunlop.

21.03 Cllr McGennis responded on 25 January 2000 and advised the Tribunal that she recalled attending a number of meetings relating to Quarryvale, some of which had taken place in Blanchardstown and were organised by Community/Residents Associations. She recalled a further meeting organised by a women's group in Clondalkin. She also stated:

> *I also recollect being at a meeting in 1991 which was attended by the then Chairman of Dublin County Council (Mr. Tommy Boland, R.I.P.) and other Cllrs. The purpose of this meeting (which to the best of my recollection took place in May 1991) was to discuss the effect, if any, that the proposed Quarryvale development might have on the Blanchardstown Centre (which was in my electoral area).*

21.04 Cllr McGennis recalled being asked by Cllr Gilbride to meet Mr Gilmartin, although she did not recollect the date of that meeting which had taken place at an office in St. Stephen's Green. She told the Tribunal that Mr Gilmartin did not request any assistance from her in connection with his Quarryvale project.

21.05 Furthermore, Cllr McGennis stated that she recalled '*being lobbied by Community Groups who were both, in favour of, and against the proposed Quarryvale development*' and recalled *'receiving submissions from the promoters of the proposed Quarryvale development and also from other groups who were against such a development.'*

21.06 In relation to any payments made to her by any party connected to Quarryvale, Cllr McGennis advised as follows:

> *In the local election campaign in 1991 I received an election contribution of £1,400.00 from Mr. Frank Dunlop. In his then capacity as National Director of Publicity for Fianna Fail during the 1992 General Election, Mr. Frank Dunlop arranged for the printing of election posters and leaflets for me. I am not aware of the cost, if any, of this work. However, my understanding was that it was being borne by the party as it was a snap election. Subsequent to my receiving your correspondence, I discussed this matter with Mr. Dunlop and he has informed me that the cost of this printing work was actually paid by his Company and not by the Party…*

21.07 On 14 June 2001 Cllr McGennis was written to by the Tribunal and requested to furnish all documents, records and diaries in her power or possession in relation to the lands at Quarryvale, and to furnish *'a detailed account of all meetings (if any) attended with any of the following:*

1. *Frank Dunlop;*
2. *Owen O'Callaghan;*
3. *Advisers to Owen O'Callaghan or any persons on Owen O'Callaghan's behalf;*
4. *Ambrose Kelly;*
5. *Liam Lawlor;*
6. *Padraig Flynn;*
7. *Tom Gilmartin…'*

21.08 Responding to that correspondence on 27 June, 2001, Cllr McGennis furnished the Tribunal with five documents being,

1. a letter from Green Property dated 15 May, 1991;
2. a letter from Green Property dated 7 June, 1991;
3. a copy of Green Property circular dated 7 June, 1991;
4. a draft of a Fianna Fáil circular; and
5. a copy of a distributed Fianna Fáil circular.

21.09 In relation to any meetings with the individuals identified in the Tribunal's correspondence, Cllr McGennis set out the following:

- *Frank Dunlop*

Frank Dunlop would have been a regular attendee at Dublin County Council meetings. While I have no particular recollection of lobbying on Quarryvale prior to the 1991 election there was very extensive lobbying in the period after that date.

I recall Frank Dunlop calling to my home, probably in late 1991, to congratulate me on my success in the local elections. While I have no clear recollection it is likely that he would have mentioned Quarryvale at that time.

- *Owen O'Callaghan*

As with Frank Dunlop Owen O'Callaghan would have been a regular attendee at Dublin County Council meetings. He would have been involved in extensive lobbying on Quarryvale in the period after the 1991 election.

- *Tom Gilmartin*

As outlined in my letter to the Tribunal dated 26th January 2000 I do recall a meeting with Tom Gilmartin at his offices in St. Stephen's Green. I do not recollect the date of this meeting but it was probably in 1989/1990. Mr. Gilmartin was less than impressed with my lack of support for his proposal which I considered to be far too large.

Mr. Gilmartin also mounted a display of his plans for Council members and management in a Dublin Hotel which I attended. Unfortunately I cannot recall the date or venue.

21.10 In a letter of 19 October 2004 Cllr McGennis was requested by the Tribunal to provide *'a detailed narrative in respect of all payments, benefits or assistance'* she may have received from Mr Dunlop while she was a member of the County Council and details of her contacts with Mr Dunlop in the period January 1991 to December 1994.

21.11 On 22 October 2004 Cllr McGennis informed the Tribunal as follows:

I have detailed in previous correspondence any payments, benefits or assistance that I would have received from Mr. Frank Dunlop. Shortly after the 1991 Local Election Frank offered assistance with the cost of my campaign and I subsequently received a cheque for £1,400. During the 1992 General Election while I was a candidate in Dublin North and Frank was acting as National Director of Publicity for Fianna Fáil he arranged for the printing of election posters and leaflets for my campaign. Also during the 1992 General Election Frank gave me the use of a mobile phone. I believe I retained the use of this phone until the Summer of 1995. I regret I have no records to give exact details.

I would have known Frank Dunlop through his close association with Fianna Fáil, through his work as a P.R. consultant and as a regular attendee at Council meetings. I do not recall any formal meetings with Frank but it is likely that I would have met him on many occasions at

Council meetings and spoken to him there, I recall that he called to my home to congratulate me on my success in the 1991 local elections, he would have telephoned often to lobby on issues with which he was associated and I would have met him occasionally at social events…

21.12 In her evidence on Day 830 Cllr McGennis acknowledged that in the course of the Quarryvale rezoning campaign, she had had face to face meetings with both Mr Dunlop and Mr O'Callaghan. Cllr McGennis described as an *'oversight',* her failure to mention in her correspondence with the Tribunal of 25 January 2000 the fact that she had had meetings with Mr O'Callaghan regarding Quarryvale, and the fact that, likewise, she had had face to face meetings regarding Quarryvale with Mr Dunlop. Cllr McGennis acknowledged 'informal' meetings with Mr Dunlop in his office regarding Quarryvale, although she did not think that she had had meetings with Mr O'Callaghan in Mr Dunlop's office. The Tribunal believed it likely that, on more than one occasion, Cllr McGennis met with Mr O'Callaghan in Mr Dunlop's office to discuss the Quarryvale rezoning.

21.13 While Cllr McGennis was at pains to emphasise that the responses given by her in correspondence to Tribunal queries was not an attempt to hide the fact that she had met with Mr Dunlop and Mr O'Callaghan on occasions to discuss Quarryvale, she agreed that the thrust of her correspondence with the Tribunal was that her contact with Mr Dunlop (in relation to Quarryvale) was casual, and arose when she met him in passing at Dublin County Council.

21.14 The Tribunal also found it to be noteworthy that in her 27 June 2001 letter, Cllr McGennis did not refer to any meetings she had attended with Mr Lawlor, or with Mr Padraig Flynn, despite having been requested by the Tribunal to detail any such contact. In the course of her evidence Cllr McGennis described again as an *'oversight'*, her failure, in correspondence, to disclose meetings she had had with Mr Lawlor concerning the Quarryvale rezoning.

PAYMENTS TO CLLR MCGENNIS FROM MR DUNLOP IN 1991

21.15 As acknowledged by Cllr McGennis in her correspondence with the Tribunal, she was the recipient of a cheque for IR£1,400 in July 1991 from Mr Dunlop, drawn on the 067 account of Frank Dunlop & Associates Ltd. In the report listing dated 29 April 1992 of cheques drawn to year end 31 October 1991 on the Frank Dunlop & Associates Ltd 067 a/c, prepared on behalf of Mr Dunlop, this payment was described as follows: '*M. McG sundries.*'

21.16 In his October 2000 statement, and in evidence, Mr Dunlop claimed that he paid this cheque to Cllr McGennis following a request from her for financial support towards expenses incurred by her in the 1991 Local Election in June 1991. Cllr McGennis told the Tribunal that she had no recollection of the circumstances in which she came to receive the IR£1,400 from Mr Dunlop, other than to state that she recalled Mr Dunlop calling to her house sometime after the Local Election in June 1991. When asked to explain the circumstances in which the payment was made, Cllr McGennis stated:

> *'As I said to you he called to my house after the election. So whether it was there or whether it was after, I can't tell you and I'm not going to manufacture stories to fit the event.'*

21.17 Cllr McGennis's name appeared at number 5 on Mr Dunlop's '*preliminary list*' of members of Dublin County Council who requested monies from Frank Dunlop (prepared by him on Day 146).

21.18 Cllr McGennis lodged the cheque for IR£1,400 to an account held by her at the Trustee Savings Bank (TSB), an account which had been opened by her in 1985 at the time she first stood for election as a councillor, and its receipt was acknowledged to Mr Dunlop by her Director of Elections on 14 September 1991.

21.19 Cllr McGennis claimed to have no knowledge of the involvement of Frank Dunlop & Associates Ltd and/or Mr O'Callaghan/Riga Ltd in financing the production and distribution of literature which was circulated in the Blanchardstown area in June 1991 on behalf of Cllr McGennis (and other local Fianna Fáil election candidates). Cllr McGennis claimed that this election literature had issued from the local Fianna Fáil election headquarters in Blanchardstown.

21.20 Notwithstanding the amendment which was made on 16 May 1991 to Cllr McGrath's Quarryvale rezoning motion, Mr Corcoran of Green Property plc had taken issue with the extent to which retail development was to be permitted in the newly rezoned Quarryvale Town Centre. It was clear from contemporaneous documentation that in 1991 Mr Corcoran maintained that the retail cap which had been placed on the Quarryvale development on 16 May 1991 did not accord with what he believed had been agreed at a meeting which took place between himself and Cllrs Boland, Lawlor, Ryan and McGennis on 13 May 1991[1].

[1] This matter is dealt with below.

21.21 Documents discovered to the Tribunal indicated literature entitled '*the Blanchardstown Town Centre – the truth and the facts*' was distributed to the electorate of Blanchardstown by '*Door to Door Distributors*', in respect of which Frank Dunlop & Associates Ltd was invoiced for a sum of IR£455.92. The Door to Door Distributors invoice, discovered by Mr Dunlop to the Tribunal, bore, in manuscript, the words '*Marian M.'* – a reference, Mr Dunlop claimed, which denoted that the distribution of the literature had taken place *'in connection with*' Cllr McGennis. The word *'owen'* was also handwritten on the invoice. Both Mr Dunlop and Mr O'Callaghan testified that Frank Dunlop & Associates Ltd duly recouped the amount of the invoice from Riga Ltd.[2]

21.22 In response to Mr Dunlop's claim that the *'Blanchardstown Town Centre - the truth and the facts'* literature had been prepared '*in connection with'* Cllr McGennis, she refuted this evidence and stated:

> '*I am saying to you, I know nothing about Mr. Dunlop's involvement in this. I have told the Tribunal already that I know about this, that I have informed the Tribunal about the support he gave me in terms and printing in a subsequent election in '92. I knew nothing about Mr. Dunlop's involvement in this.'*

21.23 Cllr McGennis reiterated that this document had been generated in Fianna Fáil election headquarters in Blanchardstown. Asked to explain why an entry in Mr Dunlop's diary of a meeting with Cllr McGennis for 27 May 1991 recorded as *'Marian Mc',* a timeframe which coincided with the *'Blanchardstown Town Centre - the truth and the facts'* document being printed by O'Donoghue Print, Cllr McGennis stated:

> *'If I met Mr. Dunlop about anything, I certainly didn't meet him about these because I am telling you I knew nothing about Frank's involvement in those leaflets until you showed the invoice. I remember the leaflets and I remember collecting them from Blanchardstown. I am telling you categorically until you put the invoice on screen, I had no idea that Mr. Dunlop was involved in them.'*

21.24 Mr O'Callaghan testified that Riga Ltd funded the production and distribution of the literature which Mr Dunlop organised and which he presumed was *'probably'* at the behest of Fianna Fáil candidates in Blanchardstown. Documentation provided to the Tribunal revealed that on 20 June 1991 Mr Deane (of Riga Ltd) wrote to Mr Donagh of AIB and enclosed a copy of the '*Blanchardstown Town Centre - the truth and the facts'* document and informed

[2] This cost was duly recouped from Barkhill Ltd

him that approximately 27,000 copies of the leaflets had been distributed in the Blanchardstown area.

21.25 The Tribunal was satisfied that the production and distribution of the aforesaid literature was organised and funded by Mr Dunlop who was then subsequently reimbursed by Riga Ltd

21.26 Cllr Colm McGrath's discovery of documentation to the Tribunal produced a document, apparently circulated by Fianna Fáil Local Election candidates in the course of the 1991 election, entitled *'the facts about Blanchardstown Town Centre.'* The contents of that document challenged the manner in which Green Property Plc. were progressing their Blanchardstown Town Centre development. It appeared to the Tribunal, (and indeed, was not disputed in evidence), that the object of the production of that document was to counter Mr Corcoran's anti-Quarryvale stance, which was being vigorously promoted during the currency of the Local Election campaign. The document contained, *inter alia*, the following:

> *We call on Green Property to follow through NOW on their commitment to build the Blanchardstown Town Centre and we look forward to all the people of Blanchardstown enjoying the benefits of their own town centre in the near future.*

21.27 The authors of this statement were said to be:

> *Cllr Tom Boland (Chairman, Dublin County Council), Cllr Ned Ryan, Cllr Jim Fahy, Cllr Marian McGennis*

CLLR MCGENNIS'S ROLE IN THE QUARRYVALE REZONING

21.28 County Council minutes recorded that, on 16 May 1991 Cllr McGennis voted in favour of the amendment to Cllr McGrath's motion, and in favour of rezoning Quarryvale Town Centre, with retail development to be capped, in the terms of the amending motion. It was Cllr McGennis's evidence that there was no interaction between herself and Mr Dunlop or Mr O'Callaghan on the Quarryvale issue in the lead up to 16 May 1991 vote. She said that she only became aware of Mr Dunlop's involvement after the 1991 Local Election, and that Mr O'Callaghan was '*nowhere near the project at that stage*.' The Tribunal rejected Cllr McGennis' evidence in this regard.

21.29 The evidence heard by the Tribunal established that in the week immediately preceding the Quarryvale rezoning vote Cllr McGennis was heavily involved in efforts to appease the concerns of Mr John Corcoran/Green Property plc that rezoning Quarryvale to town centre would impact adversely on the plans

to develop the Blanchardstown lands. Cllr McGennis did not take issue with this evidence.

21.30 Cllr McGennis testified that, in addition to being supportive of the Quarryvale rezoning proposal, she was also a staunch supporter of the Blanchardstown Town Centre development. She stated that while it had never been her belief that the Quarryvale proposal posed a threat to the plans of Green Property Plc for Blanchardstown. However, this was a belief held by Mr Corcoran in 1991.

21.31 Cllr McGennis told the Tribunal that in May 1991, in advance of the Quarryvale scheduled rezoning vote she was instrumental in setting up the meeting which took place on 13 May 1991 between Mr Corcoran and his Planning Consultant Mr Garth Maye, with Cllrs Boland (Chairman of the Council), Ryan, Lawlor and McGennis herself. Mr O'Callaghan believed that this meeting had been arranged by Mr Lawlor.

21.32 Contemporaneous documentation made available to the Tribunal, namely a letter sent to Cllr McGrath by Mr Corcoran on 14 June 1991, suggested that by 10 May 1991 Mr Corcoran had met with Senior Officials in the County Council who had explained to him what Mr Corcoran described in his letter as the *'true effect'* of the McGrath motion to rezone Quarryvale. This meeting with Council officials appeared to have triggered contact by Mr Corcoran with Cllr McGennis on 10 May 1991, which in turn led to the meeting of 13 May 1991.

21.33 The object of the meeting on 13 May 1991 was to agree the likely parameters of retail development on Quarryvale and thereby alleviate the concerns of Mr Corcoran *vis-a-vis* the likely impact on Blanchardstown, in the event that Quarryvale was to be zoned with a substantial retail element.

21.34 Contemporaneous documentation furnished to the Tribunal established that, following the meeting of 13 May 1991, Mr Corcoran met again with Cllr McGennis on the following day, following which, Mr Corcoran, by letter of 14 May 1991, wrote to Cllr McGennis and sent her the text of a suggested amendment to Cllr McGrath's original Quarryvale motion and which had been drafted by Mr Corcoran's Planning Consultant, Mr Garth Maye.

21.35 The text of the motion sent to Cllr McGennis was as follows:

> *Dublin County Council hereby resolves that within the area of land at Palmerstown Quarryvale comprising approximately 176 acres between Fonthill Road and the Western Parkway an area of land be Re-zoned for retail/civic uses to provide town centre facilities consistent with a*

strategic requirement of the Lucan/Clondalkin area as set out in the County Council's Development Plan. The Planning Department shall define the location, access, acreage and square footage necessary to provide town centre facilities for Clondalkin/Lucan compatible with the 1972, revised in 1983, County Development Plan.

21.36 On 15 May, 1991 Mr Corcoran wrote to Counsellor Boland, Chairman of the County Council, as follows:

Dear Chairman,

I would like to thank you for receiving us on Monday morning last to discuss the question of Lucan/Clondalkin rezoning. We got a very fair hearing and came away from the meeting happy that reasonableness would prevail.

I now understand that a new Motion is being drafted in connection with moving the Neilstown site to the Quarryvale site and I am happy with this…

21.37 The amendment which was ultimately applied to Counsellor McGrath's motion, and as placed before the County Council and passed, on 16 May 1991, read as follows:

That a statement be included in the Development Plan to indicate that the total area of commercial development in the area zoned 'D' shall not exceed the total area of commercial development which would be appropriate to the Lucan/Clondalkin town centre site designated in the County Development Plan 1983.[3]

21.38 Mr Corcoran was made aware of the text of this motion, when it was shown to him by Mr Lawlor, shortly before the commencement of the Quarryvale rezoning meeting of 16 May 1991. Mr Corcoran considered that the amendment fell short of what his understanding was as to what had been agreed between himself and Cllrs Boland, Ryan, Lawlor and McGennis on 13 May 1991.

21.39 The Tribunal established that it was Mr Al Smith, a County Council Senior Planning Official, who ultimately formulated the wording on the amending motion that went before the Council on 16 May 1991. Mr Smith told the Tribunal that he had done so, following a *'garbled'* draft of a motion having been provided to him by Mr Lawlor.

[3] This amendment was signed by Cllrs McGrath, Hand and Hanrahan.

21.40 In the letter sent by Mr Corcoran to Cllr McGrath on 14 June 1991, in the aftermath of the Quarryvale vote, and in the face of the campaign Mr Corcoran had by then commenced urging Cllrs who had voted for the Quarryvale rezoning to change their mind, Mr Corcoran, articulated his position as follows:

> *The true effect of Motion no. 38 to Re-zone the Quarryvale site was explained to me at a meeting I had with a Senior Official of Dublin County Council on Friday 10th May, 1991. During this meeting it became clear that Blanchardstown Town Centre could not compete for business with the infinitely better located Quarryvale site. Later that day I met with Cllr Marian McGennis to discuss the events and to tell her of my extreme concern for the future of Blanchardstown. She telephoned Chairman Tommy Boland from my office and arranged a meeting for Monday 13th May at 9:30am. Pat McCormack, my agent, Garth May, my Planning Consultant and myself met with the Chairman, Cllr Tommy Boland, Liam Lawlor, T.D., Cllr Marian McGennis and Cllr Ned Ryan at the Chairman's office as arranged. We explained with the assistance of plans and maps etc. which were prepared over the weekend, why the proposed Re-zoning at Quarryvale would force us to stop building Blanchardstown Town Centre. Our concerns were accepted by all present and it was agreed that Motion No. 38 would be amended/replaced, as required, to secure the Blanchardstown scheme. Liam Lawlor, T.D. offered to discuss the matter with Cllr Colm McGrath and subsequently to draw up an amendment/replacement to Motion No. 38 which would secure the future of Blanchardstown and be agreed with me for the Council meeting on the 16th May.*
>
> *Given the urgency of the issue and the time pressure (four days to the Council meeting), I had Garth May prepare a new Motion in consultation with the Planning Department which I sent to Cllr McGennis on Tuesday 14th May with a covering letter (copies enclosed).*
>
> *THIS IS THE MOTION REFERRED TO IN MY LETTER TO THE CHAIRMAN, DUBLIN COUNTY COUNCIL ON WEDNESDAY 15TH MAY TO WHICH YOU REFER IN YOUR LETTER.*
>
> *I attended along with Pat McCormack and Garth May at the Council Chambers on Thursday 16th May.*
>
> *At approximately 2:30pm Mr. Liam Lawlor, T.D. approached me having emerged from the Chairman's office and showed me an amendment to Motion number 38. I HAD NOT PREVIOUSLY SEEN THIS DOCUMENT NOR WAS IT EVER DISCUSSED WITH ME OR ANY OF MY ADVISORS.*
> *On reading same I and my advisors who were present immediately conveyed our total objection to this amendment and stated that it was*

contrary of our understanding of what had been agreed at our meeting with the Chairman on Monday 13th May. WE CONFIRMED THAT IF PASSED IT WOULD HAVE THE EFFECT OF FORCING US TO STOP BUILDING BLANCHARDSTOWN.

Our views were also made perfectly clear to Cllrs Ryan, Fahy and McGennis in the course of the day PRIOR TO ANY VOTE BEING TAKEN.

As you know despite our opposition to this amendment it was subsequently passed.

Since that date we in Green Property plc. believe that we had no alternative but to make clear to the people of Blanchardstown our reasons for halting work on their Town Centre. Such a decision was not taken lightly and we were very conscious of the excellent relationship we have had with the Fianna Fáil Group in Dublin County Council over many years.

We regret that matters have come to this but I am sure you will see from the foregoing that I and Green Property Plc. have been misled, deceived and misrepresented on this issue.

If you feel the situation can be rectified and the future of Blanchardstown Town Centre secured, I would be more than happy to attend a meeting with your group as soon as possible…

21.41 This lengthy letter from Mr Corcoran was sent following receipt by Mr Corcoran of an unsigned letter of 11 June 1991 from the Fianna Fáil group of Dublin County Council taking issue with Mr Corcoran's Quarryvale stance.

21.42 Prior to Mr Corcoran approaching Cllr McGennis on 10 May 1991, both were known to one another from the time of Cllr McGennis initial election as a local Blanchardstown councillor in 1985. She appeared to have had close contact with Mr Corcoran over the years *vis-a-vis* his plans to develop the Blanchardstown Town Centre. Cllr McGennis acknowledged having written to the then Taoiseach, Mr Charles J. Haughey on 26 March 1990, seeking tax designation for Blanchardstown. In that correspondence Cllr McGennis referred to the several meetings she had had on this topic with the then Minister for the Environment, Mr Padraig Flynn. Cllr McGennis also acknowledged having accompanied Mr Corcoran to a meeting with Mr Flynn seeking tax designation for Blanchardstown.

21.43 The diary of Mr Albert Reynolds, the then Minister for Finance, for 10 August 1989 noted a scheduled meeting with Cllr McGennis and Mr Corcoran at which Mr Brian Lenihan, TD, then Tánaiste, was also scheduled to attend. It was

unlikely however that this meeting took place on that date as the diary note appeared to have been subsequently crossed out. Cllr McGennis in any event pursued her lobbying for tax designation for Blanchardstown in a letter to Mr Reynolds on 28 January 1991. A number of other Cllrs and politicians also lobbied the Government for tax designation for Blanchardstown.

MR CORCORAN'S PAYMENT OF IR£5,000 TO CLLR MCGENNIS IN MAY 1991

21.44 It was accepted by Cllr McGennis that on either 13 or 14 May 1991 she was presented with IR£5,000 by Mr Corcoran – money which both Cllr McGennis and Mr Corcoran maintained had been given to her as an election contribution for the then forthcoming Local Election campaign.[4]

21.45 Discovery made by Green Property plc showed that the IR£5,000 paid to Cllr McGennis was in the form of a bank draft drawn at National Irish Bank, Lower Baggot Street, Dublin, dated 13 May 1991 which was the same date as a meeting held between Mr Corcoran and Cllrs Boland, Lawlor, Ryan and McGennis. The payment was recorded in Green Property's books as an election contribution.

21.46 The IR£5,000 draft was lodged on 22 May 1991 by Cllr McGennis as the opening balance in a newly opened account on that date in National Irish Bank.

21.47 As to the circumstances in which he came to pay a IR£5,000 draft to Cllr McGennis Mr Corcoran told the Tribunal:

> *'That draft. I don't recollect anything to do with it but I have to believe there was a local election going on at the time. Every tree and every lamp post in Blanchardstown had Marian McGennis' photograph hanging from it. And she would have asked us for support for her election. And I had no difficulty with that. Marian McGennis was vital to the interests of Green Property Company. And we desperately needed her re-elected to represent us on Dublin City Council and that was the reason for our support for her election fund.'*

21.48 Mr Corcoran professed to have no recollection of the reason why he had paid Cllr McGennis by bank draft. Mr Corcoran maintained that it was normal Green Property policy to deal in cheques.

21.49 Cllr McGennis acknowledged that she received the IR£5,000 from Mr Corcoran personally, in his office. She denied any connection between the

[4] The Local Election was not called until 27 May 1991 but it was acknowledged by all concerned that Councillors knew, prior to 27 May 1991, that the election was imminent.

receipt by her of the IR£5,000 from Mr Corcoran and the then imminent Quarryvale rezoning vote, the issue which had triggered both Mr Corcoran's contact with her on 10 May 1991, and which was the subject matter of the meeting of 13 May 1991 in the Council offices.

21.50 Cllr McGennis stated:

> *'..I remember specifically when Mr. Corcoran gave me that cheque and the discussion that took place during that period was the local elections and my future.'*

21.51 Earlier, the following exchange took place between Tribunal Counsel and Cllr McGennis:

> *'Q. 429 Yes. And was it in the course of your meeting on the 10th May, 1991, that Mr. Corcoran indicated to you that he wished to make a political donation?*
>
> *A. No I have already told you that over the period of the five or six years from 1985 to 1991 Mr. Corcoran had on a number of occasions indicated that he would like to support me in my campaign. And in fact I think had indicated to me at some stage that he would make an office available to me in the new Town Centre for a constituency office. So there is no parallel between. There is no connection between those two dates Ms. Dillon.'*

21.52 The Tribunal regarded Cllr McGennis's denial of any connection between the circumstances relevant to the then imminent Quarryvale rezoning motion and the payment of IR£5,000 to her as disingenuous. The Tribunal was satisfied that a primary motivating factor in Mr Corcoran's decision to pay IR£5,000 to Cllr McGennis was the assistance and support provided by her to him in his endeavours to minimise the extent to which the Quarryvale project might adversely impact on Green Property's Blanchardstown development.

21.53 The Tribunal was also satisfied that Cllr McGennis knew that Mr Corcoran's generosity was largely related to her support and advice on that issue, rather than a desire to assist her politically.

21.54 Cllr McGennis could not recall if she had acknowledged, in writing, the receipt of the IR£5,000 from Mr Corcoran. No document was discovered to the Tribunal either by Cllr McGennis or Green Property to suggest that such acknowledgement had occurred. This lack of acknowledgment was in contrast to the position that pertained regarding the provision of an IR£1,400 payment by Frank Dunlop & Associates Ltd to Cllr McGennis in July 1991, when her Director of Elections acknowledged that payment.

21.55 Asked to account for her failure to advise the internal Fianna Fáil Inquiry in May 2000 that she had received IR£5,000 from Green Property plc for the 1991 Local Election, Cllr McGennis explained that when questioned by that Inquiry it was her belief that its focus was her relationship with Mr Dunlop.

21.56 Irrespective of the imminence of the Local Election, and Cllr McGennis's anticipated candidacy in that election, the circumstances in which Cllr McGennis came to receive an election contribution of IR£5,000 from Mr Corcoran/Green Property was linked, to no small extent, to the fervent efforts being made by Mr Corcoran in May 1991 to alleviate the perceived threat to the Blanchardstown development from the Quarryvale rezoning proposal, then before the County Council.

21.57 An example of the Green Property plc anti-Quarryvale campaign is found in a letter sent from Mr Pat Keating (Green Property's Public Relations adviser) to Mr Lawlor on 6 June 1991 (and probably also sent to all Local Election Council candidates), wherein Mr Lawlor was urged to lend his name to a prepared pro Blanchardstown advertisement, intended by Green Property plc for publication in local newspapers between 6 June 1991 and 27 June 1991. It read as follows:

> *We support the completion of Blanchardstown Town Centre and reject rezoning at Quarryvale.*

21.58 Cllr McGennis's voting record of 16 May 1991 indicated that she was supportive of the proposal to rezone Quarryvale as a Town Centre.

21.59 Contemporaneous documents record, and as was testified to by Cllr McGennis, that she attended a public meeting on the issue of the Quarryvale rezoning on 19 September 1991, and apparently expressed her support for Quarryvale. Her support for Quarryvale was noted by Mr O'Callaghan to the extent that he wrote to her on 30 September 1991 and thanked her for her '*very positive and supportive comments re Quarryvale*' voiced at that meeting.

CLLR MCGENNIS'S RELATIONSHIP WITH MR DUNLOP, MR LAWLOR AND MR O'CALLAGHAN IN THE LEAD UP TO THE DECEMBER 1992 VOTE

21.60 Contrary to Cllr McGennis's initial disclosure to the Tribunal about her contact with Mr Dunlop and Mr O'Callaghan in relation to Quarryvale, it was established that over the course of 1992 particularly, Cllr McGennis was in regular contact with Mr Dunlop, both by telephone and on a face to face basis.

21.61 Mr Dunlop attributed a lunch meeting with Cllr McGennis on 10 September 1991 as a meeting organised to *'refocus'* Cllr McGennis attention on Quarryvale.

21.62 Cllr McGennis was noted to have telephoned Mr Dunlop's office on 12 March 1992 to set up a meeting which took place on 18 March 1992. Mr Dunlop and Cllr McGennis met again on 7 April 1992. Mr Dunlop's *'contact report',* dated 17 June 1992, noted Cllr McGennis to have been contacted both by Mr Dunlop and Mr O'Callaghan in relation to Quarryvale.

21.63 Cllr McGennis made telephone contact with Mr Dunlop's office on the 2,[5] 8 and 28 September 1992, and was noted in Mr Dunlop's diary for 28 September 1992, apparently indicating a meeting with herself and Mr Lawlor. Mr Dunlop's diary for 15 October 1992 noted a lunch meeting with Mr O'Callaghan and Cllr McGennis, an encounter Cllr McGennis accepted was likely to have been in connection with the then forthcoming Quarryvale rezoning proposal. Three further telephone contacts between Cllr McGennis and Mr Dunlop's office were noted on the 2, 5 (the day the General Election was called), and 9 November 1992. Telephone contact was also apparently made by Cllr McGennis with Mr Dunlop's office on the 10, 11, 14 and 16 December 1992, the week leading to the second Quarryvale rezoning vote of 17 December 1992.

21.64 In all of Mr Dunlop's Councillor voting '*scenarios',* prepared by him in the lead up to the December 1992 vote, Cllr McGennis's support was listed as *'definite'*, indicated Mr Dunlop's absolute confidence in her support for Quarryvale. However, the County Council records for the 17 December 1992 Special Meeting indicated that Cllr McGennis's voting pattern on that date was not supportive of Quarryvale.[6]

21.65 Cllr McGennis agreed that her voting pattern on that date was in effect a u-turn on her 16 May 1991 pro-Quarryvale position. Cllr McGennis described her change of heart on the issue of Quarryvale in the following terms:

> *'What I referred to this morning, Ms. Dillon, as the explosion that occurred in Blanchardstown. It was non-ending from the day of the Local Elections. All of the way through there were pickets outside the Council offices, there were mail shots, there were people coming to the clinics, there were public meetings and it was just impossible to get the message through that a vote for Quarryvale wasn't a vote against Blanchardstown. But because it was impossible, it meant that if you voted for Quarryvale, it was going to be perceived in my own area that I was voting against Blanchardstown. So where I believed, and I still believe, that in the merit of Quarryvale, I'm afraid that the reality was that not the politically, it would have been political suicide for me to vote for that.'*

[5] Incorrectly stated in the transcript of evidence as the 7th.
[6] She voted in support of rezoning the lands to 'E' industrial.

21.66 And Cllr McGennis continued:

> *'I had gone to the public meetings in both side of the constituency and listened and spoken at them as you have shown on the screen. I was supportive of it. But in the end of the day I had been told by constituents and by lobby groups on my side that, you know, if I did this that would be the end of me in Blanchardstown.'*

21.67 Cllr McGennis conceded that her stance on 17 December 1992 *'mightn't have been the right decision. I didn't vote in accordance with what I thought was the best proper planning and development of the area. I voted out of fear.'*

21.68 Commenting on Mr Dunlop's evidence that Cllr McGennis had privately, in discussions with Mr Dunlop and Mr O'Callaghan, always been supportive of the Quarryvale rezoning, but had felt constrained to deal with the issue differently in public, Cllr McGennis stated:

> *'No. I am saying publicly I had spoken, I had voted in favour of Quarryvale and I continued to attend meetings. I had tried to explain my position in my own area in Blanchardstown and by the end of the day, when it came close to the vote I informed whoever it was, either Frank or Owen O'Callaghan that it was impossible for me to support it. So there was no public position and I read it and it's the innuendo is, you know, I won't even refer to it, but my position was publicly that I had voted in favour of Quarryvale. There was nothing underhand about that. It was a public vote. I had..my colleagues had suffered as a result of supporting Quarryvale.*
>
> *I had tried to explain my position over whatever it was 12 months or longer between the first and the second vote. And had failed miserably and basically the message from constituency groups in Blanchardstown that anyone who voted in favour of Quarryvale was voting against Blanchardstown and you just couldn't get around that.'*

INDIRECT FINANCIAL ASSISTANCE PROVIDED BY MR DUNLOP IN NOVEMBER 1992

21.69 In her early correspondence with the Tribunal, Cllr McGennis disclosed that in course of the November 1992 General Election campaign Mr Dunlop arranged for the printing of election leaflets and posters on her behalf. Likewise, Cllr McGennis informed the internal Fianna Fáil Inquiry of such assistance and in its June 2000 Report it noted that:

> *During the 1992 General Election campaign when she was a candidate in Dublin North, Frank Dunlop arranged and paid for the printing of her election posters, leaflets and bus shelter ads. She estimated that the cost of this would have been £3,000 but that she believed the cost would have*

been less if she had used her own printer instead of the one used by Mr. Dunlop. These donations would have been the largest received by Marian McGennis.

21.70 When she initially apprised the Tribunal of the assistance provided to her by Mr Dunlop in November 1992, Cllr McGennis stated that she believed Mr Dunlop had underwritten these costs in his official Fianna Fail capacity.[7]

21.71 Mr Dunlop, in his October 2000 statement, acknowledged that he provided assistance to Cllr McGennis in November 1992 by way of printing and outdoor advertising and provided her with the use of a mobile telephone. Cllr McGennis did not retain any records in connection with this telephone. In her evidence, she acknowledged that the telephone bills for the period in question had been discharged by Mr Dunlop, although she was unable to put a monetary value on this assistance.

21.72 The documentary evidence available to the Tribunal established that on 16 November 1992, Frank Dunlop & Associates Ltd was invoiced for the sum of IR£4,235(IR£3,500 + VAT) for the design, make up, printing and delivery of '*Adshell*' posters., Frank Dunlop & Associates Ltd discharged this invoice on the 22 or 25 January 1993. Mr Dunlop told the Tribunal that Cllr McGennis was the only candidate for whom Mr Dunlop funded *'Adshell'* posters in the course of the 1992 General Election. Mr Dunlop's evidence was that he had done so at the request of Mr Lawlor.

21.73 On 25 January 1993, Frank Dunlop & Associates Ltd paid O'Donoghue Printing Ltd a sum of IR£2,105.40 (IR£1,740 + VAT) on foot of an invoice of 25 November 1992 for the printing of 25,000 A4 colour leaflets *'re Marian McGennis FF.'* Mr Dunlop attributed this invoice to Mr O'Callaghan.

21.74 Cllr McGennis claimed that she was unaware, prior to the Tribunal, of the involvement of Mr O'Callaghan/Riga in financing the 25,000 AF election leaflets printed for her in November 1992.

21.75 Cllr McGennis did not succeed in getting elected to the Dail in November 1992, and she did not stand for election to the Seanad. Cllr McGennis was, however, one of the Taoiseach's nominees to the Seanad in February 1993. Cllr McGennis said that she had lobbied Mr Dunlop for the Seanad nomination. Cllr McGennis stated that she had not lobbied Mr O'Callaghan, and had not known of his Fianna Fáil connections at that time. Cllr McGennis agreed that Cllr Sean Gilbride's (Cllr McGennis's Director of Elections for the November 1992 Election)

[7] Mr Dunlop worked directly for Fianna Fail from 20 November 1992, for the duration of the General Election campaign.

telephone message to Mr Dunlop on 10 February 1992, to wit *'Marian got the call'* was likely to have been Cllr Gilbride's confirmation to Mr Dunlop that she had been nominated to the Seanad by the Taoiseach.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO PAYMENTS MADE TO CLLR MCGENNIS

i. Cllr McGennis played a significant role in relation to the Quarryvale rezoning proposal over the course of 1991 to 1993, both by providing assistance to the promoters of that proposal, and interacting with Mr John Corcoran of Green Property plc, a known opponent of Quarryvale. The extent of her involvement with Mr Dunlop and Mr O'Callaghan was not something in respect of which Cllr McGennis was forthcoming, in her initial dealings with the Tribunal.

ii. The Tribunal was satisfied that Cllr McGennis was acutely aware of the extent of Mr Dunlop's involvement in the bid to rezone Quarryvale and of Mr Corcoran's attempts to prevent or restrict such rezoning. She played an active role in both campaigns. She was the recipient of direct funding of IR£5,000 from Mr Corcoran in May 1991, and of IR£1,400 from Mr Dunlop in July 1991, both of which payments were made to her, albeit as election contributions, while she was assisting in the respective campaigns of those individuals. Furthermore, even if unknown to her, she was also the beneficiary of indirect financial assistance from Mr Dunlop in June 1991 when he funded election literature which benefited her.

iii. With regard to the IR£1,400 cheque from Frank Dunlop & Associates Ltd provided in July 1991, the Tribunal was satisfied that Ms McGennis solicited this payment. Likewise, notwithstanding her claim that it was Mr Corcoran who instigated the offer of IR£5,000 to her in May 1991, the Tribunal considered it likely that this sum was solicited by Ms McGennis. Thus, over a period of two months she was the recipient of a total of IR£6,500 from individuals with whom she was closely associated with in the context of an issue (Quarryvale), which had been and would again be subject to consideration by her as a councillor.

iv. The Tribunal was satisfied that these payments, together with the discharge by Mr Dunlop of election expenses incurred by Cllr McGennis in the June 1991 Local Elections and the November 1992 General Election compromised the requirement that Cllr McGennis undertake her duties as a councillor in a disinterested manner, and were improper.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR COLM MCGRATH (F.F)

CLLR MCGRATH'S INVOLVEMENT IN THE QUARRYVALE REZONING PROCESS

22.01 Cllr McGrath was an elected councillor for the Clondalkin ward, having been first elected on the Fianna Fail ticket in June 1991. He was re-elected in 1999 as an Independent candidate and lost his seat in the Local Elections of 2004. He also ran unsuccessfully for the Dail both as a Fianna Fail and an Independent candidate.

22.02 The evidence established that Cllr McGrath took on board the Quarryvale project on behalf of Mr Gilmartin at an early stage (probably in 1989/1990), and that he did likewise on behalf of Mr O'Callaghan from about February 1991 onwards.

22.03 Cllr McGrath met Mr Gilmartin prior to Mr Gilmartin's launch of his plans for the site in July 1990. It appeared that from as early as 1988/1989, Mr Gilmartin had been given Cllr McGrath's name by Mr Lawlor.

22.04 It was the case that from the outset Cllr McGrath was an enthusiastic supporter of the proposal to re-zone Quarryvale for '*Town Centre*' development.

22.05 On the 23 July 1990 Cllr McGrath wrote to the then Taoiseach Mr CJ Haughey requesting an urgent meeting for Mr Gilmartin with Mr Haughey, to facilitate discussion on:

> *various problems, hitherto unforeseen, which are posing a serious threat to the realization* (of MrGilmartin's Quarryvale project).

22.06 Mr Gilmartin maintained that he gave Cllr McGrath the go ahead to write to Mr Haughey, as recommended by Cllr McGrath, after Cllr McGrath had advised him (referring to Mr Gilmartin's efforts to assemble the Quarryvale site) '*that the whole thing was being thwarted, being deliberately thwarted at that time*.'

22.07 Mr Haughey declined to meet Mr Gilmartin, because of, as advised to Cllr McGrath on 25 July 1990, his '*heavy schedule of commitments*.'

22.08 As was the case with Cllr Gilbride, Cllr McGrath professed his support for the Quarryvale project in the first instance to Mr Gilmartin. That support which transferred, in early 1991, to Mr O'Callaghan, probably in recognition of Mr O'Callaghan's then perceived role as the individual who from February 1991, in

particular, was taking over from Mr Gilmartin as the promoter of the development. Mr Dunlop, in his evidence, described Mr O'Callaghan and himself as having '*inherited*' Cllr Gilbride and Cllr McGrath from Mr Gilmartin, as supporters of Quarryvale which was '*much to their satisfaction*.'

22.09 It was common case that, prior to any question of Cllr McGrath receiving financial support from Mr O'Callaghan or Mr Dunlop, be it by way of political support or otherwise, Cllr McGrath had signed a motion to rezone the Quarryvale lands to '*D&E*' which was lodged with the County Council on 15 February 1991. On 15 January Cllr McGrath personally wrote to Mr Gilmartin, and informed him of his intention to provide support. The Tribunal believed that this expression of support from Cllr McGrath was likely to have been communicated by Mr Gilmartin to Mr O'Callaghan. In his letter Cllr McGrath referred to his belief that the motion would:

> *enjoy unanimous cross-party support particularly in view of your successful negotiations with the developer of the former Town Centre Site at Foxdene*(Neilstown) *which is not now being proceeded with…*

22.10 In the course of their respective testimonies, a conflict arose as between Mr Gilmartin on the one hand, and Messrs O'Callaghan, Cllrs McGrath and Gilbride on the other hand, as to the circumstances in which Cllr McGrath ultimately lodged this motion. The last possible date for the lodging of a Quarryvale Motion with the County Council, for consideration prior to the first Statutory Display, was 15 February 1991.

22.11 Mr Gilmartin maintained that during the course of that day he had received two telephone calls from Cllr McGrath, and one telephone call from Cllr Gilbride, to his Luton home, urging him to sign the second Heads of Agreement with Mr O'Callaghan and AIB Bank.

22.12 In the days immediately preceding 15 February 1991, AIB initiated a series of communications with Mr Gilmartin in the course of which he was called upon to discharge his indebtedness to AIB Bank. Simultaneously, Mr Gilmartin was being urged by AIB to enter into a second Heads of Agreement between himself, Mr O'Callaghan and AIB. Mr Gilmartin described 15 February 1991 as the '*night of the long knives.'*

22.13 It was common case that neither Mr Gilmartin nor Mr O'Callaghan was happy with what had been earlier agreed as between himself, Mr O'Callaghan and AIB in December 1990, the first Heads of Agreement.

22.14 Mr Gilmartin duly signed the second Heads of Agreement on 15 February 1991, and apparently faxed his signed copy of the agreement to AIB at 9:03pm on 15 February 1991. Mr Deane stated that it was '*likely*' that either himself, or Mr O'Callaghan, were still at the bank at that time.

22.15 Mr Gilmartin maintained that the telephone calls made to him by Cllr McGrath on 15 February 1991 advised him that Cllr McGrath was being prevented by AIB Bank and Mr O'Callaghan from lodging the Quarryvale rezoning motion, until such time as Mr Gilmartin signed the second Heads of Agreement. Mr Gilmartin ultimately signed the agreement.

22.16 Mr Gilmartin testified that, following the signing of the agreement, both Mr Kay of AIB and Cllr McGrath telephoned him on 16 February 1991, and told him that the motion had been lodged. Cllr McGrath also faxed to Mr Gilmartin a copy of this motion, and a copy of a motion prepared by Mr Lawlor (signed by Cllr McGrath), which proposed to rezone Neilstown to 'E' (industrial and related issues), a motion ultimately rejected by the County Council as it was out of time.

22.17 Cllr McGrath and Cllr Gilbride denied that occurred on 15 February 1991 with Mr Gilmartin. Mr O'Callaghan maintained that, by 15 February 1991, he had not yet met Cllrs McGrath and Gilbride. Mr Deane rejected Mr Gilmartin's allegation that he could have been told by Cllr McGrath that Cllr McGrath was being prevented from lodging the motion on 15 February 1991, since the motion was lodged hours before the agreement was signed with Mr O' Callaghan and AIB.

22.18 In the course of his evidence Mr O'Callaghan maintained that he had no specific awareness of the McGrath motion until later in February 1991. However, in the light of Mr Kay's evidence (see below), which the Tribunal accepted, and also in light of Mr O'Callaghan's dealings with Mr Lawlor in February 1991, this was unlikely to have been the case.

22.19 Mr Kay, in evidence, confirmed that on the day the second Heads of Agreement was signed, Mr Gilmartin did not attend at AIB Bank Centre and, accordingly, documentation had been faxed to him for his signature. Mr Kay agreed that Mr Gilmartin was told by him that unless he signed the second Heads of Agreement the motion to rezone Quarryvale would not be lodged. Mr Kay said he had been advised of this by Mr O'Callaghan. Mr Kay stated that he had no knowledge of any calls made to Mr Gilmartin by Cllr McGrath or Cllr Gilbride, or by Mr O'Callaghan.

22.20 As to whether Mr Gilmartin was telephoned by Cllr McGrath (and Cllr Gilbride), the Tribunal preferred the evidence of Mr Gilmartin to that of Cllrs McGrath and Gilbride, and accepted that such contact was indeed made and that its content was as recalled by Mr Gilmartin.

22.21 Having lodged the motion to rezone Quarryvale by 15 February 1991, Cllr McGrath, (together with Cllrs Hand and Hanrahan), was also instrumental on 16 May 1991, (the day of the Quarryvale rezoning vote), in effecting a cap being placed on the scale of retail development permissible on the Quarryvale site, by way of an amendment to the original rezoning motion. This amendment, probably an initiative of Mr Lawlor, following upon a meeting which took place on 13 May 1991 between Mr Lawlor, Cllrs Tommy Boland, Ned Ryan and Marian McGennis with Mr John Corcoran (of Green Property Plc) and his advisor, was put in place in an attempt to alleviate the concerns of, and counter the opposition of, Green Property Plc. to the rezoning of Quarryvale. The effect of the McGrath motion (as amended), as passed on the 16 May 1991, was to allocate Town Centre zoning to Quarryvale and limit its retail development on the site to that which was previously permitted for the Neilstown lands, pursuant to the 1983 Development Plan (approximately 500,000 square feet of retail space).

22.22 In his evidence, Cllr McGrath acknowledged that both in the lead up to the vote of 16 May 1991, and subsequently, he was a member of the strategy team which had been established to ensure the rezoning of Quarryvale – a team whose core included Mr O'Callaghan, Mr Dunlop, Mr Lawlor, Mr Ambrose Kelly, Cllrs Gilbride and McGrath.

22.23 Mr Dunlop's diary for 6 June 1991, (as forensically analysed), indicated that a meeting took place on that date between Mr O'Callaghan, Mr Gilmartin, Cllr McGrath and Cllr Gilbride, probably with Mr Dunlop in attendance. The Tribunal was satisfied that prior to furnishing to the Tribunal his unredacted diaries in 2001, Mr Dunlop attempted to obliterate this diary entry. The Tribunal was satisfied that he did so in an attempt to conceal from the Tribunal the fact that in June 1991, Mr Gilmartin was with Mr O'Callaghan, in the company of Mr Dunlop and the councilors. The Tribunal would be minded to consider (which it did) that the fact of Mr Gilmartin's presence at such a meeting belied Mr Dunlop's and Mr O'Callaghan's contention that the original reason for the use by Mr Dunlop of Shefran in his dealings with Mr O'Callaghan was to keep Mr Dunlop's involvement in Quarryvale secret from Mr Gilmartin.

22.24 In the throes of the '*war of words'* which broke out between the promoters of the Blanchardstown development and the promoters of Quarryvale, subsequent to the rezoning of Quarryvale on 16 May 1991, and following Cllr McGrath's re-election as a councillor, Mr Corcoran of Green Property plc wrote to Cllr McGrath in the following terms on 3 July 1991:

> *Dear Colm,*
>
> *We would like to congratulate you on your recent election to the County Council. We wish you well in your position.*
>
> *As you may be aware, we are the developers of the new Town Centre at Blanchardstown where work has been suspended as a result of the threat to its viability posed by the recent motion of the outgoing Council to rezone lands at Quarryvale.*
>
> *We are anxious to recommence work on the site as soon as practical and in this regard we would welcome an opportunity to discuss the matter with you and your colleagues as soon as possible. If you are interested in meeting us, I would be grateful if you would contact me upon receipt of this letter.*

22.25 Cllr McGrath's reply of 9 July 1991, having thanked Mr Corcoran for his good wishes, stated as follows:

> *In my opinion, a further meeting to discuss the future of Blanchardstown Town Centre would serve no purpose as long as you continue to assert that the re-zoning of lands at Quarryvale poses a threat to the viability of Blanchardstown which I totally refute.*
>
> *Your persistent targetting of the Quarryvale re-zoning decision is now, thankfully, being seen for what it is, a smoke-screen, to hide the real reason why you have not proceeded with the Town Centre to date. It is only a matter of time before the serious concern of your shareholders manifest itself in some form of corrective action.*
>
> *I have no doubt that a Town Centre will be built at Blanchardstown, the question is, by whom? Equally, I am confident that a Town Centre will be built at Quarryvale to serve the people of Lucan/Clondalkin as provided for in the County Development Plan at an improved location.*
>
> *Councillors must plan and act for the common good, not for the interests of any one property development company. I regard any attempt to deprive the people of Lucan/Clondalkin of their major Town Centre as an act against the common good and I will vehemently oppose any such action from whatever quarter.*

22.26 Prior to dispatching this letter to Mr Corcoran, Cllr McGrath provided a copy to Mr O'Callaghan, who, in turn, faxed it to Mr Deane. The Tribunal was satisfied that the purpose of Cllr McGrath's providing it to Mr O'Callaghan was to elicit his approval for such a letter to be sent by him to Mr Corcoran. The Tribunal was satisfied that Mr O'Callaghan gave that approval.

22.27 In or about September 1991, Cllr McGrath made direct contact with Mr Deane, requesting Mr Deane to '*throw* (his) *eye over*' a letter dated 4 September 1991 which Cllr McGrath was proposing to send to Mr Pat Keating, of Green Property, in response to communication sent to Cllr McGrath by Mr Keating.

22.28 The letter to Mr Keating stated as follows:

Dear Mr. Keating,

As the proposer of the successful Motion to rezone 106 acres at Quarryvale for an alternative Town Centre for Lucan/Clondalkin to replace the failed site at Ronanstown I regard your attitude to this important Planning matter as flippant, patently prejudiced and grossly insulting to the integrity of the elected Members of Dublin Council who are fully aware that you are a paid servant of another Town Centre Developer whose bluff is now being called.

As far as the Development Plan Review is concerned you conveniently failed to mention the fact that the Planners have proposed the rezoning of the Ronanstown site to Industrial in favour of the Quarryvale site.

Your scaremongering is pathetic. The only 'uncertainty' about Blanchardstown is when it is going to be built. Green Property PLC failed to deliver the goods in Blanchardstown and decided instead to invest in the British property market. This is the real scandal in this whole affair and the Quarryvale excuse is only a 'cop-out' for the Directors.

I would suggest therefore that you desist from regurgitating hypocritical self-interest propaganda which insults the intelligence of Politicians, Planners and the general public who now know the trust behind the Green Property smokescreen.

No amount of your dubious lobbying will deprive the people of Lucan/Clondalkin of their long awaited Town Centre, which, unlike Blanchardstown will be commenced immediately on receipt of Planning Permission which I am confident will be forthcoming…

22.29 On 6 September 1991 Mr Deane advised Mr O'Callaghan that Mr Deane had '*spoken to Colm McGrath and he has agreed to hold the letter for the time being…*'

22.30 The communication between Cllr McGrath and Mr Deane, and between Mr Deane and Mr O'Callaghan, on the subject of Cllr McGrath's letter to Mr Keating indicated the extent to which, by this time, Cllr McGrath was actively engaged as a member of Mr O'Callaghan's strategy team promoting the Quarryvale project.

22.31 Cllr McGrath's letter, albeit slightly altered as compared to the version which was provided to Mr Deane, duly issued to Mr Keating on 23 September 1991,[1] presumably with the imprimatur of Mr Deane.

22.32 It was noteworthy for the Tribunal that while Cllr McGrath strongly castigated Mr Keating as '*a paid servant*' of a developer, Cllr McGrath himself, accepted a payment of IR£10,000 from Mr O'Callaghan approximately 17 days later, on 11 October 1991 (see below).

22.33 Similarly to the significant role played by him in advance of the first Quarryvale rezoning vote, Cllr McGrath likewise played a significant role in promoting Quarryvale as the date for the second vote advanced. Throughout 1992 Cllr McGrath attended many strategy meetings with Mr O'Callaghan, Mr Dunlop and others.

22.34 On 21 April 1992, in the course of the Quarryvale lobbying campaign, Cllr McGrath wrote to his fellow councillors enclosing a copy of his September 1991 letter to Mr Keating, and he advised them as follows:

> *In recognition of the fact that the coming months will see us all bombarded with vested interest representations in relation to the Development Plan Review I do not intended to respond to the tediously regular propaganda missives from the paid public relations servant of Green Property Company which continue to insult our intelligence.*
>
> *My last response (copy enclosed) is still relevant although, unfortunately for us all, the advice therein was ignored.*
>
> *If, however, you wish to witness what must rank as a classical case of the pot calling the kettle black I will gladly forward a copy of Green Property's 'West One' prospectus for the Blanchardstown Town Centre, a small sample of which I enclose, which speaks for itself.*

[1] This was also the date on which Mr O'Callaghan paid IR£10,000 to Mr Lawlor, and a little over two weeks prior to Mr O'Callaghan paying a similar sum to Cllr McGrath, the letter's author.

Transparent propaganda will continue to be ignored, however, further attacks on the integrity of councillors will be dealt with appropriately…

22.35 At the time he wrote this letter, Cllr McGrath had received a sum of IR£10,000 from Mr O'Callaghan.

22.36 Cllr McGrath was one of four councillors who on 17 December 1992 put forward the motion (dated 9 December 1992) proposing the adoption of the Manager's recommendation for Quarryvale (a '*C*' and '*E*' zoning as opposed to a '*D*' town centre zoning). He was also one of four councillors (the others being Cllrs O'Halloran, Ridge and Tyndall) who signed an addendum to 9 December 1992 motion, proposing that the Neilstown lands would revert to a '*D*' town centre zoning with a new special objective to encourage commercial, recreational, industrial and residential uses. Such a proposed specific objective with regard to the Neilstown lands would accommodate plans then being put forward for Mr O'Callaghan and others for the development of a National Stadium on these lands.

22.37 Cllr McGrath also supported limiting the retail square footage on the Quarryvale site to 250,000 square feet.

22.38 Cllr McGrath acknowledged that while on 17 December 1992 he and others[2] were advocating a cap of 250,000 square feet for retail on the Quarryvale lands, he was at the same time confident that such a cap would be removed in due course. He however had no recollection, in the immediate aftermath of the 17 December 1992 vote, of making the following utterance '*a good day's work lads, we'll lift it in the new Council*', words which were attributed to Cllr McGrath by Mr Keating in his evidence.

22.39 Mr Gilmartin did not attend Dublin County Council for the Special Meeting of 17 December 1992. He gave evidence that, notwithstanding his absence, he made a number of attempts on that date to contact Cllr McGrath, with a view to requesting him not to support a 250,000 square foot retail cap for Quarryvale to which Mr Gilmartin was strongly opposed. On 16 December 1992 MrGilmartin had also telephoned Cllr Gilbride. Cllr McGrath, in evidence, acknowledged that he may have had telephone contact with Mr Gilmartin on that date, but did not specifically recall it.

22.40 It was apparent, from the evidence of Mr Gilmartin, Mr Deane, Mr O'Callaghan and Mr Dunlop, that Mr Gilmartin's efforts to prevent a 250,000 square feet retail cap being imposed on Quarryvale continued on the 17

[2] A motion to this effect in the names of Cllrs McGrath, Devitt, Tyndall and O'Halloran was put before the Council and passed on 17 December, 1992.

December 1992 – the date of the Quarryvale vote, when Mr Gilmartin made a number of attempts to contact Cllrs Gilbride and McGrath at the County Council offices. Although Mr Deane disputed any suggestion that he was 'manning' the telephone in the Council offices, he conceded that Mr Gilmartin happened to have '*got through*….' to him on one occasion at Council on the evening of 17 December 1992. The Tribunal was however satisfied, from the evidence, that one of Mr Deane's functions on that day, as he sat in the Fianna Fail rooms of Dublin County Council, was indeed to '*man*' the telephone, in order to prevent direct communication by Mr Gilmartin with Cllrs McGrath or Gilbride. [3]

PAYMENTS MADE TO CLLR MCGRATH BY MR O'CALLAGHAN IN THE PERIOD 1991 TO 1997

22.41 In the period 1991 to 1997 a number of payments, both direct and indirect, were made to Cllr McGrath by Mr O'Callaghan. The payments included four round figure payments of IR£10,000, IR£1,000 (paid to Cllr McGrath's company), IR£10,700, and IR£20,000 made in the period October 1991 to November 1993, and a number of additional payments ranging from IR£500 to IR£10,000, paid to entities associated with Cllr McGrath.

22.42 The three larger round figure payments totalling IR£40,700, made to Cllr McGrath in the period October 1991 to November 1993 were said by Cllr McGrath to have been political donations. Mr O'Callaghan described the first IR£10,000 payment as a political donation but maintained that the sums of IR£10,700[4] and IR£20,000 which had been given to Cllr McGrath were loans which, as of 2008, remained unpaid.

THE PAYMENTS BY MR O'CALLAGHAN IN THE PERIOD 1991 TO 1993
A PAYMENT OF IR£10,000 ON 11 OCTOBER 1991

22.43 Mr O'Callaghan told the Tribunal that in June 1991, Cllr McGrath requested a contribution to his Local Election campaign, then underway. Mr O'Callaghan said that he did not then make a contribution, but subsequently did so on 11 October 1991, having been reminded to do so by Cllr McGrath. Mr O'Callaghan claimed that Cllr McGrath was one of only two Dublin County Council councillors (the other being Mr Lawlor who received IR£10,000 in September 1991) who had asked him for political contributions during the Local Election campaign. Mr O'Callaghan claimed to have made the contributions to both

[3] Also on 17 December 1992, Messrs Kay and Dave McGrath (of AIB) travelled to London to meet MrGilmartin (See Part four of this Chapter entitled '*The Role of AIB in Quarryvale…*')

[4] Mr O'Callaghan's evidence in relation to the IR£10,700 sum was inconsistent. On Day 875, he said that he did not consider the IR£10,700 to have been a loan to Cllr McGrath. However on Day 892, Mr O'Callaghan said he treated as a '*possibility*' that Cllr McGrath '*would have returned or refunded*' the sum to him.

councillors because he wanted *'to get them elected.'* At the time that Mr O'Callaghan made the payment, Cllr McGrath had been re-elected to the County Council, but Mr Lawlor had lost his seat. According to Mr O'Callaghan, Cllr McGrath, like Mr Lawlor, had himself nominated the sum of IR£10,000, and which was duly paid by Mr O'Callaghan.

22.44 The two IR£10,000 payments to Cllr McGrath and Mr Lawlor respectively were each double the amount Mr O'Callaghan had contributed towards the Local Election campaign of Mr Mícheál Martin, then a Cork based councillor and the only individual, apart from Cllr McGrath and Mr Lawlor, whom Mr O'Callaghan claimed to have supported directly in connection with the 1991 Local Election. Unlike the situation with Cllr McGrath and Mr Lawlor, Mr Martin's election contribution had been given to him during the currency of his campaign.

22.45 Questioned as to the difference in the size of the amounts paid to the Dublin based councillors and that paid to the Cork based councillor, Mr O'Callaghan maintained that the IR£10,000 payments to Cllr McGrath and Mr Lawlor were '*not an outrageous figure at all.'* Mr O'Callaghan, by way of justification for those payments, stated:

> '*McGrath was a lynchpin of the Quarryvale vote and Lawlor worked extremely hard as well for the first year or two.'*

22.46 This explanation was a clear indicator on the part of Mr O'Callaghan of an association between these two substantial payments, and the active support of both recipients for the efforts to rezone the Quarryvale lands.

THE METHOD OF PAYMENT TO CLLR MCGRATH[5]

22.47 On 11 October 1991 Mr O'Callaghan's personal bank account at AIB, 97 South Mall, Cork, was put in funds to the extent of IR£10,000 by Riga Ltd. An analysis of Mr O'Callaghan's personal cheque book stub for 11 October 1991 revealed the following manuscript notation, '*OOC cheque to <u>OOC</u> C/McGrath £10,000 in/out.'* In evidence, Mr O'Callaghan acknowledged that the notation on his cheque book stub suggested that he had cashed an IR£10,000 cheque, but he denied that such had in fact occurred, and maintained that he had given his personal cheque to Cllr McGrath. As was the case with the IR£10,000 cheque given to Mr Lawlor in September 1991, the Tribunal was not furnished with a copy of Mr O'Callaghan's 11 October 1991 cheque, as AIB had not retained the relevant records.

[5] For further consideration of this issue see Part 8.

22.48 In his evidence, Cllr McGrath acknowledged receipt of IR£10,000 from Mr O'Callaghan in October 1991. Previously, in the course of his private interview with the Tribunal on 12 October 1998, Cllr McGrath acknowledged receipt of '*political contributions'* from Mr O'Callaghan, '*always at the time of election.'* In that interview Cllr McGrath declined to give details of the payments deeming such to be '*private.'* However, subsequently on 27 October 1998, Cllr McGrath's solicitors wrote to the Tribunal to...

> ...*confirm that our client received two political contributions from Mr. Owen O'Callaghan. The first of the contributions was received in October 1991 in the sum of £10,000 by way of personal cheque. The second contribution was received in November 1993 in the sum of £20,000 by way of personal cheque. Our client is unsure as to which Dublin Hotels in which contributions were made.*

22.49 An analysis of Cllr McGrath's bank accounts, including an AIB '*election campaign fund*' account (opened by him in 1985), did not reveal a cheque lodgement of IR£10,000. In the course of correspondence with the Tribunal, Cllr McGrath attributed a IR£5,000 lodgement to his IPBS account on the 5 November 1991 as being sourced to Mr O'Callaghan, but in evidence, agreed that that IR£5,000 lodgement could not have formed part of the IR£10,000 cheque received from Mr O'Callaghan, as the IR£5,000 was in fact a single cheque lodgement.

22.50 While the Tribunal was satisfied that Cllr McGrath did receive IR£10,000 from Mr O'Callaghan in 1991, the Tribunal believed that Cllr McGrath either received such sum in cash from Mr O'Callaghan, or alternatively, that Cllr McGrath dealt with the IR£10,000 cheque from Mr O'Callaghan otherwise than by lodging it to any account in his name.

THE TRIBUNAL'S CONCLUSIONS AS TO THE PURPOSE OF THE PAYMENT TO CLLR MCGRATH IN OCTOBER 1991

22.51 Notwithstanding Mr O'Callaghan's and Cllr McGrath's attribution of the payment of IR£10,000 in October 1991 as a political donation, the Tribunal was satisfied that the primary motivation, both on the part of Cllr McGrath in requesting the payment, and on the part of Mr O'Callaghan in making the payment, stemmed from Cllr McGrath's crucial past, and continuing active involvement in support of the Quarryvale project. At the time the payment was made, both men were well aware of Cllr McGrath's importance in the success of the project to date, and in the future.

22.52 In particular, certain aspects of the payment suggested to the Tribunal that it was a payment other than a *bona fide* political donation. Firstly, on the part of Mr O'Callaghan, a significant and enhanced degree of secrecy attached to the payment. Secondly, its substantial size compared to, for example, the political contribution paid to the Fianna Fail politician Mr Micheál Martin in June 1991. Thirdly, the fact that Cllr McGrath had himself stipulated the amount of the payment and had reminded Mr O'Callaghan to make the payment suggested that it was other than a voluntary donation on Mr O'Callaghan's part in response to a request for an election contribution.

22.53 The Tribunal was satisfied that the payment of IR£10,000 was sought by Cllr McGrath and was in all probability requested on the basis of the assistance he was giving Mr O'Callaghan. The Tribunal believed that the request was readily acceded to by Mr O'Callaghan given the relative importance of Cllr McGrath and the role he was playing as part of the Quarryvale strategy team. This payment compromised in the most grievous fashion the disinterested performance by Cllr McGrath of his public duties in relation to matters relating to Quarryvale coming before Dublin County Council, and was corrupt.

THE PAYMENT OF IR£1,000 TO TOWER SECRETARIAL IN APRIL 1992

22.54 On 30 April 1992 Frank Dunlop & Associates Ltd invoiced Riga Ltd for the sum of IR£10,253.27. Included in the breakdown of that figure, as detailed on the invoice, was a sum of IR£1,423.67 for '*Secretarial Services*.' Riga Limited discharged the Frank Dunlop & Associates Ltd invoice on 22 June 1992. Riga Ltd was duly reimbursed by Barkhill Ltd on 2 October 1992.

22.55 On 1 May 1992 Frank Dunlop & Associates Ltd made a cheque payment of IR£1,000 to '*Tower Secretarial Services',* on foot of an invoice received from that entity which sought payment of IR£1,000 for:

> *To Secretarial Services in relation to the Commercial Development at Quarryvale including; mail-shots to all Councillors; faxes and telephone calls; typing and photocopying for the period 1990, 1991*.

22.56 Cllr McGrath acknowledged that Tower Secretarial Services was his business, and that he received the said sum of IR£1,000 from Mr Dunlop.

22.57 Mr Dunlop told the Tribunal that the IR£1,422.67 figure on the invoice to Riga Ltd represented (and which included an '*added value*' for Frank Dunlop & Associates Ltd) the IR£1,000 payment that Frank Dunlop & Associates Ltd went on to make to Cllr McGrath/Tower Secretarial on 1 May 1992 and was a payment which Mr O'Callaghan agreed to, although he maintained that he was unaware of

Mr Dunlop's profit mark up. While Mr O'Callaghan acknowledged that he had agreed that Mr Dunlop could make the payment to Cllr McGrath and be reimbursed by Riga, Mr O'Callaghan disagreed with Mr Dunlop's evidence that the Tower Secretarial invoice for IR£1,000 was simply an excuse for the provision of funds to Cllr McGrath. Both Cllr McGrath and Mr O'Callaghan maintained that the payment was for expenditure which had been incurred by Cllr McGrath in connection with Quarryvale (prior to Mr O'Callaghan's involvement), as reflected on the Tower Secretarial service invoice. The Tribunal however was inclined to believe Mr Dunlop's explanation was the more accurate account of why Cllr McGrath received IR£1,000 in May 1992. The Tribunal was satisfied that this payment was corrupt.

THE PAYMENT OF IR£10,700 IN MAY 1992.

22.58 The cheque payments book of Frank Dunlop & Associates Ltd documented a purchase by that firm of a bank draft for IR£10,700 in the name of William Fry Solicitors on 21 May 1992, a transaction analysed in the accounts of Frank Dunlop & Associates Ltd detailed profit and loss account for the year end 31 October 1992 as '*legal and professional*.'

22.59 Mr Dunlop, Mr O'Callaghan and Cllr McGrath all accepted that the IR£10,700 draft was paid to William Fry Solicitors, in order to discharge an indebtedness which Cllr McGrath had incurred to a third party, and which was the subject of litigation.

22.60 Mr O'Callaghan and Mr Dunlop gave broadly similar evidence relating to the circumstances as to how the payment of the IR£10,700 came about, which was that during the course of a meeting between Mr O'Callaghan, Mr Ambrose Kelly and Mr Dunlop on 21 May 1992 in Mr Dunlop's office, a telephone call was received from Cllr McGrath who wished to speak to Mr O'Callaghan or Mr Dunlop. Mr Dunlop took the call. Cllr McGrath had explained that he was at that time in the Four Courts, and that a Court Judgment against him for IR£10,000 approximately was imminent. Cllr McGrath sought financial assistance to discharge the debt, and thereby avoid a Judgment. Mr O'Callaghan agreed with Mr Dunlop that Mr Dunlop would provide a cheque/draft to William Fry Solicitors in discharge of Cllr McGrath's indebtedness and that Mr Dunlop would then include this outlay in the next invoice to Mr O'Callaghan/Riga Limited from Frank Dunlop & Associates Ltd

22.61 Mr O'Callaghan recalled the occasion in the following terms:

> '*...he rang me asking me to looking for me actually, I wasn't available. I was actually in Frank Dunlop's office but he rang Frank and passed the information on to Frank that he was in trouble, that he was in court and*

that he was looking for an amount. I think the total claim against him was about 8,000 pounds but together with fees I think it was about 10,700 pounds.'

22.62 Explaining the rationale behind his decision to discharge Cllr McGrath's debt, Mr O'Callaghan stated that his concern in May 1992 was that Cllr McGrath might be made '*bankrupt*', and that this would adversely affect the Quarryvale rezoning process in which Cllr McGrath, as a local councillor, was strongly involved. Equally, Mr Dunlop testified that the '*over arching*' concern at the time was that Cllr McGrath, a very significant supporter of Quarryvale, might have a judgment entered against him, a prospect which both Mr O'Callaghan and himself felt might have an adverse impact on Quarryvale.

22.63 Asked by Tribunal Counsel as to why or how Cllr McGrath's financial/legal difficulties were a relevant factor in Quarryvale, Mr Dunlop replied that Cllr McGrath himself felt sufficiently comfortable to make such a telephone call looking for financial assistance, and that Cllr McGrath's request for funds had emanated from the relationship which existed between Mr O'Callaghan and Cllr McGrath. Mr Dunlop also testified that neither Mr O'Callaghan nor himself had discussed the appropriateness, or otherwise, of acceding to Mr McGrath's request, and that their discussion had related solely to how Mr McGrath's request might be facilitated.

22.64 On 26 May 1992 Mr O'Callaghan wrote to Mr Dunlop and thanked him for having organised the payment to William Fry Solicitors and requested that Mr Dunlop include this sum in his next invoice to Riga Ltd. Mr Dunlop and Mr O'Callaghan both agreed that the IR£10,700 paid by Frank Dunlop & Associates Ltd was most probably included in an invoice for IR£13,530.04 relating to '*ongoing costs and expenditure in relation to Quarryvale*' furnished by Frank Dunlop & Associates Ltd to Riga Ltd on 10 June 1992 and which was discharged by Riga on 28 August 1992, and that the subject matter of the invoice would have been, in general, agreed between them prior its issue.

22.65 On 2 October 1992 Barkhill Ltd in turn reimbursed Riga Ltd for this payment. Neither Barkhill Ltd nor Mr Gilmartin were apprised of the fact that Mr O'Callaghan/Riga had discharged a debt incurred by Cllr McGrath in the sum of IR£10,700, nor was the fact that such payment was made in order to assist Cllr McGrath recorded in the records of Riga Ltd or Barkhill Ltd. There was no record or memorandum furnished by AIB to the Tribunal which suggested that AIB, when it sanctioned the drawdown on the Barkhill No. 2 loan account to reimburse Riga Ltd for this payment, received an explanation, or that it queried the meaning of the term, '*ongoing costs',* referred to on Mr Dunlop's invoice of 10 June 1992. Mr Kay suggested that AIB may have requested a detailed breakdown of the invoice,

and having not received that breakdown, simply failed to follow up on the request for an explanation. Mr Kay also stated that he presumed that AIB took it for granted that Mr O'Callaghan was himself aware of the breakdown.

22.66 Cllr McGrath disputed that he had instigated the request to Mr Dunlop and/or Mr O'Callaghan for financial assistance. The thrust of his evidence was that on 21 May 1992 he had been telephoned by Mr Dunlop, who had inquired about his whereabouts because he, Cllr McGrath, was due to attend a meeting with Mr O'Callaghan and Mr Dunlop. Cllr McGrath had then explained to Mr Dunlop that he was in Court and had explained the nature of the legal proceedings in which he was involved. Cllr McGrath testified that, while he had been quite prepared to proceed with his court case Mr Dunlop offered to assist him, which Cllr McGrath accepted. He did not recollect discussing the matter with Mr O'Callaghan at that time.

22.67 The Tribunal rejected Cllr McGrath's evidence that he was not the instigator of the plea for financial assistance on 21 May 1992. The Tribunal preferred the account provided to it by Mr O'Callaghan and Mr Dunlop to that provided by Cllr McGrath. It was satisfied that Cllr McGrath sought financial assistance from Mr O'Callaghan to discharge a personal debt, and that the payment to William Fry, Solicitors was made on that basis.

22.68 Mr O'Callaghan first apprised the Tribunal of the fact of this payment on 16 May 2003. Mr O'Callaghan's earlier statements of 12 April 2000 and 3 May 2000 did not refer to the payment. In the course of his 2003 statement Mr O'Callaghan stated as follows:

> *In or about the month of June 1992 I paid the sum of £10,700 to Councillor Colm McGrath of Dublin County Council. When I made my original statement I did not remember this payment as I personally held no documentation which would have helped me to recollect it. It was only going over matters in my mind that I began to recall a payment made to Colm McGrath. I checked my records but still could not find any record of the payment. I asked Frank Dunlop if he had any recollection of the events. He told me that he would only deal with the matter through his Solicitor. In this regard I beg to refer to my third Supplemental Affidavit as to documents.*
>
> *I believe that this payment was made in the following circumstances.*
>
> *Colm McGrath had told me on a few occasions that he was being sued for money and expressed concern that he did not have the funds to meet this litigation. In or about 21st May 1992 I was in Frank Dunlop's office when he received a call from Colm McGrath. Colm McGrath informed him that the litigation case was due in Court that day and that he felt Judgment*

was about to be given against him for the sum of £10,700. He told Frank Dunlop that he had tried to contact me and asked him if he knew where I was. Frank Dunlop told him that he would ring him back. Frank Dunlop then discussed the matter with me and I agreed to pay the amount involved. I asked Frank Dunlop if he would make the payment on my behalf and that I would reimburse him. Frank Dunlop sent a bank draft in the sum of £10,700 by courier to William Fry & Sons Solicitors to resolve the matter. From a copy of my letter to Frank Dunlop dated 26th May 1992 it is clear that I asked Frank Dunlop to include this amount in his next invoice. I do not have any copy of this letter other than the copy sent to my Solicitors by the Solicitors for Frank Dunlop. I believe from correspondence I have received from Frank Dunlop's Solicitor that this amount was included in an Invoice dated the 10th June 1992 from Frank Dunlop & Associates in the sum of £13,530.04. This invoice was paid on the 28th August 1992.

22.69 Between 14 July and 5 October 2000 Mr O'Callaghan had initiated correspondence with Mr Dunlop with regard to the payment of the IR£10,700, seeking Mr Dunlop's assistance in relation to the matter for the purposes of Mr O'Callaghan's assisting the Tribunal. Mr O'Callaghan's correspondence with Mr Dunlop culminated in a letter written by his solicitors to Mr Dunlop's solicitors on 23 October 2000 which resulted in Mr Dunlop's solicitors furnishing Mr O'Callaghan's legal advisors with a copy of Mr O'Callaghan's letter to Mr Dunlop of 26 May 1992, and a copy of the Frank Dunlop & Associates Ltd invoice of 10 June 1992.

22.70 In the course of his evidence on Day 809 Mr Dunlop took issue with portion of the content of the letter to him from Mr O'Callaghan of 14 July 2000. On that date Mr O'Callaghan wrote to Mr Dunlop as follows:

Dear Frank,

It has been on my mind that some monies were paid to a Solicitor in Dublin on behalf of Colm McGrath. I have no account of this.

I am anxious to establish if this has happened or not. It could have been some time in 1992. Can you throw some light on this subject?

I have spoken to Colm – who has some recollection of this happening, but is not quite sure.

I know you have confirmed to me that you never paid politicians on my behalf.

You might contact me after your holidays.

22.71 Mr Dunlop categorically denied that he had confirmed to Mr O'Callaghan that he had never made payments to councillors on behalf of Mr O'Callaghan, and he maintained that, as between himself and Mr O'Callaghan, the issue of whether Mr Dunlop had paid councillors on behalf of Mr O'Callaghan had never arisen in discussion between them. Mr O'Callaghan, on the other hand, was adamant that he received such confirmation from Mr Dunlop. Mr O'Callaghan recalled that in 2000 Mr Dunlop (referring to revelations that he had corruptly paid councillors) had said to him:

> *'Don't get involved in this, this had nothing to do with you, you are not aware of what happened, stay away from it. That was dismissing the whole show, this has been Frank Dunlop's attitude always to this from the very, very beginning. His business was his open business and never informed me.'*

22.72 The Tribunal was satisfied that Mr Dunlop gave no such assurance to Mr O'Callaghan, nor had Mr O'Callaghan sought such an assurance.

CLLR MCGRATH'S DISCLOSURE TO THE TRIBUNAL OF THE IR£10,700 PAYMENT

22.73 In the course of his private interview with the Tribunal on 12 October 1998 Cllr McGrath made no mention of having been the recipient of IR£10,700 in 1992, be it from Mr O'Callaghan or Mr Dunlop. Nor had Cllr McGrath referred to this issue when he furnished a written statement on 27 October 1998 which detailed payments received by him of IR£10,000 and IR£20,000 from Mr O'Callaghan, in 1991 and 1993, respectively. In evidence, Cllr McGrath acknowledged that he first apprised the Tribunal of the IR£10,700 payment on 16 August 2000, by which time Mr O'Callaghan and Mr Dunlop had brought it to the attention of the Tribunal. Mr O'Callaghan told the Tribunal that at some point between 3 May and 14 July 2000 he spoke to Cllr McGrath seeking to ascertain the detail of the circumstances in which the IR£10,700 was paid.

22.74 Irrespective of whether he believed it to be from Mr O'Callaghan or Mr Dunlop, it appeared to the Tribunal inconceivable that, when compiling his statement in 1998 for the Tribunal, Cllr McGrath had forgotten that he had been the beneficiary of funds to the extent of IR£10,700 in 1992, and in particular the unusual circumstances in which these funds had been requested by him, and had been paid to a third party on his behalf.

22.75 Cllr McGrath's ultimate disclosure of the IR£10,700 payment on 16 August 2000, came about in a letter from Cllr McGrath's solicitors, in the following terms:

Our client has asked us to bring one further matter to the attention of the Sole Member of the Tribunal. The latter part of the 1992 proceedings were issued by Durapak Limited against our client Colm McGrath trading as Clondalkin Distributors. This related to an unpaid debt of £7500. This debt and the costs of the action were subsequently discharged by Mr. Frank Dunlop and the proceedings were struck out.

22.76 On the 5 September 2000 Cllr McGrath elaborated as follows:

In relation to the discharge of a debt in 1992 by Mr. Frank Dunlop, to the best of my recollection the court date clashed with a meeting of the Council at which the Quarryvale development was on the agenda. Mr. Dunlop undertook to discharge the debt to the Plaintiff's Solicitors on my behalf and the case was not proceeded with. In the brief conversations that took place on the day and in answer to my questions Mr. Dunlop said that the matter would be 'sorted out later' and that my attendance at the meeting was of overriding importance.

22.77 Cllr McGrath acknowledged that no County Council meeting concerning the Quarryvale rezoning had been scheduled for 21 May 1992, and that the assertion in his statement of 5 September 2000 to this effect was entirely incorrect. He claimed that his incorrect version of events was his best recollection at the time he wrote his letter of 5 September 2000 to the Tribunal. The Tribunal was however satisfied that Cllr McGrath, in all probability, made that assertion in an attempt to justify the circumstances in which he came to be paid (indirectly) IR£10,700, by Mr O'Callaghan and/or Mr Dunlop.

22.78 When giving evidence in another module (predating his evidence in this module), Cllr McGrath described the IR£10,700 payment as a '*loan'* by Frank Dunlop to him, not yet discharged.

22.79 On Day 823, in the course of his evidence in this module, the following exchange took place between Tribunal Counsel and Cllr McGrath:

'Q 'Would you agree, that where somebody decided a debt of 10,000 pounds it is clearly conferring the benefit of on you, isn't that right?'

A 'Well it depends now given that we have now decided that at one point I regarded it as a loan and now as time passed on it wasn't sorted out at a later date. So I wasn't invoiced for it. So now we have to regard it as a donation.'

Q 'When you say 'we' do you mean you, Mr. McGrath?'

A 'Yes'

Q 'So it might be better it is your evidence to the Tribunal if you were to put that to the Tribunal in the first person if you wouldn't mind. So it is your position now, Mr. McGrath, that originally you had considered this matter to be a loan which you would have to repay to Mr. Dunlop but having considered it over the years you have now decided it's a political contribution? '

A 'Yes. Not from Mr. Dunlop.'

Q 'You consider it a political contribution from who?'

A 'Mr. O'Callaghan'

Q 'Is that because you have become aware of the fact that Mr. Dunlop was reimbursed by the monies?'

A 'Yes'

Q 'And when did you become aware of that?'

A 'Well I suspected that from the very start.'

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE IR£10,700 PAYMENT

i. The Tribunal was satisfied that Cllr McGrath's indebtedness was discharged by Mr Dunlop on behalf of Mr O'Callaghan solely because Cllr McGrath was a councillor who had undertaken in the past, and would continue to undertake in the future, a strategic and supportive role in the project to rezone Quarryvale. The fact that Cllr McGrath felt sufficiently comfortable to seek out Mr O'Callaghan to discharge a substantial third party debt served to emphasise the fact of their mutually beneficial relationship as it then existed, and which provided Mr O'Callaghan with accessible and reliable councillor support for Quarryvale, and which enabled Cllr McGrath to relatively easily access substantial funds when required.

ii. The Tribunal was also satisfied that at no time was the IR£10,700 deemed a loan, either in the minds of Mr O'Callaghan or Cllr McGrath. The Tribunal did not accept Mr O'Callaghan's evidence that he requested Cllr McGrath to repay it. The Tribunal was equally satisfied that at all times, as reflected in Mr Dunlop's June 1992 invoice, the IR£10,700 payment was understood and was treated by Mr O'Callaghan/Riga Ltd, as one of the '*ongoing costs'* associated with the Quarryvale rezoning project.

iii. The payment of IR£10,700 was not, and never became (as suggested by Cllr McGrath) a political donation. The Tribunal found Cllr McGrath's opportunistic changed description of the receipt of money which he originally claimed was a '*loan'* from one individual (Mr Dunlop) into a '*political donation'* from another individual (Mr O'Callaghan) was not credible.

iv. The Tribunal was satisfied that the account given to it by Mr O'Callaghan and Mr Dunlop as to the circumstances in which Cllr McGrath sought financial assistance to the extent of IR£10,700 in order to settle a personal debt, and avoid a Court judgment against him was largely accurate. The Tribunal rejected the account given by Cllr McGrath to the extent that it conflicted with that given by Mr O'Callaghan and Mr Dunlop.

v. The Tribunal was satisfied that, in all the circumstances this payment of IR£10,700 was corrupt.

THE PAYMENT OF IR£20,000 ON 9 NOVEMBER 1993

22.80 In his May 2000 statement to the Tribunal, and under the heading '*Political Contributions/Benefits*'Mr O'Callaghan, *inter alia*, described the circumstances in which he made a payment of IR£20,000 to Cllr McGrath on 9 November 1993. Mr O'Callaghan stated as follows:

> *On the 9th November 1993 I paid the sum of IR£20,000 to Councillor Colm McGrath. The circumstances of this payment are as follows. Councillor McGrath approached me and requested this payment on the basis that he had spent a considerable amount of money on the November 1992 elections as a result of which his business was in serious financial difficulty and he needed some financial help. As Councillor McGrath had supported me in my efforts in Liffey Valley and had supported Tom Gilmartin prior to I becoming involved in Quarryvale I felt obliged to offer support as a 'thank you' for all the help and assistance which he had given.*

22.81 On Day 902 Mr O'Callaghan further elaborated on the issue by testifying that in November 1993 Cllr McGrath apprised Mr O'Callaghan of difficulties he had with the Revenue Commissioners. Mr O'Callaghan stated that it was agreed between himself and Cllr McGrath that when the latter sorted out his business affairs the IR£20,000 was to be repaid to Mr O'Callaghan. Accordingly, Mr O'Callaghan said he treated the payment to Cllr McGrath as a loan.[6] Mr O'Callaghan however acknowledged that Cllr McGrath never repaid the money and that, as of 2008, he had never sought its repayment.

[6] In Riga Ltd schedule of Political Payments to Politicians it was described as a *'POLITICAL CONTRIBUTION'*

22.82 The payment to Cllr McGrath was effected by a Riga Ltd cheque for IR£20,000. As was the case with Mr O'Callaghan's IR£10,000 payment to Cllr McGrath in October 1991, the November 1993 Riga cheque was similarly not discovered to the Tribunal, as the relevant AIB records were no longer available.

22.83 Riga Ltd's cheque payments book documented the IR£20,000 payment to '*Colm McGrath'* and analysed it under the '*sundries'* column, as expenditure paid out by Riga on behalf of Barkhill/Quarryvale.

22.84 Riga Ltd's auditors, likewise, attributed the payment as a Barkhill Ltd/Quarryvale expense, and for the year end 30 April 1994 the payment was posted to the Riga Ltd Barkhill Ltd inter-company loan account in the books of Riga Ltd. There was no reference in Riga's books of the payment, being a '*loan*' to Cllr McGrath, nor indeed to it being a political contribution.

22.85 While appearing in Riga's books for the year end 30 April 1994 as money due to Riga Ltd by Barkhill Ltd, in its audited accounts for the year end 30 April 1995, the IR£20,000 which had been paid to Cllr McGrath was reposted to the Director's Loan Account in Riga Ltd, a posting which removed it entirely from the remit of the Riga Ltd/Barkhill Ltd inter-company loan account, and therefore from the scrutiny of Mr Fleming, Barkhill's auditor, and indeed from the scrutiny of any potential investor in Barkhill Ltd.

22.86 Cllr McGrath's IR£20,000 payment was part of a total of IR£60,000 (comprising a IR£5,000 payment to Cllr John O'Halloran on 9 November 1993[7], a IR£10,000 reimbursement by Riga Ltd to Mr O'Callaghan on 24 September 1993 and a IR£25,000 cheque payment to Mr Dunlop on 14 September 1993), which appeared in Riga's books at year end 30 April 1994 as monies owed by Barkhill Ltd to Riga Ltd, but which for the year end 30 April 1995 were attributed to the Director's loan account within Riga Ltd.

CLLR MCGRATH'S EVIDENCE IN RELATION AS TO THE IR£20,000 PAYMENT

22.87 In a statement of the 26 September 2001, in which he dealt with the circumstances of the receipt by him of the IR£20,000, Cllr McGrath stated as follows:

> *1.During the period 1981 to 1995/6 I was a Sole Trader. My personal, business and political finances were inextricably linked.*
>
> *In relation to the £20,000 received from Mr O'Callaghan the following circumstances pertained. My involvement in the Quarryvale development*

[7] See Cllr O'Halloran

impacted seriously on my business affairs. When Mr. O'Callaghan became aware of my predicament he offered to help out and thankfully did.

Political income and expenditure is perpetual and relates to all Local Authority and Dáil Elections of the period and the time in between.

The £20,000 was used to pay creditors (£16,787.40). The balance was miscellaneous expenditure (copies requested from Irish Permanent Building Society).

22.88 In his evidence, Cllr McGrath described the payment from Mr O'Callaghan as a political contribution. In response to Mr O'Callaghan's assertion that Cllr McGrath had requested financial assistance from him, Cllr McGrath stated that he had made no request of Mr O'Callaghan for a specific amount, rather, he had emphasised to Mr O'Callaghan the burden which had been put on his business by election expenses incurred by him.

22.89 No portion of the IR£20,000 paid to Cllr McGrath by Mr O'Callaghan found its way into Cllr McGrath's Election Campaign Fund account in AIB. Cllr McGrath explained this fact by stating that the purpose of the AIB account was for political contributions received around election times but that donations received at other times were treated differently. On Day 824, Cllr McGrath categorised the '*donations*' received by Mr O'Callaghan and which were not lodged into his '*political account*' in AIB, as a '*sort of a reimbursement back to my political expenditure.'*

22.90 Documentation discovered to the Tribunal revealed that the Riga Ltd cheque for IR£20,000 was in fact lodged to Cllr McGrath's Irish Permanent Building Society account on 19 November 1993 from which two withdrawals of IR£8,969.40 and IR£7,818 were made on 13 and 14 January 1994 respectively. Cllr McGrath told the Tribunal that the withdrawals were made to discharge debts accrued by his business, and which had been incurred because of his use of his business funds for political expenditure.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE PAYMENT OF IR£20,000 TO CLLR MCGRATH IN NOVEMBER 1993

22.91 The Tribunal was satisfied that no '*loan'* was given by Mr O'Callaghan to Cllr McGrath in November 1993, and it thus rejected Mr O'Callaghan's description of the money as a '*loan.'* The payment of IR£20,000 was made to Cllr McGrath in the immediate aftermath of the Quarryvale confirmation votes of 28 October 1993.

22.92 The Tribunal was satisfied that the IR£20,000 payment was in reality a reward or, as Mr O'Callaghan himself put it in his May 2000 statement, a '*thank you'* to Cllr McGrath for assistance rendered by him in respect of the Quarryvale rezoning.

22.93 The Tribunal did not consider it to be a coincidence that on the day Mr O'Callaghan/Riga Ltd paid IR£20,000 to Cllr McGrath, Riga Ltd likewise paid IR£5,000 to Cllr John O'Halloran, who, like Cllr McGrath, had provided wholehearted support to the Quarryvale rezoning process.

22.94 The Tribunal also noted that the payments made to Cllrs McGrath and O'Halloran on 9 November 1993 were preceded, by only 8 weeks approximately, by a payment by Riga Ltd of IR£25,000 to Mr Dunlop on 14 September 1993, a cheque which was encashed by Mr Dunlop on that date and in respect of which proceeds Mr Dunlop maintained (which the Tribunal did not accept) that he could not account, save that he conceded it was likely that he was in possession of the IR£25,000 in cash on the evening of 17 September 1993 when he visited Powers Hotel.[8]

22.95 As occurred with the discharge, some seventeen months earlier by Mr Dunlop, on behalf of Mr O'Callaghan, of the IR£10,700 debt payable by Cllr McGrath to a third party the payment of IR£20,000 by Mr O'Callaghan to Cllr McGrath in November 1993 followed upon a request for financial assistance made by Cllr McGrath to Mr O'Callaghan. The Tribunal rejected the contention that it was, or could ever have been categorised as a political donation. Similar to the IR£10,700 payment, it was clearly the case that Cllr McGrath felt sufficiently comfortable to request substantial financial assistance from Mr O'Callaghan in circumstances where he and Mr O'Callaghan were aware of the crucial assistance already provided by him, in his role as an elected councillor, to the Quarryvale project, and the probable perceived need for ongoing assistance of a similar nature into the future.

22.96 The Tribunal was satisfied that the said payment of IR£20,000 was, in effect, solicited by Cllr McGrath and readily acceded to by Mr O'Callaghan. This payment was entirely connected to the role played by Cllr McGrath in the, by then, successful Quarryvale rezoning. The connection between Cllr McGrath's soliciting and Mr O'Callaghan's payment of IR£20,000 was Quarryvale. As such, the payment was corrupt.

[8] For the Tribunal's consideration of this payment see Part Five.

MR GILMARTIN'S CLAIM THAT HE WAS TOLD BY MR O'CALLAGHAN THAT CLLR MCGRATH WAS '*ON HIS PAYROLL*'

22.97 Mr Gilmartin described an encounter he had with Mr O'Callaghan subsequent to a meeting which had taken place in AIB Bank Centre. Mr O'Callaghan and Mr Gilmartin had shared a taxi to the Airport. Mr Gilmartin claimed that in the course of the journey Mr O'Callaghan taunted him by saying that Mr Gilmartin did not know how business was done in Dublin, and that he had Cllr McGrath '*on his payroll*.' He stated, according to Mr Gilmartin, that he was meeting Cllr McGrath at the Airport for the purposes of giving him money, and had waved a cheque for either £10,000 or £20,000 in front of Mr Gilmartin saying to Mr Gilmartin '*that will be £30,000 I've given to McGrath*.'

22.98 It was also alleged by Mr Gilmartin that, in the course of this journey, Mr O'Callaghan made reference to Cllr Sean Gilbride as being on his payroll and that Cllr Gilbride had given up his job and was working for Mr O'Callaghan.

22.99 Prior to giving evidence, in his May 2001 statement Mr Gilmartin had made reference to this issue in the following manner:

> *I never paid Colm McGrath any money, but I do recall at some time in 1992, when I was travelling in a taxi to Dublin Airport with Mr. O'Callaghan, he told me he was meeting with Mr. McGrath, and that Mr. McGrath was always after money. Mr. O'Callaghan then put his hand into his pocket and he pulled out what looked to me like a cheque or a bankers draft. While I did not see the sum of money written on the cheque or draft, Mr. O'Callaghan told me that he had already given Mr. McGrath £20,000 and he indicated to me that the cheque or draft represented a further £10,000.*

22.100 In evidence, Mr O'Callaghan denied that he had ever told Mr Gilmartin of payments he had made to Cllr McGrath. Mr O'Callaghan also denied that any conversation or cheque waving incident, as described by Mr Gilmartin, had taken place between them.

22.101 The Tribunal noted the fact that prior to any disclosure being made to the Tribunal by Mr O'Callaghan of payments by him to Cllr McGrath, Mr Gilmartin advised the Tribunal that Mr O'Callaghan had paid a substantial sum to Cllr McGrath.

22.102 In the course of a telephone conversation with Counsel for the Tribunal on 17 April, 1998, Counsel noted the following:

Mr. Gilmartin said that Colin (sic) *McGrath a councillor from Clondalkin got £30,000 from Callaghan* (sic).

22.103 In a further telephone conversation between Mr Gilmartin and Counsel for the Tribunal on 13 October, 1998, Counsel noted that Mr Gilmartin had referred to a sum paid by Mr O'Callaghan to Cllr McGrath at Dublin Airport. It was also noted that Mr Gilmartin had said that Mr O'Callaghan and Mr Deane had met Cllr McGrath at Dublin Airport. Counsel noted:

Gilmartin was waiting for a taxi to the airport. O'Callaghan and Deane had earlier ordered a taxi and outside the Bankcentre, they offered Gilmartin a lift to the airport. Gilmartin accepted the offer and in the course of the journey, O'Callaghan said that he had to meet McGrath at the airport and said 'I've already paid him and he's looking for more.'O'Callaghan insisted that Gilmartin should not be seen at the airport by McGrath. Gilmartin went to the Ryanair desk.

O'Callaghan later said that McGrath had seen him (Gilmartin) to which Gilmartin replied 'so what.'

22.104 And that: *'O'Callaghan said it was important that McGrath should not see Gilmartin at the airport.'*

THE TRIBUNAL'S CONCLUSIONS AS TO WHAT MR O'CALLAGHAN TOLD MR GILMARTIN IN RELATION TO CLLR MCGRATH

i. In relation to the issue as to whether or not, as a matter of probability, Mr O'Callaghan informed Mr Gilmartin as to payments made by him to Cllr McGrath, and that Cllr McGrath was on his payroll, the Tribunal accepted as substantially accurate, the account given to it by Mr Gilmartin, and rejected Mr O'Callaghan's denial that any such conversation had taken place.

ii. The Tribunal also accepted Mr Gilmartin's evidence that Mr O'Callaghan had waived a cheque for IR£10,000 or IR£20,000 that he intended paying Cllr McGrath in front of him, and that Mr Gilmartin understandably interpreted this gesture as a taunt by Mr O'Callaghan, whether or not in fact it amounted to such.

22.105 In particular, the Tribunal took cognisance of the relative accuracy of Mr Gilmartin's assertions to the Tribunal in 1998 to the effect that Cllr McGrath had been paid IR£30,000 by Mr O'Callaghan. The Tribunal has established that Cllr McGrath received two round figure payments totaling IR£30,000 from Mr O'Callaghan in the period October 1991 to November 1993 and that it was Mr O'Callaghan himself who had personally handed over the two payments to Cllr McGrath.

22.106 Moreover, the Tribunal was satisfied, that Mr O'Callaghan occasionally boasted to Mr Gilmartin of his political connections and influence that he probably did as alleged by Mr Gilmartin on occasion refer to politicians, including Cllr McGrath, being on '*his payroll.l*'

CLLR MCGRATH'S COMPLAINTS THAT HE WAS SHORT OF MONEY

22.107 While there was considerable divergence in the evidence of Messrs Gilmartin, O'Callaghan and Dunlop on a range of issues, one of the few matters in respect of which they displayed virtual unanimity in their respective testimonies was that Cllr McGrath constantly complained of being short of money.

22.108 Mr Dunlop testified as to Cllr McGrath's many references to the adverse financial effect on his business which he claimed was caused by his involvement with Quarryvale. Mr O'Callaghan also gave broadly similar testimony. Mr Gilmartin testified that in encounters with Cllr McGrath the latter had talked about needing '*£100,000*' but that '*...it wasn't as bluntly as say Lawlor or Hanrahan.*' Later in his testimony (Day 765) Mr Gilmartin gave somewhat conflicting evidence on this issue which suggested that no sum of money had been alluded to by Cllr McGrath. However, the thrust of his evidence, which was similar to that of Mr O'Callaghan and Mr Dunlop, was that Cllr McGrath had talked about being in need of money.

PAYMENTS MADE BY RIGA LTD/BARKHILL LTD TO ESSENTIAL SERVICES LIMITED IN THE PERIOD 1995 TO 1997

22.109 Cllr McGrath's company, Essential Services Limited, was the beneficiary of the following payments directly from Riga Ltd/Barkhill Ltd, in the period 1995 to 1997:

- 27 April 1995 IR£8,500
- 2 June 1995 IR£1,055
- 21 March 1996 IR£1,412
- 18 July 1996 IR£874.83.
- 25 April 1997 IR£500
- 6May 1997 IR£10,000
- 30 June 1997 IR£1,121.57
- 16 September 1997 IR£1,149.50
- 4 November 1997 IR£762.30

22.110 All but one of these payments were stated by Cllr McGrath and Mr O'Callaghan to have been made by Riga Ltd/Barkhill Ltd to Essential Services for the provision of security and miscellaneous services on the Quarryvale site. Mr

O'Callaghan stated that Cllr McGrath provided security services to the Quarryvale site '*for a long time*.'

PAYMENT OF IR£10,000 ON 6 MAY 1997

22.111 On 6 May 1997 Essential Services Ltd received a IR£10,000 cheque from Riga Ltd. An invoice marked '*RECEIVED*' by Riga Ltd on 26 June 1997 and which post-dated the payment by some seven weeks, was said by Mr O'Callaghan to describe the service rendered by Essential Services Limited for which Riga paid IR£10,000. The invoice claimed the money for: *'To provision of serviced office accommodation in the period January to June 1997, as agreed*.'

22.112 Mr O'Callaghan claimed that he had been provided with such a facility at Cllr McGrath's Clondalkin office. However, Mr O'Callaghan also told the Tribunal that from 1991 he had been provided with office facilities by Mr Dunlop, in Mr Dunlop's offices.

22.113 The IR£10,000 payment to Essential Services was posted in Riga Ltd/Barkhill Nominal ledger of the Intercompany Loan Account.

22.114 In the course of his evidence Mr O'Callaghan rejected any suggestion that this payment had been made in connection with Cllr McGrath's candidature in the General Election which was called on 15 May 1997, and stated that if Cllr McGrath had requested a political contribution for that election, he would have paid him.

22.115 The Tribunal was satisfied that the payment of IR£10,000 was not, as claimed, a payment for the provision of office accomodation. The Tribunal believed that the payment, which was the fourth substantial round figure payment to Cllr McGrath from Mr O'Callaghan in the period 1991 – 1997, was in reality a payment made in connection with Cllr McGrath's ongoing supportive role in Quarryvale, and was corrupt.

THE ASCON LTD /JOHN SISK & SON LTD (AND OTHER) PAYMENTS TO ESSENTIAL SERVICES LIMITED

22.116 Over a two year period Essential Services Ltd received almost IR£800,000 from contracting companies Sisk and Ascon and other companies involved in the construction of the Liffey Valley Shopping Centre. From the documentation provided by Cllr McGrath, Essential Services Limited was paid IR£53,403.73 in the period March to December 1996, a total of IR£277,274.78 in the period January to December 1997; IR£70,358.45 for the period January to February 1998; IR£72,091.20 for the months of March to April 1998;

IR£104,055.78 in the period May/June 1998; IR£78,098.78 for the period July/August 1998; IR£108,564.60 for the period September/October 1998.

22.117 Cllr McGrath told the Tribunal that his company provided security and earth moving services for the contractors and sub contractors employed on the Quarryvale site. Cllr McGrath stated that Essential Services Ltd had tendered for a number of contracts, in respect of some of which (for example the Ascon and Sisk contracts), it had been successful.

22.118 In a statement provided to the Tribunal in November of 2007 Mr O'Callaghan stated as follows:

> *At the time of the proposed development for Liffey Valley, there was a concern developing locally to the effect that there would be nothing in the development which would be of benefit to the locals. It was asserted, from time to time, to me that I would simply bring in all my own people and there would be nothing for the locals.*
>
> *I endeavoured, in so far I could, to ensure that people from the local area would be taken on in relation to certain activities. In this regard the following local people were involved in the provision of services to the development:*
>
> 1. *John O'Halloran, Canteen Services*
> 2. *Colm McGrath, Security Services and Small Plant Hire*
> 3. *Colm Tyndall, Insurance Services*
> 4. *Joe O'Sullivan Security Services*
> 5. *Colm McHale & Plant Hire etc.*
>
> *In addition I encouraged Sisk, the main contractors, to employ local people. Many of those local people who sought employment were unsuitable and so we initiated, following consultation with FAS, a FAS training scheme.*

22.119 Mr O'Callaghan acknowledged that Cllrs McGrath, O'Halloran and Tyndall, whom he described as his main councillor supporters in relation to Quarryvale, all benefited commercially during the construction of the Liffey Valley Shopping Centre, and justified their employment on the basis that he was '*employing local people*.'

22.120 Cllr McGrath maintained that he was unaware that Mr O'Callaghan had encouraged contractors and sub contractors on the Quarryvale site to use local services and labour during the construction of Quarryvale. The Tribunal considered it extremely unlikely that Cllr McGrath was unaware of Mr O'Callaghan's efforts, particularly having regard to the fact that from 1995 to

1996 his company, at Riga's behest, was already engaged in providing security services on the lands.

MR DUNLOP'S ALLEGED PAYMENTS TO CLLR MCGRATH IN THE CONTEXT OF QUARRYVALE

22.121 On Day 147, and on Day 148, in his '*1991 Local Election Contributions*' and his '*1992 List*' respectively, Mr Dunlop named Cllr McGrath as the recipient of IR£2,000 cash at the time of the Local Election in June 1991, and IR£2,000 cash at the time of the November 1992 General Election. Mr Dunlop in his October 2000 and December 2003 statements, and in his sworn evidence linked both payments to the support Cllr McGrath was giving to Quarryvale.

22.122 Explaining why he had given Cllr McGrath, and indeed the other elected councillors named on his 1991 list, election contributions, Mr Dunlop stated that all were strong supporters of the Quarryvale rezoning project and for this reason Mr Dunlop had supported them electorally in May/June 1991, when they approached him for financial support. According to Mr Dunlop, when requesting financial support for his Local Election campaign, Cllr McGrath averted to that very support. Mr Dunlop stated that the IR£2,000 cash was duly paid over to Cllr McGrath at his office in Clondalkin in June 1991.

22.123 Mr Dunlop also told the Tribunal that on 10 November 1992 he had met Cllr McGrath at a public house in Clondalkin and handed him IR£2,000 cash for his General Election campaign. Mr Dunlop stated that an entry '*Clondalkin*' in his diary for that date referred to his pre-arranged meeting with Cllr McGrath. As was the case with the 1991 Local Election, Cllr McGrath had sought the contribution and had referred to the support he was providing to the Quarryvale project.

22.124 Mr Dunlop claimed to have been unaware that Mr O'Callaghan had given IR£10,000 to Cllr McGrath in October 1991 or that a further sum of IR£20,000 had been given by Mr O'Callaghan to Cllr McGrath in November 1993. Mr Dunlop maintained that it was not until some years later that a journalist had brought the matter of payments from Mr O'Callaghan to Cllr McGrath, to his attention for the first time.

22.125 Cllr McGrath acknowledged that he had been the recipient of political contributions in cash from Mr Dunlop on a few occasions, ranging from IR£500 to IR£2,000. Cllr McGrath recalled receiving sums of IR£500 on two occasions, IR£1,000 on one occasion and IR£2,000 on another occasion. Documentary evidence revealed that in 1999 Cllr McGrath was the recipient of a cheque for IR£500 from Mr Dunlop on foot of a written request made by Cllr McGrath on 7

May 1999 for support from Mr Dunlop towards a golf fundraiser to raise money for Cllr McGrath's campaign as an independent candidate in the 1999 Local Election.

22.126 The thrust of Cllr McGrath's evidence was that, insofar as he had received political contributions from Mr Dunlop in relation to the 1991 Local Election and the 1992 General Election, (which he acknowledge he probably received), such contributions fell into the group of four cash contributions (already referred to above), he recalled receiving from Mr Dunlop. Cllr McGrath denied that he had ever received money from Mr Dunlop in connection with the rezoning of Quarryvale or in connection with any other rezoning.

22.127 While acknowledging a probable political contribution in cash from Mr Dunlop in November 1992, Cllr McGrath took issue with Mr Dunlop's testimony that the cash had been paid to Cllr McGrath in a public house in Clondalkin. He maintained that while he may have met with Mr Dunlop in a public house in Clondalkin on occasions, he had never met him at such a location for the purpose of receiving a donation, Cllr McGrath stated: '*In fact I would have been abhorred if he attempted to give me a donation in a public forum like that*' as it could be '*misconstrued.*'[9]

22.128 It was Cllr McGrath's contention that Mr Dunlop had given his political donations to him either at his home or at his Clondalkin office. Cllr McGrath said that on one occasion Mr Dunlop gave him IR£2,000 in cash in his (Cllr McGrath's) office wrapped in a newspaper. Mr Dunlop's position, *vis-a-vis* his handing to Cllr McGrath IR£2,000 in cash wrapped in a newspaper, was that that particular cash payment was given to Cllr McGrath in connection with a rezoning motion (unrelated to Quarryvale) and that it was a payment separate to the cash payments of IR£2,000 each made to Cllr McGrath in May/June 1991 and on 10 November 1992 respectively.

22.129 On 6 October 1998 the Tribunal invited Cllr McGrath to attend an interview with Tribunal Counsel on 12 October 1998, in connection with Quarryvale, and requested Cllr McGrath, prior to such attendance, to provide a narrative account of his knowledge of and involvement with the Quarryvale rezoning.

[9]However, in his statement to the Tribunal on 27 October, 1998, Cllr McGrath suggested that he received the payments of IR£10,000 (October 1991) and IR£20,000 (November 1993) from Mr O'Callaghan in hotels in Dublin.

22.130 By letter of 7 October 1998 Cllr McGrath responded as follows:

> *As an elected member of Dublin County Council for the Clondalkin area one of my most serious concerns was the failure of the designated Town Centre lands at Neilstown/Balgaddy to get off the ground despite the fact that it had been zoned since 1972.*
>
> *It was generally perceived that the location was wrong as no multiple/anchor tenants would commit themselves to the site.*
>
> *An alternative site in a more strategic location was identified at Quarryvale. Several multiple/potential anchor tenants immediately expressed strong interest in the alternative site and a proposal for its development was prepared outlining the employment creation potential in a disadvantaged area. The promoters, Mr. Tom Gilmartin and Mr. Owen O'Callaghan sought the support of the Planners and the elected members in having the Town Centre designation relocated to Quarryvale. To achieve this the lands would require a change in zoning and having satisfied myself that the developers were determined to advance the project without delay I submitted an appropriate Motion to the Development Plan Review which was eventually passed, as amended, by a substantial majority. My support for this project was unconditional.*

22.131 In the course of that private interview on 12 October 1998 Cllr McGrath, while acknowledging political donations from Mr O'Callaghan[10] which he stated were '*always at the time of election*' (a timeframe that was not in fact accurate), when asked if he had received any payments indirectly through Mr Dunlop, replied in the negative, other than stating that Mr Dunlop: '*may have supported one of my golf outings, maybe even twice, once anyway*.'

22.132 Cllr McGrath sought to account for his failure in 1998 to apprise the Tribunal of the fact that he had received money from Mr Dunlop by stating that he had not informed the Tribunal of cash political contributions received from Mr Dunlop because he had simply been asked about '*payments*' from Mr Dunlop, whereas, he pointed out: '...*there is a very clear distinction between payment and a political contribution*.'

22.133 On 20 December 1999, the Tribunal requested Cllr McGrath to provide a statement outlining his involvement in the Quarryvale rezoning, and also requested details of financial support provided to him by anyone connected to

[10] On 12 October 1998 Cllr McGrath in an interview with the Tribunal declined to provide details of such payments, although he later did so in correspondence on 28 October 1998.

the Quarryvale rezoning. In the course of his response, furnished on 18 February 2000, Cllr McGrath stated:

> *I received two personal donations from Mr O'Callaghan the details of which I have outlined to you already and which I regard as strictly private and confidential. I provided printing services to Frank Dunlop & Associates in relation to the notification of public meetings. Mr. Dunlop entered teams in my golf classics.*

22.134 On the 14 December 2000, in response to the Tribunal informing Cllr McGrath that it had come to its attention that he had, directly or indirectly, received money from Mr Dunlop in connection with a number of land rezoning, Cllr McGrath, while denying receipt of any monies directly or indirectly from Mr Dunlop in connection with land rezonings, advised the Tribunal that:

> *I did receive a number of unconditional political donations from Frank Dunlop in response to fundraising requests to defray election expenses and the costs of running my full time constituency office. These ranged in amounts from £500 to £2,000 in the form of cash and cheques. Cheques were lodged to my bank account, details of which have been supplied to the Tribunal. Cash was expended on day to day election and constituency expenses.*
>
> *Full details have already been supplied to the Tribunal in relation to the discharge of a debt in the sum of £7,500 plus costs by Frank Dunlop on my behalf…*

22.135 In his evidence Cllr McGrath denied that there was any substantial difference between what he had told the Tribunal on the 12 October 1998, when he stated that Mr Dunlop may have supported one or two golf classic outings, and the contents of his 14 December 2000 statement. Cllr McGrath maintained that it was in effect the same information and pointed out that Mr Dunlop:

> …*would enter teams in my golf classics. I would write to him inviting him to participate and he would invariably turn up and take a team or two teams, as he did in one case*.

22.136 At one point in the course of his evidence, it was Cllr McGrath's position that other than taking teams in his golf classics, Mr Dunlop had not otherwise given him political donations. He, however, also advised the Tribunal that on the occasion Mr Dunlop had turned up at his Clondalkin office with IR£2,000 in cash wrapped in a newspaper, he had done so in response to Cllr McGrath's request to him to support a fundraising event. Later in his evidence, Cllr McGrath appeared to distance himself from his hitherto apparent stated position, namely that all political contributions from Mr Dunlop had emanated from requests to support golf classics to stating:

'*one of these donations may have been a donation that fell between a fundraising event having bee finished and an election pending'*

and,

'*that some of those donations may not have actually found themselves in the overall. May not have been a team in a golf classic. It may have been a straight contribution just at election time*.'

22.137 Cllr McGrath acknowledged that, by and large, none of Mr Dunlop's cash political contributions were lodged to his AIB Bank election account and that no record of such contributions had been maintained by him. Large cash donations received by him in between elections were simply retained in cash.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO PAYMENTS TO CLLR MCGRATH BY MR DUNLOP

i. The Tribunal was satisfied that, as alleged by Mr Dunlop, cash donations of IR£2,000 were paid to Cllr McGrath at the time of the Local Elections in 1991 as well as during the course of the General Election campaign in 1992. As was the case with other councillors who were the beneficiaries of money from Mr Dunlop between 16 May and 27 June 1991, Cllr McGrath's IR£2,000 was paid to him in the immediate aftermath of the Quarryvale vote of 16 May 1991. Likewise, the 1992 contribution was provided to Cllr McGrath immediately prior to the second Quarryvale vote of 17 December 1992.

ii. The Tribunal was satisfied that Mr Dunlop's primary motivation in making the 1991 payment to Cllr McGrath (and indeed to others) was to consolidate his support for Quarryvale.

iii. The Tribunal was also equally satisfied that Mr Dunlop's IR£2,000 cash payment to Cllr McGrath in November 1992, albeit given again under the guise of an election contribution, was in consideration of Cllr McGrath's important role as an advocate of the Quarryvale rezoning. The Tribunal accepted Mr Dunlop's contention that Cllr McGrath solicited both payments.

iv. The Tribunal was satisfied, given the key role played by Cllr McGrath in the Quarryvale rezoning process from as early as February 1991 and given his role as a Quarryvale strategist that Mr Dunlop's payments to Cllr McGrath were in all the circumstances corrupt.

AN OVERVIEW OF THE FOUR ROUND FIGURE PAYMENTS MADE BY MR O'CALLAGHAN (DIRECTLY OR INDIRECTLY) AND THE PAYMENTS MADE BY MR DUNLOP DIRECTLY TO CLLR MCGRATH IN THE PERIOD 1991 TO 1993

22.138 Cllr McGrath received, directly or indirectly, four payments totalling IR£41,700 from Mr O' Callaghan within a two year period, approximately between late 1991 and late 1993, which was a crucial period in the project to rezone Quarryvale for retail development. The four payments were solicited by Cllr McGrath, and were paid to him at a time when he was, in his capacity as a councillor, involved with the rezoning of the Quarryvale lands (and related issues). Mr O'Callaghan transparently described Cllr McGrath (in the context of the IR£10,000 payment in October 1991) as a '*…linchpin of the Quarryvale vote* ….'

22.139 The Tribunal was satisfied that the payments of IR£10,000, IR£10,700 and IR£20,000 could not justifiably or reasonably be described as *bona fide* or legitimate political donations, nor could the payments of IR£10,700 and IR£20,000 be accurately described as '*loans'* to Cllr McGrath, as contended.

22.140 The statement made by Mr O'Callaghan to Mr Gilmartin – that Cllr McGrath was '*on his payroll*', and which the Tribunal has found was indeed stated by Mr O'Callaghan to Mr Gilmartin, aptly and accurately summarised the basis of the relationship which existed between Mr O'Callaghan and Cllr McGrath from 1991 onwards.

22.141 The recipient of the four payments was not disclosed to the auditors of Barkhill Ltd or to Mr Gilmartin. The payments to Cllr McGrath were effected unbeknownst to Barkhill Ltd, yet this company ended up discharging three of them – the October 1991 IR£10,000 payment, 1 May 1992 IR£1,000 payment and the May 1992 IR£10,700 payment.

22.142 Mr O'Callaghan's claimed '*political contribution'* of IR£10,000 in October 1991 to Cllr McGrath was assigned to Mr Gilmartin's Directors Loan account without his knowledge or consent.

22.143 In the books of Riga Ltd the IR£20,000 November 1993 payment to Cllr McGrath was posted in the Riga Ltd/Barkhill Ltd, Intercompany Loan Account, until removed in 1995.

22.144 The Tribunal was satisfied that over the course of the Quarryvale rezoning process between 1991 and 1993, while Cllr McGrath was publicly perceived as an elected councillor discharging his duty as an elected

representative, he was in reality, and secretly, acting in the role of strategist for and advisor to Mr O'Callaghan in relation to Quarryvale, as well as a supporter at County Council meetings, and as such was in receipt of very substantial financial benefits. On that basis, the said payments were corrupt.

22.145 Quite clearly, Cllr McGrath's ability to disinterestedly perform his duties as an elected councillor was hopelessly compromised in relation to the rezoning of the Quarryvale lands, because of his corrupt financial relationship with Mr O'Callaghan and Mr Dunlop.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR OLIVIA MITCHELL (FG)

23.01 Cllr Mitchell was a Fine Gael councillor in Dublin County Council from 1985 to December 1993, and a member of Dún Laoghaire-Rathdown County Council from 1994, where she served as Cathaoirleach from July 1995 to July 1996. Cllr Mitchell was a Dáil candidate for Fine Gael in the November 1992 General Election.

23.02 Documentation discovered to the Tribunal by Mr Dunlop in July 1999 concerning political contributions made by him personally in the period 1 September 1991 to 1 September 1993 listed Cllr Mitchell as one of the four councillors to whom Mr Dunlop claimed he made political contributions in the year ending 31 December 1992. Cllr Mitchell was stated to have received IR£500.

23.03 On 11 April 2000 (Day 145) Cllr Mitchell's name was one of a number of Cllrs listed by Mr Dunlop as having been lobbied by him in relation to Quarryvale. Cllr Mitchell was also listed by Mr Dunlop on Day 146 as a councillor who had requested legitimate political contributions from him.

23.04 On Mr Dunlop's '*1992*' list (provided on Day 148/9 May 2000), Cllr Mitchell was listed as the recipient of IR£500 in cash.

23.05 Although Cllr Mitchell did not dispute that she was the beneficiary of a cash donation from Mr Dunlop in November 1992, she vehemently denied that she had ever solicited a political donation from him.

23.06 Mr Dunlop told the Tribunal that an entry in his diary for 10 November 1992, '*Ashton's Clonskeagh*', denoted the meeting with Cllr Mitchell in the course of which he gave her the IR£500 donation.

23.07 Although Cllr Mitchell agreed that she met with Mr Dunlop at Ashtons on 10 November 1992, she disagreed with elements of Mr Dunlop's account of how that meeting came about and she queried whether it was, in fact, IR£500 she received. She believed it more probable that Mr Dunlop had donated a sum in the region of IR£200 to IR£300 at the time of the 1992 General Election. Cllr Mitchell described a IR£500 political contribution as '*huge*', and one she believed she would recall, if made.

23.08 Cllr Mitchell testified to a discussion she had with Mr Dunlop within three years of the establishment of the Tribunal, when Mr Dunlop had telephoned her asking her to confirm that he was correct in his recollection that the contribution he had given her in November 1992 was IR£200. Cllr Mitchell's belief, prior to being contacted by Mr Dunlop, was that the contribution was IR£300 but Mr Dunlop had confirmed that it was IR£200.

23.09 Cllr Mitchell provided the same figure of IR£200 to the Tribunal on 7 February 2003 in response to an inquiry from the Tribunal as to whether she had had, post the establishment of the Tribunal, contact with Mr Dunlop. However, previously, in a statement furnished to the Tribunal on 6 January 2000, in response to the Tribunal's inquiries, *inter alia*, as to her involvement with Mr Dunlop and Mr O'Callaghan regarding Quarryvale, Cllr Mitchell had advised the Tribunal that, to the best of her recollection, she received a IR£500 donation from Mr Dunlop in November 1992, and a donation of either IR£300 or IR£500 for the 1997 General Election.

23.10 Both in her written statements to the Tribunal, and in her evidence, Cllr Mitchell acknowledged that she could not recall with any degree of certainty the amount received from Mr Dunlop in November 1992. As a matter of probability, given the extent to which Mr Dunlop was cash rich in November 1992, the Tribunal considered it likely that Ms Mitchell was the recipient of a IR£500 cash donation from Mr Dunlop.

Mr Dunlop testified that he gave Cllr Mitchell the IR£500 contribution following a request from Cllr Therese Ridge that he make a political contribution to her colleague, Cllr Mitchell.

23.11 Cllr Ridge denied being the instigator of the suggestion that Cllr Mitchell would receive an election contribution from Mr Dunlop. She testified that it was Mr Dunlop who raised the issue in conversation, and that she had advised him to contact Cllr Mitchell.

23.12 Cllr Ridge was adamant that while she may have alerted Cllr Mitchell to the likelihood of contact from Mr Dunlop in the context of an election donation, she had not suggested the idea to Mr Dunlop. Cllr Mitchell accepted that Cllr Ridge forewarned her of an approach from Mr Dunlop.

23.13 Cllr Mitchell told the Tribunal that in the course of her telephone conversation with Cllr Ridge, she learned that Cllr Ridge herself had received an election contribution from Mr Dunlop and that he had told Cllr Ridge he that wished to make an Election contribution to her. Cllr Ridge had told Mr Dunlop to

contact Cllr Mitchell which he did. They duly met on 10 November 1992 at Ashton's Public House in Clonskeagh. Cllr Mitchell told the Tribunal that she assumed that Mr Dunlop was making election contributions to a number of General Election candidates, but was unsure whether she had given any thought to this at the time.

23.14 Asked on Day 811 about his purpose in giving IR£500 cash to Cllr Mitchell in November 1992, Mr Dunlop maintained that while it was given to her in the context of her candidacy in the General Election, it had also been given in the context of a request which had been made by Cllr Therese Ridge, who was a supporter of Quarryvale and someone who had sought Cllr Mitchell's support for Quarryvale. Mr Dunlop stated as follows:

> '*The payment was made to Ms. Olivia Mitchell in the context of the election and in the context of the representation that had been made to me by Therese Ridge who was an inhabitant supporter of Quarryvale and who had garnered the support of Olivia Mitchell. I, my orientation on the payment to Ms. Mitchell of the £500 was in the specific context that Olivia Mitchell was, had already declared or was on the cusp of declaring her support for the Quarryvale project and it was in that context that I made the payment to her.*'

23.15 Mr Dunlop acknowledged that in his discussions with Cllr Mitchell regarding Quarryvale she had never intimated to him that her support for the Quarryvale rezoning project came at a '*cost*' to Mr Dunlop. Mr Dunlop also stated that, while he could not say so specifically, it was '*highly probable in the context of the imminence of the vote that Quarryvale was discussed in that conversation*' (a reference to his meeting with Cllr Mitchell on 10 November).

23.16 County Council records indicated that Cllr Mitchell was one of a small number of Fine Gael Councillors who voted for the rezoning of Quarryvale on 16 May 1991. Cllr Mitchell's voting pattern on the second Quarryvale vote on 17 December 1992 was likewise supportive of the Quarryvale Town Centre proposal.

23.17 While there was no written reference of contact by Mr Dunlop and/or Mr O'Callaghan with Cllr Mitchell regarding Quarryvale prior to 1992, as a matter of probability the Tribunal believed that she was lobbied by Mr Dunlop and/or Mr O'Callaghan in the period leading up to 16 May 1991 vote. Mr O'Callaghan told the Tribunal that he knew Cllr Mitchell at the time of that vote.

23.18 Documentation furnished to the Tribunal by Mr O'Callaghan suggested that a scheduled meeting between Mr O'Callaghan and Cllr Mitchell was

arranged for 25 March 1992, at the Gresham Hotel. Mr Dunlop's diary for 4 June 1992 also documented a meeting with Cllr Mitchell at the Gresham Hotel. Cllr Mitchell recalled the former meeting with Mr O'Callaghan/Mr Dunlop at the Gresham Hotel, and while she did not recall the latter meeting, she conceded that it may have occured.

23.19 Mr Dunlop's *'contact report'* of 17 June 1992 prepared for Mr O'Callaghan certainly indicated that by that date Cllr Mitchell had been contacted by Mr Dunlop and by Mr O'Callaghan.

23.20 Mr Dunlop's diary for 6 November 1992, (the day following the calling of the General Election), suggested that a meeting between Mr Dunlop and Mr O'Callaghan with Cllrs Therese Ridge, Mary Elliott and Olivia Mitchell had been scheduled for that date (the lines drawn across the diary entry suggested that this meeting may in fact not have taken place). The Tribunal was however satisfied that Mr Dunlop and Mr O'Callaghan met with Cllrs Mitchell, Ridge, Elliott and Devitt for dinner at the Le Coq Hardi Restaurant on 8 December 1992, some nine days prior to the Quarryvale vote of 17 December 1992. While Cllr Mitchell claimed that she had no recollection of the dinner in question, she conceded that, given the imminence of the forthcoming Quarryvale vote, the Quarryvale rezoning was likely to have been a topic of conversation on that occasion.

23.21 The Tribunal believed, as a matter of probability, that one of the likely topics of conversation at the dinner was the motion in the names of Cllrs O'Halloran, McGrath, Ridge and Tyndall, which was subsequently lodged with the County Council on 9 December 1992, and which advocated, *inter alia*, the adoption of the Manager's Report which had been circulated on 2 December 1992 to the extent that that Report recommended the development of Quarryvale with a 'C' and 'E' zoning.

23.22 On Day 148 (9 May 2000), Mr Dunlop identified Cllr Mitchell as one of the individuals who was involved in counselling Mr O'Callaghan/Mr Dunlop to accept a retail cap of 250,000 square feet on Quarryvale. Cllr Mitchell denied this suggestion. While the Tribunal believed that Cllr Mitchell may not have been the principal contributor to this topic, it was satisfied that almost certainly, she was party to a discussion on the matter on 8 December 1992. Cllr Ridge on the other hand acknowledged that she may have discussed the matter with Mr Dunlop prior to the vote (on 17 December 1992), although she denied that she ever gave him advice. While the motion to cap the Quarryvale retail development at 250,000 square feet was not lodged or placed before the County Council until 17 December 1992, the Tribunal believed it probable that the issue of a

reduction in the retail development area of Quarryvale to 250,000 square feet was a matter of discussion on 8 December 1992.

23.23 On 1 December 1992, Mr O'Callaghan advised AIB that County Council officials[1] were by then thinking in terms of *'...a smaller centre for Quarryvale of approximately 250,000 square feet.'* In the Tribunal's view it was improbable that Mr O'Callaghan would not have shared this information with Cllrs Mitchell, Ridge, Elliott and Devitt on 8 December 1992, or that he did not discuss with them whether or not the proposed reduction in the retail area limit would be sufficient to satisfy those councillors who were opposed to the rezoning of Quarryvale.

23.24 Cllr Mitchell acknowledged social contact between herself and Mr O'Callaghan and Mr Dunlop. She was one of four Fine Gael councillors (the others being Cllrs Ridge, Elliott and Devitt, and occasionally Cllr L.T. Cosgrave) with whom Mr O'Callaghan and Mr Dunlop socialised on an occasional basis (the '*4x2 Club*').

23.25 The Tribunal was satisfied that Cllr Mitchell was probably in attendance at such social engagements on 8 December 1992, 24 March 1993, 28 July 1993, 2 December 1993, 21 January 1994, 26 April 1995, 24 October 1997, 8 May 1998, 15 January 1999 and 8 October 1999, based on information found in Mr Dunlop's diaries.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO A PAYMENT OF IR£500 TO CLLR MITCHELL FROM MR DUNLOP

23.26 The Tribunal was satisfied that, as a matter of probability, Cllr Mitchell received a sum of IR£500 from Mr Dunlop at the time of the 1992 General Election. At that time Cllr Mitchell had had meetings with Mr Dunlop and Mr O'Callaghan in relation to the Quarryvale project, and was a supporter of that project. While the available evidence would suggest that Cllr Mitchell herself did not solicit the contribution, she nonetheless accepted it in the knowledge of Mr Dunlop's close association with the Quarryvale rezoning project. In all those circumstances it was inappropriate for her to have accepted the cash donation.

[1] Mr O'Callaghan also told the Tribunal that, at 5pm on 8 December 1992, he met with the County Council's senior planner, Mr Willie Murray.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR TOM MORRISSEY (FG)

24.01 Cllr Morrissey was first elected a County Dublin councillor in the Local Elections of 1991. In that election, he stood on a '*pro Blanchardstown, anti Quarryvale ticket*.' Cllr Morrissey told the Tribunal that the Quarryvale issue was one of the main issues in the Local Elections in the west Dublin area.

24.02 The telephone records maintained by Mr Dunlop's office indicated that a number of telephone calls were made, either from Mr Dunlop's office to Cllr Morrissey, or from Cllr Morrissey to Mr Dunlop's office. Those referred to in evidence included telephone calls on 16 October 1991, 26 November 1991, 29 November 1991, 29 April 1992 and 1 October 1992. Mr Dunlop's diaries included references to meetings with Cllr Morrissey on 1 November 1991 (an entry that was subsequently crossed out), 30 April 1992 (probably the meeting in Mr Dunlop's office when he met Mr O'Callaghan) and 1 October 1992.

24.03 Cllr Morrissey was in the business of producing diaries and calendars for the corporate sector. In 1992, he fulfilled an order to Frank Dunlop & Associates Ltd for the provision of 100 diaries, at a cost of IR£377.52.

24.04 Cllr Morrissey was at all times a known opponent of the Quarryvale project. He testified that on the one occasion when he met Mr O'Callaghan, he had listened to what Mr Dunlop and Mr O'Callaghan said in support of that project and the Stadium project but had explained to them the reasons for his opposition to Quarryvale.

24.05 On 25 June 1992, the following reference to Cllr Morrissey appeared in a memorandum written by Mr Gerard Leahy, an Auctioneer with Gunnes Auctioneers, following a meeting on that date involving himself, Mr Dunlop and Mr O'Callaghan: *'Tom Morrissey was very wound up and Owen and Frank were working hard on him.'*

24.06 This brief reference of Cllr Morrissey in Mr Leahy's memorandum was apparently related to efforts by Mr O'Callaghan and Mr Dunlop to tone down, or alter Cllr Morrissey's opposition to Quarryvale.

24.07 On 9 December 1992, Cllr Morrissey, together with Cllr Sheila Terry, lodged a motion with Dublin County Council which sought to, in effect, reverse the Quarryvale Town Centre zoning.

24.08 On 17 December 1992, Cllr Morrissey voted in favour of the motion to cap the Quarryvale retail element at 100,000 square feet. That motion was lost. He also voted in favour of motions to rezone Quarryvale to E (industrial). Those motions were also lost. He voted against the, ultimately successful, motion to place a retail '*cap*' on Quarryvale at 250,000 square feet.

24.09 Cllr Morrissey confirmed the content of a newspaper article published at the time which stated that, following the County Council meeting on 17 December 1992, and the success achieved for Quarryvale, '*the developer of the Quarryvale project'* made a passing remark to him to the effect that, (in time), the 250,000 square feet '*cap*' would be over turned, and that he (the developer), would then proceed to develop the project at its original intended size of 500,000 square feet. Cllr Morrissey, given the passage of time between the occasion when that comment was made to him, and the date of giving evidence to the Tribunal, was uncertain who the person described as '*the developer*' was but suggested it might have been either Mr Dunlop or Mr O'Callaghan or Mr Gilmartin.

24.10 That developer may have been Mr O'Callaghan, as on 23 December 1992, Mr O'Callaghan stated the following in a letter written by him to his Bank of Ireland Manager in Cork:

> *Quarryvale has come through, and we have got all we wanted, despite a lot of opposition…. As soon as the existing Dublin County Council is divided into three separate Counties, and this will happen officially in January 1994, we would be in John Fitzgerald's new County i.e. Dublin South, and we can then get as much retail space as we can fill* [1]

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO CLLR MORRISSEY'S EVIDENCE

24.12 The Tribunal was satisfied that Cllr Morrissey, as maintained by him, at all times remained staunchly opposed to the rezoning of Quarryvale as a Town Centre.

24.13 The Tribunal was also satisfied that there was no improper motivation on the part on either Cllr Morrissey or Mr Dunlop in Cllr Morrissey's firm producing diaries for Mr Dunlop's firm at a cost of IR£377.52. The Tribunal was satisfied that this was simply a commercial arrangement between the two men.

[1] On 1 January 1994, Dublin County Council split into three separate Councils. Quarryvale from that date was in the area of South Dublin County Council. Mr John Fitzgerald was appointed the Manager of South Dublin County Council from that date.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR ANN ORMONDE (FF)

25.01 Cllr Ormonde was a Fianna Fáil councillor representing the Rathfarnham ward of Dublin County Council, having been first elected in 1985, and re-elected in 1991. From 1 January 1994, she was a member of South Dublin County Council.

25.02 On Day 146 (18 April, 2000) Cllr Ormonde's name featured, at number 9, on the list compiled by Mr Dunlop of people who Mr Dunlop alleged, asked him for election contributions.

25.03 In his October, 2000 statement Mr Dunlop, with reference to Cllr Ormonde, stated as follows:

> *Ms. Ormonde never requested money from me for support in any vote in Dublin County Council. I gave Ms. Ormonde a sum of £1,000 in January 1993 (Appendix 1) at the time of the Senate Election in 1993 and supported subsequent fundraisers for her.*

25.04 Documentary evidence produced by Mr Dunlop established that Cllr Ormonde was one of four Seanad Election candidates, (the others being Cllrs L.T. Cosgrave, Don Lydon and Michael J. Cosgrave), to whom Frank Dunlop & Associates Ltd paid IR£1,000 each by cheque in January, 1993. It was lodged by Cllr Ormonde on 18 January, 1993 to her savings account in Bank of Ireland.

THE INVOLVEMENT OF CLLR ORMONDE IN THE REZONING OF QUARRYVALE

25.05 Cllr Ormonde voted in favour of the successful Quarryvale rezoning motion of 16 May 1991, and also voted to restrict retail development on the site to that permissible for the Neilstown lands – approximately 500,000 square feet. On 17 December, 1992 Cllr Ormonde's voting pattern remained supportive of Quarryvale, with her voting against a motion which sought to reverse what had been achieved for Quarryvale on 16 May 1991, and also voting against an attempt to rezone Quarryvale 'C1' with a retail limit of 100,000 square feet. Cllr Ormonde voted in support of the O'Halloran/McGrath/Ridge/Tyndall motion, dated 9 December, 1992, which proposed to rezone Quarryvale 'C' and 'E', and she supported the amending motion in the names of Cllrs O'Halloran, McGrath, Ridge and Tyndall to restrict retail development in Quarryvale to 250,000 square feet. Moreover, Cllr Ormonde voted in favour of the addendum which attached to the O'Halloran, McGrath, Ridge and Tyndall 9 December, 1992 motion, which proposed the reinstatement of the 'D' (town centre) zoning on the Neilstown lands.

25.06 Cllr Ormonde described the decision on 17 December, 1992 to reduce the retail square footage permissible on Quarryvale to 250,000 square feet as a '*very good compromise*', which pleased her, as her philosophy was to develop the three town centres. Cllr Ormonde described herself as a committed supporter of Quarryvale. She also stated that while she supported the reinstatement of Town Centre zoning for Neilstown, she had not in fact given much thought as to what should happen to the Neilstown lands.

25.07 Cllr Ormonde testified that from the outset she had been aware that the Quarryvale rezoning proposal was a contentious issue. She acknowledged that during the course of the Quarryvale rezoning campaign she was lobbied by Mr Dunlop and Mr O'Callaghan, and she recalled meeting Mr O'Callaghan when he addressed the Fianna Fáil group of councillors in the County Council.

25.08 Mr Dunlop's diary for 7 September 1992 noted an intention on Mr Dunlop's part to meet Cllr Ormonde. This meeting, according to the diary, took place on 8 September 1992.[1]

25.09 Cllr Ormonde told the Tribunal she had no recollection of a meeting on 8 September 1992 with Mr Dunlop, nor of having contacted Mr Dunlop's office on 11 November 1992, as suggested by Mr Dunlop's office telephone records.

25.10 Cllr Ormonde believed that insofar as she has had telephone contact with Mr Dunlop, it had occurred following the establishment of the Tribunal, in response to Mr Dunlop's efforts to contact her.

25.11 Cllr Ormonde had no recollection of making telephone contact with Mr Dunlop's office on 7 or 8 January 1993, despite the records of Frank Dunlop & Associates Ltd indicating that such telephone contact had taken place. She stated that she had no reason to contact Mr Dunlop's office in January 1993.

25.12 Cllr Ormonde was a candidate in the Seanad Election in January 1993.[2] The IR£1,000 cheque which Cllr Ormonde acknowledged receiving from Frank Dunlop & Associates Ltd was dated 12 January, 1993. She told the Tribunal that she had not solicited this election contribution and she maintained that she did not know why she was selected by Mr Dunlop to be the beneficiary of this payment. Mr Dunlop testified that Mr Lawlor and Cllr Sean Gilbride approached him with regard to making an election contribution to Cllr Ormonde. Cllr Ormonde denied knowledge of any such request.

[1] Mr Dunlop when first providing his redacted diaries to the Tribunal in July 1999 disclosed this entry as Quarryvale related. In his evidence, Mr Dunlop stated that it was his belief that at this meeting, he discussed the Ballycullen/Beechhill rezoning issue, as well as a 'larger development.'

[2] She was also a candidate in the November 1992 General Election.

25.13 On Day 818, the following exchange took place between Tribunal Counsel and Cllr Ormonde:

> Q.719 '*Yes. And if you look at 10670, Ms. Ormonde, you will see that at 10.30 on the 17th of January, the day before those funds are credited to your bank account you again telephone Mr Dunlop's office?*
>
> *A. I don't remember that at all.*
>
> *Q.720 And what I am suggesting to you, Ms. Ormonde, is that it's likely that telephone call would have been a telephone call of thanks probably to Mr. Dunlop in respect of the cheque that he had given to you or sent to you?*
>
> *A. Uh-huh.*
>
> *Q.721 On the 12th. Doesn't that seem logical?*
>
> *A. It does seem but I don't recall those phone calls.'*

25.14 The Tribunal, was satisfied that there was contact by Cllr Ormonde with Mr Dunlop (at his office) in September and November 1992, and also on 7 and 8 January 1993 as suggested by Mr Dunlop, and his office records.

25.15 Documentation produced to the Tribunal from the internal Fianna Fáil Inquiry conducted in May 2000 (following Mr Dunlop's April 2000 revelations to the Tribunal) recorded, *inter alia*, that in the course of Cllr Ormonde's meeting with the Inquiry, she said she believed that the money she received from Mr Dunlop *'was from Owen O'Callaghan.'*

25.16 Cllr Ormonde acknowledged having conveyed this information to the Fianna Fáil Inquiry and she stated *'And now that I see it, it's probably the way it was at the time but right now I can't recall that.'* Cllr Ormonde explained the basis of her belief in 2000 that the January 1993 IR£1,000 cheque, although coming to her via Mr Dunlop, was connected with Mr O'Callaghan by saying that in January 1993 she had taken it to be from Mr Dunlop, and added *'and then when you have time to think of it at a later stage and time to reflect well it could have been through Mr O'Callaghan.'*

25.17 Cllr Ormonde had no recollection of any meetings with Mr Dunlop on 3 September 1996, 2 October 1996, 9 October 1996 and 14 October 1996, as noted in Mr Dunlop's diary. Cllr Ormonde did not recall either seeing or meeting Mr Dunlop in and around South Dublin County Council in 1996 as she had done in and around Dublin County Council prior to 31 December 1993.

25.18 In the course of her 14 January 2000 statement to the Tribunal, Cllr Ormonde had acknowledged receipt of the IR£1,000 cheque from Mr Dunlop and in that statement also she apprised the Tribunal of receipt of a IR£400/£500 political donation from Mr O'Callaghan in 1999, '*towards her local Golf Classic*', and also of receipt of a cheque of IR£250 from Mr Dunlop in 1997 for the May 1997 General Election. Cllr Ormonde stated that these payments were made '*through Frank Dunlop from Owen O'Callaghan.'*

25.19 In 1998, during the course of the making of the Development Plan for South Dublin County Council, Cllr Ormonde was lobbied by Mr O'Callaghan and urged to support the removal of the 250,000 square feet retail 'cap' which had been imposed on Quarryvale in December 1992, and confirmed in October 1993. Cllr Ormonde believed that she was lobbied by Mr O'Callaghan on this issue when she met him in and around the offices of South Dublin County Council.

25.20 Mr O'Callaghan's lobbying of Cllr Ormonde (and other councillors) followed the publication by the Manager of South Dublin County Council in 1998 of the Draft Plan for Quarryvale without reference to a retail '*cap*', and against the backdrop of attempts, subsequent to the publication of the Draft Plan, made by Cllrs who opposed Quarryvale to have the '*cap*' reinstated. On 7 September 1998 Mr O'Callaghan wrote directly to Cllr Ormonde seeking her support for the Manager's decision to remove the retail restriction on Quarryvale.

25.21 Cllr Ormonde supported the removal of the retail cap, in that she voted against the O'Connell/Muldoon motion to retain the cap at 250,000 square feet, on 24 September 1998.

25.22 The Tribunal was satisfied that in the period January 1993 to 1998 Cllr Ormonde received, in total, at least IR£1,650 from Mr Dunlop and Mr O'Callaghan. The acceptance by Cllr Ormonde of money from Mr Dunlop in the knowledge that he was Mr O'Callaghan's lobbyist, and in circumstances where she herself associated such money with Mr O'Callaghan were entirely inappropriate and consequently, by soliciting election contributions in such circumstances Cllr Ormonde negated her responsibility to undertake her duties as an elected public representative in a disinterested fashion.

CONTACT BETWEEN MR DUNLOP AND CLLR ORMONDE AFTER THE ESTABLISHMENT OF THE TRIBUNAL

25.23 In evidence given to the Tribunal by Mr Dunlop on 5 February 2003 he alluded to individuals (whom he indentified) with whom he said he had been in contact subsequent to the establishment of the Tribunal. Mr Dunlop furnished a statement to the Tribunal, on 11 February 2003 in which he made the following reference to Cllr Ormonde:

> *Subsequent to her receipt of queries from the Tribunal Ann Ormonde rang me to confirm that a contribution of £1,000 by way of a cheque for her candidacy in the 1993 Senate Election was a legitimate political donation. I so confirmed. A short discussion followed about the ridiculousness of the whole affair, i.e. the Tribunal and I have not met or spoken to Ann Ormonde since then. I believe the conversation took place in 1999.*

25.24 Cllr Ormonde furnished the Tribunal with a statement on this issue on 6 February 2003 in which she stated:

> *At some stage after the Tribunal was established, Frank Dunlop telephoned me to remind me that he had given me a donation of £1,000 in the 1992 General/Seanad Election. I did not make contact with him. He initiated this contact. After he advised me of this donation, I examined all of my bank account records dating back to 1989 when I opened a political account. The Tribunal has this bank information already. I could not trace any reference in any of the statements to the donation Frank Dunlop said he made to me. When I instructed my Solicitor Paul McCormack of Brendan B. McCormack & Son to write to this Tribunal on the 14th January, 2000 I decided to accept the word of Frank Dunlop and to indicate that I had received the sum of £1,000 by way of donation. I should say that I was satisfied that I had received the sum of £250 and £500 referred to in my letter of the 14th January 2000. Given what Frank Dunlop had told me I decided to advise the Tribunal about this sum. I assumed that if he said he gave the donation to me, then he did.*

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR GUSS O'CONNELL (IND)

26.01 Cllr O'Connell was elected in June 1991 as an independent councillor for the Palmerstown area. Cllr O'Connell was an employee of FAS, based at its Baggot Street headquarters.

26.02 Prior to, and after his election, Cllr O'Connell opposed the zoning of Quarryvale as a town centre.

26.03 In his evidence, Cllr O'Connell told the Tribunal that over the course of 1991 and 1992, he attended many public meetings on the issue of the Quarryvale rezoning, and during that period also, he met Mr Dunlop and Mr O'Callaghan on numerous occasions. Mr O'Callaghan, in evidence, surmised that he met with Cllr O'Connell at least twenty times during the course of the rezoning process.

26.04 During his meetings with Mr O'Callaghan and Mr Dunlop, Cllr O'Connell made known his opposition to the Quarryvale rezoning. However, in his capacity as a public representative he was prepared to meet them and listen to their point of view, but he had never been persuaded on the merits of Quarryvale as a town centre location.

26.05 Mr Dunlop's telephone records and diary entries for the years 1991 and 1992 revealed contact between Cllr O'Connell and Mr Dunlop. Cllr O'Connell believed that the contact he initiated with Mr Dunlop's office in 1992 was probably related to a particular issue which arose with regard to a section of the Quarryvale lands. Other occasional contact with Mr Dunlop probably related to attempts being made by Cllr O'Connell to secure the preservation of a period house on the Quarryvale lands, something which ultimately was not achieved.

26.06 In the lead up to the Special Meeting of 17 December 1992 in relation to on Quarryvale, Cllr O'Connell, together with Cllr Joe Higgins, were signatories to a number of motions lodged with the County Council before 7 December 1992, which motions sought 1) the re-instatement of 'D' Town Centre zoning on the Neilstown lands, 2) a reversion to 'E' Industrial zoning for the Quarryvale lands, and 3) certain changes to be made to the County Council's draft Written Statement.

26.07 Cllrs O'Connell and O'Higgins were in effect seeking a reversion to the 1983 Development Plan zoning for the Neilstown and Quarryvale Lands.[1]

26.08 The Manager's report, circulated to councillors on 2 December 1992, while primarily recommending a reversion to the 1983 plan (with some modifications) for the Neilstown and the Quarryvale lands, contained, in the event that this recommendation was not acceptable, an alternative recommendation that the Quarryvale lands be zoned 'C' and 'E', with the Neilstown lands reverting to a 'D' Town Centre zoning with the specific objective to encourage the development of specialised commercial, recreational, industrial and residential uses in this area. The '*specific objective*' was, according to Mr O'Callaghan, a reference to the development of a stadium.

26.09 By 9 December 1992, the promoters of Quarryvale (Mr O'Callaghan, Mr Dunlop and certain councillors) were preparing to adopt this alternative position, as proposed by the Manager. This was evident from the motion lodged on 9 December 1992, in the names of Cllrs McGrath, Ridge, Tyndall and O'Halloran.

26.10 On 17 December 1992 (the date of the second Quarryvale vote), the O'Connell/Higgins motion seeking a reversion to 'E' (Industrial) zoning for Quarryvale fell because a similar motion, in the names of Cllrs Ryan and Burton, had been put and lost by a margin of 5 votes (32 voted in favour and 37 against).

26.11 Cllr O'Connell was not present in the Council chamber on 17 December 1992 and thus did not participate in any vote in relation to Quarryvale on that day.

THE REASONS FOR CLLR O'CONNELL'S ABSENCE FROM THE SPECIAL MEETING OF 17 DECEMBER 1992

26.12 As a result of certain opinions expressed by Mr Dunlop in the course of a private interview with the Tribunal on 1 June 2000, the Tribunal determined it appropriate to inquire as to the reason for Cllr O'Connell's absence from the Council chamber on 17 December 1992.

26.13 In the course of that private interview, Mr Dunlop suggested that Cllr O'Connell's absence from the meeting on 17 December 1992 was because he had been sent on a *'junket'* by his employer, FAS. Mr Dunlop, in that private interview stated as follows:

[1] Other similar motions were lodged with the Council by Cllrs Ryan, Burton, Walsh and Hanrahan.

'*My understanding, I cannot prove it, my understanding is that John, Owen O'Callaghan and John Lynch, Chairman and our Chief Executive of FAS at the time was very friendly, John Lynch was either Chairman of Bord Gais or had been and Owen O'Callaghan had been a member of Bord Gais and Gus O'Connell was sent on a foreign junket.*'

26.14 The Tribunal was satisfied that insofar as Mr Dunlop was making this claim, he was speaking about the vote which took place on the Quarryvale issue 17 December 1992. Dublin County Council records indicated that Cllr O'Connell was present at all special meetings except those on 17 and 18 December 1992.

26.15 In a subsequent statement furnished in 2007 Mr Dunlop stated:

Mr. Gus O'Connell, an Independent/Community councillor, did not attend one of the meetings with regard to the Quarryvale proposal at which a vote was taken. I cannot state precisely which vote this was but I do recall some surprise being expressed by some of his fellow councillors at his absence particularly in circumstances where he was believed to have serious reservations about the project. I should add that Mr. O'Connell did express such reservations to both Mr. Owen O'Callaghan and to me, together or separately, on a number of occasions. He never expressed his voting intentions to me.

I cannot recall, at this remove, from whom I heard that Mr. O'Connell was missing from the vote due to being sent on a junket by his superior Mr. John Lynch. However, I did hear this being proferred as an explanation. I am unaware of the truth or otherwise of such a statement.

26.16 In his testimony Mr Dunlop told the Tribunal that Cllr O'Connell's absence from the council chamber had been the subject of discussion among his council colleagues.

26.17 When questioned, in the course of his evidence, as to his understanding of the reason for Cllr O'Connell's absence on 17 December 1992, Mr Dunlop largely repeated what he had told Counsel for the Tribunal in the course of his private interview, namely that Cllr O'Connell's absence from the meeting was due to him being sent on a '*junket.*' Mr Dunlop clarified that his view was based on what had been suggested by others and not based on his own knowledge.

26.18 When asked to clarify whether he believed Cllr O'Connell's absence from the Council on the date in question was merely a coincidence or whether he believed he had been sent away purposely, Mr Dunlop stated:

'*Oh, from my understanding from rumours that I heard was that he was away on a junket, whether that was deliberate or accidental, coincidental or otherwise.*'

26.19 When asked the following question '*But was the rumour, was there a rumour or an aspect of any of the rumours that he had been purposely taken away or that?',* Mr Dunlop replied:

'*Yes, I would have to say, Chairman, I would have to say that there was while that may not have been directly said, there was an imputation to that effect that he had been sent away on a junket which in retrospect and at that time I probably would have found somewhat surprising because we had done a very careful tally on the vote. And whether Mr. Gus O'Connell was going to support or not the likelihood is that we were going to succeed. But notwithstanding that, I think, yes, there was an imputation that he had, he was missing because had been, because he was on a junket and that the possibility was that he had been sent deliberately.*'

26.20 Evidence to the Tribunal established that over the course of two days (17 and 18 December 1992), Cllr O'Connell was part of a three-person delegation sent by FAS to the UK on a study visit.

26.21 In the course of his evidence, Cllr O'Connell outlined the circumstances in which he came to be part of that study visit, as follows: in or about mid December 1992 (Cllr O'Connell said it may have been 10 December 1992), at a meeting with Mr John Lynch, then Director General of FAS, Cllr O'Connell was requested by Mr Lynch to participate in a FAS delegation due to travel to the UK on 17 December 1992. Cllr O'Connell told the Tribunal that he understood that arrangements for the trip to the UK were already in place when he was asked by Mr Lynch to join the delegation. Cllr O'Connell said that in the course of his meeting with Mr Lynch, he informed Mr Lynch that the proposed trip clashed with the County Council vote on Quarryvale, scheduled for 17 December 1992. Cllr O'Connell stated that he inquired whether the trip could be put back until after Christmas, but had been advised by Mr Lynch that the trip needed to take place, and could not be put off. Cllr O'Connell testified that in light of what he had told Mr Lynch about the Quarryvale vote, the latter had said to him that he would understand if he did not go to the UK, but Mr Lynch had also stressed that he would like him to be part of the delegation. It had been agreed between them that Cllr O'Connell would consider the situation. He duly did so, and he decided to participate in the delegation. Cllr O'Connell explained to the Tribunal that he had concluded that his greater loyalty was to his employer FAS. He said that FAS had generally been very facilitating of his duties as a councillor. While in the UK

on 17 December 1992, Cllr O'Connell contemplated the possibility of returning later that day for the Quarryvale vote due later that evening, but travel arrangements and other circumstances prevented him from so doing.

26.22 In his evidence, Mr Lynch acknowledged that in his capacity of Director General of FAS in December 1992, he requested Cllr O'Connell to participate in the UK trip. Mr Lynch acknowledged that he had made the request of Cllr O'Connell while knowing that the trip coincided with a County Council *'planning vote of some importance'* scheduled for 17 December 1992. However, Mr Lynch said that it was after he had requested Cllr O'Connell to participate in the UK trip that he learned of the impending Quarryvale vote. He said he was uncertain as to who had informed him, but he was satisfied that there was a discussion about the matter between himself and Cllr O'Connell. Mr Lynch stated:

> '*The only thing that stood out is the first time ever that I was confronted with a case where somebody was going away and they were also a local councillor and there was a vote coming up. That's how I remember it.'*

26.23 Mr Lynch told the Tribunal he had left it to Cllr O'Connell to make up his mind as to whether or not he would go on the UK trip. Mr Lynch did not dispute Cllr O'Connell's assertion that the itinerary for the trip had been arranged prior to Cllr O'Connell being requested to join the delegation. In his statement to the Tribunal, and in his evidence, Mr Lynch vehemently disputed the suggestion that he had ever sent anyone on a '*junket.*'

26.24 Mr Dunlop's record of telephone calls made to his office in the month of December 1992 recorded three calls made by, or at the behest of, Mr Lynch. On 2 December 1992, Mr Dunlop's office recorded the following '*OOC please call John Lynch – FAS 601324.'* On 15 December 1992, Mr. Dunlop's office recorded: '*9.45 John Lynch – FAS 601324.'* And for 16 December 1992, his office recorded '*10.33 John Lynch – FAS.'*

26.25 Mr Dunlop's telephone attendance records indicated that Mr Lynch contacted Mr Dunlop's office on a number of other occasions in 1992 namely on 15 and 27 January, 6 February, 19 March, 23 March, 5 June and 17 September 1992. It was the case that Mr Dunlop's firm, Frank Dunlop & Associates Ltd, was retained as PR advisors to FAS in 1991 and 1992. Mr Dunlop told the Tribunal that in his capacity as PR advisor to FAS he would not normally have had a direct line of communication with Mr Lynch, other than for '*plenary meetings'*. Mr Lynch agreed and said that direct contact between himself and Mr Dunlop would only have occured when issues could not be resolved as between Mr Dunlop and the PR department of FAS.

26.26 Mr Lynch told the Tribunal that he could not recall the subject matter of the contact between himself and Mr Dunlop's office in December 1992. Mr Lynch maintained that he himself would not have made the calls, and that they had probably been made by his secretary. Mr Lynch had no idea if a call had been made on his behalf to Mr Dunlop's office on 2 December 1992, leaving a message for Mr O'Callaghan to call Mr Lynch. Mr Lynch accepted that in 1992, Mr O'Callaghan and he knew each other through their mutual association with An Bord Gais, where Mr Lynch served as Chairman and Chief Executive, and Mr O'Callaghan served as a Director.

26.27 Mr Dunlop also claimed to have had no recollection of the purpose for which contact with his office was made by or on behalf of Mr Lynch in December 1992. Mr Dunlop opined that Mr Lynch might have been attempting to contact him in relation to some contractual issue concerning Mr Dunlop's business relationship with FAS, or that he could possibly have been attempting to contact Mr O'Callaghan through him. Furthermore, Mr Dunlop told the Tribunal that he '*could not specifically say*' why Mr Lynch was seeking to contact Mr O'Callaghan on 2 December 1992.

26.28 Mr Lynch replied '*categorically no',* and '*absolutely not',* to an inquiry by Tribunal counsel as to whether his telephone contact with Mr Dunlop's office was related to whether or not Cllr O'Connell was going to be present at the County Council on 17 December 1992. Mr Dunlop did not recall any such discussion with Mr Lynch. Mr Lynch however agreed that two of the recorded telephone contacts he made with Mr Dunlop's office (15 and 16 December 1992) occurred after Cllr O'Connell was first asked to accompany the FAS delegation to the UK (possibly 10 December 1992) and before Cllr O'Connell's flight to the UK on 17 December 1992. He also agreed that he would have known that Cllr O'Connell intended to go on the trip to the UK when he telephoned Mr Dunlop on 16 December 1992.

26.29 Mr Lynch agreed that his acquaintance with Mr O'Callaghan arose solely from their mutual association with An Bord Gais and that he had no other common interest with Mr O'Callaghan (other than the opening of a FAS training centre in Quarryvale).

26.30 However, he strongly refuted any suggestion that he arranged for Cllr O'Connell to be unavailable for the 17 December 1992 Quarryvale vote, at the behest of Mr O'Callaghan or otherwise.

26.31 Mr O'Callaghan, in evidence, agreed that the thrust of what Mr Dunlop suggested in the course of private interview with the Tribunal in 2000 was that Mr Lynch had sent Cllr O'Connell on a *'junket'* at the behest of Mr O'Callaghan, so as to ensure that he would be absent for the crucial vote on Quarryvale. Although he knew Mr Lynch '*reasonably well'* in 1992, Mr O'Callaghan denied any involvement on his part in ensuring Cllr O'Connell was on a foreign trip at the time of the Quarryvale vote.

26.32 Asked why Mr Dunlop would have suggested such a thing Mr O'Callaghan replied '*I don't know but that was a standing joke, I heard that story too from quite a few people'.*

26.33 And when asked: '*Yes but did you hear the story that you were the person orchestrated Mr O'Connell to be out of the country?'* Mr O'Callaghan replied '*Absolutely'.*

26.34 Mr O'Callaghan's explanation as to why Mr Dunlop's office telephone records would have recorded the message from Mr Lynch on 2 December 1992, '*OOC Please call John Lynch – FAS 601324',* was that it probably related to Mr O'Callaghan's attempts in 1992 to organise a FAS training scheme for Quarryvale. He said that it was in this context that he dealt with Mr Lynch, who was the only person he knew in that organisation. Discussions on this topic commenced in November/December 1992, according to Mr O'Callaghan. Mr Lynch confirmed that this issue had been the subject of discussion between himself and Mr O'Callaghan in 1992. The documentation furnished to the Tribunal did not indicate that any such dealings/negotiations were ongoing with FAS at the end of 1992.

THE TRIBUNAL'S CONCLUSIONS

i. The Tribunal was satisfied that having been requested to join the FAS delegation to the UK, and having been offered an opportunity to decline the invitation (although it was stressed by Mr Lynch that he would like Cllr O'Connell to go on the trip), Cllr O'Connell made the decision to accompany the FAS delegation for the reasons stated by him.

ii. The issue for consideration by the Tribunal was whether evidence of events which pre-dated and post-dated the request made to Cllr O'Connell to travel to the UK could lead it to conclude that Cllr O'Connell's absence from the County Council on 17 December 1992 had, in some way, been *'orchestrated'*, as suggested by Mr Dunlop. There were certainly rumours to that effect in circulation at the time, as testified to by Mr Dunlop and Mr O'Callaghan.

iii. There was no doubt but that Cllr O'Connell's absence benefited Mr O'Callaghan, although had Cllr O'Connell been present and voted in opposition to Quarryvale on 17 December 1992, the outcome of that vote would not have been materially altered.

iv. From an early stage (mid 1992), Mr Dunlop listed the likely voting intentions of certain councillors *vis-à-vis* Quarryvale in his various voting *'scenarios'*. Cllr O'Connell was invariably listed as voting against Quarryvale save for one document where he was listed by Mr Dunlop as *'abstaining'*. Mr Dunlop testified that there were means by which councillors who opposed a proposal could be *'neutralised.'* He explained that this meant he would try to persuade them to abstain or to be absent on the day of the vote.

v. On 6 March 1992, in a letter written to AIB Capital Markets which took issue with a third party prediction as to the likelihood of success for the Quarryvale rezoning, Mr Dunlop, *inter alia*, stated:

> *'Don't be surprised if the number of those expressing opposition to Q'vale have to attend their grandmother's funeral in Kerry on the day of the vote!'*

vi. Thus, the Tribunal was satisfied that it was likely that consideration was given as to how a councillor (such as Cllr O'Connell), who genuinely opposed the Quarryvale rezoning might, in Mr Dunlop's words, be *'neutralised'*.

vii. The coincidence in time between Mr Lynch seeking to speak to Mr O'Callaghan on 2 December 1992, which contact was followed by two further calls to Mr Dunlop's office by or on behalf of Mr Lynch on 15 and 16 December 1992, and the imminence of the Quarryvale vote, was remarkable. The Tribunal also noted Cllr O'Connell's late addition as a member of the UK FAS delegation. As a matter of probability, Mr Lynch's telephone calls to Mr Dunlop on 15 and 16 December 1992 related to some extent to Cllr O'Connell's trip to the UK. However the Tribunal was not satisfied that Cllr O'Connell's absence from the County Council on 17 December 1992 had been *'orchestrated',* as suggested by Mr Dunlop.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR JOHN O'HALLORAN (LAB/IND)

CLLR O'HALLORAN'S INVOLVEMENT IN THE REZONING OF QUARRYVALE AND RELATED MATTERS

27.01 Cllr O'Halloran was first elected to Dublin County Council in June 1991 for the Lucan Ward in West County Dublin, and was a member of the Labour party until 1993.

27.02 According to Cllr O'Halloran some six to eight weeks following his election he was contacted by Mr O'Callaghan who outlined to him his plans to develop Quarryvale. As an elected councillor he became aware of the Council's plan for the development of the three western towns at Tallaght, Neilstown and Blanchardstown, and of the fact that the Town Centre, originally proposed for Neilstown, had been effectively transferred to Quarryvale, following the passing of the Quarryvale related motions at the County Council Special Meeting of 16 May 1991.

27.03 It appeared to the Tribunal that by July 1991 Cllr O'Halloran clearly supported the proposal for a Town Centre for Quarryvale, as was evidenced in a letter written by him to the Irish Press newspaper on 23 July 1991. On 26 July 1991 Mr O'Callaghan was faxed a copy of that letter by Cllr McGrath.

27.04 Cllr O'Halloran believed that he first met Mr Dunlop at a meeting of Palmerstown Community Council, probably on 19 September 1991, their introduction being effected by Mr O'Callaghan. Cllr O'Halloran spoke in support of the Quarryvale rezoning proposal at that meeting. On 30 September 1991 Mr O'Callaghan wrote thanking him for his '*positive and objective approach'* at the meeting. Cllr O'Halloran, together with other councillors and County Council officials, attended a meeting of Neilstown Community Centre in November 1991, at which Mr O'Callaghan spoke.

27.05 From telephone records maintained by Mr Dunlop's secretary it was clear that he and Cllr O'Halloran had established contact by October 1991. Cllr O'Halloran acknowledged that he had several meetings with Mr Dunlop, post September 1991.

27.06 In Mr Dunlop's '*contact report'* of 17 June 1992 Cllr O'Halloran was identified as someone who would speak to/lobby Cllr Richard Greene regarding Quarryvale. Cllr O'Halloran acknowledged that he approached Cllr Greene. The Tribunal was satisfied that by this time (June/July 1992) Cllr O'Halloran was, if

not a member of the Quarryvale '*strategy'* team, certainly a councillor whose support for Quarryvale was absolutely assured, and was someone with whom Mr Dunlop liaised for advice regarding interaction with local communities. This was evident from Mr Dunlop's handwritten note where he undertook to check with Cllrs Lawlor, Ridge and O'Halloran concerning the provision of funds for a Summer Camp for local Quarryvale youth.

27.07 Mr Dunlop's diary for 4 November 1992 recorded a meeting with Cllr O'Halloran.[1] Cllr O'Halloran, while he accepted that he could well have met Mr Dunlop on that date, maintained that he had no recollection of the meeting. The Tribunal was satisfied that the anticipated second Quarryvale vote was, *inter alia*, a topic likely to have been discussed.

27.08 Mr Dunlop's office telephone records revealed a number of telephone calls made by Cllr O'Halloran throughout November and in the early days of December, 1992 – telephone contact which was almost certainly related to the then forthcoming scheduled meeting of the County Council at which the Quarryvale rezoning was to be debated. On 2 December 1992, in advance of that meeting, a report of the County Council Manager was circulated to councillors, which included a number of references and recommendations relating to the zoning of the Quarryvale lands.

27.09 Cllr O'Halloran was one of four councillors who signed the motion (lodged with the County Council on 9 December 1992) which proposed the adoption of the Manager's recommendation of 'C' and 'E' zoning for Quarryvale, and which also proposed the restoring of the 'D' Town Centre zoning for the nearby Neilstown lands. It was likely that Cllr O'Halloran was asked to sign this motion by Mr Dunlop when they met on 9 December 1992. Four councillors are recorded in Mr Dunlop's diary on that day, three of whom, Cllrs Ridge, O'Halloran and McGrath were signatories to the motion. Cllr O'Halloran did not believe that he had had any input into the drafting of the motion.

27.10 Mr Dunlop told the Tribunal in evidence in another module that he had no need to pay Cllr O'Halloran to support Quarryvale, as Cllr O'Halloran was '*in the vanguard of support of people leading in relation to support for Quarryvale*.'

27.11 Cllr O'Halloran, while acknowledging that on 17 December 1992 he signed a motion to limit retail development on Quarryvale, claimed that he had no recollection as to how he came to sign it.

[1] This meeting is also the subject of consideration in Chapter Four.

27.12 Prior to signing the aforementioned motion and voting in support of Quarryvale related proposals on 17 December 1992, Cllr O'Halloran wrote to either all or a number of his fellow councillors urging them to support Quarryvale. This was evidenced by a copy of a letter sent to Cllr David Healy by Cllr O'Halloran on 11 December 1992.

27.13 In April 1993 Cllr O'Halloran was one of a number of signatories to a motion (which was, according to Mr Dunlop, drafted by Mr Lawlor), the purpose of which, as acknowledged by Mr Dunlop, was to render less restrictive the 250,000 square feet retail cap on Quarryvale which had been incorporated into the amended Draft Written Statement by the County Manager. Following debate on, and amendments made to, the April 1993 motion at a Special Meeting of the County Council in June 1993, the objective sought by the signatories of the April motion was achieved.

27.14 The 'C' and 'E' zoning for Quarryvale, with the less restrictive 250,000 square feet retail cap, was ultimately confirmed by the County Council on 19 October 1993. Some three weeks following this confirmation meeting, Cllr O'Halloran received a IR£5,000 cheque from Mr O'Callaghan/Riga. On 4 December 1993, within three weeks of the receipt of that cheque, Cllr O'Halloran was one of five signatories (the others being Cllrs McGrath, Ridge, Tyndall and Brady) to a letter written to the Minister for Finance, Mr Bertie Ahern, in which tax designation was sought for Quarryvale, on a par with the Tallaght Town Centre. It read:

> *Dear Minister*
>
> *We are members of Dublin County Council representing both the Lucan and Clondalkin Wards. These Wards contain an area popularly known as 'North Clondalkin.' You will already know that this area was the subject of an interdepartmental inquiry following an outbreak of social unrest in 1991.*
>
> *The inquiry has recognised that the very high level of unemployment along with a lack of amenities almost certainly contributed to this particular incident. It also recognised the need for these problems to be addressed quickly.*
>
> *Following the making of our Development Plan in County Dublin the area now has a much brighter future. A major shopping development is planned at Quarryvale. This development will include an Industrial Park, a Business Park and leisure facilities.*

In order to help this project and indeed other projects that might come into the area we are asking for tax designation for Clondalkin. This would put the area on the same footing as Tallaght.

27.15 Cllr O'Halloran could not recall who presented the letter to him for signature, but he presumed it was either Mr Dunlop or Mr O'Callaghan.

PAYMENTS TO CLLR O'HALLORAN FROM MR DUNLOP AND MR O'CALLAGHAN

THE PAYMENT OF IR£250 ON 8 DECEMBER 1992 FROM FRANK DUNLOP & ASSOCIATES

27.16 Documentation produced to the Tribunal by Mr Dunlop[2] revealed the existence of a cheque in the sum of IR£250 drawn on the 067 account of Frank Dunlop & Associates Ltd dated 8 December 1992, and payable to Cllr O'Halloran. Cllr O'Halloran was unable to recall the circumstances in which he came to receive this cheque from Mr Dunlop but accepted that he may have received it, and had forgotten that he did so. In any event, Cllr O'Halloran maintained that there was no connection between the cheque and his signature on the Quarryvale motion lodged with the County Council on 9 December 1992. He acknowledged it was *'possibly'* received by him on 9 December 1992 when he met Mr Dunlop. He also acknowledged that he was not a candidate in the November 1992 General Election, and stated that he was not in a position to categorise this payment.

A COMPOSITE PAYMENT NOT EXCEEDING IR£5,000 FROM MR DUNLOP

27.17 In the course of his evidence (Day 344) Mr Dunlop stated of Cllr O'Halloran, that he: *'…was an enthusiastic supporter of motions in relation to rezoning, and I specifically refer that remark solely to motions and items that I was involved with.'*

27.18 Mr Dunlop also stated that:

'During the course of the development plan, Cllr John O'Halloran approached me In Dublin County Council and complained is the word I have used, that he was getting nothing and others were coining it. In this conversation that I had with Councillor O'Halloran he alluded to his ongoing support for the development which I have referred to earlier, but is not relevant to this module.'

[2] Mr Dunlop was not questioned about this cheque.

27.19 Mr Dunlop alleged that in addition to a payment of IR£2,500 which he made to Cllr O'Halloran in 1996 (see below), he then paid '*small amounts, and not more than £5,000 in all during the course of the development plan'* to Cllr O'Halloran. Mr Dunlop believed that these small payments were made in the period between late 1992 and the end of 1993, and related to Cllr O'Halloran's support for various developments with which Mr Dunlop was engaged.

27.20 Mr Dunlop was unable to provide the Tribunal with a detailed breakdown of these small payments not exceeding IR£5,000 in total.

27.21 Cllr O'Halloran denied receiving payments from Mr Dunlop in the 1991-1993 period other than the IR£250 cheque payment in December 1992 and a cash payment of IR£500.

CLLR O'HALLORAN'S CLAIM THAT HE RECEIVED A POLITICAL DONATION OF APPROXIMATELY IR£500 FROM MR DUNLOP BETWEEN JUNE 1991 AND DECEMBER 1993

27.22 On 25 November 2002, Cllr O'Halloran's solicitors advised the Tribunal of the following:

> *Our client John O'Halloran wishes to bring to the attention of the Tribunal an unintentional inaccuracy in his letter of reply dated the 20th December 2000 to the Tribunals letter dated the 22nd November 2000. In the course of our client's reply he stated that the sole payment which he could recall having received from Mr. Dunlop was the sum of £2,500.00 paid by cheque as a political donation to our client to defray electoral expenses in the course of his campaign as a candidate in the County Dublin Bye-election in 1996.*
>
> *Our client has now brought it to our attention that he has a recollection of receiving a political donation from Mr. Dunlop in the sum approximately £500.00 whilst an elected member of Dublin County Council. It is our clients further recollection that he received this donation at some time between June 1991 and December 1993 at or in environs of the Council Headquarters in Upper O'Connell Street. He believes that the donation was made by Mr. Dunlop following a conversation initiated by Mr. Dunlop and was unsolicited by our client. Our client cannot recall whether the donation was made in the course of his conversation with Mr. Dunlop or subsequently. Our client wishes to make clear that he accepted this donation as a straight forward political contribution without any express or implied agreement or understanding that its acceptance was in return for agreeing to support any land re-zoning proposals in the Dublin Draft Development Plan either concerning lands at Carrickmines or otherwise.*

It is a matter of considerable embarrassment to our client that he did not recall this political contribution at an earlier stage. However, it is in the context of our client's absolute co-operation with the work of this Tribunal to date that our client has specifically instructed us to bring his recollection of this payment to the Tribunal's attention…

27.23 In evidence,[3] Cllr O'Halloran told the Tribunal that this payment of IR£500 from Mr Dunlop was a '*once off*', and the only cash payment ever made to him by Mr Dunlop. Cllr O'Halloran maintained that the payment was made after Mr Dunlop had raised the issue of fundraising with him, and that he had not solicited the payment. Cllr O'Halloran acknowledged that there was no election expected at the time of the payment.

THE PAYMENT OF IR£5,000 IN NOVEMBER 1993 FROM MR O'CALLAGHAN

27.24 Mr O'Callaghan told the Tribunal that in October 1993 he was approached by Cllr O'Halloran who sought a political donation from him. Cllr O'Halloran advised Mr O'Callaghan that he had lost the Labour Party Whip,[4] and had been expelled from the Labour Party as a result of his support for the Quarryvale rezoning. Cllr O'Halloran had explained that he was as a consequence operating as an Independent councillor and he had advised Mr O'Callaghan that he believed that his Council seat was under threat from Sinn Fein. Mr O'Callaghan stated that on this basis he made a political contribution of IR£5,000 to Cllr O'Halloran by cheque drawn on the AIB account of Riga Limited on 9 November 1993.

27.25 In a statement of 3 May 2000 Mr O'Callaghan put it as follows:

On the 9th November 1993 I made a payment to Councillor John O'Halloran in the sum of £5,000. Councillor O'Halloran approached me for this money. He stated that due to his support for Quarryvale he was asked to leave the Labour Party. In these circumstances he was without a party and without any financial support from the Labour Party. At that time I was fully conscious of not only the assistance which Councillor O'Halloran had given to Quarryvale but also the immense amount of work he had done (and continues to do) for the local community. In these circumstances I had no difficulty in making a contribution of £5,000.

27.26 Responding to questions put by Cllr O'Halloran's Counsel on Day 914, Mr O'Callaghan had the following to say in relation to who had raised the issue of a political contribution to Cllr O'Halloran in 1993:

[3] See also Chapter 4 (Ballycullen/Beechill).
[4] Cllr O'Halloran left the Labour Party in 1993.

> *'As I said in my statement, John O'Halloran was probably the best supporter Quarryvale ever had and probably still is. When he lost the party whip in '93 he approached me and asked me, told me that he was going to stand as an independent councillor, he was going to stand independently or remain in politics, which I certainly hoped that he would. And he asked me if I could support him and I was delighted to do it actually in that particular case, I can assure you. He actually said that, he asked me for at the time, he mentioned that he would like support of 5,000 pounds to help him get himself organised as an independent or to continue in politics and I provided that to him, I did that gladly.'*

27.27 While he acknowledged receipt of a IR£5,000 political contribution from Mr O'Callaghan in November 1993, Cllr O'Halloran vehemently disputed Mr O'Callaghan's contention that he had solicited the contribution. It was his position that it was Mr O'Callaghan who had approached him with the offer of the contribution. He testified that to the best of his recollection Mr O'Callaghan told him that the cheque was being given to him to assist him in his political work. Cllr O'Halloran said he had no recollection of ever approaching Mr O'Callaghan for money on a personal basis.

27.28 Notwithstanding their conflicting accounts as to the circumstances which immediately preceded the payment of IR£5,000, both Mr O'Callaghan and Cllr O'Halloran maintained that the payment was a political contribution.

THE TREATMENT OF THE IR£5,000 PAYMENT IN THE BOOKS AND AUDITED ACCOUNTS OF RIGA LTD

27.29 Similarly to the manner in which the IR£20,000 cheque payment to Cllr Colm McGrath (also on 9 November 1993) was accounted for, the IR£5,000 Riga Ltd cheque to Cllr O'Halloran was posted in Riga's cheque payments book under '*sundries*.'

27.30 In their analysis of '*sundries*' to year end 31 December 1993, Riga's auditors attributed the IR£5,000 cheque payment as having been made on behalf of Barkhill Ltd/Quarryvale and for the year end 30 April 1994, in the nominal ledger of Riga Ltd, the IR£5,000 cheque payment was duly posted to the Riga/Barkhill intercompany Loan account.

27.31 However, as with the IR£20,000 cheque payment to Cllr McGrath, in Riga's audited accounts for the year end 30 April 1995 the IR£5,000 payment to Cllr O'Halloran no longer appeared as part of the Riga/Barkhill Intercompany Loan Account. Rather, as with the McGrath payment (and certain other payments) it was posted, in Riga's nominal ledger, to Riga's Directors Loan

Account – a posting which removed the connection between the O'Halloran payment and the Quarryvale project, previously made by the Auditors.

27.32 In the course of his evidence to the Tribunal, Mr O'Callaghan claimed that the IR£20,000 payment to Cllr McGrath, and the IR£5,000 payment to Cllr O'Halloran, had been erroneously attributed as a Barkhill expense in Riga's books for year-end April 1994.

27.33 Yet, Mr O'Callaghan conceded that he was the person likely to have instructed Riga's Auditors that the McGrath and O'Halloran November 1993 cheque payments were Barkhill/Quarryvale related. Mr O'Callaghan also agreed that it must have been his view in 1994, that the payments made to Cllr McGrath and Cllr O'Halloran in November 1993 were made for the benefit of Quarryvale. The Tribunal was satisfied that when making the IR£5,000 payment to Cllr O'Halloran (and the IR£20,000 payment to Cllr McGrath), Mr O'Callaghan regarded both as expenditure incurred in relation to the Quarryvale rezoning.

27.34 In her evidence to the Tribunal, Ms Cowhig (of Barber & Co, Riga's Auditors) in referring to the postings of the two payments for the year end 30 April 1994 as Barkhill expenses paid by Riga, stated:

> *'I knew what the payments were for and I – I knew that they were all related to Barkhill and I allocated them to the Barkhill loan in that particular period.'*

27.35 Ms Cowhig told the Tribunal that notwithstanding the accounts to year end 30 April 1994 having been signed off by Mr O'Callaghan and Mr Deane in January 1995, she had advised Mr Deane subsequently that because of the absence of invoices for the payments, they (and other payments) should be removed from the Riga/Barkhill Intercompany Loan Account and posted into the Riga Director's Loan Account in the books of Riga.

27.36 Ms Cowhig agreed that the absence of invoices for the IR£20,000 payment to Cllr McGrath and the IR£5,000 payment to Cllr O'Halloran (and indeed for a sum of IR£10,000 reimbursed to Mr O'Callaghan by Riga in September 1993) had not prevented her, for the year end 30 April 1994, from attributing such payments in Riga's books as Barkhill related and she agreed that when Mr O'Callaghan and Mr Deane, as Directors of Riga, signed off on the year end 30 April 1994 account in January 1995, they were, at that time, attesting to the fact that Riga Ltd had expended such sums on behalf of Barkhill Ltd.

THE PAYMENT OF IR£2,500 IN 1996

27.37 In an invoice dated 20 March 1996, Frank Dunlop & Associates sought, *inter alia*, reimbursement of IR£2,500 from Riga Ltd for payment of a '*political contribution (John O'Halloran)*.' Mr Dunlop told the Tribunal that in the course of the Dublin West by-election in 1996, Cllr O'Halloran approached him seeking a political donation. According to Mr Dunlop, Cllr O'Halloran regarded Mr Dunlop and Mr O'Callaghan as '*joined at the hip*', and while Cllr O'Halloran made the approach to Mr Dunlop for the contribution, Mr Dunlop believed that Cllr O'Halloran probably knew that Mr O'Callaghan would be the person who would ultimately pay it.

27.38 Mr Dunlop told the Tribunal[5] that when soliciting the contribution Cllr O'Halloran had pointed out to Mr Dunlop *'that he had been extremely helpful in relation to a number of developments, one in particular, and he would be grateful if I organised that the proposer of that particular development would assist him also.'*

27.39 Mr Dunlop identified the '*particular'* development to have been Quarryvale. In later sworn evidence to the Tribunal,[6] Mr Dunlop expressed his view that he did not '*on balance*' consider the IR£2,500 payment to have been a legitimate political donation.

27.40 In a statement of 20 December 2000, Cllr O'Halloran dealt with the receipt of the IR£2,500 from Mr Dunlop as follows:

> *... I have already indicated in my previous statement to the Tribunal that I did receive a sum of £2,500 from Frank Dunlop as a political contribution in the course of my campaign as an independent candidate in the Dáil By election in 1996. I personally solicited these funds from Mr. Dunlop as a political donation. I cannot now recall the precise date on which I made this request of Mr. Dunlop other than to say it was after the date of the proposed by-election had been announced and before the election date itself. I recall that payment was in the form of a cheque which I subsequently lodged into my bank account at Trustee Savings Bank in Clondalkin. I believe that the Tribunal is already in possession of my Bank Account details and transactions during this period. I further confirm that I did not distinguish this political contribution from my personal funds nor have I accounted separately the expenditure of the money received from Mr. Dunlop for expenses incurred by me in the course of running my campaign. I was not in a position to furnish the Tribunal with any*

[5] Mr Dunlop gave this evidence in another module.
[6] See Chapter Chapter 4 (Ballycullen/Beechill).

documentary evidence other than information already available to the Tribunal from my disclosed bank accounts as to how these monies were spent. I further confirm that I did not issue an acknowledgement/receipt to Mr. Dunlop in respect of such a payment. I wish to reiterate that money received from Mr. Dunlop was not a payment 'in connection' with any rezoning proposal or planning matter as is implied in the text of your letter dated 22nd November 2000.

27.41 In evidence, Cllr O'Halloran stated that he was unaware that Mr Dunlop had recouped the IR£2,500 from Mr O'Callaghan/Riga. He could not assist the Tribunal as to how a figure of IR£2,500 had been arrived at when he made his request of Mr Dunlop. He could also not explain why he solicited a contribution from Mr Dunlop in particular. He said he was surprised at the large amount of the contribution.

27.42 Cllr O'Halloran specifically denied (when giving evidence in another module) that, when soliciting this payment from Mr Dunlop, he had reminded Mr Dunlop of his assistance in relation to the Quarryvale rezoning project.

27.43 In his statement of 16 May 2003, Mr O'Callaghan advised the Tribunal:

'*In or about the month of March 1996 Frank Dunlop & Associates made a contribution on my behalf to John O'Halloran in the sum of £2,500. As far as I can recall, John O'Halloran contacted Frank Dunlop seeking a contribution from Frank Dunlop towards expenses in connection with the 1996 By-Election. Frank Dunlop rang me and asked me if I was prepared to contribute as well. I agreed to contribute the sum of £2,500 and I authorised Frank Dunlop to pay this amount of money on my behalf. I requested him to include it in his next Invoice to me. This amount was included in the Frank Dunlop invoice dated 30th March 1996.'*

27.44 Mr Dunlop, when questioned about the content of Mr O'Callaghan's statement, told the Tribunal that while the cheque given to Cllr O'Halloran in 1996 was a Frank Dunlop & Associates Ltd cheque subsequently reimbursed by Mr O'Callaghan/Riga, he himself had not made a separate payment to Cllr O'Halloran.

27.45 Mr O'Callaghan's evidence on Day 912 was to the effect that while Cllr O'Halloran approached Mr Dunlop directly seeking an election contribution in 1996, he considered that to have been, in reality, a request to himself and thus had agreed to make it. Mr O'Callaghan testified:

> *'…as far as I know John O'Halloran was trying to contact me, wasn't able to do it, contacted me through Frank Dunlop. I think that's where that one came about actually. John O'Halloran spoke to Frank Dunlop and he in turn contacted me, but it was at John O'Halloran's request that he spoke to me.'*

27.46 Mr O'Callaghan was questioned about the reference in his May 2003 statement to Mr Dunlop having been asked by Cllr O'Halloran for an election contribution, and Mr Dunlop then inquiring of Mr O'Callaghan if he too would make a contribution to Cllr O'Halloran. This claim was at odds with Mr O'Callaghan's sworn testimony that Mr Dunlop was, effectively, only the conduit for the contribution given to Cllr O'Halloran. Mr O'Callaghan stated:

> *'… at the time I thought, when I wrote that statement I thought and I am still not 100 per cent clear on this one, that John O'Halloran rang Frank Dunlop for a contribution from Frank Dunlop towards his '96 by-election and at the same time asked Frank Dunlop to ask me to, would I give him a contribution. I still feel that will there might have been two contributions made at that time, one of 2,500 from me and the other from Frank Dunlop to John O'Halloran I am not clear about that point.'*

27.47 Mr O'Callaghan testified that at the time he thought that '*Frank Dunlop was also going to help John O'Halloran to elect himself as well.'* There was however no evidence that Cllr O'Halloran received a payment from Mr Dunlop in 1996, other than the IR£2,500 cheque.

27.48 Mr O'Callaghan agreed that the Riga payment, reimbursing Frank Dunlop & Associates Ltd for the IR£2,500 given to Cllr O'Halloran, was duly attributed in the books of Riga as a Barkhill expense. It was not attributed as a political donation, although there were, in Riga's nominal ledger, various codes under which political donations could be posted. On Day 912, in response to the question '*In effect this payment is a payment for the benefit of Barkhill?'* Mr O'Callaghan replied '*Yes, John O'Halloran would be Barkhill.'* The cheque payment was debited from Riga's bank account on 4 April 1996.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE PAYMENTS MADE TO CLLR O'HALLORAN BETWEEN 1991 AND 1996

SMALL PAYMENTS NOT EXCEEDING IR£5,000 IN TOTAL IN THE PERIOD 1991 TO 1993

(i). There was substantial conflict between Mr Dunlop and Cllr O'Halloran on the issue of the number of small payments made by Mr Dunlop in the period 1991 to 1993. The Tribunal was satisfied that Cllr O'Halloran received IR£500 in cash from Mr Dunlop sometime between June 1991 and December 1993. The

Tribunal was also satisfied that Cllr O'Halloran was paid a cheque for IR£250 by Mr Dunlop on 8 December 1992, in or about the time that he signed the Quarryvale motion which was lodged with Dublin County Council on 9 December 1992. Furthermore, the Tribunal accepted Mr Dunlop's evidence that there were other occasions on which he paid Cllr O'Halloran small sums (in the region of IR£500 each) during this period.

(ii). The Tribunal was satisfied that Cllr O'Halloran did on occasion receive small payments in the region of IR£500 each from Mr Dunlop in the course of the making of the Development Plan 1991-1993. The Tribunal could not determine which of Mr Dunlop's development projects these payments related to. The Tribunal was satisfied that insofar as Cllr O'Halloran solicited and accepted such payments, he did so improperly in the knowledge that Mr Dunlop was a lobbyist in relation to rezoning issues current in Dublin County Council, including Quarryvale.

THE PAYMENT OF IR£5,000 IN NOVEMBER 1993

i. The Tribunal was satisfied that Cllr O'Halloran's solicited this payment from Mr O'Callaghan.

ii. While the fact that Cllr O'Halloran's parting company with the Labour Party may have resulted in some reduction of political funding for him, the Tribunal was satisfied that his request for money from Mr O'Callaghan was a deliberate act on his part to personally benefit from the support he had given to the proposal to rezone the Quarryvale lands. The coincidence in time between the making of this payment and the confirmation of the Quarryvale rezoning on 19 October 1993 indicated to the Tribunal that the payment was in effect a reward for Cllr O'Halloran's commitment to Quarryvale.

iii. The Tribunal did not believe it to be merely a '*coincidence'* (as maintained by Mr O'Callaghan) that the cheque for IR£5,000 paid to Cllr O'Halloran bore the same date as the IR£20,000 cheque paid to Cllr McGrath. The Tribunal was therefore satisfied, notwithstanding the appellation '*political contribution'* given to the payment by both Mr O'Callaghan and Cllr O'Halloran, that this payment was, as stated, made to Cllr O'Halloran in return for his support for Quarryvale. In making this payment Mr O'Callaghan, in all probability, took cognisance of the fact that Cllr O'Halloran's support might be required in the future given that he would be a member of the soon to be established South Dublin County Council.

iv. In his evidence to the Tribunal, Mr Dunlop claimed that he had no knowledge in 1993 of this IR£5,000 payment. The Tribunal did not accept Mr Dunlop's evidence in this regard. The office telephone message records of Frank Dunlop & Associates Ltd listed a telephone call from Cllr O'Halloran on 8 November 1993,

the day prior to the date of the IR£5,000 Riga cheque. Cllr O'Halloran was also noted as contacting Mr Dunlop's office twice on 10 November 1993. Mr O'Callaghan was himself recorded as telephoning Mr Dunlop's office on that date. The Tribunal rejected as not credible that the IR£5,000 cheque was not a matter of discussion between Mr O'Callaghan and Mr Dunlop.

v. Cllr O'Halloran's request for money, his acceptance of IR£5,000 from Mr O'Callaghan, and Mr O'Callaghan's payment of that sum, in circumstances where Cllr O'Halloran was involved in a process necessitating him to vote, as an elected representative, in relation to lands in which Mr O'Callaghan had an interest, was corrupt.

THE PAYMENT OF IR£2,500 IN 1996

i. It appeared to the Tribunal that Riga's treatment of the 1996 payment of IR£2,500 to Cllr O'Halloran was indicative of what Mr O'Callaghan considered the payment to have represented in reality, namely a payment associated with, and part of, the cost of the Quarryvale project. It was not a *bona fide* political contribution.

ii. The Tribunal accepted Mr Dunlop's evidence that Cllr O'Halloran solicited the payment from him in 1996 in the context of earlier assistance provided by him in his capacity as a councillor to, in particular, the Quarryvale rezoning project. In those circumstances, the Tribunal was satisfied that both the request for, and the receipt of the sum of IR£2,500 were corrupt, being in reality an attempt by Cllr O'Halloran to personally financially benefit from the exercise of his duties as an elected councillor.

THE FRANK DUNLOP & ASSOCIATES LTD IR£500 CHEQUE OF 18 MAY 1999

27.49 Cllr O'Halloran acknowledged that he was the recipient of a IR£500 cheque from Frank Dunlop & Associates Ltd in May 1999. Cllr O'Halloran first acknowledged to the Tribunal receipt of this cheque when giving sworn evidence in 2003.

27.50 Cllr O'Halloran told the Tribunal that the IR£500 was paid as a political donation in relation to the Local Elections in 1999. It had been his intention to stand as a candidate in the election, and having commenced his campaign, he then dropped out, and did not stand. He did not return the donation to Mr Dunlop.

27.51 Cllr O'Halloran was unable to recall with certainty if he had solicited the payment. On Day 828, Cllr O'Halloran, when asked if he had solicited the payment, responded '*I'm sure I did. I don't recall exactly but I'm sure I did*.'

27.52 Neither could Cllr O'Halloran recall whether or not the payment post dated his telephone conversation with Mr Dunlop on the subject of payments made by Mr Dunlop to Cllr O'Halloran, and which Cllr O'Halloran said took place after the establishment of the Tribunal (in late 1997).

PAYMENTS MADE BY MR DUNLOP AND MR O'CALLAGHAN TO SPORTING AND VOLUNTARY ORGANISATIONS AT THE REQUEST OF CLLR O'HALLORAN

27.53 Mr O'Callaghan told the Tribunal that Cllr O'Halloran was always looking for small donations for charity from Mr Dunlop, in the knowledge that, ultimately, they would be paid by Mr O'Callaghan. Mr O'Callaghan acknowledged that he did ultimately pay these contributions.

27.54 In January 1992 Cllr O'Halloran wrote to Mr Dunlop seeking sponsorship for a local youth project, a request which resulted in Mr Dunlop and Mr O'Callaghan respectively donating IR£1,000 and IR£500. Cllr O'Halloran wrote to Mr Dunlop on 10 January 1992 thanking him for his contribution and also thanking Mr Dunlop for a Christmas gift (most probably a Christmas hamper).

27.55 In his December 2000 statement Cllr O'Halloran referred to an approach made by him to Mr Dunlop in 1992 for a financial contribution to the Neilstown Boxing Club, which operated within his electoral area. Documentation produced to the Tribunal revealed that in December 1992, as part of a Frank Dunlop & Associates Ltd invoice to Riga Limited for a total sum of IR£64,897.78, Mr Dunlop sought to recoup a sum of IR£2,460 attributed by Mr Dunlop to '*Neilstown Boxing Club John O'Halloran.*' This invoice was paid by Riga Ltd on 21 December 1992.

CLLR O'HALLORAN'S CATERING CONTRACT WITH SISKS

27.56 For a number of years during the construction of the Quarryvale Town Centre, Cllr O'Halloran provided on-site canteen facilities to Sisks, one of the principal Quarryvale building contractors. In evidence, Cllr O'Halloran stated that after building works commenced, he had approached Mr O'Callaghan to enquire as to the possibility of his securing a catering contract on the site. Mr O'Callaghan referred him to Sisks. Mr O'Halloran secured the contract and went on to provide canteen services on-site over a number of years. While he

acknowledged that it was likely that Mr O'Callaghan had intervened with Sisks on his behalf, he claimed that he had not requested Mr O'Callaghan to do so.

27.57 Cllr O'Halloran also acknowledged that he was unable to provide the Tribunal with any documentary record or estimate of the value of the catering contract secured by him. On 25 June 2001 his accountants advised the Tribunal that while they had been requested by Cllr O'Halloran to prepare income and expenditure accounts, they were unable to do so because cheque stubs, purchase invoices or sales records had not been provided to them by Cllr O'Halloran.

27.58 In the course of correspondence with the Tribunal, and in evidence, Mr O'Callaghan acknowledged that Cllr O'Halloran had approached him with regard to Mr O'Halloran securing a catering contract with Sisks. Mr O'Callaghan advised the Tribunal that he went to Sisks and suggested that they would interview him. Mr O'Callaghan said he was anxious that the development of Quarryvale would benefit local businesses as much as possible.

27.59 While the Tribunal cannot say what, in monetary terms, the benefit of the Sisks catering contract meant to Cllr O'Halloran, it was however satisfied that Cllr O'Halloran secured the Sisk contract following Mr O'Callaghan's intervention on his behalf and that Mr O'Callaghan was requested by Cllr O'Halloran to approach the contractors in question.

THE SEQUENCE OF CLLR O'HALLORAN'S DISCLOSURE TO THE TRIBUNAL OF RECEIPT OF MONEY AND/OR OTHER BENEFITS FROM INDIVIDUALS/ENTITIES ASSOCIATED WITH QUARRYVALE

27.60 On 20 December 1999, Cllr O'Halloran was contacted by the Tribunal in connection with his involvement in the rezoning of Quarryvale. Among other queries he was asked if he:

> *at any time and for any purpose, [was] in receipt of any payment(s), donation(s) or benefit(s) (including any form of gift, assistance, service, facility, entertainment or any other benefit of a non monetary nature) from any parties who were involved in the development of the Quarryvale Shopping Centre or from any person(s) or company(ies) acting on behalf of the developers*.

(The parties named were: Barkhill Ltd, Riga Ltd, O'Callaghan Properties Ltd, Owen O'Callaghan, Thomas Gilmartin, Frank Dunlop & Associates Ltd, Shefran Ltd and Frank Dunlop.)

27.61 In his response of 26 January 2000, Cllr O'Halloran stated:

> *I received a political donation of £5,000 from Owen O'Callaghan sometime towards the end of 1993. I also received £2,500 from Frank Dunlop as a contribution towards election expenses during the by-election in Dublin West in April 1996.*

27.62 In March 1999, prior to the exchange of correspondence referred to above, Cllr O'Halloran was privately interviewed by the Tribunal and was asked if he had received assistance from Mr O'Callaghan or Mr Dunlop in relation to his 1991 Local Election campaign. Cllr O'Halloran replied in the negative, stating that at the time of that Election he had not met with, nor did he know, either Mr O'Callaghan or Mr Dunlop. In the course of his response however he volunteered that he had, as a candidate in a by-election in 1996, received a cheque donation of IR£2,500 from Mr Dunlop. Asked if he had received financial assistance from Mr O'Callaghan for that by-election, Cllr O'Halloran replied in the negative. Cllr O'Halloran also replied to the following query in the negative, '*Did you ever receive any form of assistance of any kind from Mr. O'Callaghan?*'

27.63 Asked on Day 828 as to why he had not volunteered, when questioned in 1999, the information that he had received IR£5,000 from Mr O'Callaghan, Cllr O'Halloran stated that he had '*misunderstood*' the timeframe he was being questioned about. He conceded that there was no reason why he could not have given this information to the Tribunal in March 1999.

27.64 In his statement of January 2000, Cllr O'Halloran referred to the IR£5,000 cheque from Mr O'Callaghan in 1993, and to the cheque from Mr Dunlop in 1996, but did not mention that he had received a further cheque for IR£500 from Frank Dunlop & Associates Ltd in May 1999, only eight months prior to making that statement.

27.65 The Tribunal was satisfied that Cllr O'Halloran had not been, in general, frank with the Tribunal, in the manner in which he responded to its requests for information of payments to him for Mr Dunlop and Mr O'Callaghan.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR PAT RABBITTE (DL)

28.01 Cllr Pat Rabbitte was an elected member of Dublin County Council between June 1985 and December 1993 when he vacated his seat in order to take up a Government ministerial position. He was Chairman of Dublin County Council between July and December 1993. He was, and remains, an elected TD.

28.02 On Day 148, Cllr Rabbitte's name had appeared on Mr Dunlop's '1992' list (of recipients of election contributions) at number 23 as a recipient of £3,000 cash and on Day 148 also Mr Dunlop advised the Tribunal that the £3,000 had been later returned to him by means of a cheque.

THE ROLE PLAYED BY CLLR RABBITTE IN THE QUARRYVALE REZONING AND LIKELY CONTACTS MADE BY MR DUNLOP AND/OR MR O'CALLAGHAN WITH CLLR RABBITTE REGARDING QUARRYVALE.

28.03 Cllr Rabbitte was an elected councillor for the Tallaght/Rathcoole Ward from 1985 to 1991 and a councillor for the Tallaght/Oldbawn Ward from 1991 to 1994. During the currency of the Quarryvale rezoning process from 1991 to December 1993, Cllr Rabbitte was a member of the Workers Party, and later the Democratic Left Party. He told the Tribunal that as a councillor he had an interest in promoting the development of the three Western towns, Tallaght, Blanchardstown and Neilstown, as provided for in the 1983 Development Plan.

28.04 An analysis of Mr Dunlop's diaries for late 1990 and early 1991 suggested that Cllr Rabbitte and Mr Dunlop met on 10 September 1990, and on 3 January 1991, although the Tribunal was satisfied that such contact was not in relation to Quarryvale. As acknowledged by Cllr Rabbitte, he met Mr Dunlop on many occasions in and around the County Council, and he agreed that he was likely to have been lobbied by Mr Dunlop regarding Quarryvale despite Democratic Left's well known position of opposition to Quarryvale.

28.05 While he was recorded as being present at some point in the County Council chamber on 16 May 1991, Cllr Rabbitte was not recorded as having voted on either of the Quarryvale Motions on that date.

28.06 There was no documentary reference suggesting that Mr Rabbitte met with Mr O'Callaghan in 1991. A schedule of meetings prepared by Mr Dunlop for

Mr O'Callaghan for the purposes of meeting councillor referred to a meeting with Cllr Rabbitte on 24 March 1992 in the Dáil. While Mr Dunlop's diary for 14 May 1992 recorded a reference to Cllr Rabbitte, a meeting on that date probably did not take place, given Cllr Rabbitte's telephone message of the same date, as recorded by Mr Dunlop's secretary. Mr Dunlop's 17 June 1992 *'contact report'* suggested that as of that date no meeting had taken place, between Cllr Rabbitte and Messrs Dunlop and O'Callaghan in relation to Quarryvale.

28.07 Cllr Rabbitte agreed, (although he had no recollection of the meetings) that it was possible that an entry in Mr Dunlop's diary for a meeting with Democratic Left on 23 June 1992 and with himself on 25 June 1992 were Quarryvale related meetings. Mr Dunlop's diary for 28 August 1992 recorded meetings with both Mr O'Callaghan and Cllr Rabbitte at 11am and 12pm respectively – a diary entry which Mr Dunlop, from the outset, disclosed to the Tribunal as Quarryvale related. Cllr Rabbitte acknowledged that on one occasion he met with Mr Dunlop and Mr O'Callaghan together when they produced plans regarding their proposal to develop the Neilstown lands as a stadium.

28.08 Documentation furnished by Mr Dunlop to the Tribunal indicated that in the period leading to the December 1992 Quarryvale vote, Mr Dunlop prepared a number of 'scenarios' in which he outlined the likely voting pattern of councillors. In one such 'scenario' Mr Dunlop cited all Democratic Left councillors (including Cllr Rabbitte) as supportive of Quarryvale. In another 'scenario', both Cllr Rabbitte and Cllr Denis O'Callaghan are cited as supportive of Quarryvale, while Cllr Don Tipping was stated to be in opposition to it. Mr Dunlop's third, (or '*worst case*'), 'scenario' listed Cllrs Rabbitte, O'Callaghan and Tipping as voting against Quarryvale.

28.09 In a separate document Cllr Rabbitte was listed by Mr Dunlop under the description '*support lukewarm*.' In yet another document entitled *'if Dáil sitting*' Mr Dunlop described Cllrs Rabbitte, Eamon Gilmore and Sean Barrett (all then were also TD's) as supportive, but not available to vote (presumably due to Dáil commitments).

28.10 Cllr Rabbitte described the aforesaid 'scenarios' prepared by Mr Dunlop as merely '*doodlings*', given his stated opposition to the Quarryvale rezoning proposal, and which was well-known to Mr Dunlop. Records showed that Cllrs Rabbitte and Gilmore did not in fact vote in support of Quarryvale on 17 December 1992. The Tribunal was satisfied that Cllr Rabbitte took a decisive anti-Quarryvale stance on that date, voting to rezone Quarryvale back to 'E' Industrial and, (if Quarryvale were to be zoned C1), capping retail development

on the site at 100,000 square feet. Cllr Rabbitte voted against the motion to cap Quarryvale retail at 250,000 square feet.

28.11 Cllr Rabbitte acknowledged that in the period leading up to 17 December 1992 vote he was lobbied by Mr Keating on behalf of Green Property plc to oppose the Quarryvale rezoning, and that he had on one occasion signed a document, at the behest of Green Property PLC, rejecting Quarryvale and in favour of the proposed Blanchardstown Town Centre. Cllr Rabbitte maintained that Mr Keating/Green Property was aware of Cllr Rabbitte's public opposition to Quarryvale from 1991.

MR DUNLOP'S CASH DONATION TO CLLR RABBITTE IN NOVEMBER 1992

28.12 Both Mr Dunlop and Cllr Rabbitte, over the course of two modules, Ballycullen/Beechill and Quarryvale, gave evidence of a meeting which took place between them at Cllr Rabbitte's home, in the course of the November 1992 General Election campaign, at a time when Cllr Rabbitte was an election candidate and when Mr Dunlop was actively lobbying Cllr Rabbitte for support for rezoning matters on behalf of at least two of his clients, Mr Christopher Jones Snr (Ballycullen/Beechill), and Mr O'Callaghan.

28.13 While Cllr Rabbitte acknowledged receipt of a cash donation from Mr Dunlop in November 1992 (which was later returned), there were issues of conflict between them as to the date of Mr Dunlop's visit to Cllr Rabbitte's home, whether the visit had been pre-arranged and the amount of the donation. The conclusion of the Tribunal in relation to these matters (see Chapter Four) was that Mr Dunlop visited Cllr Rabbitte in his home on 11 November 1992, probably by prior arrangement, and there gave him IR£2,000 in cash as an election contribution, and that that contribution was duly returned, to Mr Dunlop albeit in a different form (by cheque drawn on an account of Cllr Rabbitte's then political party), on 17 December 1992. The contribution was returned in circumstances where Cllr Rabbitte and his party colleagues were concerned that it was inappropriate to retain the donation because of the fact that they would, in the course of their role as councillors, be required to exercise their vote on matters in which Mr Dunlop would have an interest. This decision was commendable.

28.14 The content of the letter written by Cllr Rabbitte to Mr Dunlop on 17 December 1992, when returning Mr Dunlop's donation, indicated Cllr Rabbitte's belief that Mr Dunlop's proffering the election contribution was not unrelated to events which were then current in Dublin County Council.

CLLR RABBITTE'S MEETING WITH MR DUNLOP AND MR O'CALLAGHAN ON 18 OCTOBER 1993

28.15 Three motions were lodged with Dublin County Council on 19 October 1993. On their face, the import of these motions, as signed by Cllrs Tipping, Breathnach, O'Callaghan, Gilmore and Billane, would, if successful, result in the Quarryvale lands reverting to their pre-December 1992 status, i.e 'D' Town Centre zoning, as displayed on the Draft Development Plan 1991. These three motions therefore appeared to achieve for the Quarryvale lands a far more favourable zoning that that achieved on 17 December 1992. What was remarkable about these motions was that four of the five councillors[1] who were signatories thereto had indicated by their voting on 17 December 1992 that they were opposed to a Town Centre zoning for Quarryvale, when they voted in favour of a motion to have the Quarryvale lands revert to their 1983 'E' Industrial zoning. Cllr Rabbitte, although not a signatory to the October 1993 Motions, had likewise opposed the zoning of Quarryvale in December 1992.

28.16 Following the Special Meeting of 17 December 1992, the Quarryvale lands had been zoned 'C' and 'E' with a retail cap of 250,000 square feet. Prior to this vote their 1991 Draft Development Plan zoning was 'D' Town Centre with an estimated retail cap of 500,000 square feet (the result of 16 May 1991 vote).

28.17 The Tribunal accepted that the purpose of the motions was not to achieve a greater zoning or increased retail cap for Quarryvale, but rather to revert the zoning of Quarryvale to its original 1983 position. As already stated above, however, the effect of the wording chosen by the councillors in question to achieve this outcome, would, in fact, if the motions had been passed, have strengthened the December 1992 zoning on the Quarryvale lands to the extent that the lands would have been zoned 'D' Town Centre, with a retail cap restriction of 500,000 square feet. It appeared likely that when Cllr Rabbitte withdrew these motions from consideration by the County Council on the eve of the Special Meeting of 19 October 1993, he did so after being apprised by Mr O'Callaghan and Mr Dunlop of the implications of such motions. The Tribunal accepted as a matter of probability that even if Mr O'Callaghan and Mr Dunlop had not spoken to Cllr Rabbitte, these motions would probably have been withdrawn by the Democratic Left Councillors on 19 October 1993, when their implications of the Motions became clear.

[1] The exception was Cllr Billane who had voted in support of Quarryvale on 17 December 1992

28.18 In a letter of 21 October 1993 to Mr O'Farrell of AIB, in the aftermath of the 19 October 1993 Special Meeting, Mr O'Callaghan stated as follows:

Dear Michael,

This letter is probably irrelevant but I think I better set the record straight.

Tom G. has said to yourselves and indeed to Cllr McGrath, that we probably should have gone for the Motion put down by the Democratic Left for last Tuesday's Zoning Meeting.

That Motion read that the Council should revert to the 1991 Decision and Display i.e. 500,000 sq.ft.

The real situation with this is as follows:

1. The Democratic Left withdrew their Motion on Friday last when they discovered their mistake. Their intention actually was to de-zone Quarryvale.

2. Pat Rabbitte, Chairman of Dublin County Council and member of the Democratic Left, himself withdrew the Motion on Monday last when he discovered how wrong it was from their point of view.

3. Before any Motion is taken, the Manager must explain at the actual Council Meeting the implications of such a Motion.

If the Motion had not been withdrawn prior to the meeting, it would certainly have been withdrawn after the Manager's explanation.

4. The Chairman himself would have withdrawn the Motion at the meeting if it was still standing.

5. When the Fine Gael and Progressive Democrat Cllrs picked up this Motion on Friday last, the majority of them, who previously supported us, informed us they would not have supported the 500,000 sq.ft.

6. The Manager would not have supported the 500,000 sq.ft..

7. The real danger was that when this Motion appeared, I was accused of 'squaring' the Democratic Left and could have lost all our support.

In a nutshell, Tom G. just does not know what he is talking about.

All of this is now history, but I thought I should set the record straight.

As you know, I spoke to Tom G. on Wednesday night and I also explained this to him. He now understands and agrees, but it is just as well he is in Luton.

28.19 Mr Dunlop's diary for 18 October 1993 noted the following: '*OOC & FD to PR.'* Although Cllr Rabbitte did not recall a meeting on that date, the Tribunal was satisfied that it probably took place, and that the likely purpose of the meeting was to discuss the implications of three motions which had been lodged with Dublin County Council in advance of a Special Meeting of the Council scheduled for 19 October 1993, when one of the topics for discussion was the Quarryvale zoning confirmation, as this matter would have been foremost in the minds of Mr Dunlop and Mr O'Callaghan at that time.

28.20 Although there was an element of disagreement as between Mr O'Callaghan and Mr Dunlop as to the reason for their approach to Cllr Rabbitte, it appeared to the Tribunal that Mr O'Callaghan and Mr Dunlop were motivated, on 18 October 1993, to approach him because of a concern on their part that any hint or suggestion that there was support for, or an attempt to achieve a, 500,000 square foot retail area for Quarryvale (one of the implications of the Democratic Left Motions, if passed), would alienate Fine Gael and Progressive Democrat councillors, who had theretofore been supportive of Mr O'Callaghan's proposals for Quarryvale, based on a 250,000 square feet retail cap.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR THERESE RIDGE (FG)

29.01 Cllr Ridge was elected as a Fine Gael councillor to the Clondalkin Ward of Dublin County Council in 1985 and thus, like Cllrs McGrath and Tyndall, was a 'local councillor' as far as the Quarryvale rezoning project was concerned.

29.02 It was common case that from the commencement of the campaign to rezone Quarryvale, Cllr Ridge was a staunch supporter of that campaign. In 1992 and 1993 she was a signatory to a number of motions which sought to advance the cause to secure a Town Centre zoning for Quarryvale. Cllr Ridge however did not vote on 16 May 1991 on any Quarryvale issue as she was absent from the chamber due to her attendance at a funeral. Mr Dunlop told the Tribunal (and Cllr Ridge agreed) that Cllr Ridge was lobbied by him in relation to Quarryvale prior to the vote of 16 May 1991 and Mr Dunlop recalled Cllr Ridge, in particular, in the run up to the May 1991 vote asking about Mr Gilmartin's whereabouts. Mr Dunlop had told her that Mr Gilmartin had '*revenue*' difficulties.

29.03 Mr Dunlop and Cllr Ridge were known to each other prior to Mr Dunlop's retention as a Quarryvale lobbyist, an association that went back to the early 1980s. During the course of the Review of the 1983 Development Plan there was frequent contact between Mr Dunlop and Cllr Ridge. In 1991 Mr Dunlop's diary recorded six meetings with Cllr Ridge, and his office records suggested eight telephone contacts by her. In 1992 there were sixteen recorded meetings in Mr Dunlop's diary and some 33 recorded telephone contacts to his office, relating to Cllr Ridge. For 1993 Mr Dunlop's diary recorded twenty meetings with Cllr Ridge and his office recorded 73 telephone contacts with her. Mr Dunlop indicated to the Tribunal that his contact with Cllr Ridge in the years 1991, 1992 and 1993 was greater than appeared from his diary and office telephone records, an assertion not disputed by Cllr Ridge in her evidence.

FINANCIAL SUPPORT GIVEN TO CLLR RIDGE BY MR DUNLOP

29.04 Mr Dunlop stated that he gave Cllr Ridge a cash donation of IR£1,000 during her November 1992 General Election campaign and IR£500 during her January 1993 Seanad Campaign. Furthermore, Mr Dunlop asserted that for both of those campaigns he had provided Cllr Ridge with further assistance by discharging on her behalf election expenditure and outlay, which he subsequently recovered from Mr O'Callaghan. While Mr Dunlop stated that Cllr Ridge had not been the recipient of a direct political contribution from him for the 1991 Local Election, he revealed that he had also funded the

production/distribution of election literature for her at that time, the cost of which had again been recouped from Mr O'Callaghan.

29.05 On Day 146 (18 April 2000), Cllr Ridge's name appeared on Mr Dunlop's '*Preliminary List'* of councillors whom Mr Dunlop claimed sought monies from him. Mr Dunlop, when submitting this list did not make allegations of improper demands for money with regard to the persons identified on that list. Cllr Ridge's name did not feature on Mr Dunlop's '*1991 Local Election contributions*' list but she did feature on the continuation list he made – the '*1992 List*' – the list of persons, whom Mr Dunlop, on Day 148, claimed were recipients of payments made from withdrawals from his Rathfarnham account in 1992.

29.06 On the '*1992 List'* Cllr Ridge was noted as a recipient of IR£500 cash.

29.07 In his October 2000 statement Mr Dunlop, with specific reference to Cllr Ridge, stated as follows:

> *There was a long association between us. There was no direct request for money at the time of the 1991 Local Elections. I visited her home and indicated that I was willing to support her campaign. A sum of £500 in cash was paid there and then. A further payment of £500 in cash was made in January of 1993 in connection with the Senate Election. It was Ms. Ridge who made the request for support on behalf of Ms. Mitchell. Ms. Ridge was very determined to see something take place in north Clondalkin and was a strong supporter of Quarryvale. I met her frequently with Mr. O'Callaghan. Other assistance would have been provided to Councillor Ridge by way of election literature which amounted to a sum in excess of £4,000 (Appendix 1). I accompanied her to Cork during the 1993 Senate Election campaign to meet Mr. O'Callaghan who introduced her to various councillors in Cork. We flew to Cork and back. I paid for the tickets.*

29.08 In his December 2003 Quarryvale statement Mr Dunlop did not specifically address the issue of direct/indirect financial assistance provided to Cllr Ridge in the 1992/1993 General Election and Senate campaigns but he did make reference to indirect financial assistance provided to her in relation to the June 1991 Local Election.

29.09 Cllr Ridge's disclosure of electoral financial assistance rendered by Mr Dunlop was set out in a letter furnished by her solicitors to the Tribunal on 14 February 2000 wherein, *inter alia*, in relation to Cllr Ridge's electoral campaigns of November 1992/January 1993 it was stated:

Frank Dunlop contributed £500.00 towards the expenses of a general election campaign and £500.00 towards the expenses of a senate election campaign. He also assisted with printing. It should be noted in this respect that Frank Dunlop is a long standing friend of the Ridge family for approximately 20 years.

29.10 In a more formal statement from Cllr Ridge, which accompanied a letter from her solicitors dated 2 May 2000, the issue of Mr Dunlop's electoral financial assistance was again addressed in the following terms:

Frank Dunlop gave me a donation of £500.00 for the 1992 General Election and £500 for the Seanad Election 1993. Frank Dunlop has been known to me since 1980 / 1981 and we have maintained that friendship (from before I entered politics). He also assisted with some printing.

29.11 And, Cllr Ridge, with reference to Mr O'Callaghan stated:

'*Owen O'Callaghan whom I first met in 1990 assisted me by driving me to call on a number of councillors in the Cork area during the Seanad campaign / elections.'*

29.12 The Fine Gael Committee of Inquiry, established after Mr Dunlop's April/May 2000 revelations to the Tribunal, noted Cllr Ridge as having advised it that Mr Dunlop had given her '*£500 (1992 Election Account) – cash – unsolicited'* and *'She also received an unsolicited donation of £500 in cash from him at the time of the 1993 Senate Election.'*

29.13 However Mr Dunlop and Cllr Ridge both testified that in November 1992 Cllr Ridge was the recipient of an IR£1,000 cash donation, given to her by Mr Dunlop at her home during the election campaign.

29.14 Thus, their respective testimonies deviated somewhat from what they had advised the Tribunal in their respective statements to the Tribunal in 2000.

29.15 On Day 835 Cllr Ridge accounted for the discrepancy between her sworn testimony and what she had set out in her correspondence with the Tribunal, (namely, that she had received IR£1,000 in two tranches) on the basis that in her mind when composing her statement she had '*split'* the donation into two parts because of two elections, one immediately following the other.

29.16 As was apparent from the content of correspondence from her solicitors to the Tribunal on 12 February 2003, by the time Cllr Ridge advised the Tribunal in 2000 that she had received money from Mr Dunlop in two tranches, it

appeared that, as early as 1998 she learned from Mr Dunlop that he had given her '*an unsolicited cash donation*' in November 1992 of IR£1000.

29.17 Similarly, Mr Dunlop's testimony of handing Cllr Ridge IR£1,000 in cash in November 1992 was inconsistent with the content of his October 2000 statement, which had made reference to a payment of IR£500 for the 1991 Local Elections and a payment of IR£500 in January 1993.

29.18 In the course of his testimony, he maintained that, in addition to the IR£1,000 cash donation given to Cllr Ridge in November 1992, he believed he had provided her with a further cash contribution of IR£500 for her Seanad campaign in January 1993. However, he later appeared to accept that his IR£1,000 was in respect of '*either the General Elections or the Senate Election campaign*.'

29.19 Cllr Ridge denied that she had received a further cash donation from Mr Dunlop in January 1993.

29.20 Although the Tribunal was satisfied that Cllr Ridge was the beneficiary of IR£1,000 cash sum from Mr Dunlop in and around the time of the November 1992 General Election, it was not satisfied to make a finding that she received a further cash sum over and above that IR£1,000.

29.21 Cllr Ridge told the Tribunal of her '*amazement*' and '*great delight*' at receiving the IR£1,000 from Mr Dunlop, which she said was unsolicited. Mr Dunlop's evidence was however that his general election contribution to Cllr Ridge had been solicited by her.

29.22 On Day 813 the following exchange took place between Tribunal Counsel and Mr Dunlop on the circumstances in which the IR£1,000 was given to Cllr Ridge:

> *'Q. 219 Did you have any discussion with Ms. Ridge about Quarryvale?'*
>
> *A: Yes. And for clarity, on a ongoing basis with Ms. Ridge and on the day that I gave her money, yes.*
>
> *'Q.220 Ms. Ridge told the Tribunal herself on Day 700 that she was voting for Quarryvale no matter what, that she was an ardent supporter of the Quarryvale project?*
> *A: Well there is absolutely no doubt about that. I would not dispute that for one moment. She was a very significant supporter of Quarryvale from day one.*

Q.221 And in fact I think you have described to the Tribunal that you understood that she was the person who advised you to go and see Mr Gerry Leahy about securing the support of Mr Peter Brady for Quarryvale, isn't that right?

A: That's correct.

Q.222 So that she was a pro-active member of the pro-Quarryvale team, is that right?

A: Yes, and an identified pro-active member.

Q.223 Do you say to the Tribunal, Mr Dunlop, that the payment of 1000 pounds to Ms. Ridge was an improper payment to secure and continue with her support for Quarryvale?

A: The payment was in cash. It was in relation to the 1992 General Election of which Ms. Ridge was a candidate. On the occasion which I gave the money to Ms Ridge a number of issues were traversed including Quarryvale.

Q.224 You understand my question?

A: Yes I do.

Q.225. Mr Dunlop, you have given unequivocal evidence, in relation to other Councillors that they sought support, they sought money for their support?

A. Yes.

Q.226 Now in relation to Ms. Ridge will you simply make your position absolutely clear to the Tribunal?

A. Yes.

Q.227 Are you saying that this payment of 1,000 Pounds to Ms. Ridge in November 1992 was an improper or corrupt payment to secure or continue her support for Quarryvale?

A. In the circumstances in which it was given and in the circumstances in which the issue of Quarryvale was discussed at the time that money was paid in cash in her home, therefore, it was in recognition of her support for Quarryvale and her ongoing support for Quarryvale. And in your terminology, therefore, it must be described as a corrupt payment.

Q.228 Did she ask you for 1,000 Pounds in return for her support for Quarryvale?

A. She did not ask me for 1,000 Pounds in return for her support for Quarryvale. She asked me for a contribution for her candidacy in the General Election of November 1992 on the basis that we were in daily contact and the main concern, the main issue of contact was Quarryvale.

Q. 229 Did she ask you for a cash contribution?

A. She did not ask me for a cash contribution. She asked me for a contribution.

Q.230 Was the person who made the decision to give her cash you, Mr. Dunlop?

A. Yes, it was.

Q.231 All right. And if I understand you correctly, you are not saying that it was on foot of a demand in return for her support?

A. No, I'm not saying it was on foot of a demand for her support, I am saying to you it was given in the circumstances which obtained which was an election in which she was a candidate, and in recognition of the support that she had given in relation to the Quarryvale matter.'

29.23 Under cross-examination by Counsel on behalf of Cllr Ridge, Mr Dunlop reiterated his evidence that, from day one, he regarded Cllr Ridge as an ardent supporter of the Quarryvale project, and he conceded that if Cllr Ridge's recollection was that on the day she received the donation, Mr Dunlop had called unannounced to her home, he would be prepared to accept her recollection in that regard.

29.24 Responding to Cllr Ridge's Counsel's assertion that as someone who was '*vehemently supportive'* of a town centre for Quarryvale, Cllr Ridge's support did not need to be secured with money, Mr Dunlop responded:

'Well let me put it this way for you for convenience and expedition. She certainly wouldn't have got the support if she had not been a supporter of Quarryvale.'

29.25 In response to Counsel's assertion that Mr Dunlop had given the impression to Cllr Ridge that the donation made to her had come from him, and that Cllr Ridge was unaware that the monies in fact might have come from somebody else Mr Dunlop replied:

'*Well I… I can't absolutely testify to the fact that she either asked or I told her the source of the funding, other than she was in receipt of funding for her election campaign. I don't think that there was any discussion*

between us as to the funding. She knew of the relationship that which had Mr. O'Callaghan. She knew what the project was. She knew the support that she herself was giving, had given it publicly. She hadn't said anything in private that she hadn't said in public. So I, if Ms. Ridge is saying that she did not know the source of the funding I can but accept that other than to say that I gave her 1,000 Pounds in cash.'

29.26 Cllr Ridge told the Tribunal that she could neither agree or disagree with Mr Dunlop's evidence that Quarryvale had been discussed on the evening Mr Dunlop had called with his election donation, but she stated that her support was never in doubt.

INDIRECT FINANCIAL ASSISTANCE GIVEN BY MR DUNLOP / MR O'CALLAGHAN TO CLLR RIDGE IN 1991, 1992 AND 1993

THE JUNE 1991 LOCAL ELECTION CAMPAIGN

29.27 Documentation discovered to the Tribunal by Mr Dunlop indicated that Frank Dunlop & Associates Ltd discharged a number of bills for the printing and distribution of election literature associated with Cllr Ridge. In August 1991 Frank Dunlop & Associates Ltd discharged an invoice from Keyline Studios Limited in relation to the preparation of an election brochure for Cllr Ridge, a cost Mr Dunlop, by the notation '*Owen'* on the invoice, attributed as having been discharged on behalf of Mr O'Callaghan. Mr O'Callaghan accepted that this was the case. The amount of the invoice was IR£157.30.

29.28 On 28 June 1991 O'Donoghue Print Limited invoiced Frank Dunlop & Associates in the sum of IR£1,185 for the production of 15,000 election leaflets. A manuscript note on the invoice attributed the printing as having been done for '*TR'* – a notation Mr Dunlop claimed referred to Cllr Ridge. Riga Ltd discharged this account on 27 September 1991, as part of an IR£8,484.29 payment, on foot of an invoice from Frank Dunlop & Associates Ltd dated 6 August 1991. The outlay was then added to the Barkhill loan account in Riga.

29.29 Cllr Ridge disputed that she was the beneficiary of the 15,000 election leaflets described on the aforesaid invoice. On the invoice, as furnished to the Tribunal by Mr Dunlop, the printer's attribution as to who/what was the subject matter of the leaflets in question could not be identified because of an obliteration on the document and, as stated, the letters *'TR*' were written in manuscript on the document. As it was impossible to determine from the original invoice for whom or for what the leaflets were printed, the Tribunal could not in these circumstances conclude with any degree of probability that the leaflets were printed for Cllr Ridge.

29.30 A further O'Donoghue Print invoice, also dated 28 June 1991, billed Mr Dunlop for IR£1,694 for the printing of 8,000 colour canvass cards and 8,000 A4 colour leaflets. In each case the invoices indicated that the subject matter of the work was '*Therese Ridge.'* While accepting that she was the beneficiary of the 8,000 colour cards, Cllr Ridge told the Tribunal that she did not believe that she was the beneficiary of the 8,000 colour leaflets. On the balance of probability, the Tribunal concluded that the O'Donoghue Print invoice correctly identified Cllr Ridge as the subject matter of both the cards and the leaflets. The above outlay was again duly recouped by Mr Dunlop from Riga Ltd which in turn was reimbursed by Barkhill Ltd.

THE NOVEMBER 1992 GENERAL ELECTION CAMPAIGN

29.31 The Tribunal was also satisfied that in respect of her November 1992 campaign, Frank Dunlop & Associates Ltd funded the production of election literature for Cllr Ridge. Documentation supplied to the Tribunal showed that it discharged a bill for IR£421.08 from O'Donoghue Print for the production of three lots of 6,000 leaflets/flyers on behalf of (i) Therese Ridge (ii) Therese Ridge and Liam Lawlor and (iii) Liam Lawlor. The 'flyers' produced for Cllr Ridge alone bore the heading '*Town Centre for Quarryvale*' and described Cllr Ridge as '*the candidate in this election who fully supports a Town Centre for Quarryvale*.' The combined Ridge/Lawlor 'flyers' likewise bore the heading '*Town Centre for Quarryvale*' with the electorate in Dublin West being asked to vote only for those candidates (Mr Lawlor and Cllr Ridge) who supported a town centre for Quarryvale. Frank Dunlop & Associates Ltd subsequently recouped the cost of this work from Mr O'Callaghan/Riga Ltd.[1]

29.32 Frank Dunlop & Associates Ltd also funded the production of 8,000 canvass coloured cards for Cllr Ridge in relation to her 1992 General Election campaign to the extent of IR£943.80 (IR£780 + Vat). Cllr Ridge stated that these cards also benefited two other Fine Gael candidates (Cllrs Tom Morrissey and Austin Currie). The O'Donoghue invoice ascribed the work to have been done for Cllr Ridge.

29.33 On the 23 December 1992 O'Donoghue Print appeared to have furnished a further invoice to Frank Dunlop & Associates Ltd in the sum of IR£387 (IR£320 + Vat) in respect of 500 colour canvass cards for Cllr Ridge, utilised by her in her Seanad campaign.

[1] This cost was included in the invoice dated 21 December 1992 addressed to Riga Ltd totalling IR £64,897.78 one of Mr Dunlop's *'ongoing costs'* invoices.

29.34 Evidence was also given, and accepted by Cllr Ridge, that Mr Dunlop provided her with '*headed notepaper'* in the course of her Seanad campaign. No invoice was identified in respect of this notepaper.

29.35 Cllr Ridge claimed to have been entirely unaware that the indirect financial assistance Mr Dunlop had provided in paying for election literature in the course of her Election campaign had been recouped from Mr O'Callaghan through Riga Ltd or Barkhill Ltd.

29.36 During the course of her 1993 Seanad Election campaign Mr Dunlop arranged for Cllr Ridge to travel to Cork for the purposes of canvassing councillors in that area. He accompanied her on her journey to Cork and paid for the flights and discharged Cllr Ridge's hotel accommodation costs. Mr Dunlop told the Tribunal that it was likely that the costs involved were passed on to Mr O'Callaghan. Cllr Ridge maintained that she was unaware that the costs had been paid by Mr O'Callaghan.

29.37 Mr O'Callaghan personally drove Cllr Ridge around Counties Cork, Kerry and Limerick and introduced her to county councillors, as part of her 1993 Seanad canvassing. Cllr Ridge was however unsuccessful in her 1993 Seanad Election. Mr O'Callaghan again repeated this exercise for Cllr Ridge in the course of the 1997 Seanad Election campaign. She was elected as a Senator in 1997.

29.38 Mr Dunlop gave evidence that a Frank Dunlop & Associates Ltd invoice of 26 November 1993 sent to Riga Ltd in connection with '*costs associated with Quarryvale'* (total IR£7,300) arose from the provision and distribution of Christmas hampers to a number of Councillors to a total value of IR£4,500 and for subscriptions made by Frank Dunlop & Associates Ltd to a number of charitable organisations, at the behest of Councillors. In the list provided by Mr Dunlop to Mr O'Callaghan there was reference to donations of IR£250 and IR£400 paid to named charities as suggested by '*TR.'*

29.39 Mr O'Callaghan gave evidence that in July 1996, having been advised by Mr Dunlop that Cllr Ridge was organising a fundraising dinner on behalf of Fine Gael, he instructed Mr Dunlop to contribute IR£1,000 on his behalf. The sum was duly repaid to Mr Dunlop by Barkhill Ltd pursuant to an invoice dated 17 July 1996.

29.40 In November 1997 following a direct approach by Cllr Ridge, Mr O'Callaghan again made a contribution of IR£1,000 to a Fine Gael fundraising dinner by personal cheque, a sum which has duly recouped by Mr O'Callaghan from Riga Ltd In the books of Riga Ltd the IR£1,000 was analysed under '*POLITICAL DON.'*

29.41 Unlike all previous costs associated with Cllr Ridge's election campaign or projects which were paid by Riga Ltd, the October 1997 IR£1,000 was not attributed in Riga's books as an expenditure paid out on behalf of Barkhill Ltd.

CLLR RIDGE'S ON THE GROUND INVOLVEMENT IN THE REZONING OF QUARRYVALE

29.42 The Tribunal was satisfied that by mid-1992 Mr Dunlop and Mr O'Callaghan had established ongoing contact with Cllr Ridge in relation to Quarryvale. Mr Dunlop described Cllr Ridge as having been pro-active in advocating the Town Centre for Quarryvale. In this regard Cllr Ridge maintained extremely close links with Mr Dunlop and Mr O'Callaghan. The Tribunal was satisfied that Cllr Ridge was instrumental in lobbying her Fine Gael colleagues to support Quarryvale and she was specifically given the task by Mr Dunlop of approaching Cllr Mary Elliott in relation to Quarryvale.

29.43 According to Mr Dunlop, Cllr Ridge recommended to Mr Dunlop that Mr O'Callaghan might approach Mr Gerry Leahy (a local auctioneer) with a view to obtaining the support of Cllr Peter Brady, a Fine Gael councillor based in Lucan and whose pro-Quarryvale vote, Mr Dunlop stated, was important, given the proximity of Cllr Brady's Lucan electoral base to the Quarryvale lands.

29.44 Cllr Ridge told the Tribunal that she had no recollection of advising Mr Dunlop to this effect. However, the Tribunal was nevertheless satisfied that she did so and that, at Mr Dunlop's behest, she retained a close interest in Cllr Brady's voting intentions in relation to Quarryvale. Cllr Brady went on to support 'C' and 'E' zoning for Quarryvale on the 17 December 1992.

CONTACTS BY CLLR RIDGE WITH MR DUNLOP IN THE WEEKS LEADING UP TO 17 DECEMBER 1992

29.45 Telephone contact was made by Cllr Ridge with Mr Dunlop's office on 4, 5 and 6 November 1992, a timescale which coincided with the calling of the 1992 General Election.

29.46 Cllr Ridge, together with Cllrs McGrath, O'Halloran and Tyndall, was a signatory to the Motion lodged with Dublin County Council on 9 December 1992 and which sought to adopt that part of the Manager's report which recommended 'C' and 'E' zoning for Quarryvale, and which reinstated a 'D' zoning on the Neilstown lands. While Cllr Ridge could not recall who had given her the motion for the signature, the Tribunal was satisfied that she signed the motion at the behest of Mr Dunlop. On 8 December 1992, the day prior to the lodging of the motion, three of the signatories, (Cllrs Ridge, McGrath and O'Halloran) made contact with Mr Dunlop. Also on 8 December 1992, Mr Dunlop's diary stated the following: '*7.30 Dinner Therese, Olivia Mary, Ann, Owen O'C Le Coq.'* On the 9 December 1992 Mr Dunlop had scheduled meetings with Cllrs Ridge, McGrath and O'Halloran according to his diary.

29.47 The Tribunal was also satisfied that Cllr Ridge was one of the councillors who urged Mr Dunlop and Mr O'Callaghan to agree to a 250,000 square feet retail cap for Quarryvale so as to ensure support for the 'C' and 'E' zoning Motion scheduled for 17 December 1992. Cllr Ridge duly voted to cap retail at 250,000 square feet on 17 December 1992.

29.48 In his evidence, Mr Dunlop claimed to have '*orchestrated*' with Cllr Ridge, in advance of the Special Meeting of 17 December 1992, that she would sit next to or near Cllr Brady. On Day 782 Mr Dunlop described events in the council chamber on that date regarding Cllr Brady and Cllr Ridge as follows:

> '*She was right beside him or two spaces away from him there was a gap in the bill* [sic]. *But I am sitting in the public gallery of Dublin County Council God between us and all harm which is two shop units in O'Connell Street, converted into a chamber. And it would be impossible not to even overhear sotte voce or whispers that were conducted in that room. And when the heart stopping moment came in relation to Peter Brady, who was high on the alphabetical list, Ms Dillon, once it started you got a very clear view as to the numbers that you had in favour if at the top of the alphabetical list people started voting against whom you had already put down as for, you suddenly began to get a bit weak kneed and that Ms… Therese Ridge said to Peter, 'for Peter for'.'* [2]

29.49 Cllr Ridge told the Tribunal that she had no recollection of the events described by Mr Dunlop. As a matter of probability the Tribunal believed that this event occurred.

[2] Mr Brady in his evidence denied that Cllr Ridge had urged him to vote in this fashion, or that Cllr Ridge's sitting beside him had been '*orchestrated'.*

CONTACT IN 1993

29.50 While Cllr Ridge had no specific recollection of the June 1993 Special Meeting at which amendments were made to the Draft Written Statement on Quarryvale, and which effectively allowed for a looser interpretation of the 250,000 square feet retail cap, the Tribunal was satisfied that Cllr Ridge, Mr Dunlop and Mr O'Callaghan were in contact in advance of that Special Meeting. Between 26 April 1993 and 1 June 1993, Mr Dunlop's office telephone records noted Cllr Ridge making telephone contact with Mr Dunlop's office on 13 separate occasions. During this period, Mr Dunlop's diary records 4 pre-arranged meetings with Cllr Ridge.

29.51 Likewise, the Tribunal was satisfied that in advance of the Quarryvale confirmation of the Special Meeting of 19 October 1993, Cllr Ridge kept Mr Dunlop apprised of likely developments in relation to the Quarryvale project from the perspective of Fine Gael Councillors. On 7 October 1993 she telephoned Mr Dunlop with the message *'everything looks OK.'* On the morning of the confirmation vote (19 October 1993) she telephoned Mr Dunlop to advise him of the likely attendance or otherwise of certain of her Fine Gael colleagues – providing Mr Dunlop with an effective 'headcount.'

CLLR RIDGE AND THE '4 X 2 CLUB'

29.52 Cllr Ridge acknowledged that she, together with other councillors, engaged in occasional social contact with Mr O'Callaghan and Mr Dunlop from 1992 onwards, gatherings invariably described by Mr Dunlop as the *'4x2 club.'*

29.53 The Tribunal was satisfied that Cllr Ridge was probably in attendance at such social engagements on 8 December 1992, 24 March 1993, 28 July 1993, 2 December 1993, 21 January 1994, 26 April 1995, 24 October 1997, 8 May 1998, 15 January 1999 and 8 October 1999, based on information noted in Mr Dunlop's diaries.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO CLLR RIDGE'S ASSOCIATION WITH MR DUNLOP AND MR O'CALLAGHAN

i. The Tribunal was satisfied that Cllr Ridge was not merely a strong supporter of the Quarryvale project, but was in fact someone who actively engaged in providing Mr Dunlop and Mr O'Callaghan with advice in relation to the strategy generally, and specifically in relation to motions relevant to Quarryvale. She was an acknowledged conduit of information to Mr Dunlop and actively encouraged fellow councillors to support the rezoning of Quarryvale.

ii. In that context, Cllr Ridge was handsomely rewarded by Mr Dunlop and Mr O'Callaghan both in the payment (by Mr Dunlop) of generous cash donations totalling IR£1,000 in or around the time of the Dáil and Seanad Elections in 1992/1993, and by Mr Dunlop discharging significant printing and other costs associated with her election campaigns and then passing on such costs to Mr O'Callaghan.

iii. In relation to the printing and other costs paid for by Mr Dunlop, irrespective of whether or not she knew that Mr Dunlop was being reimbursed by Mr O'Callaghan/Riga/Barkhill for that largesse, and notwithstanding her friendship with Mr Dunlop, it was the case that Cllr Ridge was the beneficiary of financial assistance (direct and indirect) from Mr Dunlop whom she knew at the time to be Mr O'Callaghan's lobbyist and with whom she met with and advised on a regular basis prior to the December 1992 Quarryvale vote and prior to the confirmation vote of 19 October 1993. While Cllr Ridge was not described by either Mr Dunlop or Mr O'Callaghan as part of the Quarryvale strategy team she was nonetheless an important contact for Mr Dunlop and Mr O'Callaghan in the campaign to rezone Quarryvale and *'pro-active'* in that capacity.

iv. The Tribunal was satisfied that payments to Cllr Ridge by Mr Dunlop directly (IR£1,000), and indirectly (by the discharge of costs associated with her election campaigns), made during the currency of the Quarryvale rezoning process compromised the requirement on Cllr Ridge to discharge her duties as a councillor in a disinterested fashion. Given the extent of her association with Mr Dunlop and Mr O'Callaghan throughout the Quarryvale rezoning process, it was impossible to conceive of a situation where it could reasonably be stated that she could be perceived to have acted in a disinterested manner. In the circumstances, the payments to Cllr Ridge, totaling IR£1,000 were entirely improper.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR COLM TYNDALL (PD)

30.01 Cllr Tyndall was elected as a Progressive Democrat (PD) Cllr in the 1991 Local Election, one of six newly elected PD Dublin councillors in that election. He was elected for the Clondalkin ward – the location in which the Quarryvale lands were situated.

30.02 At the time of his election Cllr Tyndall was employed as a salesman with Marine & General Insurance Limited (an insurance brokerage firm), having commenced his employment with that firm as a school leaver in 1982. He became its Sales Executive in 1988, and then a Director and shareholder in 1995 and 2001, respectively.

30.03 From 1993 Marine & General Insurance Limited provided insurance brokerage services to a number of companies associated with Mr O'Callaghan and Quarryvale.

CORRESPONDENCE BETWEEN CLLR TYNDALL AND THE TRIBUNAL PRIOR TO HIS SWORN EVIDENCE IN THIS MODULE

30.04 In his response of 20 April 2000 to a request for details of his involvement in the Quarryvale rezoning project, Cllr Tyndall advised the Tribunal that he attended a number of public meetings relating to Quarryvale and had had a number of meetings with Mr O'Callaghan and Mr Dunlop. Cllr Tyndall also stated that he had met Mr Pat Keating, a representative of Green Property plc, the owners of the Blanchardstown development.

30.05 In the course of that correspondence Cllr Tyndall also stated: *'I was never offered nor indeed looked for any reward of any nature whatsoever in connection with my vote for Quarryvale.'*

30.06 In response to a further request for information from the Tribunal, in September 2004, and in particular for a more detailed account of his Quarryvale involvement, including any dealings he may have had with, *inter alia*, Mr Dunlop, Mr O'Callaghan or any representative of Barkhill Limited, Riga Ltd or O'Callaghan Properties Limited, Cllr Tyndall, on 16 November 2004, advised as follows:

> *Further to our recent discussions and correspondence I set out details of background relating to lands at Quarryvale.*
>
> *I was elected in June of 1991 and had no experience as to how the Council did or didn't work. It became apparent that the Council was in the*

middle of a Development Plan and the level of correspondence and representations was phenomenal from all parts of the country.

In relation to the lands at Liffey Valley I met with Mr. O'Callaghan sometime in 1991. He went through the merits of a development on these lands, however, at the time I stated that I felt it wasn't the ideal location for the people of North Clondalkin who badly needed investment in their area.

I then went about doing a lot of research into other lands proposed for a Shopping Centre in the area and quickly discovered that these lands had been sitting idle for years with no intention of being developed. Second, being from Clondalkin Village I also came to the conclusion that no town existed called Clondalkin/Lucan and that both needed to develop in their own right.

During this time I met with many different groups all over Clondalkin who were very supportive of the Quarryvale project and urged me as their representative to support it.

I also met with the representatives from the Blanchardstowncentre namely, Pat Keating and Mr. Corcoran and felt that the Blanchardstown Centre was in jeopardy when the site at Liffey Valley was developed.

It became blatantly obvious that the people who were against the Liffey Valley development were afraid of the damage it might or not do to Blanchardstown. I didn't accept that there should be any connection between the two and felt that the Liffey Valley site had to be looked at on its own merits.

It must also be stated that in the early 90's the economic climate was totally different to what we have become accustomed to. Indeed there were parts of North Clondalkin that suffered with 70% unemployment.

Having weighed up all of the above I came to the conclusion that the Liffey Valley site was the only site that was likely to be developed in the Clondalkin area.
I then phoned Mr. O'Callaghan to say I would be supportive of the development.

I subsequently would have met Mr. Frank Dunlop and Mr. O'Callaghan on different occasions to discuss in detail the proposal for the site. At no

stage did I ask or offered any inducement of any kind for my support for Liffey Valley or indeed any other development.

I would also like to point out that I would also have met Mr. Keating on different occasions to discuss his thoughts on Blanchardstown.

It was with hurt and dismay I learnt that there may have been improprieties relating to 'Liffey Valley' as I was convinced it stood on its own merits.

30.07 In his evidence, Cllr Tyndall acknowledged his involvement as a signatory to a number of motions relating to Quarryvale and which came before the County Council on 17 December 1992, and 3 and 4 June 1993.

30.08 Asked to explain his failure to allude to his role in the Quarryvale project when he wrote his letters of 28 April 2000 and 16 November 2004 to the Tribunal, Cllr Tyndall responded:

'Again, I am not a legal, I would have interpreted that letter and replied to it as best I could. I would have assumed be it rightly or wrongly, that it is of public record, as to what manner I would have conducted myself in those meeting. And that is if I did sign a Motion to it, as I say, be it wrongly at this moment in time, but it is on the public record. And whether I would have stated in the letter or not. I replied to that letter as best I could.'

30.09 In a letter of 22 November 2004 to the Tribunal, following correspondence which had been received by his employer Marine & General Insurance Limited from the Tribunal,[1] Cllr Tyndall provided the following account of the commercial relationship that was entered into between Marine & General Insurance Limited and companies associated with Mr O'Callaghan.

Further to your most recent correspondence I wish to refute any suggestion or innuendo that I used my vote at any stage as a Cllr as a result of business dealings with Mr. O'Callaghan or Riga Limited or its representatives.

There was never any secret a company I was an employee of did insurance business relating to the building of Liffey Valley Shopping Centre. Indeed, just before the local elections in 1999 political adversaries were trying to use it against me however, the facts then and now speak for themselves.

[1] The Tribunal had written to the company requesting it to furnish details of its business dealings with Mr O'Callaghan and companies associated with him.

I was born in Clondalkin, went to school in Clondalkin and started working in Clondalkin in 1982 in a company called Marine & General Insurances Limited. Some years later I took over the role as Sales Manager.

In 1991 I was elected by the people of Clondalkin/Newcastle to Dublin County Council as a non-salaried public representative. As stated previously I never sought, looked for or was offered any inducement be it money, business or otherwise to carry out my duties as a Cllr since 1991.

The simple facts are a vote took place on Liffey Valley in 1991. Building works commenced in 1996. To suggest there could be anything other than a legitimate business connection for something commencing five years after the event is absurd.

I understand the Tribunal has very serious work to investigate and I have absolutely no difficulty in assisting you in any way possible however, I would ask you to be mindful of the damage that could be done involving a company in the Tribunal business solely because I, as a public representative, was an employee.

I have worked diligently both for Marine & General and Dublin County Council and since 2001 together with two partners took over the business of Marine & General business and Hibernian Auctioneers Limited…

30.10 Cllr Tyndall told the Tribunal that the reason why, in his correspondence with the Tribunal prior to 22 November 2004, he had not averted to this commercial relationship involving his employer and Mr O'Callaghan was that he had considered that there was no connection between the insurance business associated with Mr O'Callaghan and zoning/planning issues associated with Quarryvale.

30.11 The Tribunal was satisfied that Mr Tyndall's letter of 22 November, 2004, on its face, suggested that:

1) The rezoning of Quarryvale was concluded in 1991 and

2) That Mr Tyndall's employer's business connection with companies associated with Quarryvale/Mr O'Callaghan commenced five years after such rezoning.

30.12 However, the Tribunal was satisfied, based on evidence heard by it and documentation furnished to it, that the commercial relationship which evolved between Marine & General Insurance Limited and companies associated with Mr

O'Callaghan had its genesis, most probably, in contact which took place between Mr O'Callaghan and Cllr Tyndall in or around the month of October 1992.

30.13 The Tribunal was also satisfied that between 15 October 1992 and 28 July 1993 (the date of the first Marine & General Insurance Ltd invoice to Riga Ltd) Cllr Tyndall was actively involved in successfully negotiating an agreement for the provision of insurance brokerage services to Riga Ltd by his employer.

30.14 The Tribunal considered the content of an undated document, compiled by a Mr Gerry Leahy (an auctioneer), most probably on a date in 1994 (and believed to have been compiled in the course of legal proceedings then being taken by Mr Leahy's employer Gunne Auctioneers against Mr O'Callaghan/Riga). That document, *inter alia*, made reference to a meeting which apparently took place on 25 June 1992 between Mr Leahy, Mr O'Callaghan and Mr Dunlop. The document recorded Mr Leahy's description of discussions he had with Mr O'Callaghan and Mr Dunlop as to the level of political support that then existed for the Quarryvale rezoning. It also recorded Mr O'Callaghan stating that the Progressive Democrat councillors were being coordinated by Cllr Tyndall *'who was handling the insurance.'*

30.15 On 15 October 1992 a meeting took place between Mr O'Callaghan and Cllr Tyndall. The fact that such a meeting took place was not disputed and indeed, Mr Dunlop's diary for that date noted as follows: *'OOC to meet C Tyndall.'*

30.16 Approximately six days following this meeting, Mr Aidan Lucey of Riga Ltd wrote to Cllr Tyndall as follows:

> *Re: All Purpose Stadium and Quarryvale Town Centre*
> *Dear Mr. Tyndall,*
>
> *Owen O'Callaghan has asked me to write to you re the above. As you are aware, it is our intention to have a pretty extensive involvement in West County Dublin and consequently it is our intention to deal with as many people and companies as possible in this region.*
>
> *As your company is located in Clondalkin we would be very interested in discussing the relevant insurances with your company.*
>
> *The Stadium was lodged for planning permission on Monday 19th October, and we would hope to be in a position to commence building six to nine months time. The Quarryvale project, as you are aware, will take a little longer to commence, all things being equal.*

However Owen has asked me to mention to other properties that we have in our portfolio in Dublin

a) Cumberland House – an office building in Fenian Street, Dublin 2. Value £18m. The insurances on this property have just been renewed in the past month, and we would like to talk to you about this as well, in ten months time;

b) Prize Bond House – Lower Mount Street. Value £3m. The insurances on this property are due for renewal in March 1993.

You might put these dates in your diary, and we will make contact again as the renewal dates draw closer.

30.17 Approximately four months later, on 16 February 1993, Cllr Tyndall wrote to Mr Lucey, referring to Mr Lucey's earlier correspondence and he reminded him that the insurance renewal for Prize Bond House on Lower Mount Street, (one of the premises referred to in Mr Lucey's letter), was due for renewal in the following month and Cllr Tyndall stated that he would *'be in touch over the next few days to discuss matters at your convenience.'*

30.18 As matters transpired Marine & General Insurance Limited did not secure the contract to arrange insurance on the Mount Street premises.

30.19 However, the Tribunal was satisfied that by the end of June 1993 agreement had been reached between Cllr Tyndall's company and Mr O'Callaghan/Riga Ltd to the effect that Marine & General Insurance Limited would be appointed insurance brokers for the purposes of arranging property owners' liability insurance cover for the Quarryvale lands, and public liability/contractors all risks insurance cover for such construction works as would in due course commence on these lands. There was evidence that such an agreement was in place in correspondence sent by Cllr Tyndall to two insurance companies on 30 June 1993 and 1 July 1993 respectively wherein Cllr Tyndall, on behalf of Marine & General Insurance Limited, sought quotations for public liability insurance for the Quarryvale lands. In the course of correspondence with one of the insurance companies Cllr Tyndall informed it that Marine & General Insurance Limited had *'been appointed to deal with all the insurances relating to the construction of the development in Clondalkin estimated to be over £100m.'*(A reference to Quarryvale)

30.20 Riga Ltd paid its first public liability insurance premium to Marine & General insurance Limited on 2 September 1993, on foot of an invoice Marine & General Insurance sent on 28 July 1993.

30.21 In December 1993 Cllr Tyndall met Mr O'Callaghan and Mr Lucey in Cork, following which Cllr Tyndall wrote to Mr Lucey on 15 December, 1993 expressing his delight that Marine & General Insurance Limited had been appointed brokers for *'the Athlone, Quarryvale and Stadium developments.'* The Tribunal was satisfied that Cllr Tyndall met with Mr O'Callaghan and Mr Lucey in the days preceding 15 December 1993.

30.22 On 19 October 1993 the Quarryvale rezoning was confirmed at a Special Meeting of the County Council, and on 10 December 1993 the 1993 Development Plan for the County of Dublin was adopted by the County Council.

30.23 In his evidence to the Tribunal, Mr John McLoughlin, a co-director (with Cllr Tyndall) in Marine & General Insurance Limited, acknowledged that his company regarded Riga Ltd/Barkhill Ltd as a substantial client, and its commercial business with them as very valuable to his company.

30.24 Evidence to the Tribunal from Mr McLoughlin, coupled with an analysis of the documentation provided to the Tribunal by Riga Ltd/Barkhill Ltd revealed that in the period 1993 and 2004 Mr O'Callaghan's companies paid insurance premia to Marine & General Insurance Limited amounting to circa IR£1.2M, (of which a small percentage represented commission earnings to Marine & General Insurance Ltd) broken down as follows:

1993: IR£ 2,550.00
1994: IR£ 2,550.00
1995: IR£ 2,550.00
1996: IR£91,757.16
1997: IR£430,272.10
21/4/98 to 11/2/99: IR£313,193.80
7/5/99 to 25/2/00: IR£95,874.48
19/5/00 to 22/2/01: IR£59,327.56
22/5/01 to 13/2/02: €25,052.62
09/4/02 to 21/2/03: €64,156.38
17/06/03 – 26/02/04 €85,357.11
28/6/04 to 16/8/04: €47,436.00

30.25 Mr McLoughlin told the Tribunal that all of the foregoing premia had been paid to Marine & General Insurance by companies associated with Mr O'Callaghan. His company had not been favoured with any insurance business directly from Sisk or any of the other contracting companies employed on the construction of the Quarryvale However, Mr McLoughlin confirmed that because the insurance business brokered on behalf of Mr O'Callaghan and his companies

were *'wrap around'*[2] public liability policies, Marine & General had discussions with Quarryvale contractors (including Sisk) and their legal advisors to ensure that they were satisfied with the adequacy of the insurance cover provided.

30.26 Mr McLoughlin's testimony on this issue was in conflict with information provided by Mr O'Callaghan in his November 2007 statement to the Tribunal wherein Mr O'Callaghan, *inter alia*, stated:

> *Initially, Colm Tyndall's insurance services were provided, following a request by him to me, on foot of a tender for Sisk building risk insurances at Liffey Valley. Whilst I did endeavour to encourage Sisk to take on Colm Tyndall, he was taken on for the provision of building risk cover for them, following a tender process.*

30.27 Cllr Tyndall gave somewhat contradictory testimony regarding the circumstances in which discussions were conducted between himself and Mr O'Callaghan relating to the commercial relationship which evolved between his company and Mr O'Callaghan/Riga/Barkhill.

30.28 Cllr Tyndall was asked if, in the course of his discussions with Mr O'Callaghan of issues related to the rezoning of the Quarryvale lands, he had raised the question of Marine & General Insurance Ltd providing insurance services for the Quarryvale lands. Cllr Tyndall replied *'absolutely not.'*

30.29 On being advised that Mr O'Callaghan, in his November 2007 statement to the Tribunal, had referred to insurance services being provided by Cllr Tyndall *'following a request by him to me'*, Cllr Tyndall agreed that Mr O'Callaghan was correct and went on to say that:

> *'it's the timing where it's important. And there was never any question or it was never discussed in the same manner or indeed the same meeting relating to any correlation between planning or indeed insurance.'*

30.30 Asked to identify the meeting when the issue of insurance contracts had been discussed with Mr O'Callaghan, Cllr Tyndall replied:

> *'To be honest I can't tell you exactly. I don't recall exactly. What I can say to you as a sales person, I would try and use every opportunity that I would have to make a sales as was my job.'* and *'What I can do and I know very clear in my own heart and soul that there was never a question in any shape or form between the zoning, planning or anything else relating to Mr. Owen O'Callaghan and what future business the company that I was employed of it did.'*

[2] A policy to cover all public liability on the Quarryvale site.

30.31 Mr O'Callaghan told the Tribunal that his initial contact with Cllr Tyndall, and which related to Quarryvale, was in the latter's capacity as a councillor, and that it was '*much later'* when Cllr Tyndall informed him that he was in the insurance business, and '*at a later stage*' sought insurance business from him.

30.32 Mr O'Callaghan emphasised that Cllr Tyndall's company was not '*given*' his insurance business, but was asked to quote competitively for it. Having done so, his insurance was placed with Marine & General Insurance because of their competitive quotations.

30.33 The time span between Mr O'Callaghan first meeting Cllr Tyndall (approximately June 1991) and Mr Aidan Lucey's first letter to him seeking quotations for insurance business (21 October 1992) was approximately 15 months.

30.34 By 21 October 1992 therefore, Cllr Tyndall had achieved a measure of success in this regard having, on foot of Mr Lucey's letter, the expectation of business going to Marine & General Insurance from Mr O'Callaghan, as it duly did in July 1993 when Marine & General Insurance Limited invoiced Riga Limited for the first time.

30.35 From correspondence discovered to the Tribunal it also appeared to be the case that in the immediate aftermath of the confirmation of the Quarryvale rezoning Cllr Tyndall/Marine & General Insurances Ltd consolidated their agreement with Mr O'Callaghan/Riga for the provision of insurance services.

CLLR TYNDALL'S INVOLVEMENT AS A COUNCILLOR IN THE REZONING OF QUARRYVALE

30.36 By the time Cllr Tyndall was elected to the County Council, Quarryvale had been rezoned '*Town Centre*' with a retail cap of approximately 500,000 square feet. It was the case that between the time of his election and the subsequent Quarryvale vote – 17 December 1992, Cllr Tyndall attended a number of meetings with Mr O'Callaghan and Mr Dunlop.

30.37 Cllr Tyndall was one of four Councillors, the others being Cllrs McGrath, Ridge and O'Halloran who signed the motion, lodged with the Council on 9 December, 1992, which sought *inter alia*,

to approve the C and E zoning on the Quarryvale site as recommended by the Manager to ensure the provision of a suitable Centre to meet the overall needs of the area.[3]

30.38 An addendum to that motion, also signed by Cllrs McGrath, Ridge, Tyndall and O'Halloran, was likewise lodged with the County Council on 9 December 1992 and it sought:

to approve the Manager's recommendation that the lands at Neilstown zoned for town centre uses in the 1983 Development Plan should be zoned 'D' (to provide for major town centre activities) with the specific objective, 'it is an objective of the Council to encourage the development of specialised commercial, recreational, industrial and residential uses in this area.[4]

30.39 By the 17 December 1992 Special Meeting of Dublin County Council (a meeting which was devoted entirely to the issue of Quarryvale/Neilstown), in addition to the aforementioned motion in the names of Cllrs McGrath, Ridge, Tyndall and O'Halloran, a number of other motions had been lodged with the County Council which effectively sought a reversal of the Quarryvale 'D' Town Centre zoning, achieved on 16 May 1991 (a return to 'E' industrial zoning).

30.40 Cllr Tyndall voted against the zoning reversal proposal put to the Council by way of a motion in the names of Cllrs Owen Ryan and Joan Burton. That motion was unsuccessful.[5]

30.41 Cllr Tyndall also voted against a motion in the names of Cllrs Maher and Laing to rezone Quarryvale 'C1' with retail a 'Cap' of 100,000 square feet.

30.42 The motion in the names of Cllr McGrath, Devitt, Tyndall and O'Halloran seeking to amend 9 December 1991 motion by placing a retail '*Cap*' on the Quarryvale development of 250,000 square feet, was passed by a margin of eleven votes.

30.43 Cllr Tyndall denied that he had any discussion with Mr O'Callaghan about the reduction of the retail '*cap*' on Quarryvale, and asserted that a decision to seek such a reduction to 250,000 square feet had arisen following discussions which took place on the floor of the County Council Chamber on 17 December

[3] The Manager's Report circulated on 2 December 1992 had in the first instance sought that the Quarryvale lands be rezoned back to E industrial but failing that the Manager recommended, as opposed to a 'D' town centre zoning for Quarryvale, a 'C' and 'E' zoning.

[4] Cllr Tyndall agreed that the text of this addendum was formulated in this way so as to allow for the possibility of a Stadium type development on the Neilstown lands.

[5] The defeat of the Ryan/Burton motion led to other similar motions not then being put to the Council.

1992 Cllr Tyndall stated that a decision to reduce the retail '*cap*' was arrived at in order to give comfort to the Blanchardstown councillors.

30.44 As a matter of probability the Tribunal was satisfied, that, in some shape or form, prior to 17 December 1992 Cllr Tyndall was privy to discussions that were then ongoing concerning the possibility of reducing the retail '*cap*' on Quarryvale to 250,000 square feet.

30.45 On 1 December 1992 Mr O'Callaghan advised AIB that *'officials'* of the Council were thinking of, *inter alia*, *'a smaller centre for Quarryvale for approximately 250,000 sq. ft.'* The Tribunal believed it unlikely, given Cllr Tyndall's contact with Mr O'Callaghan and Mr Dunlop, that he was unaware that such a reduction was being contemplated by the promoters of Quarryvale so as to ensure that Quarryvale would obtain a Town Centre zoning, or similar. In November 1992 Cllr Tyndall himself submitted a question to the County Council, namely:

> *to ask the Manager to comment on the limiting of the size of commercial developments to 500,000 sq. ft. in the Draft Development Plan particularly in relation to the proposed site at (address supplied) and in commenting will he please state that this is an objective of the Plan that is to be strictly adhered to?*

30.46 Cllr McGrath brought Cllr Tyndall's query to the County Manager to the attention of Mr O'Callaghan and Mr Dunlop on 4 November 1992.

30.47 The Tribunal was satisfied that in the lead up to the 17 December 1992 vote, Mr O'Callaghan and Mr Dunlop had discussions with Cllrs McGrath, Ridge, Tyndall and O'Halloran in the context of what might be permitted by way of retail development in Quarryvale.

30.48 Although Cllr Tyndall had no specific recollection of the circumstances in which he came to sign the 9 December 1992 motion, the Tribunal was satisfied that he probably did so at the request of either Mr Dunlop or Mr O'Callaghan.

30.49 Following the rezoning of Quarryvale 'C' and 'E' (with a retail development limit of 250,000 square feet.), the draft Written Statement, as prepared by the County Manager described the retail development to be permitted on Quarryvale in paragraph 5.4.9 as follows:

> *It is an objective of the Council to foster the creation of employment opportunities in the Quarryvale area and to facilitate the provision of a district centre to serve the larger community. It is proposed to designate a district centre site at Quarryvale. This district centre shall not exceed 250,000 sq. ft. of retail shopping.*

The original town centre site retains its 'D' ('to provide for major town centre activities') zoning with the following objective 'to encourage the development of specialised commercial, recreational, industrial and residential uses in the area.

30.50 On 27 April 1993 a motion[6] in the names of Cllrs O'Halloran, Ridge, McGrath and Tyndall was lodged with the County Council proposing that:

Dublin County Council hereby resolves to delete paragraph 5.4.9 of the draft Written Statement and to substitute the following: 'it is an objective of the Council to foster the creation of employment opportunities in the Quarryvale area and to facilitate the provision of a district town centre to service the larger community. It is proposed to designate a district town centre site at Quarryvale. This district town centre shall be in the order of 250,000 sq. ft. retail floor space.

The original town centre site retains its 'D' (to provide for major town centre activities) zoning with the following objective – *'to encourage the development of specialised commercial, recreational, industrial and residential uses in the area.'*

30.51 Cllr Tyndall agreed that the purpose of the motion lodged on 27 April, 1993 was to seek a less restrictive interpretation of the 250,000 square feet limit that had been placed on retail development on Quarryvale, and incorporated in paragraph 5.4.9 of the draft Written Statement.

30.52 Over the course of two days on 3 and 4 June, 1993, the issue was debated by councillors, with changes thereto being sought by way of amendments in the names of Cllrs Tyndall and Gilbride and in the names of Cllrs Sheila Terry and Catherine Quinn (PD colleagues of Cllr Tyndall's). The Terry/Quinn motion, in effect, sought to block the changes to the draft Written Statement which were being proposed by Cllrs Tyndall, Ridge, O'Halloran and McGrath.

30.53 Ultimately, on 4 June 1993, the objective to achieve a less restrictive interpretation on the 250,000 square feet '*cap*' on retail development on Quarryvale was achieved.

30.54 Cllr Tyndall did not recall discussing the 27 April 1993 motion with either Mr O'Callaghan or Mr Dunlop. The Tribunal however was satisfied that he did so.

[6] The purpose of the motion was to amend the Draft Written Statement in order to give greater leeway to the promoters of Quarryvale in terms of the retail development that might be permitted in Quarryvale Mr Dunlop credited Mr Lawlor with the idea for the motion.

The Tribunal noted that Mr Dunlop's diary for 19 April 1993 recorded a meeting with Cllr Tyndall, some eight days prior to the lodging of the motion in question.

30.55 The Tribunal was satisfied, despite Cllr Tyndall's failure of recollection in this regard, that on 4 June 1993 Mr O'Callaghan discussed with Cllr Tyndall (and indeed others) how best to achieve a less restrictive interpretation of paragraph 5.4.9 of the Written Statement.[7]

30.56 Cllr Tyndall acknowledged that in June 1993 he had not disclosed to his councillor colleagues the fact that by that time he had embarked on discussions with Mr O'Callaghan about the provision of insurance services to Mr O'Callaghan's companies by Cllr Tyndall's employer/company. Cllr Tyndall told the Tribunal '*I don't believe it was incumbent upon me to tell anybody*.'

30.57 Mr Dunlop's diary for 9 September 1993 noted a meeting between Mr O'Callaghan and Cllrs Tyndall, O'Halloran and Ridge, and his diary for 22 September 1993 noted further contact with Cllr Tyndall. The Tribunal was satisfied that contact with Cllr Tyndall at this time was connected to the Quarryvale confirmation rezoning Special Meeting which would take place in October, 1993.

1998-1999

30.58 In 1997 and 1998, the 1993 Development Plan was reviewed by South Dublin County Council, of which Cllr Tyndall was a member. The Draft Development Plan was placed on public display in early 1998 and did not include the earlier restriction cap on retail shopping on the Quarryvale lands. Cllr Tyndall voted against a motion, proposed by Cllrs O'Connell and Muldoon on 24 September 1998, which recommended that the retail cap be reinstated on the Quarryvale development.

30.59 Cllr Tyndall said that he did not recall discussing the issue with Mr O'Callaghan prior to the vote, but pointed out that he had always favoured the removal of the cap, because of his belief that it had been imposed initially in 1993 simply to appease the people of Blanchardstown.

30.60 Councillor Tyndall was not in a position to confirm whether he received a donation of IR£500 from Mr O'Callaghan in 1999. He explained that any such donation would have been paid in the course of a golf classic fundraising event.

[7] As detailed in a memorandum compiled by Michael O'Farrell of AIB on 16 June 1993, following his attendance at a Barkhill board meeting, in this regard

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO CLLR TYNDALL'S ASSOCIATION WITH THE REZONING OF THE QUARRYVALE LANDS AND THE REMOVAL OF ITS RETAIL CAP (IN 1998)

i. The Tribunal was satisfied that within the period June 1991 to October 1992, and during which period Mr O'Callaghan lobbied Cllr Tyndall in relation to the Quarryvale rezoning proposal, Cllr Tyndall (on behalf of his company Marine & General Insurance Limited), likewise lobbied Mr O'Callaghan for his company to be appointed insurance broker to companies associated with Mr O'Callaghan.

ii. The Tribunal was satisfied that Cllr Tyndall exploited his position as an elected councillor (and more particularly the role as a councillor exercising his entitlement to vote on matters relevant to the development of Quarryvale) in circumstances which benefited a company with which he was closely associated, Marine & General Insurances, and in doing so acted improperly. The prospect of securing valuable insurance business for his company could not have but compromised Cllr Tyndall's required disinterested performance of his duties as a councillor in relation to his dealings with Quarryvale related matters which were before, or likely to come before the Council of which Cllr Tyndall was a member.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - CLLR G.V. WRIGHT (F.F)

31.01 Cllr Wright was first elected to Dublin County Council in 1985 in the Malahide constituency. He was also elected to the Dail in 1987, 1997 and 2002. He was appointed to the Senate in 1989 and 1993.

PAYMENT OF IR£2,000 TO CLLR WRIGHT BY MR DUNLOP IN 1991

31.02 Both Cllr Wright and Mr Dunlop agreed that Cllr Wright was the recipient of a IR£2,000 cash donation from Mr Dunlop, paid in the course of the 1991 Local Election campaign. There was however a conflict as between Cllr Wright and Mr Dunlop in relation to how, and where, the payment was made[1].

31.03 In his October 2000 written statement to the Tribunal, Mr Dunlop had stated, referring to the said 1991 IR£2,000 payment, that same was '*handed over in the Visitors Bar of the Dail wrapped in a newspaper.*'

31.04 On Day 420, Mr Dunlop resiled from this earlier description of the handing over of the payment to Cllr Wright at the time of the 1991 Local Elections, and claimed that he used this method of payment with Cllr Wright only in relation to another rezoning issue.[2]

31.05 In his 2003 statement to the Tribunal, Mr Dunlop had claimed that the 1991 payment was disbursed in the environs of Dublin County Council shortly after the vote of 16 May 1991.

31.06 Mr Dunlop maintained that his IR£2,000 cash payment to Cllr Wright, as with other payments made by him to other councillors at that time, although given under the '*umbrella*' of the Local Election campaign, was in fact paid to Cllr Wright on foot of Cllr Wright's support for the Quarryvale rezoning project. There was no suggestion made by Mr Dunlop that he paid the money to Cllr Wright prior to the Quarryvale vote of 16 May 1991.

31.07 County Council records indicated that Cllr Wright was not present in the Council Chamber on 16 May 1991 and thus was not recorded as having voted on any motion on that date, including the Quarryvale motion.

[1] This conflict is the subject of consideration in Chapter Ten of the Report. (Fox & Mahony)
[2] See Chapter Ten (Fox & Mahony)

31.08 Mr Dunlop nonetheless maintained that in the lead up to the Quarryvale vote he canvassed Cllr Wright who had indicated his support for the project, and that it was in that context that he decided to financially support Cllr Wright electorally in May/June 1991. Mr Dunlop told the Tribunal that Cllr Wright (and some other councillors) '*wanted money in the context of the local elections…',* and gave '*verbal assurances*' in relation to Quarryvale.

31.09 Cllr Wright agreed that he met Mr Dunlop and Mr O'Callaghan in relation to Quarryvale prior to the vote of 16 May 1991 but denied any link between his receipt of IR£2,000 from Mr Dunlop in May/June 1991 and his general support for the Quarryvale rezoning project.

31.10 The Tribunal regarded it as highly probable that the purpose of Mr Dunlop's IR£2,000 cash contribution to Cllr Wright was to ensure Cllr Wright's future support for the Quarryvale rezoning project, and was therefore improper. Mr Dunlop has been found by the Tribunal to have been put in funds by Mr O'Callaghan / Riga Ltd through Mr Dunlop's company, Shefran, for the purpose of making disbursements to Local Election candidates.

PAYMENTS MADE TO CLLR WRIGHT BY MR DUNLOP AND BY MR O'CALLAGHAN IN 1992

31.11 By the time Cllr Wright voted in favour of the Quarryvale rezoning on 17 December 1992, he had received contributions totalling IR£10,000 from Mr O'Callaghan and Mr Dunlop, which were paid to Cllr Wright during the course of the November 1992 General Election campaign in which he was a candidate. It was likely that Mr Wright received these contributions on either 11 or 12 November 1992.

MR O'CALLAGHAN'S EVIDENCE AS TO THE CIRCUMSTANCES IN WHICH HE MADE A IR£5,000 CHEQUE PAYMENT TO CLLR WRIGHT IN NOVEMBER 1992

31.12 Mr O'Callaghan told the Tribunal that following the calling of the General Election on 5 November 1992 he met Cllr Wright in Jury's Hotel. Cllr Wright asked him for a political contribution which Mr O'Callaghan agreed to give. Mr O'Callaghan then sought the advice of Mr Dunlop as to whether he should make a payment to Cllr Wright and Mr Dunlop had recommended to Mr O'Callaghan that he do so. Mr O'Callaghan said that he then resolved to pay Cllr Wright IR£5,000, but said that he did not discuss the actual amount with Mr Dunlop. He and Mr Dunlop duly travelled together to Cllr Wright's constituency office in Malahide, Co. Dublin. According to Mr O'Callaghan while travelling with Mr Dunlop to Malahide, the amount of the contribution he intended to pay Cllr

Wright was not discussed. Mr O'Callaghan said '*he didn't ask me, he wouldn't ask me, and I wouldn't ask him, we didn't discuss these things*.' Mr O'Callaghan stated that he '*never discussed these amounts with anybody.'*

31.13 Mr O'Callaghan brought with him a cheque for IR£5,000 payable to Cllr Wright dated 11 November 1992 (signed by Mr O'Callaghan and Mr Lucey, Riga's book-keeper), and drawn on Riga's Bank of Ireland account at South Mall, Cork. When Mr O'Callaghan and Mr Dunlop arrived at Cllr Wright's constituency office another developer, known to Mr O'Callaghan, was already in attendance. When that individual left, Mr O'Callaghan and Mr Dunlop discussed with Cllr Wright his election prospects, Mr O'Callaghan describing Cllr Wright as being '*very excited'* about the forthcoming campaign. Mr O'Callaghan gave Cllr Wright the cheque for IR£5,000.

31.14 Mr O'Callaghan acknowledged that at the time he decided to make the payment to Cllr Wright, in response to Cllr Wright's request, he was aware that Cllr Wright was an '*important*' councillor in Dublin County Council. Mr O'Callaghan however denied that Cllr Wright's importance as a councillor was a factor in his decision to give him money.

31.15 Mr O'Callaghan acknowledged that the prospects of success for the forthcoming Quarryvale rezoning vote was raised by Mr O'Callaghan in his and Mr Dunlop's discussion with Cllr Wright.

MR DUNLOP'S EVIDENCE OF HIS IR£5,000 CASH PAYMENT TO CLLR WRIGHT

31.16 Mr Dunlop described the circumstances in which he came to accompany Mr O'Callaghan to Cllr Wright's constituency office in November 1992 on the basis that Mr O'Callaghan had approached him and informed him that Mr Batt O'Keeffe, T.D.[3] had recommended that Mr O'Callaghan should make an election contribution to Cllr Wright. Mr O'Callaghan had asked Mr Dunlop's advice about the matter and Mr Dunlop advised him that it was appropriate to make such a contribution.

31.17 Mr Dunlop's testimony on this issue was strongly refuted by Mr O'Callaghan who denied that Mr O'Keeffe had made such a recommendation, or that he had advised Mr Dunlop as such.

[3] Mr O'Keeffe acknowledged receiving an unsolicited election donation of IR£10,000 from Mr O'Callaghan on 7 November 1992. This was paid personally by Mr O'Callaghan and subsequently recouped by him from Riga Ltd

31.18 Mr Dunlop said that on arrival at Cllr Wright's constituency office, and after the other developer had departed, he and Mr O'Callaghan discussed the forthcoming General Election with Cllr Wright. In the course of that discussion, while Mr Dunlop could not recall who had raised it, the issue of the forthcoming Quarryvale rezoning vote arose. Cllr Wright had assured Mr O'Callaghan and Mr Dunlop of his support. After Mr O'Callaghan handed his contribution to Cllr Wright, and as he and Mr O'Callaghan took their leave he had returned to Cllr Wright and handed him an envelope containing IR£5,000 cash.

31.19 Mr Dunlop believed that he probably told Mr O'Callaghan that he too had given an election contribution to Cllr Wright, although Mr Dunlop was unable to say if he had advised Mr O'Callaghan that his payment was in cash. Mr O'Callaghan testified that he was unaware that on the very day he handed his IR£5,000 cheque to Cllr Wright that Mr Dunlop was also making a similar payment of IR£5,000 to him, although he said he did become aware of the payment '*many months'* later.

31.20 Mr Dunlop described Cllr Wright as being:

> '*recognised within his own party in the first instance at that time as being an influential figure. I cannot specifically state to you whether or not he held a specific role at that stage. He was never Chairman of Dublin County Council. He was whip of the party of the Fianna Fail party group at a specific, at a stage during the course of the Development Plan but that he was well recognised as a genial facilitator.'*

31.21 Mr Dunlop testified that prior to attending at Cllr Wright's constituency office on the day in question, Cllr Wright, in the course of a telephone discussion with him, had solicited an election contribution from him. Mr Dunlop stated:

> '*Yes. I had lots of telephone conversations with Mr. Wright in or around this time and on other occasions but I had a telephone conversation with the, with GV in the immediate aftermath of the calling of the General Election. During the course of which Mr. Wright and myself discussed his prospects in relation to the General Election.*
>
> *Now, all politicians have this tendency… no matter how secure they feel they are or what their majority happens to be on a given election on whatever previous election they fought, certainly the spine and the steel begins to show some sort of fault because they indicate to people that they had a tough fight on their hands. Now, GV Wright and myself had a discussion of that nature and he indicated to me that he would welcome any support that I could give him. And in the context of that discussion I told him that I would give him a contribution.*'

31.22 On Day 811, the following exchange occurred between Counsel for the Tribunal and Mr Dunlop:

'*Q 411. Did you or he raise the subject of Quarryvale in the course of that discussion?*

A. I think it is, I cannot specifically say that I did or did not. But Mr GV Wright and I were having ongoing discussions in relation to what was happening vis-a-vis Quarryvale and the main object of the exercise was twofold. One, was when this damn vote was going to come up. And secondly, to use the colloquialism that was involved at the time did we have the numbers.

Q 412. But specifically, Mr. Dunlop, I am asking you were you asked by Mr. GV Wright for a political contribution or political support which was premised on the fact that he was going to continue supporting Quarryvale?

A. I was asked for a contribution by Mr. GV Wright in the context of the election of 1992, in the circumstances that obtained vis-a-vis a vote in Dublin County Council which was imminent.'

31.23 On Day 811 Mr Dunlop testified that:

'*...there would be absolutely no reason for Mr. O'Callaghan and myself to be going out to see GV Wright, if GV Wright was an ordinary candidate...who would have no connection with Dublin County Council or would not have a role in Dublin County Council and consequently would have no role in relation to a vote in the upcoming Quarryvale... project whenever it was going to take place. But we knew it was imminent.'*

31.24 Mr Dunlop further stated:

'*I have absolutely no doubt whatsoever, Ms. Dillon, that Quarryvale was a subject of discussion at that meeting in that room on that morning, consistent with the very fact that the person who was in the room when we arrived for the meeting with Mr. GV Wright was another developer builder who actually spoke to Mr. O'Callaghan in querying terms as to know how things were going with Quarryvale. So Quarryvale was on the issue almost the minute we walked in the door.'*

31.25 Mr Dunlop described Mr Wright as:

'*...very, I think the phrase I used was very positive and I can only speak for myself, when Mr. GV Wright wanted to be positive he was quite positive and he left neither Mr. O'Callaghan or myself in any doubt as to what his actual position was in relation to the Quarryvale project.*'

CLLR WRIGHT'S ACCOUNT OF EVENTS

31.26 In his May 2000 statement[4] to the Tribunal, Cllr Wright stated, as follows:

> *Before the local election in June 1991 I received a donation of 2,000 pounds in cash from Mr. Frank Dunlop in the run up to the November 1992 General Election, I received a political contribution of 5,000 pounds in cash from Mr. Frank Dunlop and a cheque for 5,000 pounds from Mr. Owen O'Callaghan. I should say that these donation were made at the same time in my constituency office in Malahide when Mr. Dunlop and Mr. O' Callaghan came to see me.*

31.27 Cllr Wright acknowledged, in his sworn evidence, both the receipt of a IR£5,000 cheque from Mr O'Callaghan and the IR£5,000 in cash from Mr Dunlop. Cllr Wright provided the Tribunal with the following account of the visit to his constituency office by Mr Dunlop and Mr O'Callaghan, prior to Mr O'Callaghan and Mr Dunlop arriving at his constituency office in November 1992. He received a telephone call from Mr Dunlop asking if he and Mr O'Callaghan could call to see him. Mr Dunlop had not averted to the purpose of their proposed visit but Cllr Wright suspected that it was for the purposes of giving him an Election contribution. The initial discussion between himself and Messrs O'Callaghan and Dunlop had centred on Cllr Wright's election prospects. Cllr Wright however acknowledged that after being told '*to get yourself elected*' by Mr O'Callaghan and Mr Dunlop, both raised the issue of Quarryvale and stated that they would appreciate his support in relation to that project. They indicated that as soon as the election was over they would be in touch with him in his capacity as '*whip and secretary*' of the Fianna Fail Council Group. Cllr Wright put it thus: '*It was mentioned that obviously after the election was over the Quarryvale file would be back in front of all of the Council.*'

31.28 Cllr Wright indicated to the Tribunal that the meeting with Mr O'Callaghan and Mr Dunlop was a brief affair, when he commented: '*In the context of the morning in question ten days before an election* [...] *the discussion was sharp and I was out the door canvassing.*'

31.29 Cllr Wright denied any suggestion that his evidence on Day 833 contradicted what had been earlier stated by him in his September 2001 statement to the Tribunal, namely that '*the Quarryvale development was not discussed specifically at this meeting nor was my support sought for this development during the course of this meeting.*'

[4] For a consideration of Cllr Wright's sequence of disclosure prior to May 2000 see Chapter Ten (Fox & Mahony)

31.30 Cllr Wright sought to explain this apparent inconsistency when he stated '*there was no detail in any discussions [...] in relation to Quarryvale*.'

31.31 Cllr Wright strongly disputed that the payments received by him from Mr O'Callaghan and Mr Dunlop were in any way connected to the then forthcoming Quarryvale rezoning vote.

31.32 In the course of that Special Meeting on 17 December 1992, Cllr Wright voted against two motions which had been brought to effectively '*de-zone*' Quarryvale from '*town centre*' to E (industrial). He voted against the motion to impose a retail cap of 100,000 square feet on Quarryvale, and in favour of a retail cap of 250,000 square feet (a square footage promoted by Mr O'Callaghan at the time in an effort to obtain and retain councillors' support for the Quarryvale Town Centre zoning). He also voted in favour of adopting the Manager's recommendation in relation to Quarryvale as made on the day – all effectively being votes in favour of the Quarryvale project.

CONTEMPORANEOUS DOCUMENTARY REFERENCES TO MR O'CALLAGHAN'S CHEQUE PAYMENT OF IR£5,000 TO CLLR GV WRIGHT

31.33 The IR£5,000 cheque to Cllr Wright was initially recorded, by the attribution '*5098*' in the '*sundries*' column of Riga's cheque payments book as a payment made for Barkhill Ltd/Quarryvale. Similarly, the 9 November 1992 cheque written to Mr Dunlop for IR£70,000 (later cancelled and replaced with a direct transfer of IR£70,000 into Mr Dunlop's 042 Account) was initially attributed as a Barkhill Ltd expense, as was a IR£10,000 cheque payment from Riga Ltd to Mr O'Callaghan (reimbursing him for a cheque made to Mr O'Keeffe in the course of the November 1992 General Election campaign).[5]

31.34 Mr Lucey, Riga's book keeper, was unable to account as to why a donation made to Mr Batt O'Keeffe, a Cork based politician, had been initially posted as a liability of Barkhill Ltd other than to state that it was probably done so at the direction of Mr O'Callaghan. Mr Lucey also stated that in recording the IR£5,000 cheque payment to Cllr Wright as a Barkhill Ltd expense, Cllr Wright's status as a Dublin County councillor was unknown to him and he had probably recorded the payment as a Barkhill expense at the direction of Mr O'Callaghan. The Tribunal accepted Mr Lucey's testimony in this regard.

[5] See Part Six.

31.35 While the attribution as Barkhill Ltd/Quarryvale related expenses appeared to have been noted by Riga's auditor Ms Cowhig in her working documents relating to the preparation of the audited accounts, the payments made to Mr O'Keeffe and Cllr Wright were ultimately treated by Ms Cowhig as expenses of Riga Ltd solely, and were duly posted under the hearing '*Advertising and Subscriptions'* – the column in Riga's audited accounts used for the recording of political subscriptions. Accordingly they were never available for scrutiny by Mr Gilmartin, or by Barkhill's auditors.[6]

31.36 The memorandum prepared by Mr O'Farrell of AIB dated 1 December 1992 (already referred to elsewhere), noted information provided to him by Mr O'Callaghan stated, *inter alia*, '*His lobbying continues and he indicated that he had injected IRIR£85,000 into the situation from O'Callaghan properties.'* (The lobbying reference was a reference to lobbying activity related to Quarryvale).

31.37 Mr O'Callaghan acknowledged that the IR£85,000 figure included the IR£70,000 paid to Mr Dunlop (and fast tracked into his bank account on 10 November 1992), the IR£10,000 paid to Mr O'Keeffe, and the IR£5,000 paid to Cllr Wright on 11 November 1992.

31.38 The available contemporaneous documentary trail, in all the circumstances suggested that Mr O'Callaghan was minded in November 1992 to direct that a payment, maintained by him to be an election contribution to a Cork based politician, be attributed (initially at least) in the books of Riga as an expense paid out on behalf of Barkhill/Quarryvale. This attribution lent some credence to Mr Dunlop's claim of having been told by Mr O'Callaghan that Mr O'Keeffe had recommended Mr O'Callaghan make an election contribution to Cllr Wright.

31.39 While the Tribunal noted Mr O'Keeffe's emphatic denial of any discussion with Mr O'Callaghan of the type recounted by Mr Dunlop, it nevertheless, in all the circumstances believed it likely that some such discussion took place.

31.40 Mr O'Callaghan, while conceding that the wording in the memorandum suggested that all three elements in the IR£85,000 total figure represented payments made to advance the lobbying for Quarryvale, Mr O'Callaghan denied that the IR£70,000 paid to Mr Dunlop related to Quarryvale lobbying activity (insisting that it related to fees due for work relating to the Neilstown Stadium project). Mr O'Callaghan initially acknowledged to the Tribunal that the wording in

[6] The IR£70,000 payment to Mr Dunlop was ultimately posted to 'work in progress Stadium.'

AIB's memorandum associated the payments of IR£10,000 to Mr O'Keeffe and IR£5,000 to Cllr Wright with Quarryvale, but later indicated that only the Cllr Wright payments related to Quarryvale lobbying activity.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO PAYMENTS TO CLLR GV WRIGHT BY MR O'CALLAGHAN AND MR DUNLOP

i. The soliciting and acceptance by Cllr Wright of an election contribution from Mr Dunlop in 1991 in the knowledge that Mr Dunlop was Mr O'Callaghan's lobbyist compromised Cllr Wright in the exercise of his duties as a councillor, and was improper.

ii. The Tribunal was satisfied that the purpose of Mr O'Callaghan and Mr Dunlop's trip to Cllr Wright's constituency office on 11 or 12 November 1992 was to provide Cllr Wright with a substantial payment in the expectation that Cllr Wright, in his role as a councillor and as Fianna Fail whip in the Council, and in his capacity, as Mr Dunlop put it, as a '*genial facilitator*' would do his utmost to consolidate and promote support for the Quarryvale rezoning vote, an issue all concerned knew would come before the County Council in December 1992. There was no doubt but that Mr O'Callaghan and Mr Dunlop were conscious of the influential position held by Cllr Wright within Dublin County Council at that time.

iii. While Mr O'Callaghan sought to impress upon the Tribunal that his objective, in the first instance, was to get Cllr Wright elected to the Dáil, the Tribunal was not persuaded by this argument, having regard, in particular, to the evidence of Mr Dunlop, and indeed having regard to the accounting treatment that was initially attributed, within Riga's books, to Cllr Wright's election contribution from Mr O'Callaghan.[7]

iv. The Tribunal considered it highly unlikely that Mr O'Callaghan was not aware, either before the meeting with Cllr Wright, or during it, or immediately thereafter, that Mr Dunlop was, similarly to himself, making (or had made) a payment of IR£5,000 to Cllr Wright.

v. The Tribunal was satisfied that the primary motivation behind the payment of a total of IR£10,000 by Mr O'Callaghan and Mr Dunlop to Cllr Wright on 11 or 12 November 1992, was to ensure Cllr Wright's ongoing and continued support for the Quarryvale project, and had little (if anything) to do with Cllr Wright's candidature in the General Election, other than the election provided an

[7] Dealt with hereunder.

opportunity to Cllr Wright to receive substantial payments of money under the guise of election donations.

vi. The Tribunal was also satisfied that Cllr Wright was fully aware of the true purpose behind both payments. Likewise, the Tribunal believed that Cllr Wright solicited the payment from Mr Dunlop.

vii. In all the circumstances, and particularly having regard to the proximity of the payments, totalling IR£10,000, and the crucial December 1992 Quarryvale vote, and having regard to the nature of the discussion which took place on 11/12 November at Mr Wright's constituency office, the Tribunal was satisfied that both the providers and the recipient respectively corruptly paid and received IR£10,000 under the pretence that the two payments were political donations.

viii. In relation to the conflict as between Mr O'Callaghan and Mr Dunlop regarding Mr Dunlop's assertion that Mr O'Callaghan had been advised by Mr Batt O'Keeffe to give an election contribution to Cllr Wright (an assertion which was denied by Mr O'Keeffe), the Tribunal was inclined towards the view (notwithstanding the somewhat late recollection by Mr Dunlop of Mr O'Keeffe's name) that Mr O'Callaghan had indicated to Mr Dunlop, in some fashion or another, that Mr O'Keeffe had a role in his decision to make a contribution to Cllr Wright.

ix. The Tribunal was unable to determine the true purpose of the payment of IR£10,000 to Mr Batt O'Keeffe, in circumstances where it was initially categorised, both in Riga's books and in information provided by Mr O'Callaghan to AIB, as a payment associated with Quarryvale.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - 'THE MEN IN DARK GLASSES'

INTRODUCTION

32.01 At the commencement of this part, reference was made to meetings with local resident groups as having been an important aspect of the campaign to rezone the Quarryvale lands. Evidence was given to the Tribunal of a number of such meetings, the necessity of such contact, and its importance, related to the fact that the proposed rezoning and development of the Quarryvale lands did not have widespread support within local communities. There was concern with the concept of, in effect, switching the retail zoning from Neilstown to Quarryvale, and there was also apprehension in some quarters that the development of Quarryvale would harm the nearby proposed development of the Blanchardstown lands (Green Property plc). One particular meeting with local interests, and which involved both Mr O'Callaghan and Mr Gilmartin attending a public house in Clondalkin, became, in the course of the public hearings in Quarryvale, an issue of some considerable controversy.

MR GILMARTIN'S TESTIMONY

32.02 Mr Gilmartin gave sworn testimony to the Tribunal that, on an occasion in or around the *'Autumn of 1990'*, he was taken by Mr O'Callaghan to a public house in Clondalkin for the purpose of meeting residents from the Quarryvale area, as part of the campaign to bolster local support for the Quarryvale rezoning project. Mr Gilmartin maintained that he accompanied Mr O'Callaghan for this purpose at the instigation of Mr Eddie Kay of AIB.

32.03 Mr Kay testified that, subsequent to Mr O'Callaghan becoming involved in Barkhill Ltd, and in the context of the process of lobbying then underway, that he may have requested Mr Gilmartin to go *'canvassing'* with Mr O'Callaghan, so as to present a *'united front.'* Mr Kay denied that he had requested Mr Gilmartin to meet politicians, or representatives of political parties, or that he instigated any such meetings. As a matter of probability, the Tribunal accepted that, insofar as Mr Kay had a role in the matter considered hereunder, it was as described by Mr Kay himself. In any event, Mr Gilmartin, in the course of his evidence, only maintained than that he had been requested by Mr Kay to accompany Mr O'Callaghan to a meeting with a residents association.

32.04 Mr Gilmartin's description of what occurred when he arrived at the public house was as follows:

> '*..We arrived into a pub. And when I went in there, there was nobody there. There was one or two people at the bar. We went over and sat at a table and I asked Mr. O'Callaghan. I says, 'where are those residents I'm supposed to meet' and he says 'well just wait, just wait.' So we waited about five minutes or more, I'm not quite sure of the time. And then three people arrived, three people, two of them had dark glasses on them, they had dark sun glasses on them, they walked over and sat at a table looking at me but just looking in my direction and one came over and sat at our table. So I asked Mr. O'Callaghan, you know, what is this about and he says 'oh, well listen.' So this gentleman said to me 'I am the Sinn Féin representative for this area' and he said 'you are on our patch.''*

32.05 Mr Gilmartin maintained that the man whom he said introduced himself as a Sinn Fein representative, said to him '*we have a file on you'* (a reference which was understood by Mr Gilmartin to be to his previous involvement in a development in Bangor, Northern Ireland). Mr Gilmartin testified that, when he inquired of the individual if he, Mr Gilmartin, was being threatened, Mr O'Callaghan ordered him to listen to the man. Mr Gilmartin stated that following strong words from him to the individual in question, he, Mr Gilmartin, got up and walked out of the public house, whereupon he was joined by Mr O'Callaghan; both then travelled back into the city by taxi. Mr Gilmartin also stated that en route back to the city, he confronted Mr O'Callaghan about the nature of the meeting, but that Mr O'Callaghan merely advised him to take heed as to what had been said.

32.06 Mr Gilmartin identified the man with whom he spoke on the occasion in question, as Cllr Christy Burke, who was at the time an elected Sinn Fein Dublin City councillor.

MR GILMARTIN'S PRIOR DISCLOSURE OF THIS MATTER TO THE TRIBUNAL

32.07 Mr Gilmartin's first formal statement on this issue was made under cover of a letter from his solicitors to the Tribunal, dated 20 February, 2004. That letter advised as follows:

> *Our client has instructed us to write to you, concerning a meeting that he attended in Clondalkin in the Autumn of [1987][1997][1].*
>
> *You will recall that during one of the earlier interviews by Counsel for the Tribunal with our client, he recollected being taken by Owen O'Callaghan*

[1] The letter was unclear as to the year. Subsequently, in his sworn evidence, Mr Gilmartin stated that the meeting took place in 1990.

to a public house in Clondalkin which he was told by Mr. O'Callaghan was for the purpose of attending a resident meeting in connection with the proposed Quarryvale Development.

When our client arrived at the public house in Clondalkin, we are instructed that he was approached by two men wearing dark clothing and dark sunglasses and a third man who identified himself as a Sinn Féin Councillor for the area. We are further instructed that Mr. O'Callaghan stepped away from the group at that point.

At that time, our client instructs us that he did not know the identity of this person. Our client has since seen a photograph of the person, who described himself as a Sinn Féin Councillor, a copy of which we now attach. You will note that the photograph is of Christy Burke, a Sinn Féin representative.

32.08 Prior to the aforesaid communication from his Solicitors, Mr Gilmartin made a reference to an incident in a public house involving '*a man wearing dark glasses'*, in the course of a meeting with Counsel for the Tribunal on 26 February, 1998.

32.09 Counsel's notes of that meeting contained, *inter alia,* the following:

He recounted an occasion he was asked by Eoin O'Callaghan to Clondalkin. He felt that he was going to inspect a site and meet somebody of some significance. O'Callaghan took him to a pub and they sat for some time. They were then approached by a man wearing dark glasses who threatened Mr. Gilmartin and said they had a file on him in relation to his activities in the North.

Mr. Gilmartin explained that this meeting was intended to frighten him and to ensure that he would not continue any development in the Clondalkin area.

32.10 In the course of a taped question and answer discussion between himself and his then solicitor, Mr Noel Smyth in London on 20 May, 1998, Mr Gilmartin made reference to his travelling to a public house in Clondalkin in the company of Mr O'Callaghan, and there meeting a Sinn Féin Councillor. Mr Gilmartin was recorded as stating:

'…O'Callaghan invited me one day from a board meeting that I had to go out to Clondalkin because there was people out there would like to see me. And when I went out it was a Sinn Féin Councillor and others was there. And this fella came in and he sat down and he announced, I have his name incidentally at home, I've got a list anyway and he sat down. We met in a pub in Clondalkin. O'Callaghan paid the taxi all the way out. Introduced me to this fella, for him to announce to me they had a file on

me. So I said who has. We have. I said who are you. All you need to know is I'm a Sinn Féin Councillor. And I said I don't give a fuck who you are. I said what's that got to do with me. So he said oh, you operated in Northern Ireland, he says, and the boys has got a file on you. But I said what is this supposed to mean, what does it mean I said you got a file on me. ….What's it in aid of I said, what's the bottom line here. And O'Callaghan said you better listen to him, to me….

So O'Callaghan said you better listen he said. I said listen to what. I said is this a threat, are you making a threat to me. He says well you take what you like…'

32.11 Mr Gilmartin was further recorded by Mr Smyth as making reference to his having taped the encounter he had with the individual in the public house in Clondalkin. In the course of his evidence, he explained that he had recorded the encounter with a dictaphone which he had with him at the time. Mr Gilmartin claimed that he had replayed the recording to himself on occasions, thereafter. However, according to Mr Gilmartin, this recording was destroyed in 1996.

32.12 In the autumn of 1998 Mr Padraig Flynn, in the course of a telephone call made by Mr Flynn to Mr Gilmartin, noted Mr Gilmartin as having stated, *inter alia,* the following:

I was taken to pub – a Clondalkin pub – guy with dark glasses said he had a file on me.

You operated in the North and you won't here
To watch your step
He was a Sinn Féin Councillor
O'Callaghan sat on wall outside
I said are you threatening me

You had a thing in Bangor, you're not going to get involved in Ireland.

32.13 Notwithstanding the fact that Mr Gilmartin raised an issue involving a public house in Clondalkin, and of an encounter with a man who claimed to be a Sinn Féin representative (in circumstances where he felt his business interests in Clondalkin/Quarryvale were being threatened) with Counsel for the Tribunal in February, 1998 and with his own Solicitor, in May, 1998, an Affidavit sworn by Mr Gilmartin on 2 October, 1998, was silent on the matter. Nor did his initial formal statement, provided to the Tribunal on 17 May, 2001, make reference to the matter.

MR GILMARTIN'S IDENTIFICATION OF CLLR CHRISTY BURKE

32.14 Mr Gilmartin told the Tribunal that the man who had approached him in the public house in Clondalkin had not been introduced to him at the time, nor was the individual known to him. Mr Gilmartin stated that he was simply told by the man who approached him that he was a Sinn Féin representative.

32.15 Mr Gilmartin alleged that the man in question was Cllr Christy Burke. Mr Gilmartin said that a third party had given him the names of three individuals, one of whom might have been the man who had approached him in the public house. With his son's help, Mr Gilmartin identified Cllr Burke from an internet photograph of Cllr Burke. Mr Gilmartin said:

> '*…I did not identify or know Christy Burke at all* [at the time of the encounter]*. And neither did I know who the gentleman in front of me was for years after the event took place. And I was only able to identify him from a picture taken off the internet some years later.'*

32.16 And Mr Gilmartin further stated: '*…as the minute I saw Mr. Burke* [from the picture taken off the internet] *he was the gentleman who was sitting in front of me in the pub in Clondalkin.'*

32.17 In the course of cross-examination by Counsel for Mr O'Callaghan, in the context of Mr Gilmartin having been recorded by Mr Smyth on 20 May 1998 as stating '*I have his name incidentally at home'*, Mr Gilmartin said that that statement by him was a reference to the fact that in or about that time he was in possession of the three names given to him by a third party. Mr Gilmartin was unable to recall the third party who provided him with the three names, but did recall the three names he had been given. In the course of his testimony on Day 761 Mr Gilmartin provided these names to the Tribunal, in a written list. He acknowledged that this was the first occasion on which he provided the names to the Tribunal. The thrust of Mr Gilmartin's evidence was that it was on the basis of the names he had been given by this third party, that the internet search had been conducted with his son's help. In correspondence from Mr Gilmartin's Solicitors, dated 20 February, 2004 a copy of the internet photograph of Cllr Burke was provided to the Tribunal. It was common case that the photograph in question was indeed that of Cllr Burke.

32.18 In the course of it being put to Mr Gilmartin that Cllr Burke had never met Mr Gilmartin (or indeed, Mr O'Callaghan), and that he had never been in a public house in Clondalkin, and that therefore Mr Gilmartin had been mistaken in identifying Councillor Burke, Mr Gilmartin stated '*the only admission I will make to making a mistake, if I see an identical face'* (to Mr Burke's), and he went on to

state '*it will have to be practically identical…down to the glasses…down to even his teeth..*'

32.19 Asked by Cllr Burke's Counsel to describe the man he claimed to have met in the public house in Clondalkin, Mr Gilmartin stated that he recalled that the man had '*gingerish hair,*' that he was '*smallish*' and had '*a roundish face.*' Asked if the individual had any distinguishing features or marks, Mr Gilmartin responded that he '*…didn't see… any birthmarks on him, but I remember his teeth were uneven…*' Mr Gilmartin also stated '*I didn't get the photograph wrong, that face is embedded on my memory.*' Counsel informed Mr Gilmartin that Cllr Burke had in fact a birthmark on his neck.

CLLR CHRISTY BURKE'S EVIDENCE

32.20 Subsequent to the receipt of the copy photograph of Cllr Burke from Mr Gilmartin's solicitors, the Tribunal wrote to Cllr Burke advising him that it had received information that he had attended a residents' meeting in a public house in Clondalkin in the autumn of 1987,[2] and that one of the persons present at the meeting was Mr Gilmartin. The Tribunal advised Cllr Burke that it had received information that he had introduced himself to Mr Gilmartin as a Sinn Féin councillor for the area. Cllr Burke was asked to inform the Tribunal whether he had in fact attended such a residents' meeting in the circumstances described, and whether he had met with Mr Gilmartin, and if anything had been discussed between them. He was also asked to confirm whether or not he was accompanied by anyone to the meeting, and if so, to identify such persons.

32.21 On 13 April 2005, Cllr Burke telephoned the Tribunal and advised that, '*(a) he had never attended a meeting in relation to Quarryvale, (b) he had never met Tom Gilmartin in his life, and (c) Quarryvale was not in his ward.*' Cllr Burke was also noted as having informed the Tribunal that the only person he could think of who might have met Mr Gilmartin was a Sinn Féin representative named John McCann who had a similar appearance to his own.

32.22 Some days later, Cllr Burke's solicitors wrote to the Tribunal in the following terms:

> *We are instructed that Mr. Burke never attended a residents' meeting in a public house in Clondalkin in the Autumn of 1987. Mr. Burke has been a member of Dublin City Council formerly known as Dublin Corporation since he was first elected in June 1985. He represents the North Inner*

[2] The date 1987 was referred to in the Tribunal's letter. In the letter from Mr Gilmartin's solicitors of 20 February 2004 the date given was difficult to decipher, although the letter suggested either 1987 or 1997.

City Ward and he never attended a meeting with the developers of the proposed Quarryvale site, now known as Liffey Valley Shopping Centre.

He has never met Mr. Thomas Gilmartin and certainly never met him at a residents' meeting in a public house in Clondalkin in the Autumn of 1987.

Please identify the person who has provided the information to the Tribunal that Mr. Burke introduced himself to Mr. Gilmartin as a Sinn Féin Councillor for the area at a residents' meeting in a public house in Clondalkin in the Autumn of 1987.

32.23 Consequent on Mr Gilmartin's statement to the Tribunal in relation to the matter having been provided to Cllr Burke, and following sworn testimony given by Mr Gilmartin, Cllr Burke provided a further statement to the Tribunal on 3 October 2007 in which he denied Mr Gilmartin's allegation that Mr Gilmartin and himself had met in a public house in Clondalkin. Cllr Burke's statement continued:

I have carried out inquiries within the Sinn Féin organisation and ascertained that Mr. John McCann was the Sinn Féin representative of the Clondalkin area in 1990. My Solicitors have spoken with Mr. McCann and he has confirmed that he attended a meeting on behalf of the Quarryvale Residents' Association accompanied by the Chairman of the Quarryvale Residents' Association at the Jenson Hotel in late 1990 or early 1991. This meeting was organised by Mr. Frank Dunlop on behalf of Mr. Owen O'Callaghan. I understand that Mr. Gilmartin attended the meeting, accompanied by Mr. O'Callaghan and Mr. Dunlop, and they outlined details of the proposals for the Quarryvale site to the representative of the Quarryvale Residents' Association.

The allegation by Mr. Gilmartin that I attended a meeting in Autumn 1990 in a public house in Clondalkin is completely untrue and unfounded. The description of how he identified the person who he met at the alleged meeting in Autumn 1990 not credible in my opinion. His identification of the person in question was not carried out until approximately fourteen years after the event. I understand that Mr. John McCann was of similar appearance to me in the Autumn of 1990, he wore a beard and glasses, similar to the beard and glasses I wore at the time.

32.24 In the course of his sworn testimony to the Tribunal, Cllr Burke reiterated his denial of ever having met Mr Gilmartin or having met him in the public house in Clondalkin. He also denied that he ever met Mr O'Callaghan. Cllr Burke

acknowledged that he knew Mr Dunlop, and had been lobbied by Mr Dunlop in relation to matters unconnected to Quarryvale.

32.25 In response to questions posed by Tribunal Counsel, and by his own Counsel, Cllr Burke told the Tribunal that he was prepared to take a lie detector test verifying that he had never met Mr Gilmartin. The Tribunal did not require him to do so.

MR JOHN MCCANN AND MR PAT JENNINGS

32.26 In October 2007, the Tribunal wrote to Mr McCann and Mr Jennings requesting them to provide a brief narrative statement dealing with any contact they may have had with Mr O'Callaghan, Mr Gilmartin and Mr Dunlop.

32.27 Mr McCann's statement was furnished to the Tribunal under cover of his solicitor's letter of 21 November 2007, and it set out, *inter alia*, as follows:

> *I was the Secretary of the Quarryvale Residents' Association for a number of years and we had our offices in the Co-op in Quarryvale. I recall having a meeting with Owen O'Callaghan, Tom Gilmartin and their liaison person, Frank Dunlop, in early Spring 1991. I am not certain of the date and as you will appreciate many years have passed since the events took place and information which I am setting out in this statement is my best recollection of the events in question.*
>
> *By way of background to the meeting, I should explain that before any meeting took place our local community of Quarryvale under the aegis of the representative body the Quarryvale Residents' Association held a number of public meetings to discuss what was then called the Quarryvale Development Project which is now known as the Liffey Valley Shopping Centre. The community proposed that the Residents' Association conduct a fact finding process and gather as much information as it could about the project. At the time the project was receiving substantial coverage in the local and national media.*
>
> *When the information was gathered the community asked the Residents' Association to make contact with the Developers. It was unanimously agreed at the public meetings that the community would support this project as the community suffered from high unemployment, this project could only benefit the employment prospects of the local community and the community in general. There were also other matters to take into consideration, as to how this very big shopping centre would impact on our community physically as well as other social impact factors.*

At this stage the Residents' Association delegated two of its members, myself and Patrick Jennings (being the Secretary and Chairperson respectively of the Residents' Association) to be spokesmen for the Association in any meetings to be held with the Developers. They contacted one of our local political representatives, Liam Lawlor of Fianna Fáil to organise a meeting with the Developers involved in the project. Mr. Lawlor organised the meeting on our behalf.

The first contact we received about the meeting was from Mr. Frank Dunlop who informed us he was acting on behalf of the Developers, Owen O'Callaghan and Thomas Gilmartin. He then organised a meeting between ourselves and the Developers at our request.

The meeting took place at the Jenson Hotel in Clondalkin Village in early Spring of 1991. Owen O'Callaghan, Thomas Gilmartin, Frank Dunlop, Pat Jennings and myself attended the meetings. Pat Jennings and myself were attending the meeting as representatives of the local Quarryvale Residents' Association. We were provided with tea and coffee and the discussion of the meeting was around the topic of the Quarryvale/Liffey Valley Shopping Centre development. The Developers outlined their involvement in the project, suggested that they would like to involve the local Residents' Association in some part of the process. They agreed to attend some local public meetings on the subject. An informal arrangement was arrived at whereby the Residents' Association would be consulted on a regular basis as to the progress of the development.

But for one unusual comment made by Tom Gilmartin the meeting was a very positive affair. During the meeting Tom Gilmartin began to tell myself and Patrick Jennings of his meetings with certain Government 'local and national' representatives and he ranted loudly about how they were a bunch of corrupt bastards. He was about to mention an individual by name and Owen O'Callaghan seemed to prod him under the table with a gentle tap of his leg with what seemed like a gesture to get him quiet and to say nothing more.

Before we left the meeting, we told the Developers that our community and our Association would be supporting their proposal and that if we could do anything to further the development process, we would. They said that they would get back to us in the near future and the meeting then concluded. [3]

[3] Mr McCann's statement went on to recite other contacts he had with Mr O'Callaghan and Mr Dunlop post April 1991, in the absence of Mr Gilmartin.

32.28 On 29 October 2007, Mr Jennings provided a statement to the Tribunal, in which, after outlining the circumstances in which he and Mr McCann were mandated to make formal contact with the developers of the Quarryvale project, under the heading '*Meeting No. 1'*, he outlined the circumstances in which he attended a meeting with Mr Gilmartin, Mr O'Callaghan and Mr Dunlop in the company of Mr McCann:

> *Mr. Frank Dunlop subsequently arranged a meeting which I recollect was in the Spring of 1991. The meeting was held in the Jensen Hotel in Clondalkin which we were advised would be attended by Mr. Tom Gilmartin, Mr. Owen O'Callaghan and Mr. Frank Dunlop.'*
>
> *Mr. McCann and myself went to the Jensen Hotel and were met by Mr. Frank Dunlop, who introduced Mr. Owen O'Callaghan. My recollection is that Mr. Thomas Gilmartin joined up sometime later while enjoying afternoon tea and biscuits. Mr. O'Callaghan outlined the genesis of the development and what it would encompass. He recounted the successful developments he had been involved with previously and canvassed for Q.R.A.'s support. Mr. Frank Dunlop gave a concise history of the Balgaddy site for the proposed Clondalkin/Lucan town centre and the unlikelihood of it proceeding. He further outlined the challenges of successfully redesignation of the lands at Quarryvale, the likely opposition of Green Properties who were looking to develop a similar project in Blanchardstown. He further invited QRA to evaluate the proposed development in Quarryvale and suggested that if there was a mutuality of interest QRA wished to consider the possibility of organising a number of public information meetings in the surrounding areas to inform residents of these areas and the benefits of the proposed development. It was at this juncture that Mr. Gilmartin joined the meeting. Following introductions, Mr. Gilmartin gave a brief biopic of his developments in England, particularly in Luton. He recalled that it saddened him to see young homeless Irishmen lying in the streets of Luton, often under the influence of alcohol. He informed that he built and provided a wet hostel for homeless Irish emigrants who had alcohol dependency. He said at this stage he decided to look at possible developments in Ireland as a means of offering construction jobs in Ireland preventing some of the problems experienced by his compatriots in Luton and other cities in England.*
>
> *Mr. Gilmartin went on to share his experience of identifying potential development opportunities, including hiring a helicopter which assisted in identifying the development potential of the lands in Quarryvale at the juncture of the M50 and the Galway Road. The other site was an inner-city site at Bachelor's Walk.*

> *Up to this point the description had been positive and upbeat, however the tone changed when Mr. Gilmartin started to recount the difficulties and road blocks that had been put in his way by local authority officials and politicians. At one point he stated that 'they were worse than the Mafia' and were bleeding him dry by making outrageous demands for money. I took this to mean that these demands related to redesignation of the lands in Quarryvale and planning permission. Both Mr. O'Callaghan and Mr. Dunlop appeared discomfited at these discloseness* [sic]. *Mr. Gilmartin went further and stated that he had paid a single politician £50,000. At this point he yelped in pain clutching his shin, exclaiming, 'Jesus Owen, what are you kicking me for.' After an embarrassing lacuna Mr. Dunlop, quickly recovering, requested that we consider what was being proposed and that a follow-up meeting could be arranged to discuss the community response. We agreed to report on the information shared, contact Mr. Dunlop and arrange a follow-up meeting to discuss the community's reaction.*[4]

32.29 In his testimony to the Tribunal, Mr McCann acknowledged that at the time of his meeting with Mr Gilmartin, he was a member of Sinn Féin, and was a Sinn Féin representative in the Clondalkin area.[5] However, it was Mr McCann's evidence that his political affiliations were not raised at the meeting, and that it had been made clear that he was attending the meeting as a community activist, and more specifically in his capacity as the Secretary of the Quarryvale Residents' Association. Both he and Mr Jennings had expressed their support for the proposed Quarryvale development.

32.30 Acknowledging that Mr Gilmartin denied that he had ever met with Mr McCann and Mr Jennings in Jenson's Hotel, and acknowledging that Mr Gilmartin was claiming that at a meeting in late 1990 in a public house in Clondalkin, to which he had been brought by Mr O'Callaghan, he was threatened by a man who identified himself as a Sinn Féin representative, Mr McCann, in any event, denied that Mr Gilmartin was threatened, and denied that he was privy to any meeting involving Mr Gilmartin where events described by Mr Gilmartin took place. He acknowledged that Mr Gilmartin, in any event, did not identify him in this regard.

32.31 Mr McCann and Mr Jennings, in the course of their respective testimonies, reiterated what had been set out in their respective statements, namely that the meeting in Jenson's Hotel had been a positive affair, save for Mr Gilmartin's intervention alleging corruption in the context of his having met, in Mr

[4] Mr Jennings' statement went on to recite dealings he had with Mr O'Callaghan and Mr Dunlop subsequent to the initial meeting.

[5] Mr McCann was not however an elected Sinn Féin representative.

McCann's words, '*local and national'* representatives. Mr Jennings confirmed that Mr Gilmartin had referred to '*road blocks'* having been put in his way by '*Local Authority officials'* and '*politicians',* and that Mr Gilmartin had stated '*they were worse than the Mafia'*, and were, '*bleeding him dry by making outrageous demands for money.'*

32.32 They both testified that Mr Gilmartin in the course of their meeting had made reference to a sum of IR£50,000 having been paid to a politician. They further testified that it was at this juncture that Mr Gilmartin had been kicked or tapped under the table by Mr O'Callaghan. Mr McCann stated that Mr O'Callaghan's intervention had come at a point when it appeared that Mr Gilmartin was about to name an individual in connection with the IR£50,000 payment. Mr McCann told the Tribunal that, following the meeting, Mr Gilmartin's reference to IR£50,000 had been a subject of comment as between himself and Mr Jennings, because of the amount of money in question.

MR O'CALLAGHAN'S EVIDENCE

32.33 On 16 April 2007, Mr O'Callaghan was requested by the Tribunal to provide a detailed narrative statement in relation to a meeting involving Mr Gilmartin in a Clondalkin public house. In that letter, the Tribunal summarised Mr Gilmartin's account of the meeting in the following terms:

> *Mr. Gilmartin claims that your client took Mr. Gilmartin to a public house in Clondalkin; and that he told Mr. Gilmartin that it was for the purposes of attending a resident meeting in connection with the proposed Quarryvale development; that upon arrival at the public house in Clondalkin, Mr. Gilmartin was approached by two men wearing dark clothing and dark sunglasses and a third man who identified himself as a Sinn Féin Councillor; that your client stepped away from the group at that point.*

32.34 On 19 April 2007, Mr O'Callaghan was advised that Mr Gilmartin, through his solicitors, had identified the Sinn Féin Councillor as Cllr Christy Burke of Sinn Féin.

32.35 Mr O'Callaghan responded to the Tribunal's request in the course of a statement provided by him on 26 April 2007, a portion of which was entitled '*Men with dark glasses and dark clothing/meeting with Christy Burke'*, and which stated as follows:

> *I once went to Finch's Pub in North Clondalkin with Tom Gilmartin. The purpose for our going there was to meet a group of 6 or 7 women representing the Quarryvale residents. Tom Gilmartin made a fool of himself and they left. These women were very genuine and wanted work*

for their husbands. I introduced Tom Gilmartin to them. I started to tell them about the proposal but Tom Gilmartin shut me up. He spent about twenty minutes boasting as to what he had achieved in the UK. He said that he would build a massive complex in Quarryvale and bring the barefoot Irish back from London and Luton to Ireland. The women all left, one by one.

The allegation that Tom Gilmartin was approached by two men wearing dark clothing and dark glasses and a third man who identified himself as a Sinn Féin Councillor and at which point I stepped away from his utter nonsense. It never happened.

The allegations contained in the transcript of Noel Smyth interviews in this regard comprised utter nonsense and are totally false.

I do not know Christy Burke. I did know John McCann who was a Sinn Féin community activist for North Clondalkin at the time.

32.36 On 7 December 2007, subsequent to Mr McCann's statement having been provided to the Tribunal (a copy of which was circulated to Mr O'Callaghan), the Tribunal received a further statement from Mr O'Callaghan in which he took issue with only one aspect of Mr McCann's statement relating to a matter[6] which was unconnected to the '*men in dark glasses'* issue.

32.37 Mr O'Callaghan did not, in his 25 April 2007 narrative statement make any reference to any meeting in Clondalkin involving himself, Mr Gilmartin, Mr McCann and Mr Jennings. Insofar as he had, prior to his sworn testimony, indirectly acknowledged any such meeting, it was by way of the concluding remark made in his December, 2007 statement: '*I do not take issue with the statement, which has been provided to the Tribunal by John McCann in any other respect.'*

32.38 Questioned as to why he had failed to advise the Tribunal of that he had met Mr McCann and Mr Jennings in the company of Mr Gilmartin in the spring of 1991, Mr O'Callaghan stated that, when providing his statement in April 2007, he had confused two meetings which had taken place in Clondalkin with the Quarryvale community representatives and which had involved Mr Gilmartin. One of these meetings was with six or seven women, as referred to in his April 2007 narrative statement, and the other was a meeting he and Mr Gilmartin had had with Mr McCann and Mr Jennings. Notwithstanding Mr O'Callaghan's explanation in this regard, the Tribunal noted that in his April 2007 statement,

[6] It related to dealings between himself and Messrs. McCann and Jennings in 1992, in the absence of Mr Gilmartin.

Mr O'Callaghan had made reference to the fact that Mr McCann was known to him as a Sinn Féin representative, that knowledge (which Mr O'Callaghan undoubtedly had at the time he composed his April 2007 statement), had not, apparently, aided his recollection of a meeting between himself, Mr McCann Mr Jennings and Mr Gilmartin.

32.39 Mr O'Callaghan's testimony as to what had occurred at the meeting between himself, Mr Gilmartin, Mr McCann and Mr Jennings, largely accorded with the accounts given by Mr McCann and Mr Jennings.

32.40 Mr O'Callaghan's description of the meeting was as follows:

> *'At the meeting we discussed basically what I wanted to know. They wanted to know what was actually happening in Quarryvale and they themselves they would have been much more interested in the situation in Quarryvale more so than Neilstown because it was much closer to their own location. They were representing the actual Quarryvale township if you like, in North Clondalkin. And we tried, we started to outline to them the best way we could. We had no information, we had no plans, we had nothing. Just the two of ourselves. And I started to describe what his project was going to be like. But Tom more or less took it over and started just the same as he did actually started the same type of explanation as he did when we met the ladies a few weeks previous to that about his escapades in the UK etc. and what he had done. Spent a lot of time talking about these things and I could see that the two people we were talking to McCann and Jennings were not that interested, they were more interested in what was happening in Quarryvale or what was going to happen in Quarryvale. And again of course what the employment situation, potential employment etc. would be for themselves and members of their association etc.*
>
> *And it drifted on to Tom talking about one thing that really I think upset me was he was talking about bringing, he referred exactly to the same type of thing that he was he mentioned when he met the ladies in Finch's pub he started talking about bringing the barefoot Irish back to Dublin. This time it was it became the drunken barefoot Irish and I didn't particularly like that and I can assure you that the two people we were talking to didn't like that. And they started laughing at us. Tom's situation seemed to get worse and he began to start talking about the mafia and I think it was he was referring to the Irish politicians giving him a rough time and he was heading in again, I think to talking about Liam Lawlor and Redmond when I actually gave him a kick under the table. I admit that, to get him to shut up and stop and stick to the point. And I think he did actually and we tried the best way we could to explain to the two*

people we were talking to, what this meeting was all about and what Quarryvale would be all about etc.'

32.41 To the extent summarised below however, there was apparent disagreement between Mr O'Callaghan and Mr McCann and/or Mr Jennings in relation to what transpired at the meeting.

- Mr O'Callaghan described the meeting as '*hopeless'*, while Mr McCann described the meeting as '*cordial'* and '*very positive.'*

- Both Mr McCann and Mr Jennings believed that Mr Gilmartin's reference to paying a politician IR£50,000 prompted Mr O'Callaghan to kick him under the table, whereas Mr O'Callaghan (who agreed that it was at that juncture he kicked Mr Gilmartin) suggested that the main reason he kicked Mr Gilmartin was to stop him '*talking about him and boasting about himself.'* However Mr O'Callaghan conceded that when he (Mr Gilmartin) *'did get to this thing about politicians that's when I actually touched his shin and asked him to stop.'*

- There were differences in the accounts given by Mr O'Callaghan on the one hand, and by Messrs McCann and Jennings on the other hand, as to how the meeting commenced. Mr O'Callaghan testified that he and Mr Gilmartin arrived at Jenson's Hotel in a taxi, whereupon they met with Mr McCann and Mr Jennings. Mr McCann however told the Tribunal that when he and Mr Jennings arrived at Jenson's Hotel, Mr O'Callaghan and Mr Dunlop were waiting for them, and that Mr Gilmartin had arrived later. Mr McCann stated that Mr Gilmartin had taken a taxi to the hotel and had arrived, '*a bit flustered.'* Mr Jennings likewise testified that Mr Gilmartin joined the meeting at a later stage.

- While Mr O'Callaghan, Mr McCann and Mr Jennings testified that Mr Gilmartin talked about developments he was involved in in the UK, and of his experience of the Irish immigrant community in the UK, there were differences in their respective accounts as to the tone in which Mr Gilmartin talked about these matters. Mr O'Callaghan testified that Mr Gilmartin spoke about bringing the '*barefoot Irish'* back to Ireland,[7] whereas Mr McCann testified that Mr Gilmartin had spoken about his involvement in a project to build a hostel for alcoholics in Luton in response to Mr McCann having made reference to problems of heroin addiction in Clondalkin/Quarryvale community. Mr Jennings told the Tribunal that Mr Gilmartin had spoken about how it saddened him to

[7] Mr Gilmartin vigorously disputed that he had made such comments.

witness young Irishmen on the streets of London, under the influence of alcohol.

- The Tribunal noted (notwithstanding the conflicts in their respective accounts), that Mr Gilmartin's and Mr O'Callaghan's description of their meeting, which included a representative of Sinn Fein, was palpably negative (albeit for different reasons).

MR O'CALLAGHAN'S RESPONSE, IN EVIDENCE, TO MR GILMARTIN'S TESTIMONY ABOUT THE MEETING

32.42 On Day 883 the following exchange took place between Tribunal Counsel and Mr O'Callaghan:

'*Q. Now, you were aware that Mr. Gilmartin has made an allegation that you brought him out to a meeting in a pub in Clondalkin at which he met three men, one of whom was in dark glasses, isn't that right?*

A. That's the meeting.

Q. Yes. And Mr. Gilmartin has told the Tribunal that one of the men introduced himself as the Sinn Féin representative of the area and a conversation took place and you told him to listen, isn't that right? Told Mr. Gilmartin to listen?

A. Yes.

Q. Mr. Gilmartin says that he was being threatened, if his evidence is correct, isn't that fair?

A. Yes.

Q. Do you agree with that evidence?

A. No, no. What Mr. Gilmartin has done here, is converted a meeting with himself to myself and two people, Mr. McCann and Jennings, into this fantasy of his where he met two people with dark glasses, told him that they knew all about his operation in Belfast and they had a file on him. And I think he has also said that they more or less threatened him to get out of the country, or something like that, he told them to go and so and so off. He turned that meeting with McCann and Jennings into that fantasy. That is one of his many, many, many fantasies…'

32.43 Mr O'Callaghan, in the course of his testimony denied ever knowing or having met with Cllr Christy Burke.

MR GILMARTIN'S RESPONSE TO THE SUGGESTION THAT HE PERSON HE MET WITH MR O'CALLAGHAN WAS MR MCCANN

32.44 Mr Gilmartin denied that he had ever met Mr McCann, save to the extent that he may have been one of two men who remained at another table in the public house, while the man (whom Mr Gilmartin identified as Councillor Burke) sat with himself and Mr O'Callaghan.

32.45 In the course of his cross-examination by Counsel for Cllr Burke (Day 770) Mr Gilmartin strongly denied that at the meeting described by him he had mentioned corruption, or corrupt politicians. This denial was thus in conflict with the evidence given by Mr McCann and Mr Jennings as to Mr Gilmartin's references to corruption, and his reference to the '*Mafia.'* The statements furnished by Mr McCann and Mr Jennings in October, 2007, were replete with such references, and their sworn testimony, and that of Mr O'Callaghan (albeit a somewhat late recollection on the part of Mr O'Callaghan as his 2004 statement did not deal with the issue) was that Mr Gilmartin had made such references, and that he had mentioned a payment of IR£50,000.

32.46 When Mr McCann's statement was put to him, Mr Gilmartin responded that insofar as Mr McCann would give that evidence to that effect, it was not the truth.

MR O'CALLAGHAN'S ACCOUNT OF A MEETING HE CLAIMED HE HAD IN THE COMPANY OF MR GILMARTIN WITH SIX OR SEVEN WOMEN FROM THE QUARRYVALE AREA

32.47 In the course of his testimony Mr O'Callaghan reiterated what he had set out in his April 2007 statement about a meeting which took place in Finch's public house in Clondalkin, with local women who were anxious to ascertain whether or not there would be employment prospects for themselves and their husbands when the Quarryvale proposal got under way. Mr O'Callaghan believed that this meeting took place in March 1991, prior to the meeting he claimed to have had with Mr Gilmartin, Mr McCann and Mr Jennings. The meeting with the women was arranged by Mr Lawlor.

32.48 In the course of his testimony to the Tribunal, and specifically in the course of responding to questions put by Counsel for Mr O'Callaghan, Mr Gilmartin vehemently denied that he was ever at a meeting in Finch's public house in Clondalkin with Mr O'Callaghan and six or seven women as described by Mr O'Callaghan in his April 2007 statement. On Day 761, Mr Gilmartin stated:

> '*I'll give you a little challenge, Mr. Sreenan, or the Tribunal for that matter. Find those women that I'm alleged to have met! Find them. Because it never happened. That is a pack of lies. That I never went or met anybody, particularly women, in Clondalkin with Mr. Owen O'Callaghan.'*

32.49 Mr Gilmartin took particular exception to the suggestion that he had made a reference to '*the barefoot Irish'* in the course of the meeting Mr O'Callaghan claimed to have had in his company with the six/seven women. Mr Gilmartin stated:

> '*…barefoot Irish reference never crossed my lips. It's an absolute lie! The only people referred to barefoot Irish was Liam Lawlor and Owen O'Callaghan. There is no way I would.'*

He stated:

> '*…because there is no such thing as barefooted Irish. The Irish had arrived in Luton, got jobs and was given a lot of them. There were jobs waiting for them and they earned their keep. They paid for their houses. They paid for the churches. They paid for the schools. We had our own schools built and we paid for them. ..They weren't barefooted. They were some of the greatest people that ever left this country.'*

EVIDENCE RELATING TO CONTACT WITH RESIDENTS/COMMUNITY ASSOCIATIONS, SINN FEIN REPRESENTATIVES AND OTHERS

32.50 In a letter written by Mr O'Callaghan to Mr Gilmartin on 24 January 1991, in the aftermath of the Heads of Agreement which had been signed in December 1990, as a result of which, effectively, Mr O'Callaghan became a partner in Barkhill Ltd, Mr O'Callaghan made reference, *inter alia,* to:

> *…rumours circulating in Dublin that we have teamed up with you so much so that Residents' Associations and other interested bodies are now hounding me for meetings, to clarify the situation for them. All this rumour and talk is clearly damaging our prospects of development own site in Clondalkin.*[8]

32.51 Mr O'Callaghan testified that the reference to Residents' Associations in that letter was a reference to the residents of Quarryvale and especially the communities in Neilstown, some of which, he stated, had approached him as early as 1988 at a time when he was looking at the Neilstown lands, after purchasing the Merrygrove option.

[8] The reference to Clondalkin was a reference to the Neilstown/Balgaddy lands zoned town centre under the 1983 Development Plan and in respect of which O'Callaghan Properties Limited had acquired Merrygrove Limited's option to purchase the lands from Dublin Corporation/County Council.

32.52 It would appear that, by 3 April 1991, Mr O'Callaghan had commenced meeting at least some Residents' Associations, as evidenced by an AIB memorandum of a telephone discussion between Mr Donagh of AIB and Mr O'Callaghan which noted, *inter alia,* as follows, in the context of the proposal to rezone the Quarryvale lands:

> *Owen O'Callaghan explained that he has, particularly over the last two weeks, been meeting City and County Managers and Planning Officers, local politicians and community associations. This process was delayed due to annual leave of officials prior to the end of their holiday year. He received great support for the scheme and he is very pleased that he has the right support to progress matters.*
>
> *He feels a formal press announcement should be made next week as both Tom and himself meeting Jack Fagan, Irish Times. Contact names in community associations and local representatives will be given.*

32.53 While there was no reference to Mr Gilmartin in the above memorandum, an AIB '*mark-up'* document dated 15 April 1991, did contain a reference that:

> *Tom Gilmartin/Owen O'Callaghan have, in the past fortnight met with local elected representatives, community associations, planning officials, and city and county Managers all of whom had expressed support for the proposed retail development.*

32.54 On 29 April 1991, Mr Donagh of AIB noted, *inter alia,* following telephone contact from Mr O'Callaghan and Mr Deane on 26 April, 1991, that: '*Owen O'Callaghan has spent the past few days meeting Councillors. He met with F.F., Sinn Féin and Worker Party Councillors who all expressed support for the project.'*

32.55 The Tribunal was satisfied (and Mr O'Callaghan did not dispute) that by 26 April 1991, Mr O'Callaghan at least, had been in contact with Sinn Féin representatives to some extent. Mr O'Callaghan could not say when he first met Mr McCann, but testified that their first meeting had taken place in Jenson's Hotel in Clondalkin.

32.56 Mr O'Callaghan's discovery of documents to the Tribunal included a letter written by Mr O'Callaghan to Mr McCann on 29 April 1991. A letter in identical terms was written by him on the same date to a Ms Wills who headed the North Clondalkin Development Association. Mr O'Callaghan appeared to have been assisted in drafting these letters by Mr Lawlor. Both letters referred to a meeting at which Mr O'Callaghan outlined the proposal for the '*West Park Town*

Centre Project for the greater Clondalkin area.' Mr O'Callaghan, in his respective letters to Mr McCann and Ms Wills promised further engagement as the project progressed, and in both letters he made reference to, '*...Our commitment and co-operation with FÁS to ensure that a maximum number of local personnel will be employed both during the construction phase and when the town centre opens.'* And, he went on to state: '*we will establish an arrangement with FÁS (who have on the register the available personnel)'* and further stated '*we will be pleased to co-operate with you as we fully recognised the importance of maximising the local employment...'*

32.57 When it was suggested to Mr O'Callaghan that the letter to Mr McCann of 29 April 1991, may have been a reference to Mr O'Callaghan's meeting (together with Mr Gilmartin) with Mr McCann and Mr Jennings, Mr O'Callaghan denied that this was the case, stating that the letter to Mr McCann on 29 April 1991, referred to a meeting separate to the meeting he had in the company of Mr Gilmartin with Mr McCann and Mr Jennings. As a matter of probability, Mr O'Callaghan was correct in this assertion. Mr O'Callaghan however advised the Tribunal that Mr Gilmartin's meeting with Mr McCann and Mr Jennings had taken place in the same timeframe, namely April 1991. Mr O'Callaghan acknowledged that Mr Dunlop organised the meeting, and that it had probably been instigated by Mr Lawlor.

32.58 On 19 August 1991, under the heading '*Quarryvale Residents' Association'*, Mr McCann wrote to Mr O'Callaghan wherein he made a reference, *inter alia,* that the Quarryvale Residents' Association:

> *...are in the process of launching a very extensive campaign to support the Quarryvale Town Centre proposal but we have very limited resources available to us. To most people in this area, seeing is believing. All the written articles on the development issue, which are mostly found in the business columns of newspapers, is but printed, boring rhetoric. We need something tangible. Physical models with glossy pictorial displays, development comparisons with scaled figures, projected employment figures, especially in relation to local employment, environmental information pertaining to safety and landscaping etc., we're not asking for money, all we need is the relevant information and materials.*

32.59 Mr O'Callaghan responded to Mr McCann on 22 August 1991, and advised that the information/material sought by the Quarryvale Residents' Association was being prepared, and advised that it had been '*decided six weeks ago to hold meetings in the general Clondalkin area starting early September, hence the preparation of this information.'* He said that he would contact Mr McCann the following week.

32.60 While Mr O'Callaghan, in his letter to Mr McCann, indicated an intention on his part to hold public meetings in the general Clondalkin area[9], by 10 September 1991, Mr O'Callaghan was noting, in a letter to Mr Ambrose Kelly, (his architect) that '*…the Lucan/Palmerstown Community Association called a meeting for 19th September. We will probably invite ourselves to this so we will want some display material available by then.'*, and he advised Mr Kelly that '*The Quarryvale Residents' Association have called a similar meeting for 29th September, and they have specifically requested as much information as possible.'* On 16 September 1991, Mr Lawlor's office faxed to Mr O'Callaghan an extract from the '*Palmerstown Newsletter'*, which made reference to the proposed meeting of 19 September 1991.

32.61 Mr O'Callaghan attended the Palmerstown meeting of 19 September, 1991, and on 20 September 1991, following a meeting between Mr Kay and Mr Donagh (of AIB) with Mr O'Callaghan and Mr Gilmartin, AIB noted as follows, under the heading:

'*Palmerstown Residents' meeting 19/9/91.'*

> *Majority of speakers at this meeting were traders opposed to Quarryvale. Six Councillors attended meeting – O'Halloran, O'Connell, Hanrahan, Maginnis, Higgins and McGrath. Only Higgins who represents Blanchardstown was against Quarryvale. Austin Curry and Liam Lalor TDs also attended meeting. From mid-October the other 5 Residence Associations will be holding meetings and Owen O'Callaghan attend as guest to explain Quarryvale position.*

32.62 Mr O'Callaghan acknowledged duly attending a number of public meetings in the months of October and November 1991. The meetings which Mr O'Callaghan (and his advisors on occasions) attended in the period September to November 1991 coincided with the duration of the first public display of the Draft Development Plan 1991 on which the Quarryvale lands were zoned D (town centre).

32.63 It was common case that Mr Gilmartin did not attend any public meetings regarding Quarryvale in the autumn 1991 (or indeed subsequently).[10]

[9] On 16 September 1991, Mr Dunlop was writing to the Chairman of the Lucan Community Council as the representative of the '*Clondalkin/Lucan Town Centre Project'* seeking a mutually convenient date to meet with the local community – presumably in furtherance of Mr O'Callaghan's intention to instigate public meetings.

[10] The document compiled by Mr Davin (Council Planner) following a meeting in Neilstown Community Centre on 5/6 November 1991 – quoted Mr O'Callaghan as having advised the meeting that he had taken over the project and that Mr Gilmartin was no longer involved.

32.64 Both Mr O'Callaghan and Mr McCann acknowledged ongoing contact in the months of October and November 1991.[11]

32.65 On 3 December 1991, Dublin County Council received a submission from the Quarryvale Residents' Association in support of the proposal to rezone Quarryvale as a Town Centre. The letter of 2 December 1991, from the Association which accompanied that submission was signed by Mr McCann. In the same timeframe a further submission was also lodged by the Quarryvale Residents' Association under cover of a letter of 2 December 1991. Enclosed with this letter were 10,000 signatures which had been gathered in favour of the '*O'Callaghan Properties Development proposal in Quarryvale in North Clondalkin.'*

32.66 On 9 December 1991, the Quarryvale Residents' Association participated in a protest rally outside of the Council offices in support of the Quarryvale rezoning proposal. Mr McCann testified that this rally had been given complete support by Mr O'Callaghan and Mr Dunlop.[12] Mr McCann testified that at a second meeting which had taken place in Mr Dunlop's offices, subsequent to the April 1991 meeting, at which Mr O'Callaghan, Mr Dunlop, Mr McCann and Mr Jennings had been present, he had been shown outline plans with regard to the Quarryvale rezoning proposal and he stated that he and Mr Jennings had agreed to organise a campaign of rallies in support of the Quarryvale project. It had been indicated at that meeting that expenses incurred in these endeavours would be paid for.

32.67 Mr O'Callaghan and Mr Dunlop, in the course of their evidence, acknowledged that Mr Dunlop had funded the buses which had transported those who participated in the rally in December 1991 to the offices of Dublin County Council and that Mr Dunlop had been duly reimbursed by Mr O'Callaghan.

32.68 In the spring of 1992, Mr Dunlop was instrumental in providing a word processor and printer to the Quarryvale Residents' Association for which Mr Dunlop was duly reimbursed by Riga in June of 1992.

32.69 Mr O'Callaghan, Mr McCann and Mr Jennings all agreed that a further meeting took place in Mr Kelly's office in 1992. Mr Jennings told the Tribunal that he and Mr McCann had been mandated by the Quarryvale Residents' Association to seek a site for a community centre for the people of Quarryvale

[11] Mr Dunlop's diary for 17 October 1991 notes a meeting in the Quarryvale Co-op with Mr McCann and his diary for 12 November 1991, contained a scheduled meeting with Mr McCann for 9am regarding Quarryvale, a meeting which Mr O'Callaghan, in all probability attended, having regard to the entry in Mr Dunlop's diary '*OOC all day'*.

[12] Mr Dunlop's testimony was that he only *'reluctantly'* supported it. (Ref. pg. 6418, OOC Day 890)

and at the meeting Mr O'Callaghan had agreed to provide such a site. Mr O'Callaghan did not dispute that he had made this agreement and it was, he stated, done so on the basis that the Council would build the community centre. Ultimately, a community centre was not built on the lands of Barkhill Ltd, and was instead built elsewhere in Quarryvale. Mr O'Callaghan acknowledged that what was ultimately constructed was not a follow-on to what had been agreed in Mr Kelly's office in 1992, but advised the Tribunal that the construction of the centre had been funded by the Quarryvale developers, Mr O'Callaghan, and Grosvenor Properties, to the extent of fifty percent of its cost. They had provided IR£500,000 to the Council in two tranches, £250,000 on 15 February 2000, and £250,000 on 25 September 2001 for this purpose.

32.70 Mr Jennings advised the Tribunal that at the meeting in Mr Kelly's office, in 1992, when the issue of the community centre was being discussed, discussion had also taken place as to what further assistance the Quarryvale Residents' Association could provide to the promoters of the Quarryvale rezoning proposal. He stated that he and Mr McCann had agreed to organise a second rally in support of Quarryvale in advance of the December 1992 Quarryvale rezoning vote. Ultimately, however, this did not materialise as, as Mr McCann had informed him that he had received a call from Mr Dunlop to say that there was no need for such a rally because the planning issues had been sorted out. Mr McCann told the Tribunal that his understanding at that time was that the December 1992 vote would be passed as Mr Dunlop had his numbers in place.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE CLONDALKIN MEETING

i. The Tribunal was satisfied that in or about the spring of 1991, Mr Gilmartin was taken by Mr O'Callaghan to a meeting in a licensed premises in Clondalkin, and that the meeting was attended by Mr Gilmartin, Mr O'Callaghan, Mr McCann and Mr Jennings. It was common case that by April 1991, Mr O'Callaghan was informing third parties of meetings with, among others, representatives of Sinn Féin. Thus, as a matter of probability, the Tribunal was satisfied that Mr McCann's association with Sinn Féin was made known to Mr Gilmartin in some shape or form at the meeting.

ii. The Tribunal was satisfied that this was the only occasion when Mr Gilmartin attended a meeting involving a representative of Sinn Fein. This meeting was arranged by Mr Dunlop, probably at the instigation of Mr Lawlor. Mr Dunlop was not at the meeting attended by Mr Gilmartin.

iii. The Tribunal was satisfied that Mr Gilmartin's identification of Cllr Christy Burke as being the individual whom he met in the course of this encounter was erroneous, and it was satisfied that Cllr Burke never met Mr Gilmartin or Mr O'Callaghan. The Tribunal believed it likely that Mr Gilmartin's erroneous identification of Cllr Burke arose from the fact that Cllr Burke and Mr McCann bore a strong physical resemblance to each other, and it was satisfied that Mr Gilmartin's identification of Cllr Burke was not borne of any malicious intent on the part of Mr Gilmartin towards Cllr Burke.

iv. The Tribunal was satisfied that the meeting in a licensed premised attended by Mr Gilmartin, Mr O'Callaghan and Messrs McCann and Jennings, as a matter of probability, was conducted in a strained atmosphere. The Tribunal was satisfied, as a matter of probability, that reference was made to Mr Gilmartin's previous business involvement in Northern Ireland. It was also satisfied that matters which almost certainly contributed to the strained atmosphere of the meeting included references made by Mr Gilmartin to corruption, and a reference by Mr Gilmartin to a payment of IR£50,000 to a senior politician (and which resulted in Mr O'Callaghan kicking him under the table).

v. While the Tribunal could not determine with any degree of probability whether or not Mr Gilmartin was threatened in the manner described by him, it was nevertheless satisfied that Mr Gilmartin believed himself to have been threatened in the course of the meeting. Conceivably, this belief by Mr Gilmartin may have arisen as a consequence of the negative tone of the meeting, and because of references made to him about his previous business dealings in Northern Ireland.

vi. Mr Gilmartin was vigorously cross-examined with regard to discrepancies and/or inconsistencies in the various accounts he gave (both informal and formal) concerning his encounter with '*men in dark glasses.*' While, undoubtedly, there were inconsistencies in the account, the Tribunal was satisfied that there was a written record of Mr Gilmartin's claims in relation to the encounter, at least from February1998, in the course of his early contact with the Tribunal.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 7 - THE TRIBUNAL'S GENERAL CONCLUSIONS IN RELATION TO THE INVOLVEMENT OF COUNCILLORS IN QUARRYVALE

33.01 In the preceding pages, the Tribunal has considered the involvement of 30 individual councillors in the Quarryvale project. In the following pages, the Tribunal considered the involvement of councillors in the project from a more general or global perspective and has made additional findings and observations in that context. While these additional findings and observations are, for logistical reasons, set out in this, the Quarryvale Chapter, they (save where the context indicates otherwise), are equally applicable to the involvement of some councillors in other Modules of inquiry conducted by the Tribunal.

33.02 In its deliberations concerning the conduct of councillors in relation to the Quarryvale project, and other rezoning projects considered by it, the Tribunal was cognisant of the absence of any statutory or other regulations or guidelines concerning the conduct of councillors prior to 1995. However, the focus of the Tribunal's inquiries was on the behaviour of councillors (and others) in the context of planning matters, which were based on reasonable perceptions, no less improper, inappropriate or corrupt (as the case may be) in the early to mid-1990's, than in the post-1995 era, and indeed up to the present time.

33.03 Having regard to the evidence heard by the Tribunal, the Tribunal was satisfied that it should make the following general observations in addition to those made in relation to identified councillors, and others:

i. The acceptance of money (or monies worth or other favour) by an elected councillor (or a person standing for election to the office of councillors) from a developer/landowner (or his agent), in circumstances where it was known, believed, expected or suspected that a rezoning/planning manner relating to land in which the developer/landowner had an interest was (or was likely) to be the subject of a decision by a local authority in respect of which the councillor had any role (be that by virtue of an entitlement to vote, or otherwise), was, subject to a full consideration of all the circumstances, either improper, inappropriate, and/or corrupt.

ii. The acceptance of money (or monies worth or other favour) by an elected councillor (or a person standing for election to the office of councillor), specifically in return for exercising his/her vote (or for undertaking any other act open to him/her to take in his/her role as a councillor), was corrupt. To have so acted in the expectation of a payment of money (or monies worth or other favour) was also corrupt.

iii. The soliciting of a payment of money (or monies worth or other favour) by an elected councillor (or a person standing for election to the office of councillor) from a developer/landowner (or his agent) in the knowledge, belief or expectation that land in which the developer/landowner had an interest, was or was likely to become, the subject of a decision by the County Council of which the councillor was an elected member (and in that capacity entitled to exercise his or her vote, or to otherwise act) was, subject to a consideration of all the circumstances, either improper, inappropriate and/or corrupt.

iv. The soliciting or acceptance of money (or monies worth or other favour) by an elected councillor (or a person standing for election to the office of councillor), from a developer/landowner (or his agent) in the circumstances identified in (i), (ii) ad (iii) above compromised the councillor's disinterested performance of his/her duties as a councillor in relation to that councillor's role concerning any matter in which the developer/landowner (or his agent) in question had an interest.

v. The soliciting or acceptance of money (or monies worth or other favour) by a councillor (or a person standing for election to the office of councillor), in the circumstances identified in i, ii and iii above, constituted an abuse of the councillor's public office .

vi. The payment or promise (expressly or by implication) of the payment of money (or monies worth or other favour) by a developer/landowner (or his agent) to an elected councillor (or a person standing for election to that office), in circumstances where the developer/landowner, was or was likely to be, or to become, the subject of a decision by the County Council in which the councillor was an elected public representative (or if standing for election, might become an elected public representative) and in which capacity he/she would be entitled to exercise the right to vote, or to otherwise act, was, subject to a full consideration of all the circumstances, improper, inappropriate and/or probably corrupt.

vii. A councillor who, at the time he/she solicited and/or accepted money (or monies worth or other favour) from a developer/landowner (or his agent) in circumstances where, at the time he/she was unaware of any connection between the developer/landowner (or his agent) and lands which were (or subsequently became) the subject of any decision making process of a local authority in which he/she, (the councillor) was entitled to vote or otherwise act, ought having subsequently become aware of such a connection, to have either returned the payment to the donor, or publicly disclosed it prior to voting (or otherwise acting), in his/her capacity as an elected councillor.

CHAPTER TWO – THE QUARRYVALE MODULE – PART 7

EXHIBITS

1. Councillor "Contact Report" as of 17 June 1992 compiled by Mr Dunlop..... 1136

2. IR£1,000 Cheque from Dunlop & Associates to L Cosgrave dated 12 January 1993..... 1139

3. Letter from Cllr Gilbride to Mr Dunlop dated 18 September 1992..... 1141

4. Details of bank account of Cllr Hand with Commonwealth Bank Australia..... 1142

5. National Irish Bank Draft (from Green Properties) dated 13 May 1992 payable to Cllr McGennis..... 1143

6. Letter from Cllr McGrath to An Taoiseach Mr CJ Haughey dated 23 July 1990..... 1144

7. Letter from Mr Corcoran Green Properties to Cllr McGrath dated 3 July 1991..... 1145

8. Letter from Cllr McGrath to Mr Corcoran Green Properties dated 9 July 1991..... 1146

9. Undated Faxed Letter and enclosure from Cllr McGrath to Mr Deane (September 1991)..... 1147

10. Letter from Cllr McGrath to councillor colleagues dated 21 April 1992..... 1149

11. Letter from Mary O'Brien & Co Solicitors for Cllr McGrath to Tribunal dated 27 October 1998……..... 1150

12. Frank Dunlop & Associates invoice to Riga dated 30 April 1992 for IR£10,253.27..... 1151

13. Bank slip for AIB bank draft dated 21 May 1992 for IR£10,700..... 1152

14. Cheque dated 6 May 1997 to Essential Services for IR£10,000..... 1153

15. Cheque dated 8 December 1992 from Dunlop & Associates to Cllr John O' Halloran for IR£250..... 1155

16. Frank Dunlop & Associates invoice dated 20 March 1996 to Riga for IR£2,750..... 1157

17. Cheque dated 20 March 1996 from Dunlop & Associates to Cllr O'Halloran for IR£2,500..... 1158

18. Cheque dated 18 May 1999 from Dunlop & Associates to Cllr O'Halloran for IR£500..... 1160

19. Letter from Colm Tyndall of Marine & General Insurance Ltd to Mr Lucey of O'Callaghan Properties Ltd dated 15 December 1993..... 1162

20. Cheque dated 9 November 1992 from Riga to Frank Dunlop for IR£70,000..... 1163

21. Transfer docket dated November 1992 for transfer to AIB Rathfarnham of IR£70,000 dated 9 November 1992..... 1165

AS OF 17.6.92

CONTACT REPORT

NAME	PARTY	CONTACTED By	
KEN FARRELL ✓	LAB	FD	✓
TREVOR SARGENT	GREEN	FD	✓
CATHAL BOLAND	FG	00'C/FD	✓
SEAN GILBRIDE	FF	00'C/FD	✓
JACK LARKIN	FF	00'C/FD	✓
SEAN RYAN —	LAB	—	X
TOM KELLEHER ✓	LAB	FD	✓
CYRIL GALLAGHER	FF	SG	X
ANNE DEVITT	FG	00'C/FD	✓
G.V. WRIGHT	FF	00'C/FD	✓
NORA OWEN	FG	FD	✓
MICHAEL KENNEDY	FF	FD	✓
BERNIE MALONE	LAB	—	X
M.J. COSGRAVE	FG	—	X
LIAM CREAVEN	FF	00'C/FD	✓
JOAN MAHER	FG	FD	✓
DAVID HEALY	GREEN	—	X
JOE HIGGINS	IND. LAB.	—	X
MARIAN McGENNIS	FF	00'C/FD	✓
JOAN BURTON —	LAB	00'C/FD	✓
SEAN LYONS	COMM.	00'C/FD	✓
TOM MORRISSEY	FG	00'C/FD	✓
SHEILA TERRY	PD	00'C/FD	✓
NED RYAN	FF	00'C/FD	

Return to report

GUSS O'CONNELL	IND.	00'C/FD ✓
FINBARR HANRAHAN	FF	— ✓
PETER BRADY	FG	00'C/FD ✓
JOHN O'HALLORAN	LAB	00'C/FD ✓
COLM MCGRATH	FF	00'C/FD ✓
THERESE RIDGE	FG	00'C/FD ✓
COLM TYNDALL	PD	00'C ✓
MERVYN TAYLOR	LAB	— ✓
MARGARET FARRELL	FF	00'C/FD ✓
DON TIPPING	DL	— ✓
MICHAEL KEATING	FG	FD ✓
JOHN HANNON	FF	FD ✓
PAT RABBITTE	DL	— ✓
BREDA CASS	PD	00'C ✓
MICK BILLANE	DL	— ✓
CHARLES O'CONNOR	FF	00'C/FD
CATHERINE QUINN	PD	FD ✓
SEAN ARDAGH	FF	— ✓
E. WALSH	LAB	— ✓
P. UPTON	LAB	—
S. LANG	FG	00'C/FD
C. KEANE	PD	— ✓
A. ORMONDE	FF	— ✓
MAIRE MULLARNEY	GREEN	—
ALAN SHATTER	FG	—
MARY MULDOON	FG	00'C/FD

-3-

TOM HAND	FG	00'C/FD	✓
SEAMUS BROCK	FF	TF/SG	✓
RICHARD GREENE	GREEN	JO'H	✓
TREVOR MATTHEWS	FF	TF	X
TONY FOX	FF	00'C/FD	✓
MARY ELLIOTT	FG	TR	✓
FRANK BUCKLEY	LAB	—	X
SEAN BARRETT	FG	—	X
LARRY BUTLER	FF	—	X
DENIS O'CALLAGHAN	DL	00'C/FD	✓
EITHNE FITZGERALD	LAB	—	X
OLIVIA MITCHELL	FG	00'C/FD	✓
LARRY GORDON	GREEN	—	X
DON LYDON	FF	FD	✓
E. GILMORE	DL	FD/MM	
D. MARREN	FG	SG	X
R. CONROY	FG	AK/S.M'	
FRANK SMYTH	LAB	—	,
LARRY LOHAN	PD	—	;
N. BHREATHNACH	LAB	—	X
JOHN DOCKRELL	FG	FD	✓
BETTY REEVES	GREEN	—	X
PADDY MADIGAN	FF	—	X
L.T. COSGRAVE	FG	00'C/FD	;
BETTY COFFEY	FF	SG	;
HELEN KEOGH	PD	—	;
COLM BREATHNACH	DL	—	;

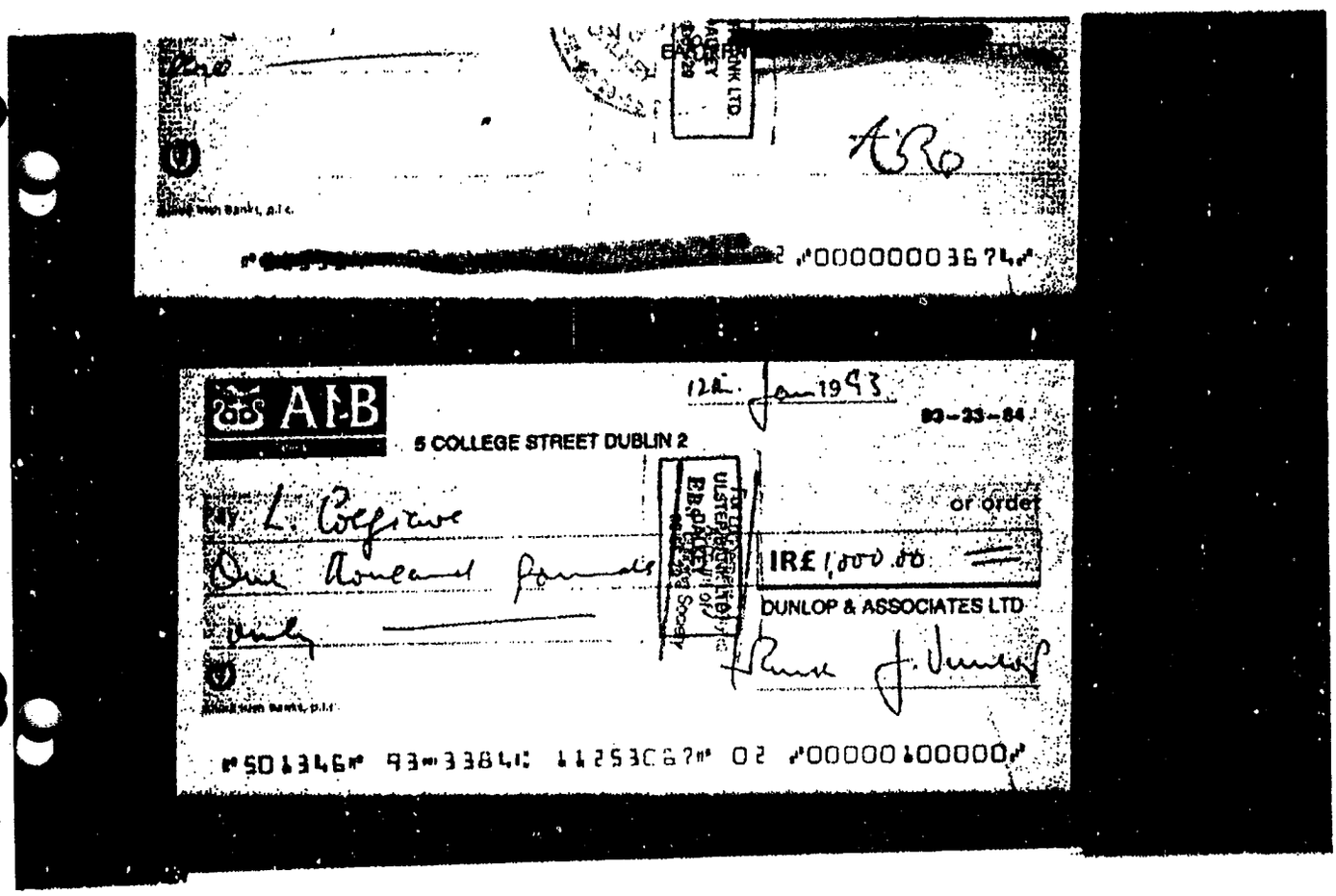
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Tribunal Ref : AIB.FD 6

Page No: 3

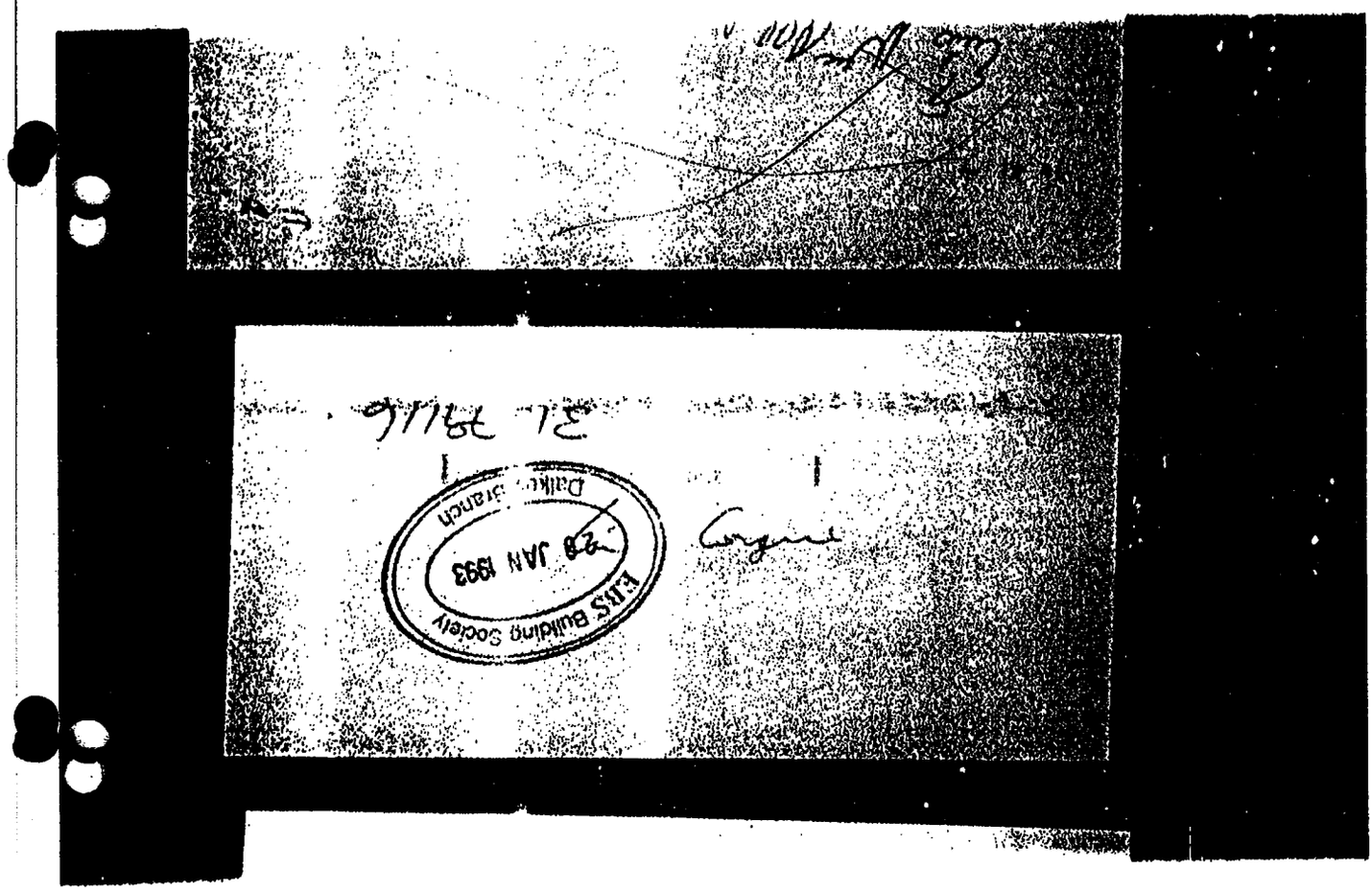


Tribunal Ref : QV II

Page No: 9073

Tribunal Ref : AIB.FD 6

Page No: 4



Return to report

Dublin County Council Comhairle Chontae Atha Cliath
Seomra an Chomhairle

Bosca 174
P. O. Box 174
46/49 Sraid O'Connaill Uacht,
46/49 Upper O'Connell Street,
Baile Atha Cliath 1.
Dublin 1.
Telephone. (01)727777
Fax. (01) 725782

18 Greenlawn
Seomra
Co. Dublin

Our Ref.
Your Ref.
Date 23/9/92

Dear Trudy,

The figure I mentioned to you £1750 a month. Made up of £1500 pay + £250 which is made up of Pension, P.R.S.I. and Health insurance.

Yours faithfully
Sean Gilleden.

P.S. I am off until end of March. Seven months.

Commonwealth Bank
Commonwealth Bank of Australia
A.C.N. 123 123 124
Commonwealth Savings Bank of Australia

Karrinyup WA
Cnr Burroughs Road and
Davenport Street
Karrinyup WA 6018
Australia

P O Box 58
Karrinyup
Karrinyup WA 6018

Telephone (09) 446 6622
Facsimile (09) 244 2134

6157 - 5004 - 9488

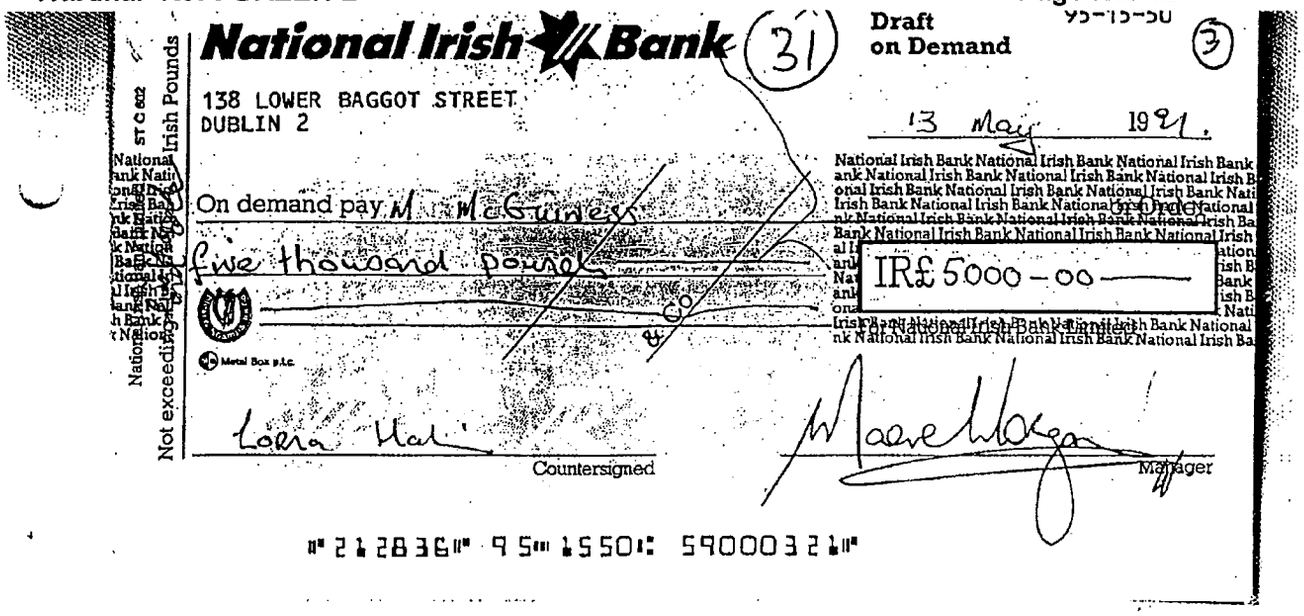
Mr Thomas Hand
The Haven
Farravboley Park
Dundrum
DUBLIN 014 IRELAND

16 July 1992

FD 9 - 2

Return to report

Tribunal Ref : GREEN 2
Page No: 42



National Irish Bank

138 LOWER BAGGOT STREET
DUBLIN 2

Draft on Demand

13 May 1991.

On demand pay M. McGuiness

five thousand pounds

IR£ 5000-00

Irish Pounds

Not exceeding

Countersigned

Manager

Metal Box p.l.c.

"212836" 95"1550": 5900032 4"

Return to report

Tribunal Ref : QV II
Tribunal Ref : CMG 3
Page No: 4314
Page No: 34

COLM McGRATH
COUNCILLOR, DUBLIN COUNTY COUNCIL

OFFICE:
48 Tower Road,
Clondalkin, Dublin 22.
Telephone: 570187

HOME:
2 Moyle Park,
Clondalkin, Dublin 22.
Telephone: 592585

FIANNA FAIL
THE REPUBLICAN PARTY

An Taoiseach Mr. Charles Haughey T.D.,
Dept. of The Taoiseach,
Government Buildings,
Upper Merrion St.,
Dublin 2.

23rd July 1990.

Re: WESTPARK Commercial Development - North Quarryvale, Clondalkin.

Dear Taoiseach,

The promoter of the above project Mr. Tom Gilmartin has asked me to request an urgent meeting with you to discuss various problems, hitherto unforseen, which are posing a serious threat to the realisation of this unique development.

I fully appreciate the pressures of time that you endure and would appeal to you in the context of the magnitude of this project to allocate fifteen minutes of your time to Mr. Gilmartin.

Looking forward to hearing from you and in the meantime if you need some background information do not hesitate to contact me by phone.

Kind regards,

Yours sincerely,

COLM MC GRATH.

Return to report

GREEN PROPERTY p.l.c.

Segrave House, 20 Earlsfort Terrace, Dublin 2.
Telephone 766431, Fax 766430

Cllr. Colm McGrath,
2 Moyle Park,
Clondalkin,
Dublin 22.

3rd July, 1991

Dear Colm,

We would like to congratulate you on your recent election to the County Council. We wish you well in your position.

As you may be aware, we are the developers of the new Town Centre at Blanchardstown where work has been suspended as a result of the threat to its viability posed by the recent motion of the outgoing Council to rezone lands at Quarryvale.

We are anxious to recommence work on the site as soon as practical and in this regard we would welcome an opportunity to discuss the matter with you and your colleagues as soon as possible. If you are interested in meeting us, I would be grateful if you would contact me upon receipt of this letter.

Yours sincerely,

John Corcoran
Managing Director
GREEN PROPERTY PLC

Directors
M MacCormac (Chairman) J. Corcoran (Managing) J. McKenna D. McDowell (Secretary)
S. Vernon* B. Collis* K. Wylie (*British)
Registered in Ireland, Reg. No. 23013.

Return to report

J.DEANE 1.1 - 354

M McGRATH
...OR, DUBLIN COUNTY COUNCIL.
...wer Road
...dalkin, Dublin 22.
...lephone : 570187
HOME:
2 Moyle Park
Clondalkin, Dublin 22.
Telephone : 592585.

FIANNA FAIL
THE REPUBLICAN PARTY

Mr John Corbetan
Director
Green Property PLC
Segrave House
20 Earlsfort Terrace
Dublin 2

9th July 1991

Dear John,

Thank you for your good wishes and congratulations on my recent re-election to Dublin County Council.

In my opinion, a further meeting to discuss the future of Blanchardstown Town Centre would serve no purpose as long as you continue to assert that the re-zoning of lands at Quarryvale poses a threat to the viability of Blanchardstown which I totally refute.

Your persistent targetting of the Quarryvale re-zoning decision is now, thankfully, being seen for what it is, a smoke-screen, to hide the real reason why you have not proceeded with the Town Centre to date. It is only a matter of time before the serious concern of your shareholders manifests itself in some form of corrective action.

I have no doubt that a Town Centre will be built at Blanchardstown, the question is, by whom? Equally, I am confident that a Town Centre will be built at Quarryvale to serve the people of Lucan/Clondalkin as provided for in the County Development Plan at an improved location.

Councillors must plan and act for the common good, not for the interests of any one property development company. I regard any attempt to deprive the people of Lucan/Clondalkin of their major Town Centre as an act against the common good and I will vehemently oppose any such action from whatever quarter.

Trusting you understand my position in the matter.

Yours sincerely,

COLM McGRATH T.D.

Return to report

JD 1.2 - 314

M McGRATH
OR, DUBLIN COUNTY COUNCIL

...er Road
...lkin, Dublin 22
...phone : 570187

HOME :
2 Moyle Park
Clondalkin, Dublin 22.
Telephone : 592585.

FIANNA FAIL
THE REPUBLICAN PARTY

John,

Throw your eye over this response to Keating letter.

Regards,

Colm.

021 - 270437

04 SEP '91 15:52 MARTIN & CO./CLONDALKIN DIST. P.1.

COLM McGRATH
COUNCILLOR, DUBLIN COUNTY COUNCIL

OFFICE :
48 Tower Road
Clondalkin, Dublin 22
Telephone : 570187

HOME :
2 Moyle Park
Clondalkin, Dublin 22.
Telephone : 592585.

FIANNA FAIL
THE REPUBLICAN PARTY

Mr Pat Keating
Blanchardstown Town Centre
Information Bureau
33 Lower Baggot Street
Dublin 2

4th September 1991

Dear Mr Keating,

As the proposer of the successful motion to re-zone 106 acres at Quarryvale for an alternative Town Centre for Lucan/Clondalkin to replace the failed site at Ronanstown I regard your attitude to this important Planning matter as flippant, patently prejudiced and grossly insulting to the integrity of the elected Members of Dublin Council who are fully aware that you are a paid servant of another Town Centre Developer whose bluff is now being called.

As far as the Development Plan Review is concerned you conveniently fail to mention the fact that the Planners have proposed the rezoning of the Ronanstown site to Industrial in favour of the Quarryvale site.

Your scaremongering is pathetic. The only 'uncertainty' about Blanchardstown is who is going to build it and what revised size it will be pro-rata to it's catchment area. Green Property PLC failed to deliver the goods in Blanchardstown and decided instead to invest millions in the British property market leaving itself strapped for development cash. This is the real scandal in this whole affair and the Quarryvale excuse is only a 'oop-out' for the Directors.

I would suggest therefore that you desist from regurgitating hypocritical self-interest propaganda which insults the intelligence of Politicians, Planners and the general public who now know the truth behind the Green Property smokescreen.

No amount of your dubious lobbying will deprive the people of Lucan/Clondalkin of their long awaited Town Centre, which, unlike Blanchardstown will be commenced immediately on receipt of Planning Permission which I am confident will be forthcoming to the eminently more credible Developers.

Yours sincerely,

COLM MCGRATH M.C.C.

Return to report

DH. DCC 1 - 11

COLM McGRATH
COUNCILLOR, DUBLIN COUNTY COUNCIL

OFFICE :
48 Tower Road
Clondalkin, Dublin 22
Telephone : 570187

HOME :
2 Moyle Park
Clondalkin, Dublin 22.
Telephone : 592585.

FIANNA FAIL
THE REPUBLICAN PARTY

21st April 1992

RE: LUCAN/CLONDALKIN - BLANCHARDSTOWN TOWN CENTRE

Dear Colleague,

In recognition of the fact that the coming months will see us all bombarded with vested interest representations in relation to the Development Plan Review I do not intend to respond to the tediously regular propaganda missives from the paid public relations servant of Green Property Company which continue to insult our intelligence.

My last response (copy enclosed) is still relevant although, unfortunately for us all, the advice therein was ignored.

If, however, you wish to witness what must rank as a classical case of the pot calling the kettle black I will gladly forward a copy of Green Property's 'West One' prospectus for the Blanchardstown Town Centre, a small sample of which I enclose, which speaks for itself.

Transparent propaganda will continue to be ignored, however, further attacks on the integrity of Councillors will be dealt with appropriately.

Kind regards,

Yours sincerely,

COLM McGRATH M.C.C.

Return to report

MARY O'BRIEN & CO.
SOLICITORS

ry O'Brien

48 Tower Road, Clondalkin, Dublin 22.

Telephone: 01-457 5886
01-457 5889
Fax: 01-457 5890
DX 93006

Our Ref:

Your Ref:

Patrick Hanratty S.C.
Tribunal of Inquiry into Certain Planning Matters and Payments
State Apartments
Upper Castle Yard
Dublin Castle
Dublin 2.

TRIBUNAL OF INQUIRY INTO PLANNING MATTERS
By Hand
27 OCT 1998
RECEIVED

27th October 1998

Re: Our client Mr. Colm McGrath.

Dear Sir

Further to our informal meeting and subsequent telephone conversation we wish to confirm that our client received two political contributions from Mr. Owen O'Callaghan. The first of the contributions was received in October 1991 in the sum of £10,000 by way of personal cheque. The second contribution was received in November 1993 in the sum of £20,000 by way of personal cheque. Our client is unsure as to which Dublin Hotels in which the contributions were made.

Trusting this is of assistance and if we can be of any further help do not hesitate to contact the writer.

Yours faithfully

Mary O'Brien.

Return to report

AIBQ 1 - 85

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Riga Ltd.,
21-24 Lavitt's Quay,
Cork.

30th April 1992

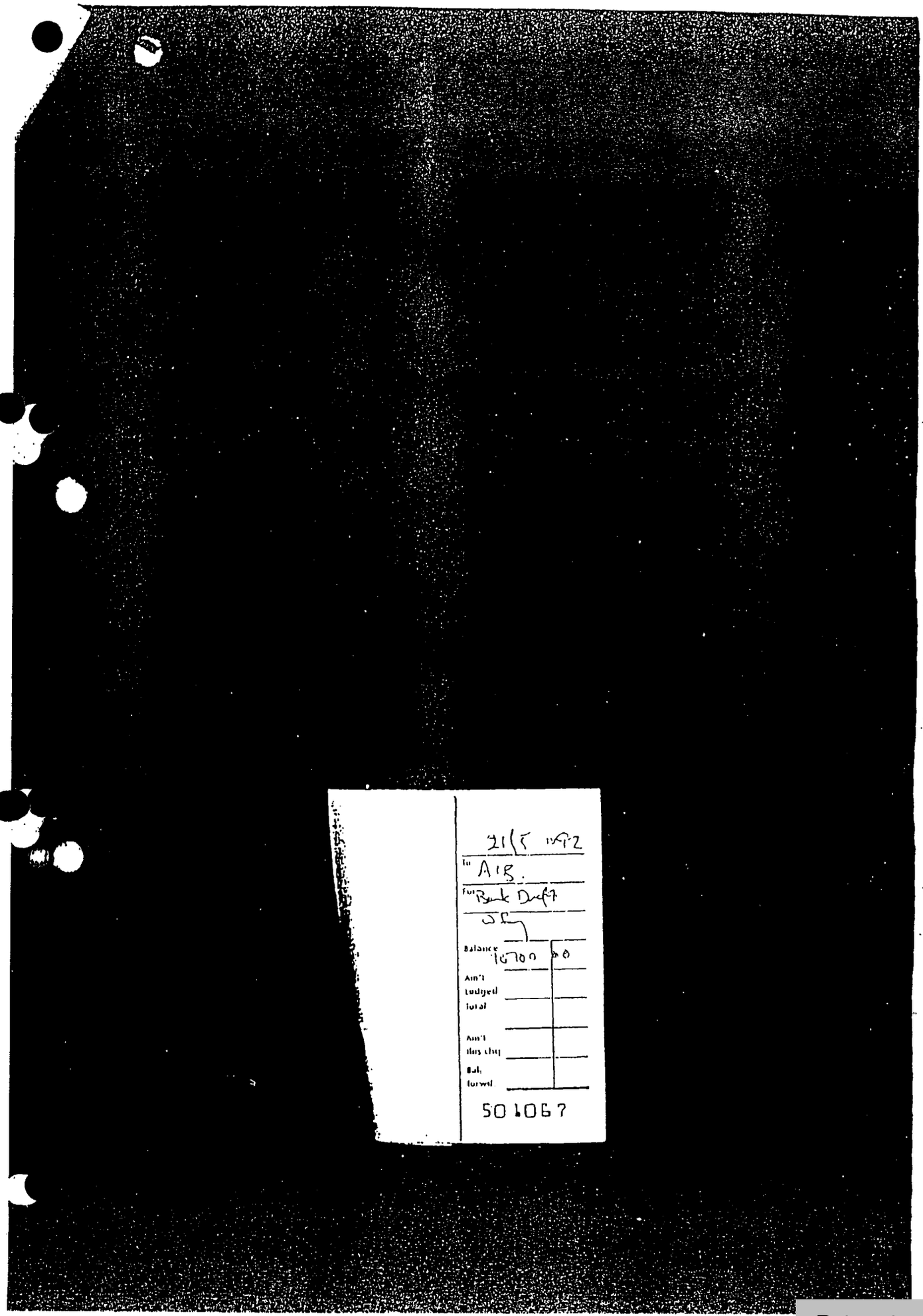
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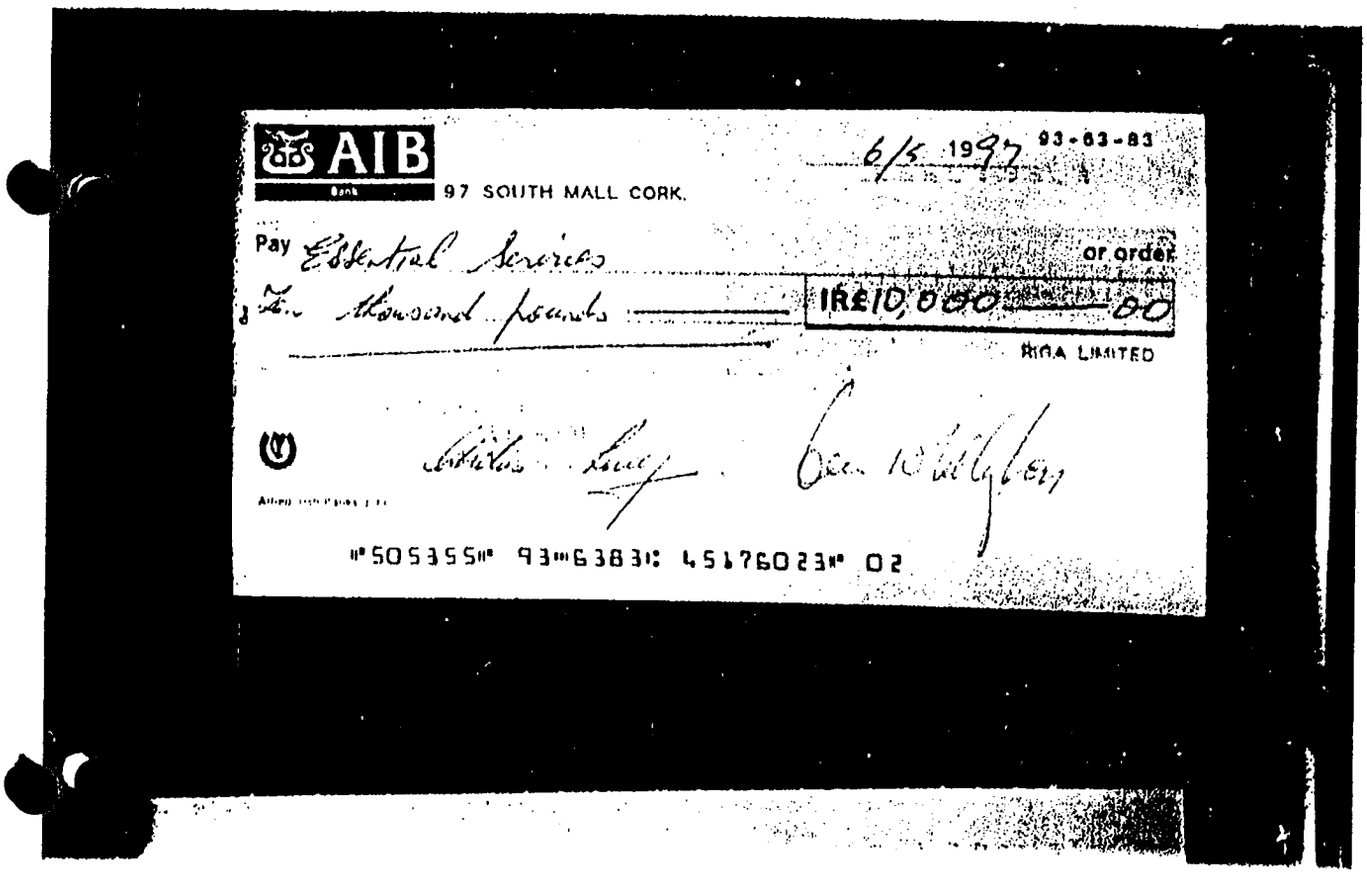
Macintosh Word Processor & Printer	**£3,260.00**	
VAT @ 21%	**684.60**	
		£3,944.60
Secretarial services	**£1,422.67**	
VAT @ 0%	**00.00**	
		£1,422.67
Lunches & entertainment expenses	**£186.00**	
VAT @ 0%	**00.00**	
		£186.00
Contributions : (including St. Kevin's School)	**£4,700.00**	
		£4,700.00
		£10,253.27

Rec'd & Rec'd
23/6/92

Return to report

FD.ST 1 - 23


21/5 1972
to AIB.
for Bank Draft
Balance 16700 00
Am't tendered total
Am't this chq
Bal. forwd
50 1067



AIB
Bank
97 SOUTH MALL CORK.

6/5 1997 93-63-83

Pay Essential Services or order

Ten thousand pounds IR£10,000—00

RIGA LIMITED

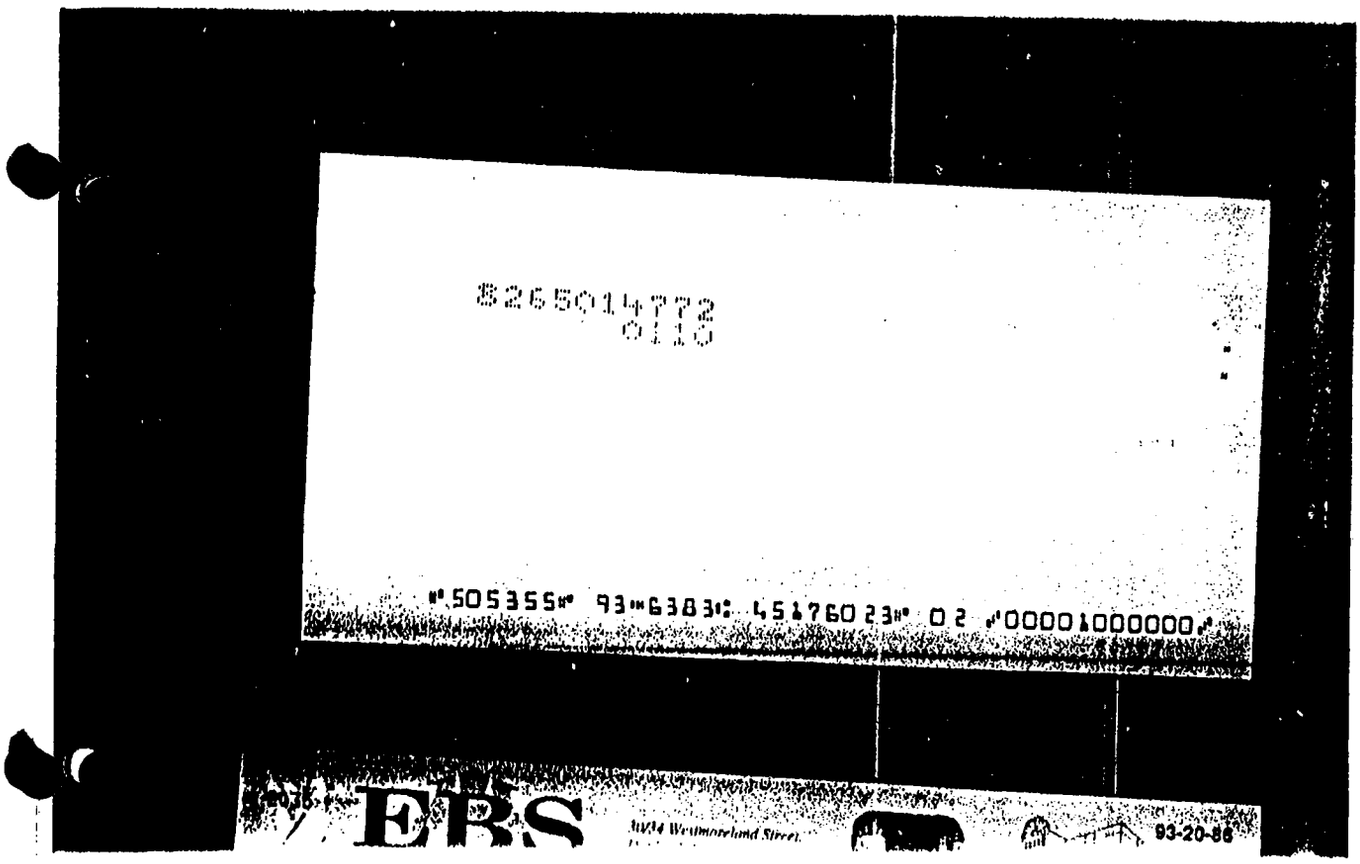
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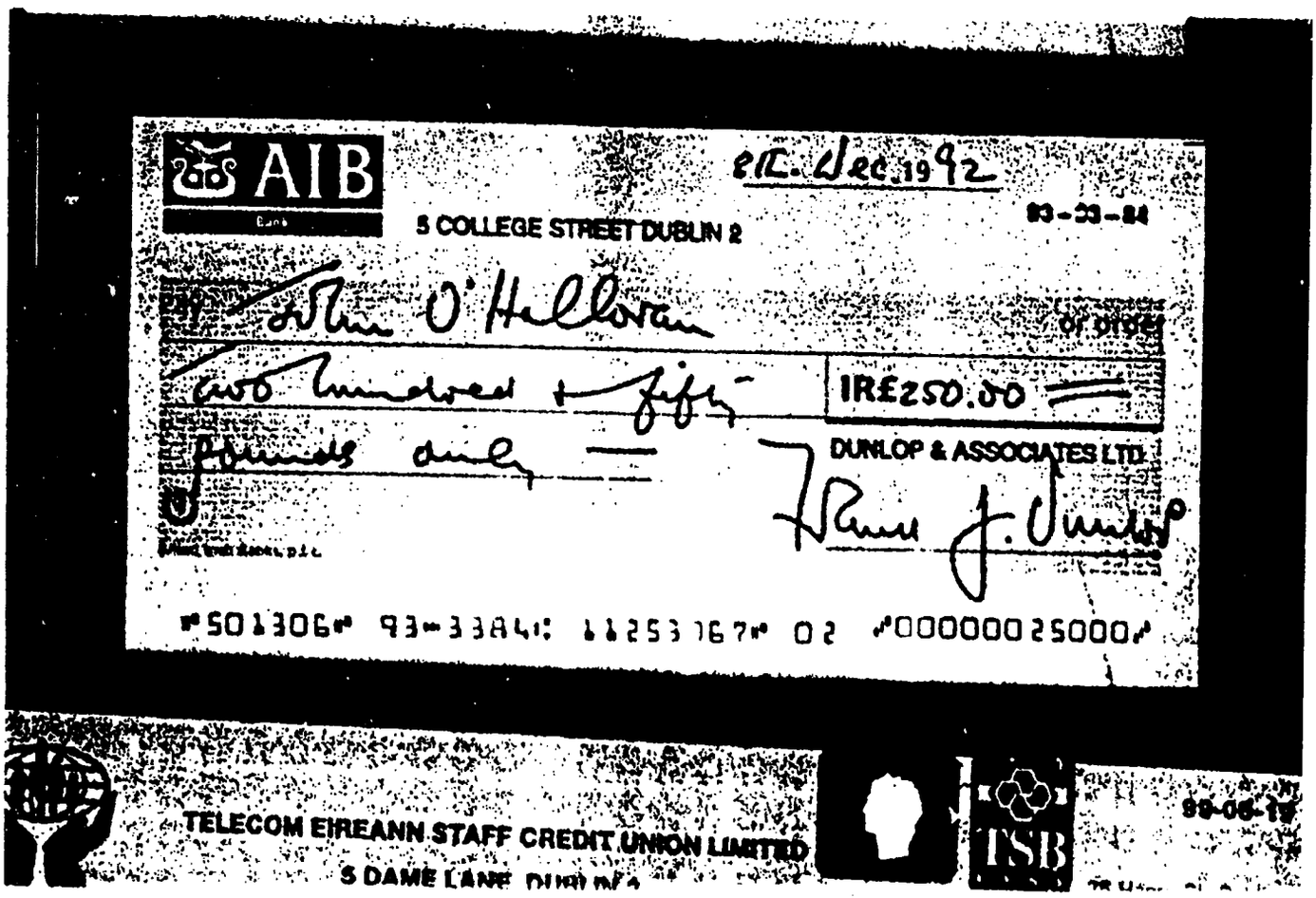
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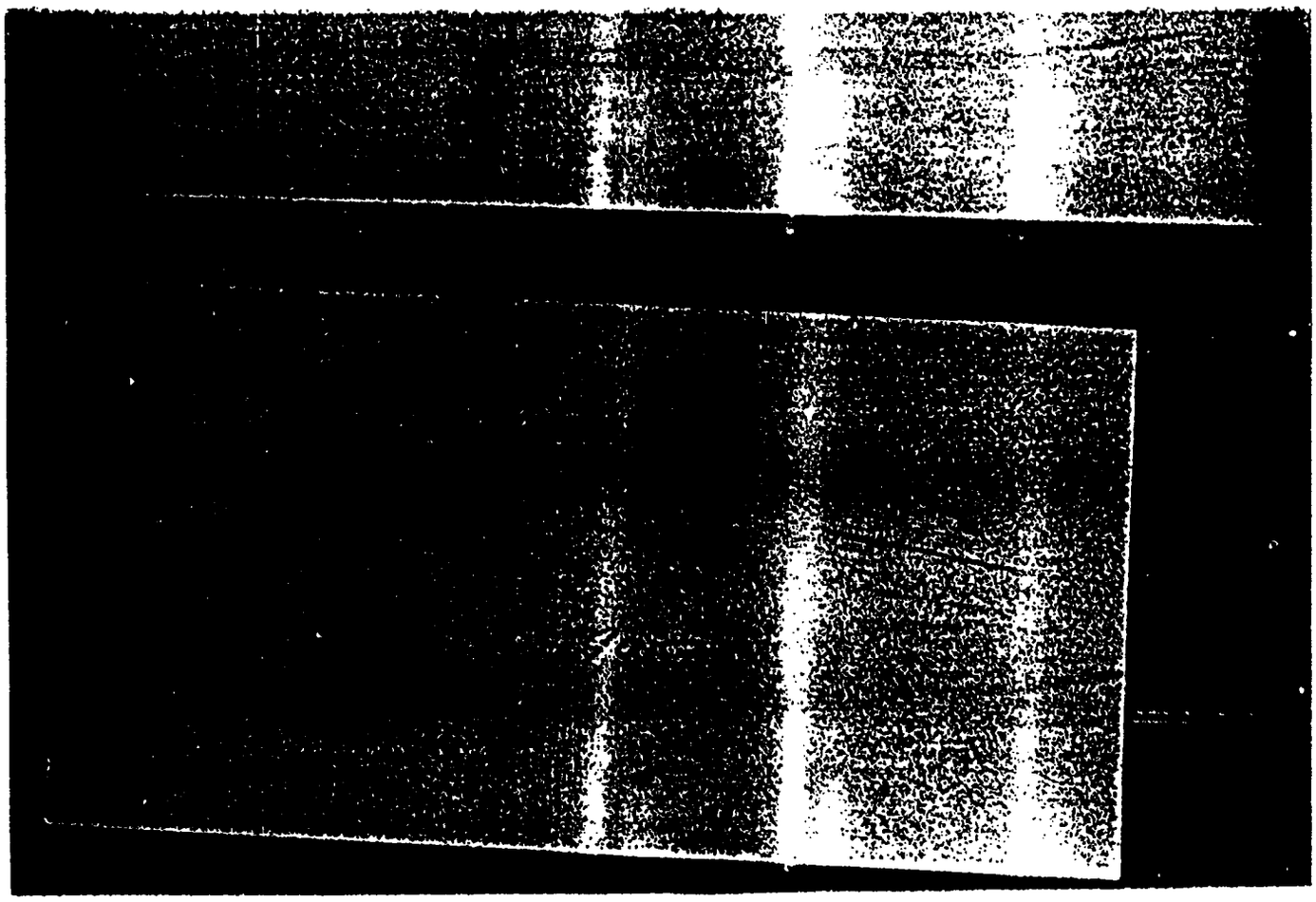
Page No: 326



FD. 1.7.26 - 33


AIB
Bank
5 COLLEGE STREET DUBLIN 2
8th Dec 1992
93-33-84
Pay John O'Halloran
or order
two hundred + fifty
IR£250.00
Pounds only
DUNLOP & ASSOCIATES LTD
for Dunlop J. Dunlop
⑈501306⑈ 93-33841: 11253167⑈ 02 ⑈000000250000⑈
TELECOM EIREANN STAFF CREDIT UNION LIMITED
5 DAME LANE
TSB

FD. 1.7.26 - 34



OC 4.07 - 233

FRANK DUNLOP

& ASSOCIATES

& Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577

Riga Ltd,
21-24 Lavitt's Quay,
Co[illegible]

20th. March, 1996.

INVOICE NO. 1432

To political contribution (JO'H)	£2,500.00
To contribution to Saint Patrick's Day Parade, Lucan (PB)	£ 250.00
	£2,750.00

PAY

VAT No. 6547261I

ok
QO

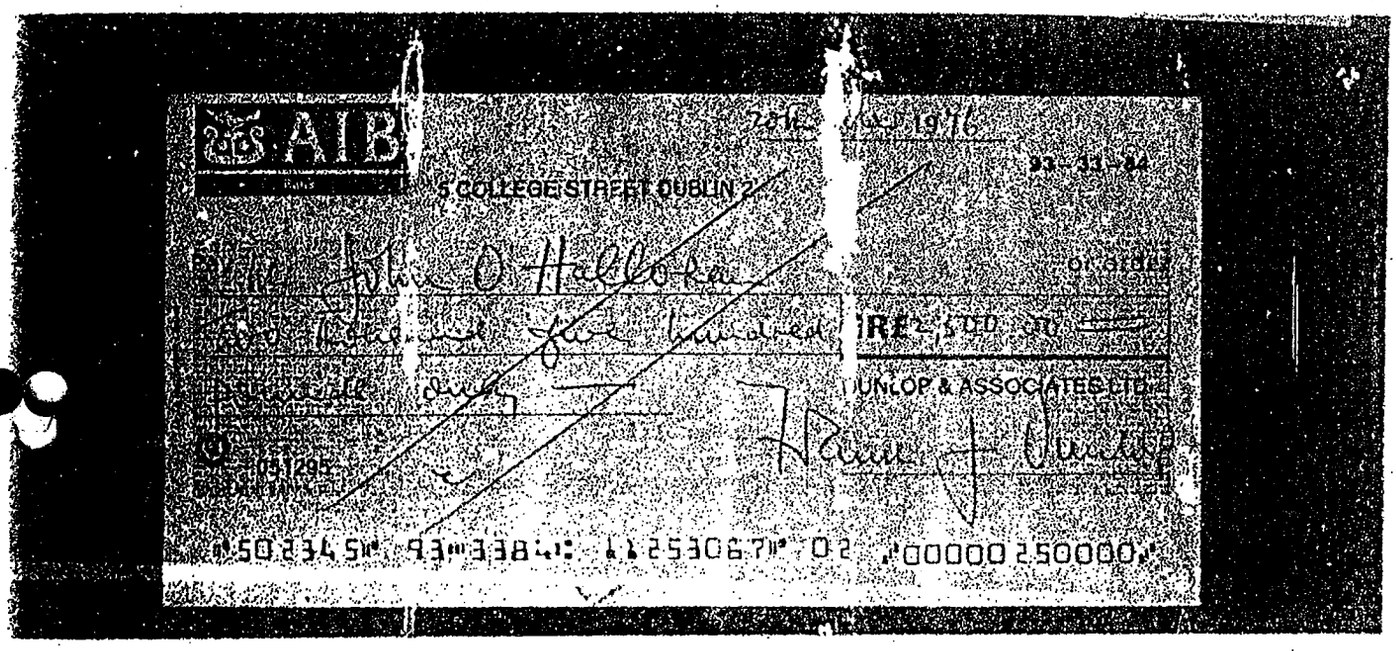
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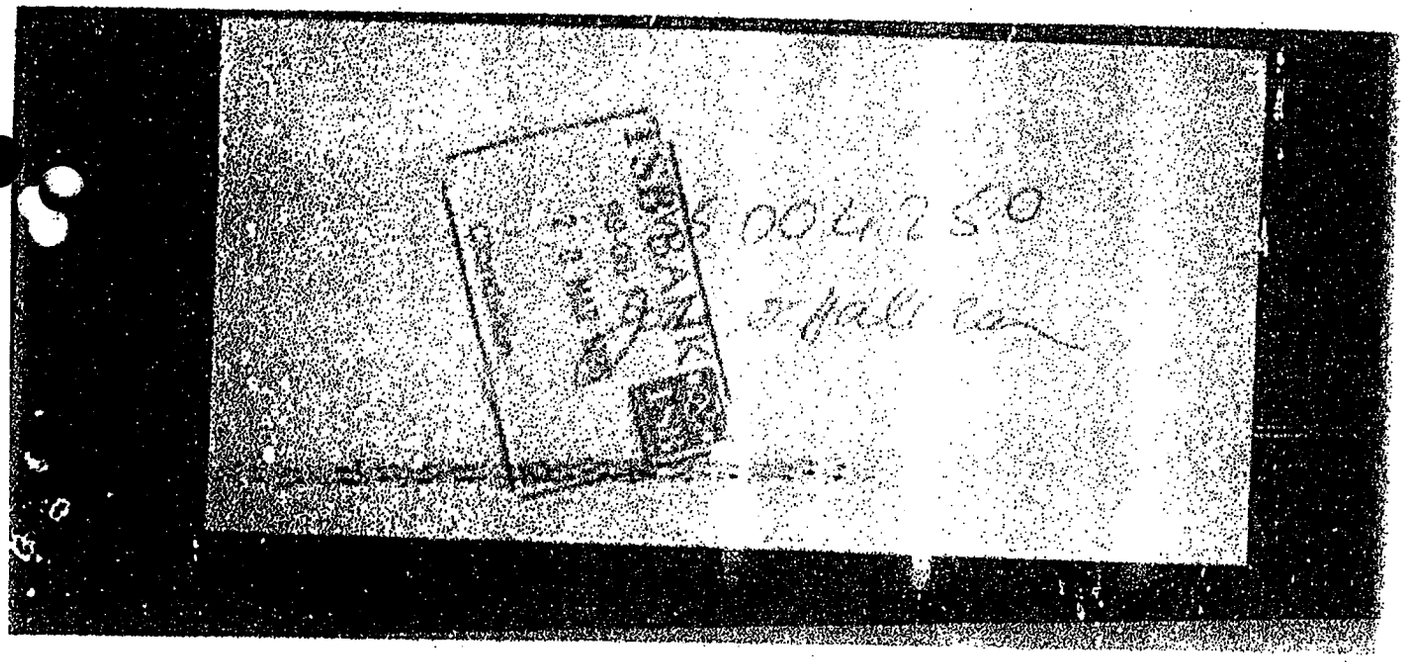


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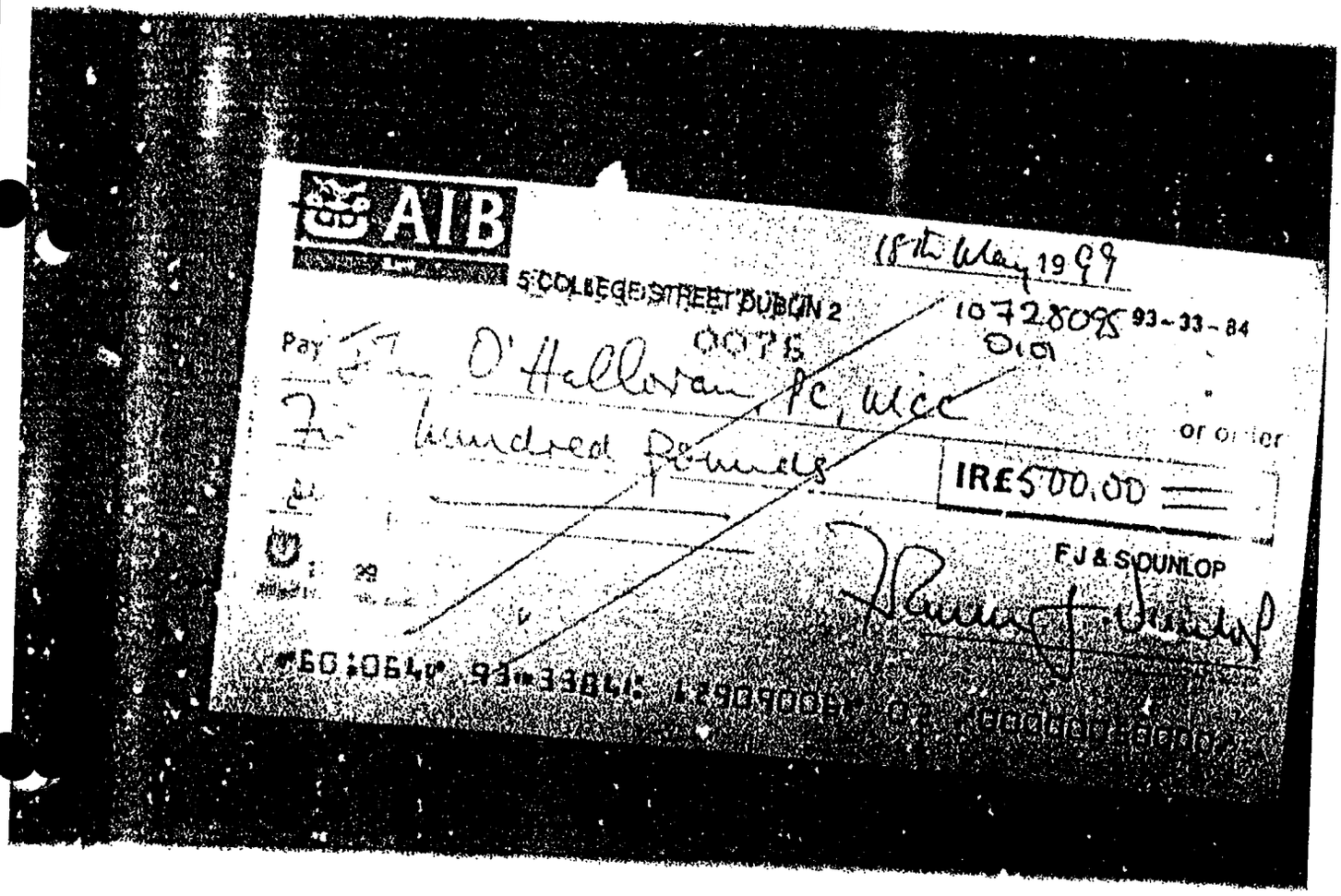
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Page No: 15

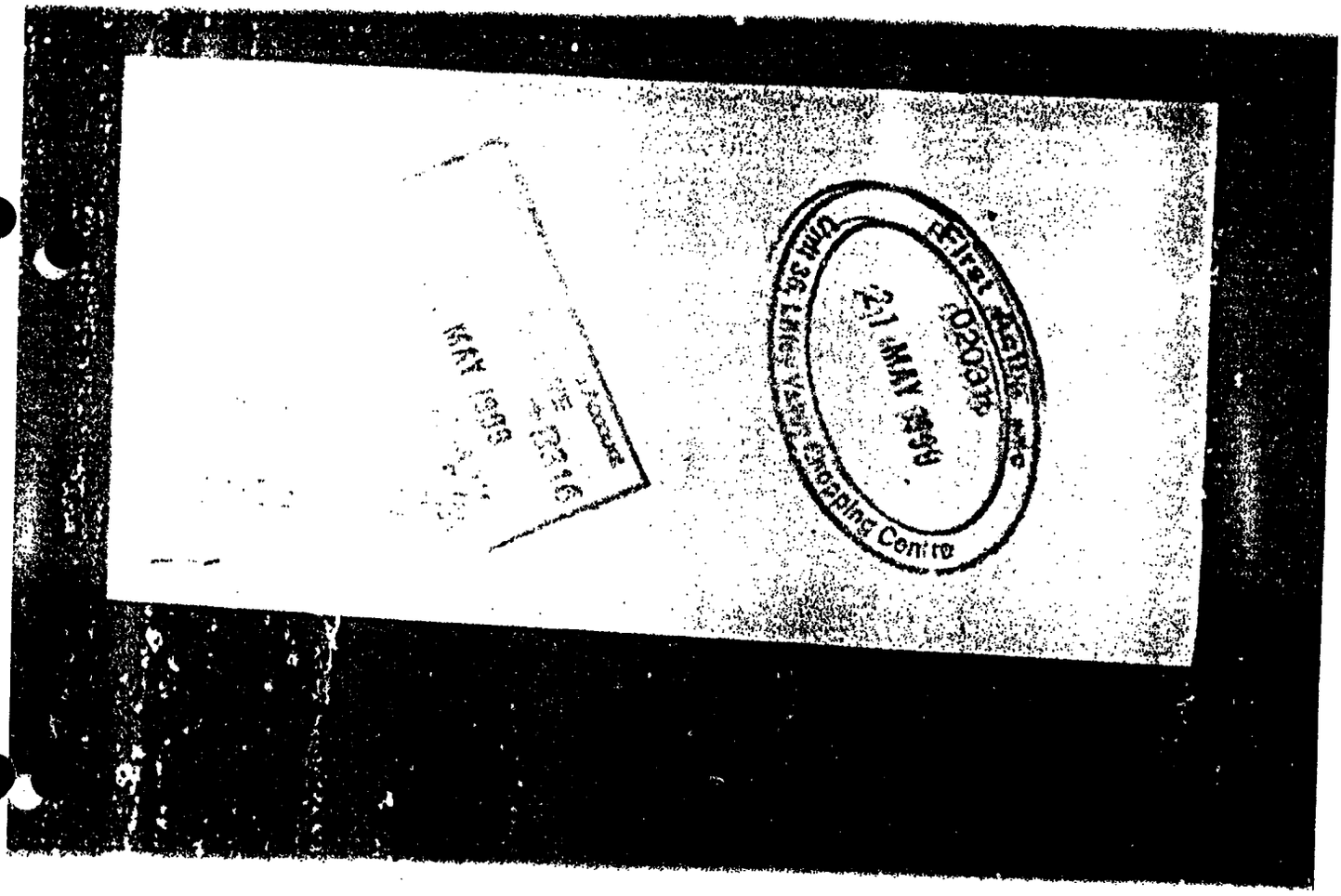


Tribunal Ref : QV II

Page No: 13536

Tribunal Ref : AIB.FD 5.5

Page No: 16



Tribunal Ref : QV II

Page No: 15728

Tribunal Ref : M&G.CT 1.1

Page No: 226

Marine & General Insurances Limited

Insurance Brokers
DOLCAN HOUSE
80 TOWER ROAD
CLONDALKIN
DUBLIN 22

Member of Irish Brokers Association

Telephone: 573100. Fax: 573815

15th December 1993

Mr. Aidan Lucey,
O'Callaghan (Properties) Ltd.,
21/24 Lavitts Quay,
Cork.

Dear Aidan,

I would like to thank you for the courtesy shown to Larry and myself during our recent meeting at your offices.

I am delighted that we have been appointed as your Broker for the Athlone, Quarryvale and Stadium developments and can assure you that we at Marine & General will provide a prompt, efficient and cost effective service at all times.

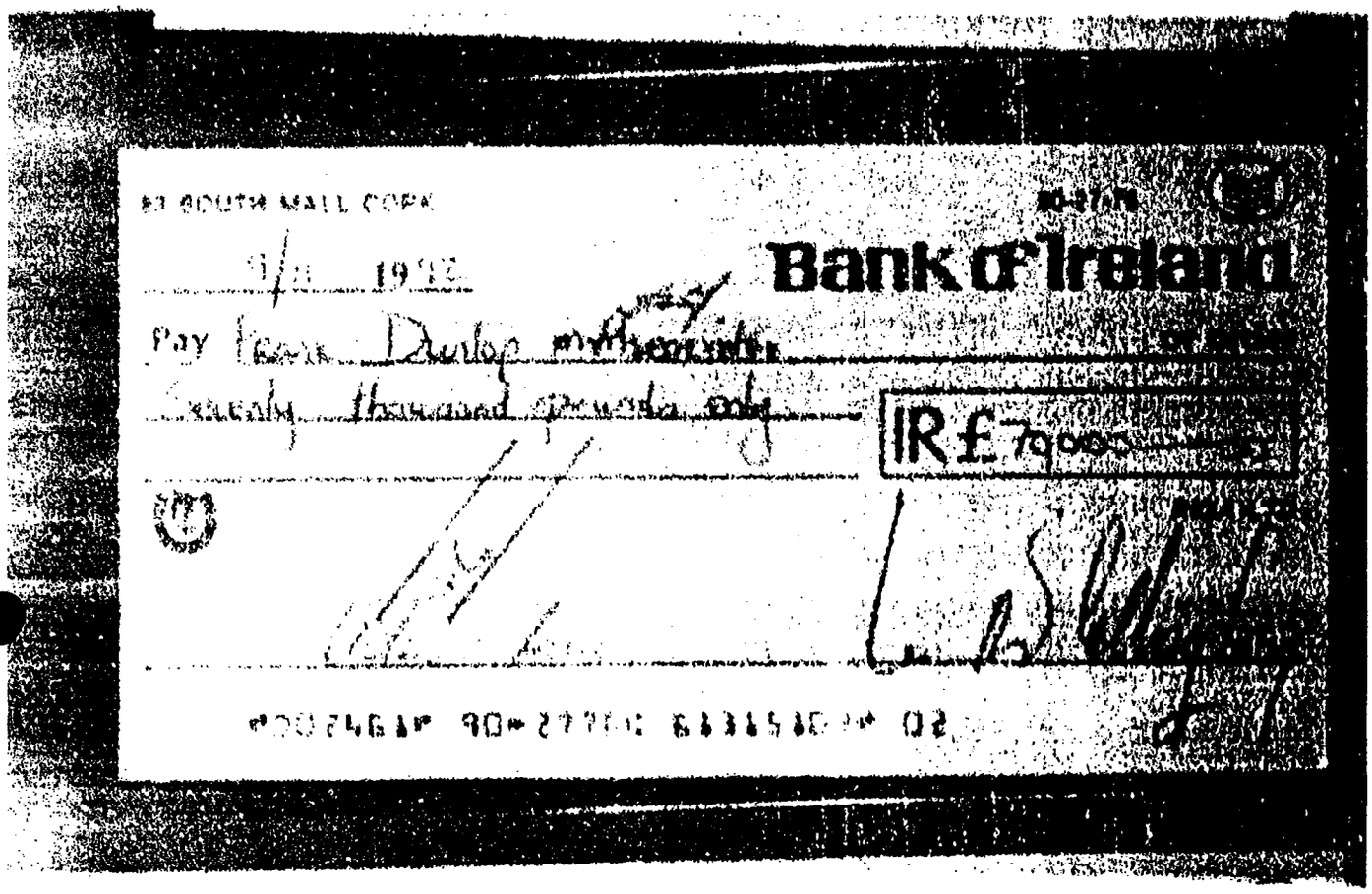
I look forward to meeting you again early in the New Year to discuss in more detail the covers required.

Wishing yourself, Owen and all your staff a very Happy Christmas and prosperous New Year.

Regards,

Colm

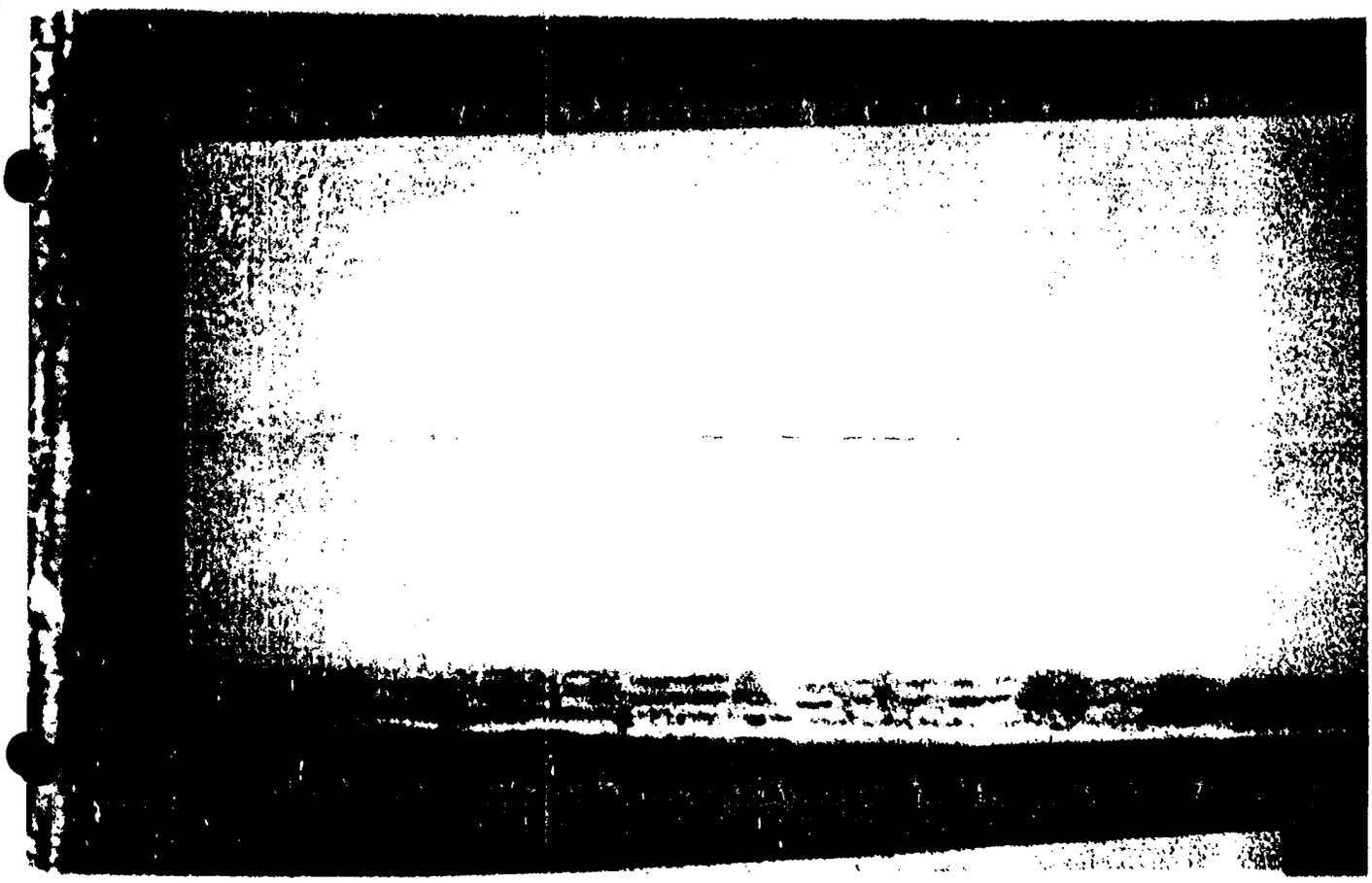
C. Tyndall M.C.C.


Bank of Ireland
Pay Frank Dunlop or Bearer
Seventy thousand pounds only
IR£70000

[redacted]

Tribunal Ref : QV II

Page No: 25549



Return to report

ITEM 2.

DEBIT A/C RICA CCD,

OFFICE BRAND	A/C NUMBER	TRAN CODE	TOTAL £
	6131517	33	70,000 =

Bank of Ireland 90-27-71 For Collection Only

DRAWER No. 1527

FRANK DUNLOP

PREPARED BY

AUTHORISED BY

⑈143773⑈

Destination Branch Code 93-13-30

BANK GIRO CREDIT TRANSFER

TO BANK A.I.B. Date 9/11/92.

BRANCH 12 Rathfarnham Road, Terenure, Dublin 6

CREDIT ACCOUNT Frank Dunlop

Ref. No.	Account Number	Tx
	03375042	

Notes		
Coin		
Total Cash		
Cheques (See over)	70,000	00
TOTAL £	70,000	00

Bank Stamp 1992

Initial/Initials

FOR OFFICE USE

CASH LOCD.		99
NO. REMS.		98
CASH WTHDR.		97

Paid in by Anne Tuepin-Murphy

Address 22 Lavitt's Quay

Cork

Return to report

CHAPTER TWO – QUARRYVALE MODULE

PART 8: MR ALBERT REYNOLDS AND QUARRYVALE

INTRODUCTION

1.01 Mr Albert Reynolds was Minister for Finance between 24 November 1988 and 7 November 1991, and Taoiseach from 11 November 1991 to 15 December 1994, when his Government left office. Mr Reynolds was succeeded at that time as Taoiseach by Mr John Bruton, and as leader of the Fianna Fáil Party by Mr Bertie Ahern.

1.02 Mr Reynolds gave sworn evidence to the Tribunal in the Lissenhall Module, and in the early part of the Quarryvale Module. When requested to give additional sworn evidence in the Quarryvale Module, Mr Reynolds submitted medical information to the Tribunal in support of his contention that he was medically unfit to give evidence because of cognitive impairment. Following a review by the Tribunal of Mr Reynolds' medical condition, the Tribunal excused Mr Reynolds as a witness.

1.03 Mr Reynolds provided a number of narrative statements to the Tribunal between 2002 and 2006 from which appropriate extracts are referred to in this section of the Report.

MR GILMARTIN'S CLAIM THAT MR O'CALLAGHAN TOLD HIM OF A PAYMENT OF IR£150,000 TO MR REYNOLDS, AND THE CORK PRIVATE DINNER

2.01 In the course of his evidence to the Tribunal on Day 730, Mr Gilmartin claimed that on a date between 12 and 17 March 1994, following a meeting with Mr O'Callaghan at AIB Bankcentre, Mr O'Callaghan informed him that on 11 March 1994 he had given Mr Albert Reynolds either IR£100,000 or IR£150,000 during a visit by Mr Reynolds to Cork. In the course of his evidence, Mr Gilmartin settled on the sum of IR£150,000, as the figure mentioned to him by Mr O'Callaghan.

2.02 Mr Gilmartin described the circumstances in which Mr O'Callaghan spoke to him about Mr Reynolds as follows:

> *'On that particular day, which was around 11th or 12th March, he told me that he was tired because they were up late the night before, that Mr Reynolds was at his house in Cork and had dinner at his house. And he was there to collect his money. And he told me that Albert was absolutely*

knackered, three o'clock in the morning, that he gave him the money. He gave him I think it was a cheque for over £100,000, £150,000 or something at three o'clock in the morning. And that Albert was, to use his words, and I quote, 'knackered' because he had to catch a flight to America. So the following morning they had to pick him up early by helicopter.'

2.03 The way Mr O'Callaghan had *'put it across'*, according to Mr Gilmartin, was that Mr O'Callaghan had given Mr Reynolds IR£150,000 of his own money. Asked to specify in detail what Mr O'Callaghan had told him as he and Mr O'Callaghan exited AIB Bankcentre on the relevant date in March 1994, Mr Gilmartin stated:

' . . . well I'm going back. I'm relying just on memory of the exact conversation which is rather difficult. But it went in the lines that Mr Reynolds had visited his house and it was around the 10th or 11th of March 94. And he was in Cork. He may have mentioned some kind of fundraising because he did mention a Mr Walsh and I think he mentioned a gentleman . . . I can't remember all the names now.'

2.04 Mr Gilmartin believed that the other *'gentleman'* mentioned by Mr O'Callaghan was Mr Noel C. Duggan who, according to Mr Gilmartin, had some connection with Millstreet, Co. Cork. Mr Gilmartin, was adamant throughout his testimony that it was Mr O'Callaghan who had relayed this information to him and that he had done so within a day or two of Mr Reynolds having been in Cork. Mr Gilmartin told the Tribunal that he, Mr Gilmartin, was not making any allegation against Mr Reynolds, and he reiterated his position, namely that he was merely repeating to the Tribunal what had been relayed to him in March 1994 by Mr O'Callaghan. Mr Gilmartin believed that the payment to Mr Reynolds had some connection with *'Golden Island'*.[1]

2.05 Mr Gilmartin told the Tribunal that Mr O'Callaghan had relayed to him on a number of occasions how friendly he was with Mr Reynolds and that he had claimed that Mr Reynolds was on his *'payroll'*.

2.06 Prior to his sworn testimony on the matter, the first record of Mr Gilmartin having conveyed information to the effect that Mr Reynolds had received IR£150,000 from Mr O'Callaghan was contained in a memorandum dated 26 November 1999 prepared by Tribunal Counsel, following a telephone call made by Mr Gilmartin to the Tribunal on the previous day. That memo, *inter alia*, noted the following:

[1] Golden Island was a development in Athlone with which Mr O'Callaghan had a connection.

TG then referred to the IR£150,000 paid by OOC to Albert Reynolds in Cork in 1994. This was a few days before St Patrick's Day. TG said that this was not, as alleged by AR, the result of a fundraising dinner. There was a dinner but it was in OOC's house and it was not a fundraising dinner. AR stayed in OOC's house that night. At 3 am in an upstairs bedroom OOC handed AR IR£150,000 in cash. TG said that this was a payment for tax designation in Athlone. TG said that Bertie Ahern got a cut out of this money.[2] AR was picked up by helicopter the following day. I asked TG if his informant would be prepared to talk to the Tribunal. TG said that people were wary of the Tribunal and is not prepared to disclose his name to me. He told me previously that his informant does not want to get involved.

2.07 In a memorandum dated 29 November 1999, relating to a further telephone call from Mr Gilmartin on 25 November 1999, Counsel for the Tribunal noted, *inter alia*, a reference from Mr Gilmartin *'that AR was given IR£150,000 in cash in OOC's house in Cork in March 1994.'*

2.08 Prior to 25 November 1999, Mr Gilmartin was noted in two memoranda as having made reference to a visit by Mr Reynolds to Cork in March 1994. On 5 February 1998, in the course of his first recorded telephone call to the Tribunal, Counsel for the Tribunal noted Mr Gilmartin as stating, *inter alia*, that:

. . . on a particular date in 1994, the 11th March 1994, Albert Reynolds was in a particular private house in Cork to collect his views before flying off to America. He went to this house and got his 'bag' and then left in the Government helicopter. The house belonged to O'Callaghan. Noel C. Duggan was also involved. Gilmartin says that these people were blatant in relation to the influence they had and tended to talk about it.

There was also a huge collection in Millstreet where, again, Reynolds flew down in the Government helicopter and received a huge collection of donations.

2.09 In a tape-recorded interview on 20 May 1998 with his then solicitor, Mr Noel Smyth, Mr Gilmartin made brief references to a visit by Mr Reynolds to Cork in March 1994, as follows: *'like, for instance, Albert spent the night of the 11th March 1994 in O'Callaghan's house'* and *'To make his financial collection of, there were three or four other notorieties there to pay him his money. And he flew from O'Callaghan's house in the morning to catch the plane to go to the St Patrick's do in America on 12th March'.*

[2] Mr Gilmartin took issue with the memorandum in the following regard: he stated that Mr O'Callaghan had advised him that '*Bertie had to have his cut'*. See below.

Mr Gilmartin was also recorded as stating: *'Because I know Albert Reynolds was in O'Callaghan's house that night'.*

2.10 On 9 January 2002, following a telephone call from Mr Gilmartin, Tribunal Counsel noted that *'he believes that two senior politicians got IR£100,000 and IR£150,000 respectively from Mr O'Callaghan but he is unable to prove this.'*

2.11 On Day 732 Mr Gilmartin testified that the IR£150,000 figure in the memorandum referred to Mr O'Callaghan's claim to him of having given IR£150,000 to Mr Reynolds. He believed that the reference in the memorandum to a senior politician getting IR£100,000 was a reference to Mr Lawlor. Notwithstanding the suggestions inherent in the two Tribunal Counsel memoranda, dated 26 and 29 November 1999 respectively, that Mr Gilmartin's information about Mr Reynolds' presence in Cork and the allegation that he had received IR£150,000 from Mr O'Callaghan, had come from a source other than Mr O'Callaghan, Mr Gilmartin was adamant, in the course of his evidence, that the information he had conveyed to the Tribunal had come to him from Mr O'Callaghan himself and that it had been relayed within a day or two of the event in question. Mr Gilmartin conceded, however, that other information he conveyed to the Tribunal concerning Mr O'Callaghan and Mr Reynolds[3] had been provided to him by an anonymous source.

2.12 In the course of his examination by Tribunal Counsel, Mr Gilmartin acknowledged that information provided to the Tribunal, following inquiries by it, suggested that on 11 March 1994 a sum of IR£50,000 had been collected for Fianna Fáil at a fundraising dinner in Cork at which Mr Reynolds was in attendance. Questioned by Tribunal Counsel as to whether it was possible that, if Mr O'Callaghan had indeed apprised Mr Gilmartin of events which took place in Cork on 11 March 1994, he might have been *'teasing'* Mr Gilmartin or *'spinning'* him a story about having given Mr Reynolds IR£150,000, Mr Gilmartin remarked:

> *'As I said possible. Highly possible, but then Shefran existed and the monies were going out through Shefran and Riga was being reimbursed round sums of money and since O'Callaghan had been funded on my assets, in other words, the only security Mr O'Callaghan had to bring to the thing or the only money, even the loan he put in, as far as I, as far as I know, was actually secured on my, on Quarryvale, which was my company.'*

2.13 In the knowledge that it had been established that on 11 March 1994 a Fianna Fáil fundraising event in Cork had taken place, Mr Gilmartin was asked

[3] Including the claim that Mr O'Callaghan had given Mr Reynolds a sum of IR£40,000 in 1992/3.

the following question: *'Could your recollection, Mr Gilmartin, be flawed and could in fact Mr O'Callaghan have been referring to a collection of approximately IR£50,000 at a fundraising dinner, IR£10,000 of which he or his company had contributed and which is receipted?'* Mr Gilmartin replied: '*I'm repeating what Mr O'Callaghan told me.*'

2.14 In the course of his testimony, Mr Gilmartin appeared to suggest that he had also learned of the Reynolds IR£150,000 issue from his anonymous source.

2.15 In the course of vigorous cross-examination on behalf of Mr O'Callaghan, Mr Gilmartin acknowledged that neither in an affidavit sworn by him for the Tribunal on 2 October 1998, nor in his considered statement of 17 May 2001, was there any reference to payments to Mr Reynolds by Mr O'Callaghan or of Mr Gilmartin's claim that Mr O'Callaghan had informed him that he had made a payment of IR£150,000 to Mr Reynolds.

2.16 Mr Gilmartin's account of being told by Mr O'Callaghan of a payment of IR£150,000 to Mr Reynolds was also challenged on the basis that, while Mr Gilmartin had first mentioned Mr Reynolds to the Tribunal in the context of a visit to Cork in March 1994, he was not noted by the Tribunal as having made any reference to an alleged payment of IR£150,000 by Mr O'Callaghan in the course of a telephone conversation on 5 February 1998. Nor did Mr Gilmartin make reference to an alleged payment of IR£150,000 when he spoke about Mr Reynolds to Mr Smyth on 20 May 1998.

2.17 It was put to Mr Gilmartin that, although he had made reference to Mr Reynolds[4] on 22 October 1998 and again on 6 November 1998 in the course of telephone calls to the Tribunal, he had not adverted to the *'equally dramatic if not more dramatic allegation'* that Mr O'Callaghan had given Mr Reynolds IR£150,000 in March 1994. It was also put to Mr Gilmartin that it was not until his 25th telephone call to the Tribunal, on 25 November 1999, as noted by the Tribunal on 26 November 1999, that he had made reference to Mr O'Callaghan having paid Mr Reynolds IR£150,000. It was suggested also to Mr Gilmartin that the memorandum indicated that, insofar as he had conveyed such information, he had learnt of it from an *'informant'*.

2.18 Mr Gilmartin was also reminded in cross-examination that in the course of his testimony he made reference to a *cheque* for IR£150,000 having been given to Mr Reynolds, yet the notes of his telephone calls to the Tribunal referred to IR£150,000 in *cash*. It was further put to Mr Gilmartin that he appeared to have

[4] In the context of his having been told by an anonymous source that Mr Reynolds had received IR£40,000 from Mr O'Callaghan. See below.

been in a position on 22 October and 6 November 1998 to inform the Tribunal of an alleged payment of IR£40,000 by Mr O'Callaghan to Mr Reynolds, yet in the context of passing that information to the Tribunal he had not alluded to information which he claimed to have had since March 1994, namely Mr O'Callaghan's claim to have given Mr Reynolds IR£150,000.

2.19 Mr Gilmartin was also reminded that, in the course of his interview with Mr Smyth on 20 May 1998, Mr Smyth asked him to be specific with regard to names and amounts. While Mr Gilmartin had mentioned Mr Reynolds in the course of that interview he had not adverted to the information he allegedly had from Mr O'Callaghan regarding the issue of payment of IR£150,000 to Mr Reynolds.

2.20 Mr Gilmartin continued to maintain in testimony, however, that it was Mr O'Callaghan who had informed him of the matter. Moreover, Mr Gilmartin maintained that he had relayed this information to the Tribunal prior to 25 November 1999 and that he could not account for the manner in which the Tribunal may have noted this information. Mr Gilmartin repeated his assertion that the allegation about Mr Reynolds receiving IR£150,000 had come from Mr O'Callaghan and that he, Mr Gilmartin, was not himself making any such allegation.

2.21 Counsel for Mr O'Callaghan also put it to Mr Gilmartin that it was impossible, given Mr Gilmartin's claims of having threatened in 1991 to go to the '*fraud squad'* regarding certain matters, that Mr O'Callaghan in March 1994 would have made such a claim to him.

2.22 Throughout his evidence and questioning by Counsel for Mr O'Callaghan, Mr Gilmartin repeated his contention that insofar as he relayed information about Mr O'Callaghan having given Mr Reynolds a sum of IR£150,000 in the bedroom of Mr O'Callaghan's house in Cork on 11 March 1994, he had done so on the basis that this was information given to him by Mr O'Callaghan within a day or two of the event itself and he had passed it on to the Tribunal.

2.23 Mr Gilmartin's description of the event on Day 761 in the course of cross-examination by Counsel for Mr O'Callaghan was as follows:

> Q. *'Would you now be specific and tell us what exactly Mr O'Callaghan is alleged to have said to you about monies allegedly paid to Albert Reynolds?'*
>
> A. *'On 11 March '94, Albert Reynolds flew down by helicopter to Cork. I'm repeating what Mr O'Callaghan said to me, whether it's fact or not I cannot say.'*

Q. *'That's what I want you to do. Is to repeat to the Tribunal what Mr O'Callaghan is supposed to have said to you.'*

A. *'To collect money. Mr O'Callaghan told me that Mr Reynolds came to his house. He did not tell me about any fundraising thing in anywhere else. That he was in his house. And that he gave him a substantial sum of money. The figure I think was 150,000 pounds.'*

Q. *'Did he mention the figure?'*

A. '*Pardon? 150,000 pounds as far as I remember.'*

Q. *'Did Mr O'Callaghan mention the figure to you?*'

A. *'Yes.'*

Q. *'And did he use the words 'a substantial sum of money'?'*

A. *'He . . . to collect that he was there to collect money.'*

Q. *'Did he say anything else to you about it?'*

A. *'Yes, he told me that he gave him the money in a bedroom. Now, I took from that, that Mr Reynolds was staying, was staying at O'Callaghan's house. That's as I understood it. And he also added he was knackered. He didn't go to bed until three o'clock in the morning and he had to fly off to America the next day. He had to fly back. The helicopter picked him up and he had to fly back to Dublin. Now, as I remember, that's what Mr O'Callaghan told me.'*

Q. *'And when did he tell you this?'*

A. *'He told me shortly after the 11th March '94. Sometime shortly afterwards.'*

Q. *'And did he tell you anything about where in the house this bedroom was?'*

A. *'No, he just . . .'*

Q. *'Did he tell you anything else about the incident?*'

A. *'Did he tell me anything else?'*

Q. *'Yes. I'm giving you the opportunity now to tell the Tribunal everything that you say Mr O'Callaghan told you about this alleged payment of 150,000?'*

A. *'Well I can't recall every detail at the moment. There's no point in me . .*

Q. *'When do you say Mr O'Callaghan told you about this?*'

A. *'He told me sometime after.'*

Q. *'How long?*'

A. *'Very shortly after.'*

Q. *'How long after?'*

A. *'I'm not 100 per cent sure whether it was the day after or two days after but it was in before St Patrick's Day, that is 100 per cent certain.'*

2.24 Questioned by Counsel for Mr O'Callaghan as to why he had told the Tribunal in the course of his evidence that Mr O'Callaghan had referred to Mr Reynolds as *'knackered'* and why he had not, in any prior statement to the Tribunal, made a reference to this fact, Mr Gilmartin replied that it was only *'incidental to the story'* and repeated his contention that Mr O'Callaghan had told him that Mr Reynolds *'didn't get to bed until 3 in the morning and he was knackered. He was, he had to fly off to America for the St. Patrick's Day the next day'*. Mr Gilmartin denied that he was not telling the truth or that he was using *'little bits of words here and there to give a ring of truth'* to his evidence. He also denied that what he had done, as put to him by Counsel for Mr O'Callaghan, was *'to take a hook of some piece of fact and on that to hang a lot of lies.'*

MR O'CALLAGHAN'S EVIDENCE

2.25 In the course of a composite statement provided to the Tribunal on 25 April 2007, Mr O'Callaghan addressed Mr Gilmartin's claim that he had told him that he had paid IR£150,000 to Mr Reynolds. Under the heading *'Allegation that I gave Albert Reynolds IR£150,000 at 3 am in an upstairs bedroom of my house'* Mr O'Callaghan stated as follows:

> *This allegation is utterly false and patently absurd. Albert Reynolds came to Cork, by car, for the fundraising dinner* [referred to above] *in T Niall Welch's house. He did not stay in my house. So far as I am aware, he went back to Longford that night by car. I did not give him IR£150,000 either at 3am or at any other time, either in my house or at any other place.*
>
> *I never gave Albert Reynolds any money. Albert Reynolds was never in my home*.

2.26 In the same statement and under the heading *'Fianna Fáil Private Dinner March 1994'* Mr O'Callaghan stated as follows:

> *This dinner was held at the house of T. Niall Welch. The purpose for holding the dinner was to raise funds for Fianna Fáil. T. Niall Welch and I organised this dinner at the request of Fianna Fáil and the party secretary, Pat Farrell. I have already provided details to the Tribunal of the contribution which I made to the party at the dinner (see my statement to the Tribunal of 16th May 2003). So far as I can recall, the following people attended the dinner:*
>
> *Mitchell Barry*
>
> *Joe Donnelly*
>
> *Noel C. Duggan*
>
> *Pat Farrell*
>
> *Bill Grainger*

John McCarthy
Denis Murphy
Owen O'Callaghan
Eddie O'Connell
Albert Reynolds
Des Richardson
Joe Walsh
T. Niall Welch

2.27 In a prior statement to the Tribunal of 16 May 2003, Mr O'Callaghan had advised the Tribunal, *inter alia*, of having made a number of political contributions during the period January 1994 to 6 June 2002 and therein stated:

> *I have made a number of political contributions during the period of the 1st January 1994 to the 6th June 2002 and I would like to deal with political contributions of £1,000 or more as follows:*
>
> 1. *On the 14th March 1994 I made a payment of £10,000 to Fianna Fáil.*
> 2. *On the 13th May 1994 I made a payment of £10,000 to Niall Crowley for the European Election Fund for Brian Crowley.*
> 3. *On the 21st June 1994 I made a payment in the sum of £80,000 to Fianna Fáil.*

2.28 With regard to the payment of IR£10,000 to Fianna Fáil in March 1994, Mr O'Callaghan in his May 2003 statement went on to state as follows:

> *In or about the month of March 1994 I attended a fundraising dinner to which approximately twelve people were invited and at which it was indicated that Mr Albert Reynolds (then Taoiseach) would attend. It was expected that each of the invitees would contribute approximately £10,000 to the party. On the night of the dinner I handed over a cheque in the sum of £10,000 payable to Fianna Fáil.*

2.29 In the course of his evidence to the Tribunal Mr O'Callaghan repeated his denial, as earlier set out in his statement of 27 April 2007, of ever having given Mr Reynolds a sum of IR£150,000, or any sum.

2.30 On Day 897 the following exchange took place between Tribunal Counsel and Mr O'Callaghan:

> Q. *'Well, what Mr Gilmartin has told the Tribunal, Mr O'Callaghan, first and foremost, is that there was a meeting with Mr Albert Reynolds around the 11th or 12th March 1994 at a private house in Cork which he thought was yours, isn't that right, you agree he told the Tribunal that?*'
>
> A. *'Yes, he had, he said it was my house.'*

Q. *'Now, you say he was wrong insofar as it's in your house, isn't that right?'*

A. *'Yes.'*

Q. *'Would you say that, the balance of it, you have no substantial disagreement with the balance?'*

A. *'Well, I think it appeared in all the papers as well and most of Mr Gilmartin's stories came from stuff he read in the papers. So he could have picked it up there.'*

Q. *'Yes. I think this information comes to the Tribunal I think, Mr O'Callaghan, in fairness before there was any publication in the newspapers. That's why I am asking you is it possible that you are the person who first discussed with Mr Gilmartin the fact that there was a fundraiser in Cork on 11th March 1994, at which money was collected and Mr Reynolds was present?'*

A. '*It's possible, but I can't say for definite.'*

Q. *'Now, what Mr Gilmartin has told the Tribunal is, he says that you told him that Mr Reynolds was in your house in Cork on the night before to collect his money and that you gave over a cheque for over 100,000 pounds, 150,000 or something like that, at 3 o'clock in the morning, now is there any truth in that?*

A. *'Oh my God. That's as far from the truth as it could possibly be. I think that's the morning Albert Reynolds took off in a helicopter as well from my house at 3 o'clock in the morning as far as I know.'*

Q. *'He was picked up the next morning I think Mr Gilmartin said, by helicopter to catch a flight to America?'*

A. *'That is not the greatest lie Gilmartin told, that is one of the greatest lies he told.'*

Q. *'Now, is it nonetheless I think a fact that on the night of the 11th or early the morning of the 12th, Mr Reynolds was taken by helicopter to Dublin, I think the records establish that?'*

A. *'Yes, I wasn't even aware of that, I found that out afterwards I thought he drove to Dublin, drove to Longford actually.'*

Q. *'Be that as it may, it would appear that Mr Reynolds was picked up and brought to Dublin, isn't that right?'*

A. *'Yes, he was.'*

Q. *'And insofar as the first figure that is mentioned by Mr Gilmartin in his evidence is concerned, where he says that you told him you gave a cheque for 100,000 pounds to Mr Reynolds at this meeting on the 11th March.'*

A. *'In my house?'*

Q. *'In your house.'*

A. '*At 3 o'clock in the morning?*'

Q. *'Is there any truth first of all that you did such a thing, Mr O'Callaghan?'*

A. *'Absolutely not.'*

Q. *'Now, is it possible that you might have told Mr Gilmartin you had done such a thing.'*

A. *'No.'*

Q. *'Is it possible that what in fact might have happened is that you discussed with Mr Gilmartin your commitment to pay £100,000 to Fianna Fáil?'*

A. *'No, No. This is just a complete make up by Gilmartin actually. It's so horrendous, it's so far from the truth that it is a complete fiction of his imagination.*'

Q. *'Now, do you agree nonetheless that there was a fundraising dinner, it did happen in Cork, all of that is correct we have gone through that?'*

A. *'Yes.'*

Q. *'Now, Mr Gilmartin then went on to tell the Tribunal that Mr Reynolds was picked up the next morning by helicopter to catch a flight to America, isn't that right?'*

A. *'That's right.'*

Q. *'Now, I think you agree now although you didn't know it at the time Mr Reynolds was picked up that night by helicopter isn't that right?*'

A. *'I don't know it was night or morning*.'

2.31 Mr O'Callaghan was further questioned as follows:

Q. *'What I am asking you now about is where Mr Gilmartin could have got the information that Mr Welch and Mr Duggan were at the fundraising event, did that come from you, Mr O'Callaghan?'*

A. *'As I said before, and I'll say it again, it's possible but I'm not sure.'*

Q. *'Alright. Insofar . . . do you think that it's possible, Mr O'Callaghan, that you might have had occasion to discuss with Mr Gilmartin the political donations you were making to Fianna Fáil?'*

A. *'It's possible, yeah, it is possible. It's possible that either I told Tom Gilmartin that I'd made, that I'd been asked by the Fianna Fáil party, by the Fianna Fáil National Treasurers to make a contribution to the party and that the figure I made was £80,000 and that that was based on a letter that was sent to me by Albert Reynolds and Bertie Ahern. That's quite possible that I told that to Tom Gilmartin, and that he actually turned that story around to the story he is telling, has told everybody that quite simply that I gave £80,000 to either Bertie Ahern or to Albert Reynolds. That's probably where his story has come from.'*

2.32 Mr O'Callaghan went on to suggest that Mr Gilmartin could have obtained his story from a journalist, Mr Frank Connolly, although he agreed that, for Mr Gilmartin to have obtained the information from Mr Connolly, somebody had to provide the information to Mr Connolly in the first place, and he conceded that it would have had to have been someone with a very intimate knowledge of his financial affairs. Mr O'Callaghan conceded that

> *'it is possible that I told some part of the story to Gilmartin about the 80,000 pounds in particular. And it is possible that he gave it to his friend Connolly and Connolly has put the spin on it that's been going around for the past seven or eight or nine years.'*

2.33 Mr O'Callaghan stated:

> *'In fact, my guess would be but I have no proof of this, my guess would be that is how this whole £80,000 thing happened and this how it has been blamed and put at the doorstep of Bertie Ahern and Albert Reynolds that I think the man who manipulated Gilmartin to do so is none other than Connolly.'*

2.34 Mr O'Callaghan acknowledged, however, that certain of the detail relating to a visit by Mr Reynolds to Cork in March 1994 had been noted by Tribunal Counsel (in a telephone conversation on 5 February 1998), as having been conveyed by Mr Gilmartin long before a report of Mr Reynolds' visit to Cork in March 1994 appeared in a press article in August 1999.

2.35 Mr O'Callaghan agreed with Tribunal Counsel that, as far as the material facts pertaining to the fundraising event in Cork and the recorded information, as conveyed by Mr Gilmartin to the Tribunal, were concerned, the issues of dispute between himself and Mr Gilmartin related substantially to two items: 1) that the fundraising dinner did not take place in Mr O'Callaghan's house and 2) that Mr O'Callaghan did not pay IR£150,000 to Mr Reynolds, Mr O'Callaghan stating *'I never paid a penny in my life to Albert Reynolds.'*

2.36 In the course of his evidence Mr O'Callaghan acknowledged that he was instrumental, together with Mr Niall Welch, in organising a private fundraising dinner for Fianna Fáil which took place on 11 March 1994 at the home of Mr Welch and which Mr Reynolds attended. In evidence, Mr O'Callaghan confirmed that on the night in question he had made a payment by cheque of IR£10,000 to Fianna Fáil.

2.37 While Mr O'Callaghan denied telling Mr Gilmartin of a payment (of any sum) to Mr Reynolds at any location, he acknowledged that shortly after the event he may have informed Mr Gilmartin of the Fianna Fáil fundraising dinner

which had been held in Cork and of Mr Reynolds' attendance at it. He also acknowledged that he may have informed Mr Gilmartin of the identity of some of those who attended the dinner and of his own contribution.

2.38 Inquiries made by the Tribunal established that on 11 March 1994 Mr Reynolds was flown by helicopter to Cork and that at half past midnight on 12 March 1994 Mr Reynolds, having attended the Fianna Fáil fundraising event in the home of Mr Niall Welch in Cork, was flown by helicopter from Cork Airport to Baldonnell, near Dublin, and that later on 12 March 1994, Mr Reynolds was flown from Baldonnell to the USA for engagements (apparently related to the St Patrick's Day festivities).

2.39 The Tribunal established that on 11 March 1994, a Fianna Fáil fundraising event was held in the Cork home of Mr Niall Welch, and was attended by at least 14 Cork-based businessmen.[5]

2.40 It was common case that the guest of honour on the night was the then Taoiseach Mr Reynolds. In addition to Mr Reynolds, individuals associated with Fianna Fáil who attended the dinner were Mr Joe Walsh, then Minister for Agriculture, Mr Pat Farrell, then General Secretary of Fianna Fáil, Mr Des Richardson, then an executive fundraiser for Fianna Fáil, and Mr Roy Donovan, a voluntary fundraiser for Fianna Fáil.

2.41 The Tribunal was satisfied that the primary purpose of the event was to raise funds for the Fianna Fáil party.

THE POSITION OF FIANNA FÁIL

2.42 On 20 January 2005, in the course of its private inquiries, the Tribunal wrote to the solicitors for the Fianna Fáil party under the heading *'Private Fundraising Dinner—1994'* as follows:

> *I am directed by the Members of the Tribunal to write to you concerning the above mentioned matter.*
>
> *The Tribunal Members understand from their inquiries that a dinner party for the purpose of raising funds was held in Cork in or around 11th March, 1994.*

[5] Including Mr Ed O'Connell, Mr Noel C. Duggan, Mr Colm O'Connaill, Mr Ed McNamara, Mr John McCarthy, Mr John Fleming, Mr Owen O'Callaghan, Mr Joseph Dowling, Mr Mitchell Barry, Mr Joe Donnelly, Mr Michael O'Flynn and Mr Niall Welch in whose house the event took place. Certain of the attendees who gave evidence to the Tribunal also recalled the presence of Mr Denis Murphy (deceased) and one or two of the attendees who gave evidence made a reference to the presence of a Mr Joe Kelly, but one later stated his belief that Mr Kelly did not attend.

The Tribunal Members are now anxious to ascertain the following information from your client:

1. *Names of all individuals who were invited to the said dinner;*
2. *The names of all individuals who attended at the aforementioned dinner;*
3. *The venue of the aforementioned dinner; and*
4. *Details of all funds raised together with details of where such monies were lodged.*

2.43 The reply to this correspondence was received on 29 April 2005 as follows:

My clients have made extensive searches in the Party Headquarters in an effort to locate any records relating to the event in question. Such efforts have proven unsuccessful and in those circumstances I regret that we are unable to provide you with a response to the first three queries raised by you.

With regard to details of funds raised my Clients have gone through the donations records for the calendar year 1994. However, it is not possible to relate any particular donation therein to this event. My Clients have no difficulty in providing you with a copy of the entire list of such donations if this might be of assistance to you.

2.44 Fianna Fáil provided documentation to the Tribunal which included two receipts, numbered 1496 and 1498 respectively. The sum on each document was IR£25,000. Both documents bore the words *'PRIVATE DINNERS, Cork private dinner 14-03-94*'. While the words *'Received from'* were printed on both of the documents there was no indication on their face as to who within Fianna Fáil had received the two payments of IR£25,000 following the *'Cork Private Dinner'*.

2.45 Included also in documentation furnished by Fianna Fáil to the Tribunal was a Bank of Ireland (Lower Baggot Street) statement relating to a Fianna Fáil account (account No. 38621769), maintained in the names of Mr Reynolds and Mr Ahern. That document recorded that on 14 March 1994 there were two lodgements of IR£25,000 each to this account.

2.46 In the light of the inability of the Fianna Fáil party to provide details relating to the Cork private dinner of 11 March 1994 sought by the Tribunal under cover of its letter of 20 January 2005, the Tribunal duly requested the Bank of Ireland branch at Lower Baggot Street to provide all relevant documentation in its possession pertaining to the two lodgements of IR£25,000. The bank duly discovered such documentation to the Tribunal.

2.47 The information supplied by Bank of Ireland established that the sources of the two lodgements comprised respectively five and four elements. The first IR£25,000 lodgement was sourced to:

1) A bank draft dated 11 March 1994 for IR£6,000 payable to 'E O'Connell',
2) A cash sum of IR£4,000,
3) A cheque for IR£5,000 dated 11 March 1994 payable to Fianna Fáil and drawn on the account of Millstreet Horses Ltd,
4) A cheque for IR£5,000 dated 11 March 1994 payable to Fianna Fáil and drawn on the account of Radio County Sound Ltd,
5) A bank draft for IR£5,000 dated 11 March 1994 payable to Fianna Fáil from Sater Ireland Ltd (purchased by Mr Ed McNamara).

2.48 The second IR£25,000 lodgement was sourced to:

1) A cheque for IR£5,000 dated 11 March 1994 payable to Fianna Fáil and drawn on the account of 'Joan McCarthy,'
2) A cheque for IR£5,000 payable to Fianna Fáil dated 11 March 1994 and drawn on the account of Grainger Sawmills Ltd,
3) A cheque for IR£5,000 dated 11 March 1994 payable to Fianna Fáil and drawn on the account of John J. Fleming & Sons Ltd,
4) A cheque for IR£10,000 dated 11 March 1994 payable to Fianna Fáil and drawn on the account of Owen O'Callaghan.

2.49 It was established that eight of the nine sources which made up the total IR£50,000 lodged on 14 March 1994 were linked to specific individuals, as follows.

ATTENDEES AT THE DINNER

MR ED O'CONNELL

2.50 Mr O'Connell testified to the Tribunal that he had attended a fundraising event at the home of Mr Welch on 11 March 1994. While he could not recollect who had invited him it had been *'hinted'* to him *'to make a donation towards Fianna Fáil'*, and that the amount was *'discretionary'*. Accordingly, he had purchased a bank draft for IR£6,000 and handed it over on the night of the dinner. Mr O'Connell told the Tribunal that, mistakenly he had had the draft made out to himself and not Fianna Fáil. While he had no recollection of doing so, he surmised that he had probably endorsed the back of the draft on the night of the dinner.[6] Mr O'Connell told the Tribunal that on the evening of the dinner he left the draft in a sealed envelope in Mr Welch's house for collection.

[6] There was no evidence before the Tribunal that this was the case.

MR NOEL C. DUGGAN

2.51 Mr Duggan testified to the Tribunal that he attended the dinner on 11 March 1994 at the invitation of Mr O'Callaghan. Mr Duggan believed that in issuing the invitation, Mr O'Callaghan appreciated that he, Mr Duggan, might welcome the opportunity to speak to Mr Reynolds about matters which were of concern to him, namely the roads in Millstreet, Co. Cork. While he had not been specifically told in advance that it was a fundraising event Mr Duggan stated that he had an idea, from his conversation with Mr O'Callaghan, that there was a fundraising element to the dinner. Mr Duggan stated that he learned on the night that *'everybody else was doing it and I happened to have my cheque with me'*. Accordingly he had made a contribution of IR£5,000. The Tribunal was satisfied that because of an entry in Mr Duggan's chequebook stub denoting *'Owen O'Callaghan'* it was probable that Mr Duggan came to the dinner in the knowledge that he was going to make a donation to Fianna Fáil. Mr Duggan's evidence in this regard did not suggest otherwise. Mr Duggan's IR£5,000 cheque was recorded in the books and accounts of his company, Millstreet Horses Ltd, as referenced to '*Owen O'Callaghan'* and *'Donations'*.

2.52 Mr Duggan told the Tribunal that on the night in question there was a discussion amongst the attendees about the fundraising element of the dinner and what people were paying. Mr Duggan believed that the *'going rate'* was, at a minimum, IR£5,000. He himself had discussed this with Mr William Grainger, another attendee. Mr Duggan believed that he had left his cheque in an envelope on the dinner table. Mr Duggan stated that he received no receipt or acknowledgement of his donation from Fianna Fáil. He had not made a donation to Fianna Fáil prior to 11 March 1994 and he stated that the donation of 11 March was the only one he had made to the party.

MR COLM O'CONNAILL

2.53 Mr O'Connaill told the Tribunal that he had been invited to the dinner on 11 March 1994 by Mr Welch whose company at the time were doing a lot of work for Mr O'Connaill's company, Radio County Sound Ltd. He had been advised by Mr Welch that it was an opportunity to meet the Taoiseach and that it was also a fundraising event. Mr O'Connaill believed that he had asked Mr Welch, in advance of the event, what was the appropriate amount of money to contribute and he believed he must have been advised that it was IR£5,000, as he brought with him a cheque for that amount. Mr O'Connaill stressed that at no point did he recall Mr Welch stating that it was necessary to have IR£5,000 to go to the dinner. Mr O'Connaill acknowledged that it was likely he had had the cheque

prepared prior to his attending on the night and that he probably filled in Fianna Fáil as the payee on the night.

2.54 Mr O'Connaill did not recall any collection of donations taking place on the night nor did he recall seeing envelopes, but he acknowledged that he must have handed his cheque to someone on the night. Mr O'Connaill did not recall receiving a written acknowledgement his donation.

MR ED MCNAMARA

2.55 Mr McNamara testified to the Tribunal that he attended the dinner at the invitation of Mr John McCarthy (another attendee). Mr McCarthy had advised him that as Mr Reynolds was attending the dinner it was an opportunity to discuss what was happening in Cork, and in business generally. He had also been advised by Mr McCarthy that it was a fundraising dinner and he had been told *'that it would be £5,000 to attend the dinner'*.[7]

2.56 While Mr McNamara acknowledged that in his statement he had written that on the evening in question he had handed over his IR£5,000 donation to *'one of the Fianna Fáil officers'* his best recollection, in evidence, was that, having met Mr McCarthy at a hotel prior to the dinner event he had given the donation to Mr McCarthy. Mr McNamara told the Tribunal that he made the donation on behalf of Sater Ireland Ltd whose account had funded a bank draft for IR£5,000, purchased by him on the day of the dinner.

2.57 Mr McNamara could not assist the Tribunal as to whether a receipt had been received for the donation, stating that his company had moved offices and records had not been retained.

MR JOHN MCCARTHY

2.58 Mr McCarthy testified to the Tribunal that he was at the dinner on 11 March 1994 at the invitation of Mr Welch who told him that he could bring a friend to the dinner. Mr McCarthy brought Mr McNamara. In his evidence Mr McCarthy acknowledged that in the course of the dinner he had made a contribution of IR£5,000 by way of a cheque drawn on an account in the name of his wife. There was conflict between the accounts given by Mr McCarthy and by Mr McNamara as to what the state of Mr McCarthy's knowledge was in March 1994 regarding the purpose of the dinner and regarding what he might have stated to Mr McNamara in advance of their attendance.

[7] Mr McCarthy took issue with aspects of Mr McNamara's recollection of what had been stated to him. See below under heading *'Mr John McCarthy'*.

2.59 A '*précis*' of evidence furnished by Mr McCarthy in advance of his attendance at the Tribunal, stated, *inter alia*, as follows:

> *I vaguely recall being told that the purpose of the meeting was that our Taoiseach wished to meet up with some business people in the Cork area in an informal way to get ideas and a feel for what was needed, particularly in the jobs area. My memory is of a very cordial, relaxed enjoyable and indeed productive evening.*

And:

> *The dinner was not in any way characterised to me as a Fianna Fáil dinner by anyone and I have no recollection or information concerning the background of the organising of the development. I simply received an invitation from Mr Welch which I gratefully accepted.*
>
> *I note I made a contribution of IR£5,000 to the Fianna Fáil party by way of cheque signed by my wife Joan McCarthy. I have no recollection as to how or when I made this payment, nor indeed do I have any recollection or record of receiving any acknowledgement or receipt in respect of the payment. I certainly have no recollection of anybody demanding any such payment though I do have a vague recollection of two or three of us guests speaking with each other and suggesting that some form of contribution should be made for the evening.*

2.60 While he acknowledged mentioning the matter to Mr McNamara and inviting him to the dinner, Mr McCarthy told the Tribunal that he had not advised Mr McNamara that it was a fundraising dinner, rather, he had said that there was a contribution expected as he *'knew there wasn't going to be any free dinner.'*

2.61 Mr McCarthy, in evidence, accepted that Mr McNamara on the night in question had handed his contribution to him to pass on. He believed that he had left his and Mr McNamara's contributions on the dining table in Mr Welch's house. Mr McCarthy believed he had filled in the blank cheque in his wife's name which he had brought with him, following a discussion which had taken place in the courtyard of Mr Welch's house among guests as to how much ought to be contributed. Mr McCarthy stated that he did not receive a receipt for his contribution.

MR WILLIAM GRAINGER

2.62 Mr Grainger testified that he attended the dinner at the invitation of Mr Welch, who had advised him that Mr Reynolds would be in attendance and that it was a fundraising dinner and that there would be a *'contribution required'*, the amount of which had been left *'entirely up to ourselves*'. In his statement to the

Tribunal, Mr Grainger had advised that his company (Grainger Sawmills Ltd) had made a donation of IR£5,000 at a later stage than 11 March 1994.

2.63 While Mr Grainger was still of the belief, in the course of his evidence, that he had given his donation at a later stage than 11 March 1994, he accepted that a Grainger Sawmills Ltd cheque for IR£5,000 (which was dated 11 March 1994) comprised part of a lodgement of IR£25,000 made to the account of Fianna Fáil on 14 March 1994. (Mr Des Richardson told the Tribunal that one or two people came to his hotel on the morning following the dinner with cheques, and that some of the attendees at the dinner had subsequently forwarded donations to the party by post.) The Tribunal was satisfied that Mr Grainger's cheque, if not provided on 11 March 1994, was in all probability handed over to Mr Richardson on the morning of 12 March 1994. Mr Grainger could not, given the lapse of time, assist the Tribunal as to whether a receipt had issued to him, or to his company, in respect of the donation he had made.

MR JOHN FLEMING

2.64 Mr Fleming told the Tribunal that he attended the dinner at the invitation of either Mr Welch or a Mr Joe Kelly (there was some doubt as to whether or not Mr Kelly was in fact present). Mr Fleming believed his invitation had come most probably from Mr Kelly as he was involved in organising the annual Taoiseach's dinner in Cork (an event separate to the 11 March 1994 event). Mr Fleming told the Tribunal that he was aware, probably from Mr Kelly, prior to his attendance at Mr Welch's house that he was going to a fundraising event for Fianna Fáil.

2.65 Mr Fleming acknowledged bringing a cheque for IR£5,000 drawn on his company's account to the event and he believed he left his contribution in an envelope on the dining table. Mr Fleming stated that he had seen envelopes being left on the table on the night in question. He did not recall any receipt issuing in respect of his contribution.

MR OWEN O'CALLAGHAN

2.66 Mr O'Callaghan testified to having attended at Mr Welch's house on 11 March 1994 and having been instrumental, together with Mr Welch and Mr Des Richardson of Fianna Fáil, in organising the dinner. With regard to the dinner, Mr O'Callaghan believed he had been Mr Richardson's first point of contact, contact which had been made some months prior to the event with a request from Mr Richardson that a dinner be hosted, the purpose of which was to raise funds for Fianna Fáil. Mr O'Callaghan stated that those invited to the dinner had been advised that they were expected to make a donation.

2.67 While amounts of donations had not been indicated, Mr O'Callaghan stated that if anyone had enquired, they would have been informed that the *'going rate'* was IR£5,000 or IR£10,000. Mr O'Callaghan himself had made a contribution of IR£10,000[8] to the event, by way of his personal cheque dated 11 March 1994 payable to Fianna Fáil. Mr O'Callaghan's account was debited with the amount on 16 March 1994. A Riga Ltd cheque for IR£10,000 dated 14 March 1994 was lodged to Mr O'Callaghan's account on the same date. This cheque was debited to the account of Riga on 14 March 1994. In Riga's audit working paper (Y9), the IR£10,000 cheque (to Mr O'Callaghan) is described as *'General Expenses Quarryvale'* and is shown as being analysed under *'Nominal Account: 357 ADV & SUBS'* (advertising and subscriptions).

2.68 Although he was instrumental in organising the fundraising event and was himself a donor on the night, Mr O'Callaghan told the Tribunal that he did not witness anyone handing over money on 11 March 1994 or leaving cheques or envelopes for collection. It was his understanding that on the night, donations were not being handed over until the Taoiseach, Mr Reynolds, had departed. Mr O'Callaghan told the Tribunal that he was *'pretty sure'* that he had handed his donation to Mr Richardson on the evening of the event, after the dinner had ended.

2.69 Mr O'Callaghan acknowledged that his contribution of IR£10,000 was a very substantial amount of money and that it was greater than 50 per cent of the net salary of a TD at the time. It was certainly the case, from an analysis of bank documentation supplied to the Tribunal, that Mr O'Callaghan's donation was the largest of the nine components which made up the two lodgements to the Fianna Fáil account on 14 March 1994.

2.70 Mr O'Callaghan acknowledged that by March of 1994 there were two avenues of fundraising for Fianna Fáil emanating from him, namely his involvement in organising the fundraising event in Cork in respect of which invitees, including himself, were expected to contribute and his promise, as of December 1993, to donate IR£100,000 to Fianna Fáil, having been requested in writing by Mr Reynolds and Mr Ahern in September 1993 for a substantial donation. This request had been followed up by a direct approach in December 1993 from Mr McSharry who had put a figure on the substantial donation expected.

[8] Mr O'Callaghan credited this IR£10,000 donation, together with IR£10,000 to Mr Brian Crowley's election campaign in May 1994, against his promised IR£100,000 donation to Fianna Fáil.

2.71 Mr O'Callaghan stated that, while by March 1994 he had concerns regarding the appointment of Mr McSharry to the board of Green Property Plc (in the context of the ongoing quest in 1994 of Green Property's Mr John Corcoran for tax designation status for Blanchardstown) he had not, he claimed, spoken to Mr Reynolds about this issue on 11 March 1994, nor had he raised it with Mr Richardson. Mr O'Callaghan stated that the only person *'that could make a decision, that did make decisions, and he was the only man capable of making decisions on designation that would have been Mr Ahern.'*

2.72 Questioned about an entry in Mr Reynolds' diary for 21 July 1994 noting a meeting between Mr O'Callaghan, Mr Welch and Mr Reynolds, Mr O'Callaghan could not say why he and Mr Welch were meeting with Mr Reynolds on that date, other than to surmise that it must have been because of something to do with Cork. Mr O'Callaghan rejected any suggestion that he and Mr Welch discussed the 11 March 1994 Cork private dinner with Mr Reynolds when they met on 21 July stating: *'I'd say he'd long forgot that'*.[9]

MR NIALL WELCH

2.73 Mr Welch told the Tribunal that having been approached by either Mr Richardson or Mr O'Callaghan to host the dinner in his home, he had readily agreed to do so as Mr Reynolds, who was to attend, was a personal friend. The dinner had a dual purpose: firstly, to give people an opportunity to meet Mr Reynolds and discuss issues relating to their businesses and to Cork, and secondly, to fundraise for Fianna Fáil.

2.74 Mr Welch could not assist the Tribunal as to whether or not he, together with Mr Richardson, had attended a breakfast meeting with Mr Ahern on 9 March 1994 in the 'Shelbourne' (as recorded in Mr Ahern's diary),[10] although Mr Welch acknowledged meeting Mr Richardson prior to 11 March 1994 to arrange the dinner. Mr Welch also acknowledged having met with Mr Ahern over the years.[11]

2.75 An expenses sheet completed by Mr Des Richardson recorded the following in relation to 9 March 1994: *'Breakfast x3 Ahern/Niall Welch, DR. Re Cork event'*. On balance therefore, the Tribunal was satisfied that Mr Welch's and Mr Richardson's meeting with Mr Ahern on 9 March 1994 was probably to discuss the Cork private dinner and its fundraising aspect.

[9] Mr Welch, in evidence, could not say if the meeting with Mr Reynolds in July 1994 was connected to the Cork private dinner.

[10] The diary noted Niall '*Walsh*' but the Tribunal was satisfied, on balance, that it referred to Mr Welch.

[11] Mr Ahern in evidence, had no recollection of this meeting, but doubted that a meeting relating to the Cork dinner would have been taking place just two days prior to the event.

2.76 Documents discovered to the Tribunal by Fianna Fáil included a copy of a letter addressed to Mr Welch from Mr Ahern dated 16 March 1994 thanking Mr Welch and his wife for hosting *'such a successful evening on Friday 11th March last'*.

2.77 Mr Welch told the Tribunal that when inviting guests to the dinner he had not discussed with them what contribution they might be expected to make and professed himself *'shocked'* at the reference in Mr Ed O'Connell's statement to Mr Welch's advice that the expected contribution was IR£5,000.

2.78 Mr Welch stated that he himself had not made a contribution to Fianna Fáil on the night. He had paid for the dinner which had been catered by a local hotel and he had done so because of his friendship with Mr Reynolds. Mr Welch also advised the Tribunal that he did not know how the donations, known now to have been made by at least eight attendees at the dinner, had been collected on the night, although he could not rule out the possibility that envelopes had been handed to him on that evening. If this had occurred, Mr Welch believed that he would have handed the envelopes to Mr Richardson. Mr Welch told the Tribunal that after the dinner had ended he observed a number of envelopes in front of Mr Richardson on the dinner table and as Mr Richardson, Mr Pat Farrell and Mr Roy Donovan were awaiting a taxi to their hotel. Mr Welch assumed that the envelopes were taken by one of these three individuals.

MR JOSEPH DOWLING

2.79 Mr Dowling told the Tribunal that he had attended the dinner at Mr Welch's house on 11 March 1994 at the invitation of the then Minister for Agriculture, Mr Joe Walsh. Mr Dowling stated that prior to the event he had been told by Mr Walsh that Mr Reynolds was a guest and that it was an opportunity to exchange views with him. Mr Dowling stated that no-one had apprised him of the fact that it was a fundraising event and no one had sought a contribution from him on the night, or subsequently. Mr Dowling also stated that he had not observed any contributions being made on the night. It had not occurred to him that it was a fundraising event, even though he knew that Mr Richardson was Fianna Fáil's chief fundraiser at that time.

MR DAVID RONAYNE

2.80 Mr Ronayne told the Tribunal that he was invited to the dinner by either Mr Welch or Mr Denis Murphy (since deceased). Mr Ronayne had understood that the purpose of the dinner was social where local businessmen might take the opportunity to persuade the government to 'kick-start' Cork's development.

Mr Ronayne stated that he had not been informed prior to the dinner that it was also a fundraising event, nor had he observed any sign of fundraising activity on the night. He had been introduced to Fianna Fáil personnel in the course of the dinner, and at some point in the evening Mr Richardson had given him his card.

2.81 Mr Ronayne said that following the dinner and a meeting with Mr Richardson subsequent to 11 March 1994, he made a decision to make a contribution to Fianna Fáil. Mr Ronayne duly made a contribution of IR£3,000 to Fianna Fáil, a contribution which was apparently received by Mr Richardson on 10 May 1994, having regard to the contents of a copy of an acknowledgement letter[12] sent to Mr Ronayne by Mr Ahern on 11 May 1994, and signed by him as Minister for Finance and Chairman of the National Finance Committee.

2.82 Discovery made by Fianna Fáil also included a document dated 9 May 1994 and headed *'Fianna Fáil the Republican Party'* on which was printed receipt number 1552, and which had printed on it the words *'Cork Private Dinner 14-03-94 IR£3,000'*. Mr Ronayne told the Tribunal that he could not recall having been furnished with a receipt, though he recalled Mr Ahern's acknowledgment letter.

2.83 Evidence was also adduced of a further contribution of IR£3,000 made by Mr Ronayne to Fianna Fáil in August 1994 in respect of which Mr Ahern again wrote a letter of thanks on 30 August 1994 to Mr Ronayne, and which Mr Ronayne recalled receiving.[13]

MR MITCHELL BARRY

2.84 Mr Barry told the Tribunal that he attended the dinner at the invitation of Mr Welch who advised him that a number of business associates and a special guest of honour would be attending. Mr Barry learned on the night that Mr Reynolds was the surprise guest. He told the Tribunal that no issue of the dinner being for fundraising had been discussed with him prior to his attendance and he stated that during the course of the evening no one had approached him seeking a contribution. Mr Barry stated that on the night he and Mr Reynolds had discussed Mr Barry's company having achieved an ISO award, and he stated that when informed of this Mr Reynolds had promised him he would send a letter of congratulations the following day to the hotel where Mr Barry's staff were to gather to celebrate the award. Mr Reynolds duly sent such a letter on 12 March 1994. Mr Barry's evidence was, that sometime after the dinner he was contacted

[12] Discovered to the Tribunal by Fianna Fáil.
[13] This donation was recorded in a schedule of donations within Fianna Fáil as *'30/8/1994 Mainport Cork Dinner IR£3,000'.*

by Mr Donovan by telephone, suggesting that they meet on Mr Barry's next visit to Dublin. After *'many weeks'* they did meet, when the matter of his making a contribution to Fianna Fáil was discussed. Mr Barry however did not make a contribution on that occasion. Mr Donovan did not dispute making contact with Mr Barry.

2.85 Mr Barry acknowledged, however, that by 12 April 1994 he made a contribution of IR£2,500 to the Fianna Fáil Party by way of a personal cheque, under cover of a letter to Mr Donovan. Mr Barry told the Tribunal that the reason for his change of mind about making a donation was that *'other events in or around that time took place and I felt it necessary to show appreciation to the Fianna Fáil Party.'* Mr Barry stated that on the night of the dinner Mr Reynolds had promised to attend the official ISO presentation to Mr Barry's company, an event which was to take place (and did take place) within a couple of weeks of 11 March 1994. Mr Reynolds duly attended the presentation ceremony. In light of Mr Reynolds' personal support Mr Barry had reversed his original decision not to make a contribution to Fianna Fáil.

2.86 Discovery made by Fianna Fáil to the Tribunal revealed a copy letter dated 29 June 1994 from Mr Reynolds thanking Mr Barry for his contribution. Mr Barry recalled receiving that letter, but could not recall whether he had received an official receipt. Fianna Fáil records revealed a document headed *'PRIVATE DINNERS'—Mr Mitchell Barry'* and bearing the words '*receipt number 1531'* in the sum of IR£2,500.

MR JOE DONNELLY

2.87 Mr Donnelly stated that he attended the dinner on 11 March 1994 at the invitation of Mr Welch who had advised him that it was a fundraising dinner for Fianna Fáil. At the time of the issuing of the invitation no discussion had taken place about the amount of any contribution Mr Donnelly might make. Mr Donnelly told the Tribunal, however, that towards the end of the dinner on 11 March 1994 he had approached Mr Welch to ask him how much he should contribute and Mr Welch had said he should send on a cheque for IR£5,000. Mr Donnelly testified that on the night in question he had not seen envelopes being left for collection, nor had he been privy to any discussion about contributions.

2.88 On 28 March 1994 Mr Donnelly duly sent a cheque for IR£5,000 to Fianna Fáil. When shown a copy receipt bearing the number *'1506'* dated 28 March 1994 and bearing the title *'PARTY FUNDS' 'Mr Joe Donnelly'* Mr Donnelly could not recollect whether he had received such a document. Mr Donnelly recollected receiving a letter from Mr Ahern and said his recollection was aided

by the fact that in that letter, Mr Ahern had addressed him as *'John'* and not *'Joe'*.

MR MICHAEL O'FLYNN

2.89 Mr O'Flynn confirmed having attended the dinner in Mr Welch's house on 11 March 1994. He stated that he did so at the invitation of Mr Welch who had advised him that he was hosting a Fianna Fáil function in his home at which the Taoiseach Mr Reynolds would be present. Mr O'Flynn knew it had a fundraising element and had been so informed by Mr Welch. However, Mr O'Flynn described what he believed was the basis of an invitation having issued to him in the following terms:

> *'Well, Niall Welch invited me if I can recall the exact detail of the invitation, but I knew Niall Welch well, I was very involved at that time in Cork as an industry representative in relation to the construction issues. I recall him telling me that the Taoiseach was to visit his home, that he was hosting or facilitating a Fianna Fáil function and that he was extending a personal invitation to me. He would be obviously be well aware of my involvement in the industry and he was keen that issues affecting Cork or obstacles to developing Cork would be discussed on the night. So I recall that, I also recall him saying to me that he was facilitating or hosting a Fianna Fáil event and that that was it.'*

2.90 Notwithstanding his knowledge that the dinner included a fundraising element to it and that he had been a regular supporter of Fianna Fáil fundraising events prior to and subsequent to 11 March 1994, Mr O'Flynn told the Tribunal that neither he nor his company, O'Flynn Construction Ltd, had made any contribution to Fianna Fáil at the dinner or subsequent to the dinner, with reference to that event.

2.91 Mr O'Flynn again repeated what he believed to be the primary purpose of his invitation by Mr Welch in the following terms:

> *'He* [Mr Welch] *told me he was facilitating a Fianna Fáil event but he also told me that he had some personal invitations and he was very keen, in fact the day before the event he rang me to make sure that I suppose, the hard questions or the issues would be raised, at that time and every year since I would have had meetings with TD's and ministers and issues to do with Cork, so that's it, would be a regular occurrence for me, every year since then and before that. I am 20 year involved as a representative in Cork area.'*

2.92 Mr O'Flynn stated that he did not see anything unusual about going to a fundraising event and not contributing given that he was going *'on the personal invitation of the owner of the house'*. However, Mr O'Flynn acknowledged, as stated by Mr Welch in evidence, that Mr Welch, when issuing the invitation to him, had told him of its dual purpose, that of an opportunity to meet the Taoiseach and of fundraising.

2.93 Asked why he had decided not to contribute to the event on the night Mr O'Flynn stated *'I didn't see it as an inherent part of my attendance.'*

2.94 Mr O'Flynn told the Tribunal that he had absolutely no recollection of seeing envelopes lying about or being collected on the night, and that no one had asked him for a donation on the occasion.

THE EVIDENCE OF THE FIANNA FÁIL REPRESENTATIVES WHO ATTENDED THE DINNER

2.95 Four[14] of the five individuals associated with Fianna Fáil who attended the Cork private dinner on 11 March 1994 gave evidence to the Tribunal.

MR PAT FARRELL

2.96 Mr Farrell, who was General Secretary of Fianna Fáil in 1994, told the Tribunal that he attended the dinner which he knew to be a fundraising event to explain to the attendees how the resources raised would be used by Fianna Fáil. Mr Farrell stated: '*to put it succinctly, to make a pitch as to why it was important for a modern political party to function and realise its objective that it had to be funded.'*

2.97 Mr Farrell was questioned about a number of contacts made by him and on his behalf to Mr Dunlop's office in the days immediately preceding the Cork dinner but he was unable to recall the purpose of such contact. He agreed that a meeting he had with Mr Reynolds on 10 March 1994, the day before the dinner, probably included discussion about the fundraising event in Mr Welch's house.

2.98 With regard to his presence on the evening in question, Mr Farrell believed that he had addressed those present on how funds raised at the event would be applied by Fianna Fáil.[15] While he acknowledged that the event of 11 March 1994 was unambiguously for fundraising, Mr Farrell did not recall seeing

[14] Mr Reynolds did not give evidence to the Tribunal in relation to this matter.
[15] Some of the attendees at the dinner who gave evidence to the Tribunal stated that they did not recall Mr Farrell making a speech.

any fundraising taking place on the night. He himself had not collected any money, nor had he observed envelopes left for collection, as suggested by some of the witnesses who gave evidence to the Tribunal.

2.99 Mr Farrell told the Tribunal that he was not aware on the night in question whether money was in fact collected though he accepted, from the records available to the Tribunal, that at least eight of the persons attending had made donations on the night (in addition to a separate donation or donations amounting to IR£4,000, in cash), given that cheques or drafts from eight individuals/companies comprised the substantial portion of the two lodgements of IR£25,000 each made to the Fianna Fáil account on 14 March 1994. Mr Farrell also acknowledged that the documentary evidence established that a cash sum had been lodged on 14 March 1994. He agreed that someone had to have collected money on the night in question, for a total of IR£50,000 to have been lodged on the following Monday to Fianna Fáil's bank account.

2.100 Mr Farrell advised the Tribunal that it was normal practice within Fianna Fáil to maintain lists of individual donors to the party and to issue receipts to them. He could not give a reason why Fianna Fáil was unable to provide to the Tribunal a list of the individuals whose contributions comprised the total IR£50,000 lodged to the Fianna Fáil account on 14 March 1994.

2.101 Asked to comment on the two *'IR£25,000'* receipts dated 14 March 1994, both bearing the heading *'Cork Private Dinner 14-03-94'*, Mr Farrell agreed that no individual or individuals were named on these two receipts. Mr Farrell stated that Mr Seán Fleming, the party's financial director, had the primary role *of 'recording of receipts and accounting for money.'*

MR ROY DONOVAN

2.102 Mr Donovan, a voluntary national fundraiser for Fianna Fáil in 1994, was present at the dinner on 11 March. He was there, he stated, in his capacity as a fundraiser who was familiar with the Cork scene. Mr Donovan claimed that he was not involved in collecting funds on the night in question and stated that he had not been given any contributions on the night and nor had he seen any money being collected and no money had changed hands in his presence. He agreed, however, that one of the aims of the dinner was to fundraise, and he maintained that in normal circumstances the money would come into the party subsequent to the fundraising.

2.103 Mr Donovan testified that he had no knowledge of the amounts raised as a result of the 11 March 1994 fundraiser, stating that he did not involve himself in that part of the fundraising exercise. Nor had he been aware on 11 March 1994 that a sum of IR£50,000 had been collected.

2.104 Mr Donovan's understanding of the procedures within Fianna Fáil upon receipt of individual donations, was that individual receipts would have issued to donors and moreover, Fianna Fáil would have kept a list of donors for its records, not least for the purpose of approaching such individuals again in the future. Mr Donovan could not assist the Tribunal as to whether any such list of the donors of the IR£50,000, which was lodged to Fianna Fáil's account on 14 March 1994, had been created or maintained. Nor could he assist the Tribunal as to why, within Fianna Fáil, only two *'global'* receipts in the sum of IR£25,000 were to be found, each referenced to the Cork private dinner and on which no donors' names appeared, either individually or otherwise. Mr Donovan acknowledged that following the 11 March 1994 dinner he had approached Mr Barry for a donation for the party, although he had no recollection of doing so.

MR JOE WALSH

2.105 Mr Walsh (then the Minister for Agriculture) told the Tribunal that he did not recollect any fundraising element to the dinner he attended in Mr Welch's house in March 1994. He stated that when invited to the dinner he was completely unaware that it was a fundraising event. He was, he stated, present in his capacity, as the only Cork-based government minister, at an informal dinner the purpose of which, he understood, was to raise the profile of Fianna Fáil in Cork. He had not seen any evidence of fundraising in the course of the night, although from the material supplied to him by the Tribunal he acknowledged that the purpose of the dinner was to raise funds for his Party.

2.106 With regard to the absence of individual receipts for donations collected on the night, Mr Walsh told the Tribunal that he would have thought it reasonable that receipts should have issued to individual donors and that a record of their names would be kept by the Party. Mr Walsh himself kept such a record of those who contributed to his personal fundraising efforts.

MR DES RICHARDSON

2.107 Mr Richardson, who was an executive fundraiser with Fianna Fáil in the period, and operated out of the Berkeley Court Hotel (separate to Fianna Fáil HQ), provided a statement to the Tribunal on 20 January 2006. After making

reference to his memory of the Cork private dinner of 11 March 1994 not being particularly distinct, Mr Richardson stated as follows:

> *I believe that a dinner was organised by Mr Niall Welch at his home in Cork. Mr Welch knew the then Taoiseach, Mr Albert Reynolds, and was aware that the Fianna Fáil party was organising fundraising events throughout the country at that time in an effort to defray the Party debt. I understand that Mr Welch offered to host a Dinner with a view to inviting some Cork business people to attend and envisaged that hopefully thereafter they would make a contribution to the Party.*
>
> *I was invited to attend this Dinner and to the best of my recollection there were approximately fifteen other people in attendance. I do not recall many of the names, as they would have been Cork based people whom I had never met before. I do recollect the following people being in attendance from Fianna Fáil:*
>
> - *Mr Albert Reynolds T.D.*
> - *Mr Pat Farrell, General Secretary, Fianna Fáil.*
> - *Mr Roy Donovan, who was then a member of the Fundraising Committee.*
>
> *I understand that some of the guests subsequently did make a contribution to the Party and details of such contribution should be recorded in Party Headquarters*.

2.108 On 17 October 2007, under the heading *'Fianna Fáil Private Dinner 11th March 1994'* Mr Richardson's solicitors wrote to the Tribunal on his behalf as follows:

> *My client wishes to clarify matters in relation to his attendance at the fundraising function on 11th March 1994.*
>
> *My client believes that on the night of the fundraising dinner some of the individuals in attendance handed over donations for the benefit of the Party. My client believes that these donations were passed to him after the dinner by Niall Welch and by the late Denis Murphy who, at the time, was one of the principal party fundraisers in Cork.*
>
> *My client recollects that he was asked by Niall Welch to delay his departure to Dublin the following morning as a couple of the individuals who attended the dinner wished to make donations but had not brought a cheque with them on the night. Mr Richardson believes that he did delay his return to Dublin for this reason. Mr Richardson believes that some of the attendees subsequently forwarded donations to the Party by post*.

2.109 In the course of his evidence on Day 777, Mr Richardson told the Tribunal that information received from the Tribunal (prior to his scheduled appearance as a witness) which contained the names of people who had attended the dinner

in Cork on 11 March 1994 had aided his memory sufficiently for him to recall that on the night of the dinner donations had been handed to him. Mr Richardson acknowledged, however, that, with regard to new information provided by him on 17 October 2007, namely that he had delayed his return to Dublin to facilitate the collection of donations, his recollection in that regard had not been prompted by anything contained in the documentation which had been circulated to him by the Tribunal, but rather by his own memory.

2.110 In neither of the statements provided by Mr Richardson, prior to giving evidence on Day 777, was there any reference to his involvement in organising, together with Mr Welch and Mr O'Callaghan, the fundraising event of 11 March 1994. The Tribunal was satisfied that Mr Richardson was involved in organising the event having regard to Mr O'Callaghan's testimony and Mr Ahern's diary reference to a meeting which took place between Mr Richardson, Mr Welch and Mr Ahern at the Shelbourne Hotel on 9 March 1994, two days prior to the fundraising dinner. Mr Richardson said he had no recollection of that particular meeting, or of ever having breakfast with Mr Welch and Mr Ahern.

2.111 Mr Richardson told the Tribunal that insofar as he had any involvement in the collection of money at the fundraising event in Mr Welch's house, it was his recollection that donations had been passed to him by Mr Welch and by the late Mr Denis Murphy on the evening in question. On the morning following the dinner, two individuals, whose names he did not recollect, arrived at his hotel with cheques.

2.112 Questioned as to why Fianna Fáil were unable to provide the Tribunal with a list of the donors whose contributions comprised the total IR£50,000 lodged to an account of Fianna Fáil on 14 March 1994, Mr Richardson stated that he had given Fianna Fáil the names of the donors and the amounts donated. This information, Mr Richardson stated, would have been passed on to Fianna Fáil by him at the end of the year, as was his practice.

2.113 Mr Richardson acknowledged that insofar as the Fianna Fáil Party had any documentation connected to the events of 11 March 1994, such documentation consisted of two *'receipts'* for IR£25,000 headed *'Cork Private Dinner 14-03-94*', neither of which '*receipt'* identified any individual or entity as the donor/donors of the IR£25,000 sums to which the two *'receipts'* referred.

2.114 Mr Richardson stated that such *'receipts'* had not been created by him and were probably for internal purposes within Fianna Fáil.

2.115 Mr Richardson's evidence was that he himself, as was his practice as a fundraiser for Fianna Fáil, had issued receipts and letters of acknowledgment to those who had made donations on 11 March 1994 and he stated that *'Sean Fleming would be aware that I would have sent out receipts and acknowledgment'*. Mr Richardson also stated that all of his documentation in relation to the funds which had been generated as a result of the dinner of 11 March 1994 and which had come into his hands, had been maintained on his computer and this information *'to the best of'* his knowledge had been duly passed to Fianna Fáil when he ceased his work as executive fundraiser for Fianna Fáil.

2.116 Mr Seán Fleming maintained that Mr Richardson was himself responsible for issuing acknowledgements of Party donations received through his, Mr Richardson's, Berkeley Court Hotel office, and that he periodically provided the Fianna Fáil head office with the names of donors and the amounts donated. However, Mr Fleming also told the Tribunal that Fianna Fáil head office would not necessarily be provided with the identities of all donors by Mr Richardson, and that if, for example, a donor (via Mr Richardson) wished to remain anonymous, his name would not be disclosed to the Party by Mr Richardson.

2.117 Mr Richardson appeared to suggest to the Tribunal that it was not necessarily the case that his letters of acknowledgment to the donors (which would have issued in the name of Mr Ahern) would have been transmitted by him through Fianna Fáil headquarters. Mr Richardson suggested to the Tribunal that the documentation that Fianna Fáil would have received from him, and which related to the donations collected on 11/12 March 1994, would have consisted of either a handwritten or a typed page, described by Mr Richardson as follows: *'the page of names and amounts on it as I have done for eight years.'*

2.118 Mr Fleming told the Tribunal that he did not receive the names of the individual donors at the Cork dinner. However, discovery made to the Tribunal by Fianna Fáil provided a copy of a letter (from Mr Ahern) which issued to Mr David Ronayne (one of three attendees at the dinner who made a donation subsequent to 11 March 1994), and it was established that, insofar as Fianna Fáil had such a record, it had come from Mr Richardson's computer records.

2.119 Mr Richardson was unable to account as to why Fianna Fáil had a record of the acknowledgment sent to Mr Ronayne (whose IR£3,000 donation to Mr Richardson was received on 9 May 1994)[16] but yet had no such records pertaining to the eight individuals who contributed sums of between IR£5,000

[16] Fianna Fáil also had records of letters of acknowledgment which were sent to other attendees (Mr Barry and Mr Donnelly) who had made donations subsequent to 11 March 1994.

and IR£10,000 on the night of 11 March 1994. Tribunal Counsel put to Mr Richardson that this circumstance *'would suggest to you then, Mr Richardson, that for whatever reason, your documentation concerning the receipts for IR£50,000 was not in fact passed to Fianna Fáil'*. To this suggestion Mr Richardson responded as follows*: 'There is no reason in the wide world why that would happen. None.'*

2.120 Mr Richardson also rejected any suggestion that he might not have kept any record of the individuals who made contributions on 11 March 1994 or the amounts of such contributions.

2.121 Mr Richardson acknowledged having lodged a sum of IR£50,000 in total to the Bank of Ireland current account of Fianna Fáil on Monday 14 March 1994 and that the lodgement had been effected in two tranches of IR£25,000 each. He could not account for the reason why the lodgement of nine individual components (namely six cheques, two bank drafts and a sum of IR£4,000 cash) was effected in two tranches, other than to suggest that two lodgement dockets were required if names of the donors were written on the back of each. When it was pointed out to Mr Richardson that the evidence did not support this theory, he stated that he had *'no idea whatsoever'* as to why two lodgements of IR£25,000 had been made, rather than one.

2.122 Having regard to the IR£4,000 cash sum which comprised one of the five components which made up one of the IR£25,000 lodgements, Mr Richardson acknowledged that there did not exist (save the bank lodgement docket) any document which identified the person/persons who donated that cash. Mr Richardson stated *'I didn't collect that £4,000 from the person that gave it that night.'*

2.123 Mr Richardson stated that other than what his own computer records indicated, he had no independent recollection of how much money in fact had been collected on the night of 11 March 1994. He also acknowledged that discovery made by Fianna Fáil to the Tribunal had established that that party did not have in its possession any document which identified the donors of the nine individual sums that made up the two lodgements of IR£25,000 on 14 March 1994.

MR REYNOLDS' STATEMENT OF 26 JANUARY 2006

2.124 In a statement of 26 January 2006 under the heading *'private dinner—March 1994'* Mr Reynolds set out as follows:

I have never attended a fundraising dinner for Fianna Fáil in the home of Owen O'Callaghan.

I have never received any payment whatsoever, political or otherwise in the sum of £150,000 or £40,000 from Owen O'Callaghan. For the avoidance of doubt, I have never received monies from any third party on behalf of Mr O'Callaghan or otherwise. The suggestion that I received money for my 'assistance in the tax designation of the Golden Island development in the Athlone, Co. Westmeath' is entirely without foundation and an outrageous allegation.

I did attend a dinner at the home of Mr Niall Welch on or about March 11th 1994. This dinner was in the nature of a 'get to know you dinner'. The dinner was to the best of my knowledge arranged by Mr Welch in consultation with members of the Fianna Fáil party. I cannot say with any degree of certainty who initially proposed the dinner. I was not involved in organising the dinner.

I have read the letter of Mr Welch to this Tribunal dated the 16th of June, 2005 and I have no reason to disagree with any of the contents of the letter. I would however wish to make it perfectly clear that while political contributions may have been received by the Fianna Fáil political party at the dinner, no money whatsoever was received by me in my personal capacity, nor did I handle any contributions received by the Fianna Fáil Party. I have no idea how much money was received by the Fianna Fáil Party on the night in question, but I believe that the records held at Party headquarters will confirm what monies were received.

2.125 In his 20 April 2007 statement Mr Reynolds stated, *inter alia*, *'The allegation that I stayed overnight in the home of Mr Owen O'Callaghan and received the sum of £150,000 from Mr O'Callaghan is absolutely untrue.'*

MR GILMARTIN'S ALLEGATION OF A FUNDRAISING TRIP BY MR REYNOLDS TO THE USA

3.01 On 25 November 1999, immediately following Mr Gilmartin having been noted by Tribunal Counsel as stating that Mr Reynolds had been handed IR£150,000 by Mr O'Callaghan in Mr O'Callaghan's house in 1994, Mr Gilmartin was noted by Tribunal Counsel as having provided the following information:

AR then went on a fundraising trip to America. TG says that this was a massive fundraising effort. It was in the context of the euphoria over the Northern Ireland 'settlement'. AR was giving speeches about what he was doing for Ireland and a huge number of Irish Americans gave money generously. TG says that over $1m was raised on this trip which included Chicago, Boston and New York. However, only £70,000 was handed over

to Fianna Fáil. The rest was lodged in accounts in the Dutch Antilles and in Lichtenstein.

3.02 Mr Gilmartin claimed that his sources for this information (which he claimed had been given to him sometime after St Patrick's Day 1994) were contacts in the US, including relatives of his working with CNN News Agency. Mr Gilmartin was requested to identify these individuals, but in a short narrative statement to the Tribunal on 6 March 2008, he identified only one individual who was by then deceased. Mr Gilmartin claimed that two of his US relatives who were in the past in a position to identify the whereabouts of three other individuals could not now do so.

3.03 The Tribunal heard evidence from Brigadier General Ralph James of the Air Corps. Brigadier General James confirmed to the Tribunal that Mr Reynolds flew in an Air Corps helicopter from Dublin to Cork on the evening of 11 March 1994, landing in Cork Airport at 18.50, and that the same aircraft brought Mr Reynolds back to Dublin, leaving Cork Airport at 00.20 on the morning of 12 March 1994. Brigadier General James also told the Tribunal that the Government jet left Dublin at 16.55 on 12 March 1994, and flew to JFK Airport near New York.

MR GILMARTIN'S CLAIM TO HAVE RECEIVED INFORMATION THAT MR O'CALLAGHAN PAID IR£40,000 TO MR REYNOLDS

4.01 In the course of his evidence on Day 731 Mr Gilmartin told the Tribunal that information given to him by an anonymous source (in 1998/9) included that Mr Reynolds had been paid a sum of IR£40,000 by Mr O'Callaghan. Mr Gilmartin stated that this was not something Mr O'Callaghan had ever told him, in contrast to March 1994 when, he claimed, Mr O'Callaghan had informed him that he had given Mr Reynolds IR£150,000. As with the IR£150,000 claim, Mr Gilmartin stressed that he was not making any allegations against Mr Reynolds with regard to payment of IR£40,000 by Mr O'Callaghan, he was merely telling the Tribunal what had been conveyed to him by an anonymous source.

4.02 Mr Gilmartin first made reference to the alleged receipt by Mr Reynolds of IR£40,000 in the course of a telephone call to the Tribunal on 22 October 1998, noted by Tribunal Counsel as follows:

Mr Gilmartin then told me about three Shefran payments that were made in or about May of 1992. It was either in late May or early June 1992. One of them was to Albert Reynolds for either £40,000 or £50,000. One was to Bertie Ahern for £30,000 and the other was either £15,000 or

£20,000 and was to whoever was the Minister for Industry and Commerce in 1991/1992.

4.03 It was further recorded in that memorandum:

The payment to Albert Reynolds is connected with preventing Mr Gilmartin from getting the land across the way. The Corporation owned around 400 acres where St. Loman's was situated. The Corporation was going to sell this land and they had given Tom Gilmartin permission to include it in his brochure and in his maps. It was where he intended to put the conference centre and hotel. Tom Gilmartin wanted to buy 200 acres and the Corporation intended to give him an option to purchase it if the development was going ahead.

4.04 And:

Around that time, it was official policy that there was a ban on the IDA buying any more land. In fact, they had so much land that they were under instructions to sell some of the land which they held. Albert Reynolds and O'Callaghan blocked Tom Gilmartin getting the land by sending the IDA in to acquire the land. The IDA went to the Corporation and openly stated to McCloone and Derek Brady they were under instructions to stop Tom Gilmartin acquiring this land.

4.05 Prior to 22 October 1998, in the course of his taped interview with Mr Noel Smyth on 20 May 1998, Mr Gilmartin referred to Mr Reynolds as a *'coordinator'* for Mr O'Callaghan when discussing the Corporation lands issue.

4.06 In a memorandum dated 9 November 1998, compiled following a telephone conversation between Mr Gilmartin and Tribunal Counsel on 6 November 1998, it was noted, *inter alia*, as follows*:*

Gilmartin says that he knows a part of the Chefran money went to Albert Reynolds.

And

He says that at the end of 1992/1993, a sum of £40,000 was paid to Albert Reynolds and £30,000 was paid to Bertie Ahern whom he believed were Prime Minister and Minister for Finance respectively. No money went into Chefran. The money was paid direct. Chefran was being used as a money laundering operation.

4.07 In a further memorandum dated 29 November 1999, compiled by Tribunal Counsel following a second telephone conversation with Mr Gilmartin on 25 November 1999, it was noted, *inter alia*, that Mr Gilmartin received information from a *'source'*, and that this *'source'* had *'provided the information*

that Albert Reynolds got £40,000 from OOC'. In this memorandum Mr Gilmartin was also noted as stating that the information that Mr Reynolds had received IR£40,000 from Mr O'Callaghan was *'separate to the allegation that AR was given 150,000 in cash in OOC's house in Cork in March 1994.'*

4.08 The prior utterances of Mr Gilmartin in relation to a claim that Mr Reynolds got IR£40,000 from Mr O'Callaghan (as noted on 22 October and 6 November 1998 respectively) did not indicate how Mr Gilmartin acquired this information.

4.09 The affidavit sworn by Mr Gilmartin on 2 October 1998 did not contain any reference to an alleged IR£40,000 payment to Mr Reynolds, nor did Mr Gilmartin's considered statement to the Tribunal of 17 May 2001 contain any such reference. In a Tribunal memorandum dated 21 February 2000 Mr Gilmartin was again noted as citing Mr Reynolds as having a role in preventing his acquisition of lands owned by Dublin Corporation. Mr Gilmartin testified that the absence of any reference to this matter in his May 2001 statement was an omission on his part.

4.10 In the course of questioning by Tribunal Counsel and by Counsel for Mr O'Callaghan, Mr Gilmartin maintained that, insofar as he had information regarding an alleged IR£40,000 payment to Mr Reynolds by Mr O'Callaghan, this information had come to him from an anonymous source as far back as 1993/4, and from telephone calls made to him by an anonymous source in or about 1998/9.

4.11 Mr Gilmartin was cross examined by Counsel for Mr O'Callaghan as to why, in the course of his testimony to the Tribunal, he suggested that the alleged IR£40,000 payment by Mr O'Callaghan to Mr Reynolds had been made in connection with Mr O'Callaghan's efforts to secure tax designation status for Golden Island, Athlone, yet in the memorandum of 22 October 1998 Mr Gilmartin was recorded as having linked the claimed payment of IR£40,000 to Mr Reynolds to alleged interference by Mr Reynolds, via the IDA, in the attempts being made by Mr Gilmartin in 1990 to acquire lands from Dublin Corporation[17]. Moreover, Mr Gilmartin had linked the alleged payment to payments made to Shefran Ltd by Barkhill Ltd. It was put to Mr Gilmartin that in his direct testimony on this issue he had not made reference to these claims.

[17] These lands were different to the Irishtown lands in respect of which Mr Gilmartin claimed interference by Mr Lawlor and Mr Redmond in 1989.

4.12 Mr Gilmartin's response to such questioning was to state that having learned from his anonymous source that Mr O'Callaghan had made a payment of IR£40,000 to Mr Reynolds and, given the amount of money which had gone to Shefran Ltd from Barkhill Ltd in 1992, (money which was unaccounted for to Mr Gilmartin), he had surmised that the payment of IR£40,000 made by Mr O'Callaghan to Mr Reynolds had been channelled through Shefran Ltd.

4.13 Mr Gilmartin also testified that he had linked the claim that Mr Reynolds had received IR£40,000 to interference which he claimed had occurred in relation to his attempt to acquire lands from Dublin Corporation because, as he claimed, Mr O'Callaghan had boasted to him that Mr Reynolds was on his *'payroll'*. Mr Gilmartin claimed that, after he told Mr O'Callaghan that officials (within Dublin Corporation/Council) had withdrawn an option previously given to him to purchase Corporation lands, in light of an interest being expressed by the IDA in those lands, Mr O'Callaghan told him that *'Albert seen to that'*. Mr Gilmartin had taken this statement to mean that Mr Reynolds had intervened in his efforts to acquire the lands in question, at the behest of Mr O'Callaghan.

4.14 While so testifying Mr Gilmartin also continued to assert that he had been informed by his anonymous source that the alleged provision of IR£40,000 by Mr O'Callaghan to Mr Reynolds had been made in connection with Mr O'Callaghan's efforts to obtain tax designation status for *'Golden Island*'.

4.15 Mr Gilmartin stressed to the Tribunal that while Mr O'Callaghan had told him that he had paid IR£150,000 to Mr Reynolds on 11 March 1994, and had stated to him on a number of occasions, that Mr Reynolds was on his *'payroll'*, Mr O'Callaghan had never specifically stated to him that he had bribed Mr Reynolds in relation to any matter.

MR REYNOLDS' RESPONSE TO MR GILMARTIN'S CLAIM THAT HE RECEIVED IR£40,000 FROM MR O'CALLAGHAN

4.16 In the course of his 20 April 2007 statement Mr Reynolds stated the following:

> *I am asked to comment on a further allegation by Mr Gilmartin that a sum of £40,000 was paid to me. Again there is absolutely no truth in this allegation and I never received any payment whatsoever from Mr Owen O'Callaghan as suggested* [by] *Mr Gilmartin or otherwise.*

4.17 Mr Reynolds also stated:

> *I am concerned that such further statements had been requested of me, particularly in light of the clarification and narrative statement furnished*

to the Tribunal in January 2006. It is particularly noteworthy that Mr Gilmartin does not provide any grounds of any nature whatsoever to substantiate the false allegations. I take grave exception to these allegations made by Mr Gilmartin and request your confirmation that my statements have been recorded in full and with the same vigilance as the spurious, unfounded, defamatory and untrue allegations and misstatements made by Mr Gilmartin.

MR O'CALLAGHAN'S RESPONSE TO MR GILMARTIN'S CLAIM

4.18 In the course of his evidence on Day 915 Mr O'Callaghan denied that he had ever stated or intimated to Mr Gilmartin that Mr Reynolds was on his payroll or that he told Mr Gilmartin that Mr Reynolds had intervened at his behest to thwart Mr Gilmartin's attempts to purchase lands in the ownership of Dublin Corporation. Mr O'Callaghan denied that he had ever paid or authorised payment of any sum of money to Mr Reynolds in this regard or in any other regard. He said he did not pay Mr Reynolds IR£40,000 via Shefran or otherwise and he categorically denied that he had ever paid Mr Reynolds any monies (including a sum of IR£40,000) in relation to the issue of tax designation for Golden Island[18] or for any matter.

MR GILMARTIN'S CLAIM THAT HE WAS INFORMED OF OFFSHORE PAYMENTS MADE TO MR REYNOLDS BY MR O'CALLAGHAN

5.01 In the course of his telephone conversation with a former Counsel to the Tribunal on 26 September 2002, Mr Gilmartin was recorded, *inter alia,* as having stated: *'Owen O'Callaghan made offshore payments to politicians including Bertie Ahern and Albert Reynolds'* and that Mr Reynolds had *'accounts in Jersey, Liechtenstein and the Dutch Antilles.'*

5.02 In the memorandum Mr Gilmartin was recorded as having informed Tribunal Counsel that the source of this information was a *'banker'* in the UK with whom he had had two telephone conversations. Counsel for the Tribunal also recorded that Mr Gilmartin '*declined to tell me the identity of the person concerned because this person was extremely anxious not to become involved with the Tribunal although he did want to help Mr Gilmartin.'*

5.03 In the course of cross-examination on Day 764 by Counsel for Mr O'Callaghan, Mr Gilmartin stated that he received two calls within a week, in or about September 2002, from this *'banker'* source. Mr Gilmartin stated that

[18]The statutory instrument (SI No 422 of 1994) granting tax designation status to Golden Island was signed by government ministers (Mr Michael Smith and Mr Bertie Ahern) on 14 December 1994.

following the second call he had himself dialled the number which had come up on his telephone. He had done this because he had concerns that what he had been told might have been a *'spook story'*. Mr Gilmartin told the Tribunal that when his telephone call was answered by a person who claimed to do so on behalf of the Bank of Ireland, Jersey, his understanding was that he had in fact contacted that particular location in Jersey hence his assumption that his caller was a *'banker'*.

5.04 Questioned as to why, in the course of giving testimony on this matter on Day 732, he had made reference to a named individual, Mr Gilmartin stated that he did so (and had given this person's name to the Tribunal in the course of telephone calls made by him) only in the context of identifying an individual whom he understood was connected to the Bank of Ireland, Jersey. Mr Gilmartin stated that he was unable to confirm that this was in fact the individual who had telephoned him in the first place. Mr Gilmartin stated that he passed on to the Tribunal the information he received from the person who had telephoned him in September 2002, after he had received the second telephone call. Mr Gilmartin told the Tribunal that he could not now recall the telephone number in question, nor had he retained his telephone bills.

MR GILMARTIN'S ALLEGATION OF INTERFERENCE BY MR REYNOLDS IN HIS UK REVENUE AFFAIRS

6.01 In the memorandum of 22 October 1998, compiled following a telephone call from Mr Gilmartin, Counsel for the Tribunal noted, *inter alia*, as follows:

> *Tom Gilmartin mentioned to the bank that he was negotiating with the Revenue in England for a claim they had for £7,000 in relation to his development in Northern Ireland. He mentioned this to Mary Basquille of the bank. She was Michael O'Farrell's assistant.*
>
> *A week after he mentioned this to the bank, he was raided by the English Revenue at his home in Luton. Tom Gilmartin believes that the bank told O'Callaghan and that he got Albert Reynolds to set matters in motion with the English Revenue.* [19]

6.02 On Day 732 when questioned about what he had advised Tribunal Counsel on 22 October 1998 Mr Gilmartin stated:

> *'I was going on something that the gentleman from the Revenue that came to raid, came back sometime later and apologised sometime later*

[19] In notes compiled by Mr Pádraig Flynn in the course of a telephone call made by him to Mr Gilmartin in September 1998 the following appears: '*tax put writ on home for 10 million.' 'Dunlop and Callaghan to papers' 'I told AIB' 'Revenue tried even to take house'* and '*Albert Reynolds had a hand in this too'* and '*Callaghan ran to Albert with every problem he had with me.'*

and apologised for what happened and also to assure me that he—that they had nothing whatsoever to do with the media arriving on the day they arrived' and *'he also said that the information supplied to them came from Dublin and he told me they came from a very high source. He mentioned the Ministry of Finance and I—Albert, since O'Callaghan was always bragging about it . . . I presumed that he was that the reference was made to Albert.'*

6.03 Mr Gilmartin acknowledged to the Tribunal that no one, including Mr O'Callaghan, had ever suggested an involvement on the part of Mr Reynolds in Mr Gilmartin's UK Inland Revenue affairs and he acknowledged that his supposition in this regard had been based on words he claimed had been uttered by the gentleman who had called to his home (a Mr Lyons) and on what Mr Gilmartin himself, as he claimed, had been told by Mr O'Callaghan on occasions, namely that Mr Reynolds was on his *'payroll'*. These factors led Mr Gilmartin, in effect, to *'presume'* an involvement by Mr Reynolds in his UK Revenue affairs.

MR O'CALLAGHAN'S RESPONSE TO MR GILMARTIN'S CLAIM

6.04 In his 25 April 2007 statement, under the heading *'Pursuit of Tom Gilmartin by Inland Revenue in the UK'* Mr O'Callaghan stated that he:

...had absolutely no involvement in, or knowledge of, Mr Gilmartin being petitioned for Bankruptcy by the English Revenue authorities. I knew nothing whatsoever of this issue until it was drawn to my attention by Frank Dunlop following its publication in a British tabloid in May 1991.

MR REYNOLDS' POSITION

6.05 In the course of his 20 April 2007 statement, in response to having been asked to comment on the allegation that he '*set matters in motion with the English Revenue'* regarding Mr Gilmartin's tax affairs, Mr Reynolds stated: *'I never had any dealings whatsoever with the tax affairs of Mr Gilmartin. The allegation that I 'set matters in motion with English Revenue' is totally and utterly untrue.'*

6.06 There was no evidence before the Tribunal to suggest any involvement of any nature by Mr Reynolds in Mr Gilmartin's UK tax affairs nor did the Tribunal find any basis for Mr Gilmartin's supposition in this regard.

MR GILMARTIN'S ALLEGATION OF A THEFT OF IR£1M FROM BARKHILL LTD

7.01 The notes taken of Mr Gilmartin's telephone call to the Tribunal on 26 September 2002 included the following statements by him: *'Over £1 million was stolen from Barkhill and it was from this money that O'Callaghan paid Bertie Ahern and Albert Reynolds'.*

7.02 Mr Gilmartin told the Tribunal that this figure was simply his own estimate of the money which had been *'embezzled'* from Barkhill Ltd.

7.03 When challenged, in the course of his sworn evidence, to withdraw this allegation, Mr Gilmartin declined to do so. He told the Tribunal that in compiling this figure he had included the *'hundred and some thousands of pounds to Lawlor, the quarter of a million or 300,000, whatever it was to Mr Dunlop*'. Mr Gilmartin also stated *'that money was stolen, it was embezzled, without my authority, from my company and paid out in corruption money'*.

7.04 Both Mr Reynolds and Mr Ahern denied receiving any money from Mr O'Callaghan.

MR GILMARTIN'S CLAIM OF AN INVOLVEMENT BY MR REYNOLDS IN BLOCKING TAX DESIGNATION FOR THE BLANCHARDSTOWN TOWN CENTRE DEVELOPMENT

8.01 In the course of his telephone call to Tribunal Counsel on 26 September 2002, in the context of a claim of an involvement by Mr Ahern in the *'blocking of tax designation for the Green Property Company',* Mr Gilmartin said that *'John Corcoran was on the brink of getting tax designation. However it was blocked by Bertie Ahern and Albert Reynolds.'*[20]

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO MATTERS CONCERNING MR ALBERT REYNOLDS

MR GILMARTIN'S ALLEGATIONS

THE CORK FUNDRAISING DINNER AND THE £150,000 CLAIM

9.01 The Tribunal was satisfied that Mr Reynolds was not the recipient of a IR£150,000 payment from Mr O'Callaghan on the 11 March 1994, or on any other occasion.

[20] Mr Flynn compiled notes in the course of a telephone call he made to Mr Gilmartin on 26 September 1998 and noted Mr Gilmartin as having made reference to an involvement by Mr Reynolds in the blocking of tax designation for Blanchardstown/Green Property Ltd.

9.02 The Tribunal was satisfied having regard to the events of March 1994, that at that time, Mr O'Callaghan relayed to Mr Gilmartin information concerning Mr Reynolds' attendance at a private dinner in Cork on 11 March 1994. Moreover, the Tribunal was satisfied, as a matter of probability, that in the context of relaying this information to Mr Gilmartin, Mr O'Callaghan may well have either directly stated or intimated to Mr Gilmartin that Mr Reynolds' attendance in Cork at the time in question was connected to fundraising activities then being conducted by Fianna Fáil. The Tribunal was satisfied that this information was given to Mr Gilmartin by Mr O'Callaghan at that time and it was satisfied that Mr Gilmartin relayed this information to the Tribunal as early as February 1998, and that he had no other source for this information than Mr O'Callaghan.

9.03 However, the Tribunal did not believe it likely that Mr Gilmartin, as he claimed, was told by Mr O'Callaghan of an overall amount paid or collected at the dinner. The Tribunal noted that the first reference by Mr Gilmartin to a specific sum connected with the events of March 1994 was made in the course of a telephone conversation with Tribunal Counsel on 25 November 1999, some 20 months following Mr Gilmartin having first advised the Tribunal of the March 1994 event, and some three months or so after reference was made in the media to a '*Reynolds dinner party'* which it was claimed made '*£150,000'.* Given that no sum had been attributed to Mr O'Callaghan by Mr Gilmartin prior to 25 November 1999, either in his dialogue with the Tribunal in February 1998 or with his then solicitor Mr Noel Smyth in May 1998, the Tribunal took the view that as a matter of probability insofar as Mr Gilmartin alluded to a figure of IR£150,000 it was probably because he had learned of the figure from media reports.

9.04 The Tribunal was satisfied, however, that in March 1994 Mr O'Callaghan did inform Mr Gilmartin of the identities of at least some of the attendees at the dinner, and of his own contribution of IR£10,000, and that as a consequence of being so informed, Mr Gilmartin was left with the belief that a very substantial sum was, in total, collected in the course of the event.

9.05 The Tribunal accepted the truth, in general, of Mr Gilmartin's often repeated allegation that Mr O'Callaghan was inclined to claim (and on occasion boast) that he had paid substantial sums to politicians including Mr Bertie Ahern, Mr Albert Reynolds, Mr Liam Lawlor and Cllrs McGrath and Gilbride. Evidence to the Tribunal established that Mr Lawlor and both councillors (in addition to Cllr G. V. Wright and indirectly others) were indeed the recipients of substantial payments from Mr O'Callaghan.[21]

[21] See part 10 of this chapter, and in particular the Tribunal's consideration of the evidence of Mr Eamon Dunphy.

9.06 Having regard to the general thrust of what Mr Gilmartin conveyed to the Tribunal in 1998, and while particular details given by him about the Cork event were inaccurate (for example his reference to the fundraising dinner having taken place in Mr O'Callaghan's house, as opposed to Mr Welch's house) other details given by Mr Gilmartin to the Tribunal on 5 February 1998, and to his then solicitor Mr Smyth on 20 May 1998, were largely consistent with events involving Mr Reynolds which did in fact take place over the course of 11 and 12 March 1994, in particular, that he attended at an event in Cork, travelled to, and departed from Cork in a helicopter, and that on the following day he travelled to the USA in connection with the St Patrick's Day festivities.

9.07 Generally, therefore, in the context of events which have been established as a matter of fact by the Tribunal to have taken place on 11/12 March 1994, the Tribunal was satisfied that within a short time thereafter, Mr O'Callaghan apprised Mr Gilmartin of those events and in all probability mentioned that a collection had taken place at the dinner (as in fact it had). The Tribunal believed it quite possible that information which Mr O'Callaghan conveyed to Mr Gilmartin concerning a substantial donation to the Fianna Fail Party was interpreted (albeit erroneously) by Mr Gilmartin as information that Mr Reynolds was the beneficiary of the fundraising event held on the 11 March 1994. It was certainly the case that the Fianna Fáil Party was a beneficiary of the fundraising event.

9.08 The Tribunal was satisfied that the primary purpose of the private dinner held in Cork on 11 March 1994 at which Mr Reynolds, the then Taoiseach, attended, was to raise funds for the Fianna Fáil Party from wealthy Cork-based businessmen.

9.09 The Tribunal was satisfied that the main organisers of the event were Mr Welch, Mr O'Callaghan and Mr Richardson.

9.10 The Tribunal was satisfied that many of those who attended were advised, prior to their attendance at the dinner, that their expected contribution was IR£5,000, and that they duly paid such sums. The known exceptions were Mr O'Callaghan, who contributed IR£10,000, and Mr Ed O'Connell who contributed IR£6,000.

9.11 For reasons unknown, and contrary to normal practice, no record of the contributors whose donations comprised the two lodgements made to the Fianna Fail bank account on the 14 March 1994, was maintained by Mr Richardson, the person, it would appear, whose responsibility this was. The Tribunal rejected Mr Richardson's assertion that he would have forwarded to Fianna Fáil *'the page of names and amounts'* in respect of the event of the 11

March, 1994. Had such information been passed to Fianna Fáil headquarters, then that party should have been in a position to provide such information to the Tribunal on discovery. Indeed it would appear that the Fianna Fáil Party, the recipient of the two IR£25,000 lodgements on 14 March 1994, was entirely unaware of the identity of the persons whose contributions comprised the lodgements. As it happened, it was the Tribunal that established for Fianna Fáil the identities of eight of the donors. It was also certainly the case, and indeed it followed as a matter of logic, that no receipt or acknowledgment letters were provided to the eight individuals duly identified by the Tribunal. It appeared that only Messrs Donnolly, Mitchell and Ronayne, whose contributions were made subsequent to the events of 11 March 1994, received receipts and/or written acknowledgements in relation to their contributions. The mystery as to the identity of the person or persons who provided the IR£4,000 cash included in one of the lodgements remains.

THE USA FUNDRAISING TRIP ALLEGATION

9.12 There was no evidence to support Mr Gilmartin's contention (albeit based on information he said was provided to him) that, following a fundraising trip to the USA by Mr Albert Reynolds only portion of the funds collected was lodged to the accounts of Fianna Fáil, with the remainder being lodged into offshore accounts in the Dutch Antilles and in Liechtenstein.

THE IR£40,000 CLAIM

9.13 The evidence before the Tribunal did not establish that Mr Reynolds received a payment of IR£40,000 from Mr O'Callaghan (either through Shefran or otherwise).

9.14 While the Tribunal believed that Mr Gilmartin was provided with information which led him to believe that Mr Reynolds had been paid IR£40,000 by Mr O'Callaghan, it was unable to determine the actual information conveyed to him, or indeed, the identity of the source or sources of that information. It was likely, as a matter of probability, that Mr Gilmartin conflated information (irrespective as to its truth) provided to him by Mr O'Callaghan and other sources, relating to the payment of money to Mr Reynolds, resulting in, in particular, Mr Gilmartin providing the Tribunal with a confused and unreliable account of the information which was actually provided to him.

THE OFFSHORE ACCOUNTS CLAIM

9.15 The Tribunal accepted Mr Gilmartin's evidence that he was informed by a third party, probably, as he maintained, by an individual he believed was a UK-based banker, that Mr Reynolds had offshore accounts, and had received money into them from Mr O'Callaghan. However, the Tribunal did not hear evidence which satisfied it as to the truth of the information which was furnished to Mr Gilmartin.

THE UK REVENUE ISSUE

9.16 While the Tribunal accepted that Mr Gilmartin genuinely suspected that Mr Reynolds had played a role in relation to his difficulties with the UK Revenue, or to its revelation in the media, the Tribunal heard no evidence which indicated that Mr Reynolds had been involved in any way in relation to the matter.

THE IR£1M THEFT FROM BARKHILL ALLEGATION

9.17 The Tribunal was satisfied that Mr Gilmartin's allegation that over IR£1m had been '*stolen'* or '*embezzled'* from Barkhill, was not established in evidence heard by it. The Tribunal has, however, made findings in this Chapter, that substantial sums of Barkhill's money[22] were used, at the instigation of Mr O'Callaghan, to make corrupt payments to politicians (directly or indirectly).

9.18 The Tribunal was satisfied that this allegation was made by Mr Gilmartin, against the backdrop whereby substantial sums of Barkhill Ltd's money had been paid out from its accounts to, amongst others, Mr Dunlop, and against a backdrop whereby, in respect of certain payments made to Mr Dunlop/Shefran, Barkhill Ltd became indebted to Riga Ltd. Mr Gilmartin suspected that the purpose of the payments to Mr Dunlop was for ongoing disbursement to councillors. The Tribunal has found as a fact that the substantial portion of the IR£80,000 paid by Riga Ltd to Mr Dunlop in 1991 was used, in addition to other funds available to Mr Dunlop at this time, to fund payments to councillors, including a substantial payment of IR£40,000 to Mr Lawlor. Mr Gilmartin's allegations were further fuelled by substantial demands of money having been made of him by politicians and others (including Mr Lawlor, Mr George Redmond — via Mr Lawlor, Cllr Finbarr Hanrahan, an unidentified individual in Leinster House and Mr Pádraig Flynn — for Fianna Fáil.

[22] Including funds paid on behalf of Barkhill, and which were subsequently reimbursed by Barkhill

THE BLANCHARDSTOWN TAX DESIGNATION ALLEGATION

9.19 There was no evidence that Mr Reynolds '*blocked*' tax designation for Blanchardstown.

9.20 The Tribunal was satisfied that the reference to same by Mr Gilmartin was in the context of his allegation that Mr O'Callaghan had informed him that he, Mr O'Callaghan, had paid IR£30,000 to Mr Bertie Ahern in relation to the issue of tax designation for Blanchardstown and Quarryvale.

CHAPTER TWO – THE QUARRYVALE MODULE – PART 8

EXHIBITS

1. Cheque dated 11 March 1994 from Mr O'Callaghan to Fianna Fail.....1213

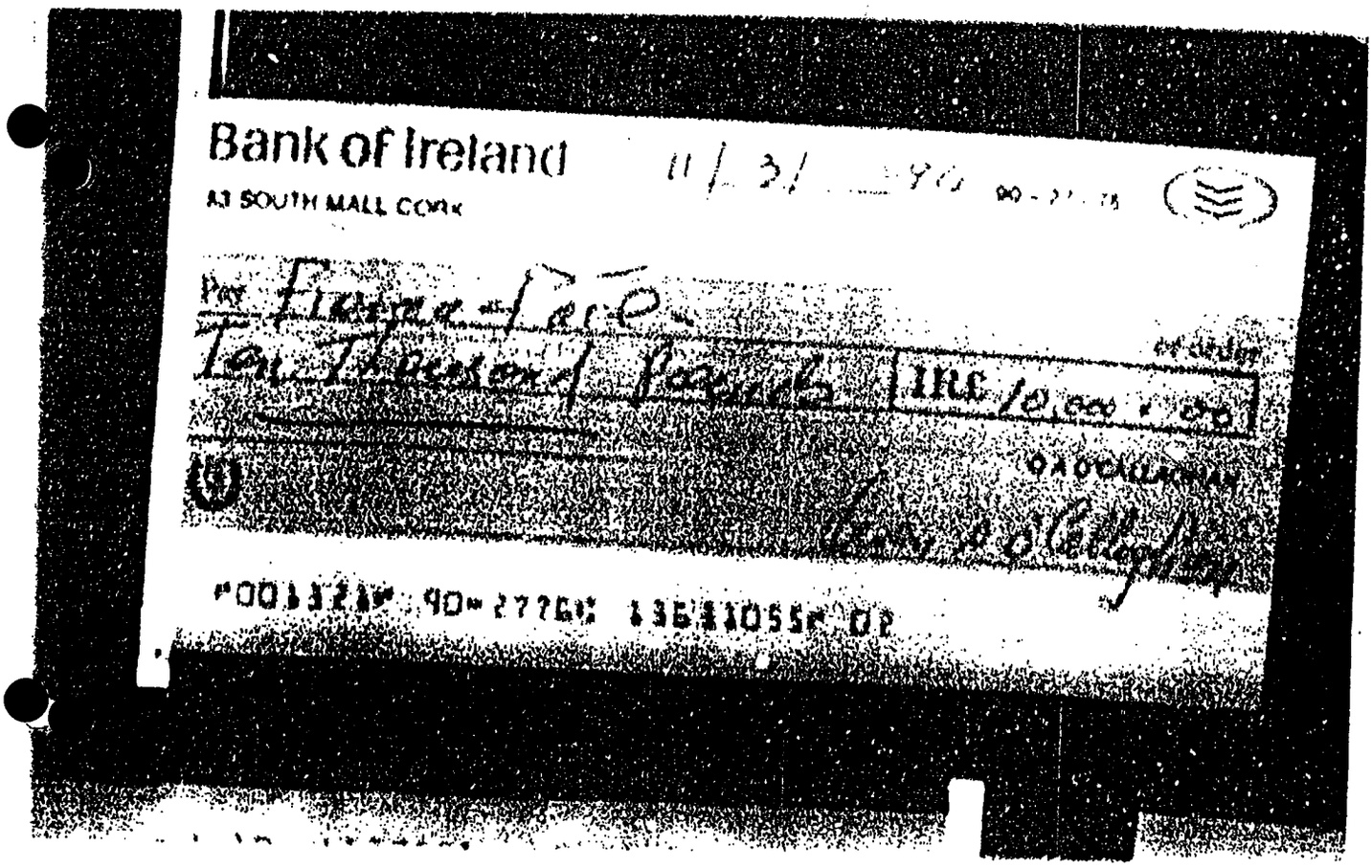
2. Letter from Mr Ahern to Mr Niall Welch dated 16 March 1994.....1215

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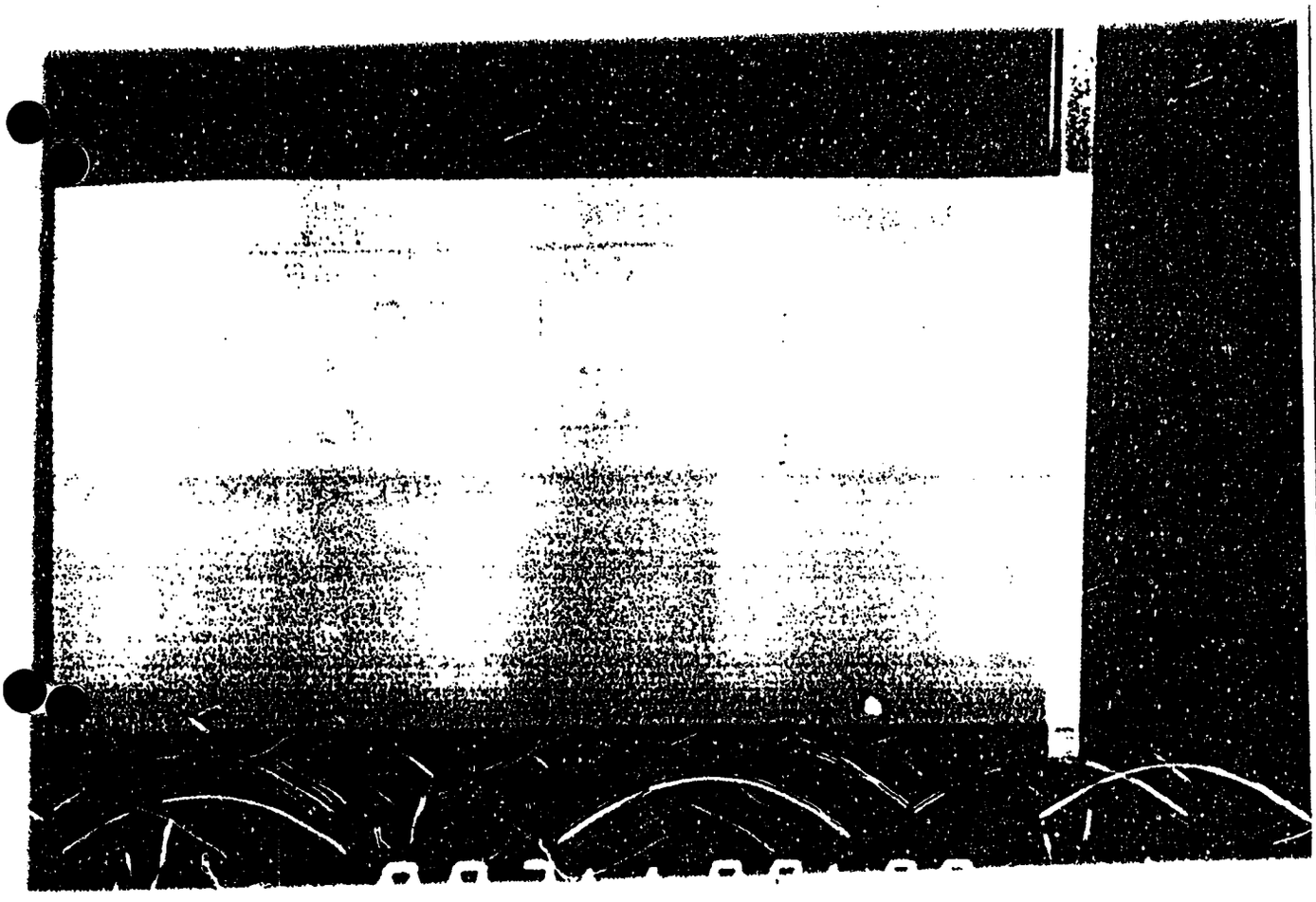


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16th March 1994

Mr Niall Welch
Welch & Co.
Chartered Accountants
70 Patrick Street
Cork

Dear Niall,

Many thanks to yourself and your wife Eileen for organising and hosting such a successful evening on Friday 11th March last.

From my brief conversation with the Taoiseach and Des Richardson an excellent evening was enjoyed by all present.

I would like to thank you most sincerely for your time and effort in making the evening such a success, your support is very much appreciated.

Once again many thanks and sincere personal regards.

Yours sincerely

Bertie Ahern TD
Minister for Finance
(Chairman National Finance Committee)

CHAPTER TWO – THE QUARRYVALE MODULE

PART 9 - MR LIAM LAWLOR'S INVOLVEMENT IN QUARRYVALE AND RELATED MATTERS[1]

MR LAWLOR'S EARLY INVOLVEMENT IN QUARRYVALE[2]

1.01 Evidence to the Tribunal suggested that Mr Lawlor's first involvement with the Quarryvale lands was his meeting with Mr Gilmartin in the Deadman's Inn, a public house near Lucan in Co. Dublin, in May 1988.

1.02 Mr O'Callaghan and Mr Lawlor first met in the 1980s in Cork. At that time, Mr Lawlor was both an elected Dublin county councillor and a Fianna Fáil TD for West Dublin. Their contact relating to a development in Dublin (unrelated to Quarryvale) probably dated from approximately 1988. Mr O'Callaghan recalled attending a function in North Clondalkin and receiving expressions of support for the proposed development at Neilstown from local councillors including Mr Lawlor, Cllr Hanrahan and Cllr Ridge. Mr O'Callaghan also recalled being advised by Mr Lawlor in November 1988 that he and Mr Gilmartin were '*heading into a bit of a mess*', a reference to Mr O'Callaghan's Neilstown site and Mr Gilmartin's Quarryvale site.

1.03 The Tribunal was satisfied (as set earlier in this Chapter) that Mr Lawlor was instrumental in ensuring that Mr O'Callaghan and Mr Tom Gilmartin would meet and discuss a partnership in relation to the Quarryvale lands. Mr O'Callaghan and Mr Gilmartin met in December 1988, and by December 1990 it had been agreed that Mr O'Callaghan would have an involvement in Quarryvale and a shareholding in Mr Gilmartin's company, Barkhill.[3]

1.04 Mr O'Callaghan frequently acknowledged Mr Lawlor's invaluable assistance and advice in relation to Quarryvale. However, at the same time, he sought to ensure the secrecy of his association with Mr Lawlor. He was concerned that any known link with Mr Lawlor might damage the project and in particular might adversely affect the land's rezoning and development prospects.

1.05 The Tribunal was satisfied that Mr Lawlor was, by December 1990, aware of Mr O'Callaghan's increasing engagement with Mr Gilmartin and the Quarryvale project and that by the time the second '*Heads of agreement'* was signed on 15

[1] For a detailed account of Mr Lawlor's involvement with Mr O'Callaghan in the Neilstown stadium see Part 6 of this Chapter.

[2] Important aspects of Mr Lawlor's early involvement with Quarryvale, and his contacts with Mr Gilmartin and Mr O'Callaghan between 1988 and 1990 are reviewed earlier in this Chapter.

[3] A 'Heads of Terms' agreement dated 14 December 1990 was signed by Mr Gilmartin, Mr O'Callaghan and AIB (see Part 4 of this Chapter).

February 1991, he was proactively engaged with Mr O'Callaghan in promoting the project to have the Quarryvale lands rezoned.

1.06 Between 15 and 18 February 1991 Mr Lawlor lodged a motion with Dublin County Council, which had probably been drafted by him, and which was signed by Cllr Colm McGrath. This motion sought, in effect, to alter the zoning of the Neilstown lands from '*town centre'* to '*industrial and related uses'*, and was prepared on the instructions of Mr O'Callaghan and his business partner Mr Deane. The County Council did not accept the motion because it was out of time.

1.07 On 18 February 1991, Mr Lawlor provided Mr O'Callaghan with a copy of this motion and he advised Mr O'Callaghan that he was in the process of preparing a strategy plan for the Quarryvale rezoning project in relation to:

A. County Council management,

B. Corporation management,

C. Elected members,

D. Community and Residents' Associations,

E. National and Local Media…

1.08 On 19 February 1991 Mr O'Callaghan faxed to Mr Kay of AIB a copy of the motion and of the points of Mr Lawlor's strategy plan to be attended to, as well as a copy of the County Council agenda. Mr O'Callaghan was recorded as telling Mr Kay that Mr Lawlor had advised him to meet various County Council officials and elected councillors and that he suggested that this be done in the company of Mr Gilmartin. It was clear from the fax that Mr O'Callaghan intended to follow this advice.

1.09 On 26 February 1991, Mr Lawlor's '*strategic plan'* in relation to Westpark[4] was provided to Mr O'Callaghan. In brief the '*strategic plan'* indicated that:

- The Quarryvale re-zoning motion was likely to be rescheduled for 7 or 22 March 1991;
- The motion to '*de-zone'* Neilstown had not been accepted by the County Council because it was out of time;
- Mr O'Callaghan should inform senior management within the County Council that '*it is proposed by joint venture that Owen O'Callaghan will now pioneer the Westpark proposal and will negotiate a suitable arrangement with the Dublin Corporation to withdraw from pursuing the town centre proposal on the Fonthill site.'*[5]
- It was '*also important after these consultations to formally inform the County Council Chairman so that the elected members can fully*

[4] Another name for Quarryvale.
[5] Another name for the Neilstown lands.

understand the Westpark situation. At the moment community groups are actively lobbying for the Fonthill project and have objected to the board on the Paper Mills site. The situation at Westpark can be turned into a political football unless it is handled positively and in advance of the motion coming up for discussion in the Council to place town centres only on the Westpark lands.'

1.10 Mr Lawlor also advised Mr O'Callaghan to appoint a planning team, an investment consultant, and to agree a media strategy and a time programme for the project. Mr Lawlor advised Mr O'Callaghan that, 'w*ith such a contentious motion presently on the County agenda and Local Elections now scheduled for mid June it is important* (that) *decisive action is taken*.'

1.11 Mr O'Callaghan was also warned by Mr Lawlor of the complications for the Quarryvale project that would follow if Merrygrove Ltd was to receive planning permission for a town centre on the Fonthill site.[6]

1.12 Mr Lawlor advised Mr O'Callaghan to engage in a '*discussion with Ambrose Kelly to endeavour to ensure no decision is granted' (*something which Mr O'Callaghan said he was already aware of).

1.13 Mr O'Callaghan told the Tribunal that Cllr Marian McGennis arranged a meeting on 13 May 1991 between Mr John Corcoran of Green Property plc[7] and his advisor Mr Garth May with Cllr Tommy Boland, the then Chairman of Dublin County Council, at which Mr Lawlor together with Councillors Ned Ryan and McGennis attended. Mr Corcoran and Green Property, who were pursuing their own development project in Blanchardstown, were opponents of the re-zoning and development of Quarryvale.

1.14 Mr Corcoran's evidence was that in the course of that meeting he was given to understand that Cllr McGrath's motion to rezone Quarryvale, which had been lodged with the County Council on 15 February 1991, and which was scheduled for determination by the councillors on 16 May 1991, was to be amended so as to ensure the future of the Blanchardstown Town Centre. Mr Corcoran's principal concern at this time was the scale of the proposed retail aspect of Quarryvale.

[6] Merrygrove Ltd had obtained planning permission for the Fonthill/Neilstown lands in 1990, and was at this time waiting the results of an appeal to An Bord Pleanála in relation to certain conditions attached to that planning permission. This planning application was withdrawn on 28 May 1991.

[7] Green Property Company plc was the developer of the Blanchardstown town centre, situated less than 2 miles distance away from the Quarryvale lands.

1.15 On 14 May 1991, Mr Corcoran wrote to Cllr McGennis furnishing her with a text of a revised motion (which Mr Corcoran believed reflected the agreement which had been reached at the meeting of 13 May 1991). On 15 May 1991 (the eve of the scheduled Quarryvale rezoning vote), Mr Corcoran advised the Council Chairman of his understanding that '*a new motion is being drafted in connection with moving the Neilstown site to the Quarryvale site and I am happy with this*.' It was likely that, on 15 May 1991 Mr Corcoran believed that the changes that would be made to Cllr McGrath's original motion would reflect the contents of the draft motion as furnished by him to Cllr McGennis. This motion read as follows:

> *Dublin County Council hereby resolves that within the area of land at Palmerston Quarryvale comprising approximately 176 acres between Fonthill Road and the Western Parkway an area of land be re-zoned for retail/civic uses to provide Town Centre facilities consistent with the strategic requirement of the Lucan/Clondalkin area as set out in the County Council's Development Plan. The Planning Department shall define the location, access, acreage and square footage necessary to provide town centre facilities for Clondalkin/Lucan compatible with the 1972, revised in 1983, County Development Plan.*

1.16 As matters transpired, the amendment made on 16 May 1991 to Cllr McGrath's Quarryvale motion, and which was voted on and passed leading then to Cllr McGrath's substantive Quarryvale motion (as amended) being put to a vote and passed successfully did not ease Mr Corcoran's concerns as to the likely impact that a Quarryvale Town Centre might have on Blanchardstown According to the contents of Mr Corcoran's letter of 14 June 1991 to Cllr McGrath, on 16 May 1991 and immediately prior to the County Council rezoning meeting, Mr Lawlor had shown him the amendment to the McGrath motion which simply sought to restrict the retail development permissible on the Quarryvale site to that which had been provided for in the 1983 Development Plan in relation to the Neilstown lands. Mr Corcoran told the Tribunal that the proposed amendment did not reflect what Mr Corcoran believed had been agreed to at the meeting of 13 May, 1991 and therefore did not go far enough to protect the interests of Green Property plc. Mr Corcoran stated that the effect of the proposal would be the end of the construction of the Blanchardstown development.

1.17 On 16 May 1991, Mr Lawlor, who was then an elected county councillor, supported the motion to re-zone Quarryvale, as amended. The Tribunal believed it likely that Mr Lawlor exerted his considerable influence as the senior political representative in the Quarryvale area to persuade a number of his fellow councillors to support the Quarryvale motion, and the Quarryvale rezoning project generally.

1.18 According to Mr Corcoran, he and Mr Lawlor '*fell out'* after the Quarryvale re-zoning motion on 16 May 1991. Mr Corcoran claimed that Mr Lawlor had misled him in relation to the Quarryvale re-zoning proposal, and in particular in relation to the nature of the amendment that would be made to Cllr McGrath's Quarryvale motion.

1.19 Evidence to the Tribunal established that in February 1991, at a time when Mr Lawlor was assisting Mr O'Callaghan in promoting the interests of Quarryvale, he also billed Green Property Plc for IR£10,000 using a fictitious business name (Comex Trading Corp) to receive the payment.[8] Mr Corcoran stated that he was unaware at the time that Mr Lawlor was also advising Mr O'Callaghan.

1.20 Mr O'Callaghan and Mr Dunlop both testified that notwithstanding the loss of his County Council seat in the June 1991 Election, Mr Lawlor continued to play a vital and strategic role in relation to the Quarryvale rezoning in the lead up to the second vote which took place on 17 December 1992 and beyond. Moreover by mid 1992 Mr Lawlor was also centrally involved in the Neilstown stadium project, not just as a strategist but also on the basis that he was to receive an interest in the venture.[9] Mr Dunlop's diary entries and office telephone records for the years 1992[10] and 1993[11] indicated the extent of Mr Lawlor's contact with Mr Dunlop over a prolonged period of time, much of which almost certainly related to Quarryvale (and the stadium project).

1.21 After the vote to rezone Quarryvale on 16 May 1991, the issues which were exercising the minds of Mr O'Callaghan, Mr Dunlop and Mr Lawlor included:

- The campaign conducted by Mr John Corcoran/Green Property to reverse the Quarryvale rezoning;
- The loss to the promoters of Quarryvale of the erstwhile Fianna Fáil support for Quarryvale within the County Council (a considerable number of Fianna Fáil councillors, including Mr Lawlor, having lost their Council seats in the Local Elections and Fianna Fáil having lost its majority on the Council);
- How best to win the support of newly elected councillors from all parties. In August 1991 Mr Lawlor provided Mr Dunlop with the names and addresses of all newly elected councillors in Dublin County Council and, according to Mr Dunlop, he and Mr Lawlor studied that list in order to identify those who would, or would not, support Quarryvale and those who might support Quarryvale '*on foot of inducements*';

[8] See Chapter Sixteen.
[9] See Part 6.
[10] 18 scheduled meetings, and 205 telephone messages to Mr Dunlop's office.
[11] 9 scheduled meetings, and 190 telephone messages to Mr Dunlop's office.

- How best to address the question of the Neilstown town centre site (the '*town centre*' designation having as of 16 May 1991 effectively been '*transferred*' to Quarryvale) so as to appease those councillors, community groups and County Council officials who favoured the retention of a town centre zoning for Neilstown (as provided for in 1983 Development Plan).

1.22 In the course of his evidence Mr O'Callaghan credited Mr Lawlor as being the person with the idea of a national stadium for the Neilstown site, in lieu of a town centre. Mr O'Callaghan also credited Mr Lawlor as one of two people (the other being Mr Albert Reynolds) who introduced Mr Bill O'Connor of the Los Angeles firm of Chilton O'Connor as possible financiers of the stadium project – a concept which by mid 1992 had evolved, on the recommendation of Mr O'Connor, to the concept of an '*all purpose national stadium*.'

1.23 Evidence given by a number of witnesses, including Mr O'Callaghan and Mr Dunlop, established to the satisfaction of the Tribunal that Mr Lawlor continued in his role as a strategist and political advisor to Mr O'Callaghan throughout the currency of the Quarryvale rezoning campaign.

MR LAWLOR'S INVOLVEMENT IN A MEETING ARRANGED BETWEEN MR DUNLOP, MR O'CALLAGHAN AND MR GILMARTIN, AND RELATED MATTERS

1.24 Mr Dunlop credited Mr Lawlor as the person who initiated his involvement with Mr O'Callaghan and the Quarryvale project. Mr O'Callaghan agreed that this was the case. According to Mr Dunlop, Mr Lawlor, at short notice, arranged a meeting between himself, Mr O'Callaghan and Mr Gilmartin in Mr Dunlop's office. Mr Gilmartin and Mr O'Callaghan agreed that a meeting, at some stage, took place in Mr Dunlop's office when Mr Lawlor was also present. There was however a substantial dispute between Mr Gilmartin, Mr O'Callaghan and Mr Dunlop as to when this meeting occurred. Mr Gilmartin dated the meeting as having taken place in late April 1991. Mr Dunlop maintained it had taken place on or before 22 January 1991, and Mr O'Callaghan maintained that he and Mr Gilmartin met Mr Dunlop towards the end of February 1991. Mr Gilmartin, Mr O'Callaghan and Mr Dunlop were however in agreement that there was only one occasion when all four met together in Mr Dunlop's office.

1.25 Insofar as Mr O'Callaghan maintained that he met with Mr Dunlop towards the end of February or in early March 1991, the Tribunal accepted that this may well have been the case, particularly having regard to the fact that Mr O'Callaghan, via Riga, became significantly involved in the Quarryvale rezoning subsequent to 15 February 1991 (the date of the signing of the second Heads of Agreement between Mr Gilmartin/Barkhill, Riga Ltd and AIB). The Tribunal could

not determine with certainty if Mr O'Callaghan and Mr Dunlop were known to one another prior to February 1991. Mr O'Callaghan maintained that the first time he met Mr Dunlop was in the latter's office in the presence of Mr Gilmartin and Mr Lawlor. Mr Dunlop placed his initial introduction to Mr O'Callaghan as having taken place in January 1991 and stated that Mr Gilmartin and Mr Lawlor were present. Mr Dunlop also maintained that this was his first meeting with Mr O'Callaghan. Neither Mr Dunlop nor Mr O'Callaghan could account for a reference to '*Owen O'Callaghan*' in Mr Dunlop's diary on 8 June 1990. Furthermore, Mr Gilmartin claimed that he saw Mr O'Callaghan together with Mr Dunlop and Mr Bertie Ahern in Dáil Eireann as early as 1989.

1.26 While there was no documentary record of any involvement on the part of Mr Dunlop, in his role as Quarryvale lobbyist, or of his having meetings with Mr O'Callaghan and Mr Gilmartin, either together or separately, until an entry in Mr Dunlop's diary for 25 April 1991, the Tribunal was satisfied, that Mr O'Callaghan and Mr Dunlop probably did meet in relation to the Quarryvale project in January or February 1991. The Tribunal accepted that Mr Lawlor may well have brought Mr O'Callaghan and Mr Dunlop together but it rejected as unlikely Mr Dunlop's and Mr O'Callaghan's evidence that Mr Gilmartin was present when they first met. The Tribunal was satisfied that as from late February 1991 there was probably a general understanding as between Mr O'Callaghan, Mr Lawlor and Mr Dunlop that Mr Dunlop would become involved in the Quarryvale rezoning as a lobbyist. By then, they knew that the Quarryvale rezoning vote was likely to be scheduled for debate in the County Council in or about March/April of 1991. Indeed Cllr McGrath's motion to rezone the Quarryvale lands was first listed for hearing for 26 April 1991. The Tribunal was also satisfied that Mr Dunlop's engagement as a lobbyist was formalised in late April 1991, probably on 26 April 1991[12]. On that date Mr O'Callaghan and Mr Deane were recorded in an AIB memorandum as having apprised Mr Donagh of AIB that they had retained Mr Dunlop '*to advise on media issues.*'

1.27 The Tribunal was also satisfied that Mr O'Callaghan and Mr Gilmartin, from 14 February 1991 onwards, on occasions, together and/or separately met with and spoke to councillors in relation to Quarryvale. Prior to this date, Mr Gilmartin had himself been in contact with a small number of councillors in relation to Quarryvale. As the vote on the rezoning motion drew closer (16 May 1991), contact with councillors in relation to Quarryvale was undertaken almost entirely by Mr O'Callaghan and his lobbyist Mr Dunlop.

[12] For details of Mr O'Callaghan and Mr Dunlop's financial arrangements see Parts 5 and 6 of this Chapter.

1.28 The Tribunal was not persuaded that Mr Gilmartin's first face to face introduction to Mr Dunlop occurred in either January or February of 1991. It was more likely that this occurred at a later stage and probably on 25 April 1991. Mr Dunlop's diary entry for that date led the Tribunal to the conclusion that this was the occasion when Mr Gilmartin was taken by Mr Lawlor and Mr O'Callaghan to Mr Dunlop's office. Mr Lawlor was at this time playing a critical role in organising and planning a strategy for Mr O'Callaghan to follow in order to achieve the rezoning of the Quarryvale lands.

1.29 While Mr Gilmartin's first meeting with Mr Dunlop probably took place on 25 April 1991, this was not the first contact between the two men. Both Mr Gilmartin and Mr Dunlop confirmed that in mid to late 1989 Mr Dunlop initiated contact by letter with Mr Gilmartin offering his services as a lobbyist in relation to Quarryvale. Mr Gilmartin declined the offer. Moreover, in 1989 Mr Dunlop had provided Mr Gilmartin with newspaper extracts relating to the Garda corruption investigation then underway and in which Mr Gilmartin had an initial involvement. Mr Dunlop stated that at the time he faxed these newspaper extracts to Mr Gilmartin he suspected that the Garda complainant referred to in the newspaper reports (although not named), was Mr Gilmartin and that the unnamed politician referred to was Mr Lawlor. Mr Dunlop also told the Tribunal that his initial contact with Mr Gilmartin in 1989 took place after Mr Lawlor had recommended to Mr Dunlop that he contact Mr Gilmartin.

1.30 Notwithstanding the scheduled meeting between himself, Mr Gilmartin and Mr O'Callaghan recorded in his diary for 25 April 1991, Mr Dunlop disputed that such a meeting had taken place on that date. Likewise, Mr O'Callaghan did not believe that he and Mr Gilmartin had met with Mr Dunlop on 25 April 1991. Both Mr Dunlop and Mr O'Callaghan agreed that, irrespective of when the first meeting between Mr Dunlop and Mr Gilmartin occurred, a subsequent meeting took place between Mr Dunlop and Mr O'Callaghan in Mr Gilmartin's absence, either on the day after or within a few days of this first meeting.[13]

1.31 Mr Dunlop's diary for 26 April 1991 recorded a meeting between himself and Mr O'Callaghan. Forensic analysis of the diary revealed that Mr Gilmartin's name also appeared in Mr Dunlop's diary for this date but had been the subject of a deliberate attempt by Mr Dunlop to obliterate it.

1.32 Mr Gilmartin and Mr O'Callaghan provided substantially different accounts as to how they ended up in Mr Dunlop's office in the company of Mr Lawlor.

[13] The Tribunal was satisfied that Mr O'Callaghan and Mr Dunlop met in the absence of Mr Gilmartin on 26 April 1991 (see Part 5 of this Chapter).

1.33 Mr Gilmartin told the Tribunal that having arrived early for a meeting at AIB Bank Centre in Ballsbridge, he met Mr O'Callaghan who requested that he accompany him to the Dail to meet a number of politicians. Mr Kay, according to Mr Gilmartin, encouraged him to accompany Mr O'Callaghan, and he agreed to do so.

1.34 Mr Gilmartin testified that en route to the Dáil, he and Mr O'Callaghan called to Buswells Hotel (opposite Leinster House), where they encountered Mr Lawlor. Mr Gilmartin said that he and Mr O'Callaghan then followed Mr Lawlor from the hotel through Leinster House and out into Mount Street whereupon they entered a building where they met Mr Dunlop in his office. Mr Gilmartin's impression at the time was that Mr Dunlop expected their arrival. On arrival into Mr Dunlop's office, neither he nor Mr O'Callaghan were formally introduced to Mr Dunlop. Mr Gilmartin said that it was his impression that Mr O'Callaghan and Mr Dunlop '*were familiar*' to each other.

1.35 Mr Gilmartin testified that no actual meeting took place between the four men or indeed between himself, Mr O'Callaghan and Mr Dunlop. He maintained that on entering Mr Dunlop's office he, for all intents and purposes, was left alone, while Mr Lawlor immediately departed into a back office, quickly followed by Mr Dunlop and Mr O'Callaghan. It was Mr Gilmartin's belief that a fourth unidentified person was also in that other office. Mr Gilmartin said that on occasions as he sat alone in the front office Mr Dunlop emerged briefly from the back office and then returned thereto.

1.36 Mr Gilmartin told the Tribunal that as he sat alone in the outer office an argument or heated discussion appeared to develop in the adjoining office, and that voices were raised. Mr Gilmartin said that he then left the office and proceeded to walk along the street outside when he was followed by Mr O'Callaghan who enquired of him as to why he had left Mr Dunlop's office. Mr Gilmartin said he responded to Mr O'Callaghan to the effect that he believed the meeting had been a '*set up'* and that he did not want any part of it. Mr Gilmartin said that as he and Mr O'Callaghan were engaged in this discussion on the footpath, a green Volvo car drew up, driven by Mr Dunlop. Mr O'Callaghan got into the car and Mr Gilmartin accepted an offer of a lift back to the AIB Bank Centre in Ballsbridge. Mr Gilmartin told the Tribunal that as he exited Mr Dunlop's car he overheard Mr Dunlop '*having a go at'* Mr O'Callaghan on the basis that Mr O'Callaghan had left him, Mr Dunlop, alone with Mr Lawlor. Mr Gilmartin said that Mr Dunlop had stated to Mr O'Callaghan that Mr Lawlor '*went for him'* because *'seemingly he was supposed to get 100,000. And he only got 40,000.'* Mr Gilmartin said that Mr O'Callaghan responded to Mr Dunlop to the

effect that he, Mr O'Callaghan, would '*try and square it'* by giving '*a bit more*' to Mr Lawlor.

1.37 Mr Gilmartin recounted that subsequent to this event when he queried Mr O'Callaghan as to what this was all about he was informed that Mr Lawlor '*was not happy with the money he was given*' and that Mr O'Callaghan '*had to go back and give him extra money.'*

1.38 Mr Gilmartin's evidence in relation to what occurred at the meeting and subsequently was disputed by both Mr Dunlop and Mr O'Callaghan.

1.39 Mr Dunlop said that Mr Lawlor had brought Mr Gilmartin and Mr O'Callaghan to his office for arrangements to be made to engage Mr Dunlop's professional services as a lobbyist for the Quarryvale project. Mr Dunlop said that the meeting in his office was dominated by Mr Gilmartin talking about his plans and ambitions for Quarryvale, and that there had been little input from Mr O'Callaghan. Mr Dunlop denied that any discussion had taken place between himself and Mr O'Callaghan in relation to Mr Lawlor or payments to Mr Lawlor. Mr Dunlop did however acknowledge that he had owned two green Volvo cars '*at some stage.'* Mr Dunlop denied that Mr Lawlor had made a demand for a payment of IR£40,000 or for any money at the meeting, or that there had been any discussions in relation to money at that meeting.

1.40 Mr Dunlop did however admit to having made a payment of IR£40,000 to Mr Lawlor, in relation to Quarryvale in May/June 1991, but maintained that neither Mr Gilmartin nor Mr O'Callaghan were present when such an arrangement had been agreed between himself and Mr Lawlor, or at the time of the actual payment to Mr Lawlor. Mr Dunlop maintained that Mr O'Callaghan was unaware of his arrangement to pay Mr Lawlor IR£40,000 or of any arrangements to pay money to Mr Lawlor.

1.41 Mr O'Callaghan told the Tribunal that the meeting in Mr Dunlop's office had been dominated by Mr Gilmartin and denied that Mr Gilmartin had left the meeting in the manner described by him or that Mr Gilmartin had accompanied Mr Dunlop and himself in Mr Dunlop's car to Ballsbridge subsequent to the meeting. Mr O'Callaghan denied that there was any discussion between himself and Mr Dunlop relating to payments to Mr Lawlor, or that he had indicated that he would pay any additional money to Mr Lawlor, in the manner described by Mr Gilmartin. Mr O'Callaghan also denied any knowledge of a payment of IR£40,000 having been made by Mr Dunlop to Mr Lawlor.

MR DUNLOP'S EVIDENCE RELATING TO THE PAYMENT OF IR£40,000 TO MR LAWLOR

1.42 On 19 April 2000 (Day 147), Mr Dunlop listed for the Tribunal the names of some sixteen councillors to whom, he alleged, he had made payments in the context of the Local Election campaign of May/June 1991. Mr Dunlop gave this information to the Tribunal to explain the purpose of certain withdrawals made by him from his 042 'war chest' account in 1991.

1.43 In his explanation to the Tribunal on Day 147 of the circumstances relating to a payment of IR£40,000 to Mr Lawlor, Mr Dunlop, in essence (although he did not name anyone publicly), told the Tribunal that a meeting had taken place in his office in April 1991 at which Mr O'Callaghan and Mr Gilmartin were present. It was on this occasion that Mr Dunlop said that he agreed to make the IR£40,000 payment to Mr Lawlor, although he did not say whether Mr O'Callaghan and Mr Gilmartin witnessed his discussion with Mr Lawlor.

1.44 On Day 147 Mr Dunlop said he agreed to pay IR£40,000 to Mr Lawlor because he was 'a *powerful individual*.' In the course of his evidence Mr Dunlop went on to explain that this '*powerful individual*' had not proceeded to play an '*electoral'* role in the Quarryvale issue subsequently. Mr Dunlop further apprised the Tribunal, on Day 147, that having made the agreement with Mr Lawlor in April 1991 to pay him money, he later paid over the IR£40,000 to him in the course of the Local Election campaign in 1991.

1.45 In his statement of December 2003 Mr Dunlop stated:

> *I gave Liam Lawlor 40,000 pounds in cash at my office at 25 Upper Mount Street, Dublin 2, in late May, early June, 1991, after the vote in Dublin County Council with regard to Quarryvale on 16th May 1991. Mr Lawlor was aware of the monies I was in receipt of at that time from Mr O'Callaghan. I had already agreed to pay him half my professional fee which he knew to be £100,000. He wanted £50,000. But by 30th May 1991, I had only received £65,000 although I had issued an invoice for the sum of £15,000 on or about 1st May 1991. And this was paid on or about 13th June 1991. I told Mr Lawlor that I had only received £65,000 and was due another payment of £15,000 shortly, making a total sum of £80,000. He then asked for £40,000. The £40,000 was in AIB sacking bags in a leather briefcase and I transferred the money into a plastic bag in the front office on the first floor of the building of the above address. There is only one entry concerning Liam Lawlor in my 1991 diary for this period that is Wednesday, 29th May and that refers to a meeting with a third party making it unlikely that the money was handed to Mr Lawlor at*

this time. I cannot therefore state specifically on what date this money was handed to Mr Lawlor at my office.

1.46 In the course of his sworn testimony in the Quarryvale module, Mr Dunlop, while standing over his claim to have paid IR£40,000 to Mr Lawlor in May/June 1991, resiled in one important respect from his previous testimony on Day 147. Mr Dunlop specifically denied that the arrangement he had entered into with Mr Lawlor for payment of money to him had been negotiated when Mr O'Callaghan and Mr Gilmartin (although not necessarily privy to the arrangement) were in attendance in Mr Dunlop's office.

1.47 Mr Dunlop's sworn testimony in the Quarryvale module was that having told Mr Lawlor of his agreement with Mr O'Callaghan for a IR£100,000 fee, Mr Lawlor had demanded half of that amount but that, when Mr Dunlop informed him that he had only received IR£80,000 from Mr O'Callaghan, Mr Lawlor settled for a payment of IR£40,000. Mr Dunlop said he duly paid this sum to Mr Lawlor in cash in Mr Dunlop's office during the course of the 1991 Local Election campaign. He was unsure whether he had withdrawn the money from the bank specifically to pay it to Mr Lawlor, or whether he already had it available in his home. He maintained that he did not inform Mr O'Callaghan of the payment.

1.48 In the following exchange between Counsel for the Tribunal and Mr Dunlop on Day 769, Mr Dunlop explained the circumstances in which he said the payment of IR£40,000 to Mr Lawlor was made.

'Q *And your payment to Mr Lawlor was in connection, was effectively 50% of what you had got or were about to get from Mr O'Callaghan, isn't that right, from Riga?*

A. That is correct yes.

Q. Right. And this is out of your professional fee, as I understand your earlier evidence?

A. Yes.

Q. Right. So that what you are going to give him or what you are agreeing to give him is half of what you are getting.

A. Yes.

Q. In reality?

A. Mr Lawlor's attitude was you are now, I have introduced you to a client, this is going to be very successful, this is going to go ahead, you are going to make a lot of money out of it and this is my fee.

Q. If Mr Gilmartin is correct in his evidence to the Tribunal, his evidence is that a payment was made on the 25th or had been made prior to the 25th, then that payment would have had to taken place if Mr Gilmartin is correct, prior to the 25th April 1991?

A. Of course I disagree with Mr Gilmartin.

Q. Except in that…

A. Yes, therefore that particular contention doesn't apply.

Q. Yes, but insofar as Mr Gilmartin tells the Tribunal of an arrangement to pay 40,000 pounds to Mr Lawlor, he is correct insofar as you did pay 40,000 pounds to Mr Lawlor isn't that right?

A. Yes, just for absolute clarity on this. I disagree with Mr Gilmartin in the outline that he gave in relation to the circumstances which he alleges there was a discussion in his presence, that did not take place. I have no argument whatsoever with Mr Gilmartin in relation to the payment of 40,000 pounds and I think Mr Gilmartin's evidence in that regard is probably, if I may suggest post hoc, Mr Gilmartin was told or found out in some fashion or other that I did give 40,000 pounds to Mr Lawlor.

Q. That's I wanted to come to, so did you ever tell Mr Gilmartin about paying 40,000 pounds to Mr Lawlor?

A. No, just for, again for clarity, so that we can proceed on the same basis or on parallel tracks as we go. I never had a discussion whatsoever with Mr Tom Gilmartin about payment of any monies to anybody, let alone Liam Lawlor.

Q. Yes. It is clear that Mr Gilmartin knew at some stage of a 40,000 pounds payment from you to Mr Lawlor, which was in some way connected to Quarryvale, isn't that right?

A. That is obvious from what he says. How he came by that knowledge, I just can't fathom.'

MR LAWLOR'S DENIAL THAT HE RECEIVED IR£40,000 FROM MR DUNLOP

1.49 In his statements to the Tribunal, Mr Lawlor denied receiving IR£40,000 (or any other substantial sum) from Mr Dunlop in 1991.

1.50 In a public statement in May 2000 (which he later provided to the Tribunal), Mr Lawlor stated that he recollected a payment of IR£4,000 from Mr Dunlop at the time of the 1991 local election. In later correspondence with the

Tribunal (June 2003), Mr Lawlor claimed to have received IR£2,000 from Mr Dunlop in 1991.

1.51 The Tribunal did not identify any single substantial withdrawal of funds from Mr Dunlop's accounts prior to 25 April, 1991 with the exception of one unexplained withdrawal of IR£16,001[14] on 18 April 1991. The Tribunal did not identify any payments made to Mr Dunlop (or Shefran Ltd) by Mr O'Callaghan/Riga prior to May 1991. However, as confirmed by Mr Dunlop in evidence, he frequently dealt in cash and particularly large amounts of cash and on regular occasions, substantial payments made to him were never lodged to any of his accounts. The Tribunal was therefore satisfied that the absence of evidence of withdrawal of a cash sum or sums amounting to IR£40,000 from Mr Dunlop's account in the period leading up to 25 April, 1991 could not be taken as a reliable indication that such a sum was not available to him in cash at that time.

1.52 The bank accounts operated by Mr Lawlor or for his benefit disclosed 15 lodgements between 16 May 1991 and 26 June 1991 amounting to IR£47,722, of which lodgements totalling IR£38,772 were unexplained.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE IR£40,000 PAYMENT TO MR LAWLOR

(i) The Tribunal was satisfied that Mr Lawlor was the beneficiary of a substantial cash payment in May/June 1991 and it was satisfied that the circumstances in which this came about, in all probability, followed a demand made by Mr Lawlor for a substantial payment, whether directly to Mr O'Callaghan or through Mr O'Callaghan's agent Mr Dunlop. It may well have been the case that Mr Lawlor made the demand directly to Mr O'Callaghan, given that it was established, to the satisfaction of the Tribunal, that at a time when the Quarryvale Town Centre concept was being promoted by Mr Gilmartin, Mr Lawlor made demands of him, not only for substantial amounts of money, but also for an interest in the project itself. Mr Lawlor had also made such demands from Mr Gilmartin in relation to the Bachelor's Walk development proposal in 1988.[15] The Tribunal believed that it was unlikely that Mr Lawlor's *modus operandi* would have radically altered in his dealings with Mr O'Callaghan.

(ii) The Tribunal was satisfied that Mr Lawlor made Mr O'Callaghan aware of his considerable political influence and that Mr O'Callaghan appreciated and

[14] Mr Dunlop maintained that he could not recall what he used this money for, but suggested that he used it *'for purposes that this Tribunal is investigating.'* This Tribunal understood this to be a reference to the Tribunal's investigation of corrupt practices in the planning system.

[15] See Part 3 of this Chapter.

believed that Mr Lawlor could exert such influence and that in this way, and in other ways be in a position to assist in achieving the rezoning of the Quarryvale lands (and indeed also the Neilstown stadium project).

(iii) In all the circumstances, the Tribunal was satisfied that a IR£40,000 cash payment was indeed made to Mr Lawlor by Mr Dunlop on a date in May / June 1991, and that it was made with Mr O'Callaghan's knowledge.

(iv) The Tribunal was also satisfied that Mr O'Callaghan and Mr Dunlop made provision, in the course of their discussion as to the extent to which Mr Dunlop would be put in funds for disbursement during the 1991 local elections, for the payment of a substantial sum of money to Mr Lawlor. Thus, the Tribunal was satisfied that the funds which were to be provided to Mr Lawlor were accounted for in the three payments Mr O'Callaghan/Riga made to Mr Dunlop in May/June 1991.[16]

(v) The Tribunal was satisfied that Mr Dunlop's agreement to pay IR£40,000 to Mr Lawlor was concluded at around the time Mr Dunlop had agreed with Mr O'Callaghan (against a backdrop of a claim for money being made by Mr Lawlor), that IR£80,000 would be paid by Mr O'Callaghan for distribution to councillors in the course of the local election campaign of May / June 1991.

(vi) While no specific IR£40,000 lodgement was identified in the bank accounts of Mr Lawlor within this timeframe (although cumulatively there was a number of unexplained lodgements to accounts connected to him in this period totalling IR£38,772) the Tribunal was nonetheless satisfied that Mr Lawlor received such a sum in cash from Mr Dunlop.

(vii) The Tribunal did not regard as significant the absence of any record in Mr Lawlor's bank accounts or accounts associated with him of a lodgement of IR£40,000 or a similar substantial amount. In coming to this decision, it took into account the fact that payments totalling IR£40,000 made by Mr O'Callaghan to Mr Lawlor[17] were likewise not reflected in any of the bank accounts under the control of Mr Lawlor.

[16] In addition to the IR£80,000 paid by Riga to Shefran in May/June 1991 a substantial portion of which was retained by Mr Dunlop in cash, he had also available to him at that time other cash funds amounting to approximately IR£80,000.

[17] These payments (dealt with below) were: IR£10,000 in September 1991 (which was found by the Tribunal to be linked to the IR£40,000 payment under discussion here), IR£10,000 in September 1994 and IR£20,000 in March 1995.

MR GILMARTIN'S KNOWLEDGE OF THE IR£40,000 PAYMENT BY MR DUNLOP TO MR LAWLOR

1.53 In the period 1998 to 2002, prior to giving sworn testimony, Mr Gilmartin made a number of references to Mr Lawlor having been in receipt of money from Mr Dunlop.

1.54 On 11 October 1998, an article in the Sunday Business Post, which carried a story about payments made to Mr Lawlor by Arlington Securities plc, attributed Mr Gilmartin as having stated that *'a further £50,000 was paid to Lawlor when the Quarryvale project was being progressed.'*

1.55 The article also stated:

> *Gilmartin claims this payment was handled by public relations consultant and former Fianna Fáil press officer, Frank Dunlop. Dunlop has forcefully denied making any such payment to Lawlor. He said that he met Lawlor for briefings on the Quarryvale project but made only one contribution of some £500 towards a golf classic organised by Lawlor. When contacted on Friday night, Lawlor refused to comment on the claims.*

1.56 A note made on 3 December 1999 by Counsel for the Tribunal (Mr Hanratty SC) of a telephone call from Mr Gilmartin on 1 December 1999 referred to a meeting in Mr Dunlop's office in the following terms:

> *TG said that LL had received £50,000 from OO'C in connection with Quarryvale. There was a meeting in the offices of Frank Dunlop in Mount Street towards the end of 1991 when Lawlor demanded £100,000 from Dunlop. There was a big row. OO'C was in the next room when it was going on. Dunlop gave him a payment which brought the total he received from OO'C to IR£50,000.*

1.57 In a subsequent telephone discussion between Mr Gilmartin and Senior Counsel for the Tribunal on 8 December 1999, Counsel noted the following:

> *I asked TG again about what he had told me about the payment of a total of £50,000 to Liam Lawlor and the row which happened in Frank Dunlop's office. I pointed out that LL lost his seat in the June 1991 election and queried whether any payment would have been made to him after that. TG said that it certainly would. LL was a man of considerable influence and who had to be kept onside. TG said that it was OO'C that told him about the Dunlop office incident.*

1.58 In his written statement to the Tribunal on 25 May 2001, Mr Gilmartin stated the following:

> *Typical of Mr O'Callaghan's style was that he told me in the course of 1992, that Liam Lawlor had been given £50,000 by Frank Dunlop and that Mr Lawlor was extremely annoyed because he had claimed that he had been promised £100,000 but he had not received it. Mr O'Callaghan told me that he was in a back office when Mr Lawlor came to collect the cash from Mr Dunlop and that, when a row developed between Mr Lawlor and Mr Dunlop, he remained in the back office listening to it. Mr O'Callaghan found it very humorous indeed that Mr Dunlop later rounded on him for not coming to his assistance in warding off an angry Mr Lawlor.*

1.59 On 9 January 2002, following a telephone conversation with Mr Gilmartin, Counsel for the Tribunal noted *inter alia*, the following:

> *He then (*Mr Gilmartin*) went on to say that he was anxious to establish who was present in Frank Dunlop's office at a meeting held there on the 28th April, 1991. I did not have the files readily available to me and asked him to remind me of what happened on that date. He said that he had been called by AIB to attend a meeting in their offices but there was no discussion or no meaningful discussion at that meeting and Owen O'Callaghan appeared. Eddie Kay said there were important people who wanted to meet TG. O'Callaghan had a taxi waiting at the bank. They went to Buswell's Hotel. O'Callaghan got out of the taxi and went in to the Hotel followed by Gilmartin. Liam Lawlor was sitting at a table in Buswell's. He got up and the three walked through the grounds of Dáil Eireann entering by the Kildare Street gate and exiting on the other side. They went to Frank Dunlop's office. Gilmartin was left in a room and O'Callaghan went into another room with Liam Lawlor. There was someone else in the room with whom Lawlor and O'Callaghan had a discussion. Dunlop was in and out of that room and Gilmartin was left sitting on his own. He, Gilmartin, says that he believes that IR£40,000 was paid to Liam Lawlor on that day which was a few days before an important vote by DCC. He says that IR£40,000 had been taken out of his company before he had knowledge of it. He said that was the day that O'Callaghan said to him 'you will never build a foot on that site.'*
>
> *Gilmartin initially thought that Ambrose Kelly may have been the unknown person in Frank Dunlop's office but he now thinks it may have been a representative of AIB, either Jim Donagh or – Ahern (of AIB, College St.).*

He inquired if the Tribunal knew the identity of the unknown person and I explained that even if we did know we would not be able to give him that information. He understood our difficulty in this regard but he then went on to talk about Frank Dunlop and said that he had been warned about Dunlop on a previous occasion and although Dunlop had written personally to Gilmartin he was not anxious to employ him.

1.60 There were inconsistencies between Mr Gilmartin's prior statements to the Tribunal and his sworn testimony on the issue of the payment by Mr Dunlop to Mr Lawlor.

1.61 In particular, there were inconsistencies as to the circumstances in which Mr Gilmartin became aware of the existence of this payment. Indeed, in his sworn evidence, Mr Gilmartin said he overheard the payment being mentioned in the course of a discussion between Mr Dunlop and Mr O'Callaghan and that Mr O'Callaghan later confirmed to him that Mr Lawlor had received money. Mr Gilmartin's prior statements, however, do not record him having been present or having overheard Mr Dunlop and Mr O'Callaghan's conversation but only suggest that he became aware of the matter via Mr O'Callaghan. Notwithstanding such inconsistencies, the Tribunal took cognisance of the fact that Mr Gilmartin was, in the course of his communications with the Tribunal in 1999 (prior to Mr Dunlop's first appearance in public at the Tribunal in April 2000), alluding to the payment of a substantial sum by Mr Dunlop to Mr Lawlor, and suggesting knowledge thereof on the part of Mr O'Callaghan.

1.62 There were also inconsistencies as to the amount which Mr Gilmartin said Mr Lawlor had been paid by Mr Dunlop. In his prior statements, Mr Gilmartin said it was IR£50,000, while in sworn evidence he said it was IR£40,000. However, by the time Mr Gilmartin gave sworn evidence, he would have been aware, from Mr Dunlop's prior evidence and statements, that even though Mr Lawlor had requested IR£50,000 at the time, he had only been paid IR£40,000.

1.63 Moreover, there were inconsistencies as to when Mr Gilmartin became aware of Mr Dunlop's payment to Mr Lawlor. In his sworn testimony, Mr Gilmartin said he overheard the conversation between Mr O'Callaghan and Mr Dunlop in late April 1991. On 1 December 1999 however, he had alluded to this meeting as having occurred at the end of 1991 and in his statement of May 2001, he referred to having been told by Mr O'Callaghan *'in the course of 1992 that Liam Lawlor had been given £50,000 by Frank Dunlop.'* In relation to such inconsistencies, it must be noted that Mr Gilmartin acknowledged being *'terrible on dates'* and could have conflated the meeting of April 1991 with another meeting.

1.64 Indeed, Mr Gilmartin told the Tribunal of another meeting which he attended with Mr O'Callaghan, Mr Dunlop and Mr Lawlor in Mr Lawlor's Dáil office, which occurred within the week following the signing of the Barkhill share subscription agreement on 13 September 1991.

1.65 Mr Gilmartin stated that, at Mr Kay's suggestion, he, Mr O'Callaghan and Mr Dunlop travelled together, in Mr Dunlop's car to the Dáil for the purposes of meeting politicians in relation to Quarryvale. Mr Kay, in the course of his evidence, acknowledged that he may well, following a meeting in AIB, have suggested that Mr Gilmartin accompany Mr O'Callaghan to the Dáil to meet politicians. Mr Kay, however, refuted Mr Gilmartin's suggestion that he would have been brought over from Luton solely for this purpose.

1.66 According to Mr Gilmartin, on arrival at the Dáil the group was led by Mr Dunlop into Mr Lawlor's office, where they met Mr Lawlor (Cllr Marian McGennis was also present). Mr Gilmartin said he then left Mr Lawlor's office and was duly followed by Mr O'Callaghan whereupon they had an exchange of words on the street.

1.67 In his sworn evidence to the Tribunal on Day 738, Mr Gilmartin confirmed his recollection of what occurred in the following terms:

> *'I asked Mr Dunlop why I was there, but he would not give me a straight answer. I distrusted Mr Dunlop and I got fed up and I left the office. In the corridor I met with Mr O'Callaghan who was there talking to Albert Reynolds. When I passed Mr O'Callaghan he asked me to wait for a little while, but I declined and made my way out of the building. Mr O'Callaghan followed me out and we had a sharp exchange of words. I put it to Mr O'Callaghan that he was trying to use me as a 'patsy.' Mr O'Callaghan responded by saying that I would never put 'an effing foot on that site and neither will any effing unionist. This is the best site in Europe.'*

1.68 There were strikingly similar features between Mr Gilmartin's account of the September 1991 meeting in Mr Lawlor's Dáil office and its aftermath and his account of his earlier April 1991 meeting in Mr Dunlop's office, and its aftermath. Both accounts involved Mr Kay encouraging Mr Gilmartin to accompany Mr O'Callaghan to the Dáil to meet politicians. Common attendees at both meetings were Mr O'Callaghan, Mr Dunlop, Mr Gilmartin and Mr Lawlor. Both accounts involved a journey in Mr Dunlop's car, both involved Mr Gilmartin's leaving the meeting and being followed on to the street by Mr O'Callaghan and some type of altercation involving Mr O'Callaghan and Mr Gilmartin taking place.

THE TRIBUNAL'S CONCLUSIONS AS TO MR GILMARTIN'S KNOWLEDGE OF THE IR£40,000 PAYMENT TO MR LAWLOR

1.69 The Tribunal was satisfied that at some point during the course of his involvement with Quarryvale, Mr Gilmartin learnt that Mr Dunlop and Mr O'Callaghan had a discussion concerning Mr Dunlop's payment of a substantial sum to Mr Lawlor and Mr Lawlor's displeasure as to the amount he was receiving. Indeed, Mr Gilmartin imparted to the Tribunal the knowledge he had of this issue, albeit in a somewhat different detail to that of his sworn testimony, long before Mr Dunlop himself admitted to paying Mr Lawlor IR£40,000. Mr Dunlop told the Tribunal that he had not given this information to Mr Gilmartin, and could not '*fathom*' how he came to know about it. But it was clear that Mr Gilmartin did know about it.

1.70 The Tribunal regarded as credible Mr Gilmartin's contention that he overheard a discussion between Mr Dunlop and Mr O'Callaghan in relation to the payment of a substantial sum to Mr Lawlor, and it accepted that he had done so.

1.71 It was also quite possible that Mr O'Callaghan, when subsequently queried on the issue by Mr Gilmartin, confirmed that a substantial payment had been made to Mr Lawlor but that the latter being unhappy with the amount, Mr O'Callaghan had to *'give him extra money.'*[18]

1.72 While the Tribunal accepted Mr Gilmartin's account of an overheard discussion between Mr O'Callaghan and Mr Dunlop regarding Mr Lawlor, the Tribunal could not regard as conclusive Mr Gilmartin's evidence that this conversation occurred in the timeframe suggested by him. The Tribunal believed it likely therefore that Mr Gilmartin conflated in his mind the occasions on which he, Mr O'Callaghan, Mr Dunlop and Mr Lawlor were together in an office, one being in the April 1991 in Mr Dunlop's office and the other being in September 1991 in Mr Lawlor's office.

OTHER PAYMENTS MADE TO MR LAWLOR BY MR DUNLOP

1.73 On 29 January 2001, Mr Lawlor in his 'B42' list[19], as part of '*Income, including political contributions, donations and consultancy fees being approximate, and as recollected by Liam Lawlor, in respect of period 1973-2000'* advised the Tribunal that he had received payments amounting to IR£60,000 from Mr Dunlop.

[18] It is Mr O'Callaghan's evidence that he made a payment of IR£10,000 to Mr Lawlor on 23 September 1991 (see below).

[19] In his supplemental affidavit of discovery sworn on the 10th January 2001, Mr Lawlor made discovery of a file, described as a 'Schedule of Receipts', which included details of income in the 1990s. The file was labelled by Mr Lawlor as his B42 file and was thereafter usually referred to as the 'B42 list.'

1.74 Subsequently in his schedule of political contributions for the period 1983 to 2000, provided to the Tribunal on 18 June 2003, Mr Lawlor, in schedule 6 thereof, attributed a total figure of IR£55,500, as having been received by him from Frank Dunlop & Associates, as follows:

1991 - IR£2,000
1992 - IR£3,500
1993 - IR£6,000
1994 - IR£6,000
1995 - IR£38,000

1.75 Mr Dunlop, for his part, advised the Tribunal prior to giving his sworn evidence that he had paid Mr Lawlor sums, in total, of between IR£153,500 and IR£155,500.

THE CHEQUE PAYMENT OF IR£5,000 BY MR DUNLOP TO MR LAWLOR ON 21 JANUARY 1991

1.76 Mr Dunlop claimed that he paid a cheque of IR£5,000 to Mr Lawlor in January 1991 at Mr Lawlor's request, and that the payment was a reward to Mr Lawlor for introducing Mr O'Callaghan to him as a client. This cheque was not available to the Tribunal but was in the cheque listing report of Frank Dunlop & Associates as paid to *'Comex Trad. Corp*', and analysed as '*Outlay-Clients.'*

1.77 The cheque for IR£5,000 was lodged to a current account in the name of Mr Lawlor's son, Mr Niall Lawlor on 29 January 1991. Mr Lawlor acknowledged to the Tribunal that this account at National Irish Bank, South Circular Road in Dublin, was operated '*wholly or partly*' for his (Mr Liam Lawlor's) benefit.

1.78 In the course of his private interview with the Tribunal in May 2000, Mr Dunlop referred to a payment of IR£5,000 made in early 1991 to Mr Lawlor and which involved a company called '*Comex.'* Mr Dunlop at that time made no specific reference to this payment being connected with Mr Lawlor's involvement with Quarryvale. Likewise, Mr Dunlop's October 2000 statement, although it referred to a payment of IR£5,000 to Mr Lawlor in early 1991, made no reference to any link between that payment and the Quarryvale rezoning project. However, in his December 2003 statement, and in his sworn evidence, Mr Dunlop attributed this payment as having been made to Mr Lawlor, after Mr Lawlor had requested it, in return for Mr Lawlor's introduction of Mr Dunlop to Mr O'Callaghan. The October 2000 statement was silent as to the nature of the IR£5,000 payment. Mr Dunlop's December 2003 statement described the IR£5,000 payment as a cash payment. In the course of his evidence Mr Dunlop

accepted that the payment in January 1991 had been effected by way of cheque from Frank Dunlop & Associates Ltd.

1.79 Mr O'Callaghan disputed Mr Dunlop's claim that this payment to Mr Lawlor was connected to Mr Lawlor's introduction of him to Mr Dunlop as Mr O'Callaghan maintained that this did not take place until late February 1991.

1.80 The Tribunal was satisfied that by January 1991, there was discussion between Mr Lawlor and Mr Dunlop in relation to the Quarryvale rezoning project and that both men at that time believed that Mr Dunlop's retention by Mr O'Callaghan was imminent.

1.81 Thus, while the Tribunal could not definitively establish the precise purpose for the payment of IR£5,000 by Mr Dunlop to Mr Lawlor in January 1991, it was satisfied nevertheless that such a payment was made and that it probably related to Quarryvale.

THE CASH PAYMENT OF IR£5,000 BY MR DUNLOP TO MR LAWLOR IN APRIL 1991

1.82 On 5 April 1991, Mr Dunlop paid IR£5,000 in cash to Mr Lawlor. Mr Dunlop told the Tribunal that this payment was made through Mr Noel Lawlor, Mr Liam Lawlor's brother, and was the proceeds of a Frank Dunlop & Associates Ltd cheque for that sum encashed by Mr Dunlop prior to it being collected by Mr Noel Lawlor at Mr Dunlop's offices. Mr Noel Lawlor denied any involvement in this payment and denied that he had ever been in Mr Dunlop's office. Mr Dunlop told the Tribunal that the payment had been requested by Mr Lawlor and was paid to him *'for his ongoing commitment to and advice on Quarryvale, but under the guise of an election contribution and at the time of an election.'*

1.83 In its cheque listing report, Frank Dunlop & Associates analysed this IR£5,000 payment as '*sundry expenses.*' A receipt for IR£5,000 dated 21 May 1991 was sent to Frank Dunlop & Associates from Mr Lawlor's Director of Elections. On this acknowledgement docket a staff member in Mr Dunlop's office noted, in manuscript: '*IR£5,000 cash 5/4/91 to NL*.'

1.84 The Tribunal was satisfied that a payment of IR£5,000 was indeed made by Mr Dunlop to Mr Lawlor in the form of the proceeds of a cheque payment drawn on the current account of Frank Dunlop & Associates on 5 April 1991. The Tribunal accepted Mr Dunlop's evidence that the payment was made to Mr Lawlor in return for his '*ongoing commitment and advice*' in relation to Quarryvale but under the guise of an election contribution, and that,

notwithstanding Mr Noel Lawlor's denial of any involvement on his part in relation to it, the payment had been collected by him from Mr Dunlop's office on Mr Lawlor's behalf.

THE PAYMENT OF IR£3,500 BY MR DUNLOP TO MR LAWLOR IN MAY/JUNE 1991

1.85 On 17 July 1991 Mr Lawlor's election campaign fund acknowledged receipt of IR£3,500 from Mr Dunlop. A manuscript note on the acknowledgement letter made by a staff member in Mr Dunlop's office noted the payment as having been made on '*6/91.*' A cheque for IR£3,500 was debited to the account of Frank Dunlop & Associates Ltd on 17 June 1991. In its cheque listing report this cheque was attributed to '*Seapave.*'[20] Mr Dunlop however assumed that this reference related to the cheque for IR£3,500 paid to Mr Lawlor. While it was not clear whether this cheque was paid directly to Mr Lawlor or if it was cashed and its value provided to Mr Lawlor, the Tribunal was satisfied that by 17June 1991 Mr Lawlor was in receipt of IR£3,500 from Mr Dunlop representing the proceeds of this cheque.

1.86 Mr Dunlop maintained that the IR£5,000 cash payment made to Mr Lawlor in April 1991 and the IR£3,500 payment made in June 1991 represented the IR£8,500 he listed on Day 147 as monies paid to Mr Lawlor, in addition to the listed IR£40,000 payment also made to Mr Lawlor by him in May / June 1991.

THE CASH PAYMENT OF IR£40,000 BY MR DUNLOP TO MR LAWLOR IN MAY/JUNE 1991

1.87 As previously stated, the Tribunal was satisfied that such a sum in cash was provided to Mr Lawlor by Mr Dunlop in the circumstances described above.

THE CASH PAYMENT OF BETWEEN IR£26,000 AND IR£28,000 BY MR DUNLOP TO MR LAWLOR IN MARCH 1992

1.88 Mr Dunlop claimed that he made a payment to Mr Lawlor of between IR£26,000 and IR£28,000 in cash in March 1992 following a request by Mr Lawlor for such funds. Mr Dunlop referred to this payment in his private interview with the Tribunal in May 2000 as a IR£40,000 payment made by bank draft. In his October 2000 statement, Mr Dunlop said the payment was in the sum of IR£26,000. In his December 2003 statement, the figure referred to by Mr Dunlop was '*between IR£26,000 and IR£28,000*' and Mr Dunlop stated that Mr Lawlor had sought the money.

[20] '*Seapave*' was not a business disclosed by Mr Lawlor to the Tribunal as having ever been used by him to generate invoices, or payments to himself.

1.89 Mr Dunlop initially categorised the payment of between IR£26,000 and IR£28,000 as a loan to Mr Lawlor, although in evidence he altered his position and said that Mr Lawlor had merely sought money and not a loan. Mr Dunlop maintained that it was agreed between himself, Mr Lawlor and Mr Harry Dobson[21] that such monies as Mr Dunlop would advance to Mr Lawlor would be reimbursed to Mr Dunlop by means of a shareholding in Citywest to be provided by Mr Dobson. Mr Dunlop claimed that the agreement whereby this would be achieved was arrived at in the course of meetings he had with Mr Lawlor and Mr Dobson in the offices of Davy Stockbrokers and in the visitor's room of Leinster House. Mr Dunlop's belief and understanding, in March 1992, was that Mr Dobson would cede to Mr Dunlop portion of his shareholding in Citywest[22] to the value of IR£26,000 to IR£28,000, being the amount to be advanced by Mr Dunlop to Mr Lawlor.

1.90 Mr Dunlop could not produce to the Tribunal any documentary reference to his claimed agreement with Mr Lawlor and Mr Dobson or to the advance of the IR£26,000 to IR£28,000 to Mr Lawlor.

1.91 Mr Dunlop told the Tribunal that although he provided the funds to Mr Lawlor in or about March 1992 he never received the expected shareholding from Mr Dobson. Save for a number of attempts to contact Mr Dobson by telephone, and raising the matter with Mr Lawlor a number of times, Mr Dunlop did not take any steps to enforce this agreement. Mr Lawlor's response to him was to '*forget about it'*, and he never repaid him.

1.92 Mr Lawlor advised the Tribunal in correspondence that he did not *'recall being a party to Mr Dunlop's and Mr Dobson's 'dealings.'*

1.93 In his evidence to the Tribunal, Mr Dobson acknowledged a lengthy association with Mr Lawlor. Mr Dobson together with Mr Lawlor and others were involved in the *'Pentagon'* pipe project that served the drainage needs of a substantial area of land in West Dublin.

1.94 Mr Dobson told the Tribunal that he recollected Mr Lawlor seeking to purchase from him a portion of his interest in the Citywest development but that Mr Lawlor had failed to produce the necessary funds. He believed that this request may have been made in Mr Dunlop's presence.

[21] Mr Dobson was a shareholder in Citywest.

[22] Citywest was a commercial/retail park developed on land adjacent to the N7 Dublin to Naas dual carriageway in the early 1990s, having benefited from a material contravention vote of Dublin County Council in which Mr Dunlop was involved as a lobbyist. Mr Dunlop's involvement was rewarded with a shareholding in the Citywest development.

1.95 He acknowledged that he may have met Mr Lawlor and Mr Dunlop in the Dáil. However he denied that he had agreed to transfer portion of his equity interest in Citywest to Mr Dunlop in return for Mr Dunlop advancing money to Mr Lawlor, or that there had been any discussions with Mr Dunlop relating to any such proposal.

1.96 Mr Dunlop claimed to have provided the IR£26,000 to IR£28,000 to Mr Lawlor from cash available to him at the time. There was no record of a withdrawal of any such sum from any of Mr Dunlop's accounts.

1.97 However, the Tribunal was satisfied that Mr Dunlop had sufficient cash resources in the period February/March 1992 from which to advance a sum of IR£26,000 to IR£28,000 to Mr Lawlor and accepted Mr Dunlop's evidence that such a sum was advanced by Mr Dunlop to Mr Lawlor in March 1992.

1.98 While the Tribunal was unable to determine the true nature, purpose and intent of the tripartite discussions or negotiations that undoubtedly took place in February/March 1992 between Mr Dobson, Mr Dunlop and Mr Lawlor, it was not satisfied that the IR£26,000 to IR£28,000 paid to Mr Lawlor by Mr Dunlop was a loan. Firstly, there was no evidence that Mr Lawlor borrowed money from individuals (including Mr Dunlop who habitually made substantial cash payments to him). Secondly, there was no credible evidence that Mr Dunlop had taken any serious steps (including steps of a legal nature) to recover any such debt from Mr Lawlor.

1.99 The Tribunal was unable to determine with any degree of certainty the specific purpose of this payment to Mr Lawlor save that it was satisfied that at the time of this payment there was an ongoing financial relationship between Mr Dunlop and Mr Lawlor in the context of their endeavours in relation to Quarrvale and other matters.

THE PAYMENT OF IR£1,000 BY MR DUNLOP TO MR LAWLOR IN JUNE 1992

1.100 Mr Dunlop claimed that he paid IR£1,000 to Mr Lawlor through his brother Mr Noel Lawlor as a contribution to a golf classic fundraising event organised in aid of Mr Lawlor's political outgoings. The cheque payments book of Frank Dunlop & Associates identified a cheque payment of IR£1,000 to Mr Noel Lawlor dated 18 June 1992.

1.101 Mr Noel Lawlor told the Tribunal that this payment was in fact a contribution by Mr Dunlop to a surprise party to celebrate Mr Lawlor's ten years as a T.D., which was held in Finnstown House Hotel in Lucan. Mr Noel Lawlor recalled receiving the cheque from Mr Dunlop at the end of the function.

THE CASH PAYMENT OF IR£25,000 BY MR DUNLOP TO MR LAWLOR IN NOVEMBER 1992

1.102 Mr Dunlop claimed to have given Mr Lawlor IR£25,000 in cash in November 1992, following a request from Mr Lawlor in the course of the November 1992 General Election campaign. According to Mr Dunlop, this payment was made to Mr Lawlor at the latter's office at his Lucan residence sometime between 5 and 20 November 1992.

1.103 In a public statement in May 2000, a copy of which he provided to the Tribunal, Mr Lawlor advised that in November 1992 Mr Dunlop called to his Lucan office and gave him a sum of IR£5,000 towards his General Election campaign. Mr Lawlor maintained that, subsequently, Mr Dunlop telephoned him to request a receipt which, Mr Lawlor claimed, he would have issued to Mr Dunlop in the form of a '*standard acknowledgement receipt.*' Mr Dunlop rejected Mr Lawlor's position on this matter.

1.104 In subsequent correspondence in July 2002, in relation to lodgements to his accounts or accounts associated with him for the year 1992, Mr Lawlor said that a lodgement of IR£3,500 to an account of Mrs Hazel Lawlor on 11 November 1992 was '*election fundraising*' and may have been sourced from IR£4,000 cash which he said he received from Mr Dunlop.

1.105 The bank accounts in question although replete with unexplained lodgements, did not show a single lodgement of either IR£4,000 or IR£5,000 (Mr Lawlor's figures) or one of IR£25,000 (Mr Dunlop's figure) in or about November 1992. Lodgements of IR£1,000, IR£3,500 and IR£2,000 between 12 and 19 November were described by Mr Lawlor as '*election fundraising.*'

1.106 The Tribunal was however satisfied that Mr Lawlor was the recipient of IR£25,000 in cash from Mr Dunlop in November 1992. It may well have been that the lodgement of IR£3,500 to the account of Mrs Hazel Lawlor on 11 November 1992 was part of this payment. Mr Dunlop acknowledged that it was possible that he paid the IR£25,000 to Mr Lawlor on 11 November 1992. It has been established elsewhere in this Report, that Mr Dunlop on 10 and 11 November 1992, met with a number of individuals for the purposes of paying money to them. While not all of these individuals (including Mr Lawlor) are listed in Mr Dunlop's diary in November 1992, the Tribunal was satisfied that Mr Dunlop did make substantial cash disbursements to politicians (including Mr Lawlor) in the month of November 1992, most of whom were candidates in the General Election.

1.107 By mid November 1992 Mr Dunlop was in possession of considerable cash resources which included IR£8,500 from Mr Christopher Jones Snr[23] and the encashed proceeds of a IR£10,000 Shefran cheque provided by Mr Brendan Hickey.[24] Moreover, as already set out elsewhere in this Report, Mr Dunlop's 042 'war chest' account had been credited with IR£70,000 by Mr O'Callaghan/Riga on 10 November 1992, IR£55,000 of which Mr Dunlop immediately withdrew in cash. The Tribunal has found elsewhere in this Report that the principal purpose for the provision of this money by Riga to Mr Dunlop was to put him in funds to make disbursements to politicians. The Tribunal believed that one of the intended recipients of these funds was Mr Lawlor.

PAYMENTS TOTALLING IR£10,000 MADE BY MR DUNLOP TO MR LAWLOR BETWEEN 1992 AND 1995

1.108 Mr Dunlop told the Tribunal that between 1992 and 1995 he regularly made payments to Mr Lawlor on either a Thursday or a Friday afternoon following requests for money by Mr Lawlor for the purpose of paying his staff and other outgoings. These payments varied in amounts between IR£2,000 and IR£5,000 and Mr Dunlop estimated the total of such payments to have been approximately IR£10,000. Payments were usually made to Mr Lawlor in cash when they met in Mr Dunlop's offices.

1.109 Within this period, Mr Lawlor attributed the following lodgements to monies received from Mr Dunlop: IR£1,200 on 5 October 1992; IR£3,500 on 11 November 1992[25]; and IR£1,200 on 12 January 1994.[26]

1.110 The Tribunal was satisfied that payments totalling approximately IR£10,000 were made periodically to Mr Lawlor as claimed by Mr Dunlop.

THE PAYMENT OF IR£25,000 BY MR DUNLOP TO MR LAWLOR IN MARCH 1997 ON FOOT OF A GANLEY INTERNATIONAL INVOICE

1.111 Mr Dunlop told the Tribunal that he paid IR£25,000 to Mr Lawlor on 11 March 1997 by way of a cheque drawn on the bank account of Frank Dunlop & Associates Ltd. The payment was made on foot of an invoice provided by Mr Lawlor to Mr Dunlop. The invoice in question was purportedly that of Ganley International Ltd of 128 Mount Street, London, which also had an office in Albania. The IR£25,000 was said to be payable by way of '*consultancy fee*' for

[23] See Chapter 4.
[24] See Chapter 9.
[25] Mr Lawlor attributed this lodgement to a IR£4,000 cash election contribution received from Mr Dunlop in the course of the 1992 general election. The Tribunal rejected this contention, preferring Mr Dunlop's evidence that he provided Mr Lawlor with IR£25,000 in November 1992.
[26] In Mr Lawlor's documentation as provided to the Tribunal this lodgement was sourced to '*Brendan Hickey via FD.*' The Tribunal was satisfied that this payment was made to Mr Lawlor by Mr Dunlop following Frank Dunlop & Associates having invoiced Mr Hickey for a sum IR£1,200 (see Chapter 9).

work done on behalf of Frank Dunlop & Associates Ltd '*in Eastern Europe and the Balkans regarding communications…*'

1.112 Ganley International was a UK registered private limited company incorporated on 1 February 1994 with registered offices at 128 Mount Street, London. Its principals included Mr Declan Ganley and Mr Gary Hunter. The company was involved in international business, primarily in the countries of the former Soviet Union and Eastern Europe.

MR DUNLOP'S REASONS FOR MAKING THE IR£25,000 PAYMENT TO MR LAWLOR IN MARCH 1997

1.113 Mr Dunlop told the Tribunal that this payment to Mr Lawlor was made in the context of ongoing complaints by Mr Lawlor that he had not been sufficiently recompensed for his efforts in relation to the Quarryvale project. Mr Dunlop maintained that in 1997 Mr Lawlor told him that Mr O'Callaghan, who had by that stage secured zoning and planning permission for Quarryvale, was then '*ignoring'* him.

1.114 Mr Dunlop said that he spoke to Mr O'Callaghan in relation to Mr Lawlor's complaint and that Mr O'Callaghan had indicated that he did not intend to give '*any more money'* to Mr Lawlor.

1.115 In any event, Mr Dunlop said he agreed to pay Mr Lawlor IR£25,000 on the basis that Mr Dunlop was receiving a payment of IR£100,000 (plus VAT) from Mr O'Callaghan/Riga for public relations work in relation to the '*Horgan's Quay*'[27] controversy in Cork which had arisen in 1996. Mr Lawlor, according to Mr Dunlop, had initially demanded fifty percent of the IR£100,000. This demand was refused by Mr Dunlop on the basis that tax was payable by Frank Dunlop & Associates Ltd on the IR£100,000. Mr Dunlop stated that Mr Lawlor had '*reluctantly'* agreed to accept IR£25,000, a payment Mr Dunlop only agreed to make if provided with an invoice. Mr Lawlor duly produced the Ganley International invoice dated 19 February 1997.

THE 'GANLEY INTERNATIONAL' INVOICE OF FEBRUARY 1997

1.116 In the course of questioning as to his knowledge, if any, as to how a Ganley International invoice was used to facilitate a payment of IR£25,000 from Mr Dunlop to Mr Lawlor, Mr Declan Ganley told the Tribunal that his company, Ganley International had never worked for or received payments from Frank Dunlop & Associates, and he described the invoice used by Mr Lawlor as '*fraudulent*' and not a true invoice from his company. He said that the invoice

[27] See also Part 5.

had not been prepared or authorised by Ganley International. Mr Ganley agreed with his colleague, Mr Hunter, that the invoice constituted an '*unauthorised reproduction of the official notepaper of Ganley International Ltd*', and was a '*fabrication.*'

1.117 Mr Ganley acknowledged that certain details on the invoice, namely the VAT number and the telephone numbers, were those of Ganley International. He also confirmed that certain bank details on the invoice related to a bank account held by the company in Barclays Bank, London.

1.118 Mr Dunlop told the Tribunal that the consultancy work described in the invoice was neither sought by, nor provided to Frank Dunlop & Associates Ltd.

1.119 Bank documentation established that the cheque for IR£25,000 was lodged on 11 March 1997 to an account of Mr Pat Murphy (a publican in Inchicore), at the Lucan branch of Ulster Bank. Mr Murphy told the Tribunal that he had lodged the cheque to his account at the behest of Mr Lawlor and had paid its value to Mr Lawlor over a period of time.

1.120 The cheque, seen by the Tribunal, had written on its reverse what appeared to be the words '*Gandley Intl Declan Gandley*' by way of endorsement. Mr Murphy told the Tribunal that these words were written in his presence by Mr Lawlor.

1.121 Mr Murphy told the Tribunal that he cashed cheques including third party cheques for Mr Lawlor from time to time.

1.122 Between 11 and 27 March 1997 Mr Murphy's account showed cash withdrawals totalling IR£25,000: IR£5,000 on 11 March 1997; IR£5,000 on 14 March 1997; IR£7,500 on 21 March 1997; IR£7,500 on 27 March 1997.

1.123 The Tribunal was satisfied, having regard to Mr Murphy's evidence, that these cash withdrawals were given to Mr Lawlor directly by Mr Murphy and constituted in effect the proceeds of the *'Ganley'* cheque.

DEALINGS BETWEEN MR LAWLOR, MR DUNLOP AND GANLEY INTERNATIONAL

1.124 Mr Ganley and Mr Dunlop were known to one another and met on a number of occasions. Documentation discovered to the Tribunal indicated that a meeting took place between Mr Dunlop, Mr Lawlor and Mr Ganley on 4 July 1996, and that Mr Lawlor and Mr Dunlop were in communication with a Mr P. Ryan of Ganley International on 10, 11 and 12 July 1996. Mr Dunlop's 1997

diary noted a meeting and telephone contact between Mr Ganley and himself on 21 and 22 January 1997 respectively.

1.125 In his statement of December 2003 to the Tribunal, Mr Dunlop stated that when he had queried Mr Lawlor about the Ganley invoice for IR£25,000, the latter had assured him that he had organised matters with the owner of Ganley International, Mr Declan Ganley.

1.126 This statement was rather disingenuous as it was clear that Mr Declan Ganley was known to Mr Dunlop when he was presented with the *'Ganley International'* invoice by Mr Lawlor in February 1997.

1.127 The Tribunal was unable to establish why Mr Lawlor chose to receive the IR£25,000 payment using a Ganley invoice. The Tribunal was satisfied that Mr Lawlor set about the task of producing an invoice when such was requested by Mr Dunlop. The Tribunal was also satisfied that as of January 1997 Mr Lawlor was sufficiently knowledgeable about the affairs of Ganley International to enable him produce a Ganley invoice to meet that requirement.

1.128 The Tribunal was satisfied that the Ganley International invoice provided by Mr Lawlor to Mr Dunlop was fictitious. The Tribunal was satisfied that Mr Ganley or his company did not authorise the use of this invoice by Mr Lawlor.

1.129 The Tribunal was satisfied that Mr Dunlop's dealings with Mr Lawlor were such that Mr Dunlop was quite prepared to make a payment of IR£25,000 to Mr Lawlor on foot of what he knew to be a false invoice.

THE PAYMENTS OF IR£5,000 AND IR£8,000 BY MR DUNLOP TO MR LAWLOR IN AUGUST AND SEPTEMBER 1998

1.130 Mr Dunlop told the Tribunal that he made payments of IR£5,000 and IR£8,000 in cash to Mr Lawlor, following requests from Mr Lawlor in August and September 1998. A note in Mr Dunlop's diary for 28 August 1998 read *'5K LAL.'* Mr Dunlop told the Tribunal that, in respect of both payments, he wrote cheques to himself on the account of Frank Dunlop & Associates Ltd, then cashed the cheques, and gave the cash proceeds directly to Mr Lawlor.

1.131 Mr Dunlop stated that the IR£8,000 was paid to Mr Lawlor in cash in his office, following the encashment of a cheque drawn on the account of Frank Dunlop and Associates Ltd in the sum of IR£10,000. An entry in Mr Dunlop's diary for the 3 September 1998 read *'8K LAL'*, being the same date on which Mr Dunlop said he made the payment.

1.132 In his correspondence with the Tribunal Mr Lawlor stated that he did not recall being the recipient of such monies and challenged the authenticity of Mr Dunlop's diary entries.[28]

1.133 The Tribunal accepted Mr Dunlop's evidence that these sums totalling IR£13,000 were indeed paid by Mr Dunlop to Mr Lawlor, at his request, in August and September 1998.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO MR DUNLOP'S PAYMENTS TO MR LAWLOR

1.134 The Tribunal was satisfied that the aforesaid payments of between IR£153,500 and IR£155,500 found by it to have been made to Mr Lawlor by Mr Dunlop in the period 1991 to 1998[29] were made at a time when Mr Lawlor was heavily involved in endeavours associated with the Quarryvale project, and in promoting the concept of a stadium on the Neilstown lands. The Tribunal was satisfied that a substantial portion of these payments directly related to Quarryvale, and were solicited, paid and received corruptly.

PAYMENTS MADE DIRECTLY TO MR LAWLOR BY MR OWEN O'CALLAGHAN

1.135 In response to requests for certain information from the Tribunal on 29 January 2001, Mr Lawlor provided the Tribunal with a schedule detailing the payments he said he received from O'Callaghan Properties amounting to IR£25,000 in the 1990s. Mr Lawlor described the payments as '*income including political contributions, donations and consultancy fees being approximate and as recollected by Liam Lawlor in respect of period 1973 to 2000.'*

1.136 According to Mr Lawlor, the dates of the payments, which he maintained were all made by cheque, were *'not available*.' The purpose of the payments was described by him as '*political contributions towards my election campaigns and running of constituency organisation.'*

1.137 On 18 June 2003 Mr Lawlor provided the Tribunal with a schedule (which he stated was mainly based on his recollection as only limited records

[28] Mr Lawlor contended that these diary entries were made after the event. The Tribunal requested the FBI to examine these entries in an effort to determine if this was the case. The FBI requested the United States Secret Service Office of Investigations Questioned Documents Branch to analyse these entries but their report was inconclusive, other than to state that the ink used was of a type of ink in existence in 1998.

[29] For further consideration of Mr Dunlop and Mr Lawlor's dealings, see Chapter Sixteen.

were available), showing the following breakdown of the IR£25,000 he claimed he received from Mr O'Callaghan:

- IR£5,000 in 1987;
- IR£5,000 in 1988;
- IR£6,000 in 1990;
- IR£5,000 in 1991;
- IR£4,000 in 1992.

1.138 In the course of correspondence in May 2000 and May 2003, Mr O'Callaghan advised the Tribunal that he made payments totalling IR£36,000 to Mr Lawlor between 1991 and 1996, namely:

- IR£5,000 on 18 November 1991 (described by Mr O'Callaghan as a contribution for Mr Lawlor's Local Election campaign in June 1991, six months earlier);
- IR£10,000 on 26 September 1994 (described by Mr O'Callaghan as *'other payments'* associated with the Quarryvale and stadium projects);
- IR£20,000 on 13 March 1995 (described by Mr O'Callaghan as *'other payments'* associated with the Quarryvale and stadium projects);
- IR£1,000 on 18 October 1996 (described by Mr O'Callaghan as a contribution made to a *'golf classic'*).

1.139 In the course of his testimony Mr O'Callaghan significantly altered his position regarding the payment of IR£5,000 on 18 November 1991, which he said was not actually a payment to Mr Lawlor.[30] Mr O'Callaghan's revised evidence was that his first payment to Mr Lawlor was a payment of IR£10,000 made in September 1991.

1.140 The information provided by Mr Lawlor differed considerably to that given by Mr O'Callaghan in his evidence, both in respect of the total monies paid to Mr Lawlor and the times at which such monies were paid. Mr O'Callaghan asserted that his first payment to Mr Lawlor was made in September 1991, whereas Mr Lawlor credited Mr O'Callaghan as the provider of funds of IR£5,000 both in 1987 and 1988 and IR£6,000 in 1990. During the period from September 1991 to October 1996, when Mr O'Callaghan claimed to have paid Mr Lawlor a total of IR£36,000 (later revised upwards to IR£41,000), Mr Lawlor only acknowledged receipt of IR£9,000 in total (IR£5,000 in 1991 and IR£4,000 in 1992).

[30] See below.

THE PAYMENT OF IR£10,000 BY MR O'CALLAGHAN TO MR LAWLOR IN SEPTEMBER 1991

1.141 In a statement made by him on 3 May 2000, and in the course of his sworn evidence on Day 875, Mr O'Callaghan told the Tribunal that in November 1991 he made a IR£5,000 cheque payment (drawn on his personal account) to Mr Lawlor, by way of a political contribution.

1.142 Riga's cheque payments book recorded, for 18 November 1991, a cheque for IR£5,000 payable to *'cash.'* This cheque was analysed under the '*sundries'* column as '*Expenses Westpark.'* On Day 884 Mr O'Callaghan stated that this Riga cheque had been lodged to his personal account, having been debited from Riga's account on 21 November 1991. The Tribunal was told that this funded the cheque payment made to Mr Lawlor. Neither cheque was made available to the Tribunal.

1.143 In Riga's nominal ledger for the year ended 30 April 1992, the IR£5,000 cheque payment was attributed under the title '*adv and subs'* (advertising and subscriptions), as a political contribution to Mr Lawlor and described as '*L Lawlor FF.'* It was not attributed within the Riga / Barkhill intercompany loan account as a Barkhill expense, either as a political contribution paid by Riga on behalf of Barkhill or otherwise.

1.144 Notwithstanding Mr O'Callaghan's sworn testimony on 19 June 2008 (Day 875), Mr O'Callaghan's solicitors advised the Tribunal on 24 June 2008 that the IR£5,000 cheque of November 1991, heretofore described by Mr O'Callaghan as Riga's reimbursement to him for a political contribution made to Mr Lawlor, had in fact had been lodged to Mr O'Callaghan's account to part fund the purchase of a pony. Moreover, the Tribunal was advised that a cheque for IR£10,000 paid out by Riga on 23 September 1991, heretofore unidentified as to its payee, was in fact the payment made to Mr Lawlor by Mr O'Callaghan by way of political contribution. This cheque was stated to have been Riga's reimbursement to Mr O'Callaghan for a cheque drawn on his personal account and paid to Mr Lawlor. Payments were made in a similar fashion by Mr O'Callaghan to Cllr Colm McGrath (IR£10,000 in October 1991) and Mr Batt O'Keefe (IR£10,000 in November 1992).

1.145 Riga's cheque payments book recorded, for 23 September 1991, a cheque for IR£10,000 payable to '*cash.'* This payment was analysed under the '*sundries'* column as '*expenses Quarryvale/Westpark'* with the attribution 5098 (the code in Riga's books for Barkhill/Quarryvale expenses). This cheque was lodged on 23 September 1991 to the personal account of Mr O'Callaghan, and

on the 27 September 1991 his account was debited in the sum of IR£10,000. This debit, Mr O'Callaghan claimed, was the cheque given by him to Mr Lawlor. This cheque paid to Mr Lawlor was not available to the Tribunal. The sum was reimbursed by Barkhill to Riga on 24 January 1992.[31]

1.146 A second payment of IR£10,000 recorded in Riga's cheque payments book on the 11 October 1991 as '*Debit (Westpark*)' and given the attribution 5098 (indicating expenditure on behalf of Barkhill and the Quarryvale project) was said by Mr O'Callaghan to be Riga's reimbursement to him of a payment from his personal funds of a political contribution to Cllr Colm McGrath. This was similarly attributed to Barkhill and duly reimbursed to Riga in January 1992, along with the above payment to Mr Lawlor. [32]

1.147 The Tribunal was advised by Mr O'Callaghan that his altered position in relation to the payment to Mr Lawlor, namely that IR£10,000 was paid rather than IR£5,000, was prompted by him seeing a list of '*Westpark expenses*' dated 14 November 1991, on which he had made a manuscript annotation '*LL'* beside *'expenses'* of IR£10,000 on 23 September 1991.

1.148 On that same list of *'Westpark expenses'*, the manuscript annotation '*McGrath'* in Mr O'Callaghan's handwriting also appeared beside a second figure of IR£10,000 dated 11 October 1991.

1.149 Mr O'Callaghan claimed that he was first asked by Mr Lawlor for money at the time of the June 1991 Local Elections and that he agreed to make a contribution to his campaign. Mr O'Callaghan said that the payment made by him to Mr Lawlor in September 1991 in the sum of IR£10,000 was in fact the payment requested of him by Mr Lawlor some months earlier, and was paid after Mr Lawlor had failed in his bid to get re-elected as a councillor. Mr O'Callaghan told the Tribunal that he paid the money because he had promised it to Mr Lawlor, who had subsequently reminded him of that fact.

1.150 Mr O'Callaghan maintained that Mr Lawlor himself had suggested the figure of IR£10,000. Mr O'Callaghan said he made a cheque to Mr Lawlor for this amount drawn on his personal bank account.

1.151 According to Mr O'Callaghan, this was one of two political contributions authorised by him for payment to Dublin politicians in 1991, the other being a political contribution of IR£10,000 to Cllr McGrath in October 1991, also

[31] For further consideration of this cheque payment see Part 4.
[32] For a further consideration of this cheque payment see Parts 4 and 7.

following a request from the councillor in question during the course of the Local Election campaign.

1.152 When asked to explain the basis and reason for the payment of IR£10,000 to Mr Lawlor on 23 September 1991 and to Cllr McGrath on 11 October 1991, some months after the June 1991 Local Elections, in circumstances where he had made a contribution of IR£5,000 to Mr Micheál Martin in the course of these elections, Mr O'Callaghan stated:

> '*With regard to the two Dublin politicians* (a reference to Messrs Lawlor and McGrath) *both of them also suggested to me before the elections in a different way, I suppose, asked me would I look after them for, that's the words they used… for the June elections and I said I would. And I said to both of them we'll see how you get on and we will look when the elections are over we'll talk about it again. It was left as loose as that actually.'*

1.153 Mr O'Callaghan acknowledged that he did not inform Mr Gilmartin, his co shareholder in Barkhill, of the payment to Mr Lawlor. He said:

> '*Probably the main reason for not telling Mr Gilmartin is because he was not available number one, number two he didn't have any interest in what was happening in Dublin, number three he left me holding the baby completely, number four, he had his own problems to sort out and they are the real reasons I'm afraid.'*

1.154 Mr O'Callaghan agreed that his payment to Mr Lawlor was kept secret from Mr Gilmartin. He acknowledged that had Mr Gilmartin been made aware of the payment in 1991 he would not have agreed to it and would have reacted angrily to any payment to Mr Lawlor. Mr O'Callaghan acknowledged that when he made this IR£10,000 payment to Mr Lawlor, he was aware from Mr Gilmartin that Mr Lawlor had previously demanded substantial monies in connection with, *inter alia,* Quarryvale. Mr O'Callaghan was also aware that Mr Gilmartin had made complaints to the Gardaí in 1989 relating to, amongst others, Mr Lawlor arising out of which Mr O'Callaghan himself had been interviewed.[33]

1.155 Mr O'Callaghan rejected any suggestion that Mr Lawlor's payment of IR£10,000 in 1991 was anything other than a *bona fide* political contribution. It was not, he claimed, a payment for services rendered.

[33] See Part 3.

1.156 Mr O'Callaghan told the Tribunal that he did not discuss requests for payments from Mr Lawlor, or actual disbursements to him, with Mr Dunlop. However, Mr Dunlop, in his evidence on Day 766, said that Mr O'Callaghan told him in 1997 that Mr Lawlor 'was not getting any more money' from him. Mr Dunlop understood this to mean that Mr O'Callaghan had previously paid money to Mr Lawlor although he did not know how much. Furthermore, the Tribunal has found as a fact that Mr Dunlop's payment of IR£40,000 to Mr Lawlor in May/June 1991 was known to Mr O'Callaghan at the time it was made. The Tribunal therefore considered it likely that Mr Dunlop and Mr O'Callaghan would also have discussed Mr Lawlor's request for money from Mr O'Callaghan around the same time, and the subsequent payment of IR£10,000 to Mr Lawlor by Mr O'Callaghan in September 1991.

1.157 Mr Lawlor did not identify the September 1991 payment of IR£10,000 from Mr O'Callaghan in information provided to the Tribunal. He claimed, however, that he received IR£5,000 from Mr O'Callaghan in 1991, after this had been confirmed to his solicitors by Mr O'Callaghan's solicitors. Indeed, Mr Lawlor's solicitors wrote to Mr O'Callaghan solicitors on 13 November 1998 following media reports of an allegation by Mr Gilmartin of a payment of IR£50,000 to Mr Lawlor through *'public relations consultant and former Fianna Fáil press officer Frank Dunlop'* who *'was employed and paid by Cork based developer Owen O'Callaghan*.' Mr Lawlor's solicitors requested *'confirmation that no such alleged payment was made either directly or indirectly by your client to our client. […] We would also be obliged to receive a note of any Political contributions by your clients to our client.*' Mr O'Callaghan's solicitors responded on 17 November 1998 that their client was *'a stranger to the matters canvassed in the first part'* of the letter but confirmed that *'Mr O'Callaghan through his company Riga Limited, made a political contribution in the sum of IR£5,000 to your client in that company's financial year which ended on 30 April 1992.'*

1.158 The Tribunal was satisfied that Mr O'Callaghan paid Mr Lawlor a sum of IR£10,000 on 23 September 1991 (in respect of which he was reimbursed by Riga). The Tribunal rejected Mr O'Callaghan's contention that this payment to Mr Lawlor was a delayed political donation associated with the Local Elections of June 1991.

1.159 The Tribunal was satisfied that Mr O'Callaghan paid the IR£10,000 to Mr Lawlor at the latter's request for his ongoing political services as a strategist for the Quarryvale project, and that this was, as indicated by Mr O'Callaghan himself in his letter of 3 December 1991 to AIB, an '*expense*' associated with the efforts to have the Quarryvale lands rezoned and developed.

1.160 The Tribunal believed that the IR£10,000 payment represented a '*top-up*' to the IR£40,000 paid to Mr Lawlor by Mr Dunlop in May/June 1991, as a result of Mr Lawlor demanding additional money because of his disappointment with the IR£40,000 payment. As has been found by the Tribunal, Mr Gilmartin in 1991 overheard Mr O'Callaghan and Mr Dunlop refer to Mr Lawlor's disappointment relating to the IR£40,000 payment. It was likely that, as reported by Mr Gilmartin, Mr O'Callaghan had told Mr Dunlop that he would *'try and square it'* by giving *'a bit more to Mr Lawlor',* which he then did.

THE PAYMENTS OF IR£10,000 AND IR£20,000 BY MR O'CALLAGHAN TO MR LAWLOR IN SEPTEMBER 1994 AND MARCH 1995

1.161 Mr O'Callaghan made payments of IR£10,000 and IR£20,000 to Mr Lawlor on 26 September 1994 and 13 March 1995 respectively. Mr O'Callaghan said that these payments were made by Riga cheques payable to '*cash'* and given to Mr Lawlor, although he acknowledged that it was possible that he had cashed the cheques himself and in turn provided the cash to Mr Lawlor. As was the position with the payment of September 1991, the Tribunal did not have sight of either the September 1994 or the March 1995 cheques.

1.162 Riga's cheque payments book recorded the payment on 26 September 1994 of a IR£10,000 cheque payable to '*cash'*, analysed under the '*sundries'* column as '*OOC / Pol C (LL'* and given the attribution '*5098'*, denoting it to be an expense paid out by Riga Ltd on behalf of Barkhill Ltd/Quarryvale. The cheque was debited to Riga's account on 27 September 1994.

1.163 Similarly, on 13 March 1995, Riga's cheque payment book recorded the drawing of a cheque for IR£20,000 to *'cash'*, again analysed under *'sundries'* as '*OOC Pol C (LL'* and similarly given the attribution '*5098'* as a payment made by Riga on behalf of Barkhill/Quarryvale. This cheque was debited to Riga's account on 13 March 1995.

1.164 Notwithstanding both payments being analysed under *'sundries'* as political contributions to Mr Lawlor, Mr O'Callaghan confirmed in evidence that these monies were in fact paid to Mr Lawlor for political services. Indeed, having been asked by Counsel for the Tribunal to explain why these payments had been made, Mr O'Callaghan replied:

> *'Well, it's difficult to define it, it wasn't really, it wasn't, it was payment for services rendered really. It's a fine line. You could claim that he was doing what he was doing from a political point of view, because it was in his constituency, and he was doing all of this for his constituents, also doing it for us. It's a fine line as to what it is, but my opinion is even*

though political contribution is written down there, is that it was for services rendered.'

THE PAYMENT OF IR£10,000 IN SEPTEMBER 1994

1.165 According to Mr O'Callaghan this payment for IR£10,00 in September 1994 was for work done by Mr Lawlor over previous years relating to both the Quarryvale and stadium projects. It was made at the request of Mr Lawlor and following a number of reminders by Mr Lawlor. As to the purpose of the payment, Mr O'Callaghan evidence was in conflict with Mr Lawlor's position, which was that all payments to him from Mr O'Callaghan were political donations.

1.166 When asked to identify work done by Mr Lawlor to warrant the IR£10,000 payment in September 1994, Mr O'Callaghan stated:

'*...first of all Mr Lawlor's intervention with Green Properties was very, very important if it had succeeded and it wasn't his fault that it did not succeed. If it had succeeded Green Property would say not have carried on like they did and we wouldn't have had the argument about Blanchardstown and Quarryvale which we had for the following years, which became a real political hot bed I suppose really for '91, '92 and even parts of '93.*

If he had succeeded and he did his very, very best and only for John Corcoran and John Corcoran's company I think he would have succeeded, in fact he agreed with John Corcoran and the Chairman of the County Council that everything was agreed and there was members of Green Properties company I believe changed it after that agreement was made. Liam Lawlor could not have been blamed for that, if he was successful we wouldn't have had any of the shenanigans we had for the following two years.

Second point is; that he was responsible for suggesting the stadium project, and without him we probably wouldn't have come up with that idea because we weren't aware that it was recommend for a site in west county Dublin by the government, and one of the sites for the stadium in west County Dublin by the government.

Secondly, he had I think, I'm not clear on this, but he had some involvement in the original proposal to finance the stadium.

But probably fourthly and most importantly of all, he was of great assistance to Frank Dunlop and in turn to me through Frank Dunlop, to let us know how most of the councillors felt about Quarryvale and what their attitudes to Quarryvale was and how we could approach them when we were lobbying them. We had quite a few councillors supported us on the

basis of friendship because of the relationships that we built up with these councillors because of the knowledge we had about them given to me by Frank Dunlop who in turn received it from Liam Lawlor.

And probably the – of that the most important thing was he was the man who introduced me to all the communities in North Clondalkin Groups that I could not have got near or anybody else could have got near, that was probably his political base really and he enabled us to meet groups of 200 or 300 people of all the various and there were various, various groups in Clondalkin and in particular north Clondalkin. And he arranged all these meetings, we met them all and were able to get the message to them and get our support. So Liam Lawlor did a lot of work for us in the background.'

1.167 Questioned by Tribunal Counsel as to the nature of the information relating to councillors imparted by Mr Lawlor to Mr Dunlop, Mr O'Callaghan described Mr Lawlor's ability to advise on the spheres of influence held by a number of named councillors within their respective political parties. On the basis of the information supplied by Mr Lawlor to Mr Dunlop, Mr O'Callaghan '*would know whether they (the Councillors) were people to stand alone and make up their own minds or supporting community associations or had to adhere with community associations etc. It wasn't just the political side of things. You would also be told personal details about family, and even where these people were from etc...*'

1.168 According to Mr O'Callaghan, Mr Lawlor could also *'tell you how many people were in the family for example and even maybe give you the names of the people in the family which you know when you meet them for the first time.'*

1.169 Asked if Mr Lawlor was providing these services to Mr O'Callaghan in the capacity of a consultant, Mr O'Callaghan stated as follows:

'No. I wouldn't really. I heard that name mentioned. I would actually say to you as a local T.D. and we were in the heart of his constituency remember, our two sites were right in the middle of his constituency, and I will say this against him, he always stuck his nose into everybody's business and it was very very hard to keep it out, but he was extremely helpful and everything he did seemed to be going in the direction of getting some development going in West County Dublin. As a consultant, not to the same extent as our consultants would be.'

1.170 Mr O'Callaghan said that Mr Lawlor had not been retained as a consultant in the way that Ambrose Kelly & Company and other professionals had been, but he was happy that Mr Lawlor '*was working*' for him.

1.171 Mr O'Callaghan acknowledged that Cllr Colm McGrath provided similar services to him throughout the Quarryvale rezoning process as those provided by Mr Lawlor, but while Cllr McGrath was providing these services as a local councillor, as of June 1991 Mr Lawlor was providing these services as a national politician, having lost his Council seat in the Local Elections of 1991.

1.172 On Day 899 the following exchange took place between Tribunal Counsel and Mr O'Callaghan:

'Q. Right. And in 1994 in September 1994, when Mr --- when you paid Mr Lawlor, may I ask you, prior to the payment that you made, had Mr Lawlor sought money from you in 1994?

A. Yes, he had.

Q. And on approximately how many occasions had Mr Lawlor raised the issue of money with you before you paid him the sum of 10,000 pounds?

A. Maybe three or four times

Q. Right. In those conversations did Mr Lawlor give you an indication of the amount of money that he expected to receive?

A. I think so yes, oh, yes he did, yes.

Q And what did Mr Lawlor ask for?

A. Well the figure he got

Q. He asked for 10,000 pounds?

A. 10,000 yeah.

Q. That would have been slightly more than half of Mr Lawlor's then take home salary as a TD, isn't that right?

A. Based on 18,000 pounds, yes.

Q. Isn't that right? So that what Mr Lawlor was asking you for was to give him a sum that was then equal to half of his TD salary, indeed it was greater than [half] *his TD salary, isn't that right?*

A. Yes

Q. Right. Did you regard that sum as an excessive sum, Mr O'Callaghan?

A. No, not really, not in the context of what Mr Lawlor was doing for it, he spent a lot of time, as I said to you, working for us indirectly.'

THE PAYMENT OF IR£20,000 ON 13 MARCH 1995

1.173 Mr O'Callaghan testified that subsequent to his having paid the IR£10,000 to Mr Lawlor in September 1994, he was approached by Mr Lawlor who *'demanded'* a further IR£20,000 payment from him. He agreed to this and made the payment in March 1995. He agreed that this was a sum which was equivalent to Mr Lawlor's then annual salary as a TD. Mr O'Callaghan was questioned as follows:

'*Q. So in anybody's working life that is an enormous amount of money, isn't it? Did Mr Lawlor regard it as an enormous amount of money?*

A. No, absolutely not.

Q. Did you regard it as an enormous amount of money?

A. Not really, no, not really

Q. Did you pay him again for the same reasons?

A. Same reasons, yes.

Q. So you were paying him in relation to the assistance that he had provided to Mr Dunlop in relation and yourself, in relation to the rezoning is that correct?

A. Plus the stadium.

Q. Yes
A. Plus the Green…

Q. In the first instance in relation to the rezoning?

A. Correct.

Q. In the second instance in relation to what he had done in connection with the stadium?

A. Correct.

Q. In the third instance in relation to what he had done in trying to broker a deal with Green Properties in 1991?

A. And in the fourth instance his connection [with] *all the local community associations.*

Q. And by December of course of 1993, the Development Plan had been made, isn't that right?

A. Yes, yes.

Q. And therefore between December 1993 and September 1994 although you know the level of work that Mr Lawlor has done you don't make any payment?

A. That's right.'

1.174 Questioned as to whom he might have told of the nature of his financial relationship with Mr Lawlor, Mr O'Callaghan stated that, other than Mr Deane, he did not believe he had apprised '*many more people.'* He had not told Mr Dunlop nor had he told Mr Gilmartin. As for AIB, Mr O'Callaghan stated that they might have had some knowledge of it but he was '*not too certain about that.'*[34]

1.175 Acknowledging that he was paying a national politician to provide services to him in relation to Quarryvale, Mr O'Callaghan stated:

'*I had a national politician, because I was involved in the heart of his constituency, probably the only two projects ongoing in his constituency were being planned to be carried out by us. He got himself very much involved in it. I found it impossible to keep him away from it because he is that type of individual. He offered his services, he continuously offered his services, at times it was very difficult to avoid him and at times his advice was very good, he knew his way around the constituency very well, I did not know anybody. He was of great help to me initially. He became so much involved, or tried to get so much involved after a year or two that I had to avoid him. He did a lot of work for us, he gave us a lot of information that I outlined to you, and he said he wanted to be recompensed for that and I felt I was obliged to do it and I did it. That's it.'*

1.176 Mr O'Callaghan acknowledged that this national politician, Mr Lawlor, had received IR£30,000 from him over a seven month period.

1.177 Mr O'Callaghan was asked the following question:

'*Would it be fair to say, Mr O'Callaghan, that if a politician provided assistance to you and asked you for money in relation to that assistance, or after they had given the assistance that you weren't averse to making a payment?'*

1.178 He replied as follows:

'*Depends on the circumstances. In these particular circumstances I arrived here in Dublin in the location that I knew absolutely nothing about. Into a horrendous situation really. I did not know any politician here, the*

[34] See Part 4 of this Chapter, in which the Tribunal found that Mr O'Callaghan informed Mr Kay of his IR£10,000 payment to Mr Lawlor in 1991.

only one I knew, and I know it was mentioned by [I] *think by Frank Dunlop, I knew two politicians, one politician I had met him once before that was Liam Lawlor. I did not know my way around Clondalkin or North Clondalkin, it was totally new territory to me, and he offered his services to help me and guide me around through Frank Dunlop admittedly and in some occasions him directly me, I appreciated that help.*

Admittedly that help, after a year or two became too much and I had to break contact with him because (I) *felt that he was getting too much involved with us, and I suppose the main reason was that he dictated a little bit --- he was a bit of a workaholic and he wanted us --- he was quite anxious and wanted that these two projects would get going in west County Dublin and became too forceful actually. But initially he was of great benefit to me. Without him I wouldn't know where I was going, I accepted his help, it was difficult not to accept it because he was always there.'*

1.179 Mr O'Callaghan was again asked:

'*...whether as a principle, if a politician provided services for you and asked to be remunerated or asked to be paid by you that as a matter of principle you were not averse to paying a politician for services?'*

He replied: *'If he provided services for us that we needed, yes.'*

THE TREATMENT OF THE IR£10,000 AND IR£20,000 PAYMENTS IN THE AUDITED ACCOUNTS OF RIGA

1.180 Both of the payments to Mr Lawlor amounting to IR£30,000 fell into Riga's annual accounting period ending 31 April 1995.

1.181 Documentation provided to the Tribunal showed that (as had been the case in the Riga cheque payments book) the two payments were initially attributed by Riga's auditors, Barber & Co., to the Barkhill loan as denoted by the attribution *'75A'* which was Riga's auditors' attribution within the Riga accounts for payments made on behalf of Barkhill/Quarryvale. Subsequently, in the analysis of sundry cheques carried out by Ms Cowhig on behalf of Riga's auditors, the attribution of the two payments to the Barkhill loan was crossed out and replaced by *'742',* i.e. the directors loan account attribution.

1.182 Ms Cowhig said she had advised Mr Deane that because there were no supporting invoices for the payments of IR£10,000 and IR£20,000 to Mr Lawlor, these payments would have to be posted to the directors loan account in the books of Barkhill. However, she knew that Barkhill was at that stage looking for an outside investor, and she indicated to Mr Deane that if these payments were

posted to the directors loan account of Barkhill, a potential outside investor would probably insist on such payments being cleared. Therefore a decision was made to post the two payments to the directors loan account in the books of Riga, thereby, as understood by the Tribunal, removing both payments from scrutiny from a potential outside investor.

1.183 Mr Deane confirmed Ms Cowhig's evidence on this point. He told the Tribunal:

> *'.....and the way as I understand or sorry as I recall the conversations, when these two items came up Clare was discussing the accounts with me. She made the point that because there weren't invoices they would have to go into the directors loan account within Barkhill. As we were getting outside investor in at that particular point in time they would insist on that being cleared, it would have had to have been paid anyway. So she advised that the thing to do was to put it into the directors loan account within Riga and then there was flexibility as to when it was paid subject to the payment of the benefit in kind tax.'*

1.184 Mr Deane told the Tribunal that Mr. O'Callaghan had made the two payments out of his own directors loan account but that ultimately these payments were '*shared'* between the loan accounts of Mr O'Callaghan and Mr Deane.

1.185 The Tribunal noted that at the time Mr Deane decided to post the two payments to Mr Lawlor totalling IR£30,000 to the directors loan account within Riga, Mr Fleming of Deloitte & Touche (Barkhill's auditors) was in the process of conducting an audit of the books of Barkhill. Had the two payments appeared in the Riga/Barkhill intercompany loan balance within the books of Barkhill, Mr Fleming would have sought explanations for these payments, a process which would inevitably have brought the two payments to Mr Gilmartin's attention. Mr O'Callaghan told the Tribunal that he considered these two payments to Mr Lawlor to be Barkhill/Quarryvale expenses. However, he acknowledged that these payments were ultimately accounted for solely within the books of Riga in order to avoid them being queried by Barkhill's auditors and potential investors in Barkhill.

MR LAWLOR'S BANKING RECORDS

1.186 While an analysis of the banking records of Mr Lawlor revealed a number of unexplained lodgements to accounts connected with him between September 1994 and March 1995, it did not show a specific lodgement of IR£10,000 in September/October 1994 or of IR£20,000 in March 1995.

1.187 The Tribunal believed however that Mr Lawlor was the recipient of sums of IR£10,000 and IR£20,000 from Mr O'Callaghan in September 1994 and March 1995 respectively.

THE PAYMENT OF IR£1,000 BY MR O'CALLAGHAN TO MR LAWLOR IN 1996

1.188 On 18 October 1996, Riga paid IR£1,000 by way of cheque to Mr Lawlor's golf classic fundraising event. Unlike Mr O'Callaghan's previous cheque payments to Mr Lawlor, this cheque was provided to the Tribunal. It was payable to '*Liam Lawlor Golf Classic'* and attributed in the '*sundries'* column of Riga's cheque payments book as *'sponsorship.'*

1.189 Bank records established that the cheque for IR£1,000 was credited on 25 October 1996 to the Irish Permanent Building Society account of Mr Lawlor's wife, Mrs Hazel Lawlor, having been duly endorsed by her.

MR GILMARTIN'S KNOWLEDGE OF PAYMENTS TO MR LAWLOR BY MR O'CALLAGHAN

1.190 Mr Gilmartin certainly suspected that payments were being made to Mr Lawlor by Mr O'Callaghan, given his knowledge of the relationship between Mr Lawlor, Mr O'Callaghan and Mr Dunlop, and given the knowledge he had of a substantial sum of money having been paid to Mr Lawlor in 1991. Indeed in February 1998, long before Mr Dunlop and Mr O'Callaghan provided to the Tribunal details of their payments to Mr Lawlor, Mr Gilmartin told the Tribunal that *'O'Callaghan got money [...] paid to Frank Dunlop (who was the 'bag man') and he paid off the councillors including [...] Lawlor and others.'*

1.191 The Tribunal also believed Mr Gilmartin's evidence that Mr O'Callaghan told him on a number of occasions that Mr Lawlor was *'on his payroll.'*

THE TRIBUNAL'S OVERALL CONCLUSIONS ON MR LAWLOR'S INVOLVEMENT IN QUARRYVALE, AND IN RELATION TO PAYMENTS MADE TO HIM BY MESSRS DUNLOP AND O'CALLAGHAN

1.192 The Tribunal was satisfied that Mr O'Callaghan directly paid Mr Lawlor IR£41,000 between 1991 and 1996. In addition the Tribunal has already found that Mr O'Callaghan was aware of, and facilitated, the payment of IR£40,000 by Mr Dunlop to Mr Lawlor in May/June 1991, from payments to Shefran totalling IR£80,000, made between 16 May 1991 and 7 June 1991. It followed therefore that Mr O'Callaghan was, directly and indirectly, instrumental in Mr Lawlor receiving IR£81,000 in the period 1991 to 1996.

1.193 Mr Lawlor did not provide the Tribunal with a true account of his relationship, including his financial relationship with Mr O'Callaghan in relation to, in particular, the Quarryvale project.

1.194 The Tribunal was satisfied that Mr Lawlor abused his role as an elected public representative, and that he, in effect, corruptly sold political services for personal gain. In relation to Quarryvale in particular, Mr Lawlor provided to Mr O'Callaghan (and to Mr O'Callaghan's agent, Mr Dunlop) strategic advice in relation to rezoning and planning issues pertinent to his constituency. The Tribunal was satisfied that Mr Lawlor was motivated to provide such services because of the opportunity, whenever it arose, to extract substantial sums of money from Mr O'Callaghan and Mr Dunlop in the knowledge that they were unlikely to reject such demands, for fear of alienating the most senior politician in Quarryvale.

1.195 In all the circumstances, the Tribunal was satisfied that the relationship between Mr Lawlor on the one hand, and Messrs O'Callaghan and Dunlop on the other hand, was one firmly based on corruption.

CHAPTER TWO – THE QUARRYVALE MODULE – PART 9

EXHIBITS

1. Ganley International Ltd invoice in the amount of IR£25,000 dated 19 February 1997.....1263

2. Cheque from Frank Dunlop & Associates Ltd payable to Ganley International in the amount of IR£25,000 dated 11..... 1264

3. List entitled 'Westpark Expenses' dated 14 November 1991..... 1266

FD.ST 1 - 222

GANLEY INTERNATIONAL LIMITED

LONDON OFFICE
128 Mount Street
London W1Y 5HA
U.K

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Telephone: 355 42 35021
Telephone: 355 42 30458
Facsimile: 355 42 35025

TRIBUNAL OF INQUIRY INTO FLOODING MATTERS
12 MAY 1999
RECEIVED

£ P

INVOICE NO: EE 809

Date: 19th February 1997

RE: CONSULTANCY FEE

SUBJECT: EASTERN EUROPE - BALKANS

As per our agreement, we have completed the study on behalf of Frank Dunlop & Associates in Eastern Europe and the Balkans regarding communications under the following headings:-

a) Government & State Information Services
b) Public Relations requirements for the Private Sector
c) Media Relations - Public & Private Sectors.
d) Communications skills relating to print and other forms of communications.

TO CONSULTANCY FEES (AS AGREED)	IR£ 25,000 00
VAT No: 645630242 (not applicable)	——
TOTAL AMOUNT DUE	IR£ 25,000 00

PAYMENT 7 DAYS FROM DATE OF INVOICE (AS AGREED)
Bank Account 80465143 - Sorting Code No: 206611

Bankers; Barclays Bank (Mayfair Group of Branches)
PB Box 11345 London W12 8GG

Chairman & Chief Executive - Mr Declan Ganley

Associate Company: Anglo Adriatic Investment Fund

Delivered by hand 25/2/97 c. 12.00 NOON

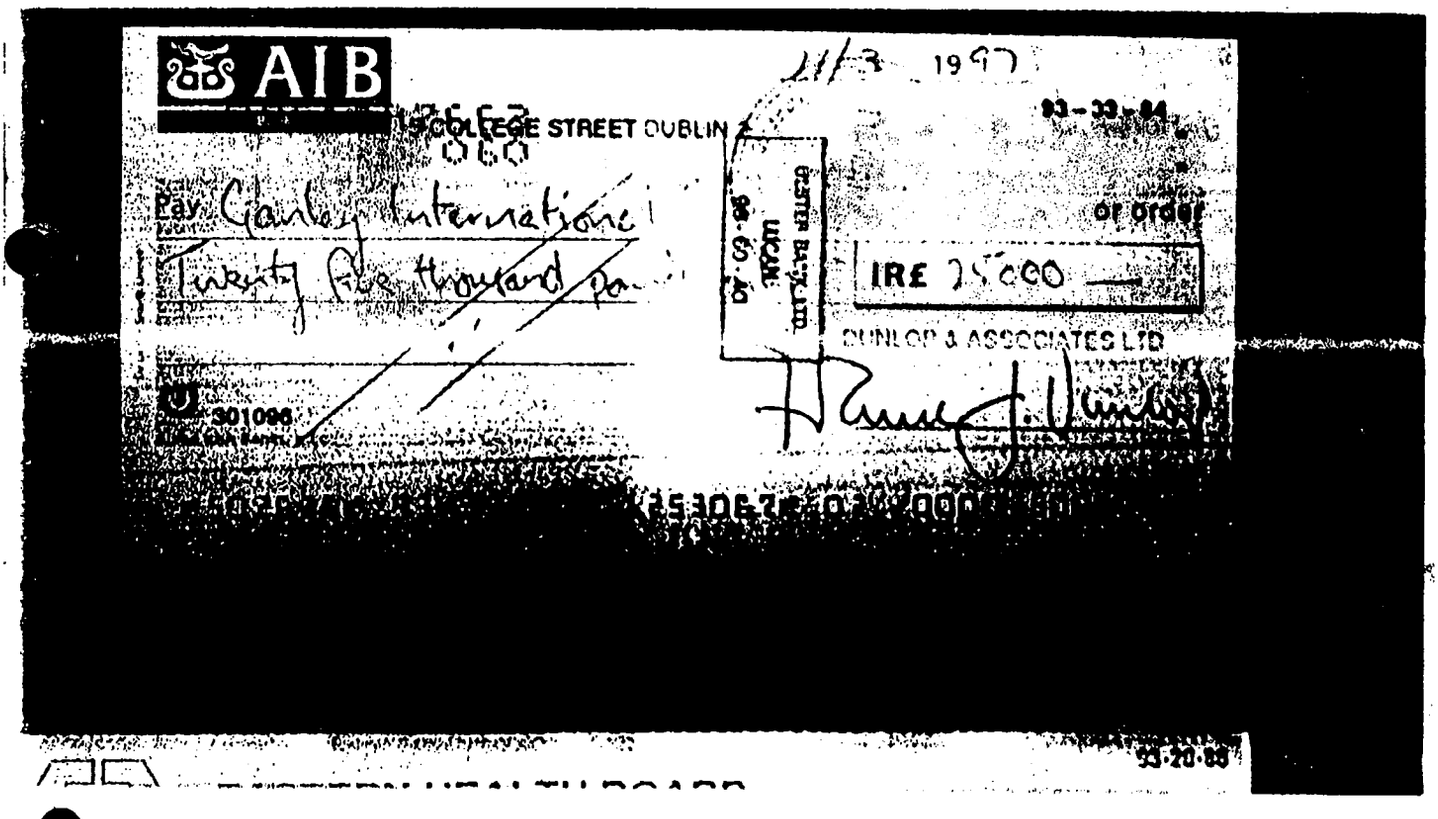
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W E S T P A R K E X P E N S E S 14/11/1991

28.02.91	Lending & Administration		£ 26,192.52
05.03.91	Tom Gilmartin	10,000 Stg. →	£10,028.00
29.04.91	Tom Gilmartin	50,000 Stg. →	£55,656.36
16.05.91	Sheafran Limited		25,000.00
24.05.91	Sean O'Leary		726.00
27.05.91	Lending & Administration		58,407.50
30.05.91	Sheafran Limited		40,000.00
13.06.91	Sheafran Limited		15,000.00
20.09.91	Tom Gilmartin	100,000 Stg. →	£100,000.00
23.09.91	Expenses		£10,000.00
~~26.09.91~~	~~Deane & Co.~~ (Barkhill 400 shares)		~~400.00~~
27.09.91	Frank Dunlop - Brothers,		8,484.29
11.10.91	Expenses		£10,000.00
11.11.91	Ambrose Kelly		26,195.00
			386,089.67
19.06.91	Refunded	230,000.00	
14.11.91	Balance		156,089.67

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CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 – THE TRIBUNAL'S INQUIRY INTO MR BERTIE AHERN'S FINANCES

THE REASONS FOR THE INQUIRY

1.01 The Tribunal undertook its inquiry into Mr Bertie Ahern's personal finances in order to establish, if possible, whether Mr Ahern received substantial sums of money from Mr Owen O'Callaghan, directly or indirectly. The Tribunal did so following upon the provision to it of the following information:

- Mr Tom Gilmartin told the Tribunal that, sometime in 1992, Mr Owen O'Callaghan informed him that he, Mr O'Callaghan, had paid a total of IR£80,000 to Mr Bertie Ahern, while the latter was a government minister.
- In particular, Mr Gilmartin alleged that Mr O'Callaghan told him that IR£50,000 was paid to Mr Ahern in 1989 when Mr Ahern was Minister for Labour, and that IR£30,000 was paid to Mr Ahern at a later date, when he was Minister for Finance.

1.02 These allegations became a focus of inquiry by the Tribunal because of their obvious relevance to its substantive inquiry into the payment of money to politicians relating to the rezoning of the Quarryvale lands. Furthermore, the relatively precise nature of the information relating to both alleged payments, the availability of witnesses (who were directly or indirectly associated with the allegations) to assist the Tribunal with its inquiry, and the fact that the alleged source of the information provided to Mr Gilmartin (namely, Mr O'Callaghan) was himself a central character in the Quarryvale inquiry, were important factors in the Tribunal's decision to comprehensively inquire into these matters.

1.03 The Tribunal's inquiries were made in the context of its analysis of Mr Ahern's banking transactions following his return[1] to personal banking in December 1993, after a period of approximately seven years. These revealed that lodgements made to Mr Ahern's accounts in the year or so subsequent to December 1993 significantly exceeded his known annual net income.

1.04 Mr O'Callaghan emphatically denied that he told Mr Gilmartin at any time that he had paid the said sums amounting to IR£80,000, or any sum, to Mr Ahern, for any purpose, or that he had paid any money whatsoever to Mr Ahern. Mr Ahern also strongly denied that any money had been paid to him by Mr O'Callaghan.

[1] Mr Ahern Advised the Tribunal that he did not personally operate any bank account for a period of years following his separation from his wife.

INFORMATION RELATING TO THE ALLEGED PAYMENTS OF £50,000 AND £30,000 TO MR AHERN PROVIDED BY MR GILMARTIN PRIOR TO HIS SWORN EVIDENCE TO THE TRIBUNAL

1.05 References to payments to Mr Ahern were made by Mr Gilmartin in the course of five telephone conversations between himself and Counsel to the Tribunal, between 22 October 1998 and 26 September 2002. References to payments to Mr Ahern were also made by Mr Gilmartin in the course of a taped discussion between himself and his then solicitor, Mr Noel Smyth, in London on 20 May 1998, (on foot of which a draft statement had been made available to the Tribunal in June 1998), and also in a narrative statement provided to the Tribunal by Mr Gilmartin on 17 May 2001. Mr Gilmartin subsequently gave sworn evidence to the Tribunal of the circumstances in which he said that he was provided with the relevant information by Mr O'Callaghan.

1.06 Set out below is a summary of the information provided by Mr Gilmartin to the Tribunal, prior to his sworn evidence, and in which reference was made to payments allegedly made to Mr Ahern by Mr O'Callaghan. [2]

(I) A TELEPHONE CONVERSATION ON 22 OCTOBER 1998 BETWEEN MR GILMARTIN AND MR PAT HANRATTY SC COUNSEL TO THE TRIBUNAL

1.07 Mr Gilmartin and Counsel to the Tribunal spoke on the telephone on 22 October 1998. This telephone call was the ninth such call between Mr Gilmartin and Counsel to the Tribunal, and took place less than nine months after the first such telephone conversation, on 5 February 1998.

1.08 In the course of this telephone conversation on 22 October 1998, Counsel to the Tribunal noted the following references by Mr Gilmartin to the issue of money and Mr Bertie Ahern:

- *When Mr Gilmartin was introduced to Councillor Gilbride, the latter would hear no criticism of Liam Lalor* [Lawlor]. *Councillors Gilbride and McGrath suggested that Mr Gilmartin should make a donation to the Party. Padraig Flynn also suggested a donation. So did Bertie Ahern.*

- *Mr Gilmartin then told me about three Shefran payments that were made in or about May of 1992. It was either in late May or early June 1992.*

- *… one was to Bertie Ahern for £30,000…*[3]

[2] Mr Gilmartin's prior statements to the Tribunal are reproduced (subject to limited redaction) in part 2 of this Chapter.

- *The payment to Bertie Ahern was connected with blocking the tax designation to Green Property Company. At the time, Albert Reynolds was the Taoiseach and Bertie Ahern was the Minister for Finance and Labour.*

- *Bertie Ahern's payment was connected with stopping the Green Property Company from getting tax designation.*

(II) A TELEPHONE CONVERSATION BETWEEN MR GILMARTIN AND MR PAT HANRATTY SC COUNSEL TO THE TRIBUNAL ON FRIDAY 30 OCTOBER 1998.

1.09 In the course of this telephone conversation, Mr Hanratty noted Mr Gilmartin as making the following reference to a payment to Mr Ahern:

- *Mr Gilmartin said that the £30,000 referred in the letter of 10 June 1992* [4] *was for Bertie Ahern. He was told at the time by Eoin O'Callaghan that he* (O'Callaghan) *would see to it that Green Property Company would not get tax designation. He said that he had taken care of Bertie Ahern*.

(III) A TELEPHONE CONVERSATION BETWEEN MR TOM GILMARTIN AND MR JOHN GALLAGHER SC COUNSEL TO THE TRIBUNAL, ON 6 NOVEMBER 1998

1.10 In the course of this telephone conversation, Counsel for the Tribunal noted Mr Gilmartin as having made the following references to payments to Mr Bertie Ahern:

- *Gilmartin says that he know that part of the Chefran* (sic)[5] *money went to Albert Reynolds, part to Bertie Ahern and a smaller sum to one other person whose names he did not know…*

- *He (*Mr Gilmartin*) says that at the end of 1992-1993, … £30,000 was paid to Bertie Ahern whom he believed (was) Minister for Finance… No money went into Chefran* (sic). *The money was paid direct. Chefran (sic) was being used as a money laundering operation*.

[3] The Tribunal identified three Shefran payments made to Mr Frank Dunlop through Shefran (or Sheafran) Ltd. in 1991, and two such payments in 1992. One of the two 1992 payments was a payment for £30,000.

[4] This was apparently a reference to a letter of 10 June 1992 written by AIB to Mr Gilmartin in relation to a payment to Shefran amounting to £30,000. The AIB letter did not make any reference to any connection between the payment and Mr Ahern.

[5] 'Chefran' was a misspelling for 'Shefran.'

(IV) A TELEPHONE CONVERSATION BETWEEN MR TOM GILMARTIN AND MR PAT HANRATTY SC COUNSEL TO THE TRIBUNAL ON 25 NOVEMBER 1999

1.11 Counsel for the Tribunal noted[6] Mr Gilmartin as making the following references in the course of this telephone call to payments to Mr Ahern:

- *… he said that he had received information to the effect that the Shefran payments were in fact reimbursements to OOC from the Barkhill account for payments to senior politicians which OOC had already made. OOC had paid around £150,000 to senior politicians in 1989 and, in total, had paid £250,000 to senior politicians in connection with Quarryvale. In 1989 £50,000 was paid to … and £50,000 to Bertie Ahern. Bertie Ahern also got another £30,000 subsequently.*

- *He said that the information came to him indirectly through an intermediary and that the person providing the information was afraid to come forward* (This was a reference to an individual whom Mr Gilmartin had earlier claimed had provided him with information).

- *… he said that the source had previously been a partner with OOC in a development in Cork* (A reference to the individual who had provided information to Mr Gilmartin)

(V) A TELEPHONE CONVERSATION BETWEEN MR TOM GILMARTIN AND MR PAT HANRATTY SC[7] COUNSEL TO THE TRIBUNAL ON 26 SEPTEMBER 2002.

1.12 According to notes made by Counsel to the Tribunal of a telephone conversation between Mr Gilmartin and himself on 26 September 2002, Mr Gilmartin provided the following information:

- *Owen O'Callaghan made offshore payments to politicians including Bertie Ahern and … He made the payments into Bertie Ahern's account in Jersey. Bertie Ahern and … have accounts in Jersey, Liechtenstein and the Dutch Antilles. Bertie Ahern also has deposits in England. On one occasion he brought a brief case full of cash over with him when he was attending a Manchester United football match. He was met by a courier from the Bank of Ireland to whom he handed the money.*

[6] Counsel's note of this telephone conversation was dated 29 November 1999, some four days after the call.

[7] Mr Hanratty had at that time recently left the Tribunal, and returned to private practice.

- *Bertie Ahern got in excess of £100,000 from Owen O'Callaghan. Over £1,000,000 was stolen from Barkhill and it was from this money that O'Callaghan paid Bertie Ahern …'*

- *Owen O'Callaghan himself … told Mr Gilmartin … that he (*O'Callaghan*) had made a payment to Bertie Ahern.*

- *In 1990 Owen O'Callaghan gave Bertie Ahern a large sum of cash at a football match in Cork. The second lot of money was paid by O'Callaghan to Bertie Ahern in 1992 in connection with the blocking of tax designation for the Green Property Company.*

- *John Corcoran was on the brink of getting tax designation. However it was blocked by Bertie Ahern and … Owen O'Callaghan paid Bertie Ahern £30,000 after a Barkhill board meeting held in Bank of Ireland (Mr Gilmartin thinks) in 1992. This was the board meeting at which Mr O'Callaghan left the room for a period and came back and announced that Blanchardstown was not going to get tax designation* (Mr John Corcoran was associated with Green Property Company, the developer of the Blanchardstown Town Centre)

- *Large sums of money were taken from the O'Connell Street account to England.*

- *Bertie Ahern held an offshore facility with an Irish Bank, which Mr Gilmartin thinks is Bank of Ireland but says it might be Allied Irish …*

- *Mr Gilmartin told me the story about the temporary chauffeur who drove Celia Larkin to a bank in O'Connell Street and withdrew a substantial sum in cash which was put in the boot of the car.*

(VI) A LETTER DATED 28 OCTOBER 2005 FROM A&L GOODBODY SOLICITORS

1.13 On 16 May 2005, the Tribunal wrote to Mr Gilmartin's Solicitors and requested additional information as follows:

> *…. I am directed by the Members of the Tribunal to write to you concerning allegations made by your client during the course of telephone conversations with Counsel to the Tribunal. Your client indicated that he had received information that some senior politicians had received monies from Mr Owen O'Callaghan in connection with the Quarryvale project.*
>
> *The Tribunal have now requested that your client provide to the Tribunal as a matter of urgency the source of this information.*

1.14 Mr Gilmartin responded through his Solicitors on 28 October 2005 in the following terms:

In relation to the query raised by you in your letter of 16 May 2006, we are instructed by our client that he was told by Owen O'Callaghan himself that he (Mr O'Callaghan) had provided monies to some senior politicians.

(VII) INFORMATION PROVIDED BY MR GILMARTIN IN THE COURSE OF A TAPED DISCUSSION WITH HIS THEN SOLICITOR MR NOEL SMYTH ON 20 MAY 1998 (PROVIDED TO THE TRIBUNAL IN JUNE 1998).

1.15 In the course of a taped conversation with his then Solicitor, Mr Noel Smyth, on 20 May 1998 at a meeting in London, Mr Gilmartin stated the following:

- *'The next thing I discover was that Owen O'Callaghan had paid Bertie Ahern to block the designation on Blanchardstown and on this one. On a zoned site.'*

1.16 Mr Gilmartin also said:

'... O'Callaghan left the meeting. ... He didn't come back for about the best part of an hour or so, and he then came back and he said there will be no designation on the site..... O'Callaghan openly stated that Bertie Ahern was ensuring that neither Green nor that site would get designation ... he was paid for doing that. Because he would have been out. I have no proof of that.'

1.17 Mr Smyth asked Mr Gilmartin if Mr O'Callaghan had ever said he gave Mr Ahern money, Mr Gilmartin responded:

'*He did. He said Bertie was taken care of*'

And

'He used to openly brag about it. O'Callaghan used to openly brag about it.'

(VIII) MR GILMARTIN'S NARRATIVE STATEMENT OF 17 MAY 2001

1.18 In the course of a lengthy narrative statement dated 17 May 2001, Mr Gilmartin said the following:

'*I also recall Mr O'Callaghan telling me, again I believe that it was some time in 1992, that he had given £50,000 to Bertie Ahern in 1989 and that he had given him a further £30,000 some time later, when Mr Ahern had apparently been instrumental in blocking Green Property Plc getting special tax designation for Blanchardstown. I inferred from what Mr*

O'Callaghan told me that, on the basis that he was paying monies to Bertie Ahern, he had been able to call on the support of Mr Ahern in his efforts to frustrate my project for Westpark/Quarryvale even though I thought at one stage that Mr Ahern was supportive of the project.'

THE EVIDENCE RELATING TO THE ALLEGATION OF A PAYMENT OF £50,000

1.19 Mr Gilmartin told the Tribunal that Mr O'Callaghan informed him that he had paid IR£50,000 to Mr Ahern. Mr Gilmartin initially stated that Mr O'Callaghan had given him this information in 1989, and that it was his understanding that the payment had been made earlier that year at a football match, which he identified as the Cork/Meath All-Ireland Final or an Irish International soccer match. Mr Gilmartin said that Mr O'Callaghan also remarked to him that Mr Ahern was on his '*payroll.'*

1.20 Mr Gilmartin alleged that the information provided to him on this matter by Mr O'Callaghan arose in the following circumstances:

Mr Gilmartin had told Mr O'Callaghan that in the context of difficulties he was encountering in 1989 with regard to his purchase of the 'Irishtown lands',[8] he had gone to Mr Ahern, as someone he could trust, for assistance and had told Mr O'Callaghan that Mr Ahern was 'the only man' who had assisted him in relation to his difficulties. Mr Gilmartin said that Mr O'Callaghan '*scoffed'* at his reasoning for expressing trust in Mr Ahern, and that Mr O'Callaghan told him that he, Mr O'Callaghan, had to pay Mr Ahern IR£50,000 to ensure that the Green Property Company (the developer involved with Blanchardstown site), did not purchase the Corporation lands.

1.21 In later evidence, and when it was pointed out to him that the All Ireland Final in 1989 had not included Cork and Meath, but that these two counties did feature in the All-Ireland Final in the following year, 1990, Mr Gilmartin acknowledged, (although he still believed it to have been 1989), that the important date indicator for him was that Mr O'Callaghan had given him this information in the year in which Cork and Meath had played in an All Ireland Final. This suggested therefore that the year may have been 1990, rather than 1989.

1.22 Mr Gilmartin was also closely questioned in relation to a reference which appeared in a note of a telephone conversation between Mr Gilmartin and Mr Pat Hanratty SC, Counsel to the Tribunal to the effect that '*in 1990 Owen O'Callaghan gave Bertie Ahern a large sum of cash at a football match in Cork.'*

[8] See Part III

Mr Gilmartin told the Tribunal that he had never indicated that Mr O'Callaghan had told him that the money had been physically paid to Mr Ahern at a match in Cork, and, further, that the match in question was an All Ireland match involving Cork, but played in Croke Park. Mr Gilmartin, in evidence, referred to the match as '*a cork match'* or *'a cork football match.'*

1.23 Mr Gilmartin emphasised on a number of occasions that he personally had never alleged of his own knowledge that Mr Ahern had in fact been paid IR£50,000. Mr Gilmartin emphasised that his allegation was simply that Mr O'Callaghan had told him that he, Mr O'Callaghan, had made such a payment to Mr Ahern.

1.24 Mr O'Callaghan strongly denied that he ever informed Mr Gilmartin that he had paid IR£50,000, or any sum, to Mr Ahern. Mr Ahern equally strongly denied that he ever received any payment of money from Mr O'Callaghan in any circumstances.

THE EVIDENCE RELATING TO THE ALLEGATION CONCERNING A PAYMENT OF IR£30,000

1.25 Mr Gilmartin described to the Tribunal that while attending a Barkhill board meeting at AIB headquarters, he believed, in 1993, Mr Owen O'Callaghan announced that the Blanchardstown development would not receive tax designation, and that he had this information on '*good authority.'* Mr Gilmartin said that he contradicted Mr O'Callaghan on this issue, and expressed his own understanding from his Government contacts, that Blanchardstown was indeed to get designation.

1.26 Mr Gilmartin described how Mr O'Callaghan then left the meeting room, and after an absence '*for some time',* returned and announced that he had confirmation from '*the horse's mouth*', that Blanchardstown would not receive tax designation.

Mr Gilmartin then alleged that when he and Mr O'Callaghan were leaving the meeting, he, Mr Gilmartin, expressed his amazement to Mr O'Callaghan that Mr O'Callaghan could give such an absolute categoric assurance in relation to the tax designation issue, whereupon Mr O'Callaghan said that he had a guarantee from the Minister for Finance (Mr Ahern) on the issue, and added that it had cost him IR£30,000.

1.27 Mr Gilmartin maintained that he understood Mr O'Callaghan to have told him that he, Mr O'Callaghan, had paid IR£30,000 to Mr Ahern to ensure that the Green Property Company did not receive tax designation in relation to Blanchardstown.

In an earlier statement in 2001, Mr Gilmartin had suggested that the date of this board meeting was in 1992. Mr Gilmartin said however that '*dates was a fierce problem'* for him, and '*trying to remember what year, let alone what month'* was difficult for him.

1.28 In the Smyth taped discussion in 1998, Mr Gilmartin had stated that he had '*discovered'* that Mr O'Callaghan had '*paid Bertie to block the designation on Blanchardstown and on this one a zoned site.'* Neither in that extract, nor elsewhere in the Smyth discussion, did Mr Gilmartin refer to the amount that had been paid to Mr Ahern. According to Mr Gilmartin, Mr O'Callaghan had also said to him that '*Bertie was taken care of.'* Mr Gilmartin emphasised that he was merely repeating what Mr O'Callaghan had said to him.

1.29 In his draft affidavit of 2 October 1998, Mr Gilmartin referred to Mr O'Callaghan leaving a meeting in AIB and returning with a statement to the effect that neither Blanchardstown nor Quarryvale would receive tax designation. In this document, there was no mention of money being paid to Mr Ahern. Mr Gilmartin's sworn affidavit did refer to his belief that '*substantial sums of monies were paid as bribes by Owen O'Callaghan to politicians* …'

1.30 In a telephone conversation with Counsel to the Tribunal on 22 October 1998, Mr Gilmartin was noted as stating that a payment of IR£30,000 was made to Mr Ahern through Shefran Ltd in approximately May 1992, and that it was '*connected'* with the blocking of tax designation to the Green Property Company (the developers of the Blanchardstown site). Whether or not Mr Gilmartin had, in the course of this telephone call, identified Mr O'Callaghan as the source of this information, the memorandum of the telephone call did not so state.

1.31 Mr Gilmartin's explanation for this reference to Shefran Ltd was that he had assumed that the IR£30,000 paid to Mr Ahern had in fact been routed through Shefran Ltd. On 25 November 1999, in the course of a telephone call between Mr Gilmartin and Counsel to the Tribunal, references to IR£50,000 and IR£30,000 being paid to Mr Ahern were noted. Mr Gilmartin said he was given this particular information by an anonymous caller. In his evidence, Mr Gilmartin stated that the anonymous caller repeated the same information as had been told to him, Mr Gilmartin, by Mr O'Callaghan.

MR O'CALLAGHAN'S EVIDENCE

1.32 Mr O'Callaghan denied that he had paid money at any time to Mr Ahern. He further denied that he at any time advised Mr Gilmartin that he had made any payments to Mr Ahern. It was Mr O'Callaghan's belief that Mr Gilmartin had never told him that he had spoken to Mr Ahern about difficulties which he was experiencing in relation to his acquisition of local authority lands in Quarryvale. Mr O'Callaghan acknowledged however, that Mr Gilmartin told him of those difficulties.

1.33 Mr O'Callaghan denied informing Mr Gilmartin that he had paid IR£50,000 to Mr Ahern to solve Mr Gilmartin's problems in relation to the acquisition of the lands. He described this allegation as '*absolute and total rubbish.'*

1.34 Mr O'Callaghan told the Tribunal that in March 1994 he met Mr Ahern in his office.[9] This appointment was probably arranged by Mr Dunlop, possibly at Mr O'Callaghan's request. Mr O'Callaghan told the Tribunal that at the time he was concerned with the news that a former Government Minister and EU Commissioner, Mr Ray MacSharry had been appointed to the Board of Green Property Company plc, and that because of that, Green would possibly get tax designation for Blanchardstown. Mr O'Callaghan said that he probably told Mr Ahern that neither Blanchardstown nor Quarryvale needed tax designation, but that if Blanchardstown was to receive it, so should Quarryvale. In any event, Mr O'Callaghan said that he was assured by Mr Ahern that neither Blanchardstown nor Quarryvale would receive tax designation. Mr O'Callaghan acknowledged that it was likely that he had informed Mr Gilmartin of his March 1994 meeting with Mr Ahern.

1.35 Mr O'Callaghan acknowledged that at a board meeting at AIB, he informed the meeting of his discussion with Mr Ahern, and of Mr Ahern's assurances that neither Blanchardstown nor Quarryvale would receive tax designation. There was no written memorandum of this meeting. He denied Mr Gilmartin's claim, however, that he had left the meeting in the circumstances described by Mr Gilmartin. Mr O'Callaghan was '*not sure'* if, when conveying what he had been told by Mr Ahern to the meeting, he had used the expression, as suggested by Mr Gilmartin, 'horse's mouth.'

[9] This meeting is considered in more detail elsewhere in this Chapter.

1.36 Mr O'Callaghan also denied that on leaving the meeting he had told Mr Gilmartin that he had paid money to Mr Ahern.

1.37 Mr O'Callaghan acknowledged that he may have told Mr Gilmartin of the Fianna Fail request to him for a payment of IR£100,000, and the subsequent payment by him to Fianna Fail of IR£80,000 in June 1994. Mr O'Callaghan suspected that Mr Gilmartin might have taken the IR£80,000 figure paid to the Fianna Fail Party, and then turned it into a story that in fact this money had been paid to Mr Ahern in his personal capacity.

1.38 Mr O'Callaghan also acknowledged that he may have informed Mr Gilmartin of the fundraising dinner in Cork on 11 March 1994, which was attended by Mr Albert Reynolds, who was then Taoiseach. The Tribunal has found as a fact that Mr O'Callaghan informed Mr Gilmartin of his own contribution of IR£10,000 to Fianna Fail at that event.

1.39 Mr O'Callaghan maintained that he never suggested to Mr Gilmartin that he had politicians or any politician on his payroll.

THE EVIDENCE OF MR AHERN

1.40 Mr Ahern denied that he ever received money from Mr O'Callaghan, directly or indirectly. In a statement provided to the Tribunal by Mr Ahern through his solicitors on 5 November 2004, Mr Ahern:

- denied receiving IR£50,000 or IR£30,000 from Mr O'Callaghan
- claimed that he did not discuss tax designation for Blanchardstown with Mr O'Callaghan *
- acknowledged that Mr O'Callaghan updated him in relation to the Stadium proposals in 1994 and again in 1996 and 1998.

In a letter from his solicitors dated 22 April 2005, the Tribunal was advised of Mr Ahern's denial that he had offshore accounts.

1.41 In the course of his evidence to the Tribunal, Mr Ahern acknowledged that he met Mr O'Callaghan on 24 March 1994, but that as far as he was concerned did not '*at any time*' discuss tax designation for Blanchardstown with him (although he recalled media references to same at that time). He accepted that he may well have outlined Government policy in relation to the tax designation issue in the course of his discussions with Mr O'Callaghan. Mr Ahern stated that, if he gave any assurance to Mr O'Callaghan in relation to tax designation for Blanchardstown/Quarryvale, it would simply have been in the context of him repeating Government Policy to Mr O'Callaghan which at that time did not envisage tax designation status for these sites.

1.42 Mr Ahern also acknowledged that he provided assistance through Councillor Joe Burke to Mr Gilmartin in relation to problems Mr Gilmartin claimed he was then having in relation to the purchase of the corporation lands[10] in Quarryvale. (Originally in his December 2003 statement to the Tribunal, Mr Ahern stated that this assistance was in relation to the Bachelors Walk development).

THE EVIDENCE OF MR EAMON DUNPHY CONCERNING MR O'CALLAGHAN

2.01 Mr Eamon Dunphy, a journalist and broadcaster, was interviewed in private by the Tribunal on 26 February 2007. Subsequently, and at the Tribunal's request, Mr Dunphy provided a written narrative statement to the Tribunal on 28 March 2007. Mr Dunphy gave sworn evidence to the Tribunal in mid February 2008 (Day 822), in the course of which he was examined by Counsel for the Tribunal, and then cross examined by Counsel for both Mr O'Callaghan and Mr Ahern.

MR DUNPHY'S EVIDENCE TO THE TRIBUNAL

2.02 Mr Dunphy told the Tribunal that over a two to three year period approximately, he acted as, essentially, as a coordinator of a project to bring Wimbledon FC to Dublin, one of the aspects of which concerned Mr O'Callaghan's plan to build a football Stadium on Barkhill's Neilstown (Clondalkin) site. Mr Dunphy was not paid for his involvement, and in any event, the Stadium project did not materialise. Mr Dunphy said that he approached Mr O'Callaghan on becoming aware of Mr O'Callaghan's involvement with this Stadium project. Mr Dunphy held a high profile position both as a sports journalist, broadcaster and as a former professional footballer.

2.03 In the course of their association, Mr Dunphy and Mr O'Callaghan met on many occasions, sometimes on their own, and sometimes with others.

2.04 Mr Dunphy emphasised on a number of occasions in the course of his sworn evidence to the Tribunal that he considered Mr O'Callaghan to be a man of integrity, and a person who was '*honest in his dealings*.'

2.05 Mr Dunphy told the Tribunal of informal discussions between himself and Mr O'Callaghan probably over a meal or coffee in either Dublin or London, and in the course of which Mr O'Callaghan made certain comments to him concerning, in particular, Mr Bertie Ahern.

[10] See Part 3 of this Chapter for a more detailed analysis of the evidence heard by the Tribunal relating to meetings between Mr Gilmartin and Mr Joe Burke.

2.06 In particular, Mr Dunphy said that Mr O'Callaghan advised him as follows:

- That he, Mr O'Callaghan, felt that in 1994 (when Mr Ahern was Minister for Finance), Mr Ahern had failed to deliver on a promise to grant tax designation status to a development with which Mr O'Callaghan was involved with in Athlone (the Golden Island Shopping Centre Development),[11] and that Mr Albert Reynolds (the then Taoiseach) had had to 'put a gun' to Mr Ahern's head on the night before they left Government to deliver on that promise

- That Mr Ahern had '*been taken care of*' but had failed to deliver on a commitment.

2.07 While in the course of his evidence to the Tribunal, Mr Dunphy acknowledged that in all his discussions with Mr O'Callaghan, Mr O'Callaghan had never used the words 'money' or 'corrupt', he said he nevertheless understood or inferred from what Mr O'Callaghan had told him, the following:

- That he interpreted Mr O'Callaghan's comments in relation to dealing with Councillors as Mr O'Callaghan informing him that '*the only way you could work as a developer and get your projects through (was) by dealing with these people, these people being corrupt Councillors'*

- That Mr O'Callaghan had used terminology or words, in the context of his comments relating to Mr Ahern such as '*looked after', 'he had been fixed up',' he'd do a deal*' and '*he'd been taken care of.'*

- That Mr Ahern had been '*induced improperly by Mr O'Callaghan to grant tax designation to this project and had failed to deliver.'*

- That the inducement in question was money, and that it was his impression from Mr O'Callaghan, that Mr Ahern had received a benefit in return for an agreed outcome.

- That Mr O'Callaghan, in order to succeed in his development projects had had no choice but deal with corrupt councillors. Mr Dunphy said '*I clearly understood him to mean that you had to get involved in bribery to get planning permission to do anything.'*

[11] Golden Island is a shopping development in Athlone, County Westmeath. It was developed in the early 1990s by a consortium of developers/investors, including Mr O'Callaghan. The development was granted tax designation status by the outgoing Fianna Fail Government in December 1994. The Ministerial Order granting the tax designation to Golden Island was signed by the Minister for Finance, Mr Bertie Ahern on the last day in office of his Government. Mr O'Callaghan denied that he had had any contact with, or had paid money to, Mr Ahern in relation to this development. While in the course of its public inquiries, there were occasional references to Golden Island receiving tax designation status in 1994, the Tribunal did not undertake any public inquiry in relation to the matter.

- That it was his '*impression clearly gained from numerous conversations with Mr O'Callaghan is that favours were expected in return for being looked after, taken care of.'*

- That '*Mr O' Callaghan's position when he discussed this with me was that he had to do it* ('it' being a reference to bribery) *in order to conduct his business as a developer. That it was pervasive, that everybody was doing it…' (*a reference to Mr Dunphy's understanding that Mr O'Callaghan had been obliged to engage in corrupt practices in order to successfully conduct his business as a developer).

- That Mr O'Callaghan had given him information about bribery and that Mr O'Callaghan was involved in bribery, and that he had paid Mr Ahern, and that Mr Ahern had taken a bribe, in relation to tax designation in Athlone.

2.08 Mr Dunphy maintained that he clearly recalled his conversation with Mr O'Callaghan, and described it as '*vivid'* in his memory. He said that the conversation had remained in his mind, as did the inference that he had taken from it, to the effect that that Mr Ahern had been given an inducement by Mr O'Callaghan. He did not know whether Mr O'Callaghan had paid money to Mr Ahern or if, in fact, he had been engaged in any corrupt activity.

2.09 Towards the conclusion of his cross examination of Mr Dunphy, Mr O'Callaghan's Counsel, Mr Sreenan S.C. questioned Mr Dunphy as follows:

Q. '*We looked earlier in your cross examination at references to how you evaluated Mr O'Callaghan that you described him as honest, first class and a thoroughly decent person. You remember those references?'*

A. '*Yes I do.'*

Q. '*Is that still your view of him?'*

A. '*Yes it is'*

Q. '*And if Mr O'Callaghan comes in here and says look, Mr Dunphy just drew the wrong inference from whatever I said, I've never paid a penny to Bertie Ahern for any purpose whatsoever, whether in relation to Athlone, Quarryvale or anything. Will you accept what Mr O'Callaghan says that you just drew the wrong inference'*

A. '*Well I will accept firstly the findings of the Tribunal.'*

Q. '*That wasn't my question.'*

A. '*I understand it wasn't your question. I'll accept … first of all, I would insist that my inferences were honestly drawn and … '*

> Q. *'Okay let's accept that as part of the question. Honestly drawn but mistaken. If Mr O'Callaghan as an honest, first class, thoroughly decent person says look I never paid a penny to Bertie Ahern will you accept that? That you just must have been mistaken but honest in your inferences.'*
>
> A. '*... that's an interesting question. I believed him when he expressed or made those remarks about his relationship with Mr Ahern. But I also accept that the inference I drew was an inference. And if Mr O'Callaghan were to come in here and say that I was mistaken well yes I would accept that'*

2.10 In this exchange, Mr O'Callaghan's counsel challenged Mr Dunphy to accept that the inferences which he took from what was told to him by Mr O'Callaghan while honestly drawn, were nevertheless mistaken. In the event that Mr O'Callaghan was to tell the Tribunal that he had '*never paid a penny to Bertie Ahern...',* Mr Dunphy agreed that if that was to happen he would accept that he had been mistaken in his inferences, and accept Mr O'Callaghan's contention that he had '*never paid a penny'* to Mr Ahern.

MR O'CALLAGHAN'S EVIDENCE

2.11 This particular matter was later canvassed with Mr O'Callaghan in the course of his sworn evidence (on Day 915) while being examined by his own Counsel Mr Sreenan. On that occasion, the following exchange took place:

> Q. '*He (Mr Dunphy) suggested that you had said to him that Bertie Ahern was a person who would take the money and didn't deliver and that you had either said or implied to him that you had paid money to Bertie Ahern in return for promised favours, but he also accepted in evidence that if you came in here and testified that you had never said that, that he would accept your testimony. Now did you ever say that to Mr Dunphy?'*
>
> A. '*No, I never did'*

2.12 The above suggestion, as put to Mr O'Callaghan by his counsel, was markedly different to that which had been put by Mr Sreenan to Mr Dunphy on Day 822. When it was put to Mr Dunphy that if Mr O'Callaghan were to give evidence that he had never said nor implied that he had paid money to Mr Ahern, or that Mr Ahern was the sort of person who would take the money and not deliver, Mr Dunphy agreed he would accept that the inferences that he took were mistaken, albeit taken honestly. However, it was never suggested to Mr Dunphy that the words which Mr Dunphy had sworn were stated to him by Mr O'Callaghan, had not in fact been said by Mr O'Callaghan. Mr Dunphy merely indicated that he would accept Mr O'Callaghan's evidence that he, Mr

O'Callaghan, had never paid money to Mr Ahern, if Mr O'Callaghan was to so confirm. Mr Dunphy had never maintained that he was in a position to prove that Mr O'Callaghan had paid money to Mr Ahern. Mr Dunphy never withdrew or otherwise retracted his evidence that particular statements had been made to him by Mr O'Callaghan, and that he had drawn a particular inference from those statements.

2.13 Mr O'Callaghan was asked if he disputed Mr Dunphy's evidence that he, Mr O'Callaghan had, in effect, told him that '*while Mr Bertie Ahern had been taken care of, he didn't do the deal, and that you had to get Mr Reynolds to put a gun to Mr Ahern's head on the night before they were to leave Government…*' Mr O'Callaghan responded that he '*completely and totally disputed it.*' Mr O'Callaghan confirmed that not only did he dispute what Mr Dunphy said that he told him, but also that he had approached Mr Reynolds in the manner suggested, or that he paid money to either Mr Reynolds or Mr Ahern. Mr O'Callaghan denied that he had anything to do with the grant of tax designation status to Golden Island by the Government on 14 December 1994, although he acknowledged that some six months earlier, he and his business partners and members of Athlone UDC had lobbied Mr Smith, the Environment Minister, on the issue on two occasions.

2.14 Mr O'Callaghan was also questioned as follows:

Q. '*…did you ever tell either Mr Gilmartin or Mr Dunphy anything to the effect that you had looked after Mr Ahern but that he hadn't delivered in relation to the matter?*'

A. '*That's totally incorrect*'

Q. '*But insofar as they have given this evidence to the Tribunal both Mr Dunphy and Mr Gilmartin are incorrect when they recollect you telling them that you had in fact taken care of or Mr Ahern, and that you had to get Mr Reynolds to intervene for you in order to get the tax designation through?*'

A. '*Both are completely incorrect, I don't think Eamon Dunphy's evidence was that straightforward.*'

Q. '*No, Mr Dunphy doesn't mention money in relation to the matter, I think his evidence was that you told him that Mr Ahern had been taken care of, but that you had to get Mr Reynolds to intervene, or …*'

A. 'That's totally incorrect on all accounts'

2.15 It was clear therefore that Mr O'Callaghan rejected not only the inferences which Mr Dunphy said he took from information provided to him by Mr O'Callaghan, but that he also denied in the strongest possible terms that anything of the nature of what Mr Dunphy suggested had been told to him was in fact said to Mr Dunphy by him.

THE FRANK CONNOLLY FACTOR

2.16 Mr Dunphy told the Tribunal that he was friendly with, and admired the journalist, Mr Frank Connolly. Mr Dunphy acknowledged that he had discussed with Mr Connolly the information which Mr Dunphy claimed Mr O'Callaghan gave him and which he had subsequently recounted to the Tribunal.

2.17 In cross examination, it was strongly suggested to Mr Dunphy that he, Mr Dunphy had come to the Tribunal in order to '*wreak revenge'* for what he perceived to have been a wrong perpetrated on his friend and colleague Mr Connolly (and which was explained by Mr Dunphy as his perception that there had been improper use of Dáil privilege in connection with Mr Connolly, involving the disclosure of confidential information relating to Mr Connolly, by the then Minister for Justice to a journalist). Mr Dunphy said that it would be '*an act of monumental irresponsibility and folly to embellish a story because something happened to Frank Connolly.'*

2.18 Mr Dunphy also stated the following:

'*If you are suggesting for one minute that I would come to this Tribunal and perjure myself and damage the Taoiseach of this country and a businessman for whom I have the highest regard in order to wreak revenge as you put it, for what was done to Frank Connolly. I don't want to be in any way bad mannered, but that is outrageous! And you must surely know it. It is a preposterous allegation to make. And if that is what you are suggesting, well then, you must pretty short of material I have to say' (*Mr Dunphy was here responding to Mr Sreenan, Counsel for Mr O'Callaghan)

2.19 The Conclusions of the Tribunal in relation to Mr Dunphy's evidence:

I. The Tribunal was satisfied that Mr Dunphy gave his evidence honestly and in the belief that it was true and accurate.

II. The Tribunal rejected any suggestion (to the extent that it was made) that Mr Dunphy embellished or otherwise altered his evidence to the Tribunal because of any sense of bitterness or anger on his part as to any past treatment of Mr Connolly or any issue relating to him, and which Mr Dunphy perceived as being unfair.

III. The Tribunal was satisfied that Mr Dunphy, in his sworn evidence to the Tribunal, accurately recounted and described the words and terminology used by Mr O'Callaghan in discussions between the two men relating to Mr Ahern, Mr Reynolds and the issue of the granting of tax designation for the Golden Island development in Athlone.

IV. The Tribunal accepted that the inferences taken by Mr Dunphy in relation to the information provided to him by Mr O'Callaghan were, as described by Mr Dunphy, honest inferences (and which were acknowledged as such by Mr O'Callaghan's Counsel), and were, in the Tribunal's view reasonable inferences for him to have taken, having regard to the words spoken by Mr O'Callaghan and the context in which they were spoken.

V. The Tribunal was satisfied that Mr O'Callaghan made verbal statements to Mr Dunphy, to the effect:

- that Mr Ahern had been given an inducement or was '*taken care of*' by Mr O'Callaghan in return for a promised favour.

- that Mr O'Callaghan gave inducements to politicians

- that Mr O'Callaghan found it necessary to engage in corrupt activity in order to successfully develop property in Dublin.

2.20 The foregoing findings assisted the Tribunal in making the following findings, some of which are replicated and considered in detail elsewhere in the Report.

i) The fact that Mr O'Callaghan disclosed information to Mr Dunphy which, at least, implied or inferred that Mr O'Callaghan had corruptly paid money to Mr Ahern was corroborative of Mr Gilmartin's allegations that Mr O'Callaghan had, likewise, disclosed information in which he stated or implied that he, Mr O'Callaghan, had paid money to Mr Ahern in return for favours from Mr Ahern in connection with matters associated with the Quarryvale project.

ii) The Tribunal was satisfied from its consideration of the evidence of Mr Gilmartin and of Mr Dunphy that Mr O'Callaghan was prepared to divulge, and did indeed divulge, to third parties, with whom he was at the time closely associated in the Quarryvale project (and which included the Neilstown Stadium project) information and statements which expressly or by implication suggested that he, Mr O'Callaghan, had made corrupt payments to politicians, including Mr Ahern.

iii) The Tribunal was satisfied that Mr O'Callaghan informed Mr Gilmartin that he had paid sums totalling IR£80,000 to Mr Ahern. The provision of such information to Mr Gilmartin was not proof that such payments had indeed been made to Mr Ahern by Mr O'Callaghan.

iv) Specifically in relation to the allegation that Mr O'Callaghan told Mr Gilmartin immediately following a Barkhill Board Meeting in AIB that he had paid IR£30,000 to Mr Ahern in return for an assurance that the Blanchardstown development would not receive tax designation status, the Tribunal accepted Mr Gilmartin's account as to the circumstances in which he was provided with such information.

v) The Tribunal was satisfied that Mr O'Callaghan was advised by Mr Ahern, the then Minister for Finance, at a meeting on 24 March 1994 that neither the Blanchardstown or Quarryvale developments would receive tax designation status. However, the Tribunal believed it to have been quite possible that Mr O'Callaghan had received a similar assurance on an unknown date considerably prior to the 24 March 1994, and that the reason for Mr O'Callaghan's again raising the issue with Mr Ahern on 24 March 1994 arose from a concern on his, Mr O'Callaghan's part, that Mr Ray MacSharry's then recent or imminent appointment to the board of Green Property Plc (the developers of Blanchardstown) might precipitate a reversal of Mr Ahern's earlier stated position that Blanchardstown would not receive tax designation.

vi) While Mr Gilmartin's evidence in relation to his allegation that Mr O'Callaghan had informed him that he, Mr O'Callaghan, had paid Mr Ahern IR£50,000 in order to ensure that the corporation owned lands in Quarryvale were not sold to Green Property Plc, was considerably less specific than his evidence in relation to the alleged IR£30,000 payment (paras (iv) and (v) above), and was probably mistaken in terms of aspects of its detail because of poor recollection on Mr Gilmartin's part, the Tribunal was nevertheless satisfied that Mr Gilmartin was provided with information by Mr O'Callaghan which led him to understand that Mr O'Callaghan had indeed advised him that he had paid IR£50,000 to Mr Ahern.

THE CONDUCT OF THE INQUIRY INTO MR AHERN'S FINANCES

3.01 The Tribunal's inquiry into Mr Ahern's finances effectively commenced in late 2004. On 15 October 2004, the Tribunal notified Mr Ahern's solicitors that Mr Gilmartin had alleged that Mr O'Callaghan had told him that sums of IR£30,000 and IR£50,000 had been paid by Mr O'Callaghan to Mr Ahern, and that as part of its inquiry into that issue, the Tribunal was considering making an Order for Discovery in relation to, *inter alia*, Mr Ahern's bank accounts. On 4 November 2004, Mr Ahern provided a detailed narrative statement to the Tribunal, in which he denied having received any money from Mr O'Callaghan.

3.02 As part of its private inquiry, the Tribunal requested details of Mr Ahern's finances from Mr Ahern and from a number of financial institutions. Because of information provided to the Tribunal, its inquiries also involved an examination of bank accounts held in the name of Mr Ahern's then partner, Ms Celia Larkin, and certain bank accounts associated with Mr Ahern's constituency organisation, as well as the purchase of Mr Ahern's house at No. 44 Beresford Avenue, Drumcondra, Dublin and, to a limited extent, bank accounts held in the names of Mr Ahern's then minor daughters.

3.03 For a number of reasons, the inquiry conducted by the Tribunal into Mr Ahern's finances was complex and lengthy. Mr Ahern did not keep records of income or expenditure. He did not himself operate any personal bank accounts between 1987 and 1993, and maintained that, within this period he saved in excess of IR£50,000 in cash, and that he kept this cash in safes in his constituency office and his departmental office. Mr Ahern's income during this period (and indeed subsequently) came from state sources (as Lord Mayor of Dublin, as a TD, and as a government minister)[12] with associated expenses.

3.04 The Tribunal sought to establish the source of these substantial funds and, in doing so, to ascertain if any were associated, directly or indirectly with Mr O'Callaghan. In the course of that process, the Tribunal heard sworn evidence from a number of individuals including Mr Ahern, bank officials and others, and it examined the content of documentation provided to it by Mr Ahern, and others, and by a number of financial institutions.

[12] TD (1977–2011); Dublin Corporation Councillor (1978–88); Minister of State at the Departments of Defence and An Taoiseach (9 March–14 Nov 1982); Lord Mayor of Dublin (1986/7); Minister for Labour (1987–91); Minister for Finance (1991–4); Minister for Industry & Commerce (4–12 Jan 1993); Minister for Arts, Culture and the Gaeltacht (18 Nov–15 Dec 1994); Tánaiste (19 Nov–15 Dec 1994); Taoiseach (1997–2008).

THE BACKGROUND

3.05 On 25 October 2005, the Tribunal requested Mr Ahern to provide an explanation on or before 30 November 2005 in respect of some 86 lodgements made to his bank accounts in the period 30 December 1993 to 22 December 1995. In later correspondence dated the 3 March 2006 to Mr Ahern's Solicitors, the Tribunal extended the response period to 24 March 2006, and requested that Mr Ahern prioritise information relating to specific lodgements. The letter stated:

> *'1. Our letter dated 25th October, 2005, which was to have been replied to by the 30th November, 2005, has not yet been replied to. A copy of this letter is enclosed herewith. I have been instructed by the Tribunal to extend the period for your client's reply up to the 24th March, 2006.*
>
> *2. While the Tribunal Members are anxious to receive all the information sought in the Tribunal's letter of the 25th October, 2005, I have been directed to request that your client prioritise dealing with the following queries:*
>
> *(a). £15,000 cash lodgement as part of a £22,500 composite lodgement to Allied Irish Banks, special savings account numbered 00401-177 on the 30th December, 1993;*
>
> *(b). £30,000 cash lodgement into Allied Irish Banks, special savings account numbered 00401-177 (£27,164.44 cash and an amount in the sum of £2,835.56 in your client's current account numbered 0041-250 lodged on the 25th April, 1994;*
>
> *(c). £20,000 cash lodgement into Allied Irish Banks account number 00004-096 in the name of Georgina and Cecelia Ahern on the 8th August, 1994;*
>
> *(d). Transfer in the sum of £24,838.49 to your client's 7-day fixed interest account at Allied Irish Banks numbered 04519/011 on the 11th October, 1994;*
>
> *(e). Transfer in the sum of £19,142.92 to your client's 7-day fixed interest account at Allied Irish Banks numbered 04519/011 on the 1st December, 1995.*
>
> *As previously stated, the Tribunal is anxious that the lodgements set out at (a) to (e) above are dealt with as a priority to the other matters set out*

in my letter of the 25th October, 2005. The Tribunal is, of course, anxious to receive replies to all queries raised at the earliest possible opportunity.

In addition, the Tribunal is also anxious to receive your client's Affidavit of Discovery in compliance with the Tribunal's Order dated the 24th November, 2005.'

3.06 The Tribunal's consideration of these, and other lodgements of which it became aware in the course of its inquiries, are, *inter alia,* the subject of consideration by the Tribunal in Sections I to VIII of this Part of Chapter Two.

CHALLENGES TO THE VALIDITY, SCOPE AND DEPTH OF THE INQUIRY POST 2004, INTO MR AHERN'S PERSONAL FINANCES.

3.07 Between late 2004 and late 2008 a substantial volume of correspondence passed between the Tribunal and Mr Ahern's solicitors in relation to Mr Ahern's finances. Much of this correspondence was concerned with requests for additional information by the Tribunal, and the provision of such information by Mr Ahern through his solicitors. On occasion during this period, and in the course of some of this correspondence, Mr Ahern, through his solicitors, challenged the basis on which the Tribunal was pursuing its inquiries into his finances, and also on occasion took issue with the extent and depth of that inquiry. When such issues arose, the Tribunal endeavoured to provide explanations as to the nature and purpose of its inquiries to Mr Ahern.

3.08 For example, in a letter to the Tribunal from Mr Ahern's solicitors dated 10 July 2007, a number of questions were posed, namely:

1. *Precisely what is the legal and evidential basis for the current inquiries into my client's personal affairs?*
2. *Please identify each decision made by the Tribunal to proceed with inquiries into my client's personal affairs and please state the issue or Module to which each decision related.*
3. *Please provide the precise date when each decision referred to above was made.*
4. *The purpose for which the alleged payment of £50,000 was made to my client has not been explained by the Tribunal. How does the inquiry into the alleged payment relate to the Quarryvale II Module?*
5. *How does the purpose for the alleged payment of £30,000 relate to the Quarryvale II Module?*

3.09 In its response to these queries, on 12 July 2007, the Tribunal stated, *inter alia*:

> *The evidential basis for the Tribunal's current inquiries, insofar as they involve inquiry into the finances of your client Mr Ahern, are to be found in the Quarryvale II brief of statements and documents circulated to you including, in particular,*
>
> *1) The evidence of Mr Tom Gilmartin, including the allegation that Mr Owen O'Callaghan informed him that he had paid Mr Ahern £50,000 and £30,000.*
>
> *2) The evidence of Mr Ahern, Ms Celia Larkin and Mr Michael Wall in relation to substantial cash transactions conducted in Irish currency and foreign currency which took place between October 1994 and December 1995.*
>
> *3) The evidence of bank officials in relation to the financial transactions conducted through the accounts of Mr Ahern and Ms Larkin, which transactions are more particularly identified in the bank documentation circulated in the Quarryvale II Brief and referred to in detail in Counsel's Supplemental Opening Statement in the Quarryvale II Module (28th May 2007).*
>
> *These inquiries involving Mr Ahern flowed directly from the decision of the Sole Member of the Tribunal taken prior to the 20th December, 1999 to conduct a public inquiry into allegations of planning corruption in relation to the rezoning of Quarryvale*.

3.10 The Tribunal's letter further stated:

> *In furtherance of this decision, inquiries have been made of a large number of politicians, which included detailed examinations of their personal bank accounts. Where the Tribunal inquiries have raised issues as to the source or nature of financial transactions conducted through such accounts, they will be inquired into in the Quarryvale II Module…*

and

> *The inquiries which are being made of your client in the Quarryvale II Module which touch upon your client's private and personal affairs do so only to the extent necessary to inquire into the sources of large cash lodgements made to Mr Ahern's bank accounts and to the accounts in the name of Ms Larkin being operated for his benefit and the purpose for which such payments were made…*

and

> *The Tribunal has legitimately determined that these are matters which merit public inquiry in the course of the Quarryvale II inquiry into the allegations made by Mr Tom Gilmartin regarding corrupt payments made in connection with the redevelopment of lands at Quarryvale and in*

particular his allegation that he was informed by Mr Owen O'Callaghan that Mr O'Callaghan had paid Mr Ahern £50,000 and £30,000. The inquiries which have been made of your client, Mr Ahern, and persons associated with him in relation to the lodgements of large sums of cash to his accounts and those of Ms Larkin are proportionate to the importance of the matters being inquired into and reflect the level of information provided to the Tribunal by Mr Ahern and others in relation to such lodgements. The tracing of funds through the accounts of Mr Ahern and those with whom he has had financial dealings is in no sense 'extraordinary' nor is it exclusively a matter relating to Tribunal inquiries into tax designation...

The Quarryvale II inquiry is specifically concerned with the alleged payment of £50,000 said to have been paid by Mr O'Callaghan to Mr Ahern because:

1) Mr Tom Gilmartin, a witness in the Quarryvale Module, alleges that Mr O'Callaghan, another witness in the Quarryvale Module, allegedly made the statement to him to the effect that such payment had been made. Mr O'Callaghan denies having made any such statement;
2) If the payment of £50,000 was made by a property developer Mr O'Callaghan, to a Government Minister Mr Ahern, that matter is an appropriate matter to be inquired into where the Tribunal is inquiring into the legitimacy of the rezoning of Quarryvale and the payment of monies to politicians by persons connected with Quarryvale;
3) Where Mr O'Callaghan has denied making a payment of £50,000 to Mr Ahern and where Mr Ahern has denied receiving such a payment, if such payment was made, it would be a material issue in determining the credibility of both witnesses in the Quarryvale II Module.

The allegation that Mr O'Callaghan made a statement to Mr Gilmartin that he had paid £30,000 to Mr Ahern in order to block the tax designation being sought by rival developers of the Blanchardstown Shopping Centre is material to the inquiry in the Quarryvale II Module because:

1) Mr Gilmartin maintains that such a statement was made by Mr O'Callaghan and Mr O'Callaghan denies the making of such a statement;
2) The allegation is that Mr O'Callaghan told Mr Gilmartin that such payment was made in return for Mr Ahern blocking tax designation for Blanchardstown. In the circumstances, if Mr Ahern as a Ministerial office holder exercised his Ministerial powers so as to ensure that a favourable result was achieved by a person who had paid him money, he would have acted in a manner which amounted to corruption. It is alleged that such a payment was made in order to benefit the

developers of the Quarryvale Shopping Centre and accordingly the matter falls to be dealt with in the Quarryvale II Module of inquiry;

3) Where both the alleged donor, Mr O'Callaghan, and the alleged recipient, Mr Ahern, have denied the fact of any such payment, any proof of such payment having been made would materially affect the credibility of each witness in the Quarryvale II Module.

3.11 On 9 December 2008, by which time Mr Ahern had concluded his sworn evidence to the Tribunal, Mr Ahern's solicitors wrote to the Tribunal. In the course of that letter, it was submitted on behalf of Mr Ahern that:

...if the Tribunal is not in a position to find that Mr Ahern received the alleged payments of £50,000 and £30,000 from Owen O'Callaghan then it follows as a matter of law that the Tribunal is not entitled to report on or make findings in respect of his personal finances, or the other matters that were the subject of public hearings. To put it another way, the Tribunal is not an inquiry into the general circumstances or credibility of witnesses, it can only make findings of fact that directly relate to the specific planning matters contained in the Terms of Reference.

3.12 In response to that letter, the Tribunal wrote to Mr Ahern's solicitors on 15 December 2008. In its letter, the Tribunal stated the following:

The Tribunal rejects the contention advanced in your letter that if the Tribunal is not in a position to find that Mr Ahern received payments of £50,000 and £30,000 from Mr O'Callaghan, that it is not entitled to make findings in respect of his personal finances, or the other matters which were the subject of public hearings...

and

The Tribunal specifically rejects the suggestion, if it is to be drawn from your letter, that an inability to conclude that Mr Ahern received £50,000 and £30,000 from Mr O'Callaghan necessarily precludes the Tribunal from making any findings in relation to Mr Ahern's credibility as a witness before the Tribunal, or in relation to his participation with the Tribunal, whether in correspondence, in complying with Tribunal request or Orders, or as a witness.

As part of its function the Tribunal is entitled to report upon the evidence which it has heard in the course of its public hearings. It is entitled to report upon the extent to which such evidence assisted the Tribunal, or otherwise, in its efforts to resolve such issues as it deemed merited public inquiry. The Tribunal is entitled to report upon the matters in which it conducted its inquiry, including references to the assistance or lack of assistance it may have received in its inquiries and the extent to which its

efforts were hampered, if such be the case, by persons whose cooperation was sought by the Tribunal in the course of the inquiry.

The absence of a conclusion by the Tribunal (as to which version of events, if any, is correct) on any particular issue, does not preclude the Tribunal from reporting upon its consideration of the issue and the state of the evidence adduced before it . . .

THE TRIBUNAL'S ANALYSIS OF MR AHERN'S FINANCES IN THE REPORT

3.13 In the following pages the evidence heard by the Tribunal relating to Mr Ahern's personal finances is considered in detail, and, where appropriate, findings of fact made on the balance of probability are set out. For convenience, the subject matter is subdivided into eight separate sections, under the following headings:

(i) The lodgement of IR£22,500 on 30 December 1993

(ii) The lodgements totalling IR£30,000 made on 25 April 1994 and the lodgement of IR£20,000 made on 8 August 1994

(iii) The lodgement of IR£24,838.49 to a bank account of Mr Ahern on 11 October 1994

(iv) The lodgement of IR£28,772.90 on 5 December 1994

(v) The lodgements of IR£11,743.74 on 15 June 1995, and of IR£19,142.92 on 1 December 1995

(vi) Mr Ahern's Irish Permanent Building Society accounts

(vii) The B/T account

(viii) The rental and purchase of No. 44 Beresford Ave, Drumcondra, Dublin.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION I : THE LODGEMENT OF IR£22,500 ON 30 DECEMBER 1993

MR AHERN'S EXPLANATION OF THE SOURCE OF THE LODGEMENT

4.01 A lodgement of IR£22,500 to Mr Ahern's Special Savings Account with AIB, 37/38 Upper O'Connell Street, Dublin, on 30 December 1993 was one of the lodgements in respect of which Mr Ahern was requested by the Tribunal to provide an explanation as to its source.

4.02 In April 2006 Mr Des Peelo, Mr Ahern's accountant, provided the Tribunal with a report[1] in which, *inter alia*, he explained the source of the IR£15,000 cash element of the IR£22,500, based on information provided to him by Mr Ahern.

4.03 That report stated that this cash sum of IR£15,000, which, in turn, was comprised of six contributions of IR£2,500 each from Mr David McKenna, Mr Jim Nugent, Mr Fintan Gunne,[2] Mr Michael Collins, Mr Charlie Chawke and Mr Paddy Reilly,[3] who were described as personal friends of Mr Ahern. In his Report, Mr Peelo stated: '*At the time …when Mr Ahern had no home the £15,000 (£22,500 in total) was intended as a goodwill loan to help fund his legal costs… The loan was unsolicited by Mr Ahern.'* In evidence, Mr Ahern told the Tribunal that the suggestion in Mr Peelo's report to the effect that the IR£22,500 was '*intended*' as a loan was erroneous. Mr Ahern said that the true position was that the money had been intended as a gift, but was accepted by him on the basis of a loan.

4.04 The report further stated that IR£22,000 of the IR£22,500 was used by Mr Ahern to fund the repayments on a loan of IR£19,115.97 taken out by him in relation to legal costs**.** (Although this loan was taken out on 24 December 1993 – six days prior to the lodgement of the IR£22,500 – repayments of the loan did not commence until 2 June 1995).

4.05 Mr Peelo's report did not provide any detail in relation to the remaining IR£7,500 which represented the non-cash element of the IR£22,500. On 3 May 2006, the Tribunal, relying on information provided to it directly by AIB, sought an explanation from Mr Ahern as to the composition of the IR£7,500, which AIB documentation indicated included a bank draft for IR£5,000 and a cheque from '*Willdover Ltd*'[4] for IR£2,500.

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[1] In April 2007 Mr Peelo provided a further explanatory memorandum

[2] Mr Gunne died in 1997.

[3] Mr Reilly died in 1996. He is to be distinguished from another Mr Paddy Reilly, sometimes referred to as 'Paddy the Plasterer.'

[4] Willdover Ltd was a company associated with Mr Des Richardson. See later paragraphs.

4.06 In a letter to the Tribunal from Mr Ahern's solicitors dated 6 June 2006, the following explanation as to the source of the balance of IR£7,500 was provided: '*The sum of £5,000 was provided by Mr Padraic O'Connor then of NCB Stockbrokers. The sum of £2,500 was provided by Mr Des Richardson, a director of Willdover Ltd.'*

4.07 The letter categorised the eight contributions comprising the sum of IR£22,500 as: '*loans …repayable on request …provided on a goodwill basis by friends who wished to assist Mr Ahern during a difficult period of his personal life. They were not commercial loans. There was no interest payment and no fixed date for repayment.'*

4.08 Mr Ahern told the Tribunal that the IR£22,500 (which he said comprised IR£15,000 in cash, a bank draft and a cheque drawn on the bank account of Willdover Ltd) was given to him by his solicitor and friend, the late Mr Gerry Brennan in St Luke's, Drumcondra, Dublin (Mr Ahern's constituency office) on, he believed, 27 December 1993, following a day at Leopardstown Races. Mr Brennan advised Mr Ahern that the money was a gift from a number of Mr Ahern's friends, whom he identified, and Mr Ahern was told that the money was being given to him to assist him discharge legal costs incurred in relation to his matrimonial proceedings. Mr Ahern stated that he was also informed by Mr Brennan at the time that the Willdover cheque for IR£2,500 represented Mr Des Richardson's contribution, and that the IR£5,000 bank draft represented the personal contribution of Mr Padraic O'Connor.

4.09 Mr Ahern claimed that his initial reaction was to reject the gift, but having been prevailed upon by Mr Brennan to accept it, he did so on the basis that it would be treated by him as a goodwill loan from friends, and that it would be repaid.

4.10 Mr Ahern told the Tribunal that on the evening of 27 December 1993, he briefly spoke to Mr Richardson about the money, and indicated his uncertainty as to what to do in relation to it.

4.11 Mr Ahern said that, subsequently, he acknowledged to each of the donors his gratitude for their respective contributions. Mr Ahern explained that while the purpose behind the collection of the fund was to facilitate him in discharging legal bills arising from his recently completed matrimonial proceedings, he believed that he had advised the donors of the fund that he proposed saving the money towards the purchase of a house as the discharge of his legal bills had been provided for by a bank loan.

4.12 Mr Ahern also told the Tribunal that he informed the donors (with the exception of Mr O'Connor) that he would accept their contribution on the basis that he would repay the money with interest, and that he had offered to repay them on a number of occasions subsequently.

4.13 On Day 869, Mr Ahern stated:

> *'...I didn't pay any of them back. But as I think so the individuals have said, all of them, if not all of them that I had offered to pay back those on a number of occasions and they said leave it until later on and leave it to another time. But if at any time any of those individuals were in a difficulty and required it, they would have got it back, as they ultimately did, with interest.'*

4.14 In the case of Mr O'Connor, Mr Ahern stated that while he was certain he thanked him for the contribution of IR£5,000, he could not remember if he had told him of his intention to repay the money.

THE ACCOUNTS GIVEN IN EVIDENCE IN RELATION TO THE PROVISION OF IR£22,500 TO MR AHERN

4.15 The persons identified by Mr Ahern (and who were available to give evidence) as having contributed money were examined on oath to enable the Tribunal determine if as a matter of probability they had done so and to determine the reasons and circumstances in which such contributions were made.

THE ORGANISATION OF THE COLLECTION

4.16 Mr Richardson told the Tribunal that the idea of making a collection for Mr Ahern was that of the late Mr Brennan, and it was an idea which he, Mr Richardson fully supported.

4.17 Mr Richardson claimed that he himself had no idea of the amount of Mr Ahern's legal bills arising from his matrimonial proceedings, although he knew it to be a large figure. He considered the actual amount was a matter between Mr Brennan and Mr Ahern. However, Mr Richardson also told the Tribunal that the collection of the IR£22,500 was for the purposes of helping Mr Ahern *'pay off a legal bill that was anticipated to cost between £20,000 and £25,000.'* Mr Richardson suggested that it may have been the case that his estimate was prompted by his knowledge of an alternative plan to raise funds which had been mooted by Mr Brennan, but rejected by Mr Ahern. This alternative plan was a fundraising event at a cost of IR£1,000 per head involving '*twenty five or so*' of Mr Ahern's friends which would have raised a total of IR£25,000 for Mr Ahern.

4.18 Mr Richardson told the Tribunal that following Mr Ahern's rejection of the fundraising event suggestion, he and Mr Brennan drew up a list of potential contributors from Mr Ahern's circle of friends who were to be called upon to assist him financially (otherwise than by a fundraising event). It was agreed between them that contributions should be made in cash, in order to ensure acceptance by Mr Ahern, and in the interests of confidentiality. According to Mr Richardson, contributions were duly taken up from eight individuals, including himself. Mr Brennan was not himself a contributor to the collection, but Mr Richardson suggested that he may have indirectly contributed by abating or reducing legal costs due to him from Mr Ahern in relation to Mr Ahern's then recently concluded matrimonial proceedings. In due course he and Mr Brennan, either together or on their own, met with Messrs Chawke, Nugent, Collins, McKenna, Gunne and Reilly. The meeting with Mr O'Connor took place at the offices of NCB Stockbrokers. Mr Richardson claimed that all the foregoing contributed to the fund, whereupon the total collected, IR£22,500 was duly handed over to Mr Ahern at St. Luke's, Drumcondra on (Mr Ahern believed), 27 December 1993.

4.19 Mr Richardson informed the Tribunal that he learned of Mr Ahern's decision to accept the money as a repayable loan approximately one week later.

4.20 Four of the cash contributors who gave evidence, told the Tribunal of having been approached by Mr Brennan and/or Mr Richardson and of being informed of Mr Ahern's need for financial assistance.

MR CHARLIE CHAWKE

4.21 Mr Charlie Chawke, who described himself as a personal friend of Mr Ahern, Mr Richardson and Mr Brennan, told the Tribunal that in the course of a discussion between himself, Mr Brennan, and Mr Richardson in his own licensed premises, The Goat Inn, Mr Brennan had referred to Mr Ahern's 'legal bills' arising from his '*matrimonial difficulties'*, and, '*it had been decided to have a whip-round to help him defray some of those costs.*' A sum of IR£2,500 was decided as the contribution he might make and that this was to be in cash. Mr Chawke said that he paid this sum in cash to Mr Brennan and Mr Richardson some days later. Mr Richardson said that, subsequently, Mr Brennan told him that the money had been passed on to Mr Ahern. Mr Chawke himself was not present at the handover of the money to Mr Ahern in St. Luke's. He said that as of December 1993 he had never been in St. Luke's.

MR JIM NUGENT

4.22 Mr Jim Nugent said that he was a close personal friend of Mr Ahern's since the 1970s. He advised the Tribunal that following a telephone call from Mr Brennan, he met him in the Berkeley Court Hotel. He was not apprised as to why Mr Brennan wished to meet him prior to the meeting. At some point Mr Nugent said that he and Mr Brennan were joined by Mr Richardson.

4.23 In the course of their discussion, Mr Brennan referred to Mr Ahern as having *'a very difficult time with his marriage'*, and that *'there was some bills to be met and they were legal bills.'* Mr Nugent assumed that these related to Mr Ahern's marital separation, and that the bills were substantial. He stated that he '*knew life wouldn't be easy for him at that time.'* Mr Nugent was uncertain as to the date of discussion at the Berkeley Court, other than to state that it was '*late in the year'*, and could not recollect whether at the time he spoke to Mr Brennan he himself knew that Mr Ahern had been involved in matrimonial proceedings.

4.24 Mr Nugent told the Tribunal that the figure proposed to him as a contribution was IR£2,500. He decided that he would be delighted to help out once he had a little time to put the money together as he regarded Mr Ahern *'as a great friend.'* He believed that approximately a week or ten days later he gave the cash sum of IR£2,500 to Mr Brennan. The emphasis had been on a cash contribution for confidentiality for Mr Ahern, because of concern that Mr Ahern would not utilise any non cash element of the fund. Mr Nugent stated that '*The whole thing was not to transact a cheque at all.'*

MR MICHAEL COLLINS

4.25 Mr Collins described how he came to make his contribution to Mr Ahern in the following terms: in the course of a general discussion with Mr Richardson in the Berkeley Court Hotel, he had inquired after Mr Ahern. Mr Richardson had responded to the effect that Mr Ahern was having '*a hard time financially… probably due to his separation*.' Mr Collins said that he had no recollection of whether there had been any mention of legal expenses. The meeting with Mr Richardson had not been prearranged for the purpose of discussing an advance of money to Mr Ahern, but Mr Richardson had initially mentioned in the course of their discussion that Mr Collins might make a contribution in the context of a fundraising dinner then being considered as a means of raising funds for Mr Ahern.

4.26 Following a couple of further meetings Mr Collins said that Mr Richardson suggested a figure of IR£2,500 as the contribution he might make to Mr Ahern. It was Mr Collins' understanding at this point that others would also be making such a contribution, but he was not aware as to their identity. Asked if he was particularly friendly with Mr Ahern at the time Mr Collins stated '*Going back a long time I've known Bertie 20 years and I had a track record of initially of being a contributor to taking tables at the various functions that were held.'*[5]

4.27 Mr Collins said that he duly paid over the IR£2,500 to Mr Richardson in the Berkeley Court.

MR DAVID MCKENNA

4.28 Mr McKenna advised the Tribunal that he met with Mr Richardson and Mr Brennan in the Berkeley Court Hotel when the issue of Mr Ahern's legal bill was raised. Both Mr Richardson and Mr Brennan were known to him at the time. Mr Richardson was a business associate from 1989/1990, and a friend from approximately a couple of years prior to 1993. He had met Mr Brennan previously and knew him to be Mr Ahern's solicitor. He agreed that his meetings with Mr Brennan prior to December 1993 had not been of any consequence prior to the meeting in the Berkeley Court.

4.29 Mr McKenna described the background to the meeting as follows:

> '*Des rang me and said if I was around would I drop in for a cup of coffee with myself and Gerry. I said yeah no problem, I'm around tomorrow I'll drop in. Went in had a cup of coffee, sat down. Gerry said that there is an ongoing issue with our friend Bertie, he's got a number of bills to pay, legal bills. And we're looking for a number of people that can come together to help him.'*

4.30 Mr McKenna maintained that he had not been apprised of the nature of Mr Ahern's legal liabilities, but subsequently became aware that they related to his matrimonial proceedings. Mr McKenna said that this was the first occasion that he, Mr Richardson and Mr Brennan had discussed Mr Ahern's personal affairs.

4.31 On Day 797 the following exchange took place between Tribunal Counsel and Mr McKenna in the context of Mr McKenna's knowledge of Mr Ahern's personal circumstances in 1993:

[5] Mr Collins' association with Mr Ahern had been generally in the context of his association with Mr Richardson whom he knew for over 30 years.

'Q. *But my question was probably more general than that and was asking you when it was that you and Mr. Richardson ever discussed the personal affairs of Mr. Ahern?*

A. *That would have been the first time.*

Q. Is this the first occasion?

A. I would have been aware that you know things weren't great for him. Everybody in the country was who had an interest in politics.

Q. Yes. What things did you think were not great for Mr. Ahern in 1993, that you believed at the time.

A. He was sleeping above Drumcondra, he was sleeping in friends houses. So you can only assume things are not great.

Q. Yes. You knew that he was for example at that time and had been since 1991, a Minister for of Government he was the Minister for Finance.

A. He was Bertie.

Q. Yeah. He had been a government minister since 1987, even before you came back to Ireland, isn't that right?

A. He was Bertie to us.

Q. Sorry.

A. He was Bertie to me.

Q. I appreciate that is what he was. But those indicators would not indicate that he was somebody who was deserving of either your financial support or any other form of benefit or remuneration from you. He's a very successful man?

A. Well he was a politician and had been most of his life so you would assume he hadn't. You know, he had what he had. Like, I wasn't one to. I wasn't going to sit down and ask him how much have you got in the bank, what's the story.

Q. I'm not suggesting that you did but I'm indicating to you that there was nothing from his public demeanour or his public office which would suggest that he was in need of any financial assistance, would you not agree with that?

A. There was no reason for me to make a decision either way. I wasn't aware of anything.'

4.32 Mr McKenna was asked to make a contribution of IR£2,500 in cash, to which he agreed. He was unsure as to whether it had been explained to him why his contribution to Mr Ahern's legal bills was being sought in cash, other than stating to the Tribunal: '*One can only assume that Bertie is an extremely proud individual and if you give him cheques he's going to rip them up.'* Mr McKenna told the Tribunal that at the conclusion of this meeting, Mr Richardson had asked if he might be prepared to make a contribution of IR£5,000 '*to speed things along*', which he agreed to do in two instalments. He duly provided IR£2,500 in cash to Mr Brennan in the Berkeley Court '*maybe a week before Christmas.'* The second IR£2,500 was never sought from him, and it was his understanding, after inquiry was made of Mr Richardson, that Mr Richardson had successfully raised the required amount and did not therefore need the second installment.

4.33 Messrs Chawke, Nugent, Collins and McKenna all stated that their individual contributions of IR£2,500 were from cash resources available to each of them at the time. Consequently none of the four had, they said, needed to access any bank account for the funds. The four contributors told the Tribunal that having provided the funds, Mr Ahern thanked them for their contributions and indicated to each of them his intention to repay them. All four confirmed that at the time the fund was collected for Mr Ahern, their respective contributions were intended by each of them as a gift, but that Mr Ahern had insisted on treating the fund as a loan, to be repaid.

4.34 From their respective testimonies it appeared to the Tribunal that none of the four appeared to be aware of the fact that Mr Ahern had, or intended to obtain, a bank loan to cover his legal obligations arising from his matrimonial proceedings, and in the course of their evidence Messrs Chawke, Nugent and McKenna acknowledged that Mr Ahern did not apprise them of this fact. Similarly, Mr Collins' evidence did not suggest knowledge on his part of the fact that Mr Ahern had obtained or was about to obtain a bank loan.

4.35 In the course of an RTE television interview in September 2006 Mr Ahern had suggested that '*a good few*' of the contributors to the IR£22,500 fund knew of the fact that he had taken out a bank loan. In the course of that interview Mr Ahern stated:

> *'They knew. A good few of them knew that I had taken out a loan with AIB in O'Connell Street to settle my legal bills, I had taken out the loan so I actually used the loan to settle the bills. I didn't want to take the money. I took it on the agreement it was Gerry Brennan and Des Richardson. I didn't deal with them all. They gave me 22,500 and I said that I would take this as a debt of honour, that I would repay it in full, that I would pay*

interest on it. I know the tax law. I'm an accountant And that I would pay that back in full and at another date when I could.'

4.36 In the course of his private interview with the Tribunal on 5 April 2007, and when responding to an inquiry as to whether he would have informed the donors of the IR£22,500 that, although accepting the money on the basis of their understanding that he required financial assistance to discharge legal bills, as a loan to be repaid, he had nevertheless made the decision to apply the money otherwise (i.e. save it towards the purchase of a house) rather than for the purpose for which it was given, Mr Ahern responded:

'*I think I would have alerted them, I think I would have alerted - I mean six of the eight people that I would see every second day. So they were well aware I had lots of conversations. They were very close personal friends and political friends. I went back to say that I had taken out a loan. In fairness, I can't remember the precise effort. I was conscious that I had taken out the loan after they had given the money. I did make them aware of that. And I did say that I would hold money and that I would, you know, that I would use the money for my own requirements later on. Because these were when I said earlier on that these were the people that would have been concerned. I mean, most of the people on these were my own personal close political friends as well as my very good personal friends.'*

4.37 Mr Chawke advised the Tribunal that the issue of repayment had been raised by Mr Ahern some weeks after he made his contribution, but he had told Mr Ahern that he did not want it back. Mr Chawke acknowledged that Mr Ahern did not seek to repay the money at any time prior to 2006.

4.38 Mr Nugent stated that Mr Ahern had thanked him, '*probably not long after the Christmas break'*, and he had thanked him on a number of occasions thereafter saying: '*I'll talk to you again and kind of let it roll over.'* Questioned if his understanding was that Mr Ahern intended to repay the loan, Mr Nugent stated:

'From the very early stages I did have an understanding, where I got it from I'm not terribly certain. But I do have an understanding that it was being accepted by him on the basis that at some stage this would be repaid. I think I probably didn't even form an attitude towards that.'

4.39 Mr Collins advised the Tribunal that some time in 1994 he received a verbal acknowledgement of his contribution from Mr Richardson and Mr Ahern. Mr Ahern's acknowledgement had come via a telephone call some four to five months after the provision of the money. Mr Collins said that Mr Ahern thanked

him and said that he could not accept it as a gift, and that it would be repaid. Between then and Mr Collins' departure for Australia (circa 2002) Mr Ahern mentioned repayment '*a couple of times.'* Mr Collins was unable to recollect the dates or approximate dates Mr Ahern might have mentioned the matter, saying that the issue was never the focus of conversation. Mr Collins suggested that Mr Ahern's approach was *'…look Mike, I want to sort that out I'm going to pay.'* Mr Collins' response was to '*just shrug it off.'* Mr Richardson also maintained that Mr Ahern had raised the issue of repayment with him on '*one or two occasions*.'

4.40 Mr McKenna testified that subsequent to the provision of the money Mr Ahern had thanked him and had said that he had accepted it as a loan. Subsequently, the issue was raised again by Mr Ahern in the context of Mr Ahern saying words to the effect '*…we must sort that thing out'*, to which Mr McKenna would have replied, '*…look it's all right, grand, cool.'* Questioned in the context of a statement furnished on his behalf on 24 July 2006 which included the suggestion that Mr Ahern had offered to repay him on two occasions, Mr McKenna acknowledged that other than having raised it in the manner described, Mr Ahern had never offered the money back to him.

THE CASH CONTRIBUTIONS OF MR FINTAN GUNNE, DECEASED AND MR PADDY O'REILLY, DECEASED

MRS MAUREEN GUNNE

4.41 Mrs Maureen Gunne, widow of Mr Fintan Gunne, told the Tribunal that she first heard of Mr Ahern's claim that he had been assisted financially by her late husband *'around the time'* of Mr Ahern's appearance in an RTÉ interview in September 2006. She was aware of her husband having met Mr Ahern socially over the years. While she could not say whether they were personal friends, she believed that her husband considered himself a friend of Mr Ahern's. While Mr Ahern's claim of being assisted financially by her husband had come as a surprise to her, her husband had, during his lifetime, been generous to those in need. Mrs Gunne believed that her husband, by reason of the nature of one of his business enterprises, would have had ready access to cash in 1993. Mr Ahern had attended her husband's funeral in 1997 and had spoken with her. Subsequently, she said that she met Mr Ahern socially on one or two occasions. Mr Ahern had never alerted her to the fact that her husband had given him money, nor had he made any reference to her of his intention to repay such money.

MRS MARGARET GAFFNEY

4.42 Mrs Margaret Gaffney, a daughter of the late Mr Paddy Reilly, told the Tribunal that her father and Mr Ahern had a long standing friendship through politics. Mr Reilly had been a trustee of St. Luke's, and a constituency worker. Mr Ahern had attended Mrs Gaffney's wedding. She testified that, following Mr Ahern's television interview in September 2006, (in the course of which Mr Ahern referred to money having been given to him by her late father), her mother informed her, for the first time, that she had been aware in 1993/4 that her husband had provided Mr Ahern with IR£2,500 in respect of a personal matter. Mrs Gaffney herself had no knowledge of such a sum having been given and she herself first heard of it in September 2006. Mr Ahern had attended her late father's funeral in 1996, and had spoken to her on that occasion, but he had not made any reference to her then, or subsequently, to a payment to him from her late father. Mrs Gaffney commented that such a payment by her father to Mr Ahern was not something that she would likely have spoken about with her father, or over the intervening years with her mother. Mrs Gaffney expressed her belief that Mr Ahern, at the time of her father's funeral or shortly thereafter, '*would have spoken*' to her mother about 'the loan.'

4.43 She also told the Tribunal that as of September 2006, her mother, having heard Mr Ahern, during the course of a television interview, avow his intention to repay the loan, had from then been expecting repayment. It duly arrived on 29 September 2006 when her mother received a cheque from Mr Ahern in the sum of €5,914.00[6].

4.44 Mr Ahern's evidence was that he had advised Mr Reilly's widow of his intention to repay the contribution from her late husband. Mr Ahern stated: *'I had said it to Mrs Reilly that it was a payment that I would give back.'*

THE NON-CASH COMPONENTS OF THE IR£22,500 LODGEMENT.

THE 'WILLDOVER' CHEQUE

4.45 One of two non-cash elements in the IR£22,500 lodged to Mr Ahern's account in December 1993 was a cheque for IR£2,500 payable to 'cash', dated 22 December 1993, and drawn on the account of Willdover Ltd at Bank of Ireland in Montrose, Dublin 4, and signed by Mr Richardson.

[6] This issue is dealt with later in this Section.

4.46 Willdover Ltd was a company effectively owned and operated by Mr Richardson. He used this company to bill for services provided by him as chief fundraiser to the Fianna Fáil Party in 1993/1994 through invoices generated in the name of Willdover Ltd, and he used the company bank account in Bank of Ireland, Montrose, to receive payments made to him by Fianna Fail on foot of such invoices, as well as lodging other funds (including funds from Euro Workforce) to that account. Mr Richardson was not a director of Willdover Ltd, notwithstanding the contrary assertion made in a letter to the Tribunal from Mr Ahern's solicitor dated 6 June 2006.

4.47 The cheque for IR£2,500 made out to 'cash' as signed by Mr Richardson on 22 December 1993 was recorded in Willdover Ltd's payments analysis as a payment in respect of *'the Kilmain Function'*, which, the Tribunal was satisfied, referred to the O'Donovan Rossa dinner held annually in December, in the Royal Hospital, Kilmainham (Mr Ahern's constituency annual fundraising event).

4.48 The IR£2,500 cheque payment was recorded in the cheque journal as *'promotional outlay.'*

4.49 Mr Richardson, in evidence, claimed that this cheque represented his personal contribution to Mr Ahern's fund. Mr Richardson was questioned by the Tribunal as to why, having asserted that he and Mr Brennan were at pains, in December 1993, to put together a cash fund for Mr Ahern in the belief that if the money were presented otherwise than in cash, Mr Ahern might decline to utilise it and/or tear up cheques, he, Mr Richardson had nevertheless made his contribution to Mr Ahern by way of cheque. Mr Richardson's response was that perhaps he had done so because of the *'inconvenience'* of going to the bank to organise cash. Mr Richardson himself also had a personal account in Bank of Ireland, Montrose, but had not chosen to draw a cheque on this account or to use it to withdraw cash for provision to Mr Ahern.

4.50 An examination of bank and Revenue documentation relating to Willdover indicated that on 15 December 1993 Willdover Ltd's bank account, on which the IR£2,500 cheque of 22 December 1993 was drawn, was credited with the sum of IR£3,000 by way of a cheque from a company called Euro Workforce[7] payable to Willdover. This fact was also confirmed by Mr Richardson in evidence.

4.51 On 20 December 1993, two days before the cheque for IR£2,500 was written, the Willdover account was overdrawn to the extent of IR£8,572.22.

[7] See below.

4.52 On 22 December 1993, some seven days after the account was credited with the Euro Workforce cheque, IR£18,744 was lodged to the account from a cheque drawn on a Fianna Fáil bank account in the names of the then Taoiseach Mr Albert Reynolds and Mr Bertie Ahern.[8] This Fianna Fáil payment was in respect of an invoice furnished by Mr Richardson to Fianna Fail for services provided by, and expenditure incurred by, Mr Richardson in his role as the party's chief fundraiser. The cheque was signed by Mr Ahern.

4.53 The lodgement of the Euro Workforce cheque for IR£3,000 together with the Fianna Fáil cheque for IR£18,744 to Willdover Ltd's account, on 15 and 22 December 1993 respectively, moved the account from overdraft to a credit balance of approximately IR£10,000, and facilitated a number of cheques being drawn against the account. The two largest of these were a cheque for IR£5,000 (payable to '*D Richardson*' and lodged to the personal bank account of Mr Richardson at Bank of Ireland, Montrose on 22 December 1993), and the cheque for IR£2,500 (made out to cash) which, it was said, represented Mr Richardson's contribution to the sum of IR£22,500, ultimately lodged to Mr Ahern's AIB Special Savings Account (SSA), on 30 December 1993.

THE DRAFT PAYABLE TO 'DES RICHARDSON'

4.54 The second of the two non-cash components of the IR£22,500 lodgement was a bank draft for IR£5,000 payable to Mr Richardson.

4.55 In their letter to the Tribunal dated 6 June 2006, Mr Ahern's solicitors stated that the IR£5,000 was *'provided by Mr Padraic O'Connor.'* In his evidence to the Tribunal, Mr Ahern explained that he received the IR£5,000 draft *'on the basis that it was a personal donation to me from Padraic O'Connor.'*

4.56 Mr Richardson told the Tribunal that the bank draft for IR£5,000 represented the IR£5,000 donation made to Mr Ahern's fund from Mr Padraic O'Connor, who was at that time the managing director of the NCB Group (NCB Stockbrokers), and well known in the financial services sector in Ireland. Mr O'Connor had previously been a senior economist with the Central Bank in the early 1990s, and was in 1993 an occasional advisor to Mr Ahern as Minister for Finance in relation to economic and currency matters.

4.57 Mr Richardson claimed that he had solicited a contribution of IR£5,000 to Mr Ahern's fund from Mr O'Connor in December 1993.

[8] The bank account was renamed the 'Bertie Ahern Fundraising Account' in January 1995.

4.58 Mr Richardson told the Tribunal that he approached Mr O'Connor on the same basis as the other contributors to the IR£22,500, namely on the basis of what he believed was a friendship between him and Mr Ahern. Mr Richardson said that at a meeting in the offices of NCB Stockbrokers, (NCB) he explained to Mr O'Connor that Mr Ahern had incurred a *'legal personal cost'* and he invited him to contribute to a fund to assist Mr Ahern discharge this liability. Mr Richardson said that he requested IR£5,000 from Mr O'Connor and that this was one of two requests he made for IR£5,000, the other being to Mr McKenna. (As already indicated, Mr McKenna in fact contributed IR£2,500, although he claimed that he had been prepared to pay a second IR£2,500 if required). Mr Richardson said that at the time he sought the IR£5,000 personal contribution to Mr Ahern, he also requested a contribution from Mr O'Connor to the annual Kilmainham O'Donovan Rossa fundraising dinner (for Mr Ahern's constituency office).

4.59 On Day 790 Mr Richardson testified that while he was satisfied that the IR£5,000 draft, payable to himself and endorsed by him, and which had been provided to Mr Ahern, represented Mr O'Connor's contribution, he was unable to establish when he had been put in funds by Mr O'Connor. Mr Richardson claimed that he either had the funds from Mr O'Connor at the time of the purchase of the bank draft, or, alternatively, that he used his own funds to purchase the draft and had been recompensed later by Mr O'Connor.

MR PADRAIC O'CONNOR'S ACCOUNT OF MR RICHARDSON'S APPROACH TO HIM

4.60 Mr O'Connor acknowledged to the Tribunal that Mr Richardson called to see him in his office in, probably, December 1993, and requested a contribution for Mr Ahern. Mr O'Connor stated, however, that the request to him was for a contribution for Mr Ahern's constituency office and not a contribution to Mr Ahern personally. This was denied by Mr Richardson.

4.61 The essence of Mr O'Connor's evidence was that Mr Richardson had explained that as Mr Ahern had assumed the position within Fianna Fáil of National Treasurer, he was not in a position to engage in fundraising activity for his own constituency, hence the approach then being made by Mr Richardson to him on behalf of Mr Ahern. Mr O' Connor said that he was advised by Mr Richardson that the intention was to raise a sum of approximately IR£20,000–IR£25,000 the annual sum needed to fund St Luke's (Mr Ahern's constituency office).

4.62 Mr O'Connor in effect disputed the suggestion that his relationship with Mr Ahern in 1993 was such as might reasonably have allowed for the presumption, either on the part of Mr Richardson or Mr Ahern himself, that he and Mr Ahern were close personal friends. Mr O'Connor contended that at that time he and Mr Ahern had a friendly professional relationship, arising from Mr O'Connor's position as an occasional advisor to Mr Ahern, then Minister for Finance, on economic and currency issues. Mr O'Connor viewed the relationship within the context of professional contact. He and Mr Ahern did not socialise together, and Mr O'Connor told the Tribunal that in the eight years since leaving NCB, he had met Mr Ahern *'once or twice.'*

4.63 Mr O'Connor stated that following Mr Richardson's visit he had consulted informally with colleagues within NCB about Mr Richardson's request for a contribution to Mr Ahern's constituency office. However, it was primarily his decision within NCB to make the contribution.

4.64 Evidence was given to the Tribunal by Mr Christopher McHugh, the then financial director of NCB, and Mr Graham O'Brien, the then head of accounts in NCB. Both recalled Mr O'Connor's approach to them when they were apprised of Mr Richardson's request for a contribution to Mr Ahern's constituency fund. Their understanding, as communicated to them by Mr O'Connor, was that the payment for Mr Ahern's constituency fund was to be made by NCB confidentially. Mr O'Connor testified that he had been anxious to ensure that the matter would be dealt with discreetly and in confidence.

4.65 Mr O'Connor was asked to explain the secrecy attached to NCB's payment to (as he understood) assist in the cost of running Mr Ahern's constituency office, in light of the fact that NCB, over a number of years, had made contributions to the annual O'Donovan Rossa dinner, and had done so with full accounting transparency. Mr O'Connor stated that the annual dinner event was viewed as a general fundraising event, while the contribution sought by Mr Richardson was viewed as a specific or targeted fundraising issue. Mr O'Connor deemed it *'wise'* that this payment be treated *'in a discreet way.'* Mr O'Connor explained himself as follows:

> '*The approach which was made in 1993 was as I said the first approach of its type that I'd ever experienced. It was specific. It was narrow in the sense that it was put to me that four or five organisations were being asked to fund a particular thing, being the annual cost of running the constituency office and I didn't think at that time I didn't know what the name of it was. St. Luke's was what I had in mind. And you know when we were making the decision to pay that we decided that it should be confidential. We thought it would be wise if we did it in a discreet way.*

Whether that got us then on the radar of the fundraisers in that Cumann, maybe it did.

Subsequently approximately or just under a year later we were approached to participate in the annual fundraising dinner for that constituency. This obviously I would certainly see as a much more, as a different type of approach. It was a very public event, it was, I don't know how many contributors would have been to that dinner, perhaps hundreds. So the distinction that I see looking back is the distinction between this which might have been more normal course of business in terms of fundraising, and the other than was, as I said, in the, first of all that it was or our first experience of it, and secondly that it was, it was, it seemed to target it, if I can put it like that, rather than a general fundraising exercise that might go on to this day for all I know.'

4.66 While Messrs O'Connor, McHugh and O'Brien, in their contact with the Tribunal prior to giving sworn testimony, each had a recollection of a request being made by Mr Richardson, none of the three, either in the course of correspondence with the Tribunal, or in their private interviews, was able to assist the Tribunal as to how precisely the payment by NCB of IR£5,000 (which payment all three agreed had been made by NCB) had been effected.

4.67 Prior to November 2006, discovery by NCB to the Tribunal had failed to yield any document or record of any payment made by NCB and/or Mr O'Connor to Mr Ahern and/or his constituency organisation.

4.68 On 14 November 2006, in the course of being privately interviewed by the Tribunal, Mr O'Brien was asked to identify any payment in NCB's records, within the relevant period, of IR£5,000 or IR£6,050 (being IR£5,000 plus VAT). Mr O'Brien was in a position to identify one such payment, but declined to provide the Tribunal with the identity of the payee until he had first obtained legal advice. The Tribunal then made a further order for discovery against NCB, and in consequence the detail relating to the said IR£6,050 was disclosed to the Tribunal.

4.69 Documents furnished to the Tribunal by NCB on 24 November 2006 on foot of the discovery order revealed that on 14 December 1993, Euro Workforce Ltd invoiced NCB for a sum of IR£5,000 plus VAT (a total of IR£6,050), allegedly in payment for a health and safety survey carried out by Euro Workforce on NCB's premises.

4.70 Subsequently, in the course of their sworn evidence to the Tribunal, Mr O'Connor, Mr McHugh and Mr O'Brien all acknowledged that the Euro Workforce Ltd invoice was the vehicle by which NCB had given effect to the request for a contribution to Mr Ahern's constituency office which had been made by Mr Richardson. All three acknowledged that no health and safety survey had been carried out by Euro Workforce Ltd on the NCB premises and all acknowledged that the invoice had been furnished on a false basis.

4.71 Mr Richardson claimed to know nothing about the 14 December 1993 invoice from Euro Workforce Ltd to NCB. He said he was unable to recall precisely what arrangements had been put in place in relation to the IR£5,000 contribution to Mr Ahern from Mr O'Connor/NCB in order to satisfy Mr O'Connor's requirement for confidentiality and discretion.

4.72 On 15 December 1993, on foot of a cheque requisition form prepared by Mr O'Brien of NCB, a cheque for IR£6,050 payable to Euro Workforce Ltd was signed by Mr McHugh and Mr O'Brien. The NCB cheque was drawn on an AIB account at Grafton Street in Dublin.

4.73 For reasons unknown, the NCB cheque for IR£6,050 dated 15 December 1993 was not presented to a bank for some three months. By the time it was eventually presented for payment through Bank of Ireland Commercial Finance[9] in March 1994, it was rejected because of its poor physical condition. The Tribunal established that by 3 March 1994 this cheque had been returned by AIB to Bank of Ireland Commercial Finance marked *'mutilated.'*

4.74 NCB's records indicated that on 16 March 1994, a second cheque requisition form was prepared which authorised payment of IR£6,050 to Euro Workforce Ltd, and on that date, a cheque for IR£6,050, again payable to Euro Workforce Ltd, was drawn.

4.75 On 21 March 1994 this second NCB cheque to Euro Workforce Ltd was duly lodged to the Euro Workforce's factoring account in Bank of Ireland Commercial Finance, and NCB's AIB account was duly debited with the sum of IR£6,050 on 23 March 1994, nearly three months after the lodgement of IR£22,500 had been made to Mr Ahern's bank account.

[9] Euro Workforce Ltd held an account with Bank of Ireland Commercial Finance in 1993 and had an invoice discounting or factoring arrangement with it at that time. The details of this arrangement are set out below.

WORKFORCE LTD, EURO WORKFORCE LTD, ROEVIN LTD,
ROEVIN IRELAND LTD

4.76 In the early 1980s Mr Richardson, Mr Tim Collins and Mr Des Maguire were involved in a recruitment/employment business which was operated through an entity Workforce Ltd (Workforce). This company was incorporated in Ireland in March 1989 and both Mr Richardson and Mr Collins were registered as its directors. Promotional material, relating to 'Workforce' made available on discovery to the Tribunal indicated that by January 1992 Mr Richardson was its managing director, Mr Collins was its sales director and Mr Maguire was its recruitment director. Mr Richardson told the Tribunal that in 1988/1989, Workforce was acquired by an entity Roevin Ltd, (Roevin) and was subsequently acquired by Doctus Plc In February 1989 Doctus changed its name to Roevin Ireland Ltd (Roevin Ireland) with Mr Richardson (and two other named individuals) as its registered directors. Mr Richardson told the Tribunal that Doctus Plc went into receivership/liquidation in 1991/2 and, as a consequence ,Roevin Ltd had decided to '*wash its hands*' of the Irish side of its recruitment and employment agency business. At that time Roevin Ireland Ltd changed its name to Workforce Ltd. In August 1992 Mr Maguire and his wife incorporated the entity Euro Workforce Ltd (Euro Workforce) and were its registered shareholders and directors. This company operated a recruitment/employment business, and undertook health and safety surveys, including audits for customers. Mr Maguire told the Tribunal that Euro Workforce carried on the business, which had previously been carried on by Workforce, he having acquired that business from Mr Richardson in August 1992. Mr Maguire stated that although he operated the company as his own, in effect a one man business he continued to give Mr Richardson 30% of its gross profit as provided for in their buyout agreement.

4.77 Mr Maguire told the Tribunal that he did not know Mr O'Connor, and professed his unawareness of Euro Workforce Ltd having carried out a health and safety survey on NCB's premises at any time. Mr Maguire also claimed to have no knowledge of the Euro Workforce Ltd invoice dated 14 December 1993, which found its way to NCB.

4.78 Mr Maguire also explained that, while acknowledging the authenticity of the invoice document from Euro Workforce Ltd to NCB, he had been struck by the fact that the invoice stationery in question was, by December 1993, of old unused stock. He noted that the VAT number on the invoice was rubber stamped, and not part of the original print on the document. These original invoices were the subject of only one print run when the business was started in August 1992, when the company had not been allocated a VAT number. In due course the

original invoices were replaced with computer-generated invoices which included the VAT number. Unused stock of the older type of invoice had remained stored in Euro Workforce Ltd's offices.

THE FACTORING ARRANGEMENT BETWEEN EURO WORKFORCE LTD AND BANK OF IRELAND COMMERCIAL FINANCE

4.79 In December 1993 Euro Workforce had an arrangement with Bank of Ireland Commercial Finance (agreed on 10 August 1992) whereby, subject to certain conditions, Euro Workforce, upon the generation of invoices in the course of its day-to-day business, would receive from Bank of Ireland Commercial Finance 75 per cent of the value of such invoices.

4.80 As acknowledged by Mr Maguire in evidence, this arrangement provided that once invoices were generated, Euro Workforce could realise an immediate financial benefit (75 per cent of the invoice value). To avail of bank funding on foot of this arrangement, Euro Workforce would provide to the bank its computerised sales ledger wherein details of the Euro Workforce's invoices to its customers were set out.

4.81 The agreement provided that when the invoice was eventually paid, the balance outstanding on the invoice (after discounting and charges) was paid by Bank of Ireland Commercial Finance Ltd to Euro Workforce Ltd.

4.82 The Euro Workforce Ltd invoice to NCB (invoice no 2789 for IR£6,050) dated 14 December 1993 was one of a number of such invoices submitted to Bank of Ireland Commercial Finance Ltd on that date, on foot of the factoring agreement. Documentation obtained by the Tribunal established that three invoices (including no 2789), to a total of IR£8,734.35, were provided to the bank. Based on the 14 December 1993 submission of invoices, Euro Workforce Ltd was entitled to receive a credit from the bank of 75 per cent of their combined face value. On 15 December 1993, Euro Workforce Ltd was paid IR£6,000 by Bank of Ireland Commercial Finance Ltd. Mr Maguire told the Tribunal that it was their normal practice to draw down bank payments in round figure sums. This sum of IR£6,000 was then lodged to Euro Workforce Ltd's bank account on 15 December 1993.

4.83 Mr Maguire maintained, while accepting that the Euro Workforce Ltd invoice to NCB had by 15 December 1993 yielded a financial benefit for Euro Workforce Ltd pursuant to its factoring arrangement with Bank of Ireland Commercial Finance, that he, Mr Maguire, had no recollection of any of the

arrangements which had been put in place to effect this benefit for Euro Workforce.

4.84 On 15 December 1993 (the same day as Euro Workforce's bank account was credited with IR£6,000 by Bank of Ireland Commercial Finance), a cheque for IR£3,000 drawn on the account of Euro Workforce Ltd payable to Willdover Ltd was credited to Willdover's account. This cheque was debited from Euro Workforce Ltd's current account on 17 December 1993. It was on this Willdover account (the beneficiary by 15 December 1993 of the Euro Workforce cheque for IR£3,000, and by 22 December 1993 of the IR£18,744 cheque from Fianna Fáil) that Mr Richardson wrote, on 22 December 1993, the Willdover cheque to *'cash'* in the sum of IR£2,500, which was ultimately lodged to Mr Ahern's Special Savings Account.

4.85 Mr Maguire, in evidence, was unable to recollect why IR£3,000 was paid to Willdover/Mr Richardson by Euro Workforce on 15 December 1993. He was uncertain as to whether there was a connection between the NCB invoice and the IR£3,000, but acknowledged that *'there may well be.'* He agreed that the Euro Workforce cheque to Willdover appeared to have been funded by the IR£6,000 funds made available on foot of the factoring arrangement.

4.86 By 21 October 2005, the Tribunal had sight of the IR£5,000 bank draft payable to Mr Richardson and endorsed by him (and which formed a part of the IR£22.500 lodgement to Mr Ahern's SSA). Explanation for the source of the draft had first been provided by Mr Ahern's solicitors in June 2006, when Mr O'Connor and Mr Richardson respectively were first identified as the sources of the IR£5,000 draft and the IR£2,500 cheque to 'cash.'

4.87 Mr Richardson's statement provided to the Tribunal on 14 July 2006, contained, inter alia, the following explanation in response to the Tribunal's query as to why the draft had been made payable to Mr Richardson, and not to Mr Ahern: '*I understand it was the decision of NCB that the monies would not be paid directly to Mr Ahern from a confidentiality point of view. At this point NCB are checking their records to see if they can produce any details regarding the payment*.'

4.88 In December 2006, in the course of a private interview with the Tribunal, Mr Richardson agreed that it was a possibility that a Willdover cheque to *'D Richardson'* for IR£5,000, signed on 22 December 1993 (and lodged to Mr Richardson's personal bank account on that date), was the source of the draft which was lodged to Mr Ahern's account. In October 2007, Mr Richardson, through his solicitors, positively attributed this Willdover IR£5,000 cheque as the

source of the draft. On Day 790, Mr Richardson accepted that the '*D Richardson'* cheque for IR£5,000 which had been drawn on the Willdover account was not the source of the IR£5,000 draft.[10]

4.89 In the course of his evidence on Day 790 also, Mr Richardson, while accepting he had purchased the draft, claimed to have no personal recollection of its purchase or of the funds with which it had been purchased.

'ROEVIN'

4.90 Subsequent to Mr Richardson's evidence on Day 790, the Tribunal received from Bank of Ireland the requisition form which had been used to purchase the IR£5,000 draft. This form indicated that on 22 December 1993 an application to purchase the draft had been made by *'Roevin.'*

4.91 In the course of his evidence on Day 791, Mr Richardson acknowledged to the Tribunal for the first time that he had accessed funds held in an account in the name of Roevin Ireland Ltd at Bank of Ireland, Montrose, Co. Dublin, in order to purchase the draft that was subsequently provided to Mr Ahern.

4.92 Mr Richardson claimed ownership of the funds held in the Roevin Ireland Ltd account.

4.93 Documentation discovered to the Tribunal established that Roevin Ireland Ltd opened a bank account at Bank of Ireland Montrose on 9 October 1992 with a lodgement of IR£39,000. This lodgement was made some months subsequent (on Mr Richardson's account of events), to Roevin Ireland Ltd having ceased its business activities in Ireland. Between 9 October 1992 and 14 September 1995 when the then balance of IR£36,337.99 was withdrawn from the account, the account showed only two transactions (other than interest accruals), namely a debit of IR£2,000 on 16 November 1992 (a month following the opening of the account) and a debit of IR£5,000 on 22 December 1993 (which was used to purchase the bank draft payable to Mr Richardson which was subsequently provided to Mr Ahern). There was no evidence of any lodgement of funds into the bank account of Roevin Ltd from Mr O'Connor/NCB, or, indeed, from any other source.

[10] An examination of Mr Richardson's personal account at Bank of Ireland Montrose established that there was no movement on that account which facilitated the purchase of the draft that ended up in Mr Ahern's account.

4.94 Although claiming to have been entitled to access the funds in Roevin Ireland Ltd's bank account, Mr Richardson was unable to provide any explanation to the Tribunal as to the source of the initial lodgement into that account of IR£39,000 or the subsequent destination of the closing balance in that account amounting to IR£36,337.99 which was withdrawn in its entirety on 14 September 1995. Mr Richardson's only explanation was that he was entitled to the proceeds of the account because he, Mr Richardson, was owed money by Roevin Ireland Ltd.

MR AHERN'S DEALINGS WITH AIB IN DECEMBER 1993

4.95 Some days prior to lodging the IR£22,500 on 30 December 1993, Mr Ahern took a loan from AIB of a sum close to IR£20,000, largely for the purposes of discharging legal costs owed by him, as part of the settlement of their matrimonial proceedings.

4.96 Bank records, in particular AIB's computerised suspense account and its *'All Items Report'* for 23 December 1993,[11] suggest that a loan of IR£19,115.97 was drawn down by Mr Ahern on that date, by way of provision by the bank of two bank drafts for IR£12,813.61 and IR£5,000 respectively, and by the bank putting in place a credit transfer of IR£1,302.36 into a joint account in the names of Mr Ahern and his wife, thus closing that account. The Tribunal was satisfied on the basis of the available evidence that these three sums, as advanced to Mr Ahern, were utilised by him to satisfy legal fees and other commitments arising from his matrimonial proceedings.

4.97 Mr Ahern's loan account within AIB, at 37/38 Upper O'Connell Street, Dublin, appeared to have been opened on 24 December 1993. The withdrawal docket, duly signed by Mr Ahern and bearing the date 24 December 1993, appeared to be the only document extant in December 1993 within AIB which showed the sum of IR£19,115.97 being advanced to Mr Ahern.

4.98 When questioned by Tribunal Counsel as to the circumstances in which Mr Ahern was advanced this sum in December 1993, Mr Philip Murphy, Assistant Manager in AIB, O'Connell Street, in a private interview with the Tribunal stated that he believed that Mr Ahern had completed a loan application form in December 1993. In his written statement to the Tribunal on 15 November 2007, Mr Murphy said he was unable to recall a formal application form having been completed. (He believed that made '*some kind of a note.*') Mr Murphy subsequently stated in evidence that it was his belief that no loan application

[11] Other than a bank statement showing the amount of the loan.

form had been required of or completed by Mr Ahern at that time, although it was his belief that he would have made some *'notes'* in December 1993 pertaining to the loan. Later in his evidence (on Day 788) Mr Murphy stated that he was nearly sure that no application form had been completed.

4.99 No documentary evidence was furnished to the Tribunal of any loan application having been completed by Mr Ahern at this time. Neither was there any trace of the *'notes'* Mr Murphy believed he had made.

4.100 Although Mr Ahern acknowledged that the purpose and motivation of the provision of IR£22,500 to him from close personal friends was to assist him in discharging legal costs and expenses arising from his matrimonial proceedings, Mr Ahern did not use the IR£22,500 for this purpose. Nor did he discharge his loan liability with the bank from these funds by way of lump sum repayment, and in so doing save on bank interest.

4.101 Mr Ahern said that he arranged by telephone to meet with Mr Murphy on 23 December 1993 in order to request the bank loan duly obtained by him. His meeting with Mr Murphy for this purpose was in effect the commencement of Mr Ahern's personal re-engagement with the banking process after some seven years.

4.102 Both Mr Ahern and Mr Murphy told the Tribunal of Mr Ahern's arrival at the bank branch, and of Mr Ahern having been introduced to the then branch manager, Mr Michael Burns. Thereafter, Mr Ahern and Mr Murphy had concentrated on the purpose of Mr Ahern's visit, namely the arrangement of the loan and its drawdown.

4.103 Both Mr Ahern and Mr Murphy agreed that the loan was processed on 23 December 1993, although the actual loan account and the three disbursements were dated 23 and 24 December 1993.

4.104 Mr Ahern and Mr Murphy rejected any suggestion that the provision of the loan of IR£19,115.97 was in any way conditional upon the subsequent lodgement some six days later of IR£22,500 into Mr Ahern's Special Savings Account.

4.105 A consequence of the AIB loan drawdown on 24 December 1993, having regard to Mr Ahern's insistence that he had accepted the IR£22,500 offered to him as a loan to be repaid in the future, was that Mr Ahern (on his account of events) had in December 1993, over a period of days, assumed a liability for in excess of IR£41,000 (being the approximate total of the goodwill loan and the bank borrowing), for the purpose of discharging debts amounting to less than half this amount.

4.106 No repayments were made on the AIB loan by Mr Ahern until June 1995. The bank records furnished to the Tribunal indicated that Mr Ahern completed an application form in respect of the AIB December 1993 loan on 22 May 1995. On that day the balance standing due on foot of the loan was IR£21,896.30 (including interest of IR£2,780.03). In May 1995 arrangements were put in place for the repayment of the loan (with interest) to AIB by instalments spread over a number of months.

THE LODGING OF THE IR£22,500 TO MR AHERN'S SPECIAL SAVINGS ACCOUNT

4.107 The AIB O'Connell Street branch's *'All Items Report'* (an internal bank report detailing every transaction on a particular day), and the lodgement docket indicated that the IR£22,500 lodgement was processed in the bank on 30 December 1993, and these documents recorded the lodgement as comprising IR£15,000 cash and a non-cash element of IR£7,500.

4.108 Mr Ahern and Mr Murphy both claimed in their evidence to the Tribunal that the Special Savings Account had been opened on 30 December 1993, and that on that date Mr Ahern had personally delivered the IR£22,500 to AIB. Mr Murphy told the Tribunal that he had been telephoned by Mr Ahern in advance of Mr Ahern's arrival at the branch. Mr Murphy said that Mr Ahern had advised him that he wished *'to lodge a couple of bob.'*

4.109 All the initially provided AIB documentation relating to the lodgement of IR£22,500 to the Special Savings Account indicated that the opening date of the account was 30 December 1993.

4.110 However, the Tribunal noted, from the statutory Revenue declaration form subsequently produced to the Tribunal by AIB, that this Revenue form (a necessary pre-requisite to the opening of a Special Savings Account) was signed by Mr Ahern on a date stated to be 23 December 1993. It also appeared to the Tribunal that the portion of the date reading *'23rd'* over-wrote another date. A forensic examination of the item indicated that the earlier date was the *'14th'*, suggesting that the document was initially dated 14 December 1993. When presented with the Revenue form, both Mr Ahern and Mr Murphy, in the absence of any specific recollection of having done so, agreed in evidence that the likely date on which the document was signed by Mr Ahern was 23 December 1993. Neither believed that the document had been signed on 14 December 1993 or on any date prior to 23 December 1993.

4.111 Mr Ahern denied to the Tribunal that the IR£22,500 recorded in the bank documentation as having been lodged to his Special Savings Account on 30 December 1993 had been brought by him to the branch on 23 December 1993, or that such sum had been brought to the branch on 14 December 1993.

4.112 Mr Ahern stated that he must have signed the Revenue declaration form on 23 December 1993 in contemplation of lodging some of his claimed accumulated savings of approximately IR£54,000[12]. Mr Ahern maintained that he was unaware, prior to 27 December 1993, that he was to be presented with, IR£22,500 (being the sum lodged to his account on 30 December 1993) or indeed any other sum, and thus denied any suggestion that he signed the Revenue declaration form on 23 December 1993 in anticipation of receiving or lodging the IR£22,500.

4.113 Mr Ahern maintained that ultimately, on 25 April 1994, he lodged IR£30,000[13] from his claimed accumulated savings to two accounts in his name, and on 8 August 1994 he lodged IR£20,000[14] from these accumulated savings into the names of his two then minor daughters. It was his evidence that, on receiving the IR£22,500 from his friends, via Mr Brennan, on 27 December 1993, he elected to lodge that sum, rather than any of his accumulated savings, to his newly opened Special Savings Account.

4.114 Mr Ahern acknowledged that Mr Brennan was aware in December 1993 of Mr Ahern's obligation to discharge debts amounting to IR£19,115.97 following the conclusion of his matrimonial proceedings, and was probably aware as of 23 or 24 December 1993 of Mr Ahern's intention to borrow money from AIB to fund this expenditure, and of the fact that he had subsequently raised a loan from AIB for this purpose.

MR AHERN'S CLAIMED REPAYMENT OF THE FIRST '*GOODWILL LOAN*'

4.115 On the 29 September 2006 Mr Ahern wrote to the claimed providers of the first goodwill loan, including the representatives of the late Mr Gunne and the late Mr Reilly. Enclosed with each individual letter was Mr Ahern's personal cheque. Mr Ahern furnished cheques for €5,914.00 each (based on individual capital sums of IR£2,500 with interest) to Mr Richardson, Mr Chawke, Mr Nugent, Mr Collins, Mr McKenna and to the relatives of the late Mr Gunne and the late Mr Reilly. His cheque to Mr O'Connor was for €11,829.00 (based on a capital sum of IR£5,000, with interest.)

[12] See Section II.
[13] See Section II.
[14] See Section II.

Mr Ahern's letters were all similar in nature. The letter to Mr Chawke was in the following terms:

Dear Charlie,

I enclose a cheque in the amount of €5,914.00 euro in full and final settlement of the outstanding loan you very kindly extended me all those years ago.

I would like to thank you for your very kind support and I apologise for the delay in settling this long outstanding matter.

Yours sincerely,
Bertie.

4.116 By October 2006 the cheques sent to Messrs Richardson, Chawke, Nugent and McKenna had been forwarded to CARI[15] (a charitable organisation associated with Mrs Miriam Ahern).

4.117 While Mrs Maureen Gunne retained her cheque from Mr Ahern uncashed (stating in the course of her evidence that she did so for sentimental reasons) she sent a cheque for an equivalent sum to a charity associated with the Mater Hospital, with which her late husband had close connections.

4.118 Mr Michael Collins retained his cheque uncashed.

4.119 The cheque furnished to Mrs Reilly, widow of the late Mr Paddy Reilly, was cashed on 2 November 2006.

4.120 Mr Padraic O'Connor, on receipt of the cheque from Mr Ahern, wrote to him on 13 October 2006 as follows:

'*Dear Taoiseach,*

Thank you for your letter of 29th September 2006 enclosing a cheque for €11,829. The payment to which I think this refers was made on the proposal of Mr. Des Richardson and I believe was paid to or through him. I am writing to him separately about it.

Best personal regards.

Yours sincerely,

Padraic O'Connor.'

[15] According to some witnesses this was at the suggestion of Mr Desmond Carew. See Section III.

4.121 In his letter of the same date to Mr Richardson, Mr O'Connor stated as follows:

> *Dear Des,*
>
> *I have received a letter from the Taoiseach dated 29th September, attaching a cheque payable to me for €11,829. As the Taoiseach says in his letter, this all took place a very long time ago. As I said to you when we spoke some time ago, the payment to which I believe the Taoiseach's letter and cheque relate was made by NCB rather than by me personally.*
>
> *I am writing to you because NCB's payment resulted from a discussion between us and my understanding is that it was paid through yourself. I do not want to presume as to how you dealt with it. I am therefore writing a short note to the Taoiseach acknowledging his letter and cheque and saying that I am writing to you about it. Unless you or the Taoiseach asks me to deal with the cheque differently, I will simply hold it uncashed.*
>
> *Best regards*
>
> *Yours sincerely,*
>
> *Padraic O'Connor.*

4.122 As of 28 November 2007 the cheque furnished by Mr Ahern to Mr O'Connor remained uncashed, and in the custody of Mr O'Connor's solicitors.

4.123 A pre-typed acknowledgement (forwarded by and/or on behalf of Mr Ahern) dated 14 December 2006 was duly signed and returned to Mr Ahern/St. Luke's by Messrs Richardson, Chawke, Nugent, and McKenna, with Mr Gunne Junior signing on behalf of the Gunne family. Mrs Maureen Gunne forwarded her personal acknowledgement in October 2006, and Mrs Margaret Gaffney sent a handwritten acknowledgement on the 29 September 2006.

MR NOEL CORCORAN'S EVIDENCE

4.124 Mr Noel Corcoran, a tax consultant retained by Mr Ahern, gave evidence to the Tribunal relating to advice he provided to Mr Ahern arising from Mr Ahern's claimed receipt of two goodwill loans (including the claimed loan of IR£22,500). This evidence is considered in Section III.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO A GIFT OR LOAN TO MR AHERN OF IR£22,500 AND ITS LODGEMENT.

4.125 The Tribunal did not accept that in December 1993, there was a collection, in the manner described, organised by Mr Richardson and/or Mr Brennan from friends of Mr Ahern or that IR£22,500 was provided to Mr Ahern,

in the manner described, on 27 December 1993. Equally, the Tribunal was satisfied that Mr Ahern did not receive or accept any such sum, either as a gift, or as a loan, on that date.

4.126 The Tribunal rejected the evidence of Mr Ahern and Mr Richardson in relation to this matter.

4.127 The Tribunal did not accept as true the evidence of Messrs Chawke, Collins, McKenna and Nugent, that they had been requested by Mr Richardson and/or Mr Brennan to contribute to a collection for Mr Ahern or that they contributed money to Mr Ahern as claimed by them.

4.128 It therefore follows from the above that the Tribunal rejected the evidence of Messrs Richardson, Chawke, Collins, Nugent and McKenna that between 1993 and 2006 Mr Ahern had acknowledged an intention or desire on his part to repay money to them. Likewise, it rejected Mr Ahern's evidence that he had, on occasion, acknowledged or indicated his intention or desire to repay any such monies within this period.

4.129 The evidence of Mrs Gunne, the widow of Mr Fintan Gunne (who Mr Richardson and Mr Ahern claimed was a contributor to the IR£22,500 fund), did not assist in establishing if, in fact, her late husband had indeed been requested to contribute a sum of money to Mr Ahern in 1993. Mrs Gunne told the Tribunal that following the death of her late husband in 1997, she had met with Mr Ahern when he attended his funeral. There was no reference ever made by Mr Ahern to Mrs Gunne about any payment by her late husband to Mr Ahern or to an obligation or intention on his part to repay IR£2,500 to Mr Gunne's family, prior to 2006.

4.130 The evidence of Mrs Gaffney, daughter of the late Mr Paddy Reilly, was similarly of little probative value to the Tribunal. Mrs Gaffney claimed that she had been apprised by her mother, following Mr Ahern's television appearance in September 2006, that her late father had provided IR£2,500 to Mr Ahern in relation to a personal matter in 1993 or 1994. Mrs Gaffney told the Tribunal that Mr Ahern repaid the said IR£2,500 together with interest. The Tribunal was not satisfied, however to accept this as proof that the late Mr Reilly had indeed made any such contribution to Mr Ahern in 1993.

4.131 The Tribunal believed that it was not credible that Mr Ahern would not have regularised his affairs by repaying or attempting to repay, in the period between December 1993 and September 2006, the claimed contributors to the first goodwill loan, having regard to the number of years that had elapsed since

his claimed receipt of the money, and the fact that having regard to his income in this period, he could have done so with relative ease.

4.132 The Tribunal also found it to be incredible that, had Mr Ahern, as claimed by him, accepted the individual gifts supposedly proffered by the late Mr Gunne and the late Mr Reilly in 1993, on the basis that he would in due course repay them, that he did not repay the money (or attempt to do so) to the estates or families of these individuals prior to 2006.

4.133 Despite the claimed assertions of Mr Ahern, and those of Messrs Richardson, Chawke, Nugent, Collins and McKenna, that the issue of repayment was raised on occasions by Mr Ahern, it appeared equally incredible to the Tribunal that notwithstanding the claimed reluctance on the part of the aforementioned donors to accept repayment, that Mr Ahern would not have sought to regularise his affairs by furnishing cheques to these individuals prior to 2006, even if he anticipated their rejection by them of his actions in this regard.

4.134 Insofar as Mr Ahern (some 12 years after the advancement of IR£22,500) signed cheques payable to the individuals totalling €53,227 (or in the case of the two deceased persons, their immediate family members) who were said to have contributed funds to him in December 1993, the Tribunal was satisfied that such payments were not made on foot of any legal or moral requirement on Mr Ahern to make such payments.

4.135 The Tribunal was satisfied that Mr Ahern was prompted to make or tender such payments in 2006, and in consequence of, publicity relating to the receipt of money by him from third parties. This publicity arose following the unauthorised disclosure of the content of a letter sent by the Tribunal to Mr David McKenna in the course of the Tribunal's private inquiry into the source of the lodgement of IR£22,500 to Mr Ahern's Special Savings Account on 30 December 1993.

4.136 Even if the Tribunal were minded (which it was not) to accept what Mr Ahern and Mr Richardson said in this regard, it defied credibility that Mr Brennan who, on Mr Richardson's account of events, was engaged in a collection of funds for Mr Ahern, would not have alerted Mr Ahern at the earliest opportunity to the fact that a collection had taken place or was underway, particularly in circumstances in which Mr Brennan (on Mr Ahern's account of events) had alerted him to the fact that he had certain financial commitments, including legal bills, to be met arising from the conclusion of his matrimonial proceedings.

4.137 The Tribunal found it completely implausible, on Mr Ahern's account of events, that Mr Brennan would not have advised Mr Ahern to desist from entering into a loan arrangement with AIB for the purpose of raising funds sufficient to meet the aforesaid financial commitments in circumstances where he knew that a collection of money had been completed or was underway, for that same purpose.

4.138 The Tribunal was satisfied that by mid-December 1993, the probable sequence of events, *vis-à-vis* Mr Ahern's requirement for funds, was as follows:

4.139 In December 1993 Mr Ahern was aware of the need to make provision for the discharge of legal bills and other obligations which arose on foot of his then concluded matrimonial proceedings and on that basis contacted, probably, Mr Murphy of AIB. While Mr Ahern and Mr Murphy's recollection did not extend to any pre-23 December 1993 contact, the probable recording of a date 14 December 1993 on the SSA Revenue declaration form indicated that Mr Ahern may have had contact with AIB on 14 December 1993 in connection with the opening of the SSA account.

4.140 The Tribunal was also satisfied that prior to either 14 or 23 December 1993, Mr Ahern had indicated his desire to obtain a loan to assist him in the discharge of the legal bills and other obligations. The Tribunal was further satisfied that Mr Ahern's desire in this regard was acceded to by AIB prior to or, by the latest, on 23 December 1993.

4.141 By 23 December 1993 AIB had provided two bank drafts to Mr Ahern in respect of his obligations and had put in place a credit transfer of funds to an account in the name of Mrs Ahern. By 23 December 1993 also (if not by 14 December) AIB had Mr Ahern's signed declaration, a necessary pre-requisite for any customer to have completed, prior to the opening of an SSA.

4.142 The Tribunal was satisfied, as a matter of strong probability, that by 23 December 1993 (if not by 14 December 1993) Mr Ahern had within his contemplation the lodgement of funds into an SSA account. These funds did not (for reasons the Tribunal has set out in Section II hereof) constitute cash savings accumulated by Mr Ahern over a period of years.

4.143 The Tribunal rejected Mr Ahern's assertion that when he signed the Revenue declaration form (which he himself accepted he signed at the latest on 23 December) he had within his contemplation the lodgement of cash savings. The Tribunal has found (as set out in Section II of this Part) that Mr Ahern did not accumulate savings of approximately IR£54,000.

4.144 From the evidence given by Mr Ahern (and Mr Richardson) as to the timing of the provision of the IR£22,500 to Mr Ahern, Mr Ahern could not have been contemplating receiving such funds from Mr Brennan. Indeed, Mr Ahern had (on his account of events) previously rejected the suggestion of a fundraising event to assist him in the discharge of his legal bills. Thus, the Tribunal concluded that it was most probably the case that Mr Ahern had in his possession or expected to have in his possession by 23 December 1993 funds for his SSA from a source unconnected to the events of 27 December 1993, as described by Mr Ahern.

THE ISSUE OF MR PADRAIC O'CONNOR'S INVOLVEMENT

4.145 The Tribunal accepted Mr O'Connor's contention that he and Mr Ahern were not close personal friends, and that such friendship as did exist between them in 1993 was based on an occasional, albeit close, working or professional relationship in the course of which Mr Ahern in his capacity as Minister for Finance accepted an offer of professional advice from Mr O'Connor on economic and currency issues.

4.146 The Tribunal had no doubt but that the kind of personal friendship which existed between Mr Ahern and Messrs Chawke, Richardson, McKenna, Reilly, Collins, Gunne and Nugent did not, and never did, exist between Mr Ahern and Mr O'Connor. Furthermore the Tribunal believed it most likely that this fact was well known to Mr Richardson in 1993 at the time he approached Mr O'Connor.

4.147 The Tribunal was satisfied that Mr Ahern was not, in 1993, under an illusion that Mr O'Connor was sufficiently personally friendly with him as to have made it likely that Mr O'Connor knowingly contributed a substantial sum of money (a sum which was in fact twice the size of the other alleged individual payments) to him for purely personal (in contrast to political) purposes.

4.148 The Tribunal was satisfied from Mr O'Connor's evidence that Mr Ahern never acknowledged to Mr O'Connor, either formally or informally, receipt of the contribution of IR£5,000 which he claimed had been made to him by Mr O'Connor, nor did he at any time, prior to 2006, suggest or offer repayment of the money to Mr O'Connor.

4.149 The fact that the IR£5,000 contribution supposedly made by Mr O'Connor was never acknowledged by Mr Ahern, formally or informally, suggested strongly, in the Tribunal's view, that either Mr Ahern was unaware of any purported association between the IR£22,500 (or any portion of it) and Mr O'Connor, or, if he believed that such a link existed, or might have existed, Mr

Ahern was conscious that any such contribution made by Mr O'Connor/NCB in December 1993 was not intended to benefit him personally.

4.150 The Tribunal rejected Mr Richardson's evidence that, at the time of his approach to Mr O'Connor seeking a payment from him, he genuinely believed or understood that Mr O'Connor and Mr Ahern were personal friends. The Tribunal further accepted Mr O'Connor's evidence that he was never asked by Mr Richardson to make a personal contribution to Mr Ahern in order to assist him in discharging legal bills or other personal costs. On the contrary, the Tribunal was entirely satisfied that the cheque for IR£6,050 provided by NCB to Mr Richardson in December 1993 was NCB's response to the request that Mr Richardson had made to its managing director Mr O'Connor for a contribution to Mr Ahern's constituency fund.

4.151 As to what transpired at the meeting between Mr Richardson and Mr O'Connor during which a contribution was requested by Mr Richardson, the Tribunal was satisfied that, as a matter of probability, Mr O'Connor's version of events was truthful. The Tribunal therefore accepted Mr O'Connor's recollection that Mr Richardson sought what was in effect a political contribution towards the costs associated with Mr Ahern's constituency office in Drumcondra, and it rejected as untrue Mr Richardson's contention that he sought a personal contribution from Mr O'Connor for Mr Ahern.

4.152 The Tribunal was satisfied that in December 1993, Mr Richardson approached Mr O'Connor in his capacity as managing director of NCB Stockbrokers with a request that a donation of IR£5,000 be made by NCB to Mr Ahern's constituency fund.

4.153 The Tribunal was satisfied that Mr O'Connor, as managing director of NCB, agreed to this request, probably on the basis of the belief (whether it emanated from Mr Richardson or was merely something suspected or understood by Mr O'Connor) that competitors of NCB were to be similarly approached on Mr Ahern's behalf.

4.154 The Tribunal was satisfied that, in compliance with Mr O'Connor's request for confidentiality and discretion, Mr Richardson identified and provided to Mr O'Connor/NCB a process whereby a payment of IR£5,000 could be made confidentially and discreetly. The Tribunal was satisfied that at some point in time, prior to the date of issue of the Euro Workforce invoice, Mr Richardson indentified Euro Workforce to Mr O'Connor/NCB in this regard. That process involved the payment of the said sum (together with VAT) to Euro Workforce Ltd on foot of an invoice from Euro Workforce Ltd raised against NCB. The Tribunal rejected Mr Richardson's claim that he had no knowledge of the Euro Workforce

invoice. On the contrary, the Tribunal believed it most likely that Mr Richardson was directly involved in the procurement, preparation and delivery of the Euro Workforce invoice to NCB.

MR RICHARDSON'S USE OF EURO WORKFORCE LTD

4.155 The Tribunal was satisfied that Mr Maguire facilitated Mr Richardson by the provision to him of an invoice which falsely recorded work carried out by Euro Workforce Ltd for NCB. The Tribunal rejected Mr Maguire's assertions that he was a stranger to the events surrounding the provision of the Euro Workforce invoice to NCB, or the ultimate receipt of NCB cheques by Euro Workforce.

4.156 From the documentation which the Tribunal had sight of, it appeared that the details set out in the Euro Workforce/NCB invoice (together with two other unrelated invoices) were processed as part of Euro Workforce's factoring arrangement with Bank of Ireland Commercial Finance, which immediately yielded for Euro Workforce approximately 75 per cent of the face value of the invoices. The Tribunal rejected any suggestion that Mr Maguire would have been unaware of the invoice. Furthermore, the Tribunal considered it not to have been coincidental that on the day (15 December 1993) when Euro Workforce's current account was credited with the IR£6,000 on foot of the factoring arrangement, the company wrote a cheque to Willdover for IR£3,000.

4.157 The Tribunal was satisfied that the NCB cheque was provided directly to Mr Richardson by NCB and remained with him for a period of time, and for whatever reason, was not passed on by Mr Richardson to Mr Maguire/Euro Workforce Ltd for lodgement. By the time that Mr Richardson decided to pass it on to Mr Maguire/Euro Workforce Ltd, the physical state of the cheque had deteriorated to such an extent that NCB's bank, AIB, refused to honour it.

4.158 The Tribunal was satisfied that Mr Richardson returned to NCB in March 1994 and requested a new cheque, and that on being presented with it, he duly passed on that cheque dated 16 March 1994 to Mr Maguire/Euro Workforce Ltd, who in turn duly provided it to Bank of Ireland Commercial Finance on foot of the factoring arrangement then in place.

4.159 The Tribunal was satisfied that there was in fact no link between the IR£5,000 bank draft provided to Mr Ahern on 27 December 1993 and the IR£6,050 (IR£5,000 plus VAT) sum first paid by cheque dated 15 December 1993 by NCB and rewritten on 16 March 1994 and ultimately lodged to Euro Workforce's bank account on 21 March 1994.

4.160 Although no part of the NCB payment made to Euro Workforce found its way into the lodgement made by Mr Ahern on 30 December 1993, the Tribunal established a tenuous connection between NCB and the said lodgement. That connection arose in the context of the Willdover cheque payable to 'cash' (Mr Richardson's claimed personal contribution to Mr Ahern). On 14 December 1993 NCB were invoiced by Euro Workforce Ltd for IR£6,050. This process led to Euro Workforce furnishing that invoice (together with others) to Bank of Ireland Commercial Finance, thus yielding a payment from the bank of £6,000, on foot of the factoring arrangement. This event in turn led to the lodgement of IR£3,000 to Willdover's bank account on 15 December 1993. To that point in time Willdover's bank account had been overdrawn. The provision of this £3,000 cheque, credited to Willdover's account on 15 December 1993, (coupled with the lodgement on 22 December 1993 of the Fianna Fail payment of £18,744 to Mr Richardson) moved the Willdover bank account into credit, and facilitated the cheque in the sum of IR£2,500, made payable to cash, dated 22 December 1993, which was provided to Mr Ahern by Mr Richardson.

4.161 It was noteworthy that the available contemporaneous documentary evidence relating to the Willdover cheque for IR£2,500 indicated, on its face, that it had been intended for the O'Donovan Rossa fundraising event.

THE ROEVIN DRAFT

4.162 The Tribunal noted that the Roevin Ireland Ltd bank account, from which Mr Richardson purchased the IR£5,000 draft payable to himself, and which ultimately ended up with Mr Ahern, was opened on 9 October 1992, a time when, on Mr Richardson's account of events, Roevin Ireland Ltd had ceased operating business in Ireland. Mr Richardson claimed not to have any knowledge of the source of the IR£39,000 which opened the account in October 1992, or why there was a debit of IR£2,000 one month later (16 November 1992). The Tribunal rejected Mr Richardson's evidence in this regard.

4.163 The Tribunal found it incredible that Mr Richardson, who, without difficulty appeared able to access the account of Roevin Ireland Ltd on 22 December 1993 and to use its funds to obtain a draft payable to himself, was unable to account to the Tribunal for the origins of funds in the account. The Tribunal did not believe Mr Richardson in this regard, and concluded that Mr Richardson, in all probability, knew the reason why the account was opened and its purpose, and that he knew the source of the £39,000 which initially funded the account in October 1992 and the destination of the IR£36,337.99 which ultimately left the account, on its closure, in September 1995. Mr Richardson chose, for whatever reason, not to disclose this information to the Tribunal.

4.164 The Tribunal was satisfied that prior to it obtaining the requisition form for the draft from Bank of Ireland, Mr Richardson did not disclose to the Tribunal the true source of the funds which purchased the IR£5,000 draft.

4.165 Contrary to what was promoted by both Mr Ahern and Mr Richardson in the course of their evidence to the Tribunal, the Tribunal was satisfied that the IR£5,000 draft funded by Roevin and which ended up with Mr Ahern had no connection with Mr O'Connor. The Tribunal was also satisfied that there was no evidence that this draft was connected to money NCB paid via the Euro Workforce Ltd invoice on foot of Mr Richardson's request for funding for Mr Ahern's constituency expenses.

THE ACTUAL SOURCE OF THE IR£22,500 LODGED TO MR AHERN'S SPECIAL SAVINGS ACCOUNT

4.166 Because the Tribunal did not receive a true account as to the source of the IR£15,000 cash component of the IR£22,500 lodged to Mr Ahern's Special Savings Account on 30 December 1993, the actual source of these funds remains a mystery.

4.167 The utilisation by Mr Richardson of an account in the name of Roevin Ireland Ltd for the purposes of providing Mr Ahern with IR£5,000 equally remains a mystery.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION II : THE LODGEMENTS TOTALLING IR£30,000 MADE ON 25 APRIL 1994 AND THE LODGEMENT OF IR£20,000 MADE ON 8 AUGUST 1994.

5.01 Mr Ahern's banking records revealed lodgements to two bank accounts on 25 April 1994 totalling IR£30,000 in cash. IR£27,164.44 was lodged to Mr Ahern's Special Savings Account (SSA) bringing the balance in that account to IR£50,000,[1] which was the maximum permitted in this type of account. Additionally, a sum of IR£2,835.56 (being the balance of the IR£30,000), was lodged into Mr Ahern's current account.

5.02 Mr Ahern's banking records also revealed that on 8 August 1994, a total of IR£20,000 cash was lodged into a newly opened joint deposit account in the names of Mr Ahern's then minor daughters, Georgina Ahern and Cecelia Ahern in AIB, 37/38 O'Connell Street, Dublin.

5.03 Mr Ahern was asked by the Tribunal to explain the source of all three cash lodgements, a total of IR£50,000, lodged over approximately a four-month period. Mr Ahern attributed the source of these lodgements to savings accumulated by him over a number of years in cash.

MR AHERN'S ACCOUNT AS TO HOW, AND THE MANNER IN WHICH, HE ACCUMULATED CASH SAVINGS OF APPROXIMATELY IR£54,000.

5.04 In paragraphs 16 and 17 of Mr Peelo's report (as provided to the Tribunal in April 2006), it was stated that *'cash balances of in excess of IR£50,000 were accumulated'* by Mr Ahern over a seven-year period, between 1987 and 1993.

5.05 In paragraphs 9 and 10 of the report, the following explanation was provided about the manner in which Mr Ahern had accumulated his savings over the seven-year period:

> *During these seven years, Mr Ahern did not maintain any personal (current or deposit) bank or building society accounts. His salary and expense cheques were cashed, either by himself or by an assistant, and the monies necessary for the maintenance of Mrs Ahern and their two children were either given directly to Mrs Ahern or lodged in cash to the joint account of Mr and Mrs Ahern in AIB, Finglas, Dublin 11.... Mortgage repayments (IPBS[2]) on the family home were made from this account.*

[1] Mr Ahern had lodged IR£22,500 into that account on 30 December 1993. By 5 April 1993 interest of £335.56 had accrued in the account.

[2] Irish Permanent Building Society, later Permanent TSB.

> *Mr Ahern's personal expenditures during the circa seven years (i.e. '87–'93) were low, and cash balances, net of his maintenance payments, were gradually accumulated over this period…These cash balances were kept in a safe in Mr Ahern's constituency office in Drumcondra and in his Department office. (The foregoing can be confirmed by a number of colleagues and/or assistants of Mr Ahern).*

5.06 In his evidence to the Tribunal Mr Ahern confirmed the content of Mr Peelo's report as accurate and based on information provided by him. Mr Ahern confirmed to the Tribunal that during the seven-year period, in which he was at all times a Government minister, his salary and expenses cheques (relating to his positions as a TD and a Government minister) were generally cashed for him by members of his staff. Mr Ahern said that no particular financial institution was used for this purpose, although on those occasions when he himself cashed cheques, he used banks in the vicinity of Drumcondra or Dorset Street.

5.07 Mr Ahern told the Tribunal that by December 1993 he had accumulated cash savings of approximately IR£54,000, of which approximately IR£30,000 was kept in St Luke's in Drumcondra[3] and approximately IR£20,000 in his ministerial office. Mr Ahern explained that the money kept in St Luke's was kept by him on a shelf in a safe in his office, while in his ministerial office, the money was kept in a banker's pouch or wallet in a safe.[4] Mr Ahern said that he did not maintain any record of the gradual accumulation of the cash over the seven-year period.

5.08 Mr Ahern said that it was his usual practice over this period of time to pay his outgoings, including his maintenance payments for his wife and children, from his income, and to accumulate the surplus sums in his safes. He said that he *'gave no thought'* to the fact that for the duration of this period he had foregone substantial deposit interest by not utilising a bank account.

5.09 In a letter to the Tribunal from Mr Ahern's solicitors dated 6 June 2006 (in response to a request from the Tribunal for information), the following was stated:

> *During the period March 1987 to November 1991, the cash balances* [a reference to accumulated savings] *were stored in a safe in Mr Ahern's constituency office in Drumcondra, Dublin 9 . . . From November 1991*

[3] Between 1982 and 1990 Mr Ahern operated his constituency office from rooms over Fagan's public house in 146 Drumcondra Road. From 1990 Mr Ahern's constituency office relocated to St Luke's in Drumcondra.

[4] Mr Ahern also suggested in the course of correspondence from his Solicitors prior to his private interview with the Tribunal, that he occasionally kept some cash in a locked drawer in his ministerial office.

onwards, some of the monies were stored in a combination of a safe and a locked drawer in Mr Ahern's office as Minister for Finance.

5.10 In his private interview with the Tribunal on 5 April 2007, Mr Ahern confirmed that the portion of his fund kept in his ministerial office was kept in a safe, and no reference was made to any of it being kept in a drawer in his desk.

5.11 In his sworn evidence on Day 804, Mr Ahern referred to the proceeds of his cashed salary cheques (having been cashed by a member of his staff) being left for him in his absence on his desk *'or just stuck in the drawer.'* This reference to a drawer was clearly a reference to a drawer in a desk in his constituency office in Drumcondra, and not to a drawer in his ministerial office or elsewhere.

5.12 Also on Day 804, Mr Ahern explained the practice he usually followed after having cashed his salary cheques, thus: *'I'd just take out the money for that* [meaning his domestic/personal bills] *and then just put the rest into my safe or into the drawer, that's what I did throughout the period.'*

5.13 Again on Day 804, Mr Ahern appeared to confirm that his accumulated savings of up to IR£54,000 were kept in two safes, one in his constituency office, and the other in his ministerial office. Mr Ahern also confirmed in evidence that he alone had access to the safe in his constituency office,[5] while he and members of his staff had access to the safe in his ministerial office.

THE EVIDENCE OF MR AHERN'S STAFF

5.14 Three members of Mr Ahern's staff who worked for Mr Ahern at various periods between 1987 and 1993 gave evidence to the Tribunal: Ms Sandra Cullagh, Ms Gráinne Carruth and Mr Brendan Ward.

5.15 Between 1983 and 1987, Ms Cullagh worked in Mr Ahern's constituency office in Drumcondra, and between 1987 and 1994 in his ministerial offices. She returned to work in St Luke's in 1994.

5.16 Ms Cullagh told the Tribunal that on occasion she cashed cheques for Mr Ahern at his request. She said she had access to the safe in Mr Ahern's constituency office in St Luke's but not to his ministerial safe. Ms Cullagh told the Tribunal that she recalled seeing cash sitting on the shelf in the safe in St Luke's, but took no notice of it and was not in a position to speculate whether it

[5] In her evidence Ms Sandra Cullagh, a member of Mr Ahern's staff between 1983 and 1994, stated that she had access to the safe in Drumcondra. The letter from Mr Ahern's solicitors, Frank Ward & Co., on 6 June 2006 also stated that Ms Cullagh had access to this safe.

was a small or large amount of cash. Ms Cullagh explained that her access to the safe in St Luke's was only occasional and only for the purposes of placing a file in it for safe-keeping or to remove a file. It was on these occasions that she saw *'money on a shelf.'*

5.17 Ms Carruth worked for Mr Ahern between 1987 and 1999. She was based in Mr Ahern's constituency office at St Luke's until 1995, and in Kildare House and then Government Buildings between 1995 and 1999. She was one of the persons to whom Mr Ahern had entrusted the encashment of his salary cheques. She told the Tribunal that salary cheques were cashed by her, and that some of the proceeds were lodged to the Irish Permanent Building Society account in the names of Georgina Ahern and Cecelia Ahern, (Mr Ahern's then minor daughters), the balance of the encashed cheques being returned to Mr Ahern personally, or being left in a drawer in his desk at St Luke's, Drumcondra.

5.18 Ms Carruth said she did not have access to the safe in St Luke's. Accordingly, she said she had no knowledge of the large sums of cash that were, as claimed by Mr Ahern, kept in the safe. She stated that in the eight years she worked in St Luke's, she *'never saw into the safe.'* Nor had Ms Carruth been apprised by Mr Ahern that he was accumulating large cash sums in the safe.

5.19 Ms Carruth had no awareness of the Department of Finance safe or its contents.

5.20 Mr Brendan Ward worked as Mr Ahern's private secretary in the Department of Finance between 1991 and 1994 (and again as his private secretary after Mr Ahern was elected Taoiseach in 1997). Mr Ward told the Tribunal that he was aware that Mr Ahern kept an amount of cash in his department office safe, to which he, Mr Ward, had access in the course of his work, for the purposes of keeping files for safe-keeping and removing files when required. The safe's main purpose was to hold important Government papers, usually overnight.

5.21 Mr Ward told the Tribunal that he was aware of Mr Ahern's practice of cashing salary cheques, and had observed Mr Ahern's secretary, Ms Cullagh, collecting salary cheques from the department in order to cash them. He had learned from other officials in the Department of Finance that Mr Ahern did not operate a personal bank account, something which had surprised him. However in light of this knowledge he was not surprised to learn that Mr Ahern kept cash in his ministerial safe.

5.22 Questioned by the Tribunal as to his knowledge of the contents of the safe, Mr Ward recollected that in the period 1991 to 1994 it contained a camera belonging to Mr Ahern and a grey plastic banker's pouch, also the property of Mr Ahern. He recalled this pouch as always being in the safe. Mr Ward said he took care to ensure that when a lot of files were in the safe, the pouch was left to one side so as to ensure that it was not removed in error when files were being removed. Mr Ward told the Tribunal that he never looked into the pouch and never had reason to access it, but was aware that it contained money. Mr Ward said that notes were visible from the open portion of the pouch.

5.23 Mr Ward was questioned as to the appearance of the pouch. He described the pouch as not bulky, and that the notes measured approximately one to one and a half inches in thickness. He was unaware as to the currency or denominations of the notes, and he had always assumed that the pouch contained Mr Ahern's monthly salary.

5.24 In the course of a private interview with the Tribunal before giving his sworn evidence, Mr Ward described the money pouch in the following terms:

> *'I never saw anything that would've been a large amount of money. Now this is a guess, you know, but it could be maybe €400–€500,* [sic] *something like that. That is a guess on my part, but it would be something in that area like. I never saw huge wads of notes or anything like that, you know. As I say, I always felt that it was consistent with the salary, you know.'*

5.25 In his evidence to the Tribunal, Mr Ward opined that the pouch could have contained more than *'four or five hundred Euros or punts'*, although it remained his position that he never noticed large wads or stacks of notes.

5.26 Mr Ward told the Tribunal (both in private interview and in evidence) that in the period 1998 to 2002, he again worked as Mr Ahern's private secretary in the Taoiseach's office. During this period, he again noticed that Mr Ahern kept cash in the department safe, but this time in a money box in the safe. Mr Ward intimated that in this latter period, he had had a better view of the cash than in the earlier 1994 period because in this later period it was kept in a box, although he believed that the amount of cash in both periods was approximately the same. He stated:

> *'At all times I always presumed that what we were talking about was his salary money. I also thought that's what it was in the Department of Finance as well. I never had an occasion in Finance to actually see the money. I could only guess what was in it. And it wasn't something I gave*

an awful lot of thought to. In the Department of the Taoiseach I would actually have seen the denominations.'

5.27 When asked if it was his understanding that the money seen by him was definitely salary money, Mr Ward responded: *'It was small amounts of money, yeah, definitely, and I just presumed that this was a continuation of the practice that he had in Finance.'*

5.28 In the course of his private interview, Mr Ward was asked the incomplete question *'Was the quantity of cash any greater than . . .*' to which he responded: *'No, it would be about the same.'*

5.29 Mr Ward went on to express his belief that the amount seen by him was less than €1,000, and possibly *'a few hundred euros.'*

5.30 In the course of his sworn evidence (on Day 803) Mr Ward was asked to clarify his understanding as to what was being asked of him. Mr Ward was asked by the Chairman of the Tribunal: *'And did you understand there*[6] *that you were being asked was the quantity of cash*[7] *any greater than in the earlier period?'*[8] to which Mr Ward responded *'yes.'*

5.31 Mr Ward was then asked: *'Did you believe then you were talking about the same amount of cash approximately as in the earlier 1994 period?*' He replied: *'I did yes. At all times I always presumed that what we were talking about was his salary money. I also thought that's what it was in the Department of Finance as well.'*

5.32 In the course of his evidence to the Tribunal, Mr Ward was also questioned as to his knowledge of a locked drawer in Mr Ahern's desk in his ministerial office, following upon the reference to a locked drawer in Mr Ahern's solicitor's letter of 6 June 2006.

5.33 He told the Tribunal that while he was aware of drawers in Mr Ahern's desk, he did not know if they were locked but did not think they were. On the small number of occasions (he believed possibly on two occasions) when he accessed a drawer in the desk seeking an item on Mr Ahern's instructions, he found such drawer(s) unlocked. He did not notice cash in the drawer(s) accessed by him on those occasions.

[6] A reference to the incomplete question at the private interview.
[7] A reference to the cash seen by him post 1997.
[8] A reference to the cash seen by him up to 1994.

5.34 Mr Ward apologised to the Tribunal for his having earlier given a somewhat different impression in relation to the drawers in Mr Ahern's desk. In the course of a private interview with the Tribunal on 7 July 2006, Mr Ward had stated that he had access to the drawers and there was no locked drawer. In the course of that interview Mr Ward was asked: *'And as regards the pedestal desk itself do you have any recollection of any section of that being locked off to you?'* To this question, Mr Ward responded: *'No, no, I don't think he ever locked it. I don't think Albert Reynolds did either to be honest. There were a number of drawers but I don't think they were ever locked.* Mr Ward confirmed that the drawers were capable of being locked.

THE EFFECTING OF THE CASH LODGEMENT OF 25 APRIL 1994

5.35 Mr Philip Murphy, assistant manager in AIB's Upper O'Connell Street branch, told the Tribunal that in April 1994 he was telephoned and requested to attend St Luke's in Drumcondra to meet Mr Ahern to discuss Mr Ahern's plan to open an account in AIB for his then minor daughters Georgina and Cecelia Ahern. Mr Murphy duly attended at St Luke's and was '*nearly sure'* that he had brought with him the necessary documentation to enable an account to be opened in the names of Mr Ahern's daughters. Mr Murphy said that in the course of his discussions with Mr Ahern, Mr Ahern informed him that he had money in his St Luke's office safe. Mr Murphy had a *'vague recollection'* of Mr Ahern stating that the IR£30,000 cash were savings, and of stating that he had other money in his safe at another location. Mr Murphy said that he advised Mr Ahern to move the money into the bank and suggested to him that his SSA in AIB might be topped up to the maximum permitted balance of IR£50,000 (On 30 December 1993 Mr Ahern had lodged IR£22,500 to his then recently opened SSA).[9] It had been agreed in April 1994 that Mr Ahern follow this advice, and that any excess would be lodged to his AIB current account.

5.36 Mr Murphy testified that in the course of their meeting in April 1994 Mr Ahern handed him an envelope containing IR£30,000 in cash which he said Mr Ahern took from his safe directly behind his seat and that he, Mr Murphy, then counted the money in the presence of Mr Ahern. On his return to the bank he lodged IR£27,164.44 to Mr Ahern's SSA and thereby increased its balance to the maximum permitted IR£50,000, and lodged IR£2,835.56 (being the balance of the IR£30,000 cash sum) to Mr Ahern's current account at AIB.

5.37 Although Mr Murphy stated that the purpose of his visit to Mr Ahern on this occasion was about opening an account in the names of Mr Ahern's daughters, no such account was opened at that time.

[9] See Section I.

5.38 Mr Murphy said that he had no recollection of Mr Ahern informing him when the two men met some four months earlier, in December 1993 that he had accumulated cash savings in the region of IR£50,000. At that time, Mr Ahern had borrowed approximately IR£19,000 from AIB, and had then opened his SSA into which he had lodged IR£22,500 (of which IR£15,000 was in cash).

THE LODGEMENT OF IR£20,000 ON 8 AUGUST 1994

5.39 On 8 August 1994, an account was opened at AIB, 37/38 Upper O'Connell Street, Dublin, in the names of Mr Ahern's then minor daughters Georgina and Cecelia Ahern, and the sum of IR£20,000 in cash was lodged to that account.

5.40 Mr Murphy told the Tribunal that having been again requested to attend St Luke's, Drumcondra on, he assumed, 8 August 1994,[10] he met Mr Ahern and was given IR£20,000 in cash with instructions that it be lodged to an account in the names of his then minor daughters. It was Mr Murphy's belief that Mr Ahern provided him with bank documentation which had been signed by his daughters and which Mr Murphy had previously given to Mr Ahern. Mr Murphy could not recollect whether the IR£20,000 in cash was taken from the safe, or whether it was in a drawer or on the desk. As he had done previously, he had counted the cash at the time.

5.41 Mr Ahern's daughters' deposit was subsequently transferred into a 7 day notice deposit account with a better interest rate, on 13 October 1994. Mr Murphy had no recollection of this transfer but assumed it was done on his advice.

5.42 Mr Murphy had no recollection of Mr Ahern stating that the IR£20,000 provided on this occasion for his daughters was from accumulated savings.

5.43 Mr Ahern told the Tribunal that the IR£20,000 was the balance of his accumulated savings of approximately IR£54,000 (from which he claimed to have lodged IR£30,000 in April 1994). Mr Ahern said that the purpose in opening the IR£20,000 account in the names of his then minor daughters was to create an education fund for their future benefit.

[10] In evidence, Mr Murphy initially said that he visited Mr Ahern on 8 August 1994. When it was pointed out to him that Mr Ahern's diary indicated he was in a Co. Kerry hotel between 1 and 11 August 1994 inclusive (but not necessarily on 8 August), Mr Murphy clarified that he was *'nearly sure'* the meeting took place in St Luke's on 8 August 1994. Mr Ahern said believed that he was in Dublin on that date, and lodged the money.

5.44 The provision to Mr Murphy by Mr Ahern of the IR£20,000 cash on 8 August 1994 meant that within the space of approximately eight months he had handed Mr Murphy three, (largely cash) amounts totalling £72,500 (These included the cash sums of IR£30,000 and IR£20,000 provided in April and August 1994 respectively, in addition to the IR£22,500 in December 1993, of which IR£15,000 was cash).

5.45 Mr Murphy told the Tribunal that he was not surprised to have received such significant amounts of cash from Mr Ahern in August 1994 or on the earlier occasions.

DID MR AHERN ACCUMULATE SAVINGS OF CIRCA IR£54,000?

5.46 The Tribunal accepted that Mr Ahern's usual practice, in the period 1987 to 1993, was that he cashed his salary and expenses cheques, and generally paid his bills, living expenses and other disbursements using cash, rather than a bank account. These cheques were usually cashed by either Ms Cullagh, Ms Carruth or by himself and the proceeds then securely maintained in either his constituency office or in his ministerial office.

5.47 While it may well have been the case that Mr Ahern had on occasion placed cash in a drawer in his ministerial office desk, the Tribunal was satisfied, particularly having regard to Mr Ward's evidence, that it was Mr Ahern's usual practice to keep cash in his safes in either his constituency office or in his ministerial office, and that the use of a drawer in his ministerial office as a location to keep cash was probably occasional, and only in respect of small sums.

5.48 Contrary to what had been asserted by Mr Ahern in correspondence with the Tribunal, the evidence of Ms Carruth, Ms Cullagh and Mr Ward did not confirm the accumulation by Mr Ahern of in excess of IR£30,000 savings in a safe in St. Luke's over the period 1987 to 1993, nor the accumulation by him of IR£20,000 in the safe in the Department of Finance over the same period.

5.49 Ms Carruth's evidence failed to cast any light in relation to the issue of whether or not Mr Ahern was accumulating substantial cash sums in his safe in St. Luke's between 1987 and 1993.

5.50 Although Ms Cullagh saw cash in the constituency office safe, she was not prepared to speculate that what she saw amounted to a large or a small amount of money. Ms Cullagh said: *'There was a shelf that had some money on top of it...'*

5.51 Pressed as to whether or not she had an impression as to the amount of money visible to her on the occasions she observed the internal part of the safe, Ms Cullagh commented: *'I didn't take note of what size the money was or anything like that.'* and *'I didn't look at monies, I never touched monies, counted monies. I didn't take note of monies. I saw that there was money there but I couldn't . . . estimate, you know, how much.'* and *'I very rarely went to the safe. And when I did I was just anxious to get the file in or take the file out. I didn't like to look at the money because I felt that's very private.'*

5.52 In relation to the ministerial safe, the Tribunal was left with the strong impression that cash seen by Mr Ward in that safe at any one time was no more than might have represented Mr Ahern's salary for a month or two, and certainly nothing in the region of thousands of pounds. Furthermore, Mr Ward confirmed in his evidence that the amount of cash seen by him in Mr Ahern's safe in the Taoiseach's office post-1997 (of which he had a clearer recollection that that which he had of cash held in the safe in 1993/1994) was approximately similar to that seen by him in 1993/1994 in Mr Ahern's then ministerial safe. It was noteworthy that it appeared to Mr Ward that the cash maintained in Mr Ahern's office safe in the period post-1997 was, in approximate terms, much the same as that witnessed by him in Mr Ahern's ministerial safe in the period 1993–4.

5.53 While accepting that Mr Ahern kept amounts of cash in two safes (his constituency office safe and his Government office safe) from the late 1980s, and throughout the 1990s, the Tribunal's distinct impression from the evidence of two staff members, including a senior civil servant, was that the amounts involved were no greater than IR£1,000 or IR£2,000, and nothing close to sums in the region of IR£20,000 or IR£30,000.

5.54 The Tribunal was satisfied that, had the cash accumulated in the safes been in the region of many thousands of pounds, that fact would have been etched in the memories of Ms Cullagh and Mr Ward, and would in turn have been emphasised in their evidence, given the extent to which each was subjected to close questioning on the issue.

5.55 Mr Ahern, in evidence, claimed to have apprised Mr Murphy and Mr Michael Burns (the AIB branch manager) when he first met with them in December 1993 that he had approximately IR£50,000 in savings.

5.56 On Day 787, Mr Murphy told the Tribunal that he was *'nearly positive'* that Mr Ahern, when applying for his loan, did not inform him that he had IR£50,000 in a safe or elsewhere, or that he had any savings. As Mr Ahern was seeking a

loan facility from AIB, he believed it likely that he would have questioned Mr Ahern in relation to his then assets and liabilities.

5.57 On Day 788, Mr Murphy said that he did not recall Mr Ahern advising him of approximately IR£50,000 savings at that time (December 1993), and did not think he did so. Later on Day 788, Mr Murphy said, *'maybe he did. I can't remember that.'* Later again, in that day's evidence, Mr Murphy said he had a *'vague recollection'* of Mr Ahern referring to savings when they met on 25 April 1994, and believed that this was the first occasion that Mr Ahern mentioned his savings to him.

THE TRIBUNAL'S CONCLUSIONS RELATING TO THE LODGEMENTS OF IR£30,000 AND IR£20,000

5.58 The Tribunal was satisfied that Mr Ahern did not apprise Mr Murphy in December 1993 that he had cash savings.

5.59 The Tribunal rejected Mr Ahern's contention that substantial sums of cash were saved and accumulated over a period of six or seven years up to 1993/1994 and maintained in the safes in his constituency and ministerial offices. The Tribunal believed it far more likely that had substantial cash sums amounting to IR£20,000 and IR£30,000 been accumulated in the safes, those staff members who, from time to time, had the opportunity to see into the safes would have been, or would have become, conscious of the presence of a substantial wad of bank notes, and would have been unlikely to have forgotten about it.

5.60 Over and above sworn testimony of Ms Cullagh, Mr Ward and Mr Murphy, on foot of which the Tribunal concluded that they had no knowledge of large accumulations of cash by Mr Ahern, either through observation (on the part of Ms Cullagh and Mr Ward) or receipt of information (on the part of Mr Murphy), the Tribunal was further persuaded in its view that Mr Ahern had not, as claimed by him, accumulated approximately IR£50,000–IR£54,000 in savings over the period 1987 to 1994, or any other substantial sum, having regard to the following considerations:

- Had Mr Ahern available to him a cash sum in the region of IR£50,000–IR£54,000 in December 1993, it was entirely improbable that he would have borrowed approximately IR£19,000 from AIB at the relatively high interest rates prevailing at the time for the purposes of discharging legal fees and other financial commitments.

- On 30 December 1993 Mr Ahern had caused to be lodged to the SSA opened by him that month some IR£22,500. Irrespective of the origins of this money,[11] what was significant was that on 30 December 1993 Mr Ahern was lodging money to an account which was designed to earn substantial interest for deposit holders and which benefited from a reduced Deposit Interest Retention Tax (DIRT). It was inconceivable, in the view of the Tribunal, that Mr Ahern, who had been advised by Mr Murphy of the benefits of maintaining a SSA,[12] and who was in the process of returning to using banking facilities, would not have, at the very least, utilised some of his claimed circa IR£54,000 in cash savings to top up the lodgement of IR£22,500 to the permitted Special Savings Account maximum of IR£50,000, and thereby avail at the earliest opportunity of the maximum benefit available from such an account.

- Had Mr Ahern available to him cash savings of approximately IR£50,000–IR£54,000 in April 1994, it was unlikely that he would have delayed opening an account in his daughters' names and lodging IR£20,000 into that account, as he did some four months later, in August 1994, having regard to Mr Ahern's evidence that it had been his intention and desire to set aside money for his daughters since December 1993.

5.61 The Tribunal was therefore satisfied that Mr Ahern did not accumulate cash savings of IR£54,000 (or a sum close to this amount) between 1987 and December 1993 as contended by him.

5.62 The Tribunal was satisfied that a significant portion (if not the entire) of the IR£30,000 cash which was lodged on 25 April 1994 came into the possession of Mr Ahern between 23 December 1993 and 25 April 1994.

5.63 Similarly, the Tribunal was satisfied that a significant portion, (if not the entire) of the IR£20,000 cash which was lodged on 8 August 1994 came into the possession of Mr Ahern between 25 April and 8 August 1994.

5.64 The Tribunal was satisfied that Mr Ahern did not disclose to it the true source of the said lodgements in April and August 1994. The source of the IR£50,000 used by Mr Ahern to fund these lodgements therefore remains a mystery.

[11] See Section I hereof.
[12] Presumably, Mr Ahern as Minister for Finance, was himself generally aware of such benefits.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION III : THE LODGEMENT OF IR£24,838.49 TO A BANK ACCOUNT OF MR AHERN ON 11 OCTOBER 1994[1]

THE EXPLANATION OF THE LODGEMENT PROVIDE TO THE TRIBUNAL IN 2006

6.01 On 11 October 1994 IR£24,838.49 was lodged to an account in the name of Mr Ahern (hereinafter referred to as the Ahern 011 account) which was opened on that date at AIB's Upper O'Connell Street branch. This lodgement was one of the five lodgements in respect of which Mr Ahern was requested to prioritise when providing his response to the Tribunal's letter of the 3 March 2006.[2]

6.02 The report compiled by Mr Ahern's accountant, Mr Peelo in April 2006 contained a paragraph headed with the query posed by the Tribunal in its letter of 3 March 2006 with regard to this lodgement:

> *Transfer in the sum of IR£24,838.49 to your client's 7-day[3] fixed interest account at Allied Irish Banks numbered 04519/011 on the 11th October 1994.*

6.03 Mr Peelo provided the following information regarding the said lodgement:

> *(a) Mr Ahern attended and spoke at a private dinner in Manchester, circa this time. The dinner was organised by 'Manchester-Irish' businessmen and Mr Ahern had attended similar dinners on previous occasions. The dinner was not organised as a fundraiser. At the end of the dinner, unsolicited by Mr Ahern, he was presented with cash of circa sterling £8,000 made up by individual contributions from the attendance. There is no list of contributors in this regard. (John Kennedy, one of the Manchester businessmen involved and Senator Tony Kett, who attended the dinner, can confirm the foregoing.)*
>
> *(b) The exact amount of the sterling cash is not known. At the then (11 Oct '94) sterling/punt exchange rate of 0.9883, the sterling equivalent of Irish £7,938.49[4] was circa sterling £7,845.61. (Note: Irish £7,938.49 +*

[1] The Tribunal's consideration of technical banking evidence concerning the processes and accounting procedures relating to foreign currency in AIB is to be found in this Section, and in Section IV. For a full understanding of same, both Sections should be read. Section IV also includes background information relating to AIB witnesses who gave evidence to the Tribunal.

[2] See '*The conduct of the inquiry*'

[3] The account was, in fact a 28-day fixed account.

[4] The figure of IR£7,938.49 stated in Mr Peelo's report to have been the Irish equivalent of the sterling which, according to Mr Ahern, had been lodged together with IR£16,500 was an error and was subsequently amended by him to read £8,338.49—the figure which when added to £16,500 would yield £24,838.49).

£6,500 = £24,438.49). The balance of Irish £16,500 in the lodgement was made up as follows: Paddy Reilly[5] [...] *—£3,500, Barry English—£5,000, Joe Burke—£3,500, Dermot Carew—£4,500.*

...

All of the above persons are personal friends of Mr Ahern. The amounts were entirely unsolicited and represented a goodwill loan from friends towards building up Mr Ahern's personal finances re possible purchase of a house.

(c) The lodgement of £24,838.49 was made personally by Mr Ahern. The AIB bank official who received the lodgement was either Philip Murphy or Jim McNamara.

6.04 In essence, the position conveyed to the Tribunal by Mr Peelo's report was that, while the exact amount of the sterling element in the lodgement was uncertain (circa stg. £8,000), the lodgement included an exact amount of Irish currency (IR£16,500). (The Report stated '*Loans totalling 16,500 and Manchester 8338.49 -> Lodgement 24,838.49...')*

MR AHERN'S PRIVATE INTERVIEW BY THE TRIBUNAL

6.05 On 5 April 2007, Mr Ahern was interviewed in private by members of the Tribunal's legal team in relation to a number of financial transactions, including the IR£24,838.49 lodgement to his bank account on 11 October 1994.

6.06 This interview took place almost twelve months after the Tribunal received Mr Peelo's report relating to this and other financial transactions involving Mr Ahern.

6.07 In the course of his interview, Mr Ahern confirmed that the IR£24,838.49 lodgement was comprised of IR£16,500 (given to him by Dublin-based friends), and a sterling sum representing the proceeds of a presentation to him following a dinner in Manchester, probably in late September or early October 1994.

6.08 Mr Ahern also stated that it was his recollection that the sterling element of the lodgement was £8,000 in large notes. He did not suggest that the sterling amount was anything other than £8,000. He also appeared certain that the Irish pound element of the lodgement was IR£16,500, being the proceeds of a '*goodwill*' loan from four identified individuals. Mr Ahern confirmed that the lodgement of IR£24,838.49 was comprised of those two elements.

[5] The Mr Paddy Reilly sometimes referred to as 'Paddy the Plasterer.'

MR AHERN'S SWORN EVIDENCE TO THE TRIBUNAL

6.09 On 13 September 2007, Day 756**,** approximately five months after his private interview by members of the Tribunal's legal team on 5 April 2007, Mr Ahern gave sworn evidence to the Tribunal in relation to, *inter alia*, his explanation of the source of the IR£24,838.49 lodgement on 11 October 1994.

6.10 Mr Ahern commenced his sworn evidence by reading a lengthy statement from the witness box. In the course of his sworn statement, Mr Ahern said that the IR£24,838.49 lodgement did not represent Stg£25,000 (which had been suggested by the Tribunal as a possible source of the lodgement), but that it included *'about £8,000'* sterling, and a '*substantial sum of Irish pounds*.' Mr Ahern maintained that he had never asserted that the sterling component was exactly Stg£8,000 and he stated that the IR£16,500 given to him by his friends was likely to have been added to, to some extent, while stored in his safe in St Luke's in Drumcondra prior to lodgement on 11 October 1994, thus resulting in a '*non-rounded Irish punt sum being lodged.'* This was the first occasion on which Mr Ahern had suggested to the Tribunal that the Irish pound element of the total sum lodged to his bank account on 11 October 1994 was anything other than exactly IR£16,500.

6.11 In response to questions from Counsel for the Tribunal on Day 757, Mr Ahern reiterated what he had stated on the previous day for the first time, *vis-à-vis* the IR£16,500, namely that he was uncertain if he might have added to or taken from the bundle of cash which comprised the *'second goodwill loan'* prior to its lodgement. This was the first occasion when he suggested that some money have been taken from the IR£16,500.

6.12 Moreover, Mr Ahern further maintained, again for the first time, that he could not be certain that he had not either added to or taken from the cash sum of circa Stg£8,000 which he had received in Manchester, prior to its lodgement on 11 October 1994.

6.13 The uncertainty which Mr Ahern introduced on Days 756 and 757 *vis-à-vis* the sum of IR£16,500 had not manifested itself in either of Mr Peelo's two reports which had been submitted to the Tribunal in April 2006 and April 2007, nor in the course of Mr Ahern's private interview with the Tribunal's legal team in April 2007. This uncertainty on Mr Ahern's part only became evident to the Tribunal, subsequent to it having been provided with information and evidence from AIB witnesses (including documentation) which indicated that the sum lodged by Mr Ahern could not have been comprised of an exact sum of IR£16,500, and a balance of sterling notes.

THE BANKING EVIDENCE AS TO THE COMPOSITION OF THE LODGEMENT OF IR£24,838.49

6.14 The Tribunal proceeded to consider evidence (including bank documentation) relevant to the lodgement of IR£24,838.49 on 11 October 1994 in order to determine the likely source and composition of the cash which funded that lodgement.

THE AVAILABLE BANKING RECORDS

6.15 Documentation discovered to the Tribunal by AIB in relation to the lodgement of IR£24,838.49 indicated that on 11 October 1994, this sum had been, in the first instance, credited to an AIB 'DC' account, a transit account for monies before going into an individual customer's fixed term deposit account [6]. The AIB stamp on the RDC credit docket, although somewhat blurred, indicated that this transaction was likely to have been effected through AIB's foreign exchange desk, something later confirmed in evidence by Mr Murphy of AIB.

6.16 The documentation furnished by AIB to the Tribunal relating to Mr Ahern's lodgement did not include the Forde Money Changer[7] tally roll for 11 October 1994, because the tally roll had not been retained by the branch. Had the tally roll been available, it would have shown the exact sterling amount tendered by Mr Ahern on the date in question.

6.17 From documentation furnished by the branch, the Tribunal established that there were three rates of exchange applicable to sterling cash tendered by retail customers for exchange on 11 October 1994 (hereinafter referred to as the 'customer buy rates').

6.18 The three customer buy rates on 11 October 1994 were:

- 1.0212 for sterling up to a value of IR£500
- 1.0063 for sterling up to a value of IR£2,500
- 0.9988 for sterling up to a value of IR£10,000.

There was also a discretionary 1 per cent commission on transactions, with a minimum charge of IR£1 and a maximum charge of IR£5.

[6] Often referred to as AIB RDC (Retail Deposit Centre) accounts. These were special, centrally managed, deposit accounts, often requiring a minimum balance and benefiting from a higher rate of interest.

[7] Bank staff transacting foreign exchange used a calculator type machine to assist them to conduct such transactions called a Forde Money Changer. This machine produced a tally roll in which the details of every foreign exchange transaction were recorded. The tally roll in turn provided the information which at the close of each day's business within the branch was manually recorded on to debit dockets, and entered into the computerised Foreign Currency Held Ledger. Used tally rolls were not maintained beyond two or three years thereafter, and were not therefore available to the Tribunal for 1994. The debit dockets and the computerised Foreign Currency Held Ledger were, however, available to the Tribunal.

6.19 On the basis of the customer buy rates applicable on the day, the Tribunal established by mathematical calculation that had Mr Ahern tendered exactly Stg£8,000 for exchange at a rate of 0.9988 (the applicable rate for that amount), this sum would have yielded £8,009.61 in Irish pounds. Such a sum, if added to the IR£16,500 Mr Ahern claimed was lodged with the exchanged sterling sum, would yield a total of IR£24,509.61, a sum which did *not* equate with the amount actually lodged to Mr Ahern's account (either with or without the addition of a discretionary AIB IR£5 commission fee). The Tribunal further established that applying either of the other two rates of the day (i.e. applicable to sums to the value of up to IR£500 or up to IR£2,500) likewise did not yield (irrespective of whether or not a discretionary commission of IR£5 was charged) a figure of IR£8,338.49—the figure which, when added to IR£16,500, would produce IR£24,838.49.

6.20 Having established, therefore, that a round-figure Stg£8,000 sum could not have been the amount which was lodged together with a sum of IR£16,500 on 11 October 1994, based on Mr Ahern's certainty of the IR£16,500 amount, and on the premise that IR£8,338.49 was the equivalent of the sterling sum Mr Ahern lodged with his Irish money, the Tribunal sought to establish the exchanged sterling sum that, when added to IR£16,500, would result in a figure of IR£24,838.49 (being the amount lodged to Mr Ahern's account).

6.21 The Tribunal's mathematical calculations established, as a matter of fact, that the figure of IR£8,338.49 at the applicable customer buy rate of exchange of 0.9988 (i.e. the rate applicable to sterling with a value of up to IR£10,000) or at either of the other two sterling customer buy rates of the day, with or without the discretionary commission of £5, did not yield an even sterling amount, in the absence of a sterling coin element.

6.22 The evidence in relation to the possibility of the inclusion of Stg£1 notes[8] and coins in such a lodgement established the following:

- Sterling coins were not normally accepted in AIB branches.
- Stg£1 notes or coins were not in the usual course of business within AIB remitted to the bank's Currency Services department,[9] unless as '*odds*.'[10]
- Within a branch '*odds*' were usually accumulated and then remitted to Currency Services in round sum totals, quarterly or half yearly.

[8] By the early 1980s, the Bank of England, had ceased printing £1 notes (having replaced them with £1 coins). Stg £1 notes continued to be printed by banks in Northern Ireland, Scotland and the Channel Islands, and occasionally were tendered for exchange to AIB and to other banks in the Irish Republic.

[9] The AIB department dealing with foreign exchange.

[10] The term described circumstances when small amounts of currency could be remitted either quarterly or half yearly. Odds might include single pound notes, but never coin.

- There was no evidence that the foreign currency remittance to Currency Services from the branch for 11 October 1994 included any such '*odds*'
- Very few sterling £1 notes were in circulation in 1994.

6.23 Mr Ahern accepted that the involvement of coin in the cash tendered by him for exchange could be ruled out. While in his sworn evidence to the Tribunal, he suggested that it was possible that the sterling element of the lodgement may have included small denominations of sterling, Mr Ahern had, in the course of his private interview with the Tribunal, suggested that the sterling notes in question were of large denomination.

6.24 The Tribunal was satisfied, that the sterling tendered to AIB for exchange on 11 October 1994 by Mr Ahern did not include either sterling coins or sterling £1 notes.

6.25 In the course of his evidence on Day 750, Mr Murphy of AIB agreed that, in the event that IR£8,338.49 represented the sterling element of the lodgement of IR£24,838.49, as contended by Mr Ahern, then such a contention did not *'add up'*,[11] as no sterling sum (without a coin element), at any of the published customer buy rates applicable on 11 October 1994, could have yielded IR£8,338.49. Mr Murphy further agreed that this latter figure was not consistent with the sterling sum being presented for exchange being comprised of large notes.

6.26 The Tribunal concluded therefore that IR£8,338.49 could not have represented an Irish pound equivalent of a sterling sum without a sterling coin element at the rates of exchange applicable on 11 October 1994.

THE STG£25,000 QUESTION

6.27 Based on information provided to the Tribunal by AIB (and confirmed in evidence by its witnesses) the Tribunal conducted a mathematical exercise which established that if on 11 October 1994 a sum of Stg£25,000 had been exchanged at a buy rate for sums up to the value of IR£2,500—one of the sterling customer buy rates of the day—and if a commission of IR£5 had been charged by the branch for the transaction, such a sterling exchange would have yielded, in Irish pounds, a sum of IR£24,838.49—a figure precisely equal to the amount lodged to Mr Ahern's account in October 1994.

[11] Mr Murphy agreed that this was the case, when it was suggested to him by Counsel for the Tribunal.

6.28 The Tribunal considered the relevant bank procedures which applied in October 1994 when a customer tendered a sterling cash sum for exchange into Irish pounds, and where the Irish pound value of the sterling sum exceeded IR£10,000, in circumstances where, as was established in evidence, the Forde Money Changer was commissioned at the start of each day's business to identify only customer buy rates applicable to sterling amounts with an equivalent IR£ value of up to IR£500, IR£2,500 and IR£10,000. The Forde Money Changer was therefore not usually programmed to calculate the Irish pound equivalent of a sterling amount exceeding IR£10,000 at any better rate (for the customer) and was programmed to prompt the teller to contact Currency Services for a special one off *'spot rate'*, when a sterling sum exceeding IR£10,000 in value was identified to it.

6.29 AIB witnesses told the Tribunal that within its branches, it was normal practice for a teller who had been offered sterling in excess of IR£10,000 in value to contact Currency Services and request a *'spot'* rate at which to purchase that sterling. Currency Services, having regard to market conditions at the time of the contact, then nominated the rate to the branch. Currency Services had within its discretion the entitlement to nominate a rate better for the customer than the best published customer buy rate (i.e. for amounts of sterling up to a value of IR£10,000), or a lower rate, including one of the published customer buy rates applicable to sterling up to the values of IR£500 and IR£2,500.

6.30 The Tribunal was satisfied, therefore, that Currency Services had within its discretion the entitlement to direct the application of a rate equivalent to the published customer buy rate for sterling sums up to the value of IR£2,500, notwithstanding the fact that the sterling tendered for exchange amounted to approximately IR£25,000 in value.

6.31 It followed, therefore, that the Tribunal was satisfied that it was possible that a sum of Stg£25,000 tendered for exchange on 11 October 1994 at AIB's branch at 38/39 O'Connell Street in Dublin could have been exchanged at the customer buy rate applicable to sterling to the value of up IR£2,500, thus yielding IR£24,838.49 (after deduction of the £5 charge), a sum exactly equal to the sum lodged to Mr Ahern's account.

6.32 Mr Ahern disagreed with the suggestion that the branch might have applied a customer buy rate for sterling up to the value of IR£2,500 to a Stg£25,000 transaction on the direction of Currency Services. Mr Ahern maintained that the application of such a rate would have meant that the customer had been *'entirely screwed'* by the bank. Mr Ahern suggested also that the application of the customer buy rate for sterling to a value of up to IR£2,500

to Stg£25,000 could only occur if a bank teller breached bank procedure, and failed to contact Currency Services for a better rate.

6.33 The Tribunal took cognisance of the fact that when Mr Ahern undisputedly tendered the sum of Stg£20,000 to the same AIB branch for exchange into Irish pounds on 1 December 1995,[12] the customer buy rate ultimately applied to that sterling sum was in fact the published customer buy rate for sterling amounts up to a value of IR£10,000, and not a better rate.

6.34 In addition to the application of the published customer buy rates for sterling on 11 October 1994 to the information provided by Mr Ahern in order to determine the amount of foreign currency Mr Ahern tendered for lodgement on 11 October 1994, the Tribunal examined the documentation which had been furnished by AIB in the context of the overall sterling exchange transactions conducted by the branch on 11 October 1994.

6.35 In accordance with bank procedure, the total amounts of sterling, and of foreign currency *other* than sterling, purchased by the branch from customers on 11 October 1994 was recorded in manuscript on debit dockets at the close of branch business on that day. These dockets were completed based on information gleaned from the Forde Money Changer tally roll. These totals were also entered into the computerised Foreign Currency Held Ledger. The debit dockets and the ledger were made available to the Tribunal. As already indicated, the Forde tally rolls were not retained by AIB and were not available to the Tribunal.

6.36 Both the handwritten debit dockets and the computerised Foreign Currency Held Ledger recorded the value of sterling purchased within the branch on 11 October 1994 as IR£27,491.95, and the value of foreign currency *other* than sterling as being IR£1,211.66.

6.37 The purchase by the branch of sterling to the value of IR£27,491.95 allowed for the possibility that the lodgement of IR£24,838.49 to Mr Ahern's account was the Irish pound value of Stg£25,000 at one of the published customer buy rates for sterling on 11 October 1994.

6.38 Notwithstanding the non-availability of the Forde Money Changer tally roll for the relevant date, the Tribunal was satisfied that the figure of IR£27,491.95 as entered on the withdrawal/debit docket, and as entered in the computerised foreign currency held ledger pertaining to the '*Foreign Currency Held*' account,

[12] See Section V.

was a figure which was copied from the Ford Money Changer tally roll for 11 October 1994, and accurately and correctly identified the foreign currency as sterling.

6.39 In evidence on Day 747, Mr John Garrett, of AIB, made it clear that he did not take issue with the assumption that the tally roll data had been correctly transcribed and recorded within the branch.

6.40 An analysis of an AIB '*All Items Report'* (a record of the daily banking transactions) which was produced following the close of business on 11 October 1994, indicated that the branch's sterling purchases to the extent of IR£27,491.95 were conducted by teller no 12 — the same teller as processed Mr Ahern's lodgement. The Tribunal was satisfied that the teller who processed Mr Ahern's lodgement on 11 October 1994 was the same foreign exchange teller who purchased sterling from customers to the value of IR£27,491.95 on that day.

6.41 The aforementioned *'All Items Report'* concerning transactions conducted by teller no 12 shows that he or she attributed a transaction of IR£24,838.49 to '*B. Ahern.'* For the most part, the balance of the transactions processed by teller no 12, as listed on the '*All Items Report'*, related to foreign drafts, sterling drafts, fees for foreign and sterling drafts and US cheques—all items that would normally be transacted or processed by a foreign exchange bank teller.

6.42 The *'Foreign Notes in Transit'*[13] account of 37/38 Upper O'Connell Street dated 13 October 1994 recorded a sterling remittance to Currency Services to the value of IR£31,224.82 by way of the abbreviation '*STG REM*.' On the basis of the evidence of Mr McNamara and Mr Garrett,[14] the Tribunal was satisfied that the sterling remit made on 13 October 1994 included the IR£27,491.95 value of sterling purchased by the branch on 11 October 1994.

6.43 Both Mr Garrett and Mr McNamara, in their evidence to the Tribunal, acknowledged that the purchase by the branch of IR£27,491.95 worth of sterling was an *'exceptional amount'* of sterling to be purchased in a branch on a single day. For example, in the week preceding 11 October 1994 the daily Irish Pound value of the purchase of sterling recorded by the branch was as follows: 5 October 1994—IR£1,510.15; 6 October 1994—IR£601.88; 7 October 1994—IR£3,313.03; and 10 October 1994—IR£678.66. Mr Garrett confirmed to the

[13] An internal bank report containing details of foreign currency transmitted between the branch and the Currency Services department.

[14] In evidence Mr Garrett stated that the date of the remit was 15 October 1994. However, the Tribunal was satisfied that this was stated in error for 13 October 1994.

Tribunal that the daily average of sterling purchased by the branch between January and June 1995 was between Stg£2,000 and Stg£2,250.

6.44 Unlike the situation in the branch on 15 June 1995 when Ms Larkin presented Stg£10,000 cash and IR£2,000 for lodgement[15], where the documentation relating to Ms Larkin's lodgement, as processed by Mr Murphy on that date, referred to two specific amounts of IR£9,743.74 and IR£2,000, differentiating between the two different currencies being presented, no such differentiation was made by foreign exchange teller No. 12 when he or she processed the cash which comprised Mr Ahern's 11 October 1994 lodgement. While Mr Murphy believed that *'an organised teller'* would identify separate currencies on the lodgement docket, he said this did not necessarily always occur.

6.45 Both Mr Ahern, who believed he personally made the lodgement to the branch on 11 October, and Mr Murphy, who normally dealt with Mr Ahern at that time and who believed *'it must have been'* he who took the lodgement on 11 October 1994, claimed not to have any recollection of the transaction. The Tribunal finds this lack of recollection, especially on the part of Mr Ahern, to be remarkable, having regard to the size and composition of the lodgement and the fact of its having been entirely in cash.

6.46 Although he may have met with Mr Ahern on the day in question, Mr Murphy acknowledged that he himself may not have dealt with the actual processing of Mr Ahern's transaction. Having regard to the inclusion of *'B. Ahern'* on the *'All Items Report'* attributed to teller No. 12 for the day in question, the Tribunal was satisfied that Mr Murphy did not physically process the 11 October 1994 lodgement. Mr Murphy pointed out that while he could have accepted the lodgement, a bank colleague may have then processed it.

MR AHERN'S RESPONSE TO THE SUGGESTION THAT THE LODGEMENT OF 11 OCTOBER WAS STG£25,000

6.47 In his prepared statement read from the witness box on Day 756 Mr Ahern, *inter alia*, took issue with matters which Counsel for the Tribunal had raised with Mr Murphy and Mr Garrett of AIB, in the course of their evidence. One such matter was the suggestion put to the AIB witnesses by Counsel for the Tribunal that the amount of the lodgement to Mr Ahern's account on 11 October 1994, namely IR£24,838.49, allowed for the possibility that Stg£25,000 had been tendered by Mr Ahern, and had been exchanged by AIB at the customer buy

[15] See the analysis of the lodgement in Section IV

rate of exchange applicable on that day to sterling amounts up to a value of IR£2,500, and from which a discretionary commission of IR£5 was deducted.

6.48 In the course of his oral statement, and in his sworn evidence, Mr Ahern categorically denied that the sum lodged on 11 October 1994 was the Irish pound equivalent of Stg£25,000. While at all times denying that he had lodged such a sum, Mr Ahern claimed that the Irish pound equivalent of Stg£25,000 could only have been achieved if it was accepted by the Tribunal that the branch teller on 11 October 1994, when presented with Stg£25,000, breached normal bank procedures by manually overriding the Forde Money Changer, and applied a customer buy rate appropriate to sterling amounts up to a value of only IR£2,500. Mr Ahern further asserted that for the branch to have done that to him, as Minister for Finance, was *'unbelievable.'*

6.49 While denying any suggestion that he tendered Stg£25,000 for exchange and lodgement on 11 October 1994, and while asserting *'to the best of* [his] *recollection'* that what he had tendered for lodgement on the date in question was circa Stg£8,000 and circa IR£16,500, Mr Ahern in evidence on Day 756 and 757 acknowledged that Stg£25,000, if tendered for exchange on 11 October 1994, would have yielded IR£24,838.49, if a rate of 1.0063 (the published customer buy rate of exchange of the day for sterling amounts up to the value of IR£2,500) had been applied, and if a commission of IR£5 had been charged.

THE OPINION OF MR PADDY STRONGE[16]

6.50 Mr Ahern's solicitor submitted a report from Mr Paddy Stronge with their letter to the Tribunal dated 18 September 2007. A subsequent and more detailed report from Mr Stronge was furnished to the Tribunal on 19 October 2007.

6.51 In his reports, Mr Stronge considered the evidence provided to the Tribunal relating to the lodgement of IR£24,838.49 to Mr Ahern's bank account on 11 October 1994, and the lodgement of IR£28,772.90 to the account of Ms Larkin on 5 December 1994 (see Section iv).

6.52 In the section of his report wherein he considered the evidence as to the composition of the IR£24,838.49 lodged on 11 October 1994, Mr Stronge stated his conclusions in the following terms:

[16] Mr Stronge submitted his reports on behalf of Mr Ahern in his capacity as a banking expert. Mr Stronge worked in various positions in Bank of Ireland between 1963 and 2004 (and subsequently on a part time basis between July 2005 and March 2007. At the time of his retirement from Bank of Ireland in 2004, Mr Stronge held the position of Chief Operating Officer Corporate Banking. At the time he prepared his reports, Mr Stronge was Chairman of Philos Training & Consultancy Ltd.

The evidence does not substantiate the proposition that the sterling pounds lodged in AIB on that day had to comprise a single large lodgement.

The coincidence of around a sum of Stg£25,000 depends on the application of an in appropriate rate which is a breach of branch procedures.

There is no evidence which would indicate a breach of branch procedures having occured leading to an inappropriate exchange rate being used. There is evidence that there were adequate cheques and controls to ensure that the correct rate was applied.

The evidence, including the documentation, is consistent with the composition of the lodgement being circa Stg£8,000, and the remainder of the lodgement being in Irish pounds.

6.53 The Tribunal dismissed Mr Stronge's conclusions on the basis that the evidence provided to it by bank witnesses did not establish that an exchange rate for transactions with a value of up to IR£2,500 being applied to a Stg£25,000 transaction was '*inappropriate'* or constituted *'a breach of branch procedures.'*

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE COMPOSITION OF THE LODGEMENT OF IR£24,838.49 ON 11 OCTOBER 1994

6.54 The Tribunal's analysis and consideration of the contemporaneous bank documentation and the banking evidence given to the Tribunal relevant to the lodgement of 11 October 1994, established as a matter of probability the following:

1) On 11 October 1994, a sum of IR£24,838.49 was lodged to Account No. 1/A/04519/011 in the name of Mr Bertie Ahern.
2) The AIB branch stamp on the credit docket documenting the transfer of the funds presented by or on behalf of Mr Ahern to the bank's RDC (transit) account, although somewhat blurred, indicated that the transaction was processed by teller No. 12, who was the foreign exchange teller at the branch on 11 October 1994.
3) The fact of the Irish pound cash lodgement containing an Irish coin element, was suggestive of a conversion from a foreign currency having occurred.

4) An *'All Items Report'* produced at the close of business on 11 October 1994, relating to teller No. 12, documented that he or she had processed a transaction of IR£24,838.49 attributed to *'B. Ahern.'*

5) The *'Ahern'* lodgement of 11 October 1994 was processed and recorded by teller No. 12 as a single transaction. While this fact did not disprove Mr Ahern's contention that the source of the IR£24,838.49 was comprised of a sum in Irish pounds together with a sterling sum exchanged into Irish pounds, it was, at least, an indication that the composition was comprised of a single currency.

6) Both the manually written debit dockets or narratives and the branch's Foreign Currency Held Ledger documented that the branch purchased sterling from customers to the value of IR£27,491.95 on 11 October 1994.

7) In comparison to the purchases of sterling which had taken place on 5, 6, 7 and 10 October 1994, the purchase by the branch of IR£27,491.95 worth of sterling on 11 October 1994 was *'exceptional.'*

8) The purchase of sterling to the value of IR£27,491.95 allowed for the possibility that the sum of IR£24,838.49 lodged to Mr Ahern's account was originally entirely sterling.

9) The IR£31,224.82 remitted by the branch on 13 October 1994 to Currency Services by way of sterling remission included the IR£27,491.95 worth of sterling which had been purchased by teller No. 12 on 11 October 1994.

10) The information provided by and on behalf of Mr Ahern to the Tribunal prior to Day 756, namely that the lodgement made to his account comprised an exact sum of IR£16,500 cash from a *'second good will loan'* and the Irish equivalent of a sum of circa Stg£8,000 did not by the application to the figure of IR£8,338.49 of any of the published customer buy rates of exchange for sterling on 11 October 1994 yield a sterling sum (in the absence of a sterling coin element less than £1).

11) A figure of IR£8,338.49 therefore could not have represented an Irish pound equivalent of a sterling sum without a coin element at any of the published customer buy rates of exchange applicable to sterling on 11 October 1994.

12) No sum of circa Stg£8,000, if exchanged for Irish pounds pursuant to any of the applicable published rates of exchange on that day, when added to IR£16,500 would yield IR£24,838.49.

13) The lodgement of IR£24,838.49 therefore did not comprise a sum of IR£16,500 and the Irish pound equivalent of circa Stg£8,000.

14) A sum of Stg£25,000 exchanged at a customer buy rate of 1.0063—being one of the published customer buy rates for sterling for 11 October 1994 (applicable to sterling up to IR£2,500 in value)—would have yielded, if a

commission charge of £5 was deducted, IR£24,838.49, a sum exactly equal to the lodgement made to Mr Ahern's account on 11 October 1994.

15) It was within the discretion of Currency Services to authorise a customer buy rate applicable for sterling amounts up to a value of IR£2,500 for a purchase of a sum of Stg£25,000 from a customer.

6.55 In this regard, the Tribunal was satisfied, based on evidence from AIB witnesses, of the following:

(i) The application of a customer buy rate of 1.0063 to the Stg£25,000 cash sum tendered for exchange into Irish pounds (that being the rate applicable to sterling with a value of up to IR£2,500) did not, as contended by Mr Ahern in his evidence, involve the bank teller having to '*manually override*' the Forde Money Changer.

And

(ii) Furthermore, the application of the IR£2,500 rate to a Stg£25,000 cash sum tendered for exchange into Irish pounds did not indicate, of itself, that normal bank practice or procedure had been ignored or in any way bypassed.

6.56 Having regard to the foregoing, the Tribunal was satisfied that, as a matter of the strongest probability, the cash tendered for exchange and lodgement into Mr Ahern's bank account on 11 October 1994 was Stg£25,000. The Tribunal therefore rejected Mr Ahern's evidence that he tendered for lodgement a mixture of Irish pounds and sterling notes comprising approximately IR£16,500 and approximately Stg£8,000 respectively. Furthermore, the Tribunal rejected Mr Ahern's evidence that he tendered for lodgement any Irish pound cash sum on 11 October 1994.

THE ACCOUNT GIVEN TO THE TRIBUNAL OF THE CIRCUMSTANCES IN WHICH MR AHERN CLAIMED TO HAVE COME INTO POSSESSION OF IR£16,500—THE 'SECOND GOODWILL LOAN'

6.57 Mr Ahern described to the Tribunal the circumstances in which he claimed to have received IR£16,500 in September or October 1994 in the following terms: One midweek evening**,** while visiting the Beaumont House public house, a licensed premises owned by Mr Dermot Carew, Mr Carew presented him with a folder which, Mr Ahern was advised, contained IR£16,500. Mr Carew told Mr Ahern that he, together with three others, Mr Paddy Reilly (often referred to as 'Paddy the Plasterer'), Mr Joe Burke and Mr Barry English, had put together a fund with the objective of assisting Mr Ahern in the purchase of a house. Mr Carew apprised him of the respective individual contributions made by the four

men. Mr Ahern's evidence was that while his initial reaction was to decline the cash, he ultimately agreed to accept it on the basis that its purpose was to assist him in buying a house, and on the understanding that he would repay it in due course. Thus, while the intention of the four men had been to gift Mr Ahern IR£16,500 he, Mr Ahern, only accepted it as a loan, something he believed that he made clear to each of the other three contributors when he met them subsequently. (Mr Ahern's contention, if true, meant that within a matter of months, twelve friends sought to gift him a total of IR£39,000, funds which he accepted on the basis that he would repay, with interest).

6.58 Messrs. Carew, Reilly, Burke and English all gave evidence of having, in late September 1994, made the decision to assist Mr Ahern financially. It had, it was suggested, probably been Mr Carew who had broached the idea with the others, an idea which had been met with unanimous approval. According to the men, the fact that Mr Ahern did not have a permanent place of residence was the motivating factor, in their decision to contribute. They were concerned that Mr Ahern's then living arrangements might affect him politically.[17]

6.59 Mr Carew testified that it was he who had raised the issue with Messrs Reilly, Burke and English. He described having initiated the discussion in the following terms:

> *'I think I mentioned to Joe 'where is Bert staying tonight.' Something to that effect and it progressed from there and I said its about time that he got a house. Because I had mentioned to Bert beforehand on a few occasions when we'd be having a pint and you know, I said, 'would you not go out and get a fecking house instead of living in Luke's or with Joe.' He did say that he was in the process of doing that, that he had some savings.'*

6.60 Mr Burke initially told the Tribunal that, following receipt by him of a letter from the Tribunal in which he was requested to provide information to the Tribunal in relation to a contribution to Mr Ahern, he had probably raised the matter in conversation with Mr Carew for the purpose of assisting himself to recollect the date of the payment. Subsequently, in his later evidence, he denied that he had in fact raised the issue with Mr Carew.

Mr Burke gave conflicting evidence when asked to recount the circumstances in which he was requested to recall the events of 1994, as indicated in the following exchange between Tribunal Counsel and Mr Burke:

[17] Mr English was less certain than his three colleagues that the purpose of his contribution was to assist Mr Ahern buy a house, rather than merely the provision of financial assistance because of his marriage separation.

'Q.762 All right. When was the first time you were asked to recall all of this, Mr. Burke?

A. I'm almost sure when I got a letter from the Tribunal.

Q.763 All right. Not, that letter was, did we say June 2006?

A. uh-huh.

Q.764 Did you, were you asked to recall it before then?

A. No, other than I think prior to the letter was the Brian Dobson interview.

Q.765 No, it was after the letter?

A. Was it? Whatever it was anyway.

Q.766 All right. And when you got this letter did you get in touch with either Mr. Ahern or any of the other three gentlemen to discuss it with them and to try and help your recollection?

A. I asked one of them I think Mr. Carew was when did this, can he remember when it happened. I had a vague memory of when it happened. And I think, yea, I think I would have mentioned.

Q.767 Well wait now. You mentioned it to Mr. Carew?

A. I may have, yeah.

Q.67 You may have?

A. Yeah.

Q.769 You're not sure.

A. I mean listen, this is going back to '94.

Q.770 Well it's not actually it's going back to 2006, Mr. Burke.

A. Well sorry which. Which are we talking about the loan or the money.

Q.771 When you got the letter from the Tribunal asking you for a detailed narrative statement which you supplied shortly afterwards, Mr. Burke, dealing with this matter in 1994. I'm asking you did you speak to Mr. Carew?

A. No.

Q.772 About the events?

A. no.

Q.773 Not at all?

A. I am sure I would have told him that I got a letter from the Tribunal.

Q.775 But did you discuss what was required and what I mean is that what happened?

A. No.

Q.776 The loan?

A. No, no, no, no, no.

Q.777 And the circumstances?

A. I remember correctly that was there not something on a confidential not to be discussed with anybody other then my legal team.'

6.61 Mr Reilly acknowledged that prior to making his written statement to the Tribunal in relation to his contributions to Mr Ahern he discussed the issue with both Mr Ahern and Mr Carew. Mr Reilly maintained that the only information provided to him by Mr Ahern and Mr Carew was the month in which the monies were given to him.

6.62 All four men claimed that there was no suggested target figure for individual subscriptions to the collection for Mr Ahern, it being left to each individual to determine how much to contribute. Mr Carew stated *'we decided to throw in a few quid in each and there was no big deal.'* He said that, on the night *'there was no basic decision whatsoever taken whether it be a loan or a gift'* that would be given to Mr Ahern. It was decided that Mr Ahern would be given the money in cash in order to avoid a cheque remaining uncashed by him.[18]

6.63 Messrs. Burke, Reilly and English, in evidence, described how, within a short time after the discussion in Beaumont House, each of them paid over their individual contributions to Mr Carew for transmission to Mr Ahern.

6.64 Mr Carew maintained that when handing over their contributions his fellow contributors had advised him of the amounts they were giving. Thus, he had not counted them, rather he had *'put the whole lot'* in an envelope together with his own contribution of IR£4,500.

6.65 Mr Carew described the actual handover of the total collected fund to Mr Ahern in the following terms:

> *'We were sitting down having a pint and I left my pint there and went up to the safe, brought down the money and I said 'Bert the boys and myself want you to have that.' And he first of all he said 'What is it?' And I said 'It's a few pounds we collected towards a deposit for a house.' And I told him who gave what and he said 'no, no' – I won't use the words, but he didn't want to take it.'*

6.66 Mr Carew stated that after a few minutes discussion, Mr Ahern made the decision *'to take it as a loan.'* Mr Ahern, Mr Carew stated, was *'absolutely amazed'* when he learned the amount that each of the four had contributed. To the best of his recollection, Mr Ahern then placed the envelope on a seat *'with his coat over it.'*

[18] Mr Burke however testified that he did not recall this, although in the statement which he provided to the Tribunal he alluded to the fact that the money was given to Mr Ahern in cash because: *'…we believed that if we wrote a cheque Mr Ahern would not cash it.'*

6.67 Mr Carew told the Tribunal that, prior to broaching with the other three contributors the subject of a financial contribution to assist Mr Ahern in the purchase of a house he had been aware, from conversations with Mr Ahern, that the latter had *'savings'* and was in fact saving for a house. Notwithstanding this knowledge, Mr Carew felt that Mr Ahern needed a *'dig out.'* Mr Reilly likewise advised the Tribunal that in September 1994 he too was aware, from conversations with Mr Ahern, that the latter had *'savings.'*

MR AHERN'S LIVING AND FINANCIAL CIRCUMSTANCES IN SEPTEMBER 1994

6.68 By September 1994, Mr Ahern had been separated from his wife for over seven years. Mr Ahern's legal separation proceedings had concluded in November/December 1993. In December 1993, Mr Ahern had borrowed IR£19,115.97 from AIB for the purposes of discharging legal bills and other commitments arising from his concluded matrimonial separation, and had discharged them.

6.69 In September 1994, Mr Ahern was residing in St Luke's, Drumcondra, on foot of a tenancy agreement which he had entered into in January 1992. By that time, St Luke's had been refurbished and included living quarters.

6.70 By September 1994 Mr Ahern had been Minister for Finance since 1991, and had held ministerial office continuously since 1987. In September 1994 Mr Ahern was in receipt of both a minister's and a TD's salary**,** as he had been for some years previously.

6.71 An analysis of Mr Ahern's banking records showed that by September 1994 he had on deposit in excess of IR£20,000[19] in the Irish Permanent Building Society. Mr Ahern subsequently told the Tribunal that he had saved this sum for a deposit on a house. In addition, Mr Ahern had in excess of IR£50,000 in two accounts in AIB. Furthermore, Mr Ahern's financial circumstances were such that by August 1994 he had honoured a commitment, given by him in 1993, to provide additional financial support for his then minor daughters by depositing IR£20,000 to a joint account in AIB in their names.

6.72 In the course of his evidence to the Tribunal, Mr Ahern acknowledged that he did not have a need for financial assistance in 1994. Mr Ahern also told the Tribunal that by September 1994 his housing requirement had been resolved, as he had entered into an agreement to rent a house from his friend Mr Michael

[19] IR£18,225.22 in a deposit account and IR£2,500 in a current account.

Wall[20] who it was claimed was by then seeking accommodation in Dublin in connection with a proposal to extend his UK based business interests to Dublin.

6.73 No record of the IR£16,500 received from Messrs Carew, Burke, Reilly and English was kept by Mr Ahern. No written reference, acknowledgement or receipt of the IR£16,500 was ever made by Mr Ahern or by any of the contributors.

6.74 Having regard to Mr Ahern's testimony that he only reluctantly accepted the money from the four individuals concerned, and having regard to his evidence that in 1994 he had resolved to repay these loans, the Tribunal found the absence of any documented record on his part of these loans remarkable.

6.75 None of the four individuals had any contemporaneous documentary record of the money they claimed to have given Mr Ahern. There was no banking or other record available as to the source of the cash utilised for the contributions. All four claimed that their respective contributions came from cash funds they had then available. Thus, neither on the part of the givers nor of the receiver does there exist a single record of this claimed *'goodwill loan.'*

6.76 Mr Carew told the Tribunal that he had cash available to him from his own resources.

6.77 Mr Reilly said he had *'cash available through an active plastering business'* in which he was engaged in at the time.

6.78 Mr Burke accounted for his having access to IR£3,500 on the basis that at the time he was in the business of buying a lot of salvage for his public house refurbishment business, and he *'had the cash.'* Mr Burke also informed the Tribunal that his original intention had been to contribute IR£5,000 to Mr Ahern but that he had removed IR£1,500 from the envelope (intended for Mr Ahern), to purchase a gift for his wife's birthday.

6.79 Mr English claimed that he sourced his IR£5,000 contribution from accumulated cash savings from his work abroad and which he had brought back to Ireland. While he would, he said, have deposited his money in a bank account on his return, this was money he had *'just kept in cash.'* Asked to account as to why he made such a large contribution to Mr Ahern, (his being the largest of the four), Mr English stated: *'...I kind of went with a flow of the conversation that*

[20] In this regard see Sections IV and VIII hereof.

night', and had *'..come away with my own view of what was an appropriate amount.'*

6.80 In their evidence, none of the four individuals who claimed to have contributed sums of between IR£3,500 and IR£5,000 to Mr Ahern in September 1994 could point to any *specific* indicator in September 1994 such as might have prompted a decision on their part to aid Mr Ahern financially. Messrs Carew, Burke and Reilly, who were, in September 1994, longstanding close personal friends of Mr Ahern's, knew that Mr Ahern had separated from his wife in 1987 and that he had been in a new personal relationship with Ms Celia Larkin for a number of years. Almost certainly all three men knew that Mr Ahern's immediate housing needs had been taken care of, from at least 1992, on foot of the tenancy arrangement he had entered into in relation to St Luke's. Neither Mr Carew, Mr Burke nor Mr Reilly, all of whom were aware of Mr Ahern's *de facto* separated state since 1987 and of the fact that he had been out of his family home since that time, were able to give a logical or plausible explanation as to why they had decided in September 1994 to assist Mr Ahern financially.

6.81 Mr English barely knew Mr Ahern in September 1994, having met him on between four and six occasions. It was unlikely and implausible that Mr English, who had only been introduced into Mr Ahern's circle in June 1994 through Mr Burke, whom he first met in or after February 1994, would have been informed of or have acquired knowledge of Mr Ahern's personal affairs, whatever they might be, by September 1994. Mr English, in evidence, acknowledged that he was not a close friend of Mr Ahern's in 1994. He had, following a period working abroad, only returned to Dublin in early 1994. It struck the Tribunal as implausible that Mr English, a 25-year-old man without a house or car of his own, would in September 1994 have gifted IR£5,000 in cash to Mr Ahern.

6.82 Neither Mr Carew nor Mr Reilly had any awareness in 1993/1994 of the first *'goodwill loan'* which, it was claimed, was provided to Mr Ahern in December 1993. Mr Burke's evidence was that although unsure, he thought that he had been made aware by Mr Ahern in December 1993 that *'...somebody was doing something about (*Mr Ahern's) *legal bills from the separation.'* Mr Burke however professed to have had no knowledge of the fact that Mr Ahern had taken an AIB bank loan in December 1993 to assist in the discharge of his legal bills. Mr Burke also stated that while he knew most of the contributors to the claimed first *'goodwill loan',* he himself had not been approached in December 1993 in relation to that collection.

6.83 The thrust of the evidence given by Messrs Carew, Reilly and Burke was that at the time of its occurrence they were strangers to the fact that in December 1993, individuals had been approached, at the instigation of Mr Brennan and Mr Richardson, to contribute to a fund then being collected to assist Mr Ahern to discharge legal bills.

6.84 In conflict with this stated position on the part of Messrs Carew, Reilly and Burke, in his RTE interview in December 2006, Mr Ahern suggested that those who, he claimed, contributed to the second *'goodwill loan'* had been '*...keen to be involved at Christmas but weren't involved.'* Indeed, Mr English was unknown to Mr Ahern in December, 1993.

6.85 Each of the contributors to the claimed second *'goodwill loan'* gave evidence of Mr Ahern subsequently having acknowledged their individual contributions, and of Mr Ahern's statement to them that he would repay the money.

6.86 Mr Carew stated that Mr Ahern had raised the issue on *'numerous occasions',* the first of which Mr Carew, although unsure, believed '*...could have been three or four years after...'* His description of the manner in which the issue had been raised by Mr Ahern was as follows: '*You'd be out having a drink or at a race meeting or socialising, Dermot, I must fix up that few quid with you.'* Mr Carew had understood that Mr Ahern wanted to repay the money but *'...everytime he offered to pay it back I just didn't take it, I just put it off.'* Mr Ahern had not, Mr Carew acknowledged, ever produced the repayment money (prior to 2006).

6.87 Mr Reilly told the Tribunal that subsequent to receiving the money, Mr Ahern had thanked him, *'probably' 'in Fagan's',* and said that he would repay it. Mr Ahern had told him that he had not wanted to accept the money, but that Mr Carew had insisted that he did. Mr Reilly said that on three or four occasions over the years Mr Ahern raised the issue of repayment, but had never produced the funds, prior to 2006.

6.88 Mr Burke also stated that Mr Ahern had thanked him, and had said that he was accepting Mr Burke's and the other contributions as a loan. Mr Burke testified that while Mr Ahern had not, at any time between 1994 and 2006, repaid him, the issue of repayment had been raised *'On two occasions, one was at the races when I think he won a few bob.'* He recalled that Mr Ahern had uttered words to him to the effect *'...if I have a few more good days like this I'll be able to pay you guys back.'* Mr Burke maintained that the issue was raised by Mr Ahern on a later occasion (by which time he was Taoiseach), Mr Burke told him to *'Forget about it and we'll have a hooley when you step down.'*

6.89 Mr English, who in his statement to the Tribunal described the IR£5,000 given by him to Mr Ahern as a *'soft loan',* told the Tribunal that while he had provided the money as a loan, he appreciated that he was not going to see its return. On Day 799, the following exchange took place between Tribunal Counsel and Mr English:

> *'Q. So you gave it intending it to be a loan, but you appreciated that you weren't going to see it back again, is that right?*
>
> *A. Yeah.*
>
> *Q. Was that a fair assumption of the relationship that you had with Mr. Ahern here, that he would take money as a loan and you would never get it back, is that what you're saying?*
>
> *A. Is that what I'm saying? Like, on the night we said we'd give him the money until he got himself sorted out. Now, what happens after that you don't know.*
>
> *Q. And what did happen as far as you're concerned, Mr. English, after that? You had parted with your money...*
>
> *A. Uh-huh.*
>
> *Q. -- and what next happened, did you meet with Mr. Ahern in the Beaumont House some weeks later, days later, whatever it might be?*
>
> *A. Well it wouldn't have been. Sorry. It wouldn't have been daytime, it would have been evening time.*
>
> *Q. Yeah.*
>
> *A. Yeah, he would have said 'look thanks for that' or something along those lines and 'I'll sort you out for it' or yes.*
>
> *Q. He said he'd sort you out?*
>
> *A. Some kind of an intimation that—*
>
> *Q. Was that reassuring from your point of view? Did you know now that you were going to see your money back?*
>
> *A. It was just his intimation at the time.*
>
> *Q. But you say in your statement that you've known and socialised with him for 12 years.*
>
> *A. Uh-huh.*
>
> *Q. Since then.*
>
> *A. Uh-huh.*
>
> *Q. And what has taken place in that period which would indicate that he had the intention of paying you back this money?*
>
> *A. Because he said things and I'll sort you out for it.*
>
> *Q. Yes. But he didn't.*
>
> *A. No.*
>
> *Q. For 12 years.*
>
> *A. Whenever – 2006, yeah.'*

THE PAYMENT OF €37,640 TO MESSRS CAREW, REILLY, BURKE AND ENGLISH IN 2006

6.90 Mr Ahern told the Tribunal that in September 2006 he repaid the four contributors to the claimed second goodwill loan by providing a cheque to each individual which incorporated repayment of the capital sum and interest. Mr Ahern furnished cheques for €7,984 each (based on capital advances of IR£3,500) to Mr Reilly and Mr Burke, a cheque for €11,406 to Mr English (based on a capital advance of IR£5,000) and a cheque for €10,266 to Mr Carew (based on a capital advance of IR£4,500).

6.91 Letters from Mr Ahern accompanied the payments to each of the four individuals. Mr Ahern's letter to Mr Reilly read as follows:

> *29th September 2006.*
>
> *Dear Paddy*
>
> *I enclose a cheque in the amount of €7,984.00 in full and final settlement of the outstanding loan you very kindly extended to me all those years ago.*
>
> *I would like to thank you for your very kind support and I apologise for the delay in settling this long outstanding matter.*
>
> *Yours sincerely,*
>
> *Bertie Ahern.*

6.92 By October 2006 all four cheques had been endorsed in favour of CARI (a charitable organisation associated with Mrs Miriam Ahern) by Messrs Carew, Reilly, Burke and English and lodged to CARI's bank account on 13 October 2006 as part of a single lodgement. Mr Carew told the Tribunal that he initiated the idea that CARI would be the beneficiary of the payments.

6.93 However, Mr English told the Tribunal that he was informed of the idea of endorsing the cheques in favour of CARI by Ms Sandra Cullagh, Mr Ahern's secretary in St Luke's. Ms Cullagh had indicated to him (referring to Mr Ahern's payments to a number of contributors) that *'some are taking it back. Some are giving it to a charity and some are giving it to Miriam's charity, CARI.'*

6.94 Mr Burke said that he heard of the idea of endorsing his cheque in favour of CARI from *'somebody.'*

6.95 Mr Reilly told the Tribunal that he had made up his own mind to give his cheque to CARI, and that he might have heard it said *'in the office'* that others were doing likewise.

6.96 Messrs Carew, Reilly and Burke indicated that the cheques provided to them by Mr Ahern did not leave St Luke's until endorsed by them in favour of CARI. Mr English told the Tribunal that he endorsed his cheque in St Luke's following a telephone call from Ms Cullagh inviting him to come to St Luke's.

6.97 All four individuals[21] provided a pre-typed acknowledgement dated 14 December 2006 which had been furnished to them by and/or on behalf of Mr Ahern.

6.98 Mr Noel Corcoran, a tax consultant, told the Tribunal of an eight- or nine-minute telephone call he had with Mr Ahern on an unknown date, possibly in 2000, in the course of which Mr Ahern sought his advice as to the tax implications, if any, arising from Mr Ahern's receipt of loans of money from twelve individuals in amounts varying between IR£2,500 and IR£5,000 some five or six years previously, and of a further sum of Stg£8,000 following a function held in Manchester, attended by 20–25 people. Mr Ahern was unable to advise Mr Corcoran how many of the attendees contributed to the Stg£8,000 or the amount of any individual contribution. Mr Corcoran did not make any notes in the course of his telephone conversation, or subsequently, nor was any letter written to Mr Ahern in relation to the matter. Mr Corcoran told the Tribunal that, based on the information furnished to him by Mr Ahern, he advised Mr Ahern that neither the loans nor the gift of Stg£8,000 attracted any liability to tax.

6.99 Mr Corcoran said that he did not regard Mr Ahern as a client. It was his view that Mr Ahern's approach to him was informal and based on the fact that they had known each other for twenty years. Mr Corcoran said that no one had discussed the content of that telephone call with him prior to his evidence to the Tribunal, other than a brief reference to it by Mr Ahern at a meeting.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO 'THE SECOND GOODWILL LOAN'

(i) The Tribunal rejected the evidence given by Messrs Burke, Reilly, Carew and English that they gifted or lent a total of IR£16,500 to Mr Ahern. The Tribunal was satisfied that no such collection took place.

(ii) The reasons given by Messrs Carew, Reilly, Burke and English, which, they alleged, prompted them to contribute substantial sums of money to Mr Ahern in September 1994, namely a perceived need for financial assistance on Mr Ahern's part, appeared to the Tribunal to be without

[21] Mr Burke said he signed his acknowledgement letter on 29 September 2006.

credence and indeed extraordinary, having regard in particular to the following indisputable facts:

- Mr Ahern was in 1994 the Minister for Finance and had been a Government Minister and a T.D. for approximately 7 years and was therefore in receipt of a substantial salary from the State.
- In 1994, Mr Ahern's political prospects, both at constituency level and at national level, appeared to have been very good. There cannot have been any real concern on the part of any of the donors that Mr Ahern's prospects as a high profile national politician were anything but excellent.
- Mr Ahern's lifestyle was apparently relatively modest.

(iii) Particularly in relation to Mr English, it was highly improbable that in September 1994 (irrespective of Mr English's then financial circumstances) Mr English would have been sufficiently personally friendly with Mr Ahern to have made a financial contribution to him of IR£5,000 (this contribution being by far the largest single donation from the four individuals) or to have been requested to make such a contribution.

(iv) Messrs Carew, Reilly and Burke were aware in September 1994 that Mr Ahern was residing in an apartment within St. Luke's on foot of a tenancy agreement. Mr English was possibly aware of this fact also. Furthermore by his own account, Mr Ahern's future immediate accommodation requirements were to be met by an arrangement he was to embark on with Mr Wall.

(v) The Tribunal found Mr Ahern's assertion of having accepted a loan of IR£16,500 in September 1994 not credible in circumstances where he had as of September 1994 IR£50,000[22] on deposit in his SSA (together with approximately IR£20,755.92 [23]in his IPBS account), and when he had by then also honoured his commitment to commit IR£20,000 to an account for his daughters' education.

(vi) Moreover, the Tribunal did not consider it credible that Mr Ahern would have burdened himself with a second '*goodwill loan'* in circumstances where he claimed to the Tribunal (a claim rejected by the Tribunal – see Section I hereof) that he reluctantly accepted a previous '*goodwill loan'* of IR£22,500 in December 1993.

[22] IR£22,500 had been lodged into the SSA account on the 30 December 1993 and this lodgement was topped up to its limit of IR£50,000 on 25 April 1994 – See Section II.
[23] IR£18,225.92 in one share account, and IR£2,500 in another share account.

(vii) Had Mr Ahern accepted sums totalling IR£16,500 from four friends in September 1994 as repayable loans, as claimed by him, it was likely that such loans would have been fully or substantially repaid by Mr Ahern long before September 2006, particularly when post June 1997 Mr Ahern's political and financial circumstances were very favourable.

(viii) Insofar as Mr Ahern purportedly paid or actually did pay Messrs Carew, Reilly, Burke and English in September 2006 sums of money which equalled their individual alleged contributions to Mr Ahern in 1993, plus interest, the Tribunal was satisfied that such payments were not made on foot of any legal or moral requirement on Mr Ahern's part to make such payments.

(ix) The Tribunal believed that Mr Ahern was prompted to make or tender such payments in 2006 following, and in consequence of, publicity relating to the receipt of money by him from third parties. This publicity arose following the unauthorised disclosure of the content of a letter sent by the Tribunal to Mr David McKenna in the course of the Tribunal's private inquiry into the source of the lodgement of IR£22,500 to Mr Ahern's Special Savings Account (SSA) on the 30 December 1993.

(x) In relation to the evidence from Mr Corcoran and Mr Ahern that they discussed the tax implications in relation to Mr Ahern's acceptance of a total of IR£39,000[24] in loans from friends and Stg£8,000 following a dinner in Manchester, it was likely, the Tribunal believed, that Mr Corcoran was mistaken in his belief that such a discussion took place in *'possibly 2000.'* The Tribunal believed it more probable, particularly having regard to Mr Corcoran's detailed recollection as to the circumstances in which Mr Ahern advised him he received the funds and the amounts involved, in the absence of any notes or record of their eight- or nine-minute telephone discussion, that their discussion took place considerably more recently than in 2000.

6.100 With reference to Mr Ahern's testimony that the money which he lodged to his 011 account on the 11 October 1994 included IR£16,500, the Tribunal's finding, as a matter of fact, that the immediate source of the IR£24,838.49 lodged to Mr Ahern's account on the 11 October 1994 was Stg£25,000 itself established that Mr Ahern's contention that portion of the composition of the lodgement comprised a sum of IR£16,500 could not have been the case, and

[24]This sum included IR£22,500 – the claimed first *'goodwill loan'* Mr Ahern claimed to have received in December, 1993, as well as the IR£16,500 which it was claimed constituted the second *'goodwill loan.'*

thus the Tribunal was satisfied that insofar as Mr Ahern gave evidence to the contrary, such was untrue.

THE MANCHESTER STG£8,000 PAYMENT

MR AHERN'S ACCOUNT OF EVENTS

6.101 Mr Ahern told the Tribunal that on a Friday night in either May or September 1994, either at the beginning or end of the UK Premier Division football season, following a dinner he attended in the Four Seasons Hotel in Manchester he received from the late Mr Tim Kilroe, the then proprietor of the hotel, an envelope which he was advised contained a financial contribution.

6.102 According to Mr Ahern, the circumstances in which the envelope came to be handed over to him were as follows. On the eve of a Manchester United match, Mr Ahern had met with (what he described as) a '*hot*' group of about twenty Irish business people, who had settled in Manchester, for an informal meal. In the course of this informal meal (which it was stated took place in the general hotel restaurant and not in a private room) Mr Ahern addressed the assembled individuals on the subject of the Irish economy, by way of a question and answer session.

6.103 Mr Ahern told the Tribunal that following the conclusion of the dinner, when the group had retired to the hotel bar, Mr Kilroe, with one or two others, approached Mr Ahern to convey their appreciation for his presence at the dinner. Mr Ahern stated that Mr Kilroe told him that they wished to make a financial contribution to him. When asked by Mr Ahern if what was being presented to him was a political contribution for Fianna Fáil (Mr Ahern intimated to the Tribunal that if that had been the case he *'would have to have given the funds to the party'*) Mr Kilroe had replied that it was a *'personal contribution'* for Mr Ahern's use and had nothing to do with the (Fianna Fáil) Party.

6.104 When asked in the course of his evidence about his understanding of the reason for the payment, Mr Ahern stated:

> '*Given because I have attended a number of their functions but I think that night because I had asked, I had stayed with them, I always wouldn't stay, I'd go back into town in Manchester, out with my friends. A number of places we'd go over the years, I stayed with them, I answered a lot of questions, a lot of detailed questions. These are fairly serious business people, they invest and they know business and I had stayed with them answering questions and talking to them.'*

6.105 Mr Ahern stated that when handing over the envelope Mr Kilroe did not apprise him of the amount of money in the envelope, nor had there been any intimation as to who among the group had contributed.

6.106 Mr Ahern told the Tribunal that he did not examine the contents of the envelope until he arrived home in Ireland the following day, and only then did he discover that the financial contribution given to him was in fact '*about 8,000*' in Stg£50 notes.

6.107 Mr Ahern told the Tribunal that he had attended similar events in Manchester over the years but that this event (in either May or September 1994) was the first time he had been given a cash gift. Previous presentations made to him consisted of gifts of glassware or books. Mr Ahern described the group he addressed in May/September 1994 as comprising very wealthy and successful Manchester-based Irish businessmen. Mr Ahern told the Tribunal that during the course of the dinner and during the course of his question and answer session he had not observed any collection being taken up from the assembled individuals. Mr Ahern said he subsequently thanked Mr Kilroe by telephone for the financial contribution.

6.108 Mr Peelo's report of 20 April 2006 made reference to two individuals who, Mr Ahern claimed, were in a position to corroborate Mr Ahern's account of how he came to receive circa Stg£8,000 in 1994. The individuals identified by Mr Ahern were Senator Tony Kett and Mr John Kennedy.

SENATOR TONY KETT[25]

6.109 Senator Kett (since deceased) provided the Tribunal with a written statement on 18 August 2006 and gave sworn evidence on Day 800.

6.110 In his written statement, Senator Kett made reference to having accompanied Mr Ahern to a Manchester United football match and recalled that Mr Ahern had performed an '*official function'* for the Irish community in Manchester, and had invited Senator Kett to it. According to Senator Kett, Mr Ahern had used the occasion to promote Ireland and had spoken for between 20 minutes and half an hour and had thereafter engaged in a question and answer session, all of which had taken approximately two hours.

[25] Senator Kett described himself as a close personal friend of Mr Ahern from the 1970's when both worked in the Mater Hospital. Senator Kett was elected to the Seanad in 1997, having previously been a Dublin City Councillor.

6.111 In response to specific questions which had been put to him by the Tribunal relating to the Manchester event, Senator Kett stated in a letter dated 29 June 2006 as follows:

> *With regard to your specific questions I make the following comments:*
> *1. I have no knowledge of any of the names of the individuals present on that night, as I believe it was my first and last time to encounter them.*
> *2. To my knowledge Mr Ahern received an amount in the region of £8,000 stg. I recall him expressing surprise at receiving a donation as he apparently had never received one in the past despite I believe having performed similar functions.*
> *3. I recall the time being the spring of 1994 as it was close to the end of the football season. I have no knowledge of the individuals present, as to my mind I have never met them before or since. My primary reason for being in Manchester was to attend a football match.*
> *4. I made no contribution whatsoever on the occasion.*
> *5. I have no knowledge of who made contributions or of the amounts of these contributions.*

6.112 In the course of his evidence on Day 800 Senator Kett clarified his use of the words *'official function'* and explained that what he had intended to convey to the Tribunal was that in the context of the weekend in Manchester, Mr Ahern had deviated from the objective of the weekend, which was football, to be *'serious for a couple of hours.'*

6.113 Senator Kett told the Tribunal that he did not observe any collection for Mr Ahern taking place on the night in question, nor had he been privy to any discussion in that regard with any individual on the night. Senator Kett stated that he had not seen anything being handed to Mr Ahern. Some days after the event, in Ireland, Mr Ahern had mentioned to him that he had received a contribution from the *'guys'* in Manchester. When imparting that information to Senator Kett, Mr Ahern had not apprised him of how much he had received, nor had Senator Kett made any inquiry in this regard of Mr Ahern. Senator Kett felt, however, that at a later date Mr Ahern had told him that he had received Stg£8,000. He told the Tribunal that while he had made no reaction to this news, probably *'deep down'* he had been amazed at Mr Ahern's good fortune.

MR JOHN KENNEDY[26]

6.114 On 18 July 2006 Mr Kennedy replied to the Tribunal's inquiry as to his knowledge of the Manchester event. In the course of his reply Mr Kennedy set out his recollection of Mr Ahern engaging with the Irish community in Manchester at various events during the 1980s and 1990s. Mr Kennedy made reference to one such event which he claimed took place at the Four Seasons and which he had organised with Mr Tim Kilroe. Mr Kennedy stated that he had personally donated Stg£1,000 to Mr Ahern at the event in support of his efforts '*in changing the face of Irish politics.'* In his letter to the Tribunal, Mr Kennedy also stated that his belief was that something short of Stg£10,000 had been raised for Mr Ahern. Mr Kennedy also stated that Mr Ahern had addressed the group about the Irish economy and had answered questions over the course of several hours.

6.115 In advance of Mr Kennedy giving evidence to the Tribunal on Day 802 (18 December 2007), Mr Kennedy's solicitor, Mr Hugh Millar, furnished the Tribunal with a letter of the same date wherein Mr Kennedy 'clarified' certain matters which he had adverted to in his previous correspondence with the Tribunal.

6.116 Specifically, the letter of 18 December 2007 stated that:

1) Mr Kennedy had not, contrary to what he had previously stated, been involved in organising the dinner in Manchester. Mr Kennedy had attended at the invitation of Mr Tim Kilroe.

2) Mr Kennedy had not, contrary to what he had previously contended, personally given a donation of Stg£1,000 to Mr Ahern, rather he had handed money to Mr Kilroe which he believed was subsequently given to Mr Ahern.

3) The money given to Mr Ahern on the occasion in question had not, contrary to what he had previously contended, been to support Mr Ahern's '*efforts in changing the face of Irish politics'*, rather, Mr Kennedy had been advised by Mr Kilroe that Mr Ahern had certain financial difficulties as a result of his marital breakdown, and it had been in this context that Mr Kennedy had been asked by Mr Kilroe to give a donation to Mr Ahern.

4) Mr Kennedy did not know how much money had been collected at the dinner in Manchester, and the figure of £10,000 quoted in his earlier letter had been 'speculation' on his part.

[26] Mr Kennedy was a Manchester based businessman.

Mr Millar went on to state that this information had not been recorded in Mr Kennedy's earlier letter to the Tribunal to avoid embarrassment to Mr Ahern and unnecessary intrusion into his private life. It was, however, noteworthy that over the twelve months prior to Mr Kennedy's first communication with the Tribunal, and at a time according to Mr Kennedy, when he wished to avoid a reference to Mr Ahern's marital circumstances and his consequential financial difficulties (as he understood them to have been), Mr Ahern had himself publicly referred to them in the course of an interview conducted by Mr Bryan Dobson of RTÉ in September 2006.

6.117 On Day 802 Mr Kennedy testified that some three or four days prior to the event in Manchester, he had been telephoned by Mr Kilroe about the event and Mr Kilroe had advised him to bring *'a few bob'* with him, as someone special, namely Mr Ahern, Minister for Finance, would be attending. Mr Kennedy told the Tribunal that he duly arrived at the hotel with Stg£1,000 cash on him. Mr Kilroe had mentioned to him Mr Ahern's recent separation from his wife and the fact that as Minister for Finance Mr Ahern *'didn't have a bob in his pocket.'*

6.118 Mr Kennedy told the Tribunal that he had no specific connection to Mr Ahern and claimed that he had contributed the Stg£1,000 cash because he had been requested to do so by Mr Kilroe.

6.119 Mr Kennedy believed the group in attendance on the night comprised between 20 and 25 individuals. Of the attendees, other than Mr Kilroe and Mr Ahern, Mr Kennedy claimed he could recall the names of only three. All three individuals named by Mr Kennedy on Day 802 were, as of that date, deceased, as was Mr Kilroe.

6.120 Notwithstanding the claim made in Mr Millar's letter of 18 December 2007 that Mr Kennedy's earlier statement to the Tribunal to the effect that something short of Stg£10,000 had been collected for Mr Ahern was '*speculation'* on his part, Mr Kennedy, in evidence, claimed to recall Mr Kilroe telling him that something between Stg£8,000 and Stg£10,000 had been collected for Mr Ahern. However, Mr Kennedy stated to the Tribunal that he did not know exactly how much had been collected. He claimed that Mr Kilroe had not asked him to bring along any specific amount of money.

6.121 It was his (Mr Kennedy's) decision to bring and pay a sum of Stg£1,000 as a contribution to Mr Ahern. Mr Kennedy was not privy to what amount Mr Kilroe had given nor to what anyone else had given, although his understanding was that the vast majority of the attendees on the night would have contributed to the fund.

6.122 Mr Kennedy told the Tribunal that at no stage had Mr Ahern contacted him to ascertain if he had contributed to the money Mr Ahern claimed to have received.

6.123 The Tribunal considered it remarkable that Mr Kennedy, whose name had been proffered by Mr Ahern to the Tribunal as someone who was in attendance at the dinner (and therefore a potential donor) had never been contacted by Mr Ahern to ascertain if he had been one of the contributors to the circa Stg£8,000.

THE MANCHESTER DINNER DONATION: THE TRIBUNAL'S CONCLUSIONS

6.124 In relation to Mr Ahern's account as to his attendance at a dinner in Manchester in 1994, and there receiving a personal donation of approximately Stg£8,000, the Tribunal was satisfied that this account was untrue for the following reasons:

(i) Mr Ahern could not identify the approximately twenty attendees at the dinner[27], despite his advice to the Tribunal that:

- The group largely consisted of Manchester-based Irish businessmen, described by Mr Ahern as a *'hot'* group of Irish people.
- He had met '*most* 'of them *'many times before and since.'* He said he thought he would know half (i.e. approximately ten) of them *'very well.'* In his private interview with the Tribunal, Mr Ahern referred to the attendees at the dinner as '*a group of mainly West of Ireland businessmen, who are very successful businessmen'*, and said that '*a number of these people have boxes in United, I would know them well',* and *'I have been lucky enough to be* [in] *their boxes then and on a number of occasions then and since.'* In his sworn evidence, Mr Ahern described the attendees as '*a considerably important group of people'* and stated that '*every one of these people were worth 50 million plus at the time.'* Mr Ahern also stated that the attendees had '*… on other occasions …given me gifts'* (other than cash). Mr Ahern also told the Tribunal that '*some of these people … are people I know and respect'* and that he would '*consider these people, if not good friends, friends…'*
- He was unable to identify, in particular, the one or two men who accompanied Mr Kilroe when Mr Kilroe presented him with an envelope containing approximately Stg£8,000 cash, in denominations of Stg£50 notes.

[27] Other than Mr Kilroe, Mr Kennedy and Senator Kett. Mr Ahern's inability to identify attendees was indicated in a letter dated 17 October 2006 written by Mr Ahern's accountant, Mr Peelo, to the Revenue Commissioners.

(ii) Mr Ahern told the Tribunal that he did not count the sterling in the envelope that night (being a Friday) or the following day (being a Saturday), and it was his belief that he first counted the money on the following Monday (or possibly on the Sunday night) following his return to Dublin.

(iii) The Tribunal believed that if Mr Ahern had been unexpectedly (according to himself) handed an envelope containing a large amount of cash at or close to the end of a dinner on a Friday night, in circumstances where he was in Manchester for social reasons for an entire weekend, it was unlikely that he would have waited to check its contents until the Sunday evening or Monday morning, following his return to Dublin.

(iv) Moreover, had Mr Ahern received a gift of thousands of pounds in sterling cash in 1994, as described by him (and stated by him to have been an unexpected and unsolicited personal gift) it would reasonably have been expected, particularly given his then position as Minister for Finance, that he would have been anxious to ascertain the identity of the contributors.

(v) It was more likely, had Mr Ahern been unexpectedly presented with a substantial sum of cash at the dinner on the Friday evening, as he claimed, that he would have made himself aware of the size of the contribution overnight, and would have taken steps to personally thank Mr Kilroe (and possibly others who contributed) on the Saturday, or at the very least acknowledged his gratitude in writing to Mr Kilroe on his return to Dublin.

(vi) The Tribunal considered the evidence tendered by Senator Kett to have been of little assistance to it in its quest to determine if in fact Mr Ahern received a gift of Stg£8,000 at a function in Manchester, and of the amounts paid, and the identities of the donors. All that could be gleaned from his evidence was that on an occasion in 1994 (he believed it to be the Spring of 1994), Senator Kett accompanied Mr Ahern to Manchester. While he claimed to have attended a dinner with Mr Ahern in the Four Seasons, with regard to the issue of Mr Ahern being given money on that occasion Senator Kett's evidence was that he saw nothing, heard nothing and was told nothing at the time. Senator Kett's evidence was that he was subsequently apprised by Mr Ahern of the latter's receipt of the donation. Senator Kett's recollection was that on a later date again he was apprised by Mr Ahern of the amount of the donation.

(vii) The Tribunal considered that Mr Kennedy's evidence that he contributed a sum of Stg£1,000 to Mr Ahern at a particular dinner in Manchester was completely unconvincing. The Tribunal considered as not credible Mr Kennedy's inability to name more than three individuals (all since deceased) who were present at the claimed function.

6.125 Consequent on the Tribunal's finding that the IR£24,838.49 lodgement to Mr Ahern's 011 account on 11 October 1994 was in fact funded by Stg£25,000, Mr Ahern's contention that a sterling sum of only approximately £8,000 contributed to the lodgement cannot have been the case. Thus, Mr Ahern did not account to the Tribunal as to the true composition of the lodgement he made to his SSA on 11 October 1994.

6.126 Because Mr Ahern failed to account correctly to the Tribunal as to the composition of the IR£24,838.49 lodgement to his bank account on 11 October 1994, the Tribunal was unable to determine the circumstances by which he came to be in possession of Stg£25,000 on 11 October 1994.

THE EVIDENCE OF MR CORCORAN

6.127 In relation to the evidence from Mr Corcoran and Mr Ahern that they discussed the tax implications in relation to Mr Ahern's acceptance of a total of IR£39,000 from friends and Stg£8,000 following a dinner in Manchester, it was likely, the Tribunal believed, that Mr Corcoran was mistaken in his belief that such a discussion took place in 'possibly 2000.' The Tribunal believed it more probable, particularly having regard to Mr Corcoran's detailed recollection as to the circumstances in which Mr Ahern advised him he received the funds, and the amounts involved, in the absence of any notes or record of their eight- or nine-minute telephone discussion, that their discussion took place considerably more recently than in 2000.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION IV : THE LODGEMENT OF IR£28,772.90 ON 5 DECEMBER 1994[1]

THE BACKGROUND

7.01 On 7 February 2005, Mr Ahern's solicitors, under cover of a letter which accompanied an affidavit of discovery sworn by Mr Ahern on foot of an order for discovery of 24 November 2004, advised the Tribunal that Mr Ahern had transferred funds from two of his AIB bank accounts to the account of his then partner, Ms Celia Larkin. It was duly established that this reference to a transfer of Mr Ahern's funds to Ms Larkin's account concerned funds totalling IR£50,000 which were transferred from two of Mr Ahern's accounts into a 28 day fixed deposit account which was opened in the name of Ms Larkin (hereinafter called the Larkin 015 account)[2] in AIB Upper O'Connell Street on 5 December 1994 This information prompted the Tribunal to inquire into a number of banking transactions involving accounts in Ms Larkin's name.

7.02 On 14 June 2006, immediately prior to Ms Larkin being interviewed in private by Counsel for the Tribunal, her solicitor forwarded to the Tribunal a memorandum prepared by her for that interview, in which she set out her involvement with Mr Ahern's financial affairs. In that memorandum, Ms Larkin identified three accounts which had been opened by her in her name, and which had been operated by her from 5 December 1994 to 8 November 1995, all of which had an association with Mr Ahern. One such account was a 35 day fixed account into which a lodgement of IR£28,772.90 was made on 5 December 1994. In the extract referred to below, that account is referred to as '*the Third Deposit Account*.' However, for ease of reference the account is hereafter referred to as the Larkin 011 account.

7.03 Under the heading '*the Third Deposit Account'*, Ms Larkin stated the following:

> *The property at 44 Beresford[3] was purchased by Mr Michael Wall,* [a] *friend of Mr Ahern's who lived in Manchester. To the best of my knowledge an agreement was reached between Mr Wall and Mr Ahern whereby Mr Wall, who wished to acquire property in Dublin for use from time to time, agreed to purchase 44 Beresford and to rent the property to Mr Ahern while at the same time giving Mr Ahern an option to purchase the property. To the best of my knowledge this was a verbal agreement.*

[1] The Tribunal's consideration of technical banking evidence relating to the handling and processing of foreign exchange within AIB is to be found in Section III in addition to this Section. For a full understanding of same both Sections III and IV should be read.
[2] See Section VI.
[3] No. 44 Beresford Avenue, Drumcondra, Dublin 9, (Beresford) Mr Ahern's home from 1995.

The property was a second-hand property and required renovations. This included the building of a conservatory. For the purpose of carrying out the renovations, building the conservatory and paying the stamp duty on the purchase of 44 Beresford, and as he lived in the UK, Mr Wall requested that I open an account for him into which he deposited a figure of IR£28,772.90. This was an unusual IR£ figure as the lodgement was originally a sterling amount. He asked me to assist by arranging payment to the builders and generally completing the house and to use the money in the Third Deposit Account for this purpose. I therefore opened the Third Deposit Account at Allied Irish Banks of O'Connell Street for the purpose of receiving the IR£28,772.90 from Mr Wall. That sum was lodged by Mr Wall to the Third Deposit Account on 5th December 1994.

Apart from interest on the Third Deposit Account there were no further lodgements to that account.

Out of Third Deposit Account I paid £8,442 on 15th May 1995 to the solicitor who handled the purchase principally to cover stamp duty on the acquisition of the house as I recall. I withdrew all the money remaining in the account totalling £20,050.91 on 19 June 1995 out of which I paid the sum of £11,000 approximately to the builder and on Mr Wall's instructions I lodged the balance in the sum of £9,684.71 to the Second Deposit Account.

A copy of the statement for the Third Deposit Account is in Schedule 4.

7.04 This was the first occasion on which the existence of the Larkin 011 account was made known to the Tribunal.

THE LETTER TO THE TRIBUNAL FROM MR AHERN'S SOLICITORS DATED 27 FEBRUARY 2007

7.05 On 9 February 2007, the Tribunal wrote to Mr Ahern's solicitors seeking information in relation to, *inter alia*, the Larkin 011 account.

7.06 Mr Ahern responded through his solicitors in a letter of 27 February 2007. In that letter, the following information, *inter alia*, was provided to the Tribunal:

1) *After our client's marital separation in November 1993, and following a number of years of not having a settled residence, our client sought a property to purchase or rent. Some time was spent in 1994 seeking a suitable property.*
2) *In summer 1994, Mr Michael Wall, a friend of our client from Manchester, decided to purchase a house in Dublin for his own accommodation on his increased visits to the city.*

3) Mr Wall located and purchased 44 Beresford Ave (Mr Ahern's present residence). Shortly afterwards, in discussion with Mr Ahern, he agreed to rent the premises to him and also agreed an option for Mr Ahern to purchase the house at market value at a point in the future when his financial circumstances became more secure.

4) It was agreed between Mr Ahern and Mr Wall that they would jointly renovate the premises, loosely on the basis of Mr Wall doing the structural work and Mr Ahern doing the interior.

5) It was agreed that Ms Celia Larkin would organise the detail of the work being Mr Ahern's partner and a close friend of Mr Wall.

6) In December 2004 Mr Ahern transferred to Ms Larkin a sum of £50,000. Around the time Mr Wall also transferred a sum of £28,772.90 to Ms Larkin. These monies were lodged in two accounts opened by Ms Larkin in AIB, 37/38 Upper O'Connell Street, Dublin 1 as follows:

1/L/11621/011: £28,772.90 from Mr Wall;

1/L/11620/015: £50,000 from Mr Ahern.

7.07 It was not stated in this letter to the Tribunal that the source of the IR£28,772.90 was, or included, sterling.

7.08 The Tribunal was informed by Mr Ahern that the sum had been transferred from Mr Michael Wall (rather than a lodgement). Furthermore, the letter did not disclose the fact that, as Mr Ahern subsequently claimed, the money had initially been provided to him in cash, and had been passed by him to Ms Larkin for lodgement in AIB.

THE TRIBUNAL'S INQUIRY INTO THE COMPOSITION OF THE FUNDS WHICH SOURCED THE LODGEMENT OF IR£28,772.90

7.09 At the Tribunal's request, members of its legal team privately interviewed Ms Larkin, Mr Wall and Mr Ahern, and in the presence of their lawyers, on, respectively, 14 June 2006, 26 February and 5 April 2007. All, subsequent to the dates of their private interviews, gave sworn evidence to the Tribunal.

MS LARKIN'S PRIVATE INTERVIEW

7.10 In the course of her private interview on 14 June 2006, Ms Larkin advised the Tribunal of the following in relation to the lodgement of IR£28,772.90 to her account on 5 December 1994:

- Ms Larkin, having received the money from Mr Wall in Mr Brennan's office, opened *'the Michael Wall account'* with a lodgement of *'IR£28,000 and something'* for use in relation to structural work, including the construction of a conservatory, and the payment of stamp duty *'and things like that for the house'* (44 Beresford Ave, Mr Ahern's residence in Drumcondra).
- A second bank account was opened into which IR£50,000 was lodged for decoration and furnishings. Ms Larkin called this *'the Bertie Account.'*
- Ms Larkin thought that the money provided by Mr Wall was, sterling cash, *'rather than Irish cash'*, and said that she recollected it as being sterling.
- Ms Larkin thought that she lodged the IR£28,772.90 having taken the money from *'Michael in Gerry's* [i.e. Mr Ahern's solicitor, Gerry Brennan's] *office*.'

MR WALL'S PRIVATE INTERVIEW

7.11 In the course of Mr Wall's private interview on 26 February 2007, the Tribunal was advised by him as follows:

- *'It was notes. To the best of my knowledge, it was sterling. I tried to recollect on that. There may have been a percentage of punts. I don't know, but to the best of my knowledge it was all sterling.'*
- *'To me at the time the figure I had in my mind was around 30,000 pounds sterling.'*
- *'The figure was around Stg£30,000'* and was *'an even sum.'*
- Mr Wall said that he had counted Stg£30,000 from his safe in Manchester for the purpose of taking it to Ireland, and he was satisfied that he himself had counted Stg£30,000.
- Mr Wall said that on arrival at St Luke's in Drumcondra on 3 December 1994, he had with him Stg£30,000 in Stg£20 notes.

MR BERTIE AHERN'S PRIVATE INTERVIEW

7.12 In the course of Mr Ahern's private interview on 5 April 2007, the Tribunal was advised as follows:

- *'He* [Mr Wall] *gave over the £30,000.'*
- Mr Ahern said that Mr Wall had agreed to *'give £30,000 towards what we would do if we got the house'*
- *'He was putting in the £30,000.'*

7.13 In the course of the interview, the following exchange took place between Counsel for the Tribunal and Mr Ahern:

Q. *'I think the method it was paid was in cash?'*

A. *'£30,000 sterling.'*

Q. *'He was putting in £30,000 sterling?'*

A. *'Yes.'*

7.14 Mr Ahern said that Mr Wall had advised him he was giving him £30,000 in sterling, and that the £30,000 given to him by Mr Wall was cash and in sterling, and was then given in its entirety to Ms Larkin for lodgement.

7.15 In the course of the interview, Mr Ahern was advised by Counsel for the Tribunal that information provided to the Tribunal by AIB did not support the claim that IR£28,772.90 was the proceeds of a Stg£30,000 exchange into Irish pounds, and that the application of a published customer buy rate for US dollars on 5 December 1994 to IR£28,772.90 produced an exact match for US$45,000 (if a commission of IR£5 was charged). The suggestion that the source of the lodgement might have been US dollars was firmly rejected by Mr Ahern.

THE PUBLIC STATEMENT MADE BY MR AHERN ON 13 MAY 2007

7.16 Following extensive media reports relating to the Tribunal's inquiries into Mr Ahern's personal finances, Mr Ahern issued a public statement on 13 May 2007, in which he stated that the source of the IR£28,772.90 lodgement to Ms Larkin's account on 5 December 1994 was a sum of money *'mostly in sterling, though there may have been some Irish pounds as well.'* This was the first occasion on which Mr Ahern maintained that the cash given to him by Mr Wall, which funded the IR£28,772.90 lodgement to Ms Larkin's account on 5 December 1994, had been composed of anything other than exactly Stg£30,000.

7.17 On 13 September 2007, Mr Ahern, in the course of his first day of evidence to the Tribunal again referred to the lodgement having been comprised of a mixture of currencies (see below).

THE SWORN EVIDENCE OF MS LARKIN, MR WALL AND MR AHERN AS TO THE COMPOSITION OF THE FUNDS COMPRISING THE LODGEMENT OF IR£28,772.90

MS LARKIN'S SWORN EVIDENCE

7.18 Ms Larkin claimed not to know of the exact composition of the funds which sourced her lodgement of IR£28,772.90 on 5 December 1994. Ms Larkin said she recollected observing a few bundles of sterling notes on a table in Mr Ahern's office on Saturday 3 December 1994, the date on which Mr Wall claimed

he handed over a substantial sum of money to Mr Ahern. Ms Larkin said that over that weekend Mr Ahern asked her to lodge cash in AIB, at the branch at 37/38 O'Connell Street, Dublin, on the Monday, and he identified Mr Philip Murphy of AIB as the person with whom she should make contact in the bank. Ms Larkin could not recall the amount of money (although she said she was *'sure'* that Mr Ahern *'must have'* told her), which was duly left for her in a briefcase in St. Luke's to be taken to the bank, but it was her assumption that it was Stg£30,000. Ms Larkin said that she did not see the contents of the briefcase at any time.

7.19 Ms Larkin's recollection was that Mr Murphy of AIB met her when she called to AIB on, on 5 December 1994, and believed that Mr Ahern had spoken to him prior to her arrival at the bank. The briefcase containing the cash was handed to Mr Murphy. Mr Murphy had the lodgement processed, then requested her to sign completed bank documentation and returned the briefcase (which she assumed was empty), to her.

MR WALL'S SWORN EVIDENCE

7.20 Mr Wall told the Tribunal that he and his wife travelled from Manchester to Dublin on Friday 2 December 1994 to attend the O'Donovan Rossa annual dinner[4] at the Royal Hospital in Kilmainham, an event held to raise funds for the upkeep of Mr Ahern's constituency office at St Luke's.

7.21 Shortly prior to that date, Mr Wall had successfully tendered for the purchase[5] of no 44 Beresford Ave, Drumcondra, Dublin 9 for a price of IR£138,000, and had paid over a cheque for Stg£3,000 to his solicitor, Mr Gerry Brennan, as a first deposit for the purchase. Mr Brennan was also Mr Ahern's solicitor and a personal friend of Mr Ahern.

7.22 Mr Wall told the Tribunal that he brought the cash from Manchester (mostly in sterling, but possibly including a small amount in Irish pounds)[6] for the purposes of handing it over to Mr Ahern as a contribution towards the refurbishment costs of the house, which he said Mr Ahern had agreed to rent.

7.23 Mr Wall claimed that he had taken this cash from his business safe, and that the cash was sourced back to his Manchester based business, Wall's

[4] Mr Wall told the Tribunal that, apart from his support for the Kilmainham dinner, the only payment of money by him for a purpose associated with Mr Ahern was a donation to Mr Tim Collins for the benefit of the Fianna Fáil Party, which may have been lodged to the 'BT' Account (see Section VIII).

[5] See Section VIII

[6] In his earlier private interview with the Tribunal, Mr Wall stated that the sum was Stg£30,000, and that he had counted out this sum prior to leaving the UK.

Coaches. He described having '*near enough*' emptied his safe in Manchester to provide these funds. He acknowledged, however, that the records of his business did not make any specific reference to a withdrawal of a sum of approximately Stg£30,000.[7]

7.24 Mr Wall said that he and his wife stayed overnight in the Ashling Hotel in Dublin on the evening of the fundraising dinner. Mr Wall stated that while attending this function, he left the circa £30,000 cash sum in a briefcase in his hotel bedroom wardrobe. He did not inform his wife about the substantial cash sum he had brought to Dublin, nor of the fact that it was kept overnight in their hotel wardrobe, including the period of their absence from the hotel.

7.25 Mr Wall's recollection was that when going out to the dinner he had *'shoved about two grand'* in his pocket from the Manchester cash. Mr Wall said that he took the balance of the cash in a briefcase to Mr Ahern's constituency office in St Luke's on 3 December 1994, the day following the fundraising event, and there handed it to Mr Ahern. Mr Wall said that the '*vast majority'* of the cash was sterling.

7.26 Mr Wall described this money as *'working cash'*, for the purpose of providing funds to refurbish no 44 Beresford Avenue, Drumcondra.

7.27 Mr Wall described taking the money out of the briefcase and putting it on the table between himself and Mr Ahern. In the course of his evidence he elaborated as follows:

> '*...and at that time we didn't count it, he didn't count it, I didn't count it. I just said it's roughly there and he suggested that he'd put it in the bank and either he called in Ms. Larkin or she came in, but she became involved and we had discussed with her as well that she would take charge of looking after the money and looking after the work that's to be done. And it was suggested that it would be, that they would put it in the bank.'*

7.28 Mr Wall was questioned in the course of his sworn evidence to the Tribunal as to how much money he had in fact handed over to Mr Ahern on 3 December 1994. He told the Tribunal he believed he handed to Mr Ahern approximately £28,000, *'the vast majority'* of which was sterling, and that it would have included *'a couple of thousand punts.'* In the course of his earlier private interview with the Tribunal, Mr Wall had stated that the sum was *'around Stg£30,000'*, and that he had counted Stg£30,000 taken from his safe in

[7] Mr Walls' accountancy records referred to other expenditure by him in connection with Beresford, but not the Stg£30,000.

Manchester for the purpose of taking it to Ireland on that weekend. In the course of his evidence, Mr Wall finally suggested that the amount given to Mr Ahern *'could be something like £26,000 sterling and £2,000 punts'* and he added *'I am not positive. Never have been.'*

7.29 Mr Wall said he had never handled a substantial sum in US dollars and did not give Mr Ahern US dollars.

MR AHERN'S SWORN EVIDENCE

7.30 Mr Ahern began his sworn evidence to the Tribunal on 13 September 2007 by reading out a lengthy personal statement in which he provided information, *inter alia*, relating to the source of the IR£28,772.90 lodged into Ms Larkin's account on 5 December 1994. In the course of his statement he said:

> *'Whatever monies* [were] *presented by Mick Wall, whether sterling or a combination of sterling and Irish and whatever amounts were the sums, lodged in the account on the 5th December 1994 and they were the monies I left for Celia Larkin to lodge to her account on the 5th December 1994. And that is what she lodged. It is a fact* [that] *the combination of sterling and punt gives the figure actually lodged…'*

7.31 Mr Ahern told the Tribunal that Mr Wall handed him a substantial sum of money in St Luke's on Saturday 3 December 1994. Mr Ahern initially described the sum handed over as Stg£30,000, but later as a sum close to Stg£30,000.[8] He testified that he was aware that Mr Wall intended to contribute towards the refurbishment of the house at Beresford in Drumcondra, but he could not recall if he was aware, prior to the money being handed over, that Mr Wall was to give him money on the occasion of his visit to St Luke's on 3 December 1994. Mr Ahern said that it had been agreed between himself and Mr Wall that Mr Ahern would discharge the costs of decorative/internal work on Beresford in Drumcondra, while Mr Wall's contribution would pay for external and structural work and other expenditure relating to the house, including the construction of a conservatory. Mr Ahern said it had also been agreed between himself and Mr Wall that Ms Larkin would oversee the expenditure on Beresford, hence the decision to lodge the proceeds of Mr Wall's contribution to an account of Ms Larkin on 5 December 1994.

7.32 It was Mr Ahern's evidence that although the substantial cash sum was handed over to him by Mr Wall, and was then lodged to an account of Ms Larkin on 5 December 1994, he regarded the funds as Mr Wall's property.

[8] Mr Ahern told the Tribunal that subsequently in 1995 he purchased Stg£30,000 so as to reimburse Mr Wall for the cash provided on 3 December 1994. See Section V.

7.33 In the course of his evidence in relation to his claim that he purchased Stg£30,000[9] within a period of some six months between 19 January and 15 June 1995, Mr Ahern stated that the reason for the purchase was in order to return to Mr Wall the contribution he had made in relation to Beresford on 3 December 1994. When giving sworn evidence on that matter, Mr Ahern did not maintain that any sum less than Stg£30,000 had been given to him by Mr Wall on 3 December 1994.

REVIEW AND ANALYSIS OF THE BANKING EVIDENCE

7.34 Following the disclosure of the existence of the account, it was established from bank documentation that on 5 December 1994, AIB Account No. 1/L/11621/011 had been opened in the name of Ms Celia Larkin, and a sum of IR£28,772.90 had been deposited to it on that day.

7.35 AIB branches bought and sold foreign currency on a daily basis. The branches regularly (although not necessarily on a daily basis) remitted foreign currency in excess of their expected requirements, to Currency Services (in AIB's head office, and sometimes referred to as 'the note room'). Branches prepared and maintained handwritten and computer-generated records of the Irish pound values of foreign currency bought and sold each day.

7.36 These records divided the foreign currency into two separate categories, namely the Irish pound value of sterling, and the Irish pound value of foreign currency *other* than sterling. Both the branch records and the records maintained by Currency Services identified the Irish pound values of foreign currency remitted by branches to Currency Services.

7.37 The Tribunal sought to establish the composition of the lodgement of IR£28,772.90 to Ms Larkin's account on 5 December 1994. As part of that process the Tribunal conducted a detailed examination of all available documentation and information provided to it by AIB, and heard sworn evidence from a number of AIB personnel.

7.38 This process involved a close examination of all available documentation and an explanation from AIB personnel as to practices and procedures in the bank's branches and Currency Services applicable to the purchase of foreign currency and in particular relating to the 37/38 O'Connell Street branch on 5 December 1994 and including the remit (transfer) of foreign currency from that branch to Currency Services generally, and particularly on 5 December 1994.

[9] See Section V.

INTERNALLY GENERATED BRANCH DOCUMENTATION

7.39 Branch documentation furnished by AIB to the Tribunal in relation to the lodgement of IR£28,772.90 to Ms Larkin's account on 5 December 1994 established that, in the first instance, the funds were transferred to an RDC account (a holding account) within AIB on that date. The stamp on the credit docket effecting the transfer indicated that the deposit was processed through the foreign exchange counter of the branch.

7.40 The Tribunal was advised that details of individual foreign currency transactions in the branch were recorded throughout the day's business on the tally roll of the Forde Money Changer.[10]

THE DEBIT DOCKETS AND THE FOREIGN CURRENCY HELD LEDGER

7.41 The Tribunal was advised that the procedure within a branch was that at the close of business on each day a bank official manually recorded onto debit dockets the foreign currency totals based on the information contained in the Forde Money Changer's tally roll. The foreign currency totals were also entered into the branch's computerised Foreign Currency Held Ledger. These debit dockets and the computerised Foreign Currency Held Ledger were retained by AIB, and were made available to the Tribunal.

7.42 On 5 December 1994 two debit dockets were, in accordance with normal practice, completed within the branch at the close of business. One of the debit dockets had written into it a total figure for sterling purchased within the branch from customers on that day, while the other debit docket recorded the total of foreign currency *other* than sterling[11] purchased from customers on that day within the branch. The debit dockets completed within the branch on 5 December 1994 recorded the totals as being IR£1,921.53 and IR£28,969.34 respectively. On the face of it, therefore, this documentation established that on 5 December 1994 the 37/38 O'Connell Street branch of AIB purchased sterling from customers to the value of IR£1,921.53, and purchased foreign exchange *other* than sterling to the value of IR£28,969.34.

[10] Bank staff transacting foreign exchange used a calculator type machine to assist them to conduct such transactions. The Forde Money Changer produced a tally roll in which the details of every foreign exchange transaction were recorded. The tally roll in turn provided the information which at the close of each day's business within the branch was manually recorded on to debit dockets, and entered into the computerised foreign currency held ledger. Used tally rolls were not maintained beyond two or three years thereafter, and were not therefore available to the Tribunal. The debit dockets and the computerised Foreign Currency Held Ledger were available to the Tribunal.

[11] The retained branch records did not specify the currencies in question.

7.43 The computerised Foreign Currency Held Ledger for 5 December 1994 also recorded the totals purchased from customers that day as IR£1,921.53 for sterling and IR£28,969.34 for foreign currency other than sterling. This ledger also recorded totals of sterling and foreign currency other than sterling sold to customers within the branch on that date.

7.44 These totals of sterling and Foreign Currency other than sterling, if correctly transcribed from the tally rolls on to the debit dockets, and if correctly entered into the computerised Foreign Currency Held Ledger, established that sterling to the value of only IR£1,921.53 was purchased from customers within the branch on 5 December 1994. This clearly excluded any possibility that a sum of Stg£30,000, or any sterling sum remotely close to that figure, was purchased from any customer (or any number of customers) by that branch on that date, and equally excluded the possibility that the IR£28,772.90 lodged to Ms Larkin's account could in any way be linked to an exchange of Stg£30,000 or any sterling sum remotely close to that figure.

7.45 Furthermore, if the totals of sterling and foreign currency other than sterling were correctly transcribed from the tally rolls , then these figures established that foreign currency other than sterling to a value of IR£28,969.34 had been purchased from customers within the branch on 5 December 1994. That '*foreign currency* other *than sterling*' could only have been US dollars having regard to the information in the Currency Services remits book (see Para 7.53) and therefore clearly allowed for the possibility that a sum of US$45,000 had in fact been tendered by Ms Larkin for exchange into Irish pounds, for lodgement to her bank account.

AIB STAFF EVIDENCE ON DOCUMENTATION

7.46 Mr John Garrett and Ms Rosemary Murtagh were nominated by AIB as staff who possessed expertise in foreign exchange banking practices and procedures to assist the Tribunal in relation to banking issues. Mr Garrett and Ms Murtagh were interviewed by members of the Tribunal's legal team and gave sworn evidence to the Tribunal in 2007. Mr Garrett was at that time working in the commercial and strategic alliance area of AIB. He had worked in the foreign exchange section of a large AIB Dublin city centre branch (Capel Street) for a period of four to five years in the early to mid-1990s, a period of particular relevance to the foreign exchange transactions which were the subject of inquiry by the Tribunal. Mr Garrett was asked if it was possible that the debit dockets recording the transaction totals for sterling and foreign currency other than sterling might have been erroneously completed so that the total for sterling in fact represented foreign currency other than sterling, and the total for foreign

currency other than sterling in fact represented sterling (with consequential erroneous totals being entered into the computerised Foreign Currency Held Ledger). Mr Garrett responded in the affirmative but did not suggest that such an error had indeed occurred. There was no proof or indication or suggestion that any such errors had in fact occurred on this or any other occasion, or that the erroneous completion of this type of bank documentation was commonplace within the bank.

7.47 Furthermore, in its consideration of numerous items of bank documentation which involved bank staff manually recording information relating to the bank's foreign currency dealings, lodgement dockets and other handwritten records, the Tribunal did not identify errors or any evidence that the completion of such records was, in general, undertaken by bank staff other than with great care as to its accuracy.

7.48 The Tribunal noted that banking work concerned with the buying and selling of foreign currency and its remission to Currency Services was complex, and required close attention to detail on the part of bank staff, including particularly the accurate application of multipliers for the purposes of identifying and recording foreign currency purchases and sales. Errors in the manual recording of details, while possible, were therefore unlikely to have occurred.

7.49 The opening balance of foreign currency within the branch on 5 December 1994 (which included the sterling held over from the previous day's trading) was also recorded within the branch. This was stated to be IR£19,196.25 in value. In addition, the branch recorded the following information in relation to foreign currency for 5 December 1994:

- The value of sterling sold to customers: IR£1,189.29
- The value of foreign currency *other* than sterling sold to customers: IR£737.10
- The value of closing foreign currency retained in the branch for future use: IR£18,905.74

7.50 The Tribunal observed that, even if the opening figure for foreign currency retained in the branch on 5 December 1994, namely, IR£19,196.25 (assuming it was entirely sterling) were added to the total for sterling purchased on 5 December 1994, i.e. IR£1,921.53 (as recorded on bank documentation), this total would still fall far short of the sterling amount that was claimed as having been lodged to Ms Larkin's account (whether it be Stg£30,000 exactly or approximately).

CURRENCY SERVICES

7.51 Currency Services was an internal AIB department concerned with the management of the stocks of foreign currencies in the branch network and Cash Services department.[12] It purchased foreign currency for use by its branches, and took in foreign currency remitted to it by its branches surplus to their requirements.

7.52 It was established in evidence that the 37/38 O'Connell Street branch of AIB remitted to Currency Services foreign currency with an Irish pound value of IR£29,254.97, being foreign exchange in its possession and in excess of its requirements at the close of business on 5 December 1993. This Irish pound value was noted in the branch's computerised Foreign Currency Held Ledger as having been remitted to Currency Services. That document also confirmed the Irish pound value credited by Currency Services to the branch. The figure was also recorded in the Currency Services remits book as applicable to 37/38 O'Connell Street, Dublin.

THE REMITS BOOK

7.53 The Remits book, a document maintained by Currency Services, listed the Irish pound values of foreign currency amounts remitted to it by the bank's Cash Services department and a number of AIB branches. The Remits book dated 7 December 1994 included the entry of IR£29,254.97, representing the Irish pound value of foreign exchange remitted to Currency Services by the 37/38 O'Connell Street branch of AIB at its close of business on 5 December 1994.

7.54 The Remits book identified the foreign currencies as *'stg opened'* to which was added in manuscript *'and US.'* Therefore, the amounts listed under this heading, including the IR£29,254.97 figure for the 37/38 O'Connell Street branch of AIB, represented *either* sterling *or* US dollars, and no other currency.

7.55 On Day 753 (27 July 2007), Mr Colm Ó hOisín SC, Counsel for Mr Ahern cross-examined Ms Murtagh of AIB in relation to certain calculations that had been undertaken on behalf of Mr Ahern by his representatives. Ms Murtagh was at that time the operations manager in AIB's Currency Services department. In 1994/5 Ms Murtagh was the assistant manager of facilities management with AIB in the IFSC, Dublin. She had never worked in foreign exchange at branch level. Ms Murtagh told the Tribunal that she had spoken to bank colleagues who

[12] The Cash Services department was based in AIB's headquarters. It directly processed foreign exchange transactions for commercial customers, and in turn forwarded the money directly to Currency Services. Accordingly, the AIB branch network had no involvement in these transactions.

worked in foreign exchange in order to help familiarise herself with the practices of the time (early/mid 1990s). Mr Ahern's Counsel sought to establish, if possible, the type of foreign currency (sterling or US dollars) remitted on 5 December 1994 from the AIB branch at 37/38 O'Connell Street to Currency Services, with the assistance of the Remits book for 7 December 1994. Neither Ms Murtagh nor the Tribunal was provided at the time with a copy of the calculations carried out for Mr Ahern, or any related material prepared for this purpose.

7.56 The Tribunal subsequently conducted its own calculations, using the same Remits book information, and on a basis similar to that which it understood had been used by Mr Ahern's representatives. Ultimately, both the mathematical exercises carried out on behalf of Mr Ahern and on behalf of the Tribunal proved unhelpful as an aid to establishing whether the remittance of IR£29,254.97 on 5 December 1994 from AIB 37/38 O'Connell Street was sourced from sterling or US dollars.

THE EXCHANGE RATES

CUSTOMER BUY RATES

7.57 At the beginning of each day's business, Currency Services advised AIB branches of the exchange rates to be applied to purchases of foreign currency cash from customers, the 'customer buy rates.' This information was programmed into the Forde Money Changer thereby facilitating the accurate calculation of the Irish pound value of currencies (including sterling and US dollars) by the foreign exchange teller.

7.58 Currency Services determined customer buy rates for foreign currency amounts tendered by customers to the branch for exchange into Irish pounds each day. On 5 December 1994, Currency Services determined three categories of customer buy rates for application to sterling tendered for exchange into Irish pounds. These were known as the published customer buy rates, and were:

- 1.0169 for sterling up to a value of IR£500
- 1.0021 for sterling up to a value of IR£2,500
- 0.9947 for sterling up to a value of IR£10,000

7.59 AIB had two published customer buy rates on 5 December 1994 for the exchange of US dollars into Irish pounds. These rates were:

- 1.5791, for US dollars up to a value of IR£500
- 1.5637, for US dollars up to a value of IR£2,500.

7.60 These tiered rates of exchange were set on the basis that the greater the amount of foreign currency tendered for exchange (within the thresholds identified above), the better the exchange rate for the customer. For example, a customer tendering Stg£7,000 would receive a better rate of exchange than a customer tendering Stg£1,000.

THE BUY REMIT RATE

7.61 The buy remit rate was the rate at which Currency Services purchased foreign currency from branches. There was usually a small margin between this rate and the best (for the customer) buy rate set for each day for different currencies. This represented the profit earned by the branch arising upon its remittance to Currency Services. The buy remit rate was set by Currency Services and programmed into the Forde Money Changer in each branch at the beginning of each day's business. The rate could be varied by Currency Services at its discretion, within certain limits.

COMMISSION

7.62 There was provision for customers to be charged a commission on foreign currency transactions. The commission was charged at 1% of the value of the transaction, but with a minimum charge of £1 and a maximum charge of £5. The bank teller conducting the transaction had discretion as to whether or not a particular customer was charged a commission.

RATES GIVEN FOR SUBSTANTIAL SUMS OF FOREIGN CURRENCY

7.63 In the course of Mr Garrett's cross-examination, he was questioned in some detail as to what might be expected to occur when a customer tendered for exchange a substantial sum of foreign currency above the threshold values programmed in the Forde Money Changer.

7.64 For example, on Day 747 (17 July 2007), it was put to Mr Garrett that:

> *'The rate one might get if one rang Currency Services, saying I have a larger amount than is the norm, give me a rate on this, you would expect to get a more favourable rate, isn't that so?'* Mr Garrett responded: *'You would on, if market conditions permitted, yes. So I would expect to get a rate somewhere in the range from 1.5637 to 1.5386*[13] *but I may get 1.5637 if nothing is happening in the market.'*

[13] In this example, Mr Garrett was talking about US dollars. The 1.5637 rate was the customer buy rate on 5 December 1994 for US dollars with a value of up to IR£2,500 and the 1.5386 rate was the standard remit rate for US dollars remitted to Currency Services on that day.

7.65 On Day 748 (19 July 2007), the following exchange took place between Mr Garrett and Mr Ó hOisín (Mr Ahern's Counsel):

Q. *… Now, so the first piece of documentation we looked at, that document that we have looked at provides us with a question in relation to this hypothesis, which is that what would appear on its face to be an incorrect rate, was applied to that 45,000, if there was 45,000, isn't that correct?*

A. *It may not be an incorrect rate, it may be the rate that the note room[14] had given, it may say that depending on what's going on in the market, 1.5637 is an appropriate rate to apply to that transaction.*

Q. *It would be a little surprising though, to see a rate for $45,000 as being the same on the same day as the rate for up to 2,500,[15] isn't that correct?*

A. *I have seen it happen, yes, that the rate is exactly the same, but I have also seen it happen where the rate is somewhere between 1.5637 and 1.5386.*

7.66 Also on Day 747, in the course of Mr Garrett's cross-examination by Mr Ó hOisín, and on this occasion referring to sterling[16], the following exchange occurred:

Q. *It does indicate certainly at some point in that process a rate of exchange, two rates of exchange, which were the Forde Money Changer rates of exchange appropriate to transactions of up to 2,500 and 10,000 were applied to a transaction having an actual value of 19,000, isn't that so?*

A. *That's correct yes.*

Q. *Do you say that that is consistent with the procedure of the bank being implemented?*

A. *Yes I would. Because the procedure would be that you would ring the note room and may well get, what I refer to as the spot rate of the day, which in that case is probably the £10,000 rate of the day, and that rate is actually applied to the transaction.*

7.67 The Tribunal sought to adduce evidence as to the circumstances in which the daily pre-determined foreign exchange rates might come to be altered. It was struck by the extent to which the bank witnesses appeared at times to be less than clear, or indeed confused, as to how unusually large cash amounts of foreign currency were dealt with by branches and by Currency Services when tendered for exchange to branches and then remitted to Currency Services. This was possibly because such instances were uncommon or infrequent.

[14] Currency Services.

[15] The customer buy rate of the day applicable to US dollar purchases up to a value of IR£2,500. This was the better of the two published customer buy rates for US dollars.

[16] A reference to the IR£19,142.92 lodgement on 1st December 1995 (See Section V)

7.68 In particular, the Tribunal was anxious to ascertain (a) what might have been expected to occur, assuming usual bank practices and procedures were followed, when an unusually large amount of foreign currency cash was tendered for exchange into Irish pounds in a branch, and was then remitted by the branch to Currency Services and, more importantly, (b) what, as a matter of probability, did occur in relation to the lodgement of IR£28,772.90 into Ms Larkin's account on 5 December 1994.

7.69 The Tribunal was advised that when a customer tendered a sum of foreign currency for exchange into Irish pounds which was in excess of the maximum thresholds programmed into the Forde Money Changer (to the value of IR£10,000 for sterling and IR£2,500 for US dollars respectively), bank procedure required the foreign exchange teller to contact Currency Services to seek a spot rate to apply to the transaction in question.

THE *'SPOT'* RATE

7.70 Where a sterling amount in excess of a value of IR£10,000 was tendered by a customer for exchange into Irish pounds, bank procedure provided that the bank teller telephone Currency Services to seek a '*spot*' rate of exchange for application to the sterling purchase.[17] This spot rate might conceivably be a better rate for the customer than the best published customer buy rate (that is, the rate for sterling to a value of IR£10,000), or it might be a rate equivalent to that rate or one of the lower (less favourable to the customer) published rates, depending on financial market conditions at the time of the teller's contact with Currency Services.[18]

7.71 Where the US dollar sum tendered for exchange by a customer exceeded IR£2,500 in value, the branch had a similar procedure in place as applied when a customer tendered a sterling sum exceeding IR£10,000 in value for exchange, namely, the teller contacted Currency Services for a spot rate. The spot rate given by Currency Services might be one of the published customer buy rates (1.5791 or 1.5637 for US dollars on 5 December 1994) or it might be a better rate than the best published buy rate (1.5637).

7.72 In the course of his private interview with members of the Tribunal's legal team on 15 May 2007, Mr Garrett described the process whereby the teller, on being presented by a customer with Stg£20,000 for exchange into Irish pounds, should telephone Currency Services for a spot rate. The relevant procedure was

[17] Indeed, the Forde Money Changer prompted the teller to request a spot rate in such circumstances.

[18] Records of spot rates given to the bank branch were not maintained.

illustrated in the following exchange between Counsel for the Tribunal and Mr Garrett:

> Q. *...where the money is more than £10,000 and the phone call. Is there any discretion in that? Is that something, is that a must situation. The cashier is getting £20,000, the machine says please give me a rate, he must make a phone call?*
>
> A. *Procedure says that he should.*
>
> Q. *But it doesn't always happen?*
>
> A. *It doesn't always happen.*
>
> Q. *Is that right?*
>
> A. *That's correct.*

And:

> Q. *... the machine says it wants a rate and that cashier should phone, as a matter of practice, it didn't always happen of your experience of it, did it ever happen?*
>
> A. *Yes it would have. I would have rang a number of times.*
>
> Q. *There would be times when you would and there would be times when you wouldn't?*
>
> A. *99.9 per cent of the time I would ring.*

7.73 In the course of a further private interview on 24 May 2007, Mr Garrett (in providing an explanation as to what should have occurred in circumstances where the branch was presented with US$45,000 for exchange into Irish pounds) stated: *'The branch would have had to ring the foreign currency note room at that stage to get a rate ...and the rate could be the $2,500 rate, it could be the remit rate or it could be a rate somewhere in between.'*

7.74 In the course of his sworn evidence, when explaining the bank procedure that he assumed might have taken place on the occasion of a teller having been presented with a sum of Stg£30,000 for exchange into Irish pounds, Mr Garrett stated:

> *'Again, if they rang the note room and got another rate something above the £10,000 rate and between the remit rate, you know, again if the rates were moving in the customer's favour, that would be passed on, so there would be a possibility of a fourth rate there, something between the £10,000 rate and the remit rate of the day.'*

7.75 On Day 747 (17 July 2007), Mr Garrett expressed his opinion to the effect that when substantial cash foreign currency sums were tendered for exchange into Irish pounds, bank procedure provided that the teller contact Currency Services to seek a customer buy rate (spot rate), but only on the basis that the remit rate (the rate applicable to remittances to Currency Services) would remain as determined at the beginning of the day's business. Consequently, according to Mr Garrett, if Currency Services gave an improved rate (for the customer) for a particular exchange, as was usual but did not necessarily always happen, the remit rate would remain unchanged, so that the margin between the two rates (the customer buy rate and the remit rate) would be narrowed, and in turn the profit earned by the branch on the remittance of the foreign exchange to Currency Services would be reduced. Mr Garrett stated that he had only ever witnessed the published, predetermined remit rate being applied or used by Currency Services.

7.76 On Day 748 (19 July 2007), Mr Garrett was again questioned on this issue, and it was pointed out to him that his stated position (as summarised above) appeared to be in conflict with that of his colleague (Ms Murtagh — see below). Mr Garrett sought to explain his understanding of the procedures in question to Counsel for the Tribunal in the course of the following exchange:

> Q. *The issue that's identified there is the question as to whether or not it was within the power of the branch to contact Currency Services with the view to improving on the rate which was fixed for the day as the buy remit rate, is that right?*
>
> A. *That's correct, yes.*
>
> Q. *And I think your answer was that it wasn't possible to do so the only variation* [you could get] *was if you telephoned Currency Services with a view to improving the rate with which you would deal with the customer, is that so?*
>
> A. *That's correct, yes.*
>
> Q. *Right. What is your evidence now on that?*
>
> A. *Yes, I have just clarified . . . with some of my colleagues in Currency Services. Technically what I am saying is correct. The rate that the currency would be remitted at on the day is 1.5386* [for US dollars] *where a customer came in and a special rate was given. They have informed me that in a small number of circumstances where there was a very large amount of currency involved for particular customers they would give the same rate to buy currency over the counter and the same rate to remit the currency to Currency Services so the rate would be the same.*
>
> Q. *That, I think probably doesn't resolve the issue which is identified in the questioning and your responses on the last occasion upon which you gave evidence. Really the questioning was directed towards establishing*

whether or not it is the case that the buy remit rate for the day can be improved on by a branch contacting Currency Services, do you understand the question?

A. *I do yes.*

Q. *Is the answer to that question, yes it can be?*

A. *The answer is yes, it can be.*

7.77 As of that juncture in Mr Garrett's evidence, therefore, the Tribunal appeared to have been advised that:

1) Where a customer tendered for exchange a foreign currency amount with an Irish pound value in excess of the Forde Money Changer thresholds (i.e. IR£2,500 for US dollars and IR£10,000 for sterling), the bank teller was expected to contact Currency Services to obtain a spot rate**.** This rate, depending on market conditions, could be (marginally) more favourable to the customer than any of the pre-determined daily rates, but the published or pre-determined buy remit rates would remain operable in respect of that foreign exchange being remitted to Currency Services.
2) However, it was possible that Currency Services would marginally improve (in favour of the branch) its published buy remit rate in respect of large foreign currency remittances from a branch.
3) Furthermore, it was possible that in a *'small number of circumstances where there was a very large amount of currency involved for particular customers'*, Currency Services could authorise that the customer be given the same rate as the buy remit rate to be applied to the currency being remitted to Currency Services in which case there was no profit to the branch on the transaction.
4) However, Mr Garrett's experience was confined to circumstances where, having contacted Currency Services for a better customer buy rate for an unusually large amount of foreign currency being purchased by the branch from a customer, he then remitted that foreign currency '*at the* [remit] *rate of the day.'*

7.78 Again in his sworn evidence on Day 748 (19 July 2007), Mr Garrett maintained that he had been advised by bank personnel, since giving evidence the previous day, that an increased or varied buy remit rate would only be authorised in circumstances where the branch applied the same rate in its purchase of the foreign exchange from the customer. However, Mr Garrett appeared to have been surprised to have been so informed, when he stated in the course of his evidence: '*Now, in all my years working in the particular branch I worked in, we would buy at a special rate when we get a special rate and we would remit at the rate of the day, and that is the basis that I gave my evidence on.'*

7.79 In this evidence, Mr Garrett was reiterating his own experience in the foreign currency section of a large Dublin city centre branch in the early 1990s, which was that, while on occasion Currency Services gave a better customer buy rate than the published or pre-determined customer buy rate of the day, the published or pre-determined buy remit rate nevertheless was applied to the remittance of that currency to Currency Services. The Tribunal understood that, in consequence, the profit earned by the branch in respect of that transaction was less than it would have been had the published customer buy rates been applied without variation.

MS MURTAGH'S EVIDENCE ON BANK PROCEDURES

7.80 Ms Murtagh was questioned closely and at length as to her understanding of the bank procedures which ought to have applied in circumstances where a customer sought to exchange an amount of foreign currency which exceeded IR£10,000 in value (for sterling) or IR£2,500 in value (for US dollars), and also as to her understanding as to what probably occurred in relation to the foreign exchange amount which funded the lodgement of IR£28,772.90 to Ms Larkin's account on 5 December 1994.

7.81 In the course of her private interview with members of the Tribunal's legal team on 20 June 2007, the following exchange between Counsel for the Tribunal and Ms Murtagh was recorded (this exchange being predicated on the possibility that a customer had presented at the branch with US$45,000):

> Q. ...*The first is a transaction where the customer comes in with $45,000 and wants Irish currency. And that transaction is completed without reference to the fact that the bank may or may not enter into an arrangement with the Currency Services to remit that money upward, isn't that right? They could elect to keep that money, for example, in the branch?*
>
> A. *They could.*
>
> Q. *Now, they close off their transaction with the customer. Because the customer has been given £28,772.90 in return for what the customer gave the bank?*
>
> A.*'Yeah.*
>
> Q. *The branch now has in its possession $45,000 in notes. It picks up the phone and it rings the currency room, the note room, and says we have $45,000. What rate will you give us. And the money room says we will give you a rate of 1.5382. And that translates then into 29,254.97 there or thereabouts?*
>
> A. *uh-huh*

Q. *And they operate on that rate. Now, in adopting that rate the bank is not adopting, the branch rather, is not adopting the rate that is on the Forde machine, which is 1.5386?*

A. *No.*

Q *It is getting a different rate. But that, there is nothing unusual in that because it can get a different rate by picking up the phone and dealing with the money room and getting the authorisation to do it?*

A. *It's rare but they can do that.*

7.82 Earlier, in the course of her private interview with the Tribunal, Ms Murtagh stated that it was possible that a branch might telephone Currency Services for *either* a rate to remit (to Currency Services) *or* a rate to purchase from the customer. Ms Murtagh stated: *'And sometimes when you're phoning for a rate for the client you would be told to remit at that rate.'*

7.83 Such an authorisation would result, Ms Murtagh acknowledged, in the branch earning no profit from the transaction. Asked in what circumstances such a transaction might occur she responded: *'if the branch considered that their client is important and they want to retain the business …And if the client demands it.'*

7.84 In her sworn evidence to the Tribunal, Ms Murtagh confirmed that the buy remit rate fixed for the day could be varied *'in very minor circumstances.'*

7.85 Ms Murtagh confirmed that the remit rate applied to the remittance of IR£29,254.97 from 37/38 O'Connell Street, Dublin, for 5 December 1994, whether it was sterling or US dollars, was not the published buy remit rate for 5 December 1994, and that it must have been a special buy remit rate.

7.86 Ms Murtagh also confirmed that where a special buy remit rate was given by Currency Services, it was usually an improved rate (i.e. a better rate for the branch than the published buy remit rate). Ms Murtagh's evidence was that the degree of improvement in the buy remit rate would always have been marginal, and in any event a variation of less than 10 points.[19]

7.87 Ms Murtagh advised the Tribunal that on occasion, because of the large amount of foreign currency involved and/or the importance of a customer, a special buy remit rate might be given by Currency Services. It was her understanding that this might occur when Currency Services was anxious to have a foreign currency amount remitted to it by a branch in order to meet a looming

[19] On a scale calculated to the fourth decimal point: 1 point equals 0.0001, and 10 points equal 0.001.

deadline to provide a specific amount of foreign currency to a wholesale currency dealer. Ms Murtagh stated that where a special buy remit rate was given for such a reason, the customer could also receive that rate, with the result that the value of the amount remitted to Currency Services would match exactly the value credited to the customer.[20]

WHICH FOREIGN CURRENCY WAS REPRESENTED BY IR£29,254.97?

7.88 The published buy remit rate for sterling on 5 December 1994 was 0.9877. If that rate was applied to a remittance with a value of IR£29,254.97, it would yield a figure of £28,895.13. This mathematical calculation established therefore that the application of the published buy remit rate to a foreign exchange value of IR£29,254.97 did not yield a sum of Stg£30,000 or any round-figure sum close to Stg£30,000 (i.e. which excluded an amount in pence). It followed therefore, that if sterling was remitted, Currency Services did not apply the published buy remit rate to it.

7.89 The Tribunal then considered the results of a similar exercise conducted on the assumption that the IR£29,254.97 worth of foreign currency remitted on 5 December 1994 to Currency Services represented a US dollar amount being the only possible alternative to sterling as evidenced by the Remits book.

7.90 The published buy remit rate for US dollars on 5 December 1994 was 1.5386. The application of that rate to IR£29,254.97 produced a figure of

[20] In the course of her private interview with the Tribunal, Ms Murtagh advised the Tribunal that the bank teller, if presented with US$45,000, might have phoned Currency Services '*for a rate to remit*' to Currency Services, as opposed to a rate to purchase from the client, and that sometimes in such a case the teller would be instructed to remit at the same rate as that given to the customer, resulting in the branch making no profit on the remittance, and that that could happen in circumstances where the branch considered that the customer was important, and it wished to retain his or her business, and if the customer demanded it. In the course of her sworn evidence to the Tribunal on Day 753, in response to Mr Colm Ó hOisín SC, (Mr Ahern's Counsel) who indicated his understanding of the evidence to be that '*if you get a special remit rate it is only on terms that the customer gets the benefit of that rate*' Ms Murtagh stated: *'maybe if I just say this, if the customer asked you to get a special rate because it was a large amount or they were dealing quite frequently in currency and they knew they could get a better rate ...or a very good customer, you phone up and get a special rate for the client. And you could be told well remit at the normal remit rate at that time.'* Ms Murtagh was then asked '*is that a different rate to the special rate going to the customer?',* to which she responded: '*It is yes. You know, you could give the good rate, but the branch are losing out on their profitability at that point.'* Mr Ó hOisín then put the following to Ms Murtagh: *'...just to clarify that the position as I see it ...You have talked there about two situations, one getting a special remit rate for the client, but remitting it at the normal rate and, or an alternative situation where you get a special remit rate to Currency Services and the customer gets the benefit of that special remit rate also, isn't that correct?*' Ms Murtagh responded: '*Yes, you would get a special rate for the client ok? And you could be advised well yes you can remit at the normal remit rate, if you are remitting today. Ok? Or, if there was if you actually needed the currency in Currency Services and there was a large sum of money and you wanted to make the deadline you could get a special rate for the customer and you would tell the branch remit at that rate.'* Ms Murtagh then agreed with a suggestion put to her by Mr Ó hOisín that '*if there is any deviation from the remit rate that applies for a particular day between a branch and Currency Services, any deviation, so a special rate of remit, that is only in circumstances where the customer gets the benefit of that remit rate...'*

$45,011.70. As this sum involved a coin element, it was clear that if the equivalent of IR£29,254.97 had been remitted in US dollars, it had not been remitted at the published buy remit rate.

FOREIGN CURRENCY COINS AND STG£1 NOTES

7.91 AIB bank witnesses told the Tribunal that foreign coins were not usually accepted within its branches, other than Stg£1 coins which were occasionally accepted, but not remitted to Currency Services. The Tribunal was therefore satisfied that the smallest acceptable denomination (to remit to Currency Services, albeit as part of an occasional '*odds*' remit) in the case of sterling was a Stg£1 note, and in the case of US dollars was a $1 note.

7.92 The printing of Stg£1 notes ceased in approximately the early/mid-1980s. However, Stg£1 notes remained legal tender in 1994/5, and although in limited circulation by 1994, they were occasionally purchased in AIB branches at that time.[21]

7.93 Normal bank practice within AIB was to remit sterling pounds and US dollars in bundles of 100 notes of the same denomination. Ms Murtagh stated that a remittance from a branch could nonetheless include one bundle of less than 100 notes (e.g. a remittance of Stg£10,060 in Stg£20 notes might have comprised five bundles of 100 Stg£20 notes and one bundle of three Stg£20 notes on transmission to Currency Services).

7.94 Stg£1 notes were usually remitted to Currency Services by branches as part of an '*odds*' clear-up. Mr Garrett believed this occurred once a quarter, or once every half year. There was no evidence that a remittance of odds of foreign currency had been made by the AIB branch at 37/38 O'Connell Street, Dublin on 5 December 1994.

THE MATHEMATICAL EXERCISE CONDUCTED BY THE TRIBUNAL

7.95 The Tribunal was satisfied that it was both reasonable and possible to conduct a simple and straightforward mathematical exercise to ascertain the actual rate used in cases (such as this) where it was known that the published buy remit rate had not been used in relation to a particular remittance. This mathematical exercise involved the application of notional buy remit rates to the foreign currency amount, on a point by point basis (calculating to the fourth

[21] In 1994 Irish banks were occasionally presented with Stg£1 notes from Scotland, Northern Ireland or the Channel Islands, or with old Bank of England Stg£1 notes.

decimal point) in order to identify the special rate likely to have been used in relation to a particular remittance.

7.96 It was necessary, in the Tribunal's view, to conduct this exercise because, while records of published buy remit rates for each day were maintained by AIB, records of special buy remit rates, when used, were not retained.

7.97 The results of this mathematical exercise in relation to sterling as set out in the Tribunal prepared spreadsheet entitled *'Tribunal Table of Calculations applying Remit Rates in the range 1.0500 – 0.9500 to IR£29,254.97'*, established the following:

- On the assumption that the IR£29,254.97 represented sterling, rather than US Dollars, the closest notional buy remit rate to the published buy remit rate of 0.9877 which produced a sterling sum (Stg£28,882[22]) without pence was 0.9852. This rate was 25 points more favourable to the remitting branch. The next closest notional buy remit rate to the published buy remit rate of 0.9877 and which produced a sterling sum (Stg. £29,018[23]) without pence was 0.9919. This rate was 42 points less favourable to the remitting branch. Both assumptions required an 'odds' remittance on the day.

7.98 Having regard to Ms Murtagh's evidence that any variation in the published buy remit rate would not have exceeded 10 points, it followed that a variation in the special buy remit rate of either 25 points (more favourable for the branch) or 42 points (worse for the branch) would, as a matter of probability, not have been applied by Currency Services to sterling being remitted by AIB's Upper O'Connell Street branch on the 5 December, 1994.

7.99 The nature of the mathematical analysis carried out by the Tribunal in relation to the foregoing issue was the subject of the following exchange between Tribunal Counsel and Ms Murtagh on Day 753:

> *'Q. And we are applying the rate of 0.977 the remit rate of the day to the amount of 29,254.97 Irish, isn't that right?*
>
> *A. Yes the remit rate of 0.9877.*
>
> *Q. Yes that's the remit rate on the 5th December 1994, isn't that right? And we have seen earlier on the chart, as you move across now from the rate itself, you see what is produced by the rate and that's 28,895.13 pounds, isn't that right?*
>
> *A. That's correct.*

[22] This sum would have had to include at least two Stg. £1 notes.
[23] This sum would have had to include three single Stg. £1 notes.

Q. And you have confirmed with me earlier that that figure produced at that rate of exchange, that figure produced at that rate of exchange 29,254.97, isn't that right?

A. That's right.

Q. Now, for each of the other entries on this page both above and below this figure there is a variation of one point. So that if we look to the figure which is entry No. 623 we will see that there is a rate of exchange there of 0.9878, you see that?

A. Yes.

Q. Right. That's one point in difference, isn't that right?

A. That's right.

Q. And that's one point worse from the point of view of the branch, isn't that right?

A. Yes.

Q. Yes. Now on this page, going to the top of the page there are 42 points on the scale, in other words the rate is changing by one point at each line there, you see that?

A. Yes.

Q. So that's showing a variation of the remit rate of the day by up to 42 points worse than the actual rate of the day, do you understand that?

A. I do.

Q. Yes. As we look at those figures you will see that not one of those figures equates to the rate which we know was, sorry, equates to the amount which was actually attributed to the value of the currency on the day, isn't that right?

A. Sorry can you just repeat that please?

Q. I can yes. I will just try and lay the basis for this again with you, Ms. Murtagh, because what we are talking about here is a mathematical table which is not involving any conjecture, it is merely a matter of division and recording of the division under the headings here. And it starts from the point where at entry 624, we see the established remit rate for the day being applied to the known amount of Irish value given to the currency, isn't that right.

A. That's correct.

Q. And as against that we see that in order for that to happen the amount which would be tendered in sterling would be 28,895.13 pounds, isn't that right?

A. That's right, yes.

Q. And we know that that is not the same figure as 29,254.97, isn't that right?

A. That's correct.

Q. And that allows us to conclude as a matter of mathematical certainty that that rate was not applied, isn't that right?

A. Yes.

Q. Okay. Now, this exercise is one where one is looking at every other rate that might have been applied, starting with the rate which is one point worse from the point of view of the remitting bank, do you understand that?

A. I do. Yes.

Q. As we go up through each one of the lines to the top of the page there are 42 points and the calculation carried out using the rate of exchange for each one of those values, do you understand?

A. I do.

Q. Yes. Now each, the figure then under the reference 'sterling' represents the amount which is the result of that exercise using that rate of exchange, do you understand?

A. Yes.

Q. So that if any one of these rates of exchange had been the rate used on the day, the figure which one should see under the heading 'ST' is the figure 29,254.97, do you see that?

A. Yes.

Q. Now I am putting to you firstly, do you understand that process as a purely mathematical exercise.

A. Yes.

Q. And everything that is in the line is a mathematical certainty, although the figures have been postulated for the purpose of the exercise, do you understand that?

A. Okay.

Q. Yes. Now I am putting to you that using any one of those calculations to the extent of going to 42 points worse than the published rate of the day, one does not get the figure involved, understand?

A. Yes.

Q. And I am putting to you that the logical and only conclusion one can draw from that is that a rate of exchange worse than the published rate of exchange was not applied to any sterling sum so as to produce what we know to be 29,254.97 pounds worth of foreign currency?

A. Yes.

Q. Do you understand that?

A. Yes.

Q. So I am putting this forward as an empirical statement of fact that there was no exchange at any one of those rates that went to 42 points worse than the published rate, do you agree with that?

A. Yes.

Q. Now, a similar exercise can be carried out by moving down the page, in other words if we look at the entry at 625 which is immediately beneath the remit rate figure, we see that the rate of exchange there is 0.9876 one point more favourable to the branch, isn't that right?

A. That's right.

Q. And running down through the next 40 of those rates of exchange in every instance improving from the point of view of the branch, that is a more beneficial rate, there is no connection, there is no figure which equates to 28 – 29,254.97, isn't that right?

A. Yes.

Q. Does that tell you that the range that you would have expected of any variation that might have been given by Currency Services would have, would not have produced, would not have allowed for a sterling sum to be converted to that amount in Irish by reference to the fact that the variation would have to be greater than 40 points for that to happen.

A. That's correct.

Q. Yes. Now this page 22749, is one page of a series of entries that runs to cover the entire thousand points between the conversion rate 1.0500 and 0.9500, do you understand?

A. Yes.

Q. It in effect I suggest, exhausts all the possibilities that might have been considered by anybody wishing to vary the rate of exchange, because it goes totally off the Richter scale on both ends, isn't that right?

A. That's right.

Q. Now, equally even applying that, I am suggesting to you that there is no figure which would allow for the figure of 29,254.97 pounds to be realised applying any one of those scales to a sterling sum, would you agree with that?

A. I agree, yes.

Q. In that knowledge, Ms. Murtagh, can you confirm to me that if the bank's procedure was followed and the bundles were bundled as they should have been, in bundles of 100, that there was no sterling exchange on the 5th December, 1994 involving such a transaction?

A. Yes, if the procedures were followed and each bundle was 100 notes. Yes, that's right.

Q. Now we'll move to the next issue then, which I want to deal with you, that is the acceptance by Currency Services of amounts other than those which were being remitted in accordance with procedure, do you understand that?

A. Yes.

Q. Yes and I think that we have heard that on occasion there would be what's called the clear out of the branch where Currency Services would

circulate branches and say that they were taking in their damaged pound notes, their odd amounts, their currencies which wouldn't normally be dealt with, isn't that right?

A. Yes, that's right.

Q. And in that instance the bundles would not end with the double zero that we see on page 22755, isn't that so?

A. That's correct?

Q. Right. We know that the figures are, here are representative of either sterling or of US dollars, isn't that right?

A. That's right.

Q. And does it follow therefore that given that the lowest sterling note is 5 pounds, that even on days when one is allowing for the remission, the clear out of currencies in bundles of less than 100 even, it still must end with a five for the purpose of a sterling transaction?

A. Unless that you had one denominations from either Jersey, Scotland or Northern Ireland.

Q. Right. Would you bundle those in with the English fivers?

A. They would be separated and included on the one remittance sheet.

Q. Right. How would they appear, would they be treated as sterling or would they be treated otherwise?

A. They are treated as sterling.

Q. Right. And have you any evidence to indicate that on this day, the 5th December 1994, that this was a day upon which currencies other than in bundles of 100 were being returned?

A. No. I have no evidence.

Q. No. In the normal course, if one was talking about fragmented divisions of currency would they include amounts from Jersey or perhaps Scotland or would they be just generally sterling amounts ending in fivers?

A. They could be either, particularly if the lodgement was a full lodgement of Bank of England, main land currency, or if it was a full lodgement of any of the other bank denominations.

Q. Could I have the other bank denominations?

A. Like Bank of Scotland.

Q. Yes.

A. Ulster Bank, Bank of Ireland, Norther Ireland or Jersey Island.

Q. I see. For that to happen I take it there would have to be the resultant transaction then could be a figure which would be a one pound figure as the smallest unit, is that right?

A. As far as I am aware at that time, yes. The one pound was remitted from those non main land bank currencies.

Q. Right. And if we look to any one of the rates of exchange which we see by reference to the rate of exchange on the day, that is page 22749 we see that there is one figure there 29,018 pounds converted at a rate of 0.9919 would produce 29,254.97, is that right?

A. That's right.

Q. For that rate to apply there would have had to have been a 42 point benefit applied, is that right – sorry it would have been a rate 42 points worse than the published rate on the day, is that right?

A. That's right.

Q. What is the likelihood of that happening?

A. I think its relatively very low.

Q. Now, if we look to the positive side then I see an even figure, entry 650 which is six points better and that is 28,822 pounds, at entry 649 would produce that figure, is that right?

A. That's right, yes.

Q. But that as I say would involve the use of one pound sterling amount which was remitted in a currency which was not the mainstream sterling currency, is that right?

A. That's right.

Q It could be Jersey money, is that it?

A. It could be, or it could be an old English pound that was still in circulation and that was legal tender.

Q. Right. How likely is it that in 1994 one would be dealing with old English pounds. I think it was 1984 that they had lost the pound as a unit of currency in paper form in the UK, is that right, I may be wrong?

A. I'm not sure, I wasn't there at the time.

Q. Now, other than that imposition of a, I suppose a provincial note as I call it, its not possible for sterling to have been changed and to be reflected as 29,254.97 in the money room on that day, isn't that right?

A. Sorry can you repeat that?

Q. Sorry. I was saying other than the importing into the equation of what I call a provincial note, a current provincial note greater than a unit of five, because the English main note being the fiver, its not possible for a sterling amount to translate into 29,254.97 on that day, isn't that so?

A. If there was a sterling pound note, a main land UK note remitted we would accept it, from a branch because it is still legal tender.

Q. Right. And again as I say, we are not certain as to when exactly the one pound note went out of circulation in the UK but I am suggesting to you that its probably ten years before this particular transaction?

A. Mm-hmm.

Q. It would be, I suggest, unusual but possible?

A. Unusual, yes, but possible.'

7.100 In conducting this mathematical exercise, the Tribunal established that no sterling sum between Stg£28,500 and Stg£29,500, increasing in increments of one hundred, could have been converted to IR£29,254.97 at the published buy remit rate of the day for sterling.

7.101 The Tribunal then conducted a similar exercise in relation to US dollars[24] and sought to identify a notional special buy remit rate which, if applied to IR£29,254.97, would produce a round-figure dollar sum. Such a match was found, using a notional special buy remit rate of 1.5382, a rate 4 points better for the branch than the published buy remit rate for US dollars for 5 December 1994.

7.102 This buy remit rate of 1.5382 was well within the range of improvement which might conceivably have been given by Currency Services.[25] Such a special buy remit rate when applied to a sum of US$45,000 resulted in a figure of IR£29,254.97, which was the value of the foreign currency remitted to Currency Services by AIB 37/38 O'Connell Street for 5 December 1994.

7.103 The application of a buy remit rate of 1.5382 was the subject of the following exchange between Tribunal Counsel and Ms Murtagh on Day 753:

> *'Q. …Now in relation then to these figures, when we look to the US dollar figure which we see on, sorry page 22755, that figure of 45,000 dollars equates exactly to a sum of 29,254.97, isn't that right?*
>
> *A. That's right.*
>
> *Q. And that figure could represent an exchange of 45,000 dollars within the bank's standard procedure and without there being any exception to any rule or any clear up or special treatment, isn't that right for that equation to work, I am just putting to you, it works within the bank's standard procedure?*
>
> *A. It does.*
>
> *Q. Of notes being bundled in hundreds and being, the rate being applied to it being a rate which is an improvement upon the standard rate of the day by a margin which would reflect that improvement, isn't that right?*
>
> *A. That's right, yeah.*
>
> *Q. Now, in relation to the source of the remit on that particular day, Ms. Murtagh, we know and I think you examined the documents at interview with the Tribunal, that it can be related back to information contained*

[24] The results of this mathematical exercise were set out in a mathematical table entitled *'Tribunal application of possible Remit Rates to AIB FX Remit of IR£29,254.97 in either ST£ or US$ on 5th December, 1994.'*

[25] Based on the banking evidence that any improvement of the published rate would not *'even go as far as 10 points.'*

within the Foreign Currency Held account of AIB O'Connell Street on the 5th December, 1994, which we see at page 20674, isn't that right?

A. Yes, that's right.

Q. And when we look to this document, I think you will confirm for me that it reflects the purchases and sales of foreign currency on the 5th December, of 1994, isn't that right?

A. That's right.

Q. And it shows in the sales that is under the credits, the sum of 29,254.92 – 97 perhaps?

A. 256.97.

Q. .97. That's exactly the sum that was remitted upwards, isn't that right?

A. Yes, that's right.

Q. So what this document is telling us, independently of what happened in the money room, is that this figure is the figure that was remitted from the branch to the money room, isn't that right?

A. That's right.

Q. Yes. And then on the column under 'debits' we see the purchases of foreign currency that day, isn't that right?

A. That's right.

Q. Now, if accurate the reference here is, if we deal firstly with FX, it shows that foreign currency of 28,969.34 pounds was purchased in the branch that day, isn't that so?

A. That's right.

Q. And in the purchases of foreign notes it is distinguished as between sterling and all others, isn't that right?

A. That's right.

Q. And this is the all others figure, in other words not sterling, isn't that right?

A. Yes.

Q. And there is a separate entry for sterling beneath it for 1,921.53 pounds, isn't that right?

A. That's right.

Q. If this document is accurate, could I suggest to you that it indicates firstly that only 1,921.53 pounds sterling was transacted by way of purchase on the 5th December in the bank that day?

A. That's right.

Q. That is a purchase by the bank I should say?

A. Yes.

Q. On the other hand it also shows that they bought 28,969.34 pounds worth of other foreign currencies, isn't that right?

A. Yes.

Q. And could I suggest to you that it also would indicate, as a probability, that the funds which were purchased that day were the funds that were remitted that day?

A. Yes, that's most likely.

Q. Yes. And therefore what was most likely remitted was foreign currency other than sterling?

A. Yes, if the dockets the narratives are accurate, yes.

Q. Yes. And the foreign currency other than sterling was contained within the 28,969.34 pounds either in total or at a minimum in part, isn't that right?

A. Yes, that's right.

Q. And that it was that sum that was reflected in the 29,254.97 which was opened in the branch, by the branch I mean in Currency Services department and recorded on the 7th, isn't that right?

A. That's right.

Q. Wouldn't that confirm to you, as a matter of probability, if not certainty, that the amount of cash that was actually in Currency Services on the 7th December was 45,000 dollars?

A. Most probable, yes.

Q. How probable on the scale can you say and what would you say are the only qualifications that allow for that to take place, assuming this documentation to be accurate?

A. Well if the documentation is accurate, yes that is most likely its 45, if the narratives are not accurate then its possibly not 45,000 dollars.

Q. How likely is it that it could be 28,000 or anything close to 28,900 sterling? Firstly if this document is accurate it can't be, isn't that right?

A. Yes.

Q. And if it was to be sterling it would be, involve two other considerations which are off the normal, one is that there was a clear up of currency taking place on the day and that the bank procedure normal procedure wasn't being followed, isn't that right?

A. That's right.

Q. And a further qualification that a one pound note from either the Channel Island or Northern Ireland perhaps, I'm not sure if Northern Ireland notes are considered sterling?

A. They are, yes.

Q. Northern Ireland or Scotland was thrown into the pot as well, is that right?

A. That's right. '

THE OPINION OF MR PADDY STRONGE[26]

7.104 Mr Ahern's solicitor submitted a report from Mr Paddy Stronge with their letter to the Tribunal dated 18 September 2007. A subsequent, and more detailed, report from Mr Stronge was furnished to the Tribunal on 19 October 2007.

7.105 In his reports, Mr Stronge considered, in particular, the evidence provided to the Tribunal relating to the lodgement dated 11 October 1994 in the sum of IR£24,838.49 to Mr Ahern's account (see section III) and the lodgement of IR£28,772.90 dated 5 December 1994 to Ms Larkin's account.

7.106 Mr Stronge's conclusions in relation to the lodgement of IR£28,772.90 were as follows:

> *In the absence of tally rolls, the assumption that the lodgement was US$45,000 is speculation.*
>
> *The AIB witnesses have highlighted the unreliability of narratives to impersonal accounts in evidence and have cautioned against reliance thereon in support of a dollar hypothesis.*
>
> *The AIB witnesses have also highlighted that in this case where the values are being posted to the same account, the narratives are 'almost irrelevant.'*
>
> *The Tribunal has ruled out a Sterling pound remittance on the basis that a single exchange rate has been applied to the remittance. AIB have pointed out that remittances can be made up of more than one rate. Therefore, that analysis is inconclusive.*
>
> *The rate of 1.5382, which results in a US$45,000 remittance could not have been applied to the remittance as this rate would also have had to have been applied to the lodgement. AIB's Currencies Services expert, therefore, have ruled out the hypothesis that the remittance was US$45,000.*

[26] Mr Stronge submitted his reports behalf of Mr Ahern in his capacity as a banking expert. Mr Stronge worked in various positions in Bank of Ireland between 1963 and 2004 (and subsequently on a part time basis between July 2005 and March 2007). At the time of his retirement from Bank of Ireland in 2004, Mr Stronge held the position of Chief Operating Officer Corporate Banking. At the time he prepared his reports, Mr Stronge was Chairman of Philos Training & Consultancy Ltd.

If the lodgement of IR£28,772.90 was as a result of a $45,000 US Dollar exchange at the official rate, then the remittance should also contain $45,000 at the standard remittance rate. The Tribunal's own workings have ruled this out. Therefore the Tribunal hypothesis, of a lodgement of $45,000 US Dollars, is dependant on a breach in branch procedure, regarding exchange rates, and no evidence has been provided to support that claim.

The customer lodgement of IR£28,772.90 is consistent with the explanation put forward by Mr. Ahern that the lodgement was made up of both Sterling and Irish pounds.

For these reasons, the evidence put forward does not substantiate the Tribunal hypothesis.

7.107 Contrary to what Mr Stronge suggested in his report, the AIB bank witnesses who gave evidence to the Tribunal did not establish that the *'narratives'* used in the bank to identify the total amounts of Sterling currency and currency other than Sterling transacted in any one day within a branch were unreliable.

7.108 Again, contrary to what was suggested by Mr Stronge, the evidence to the Tribunal by AIB bank witnesses did not establish that a rate of 1.5382 could only have been applied to the remittance of the foreign currency to Currency Services if that rate was also applied to the lodgement of IR£28,772.90. For such to have occurred would not have, as suggested by Mr Stronge, depended on a *'breach in branch procedure.'*

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE BANKING EVIDENCE

7.109 The Tribunal was satisfied that a substantial foreign currency cash sum tendered to AIB in 1994 for exchange into Irish pounds could have had applied to it one of the published customer buy rates programmed into the Forde Money Changer rather than an improved rate, and that such an occurence did not amount to evidence of a breach of the bank's practices and procedures. Nor did it involve manually overriding or bypassing the Forde Money Changer machine. (See Section III also in relation to this issue)

7.110 The Tribunal was satisfied from the evidence of AIB witnesses that Currency Services had the discretion to nominate any spot rate, including one lower (less favourable to the customer) than the best of the published customer buy rates. While a teller telephoning Currency Services for a spot rate for a sterling sum with a value in excess of IR£10,000 would normally expect that the

rate quoted would be a better rate than the best published customer buy rate (i.e. 0.9947 on 5 December 1994), it was not always the case that a better rate would in fact be given. Mr Garrett, who had worked in the foreign exchange section of a busy city centre branch in Dublin,[27] recalled instances when the rate quoted was one which was not better for the customer than the best published customer buy rate.[28]

7.111 The Tribunal was further satisfied that in 1994 AIB Currency Services could give a special buy remit rate, a rate better (for the branch) than the published buy remit rate, up to 10 points better for the branch than the published rate, without also affording the customer that rate.

7.112 The Tribunal was satisfied that it was Mr Garrett's understanding, based on his foreign exchange experience, that this could have occurred. Furthermore, Ms Murtagh had in effect confirmed in the course of her private interview that Currency Services could give a special remit rate and/or special rate to purchase from the customer.

7.113 It was a fact, established to the Tribunal's satisfaction as a matter of the strongest probability, that the foreign currency remitted to Currency Services from 37/38 O'Connell Street in Dublin on 5 December 1994 was remitted at a special buy remit rate, which was not the published buy remit rate, and that Ms Larkin had not received a similar exchange rate for her tendered foreign currency. The Tribunal believed that fact to be indisputable, whether the foreign currency in question was sterling or US dollars.

7.114 With regard to the lodgement made to the Larkin 011 account on 5 December 1994 the Tribunal thus concluded as follows:

1) On 5 December 1994 Ms Larkin lodged a sum of IR£28,772.90 to a bank account in her name in the AIB branch of 37/38 O'Connell Street, Dublin having first exchanged a foreign currency amount. The contemporaneous bank documentation relating to the lodgement did not identify the type of foreign currency she exchanged.

2) The branch's debit dockets and the computerised Foreign Currency Held Ledger recorded that on 5 December 1994 the branch purchased from customers sterling to the value of IR£1,921.53, and foreign currency *other* than sterling to the value of IR£28,969.34. On its face, this documentation established that the foreign currency tendered for

[27] Capel Street.

[28] In the same bank a lodgement of Stg£20,000 was converted at the rate for amounts up to the value of IR£10,000 and the narrative on the docket suggested that the rate for amounts up to the value of IR£2,000 was first considered.

exchange by Ms Larkin on 5 December 1994 could not have been sterling, and must have been a foreign currency *other* than sterling.

3) AIB witnesses acknowledged that it was possible that a bank official might, in error, manually interchange or reverse the totals for sterling and foreign exchange other than sterling when transcribing the relevant information from the Forde Money Changer tally roll onto debit dockets, and also acknowledged that had such a human error indeed occurred, the subsequent accurately recorded data within the bank would not necessarily have triggered an awareness of such an error, or indeed a necessity to correct such an error. However, none of the bank witnesses suggested to the Tribunal that any such error had (or probably had) occurred on 5 December 1994, or that such errors had ever occurred in the past, much less that they were commonplace. The Tribunal had no reason to believe, or suspect, that such an error occured on that occasion.

4) Furthermore, in the course of the evidence heard by the Tribunal in relation to a number of AIB banking transactions, and in particular in relation to a variety of hand-written bank records, it was not established that human error in such records was a feature of bank practice, or was in any sense commonplace within AIB.

5) The Tribunal was satisfied that the foreign exchange transactions conducted in the branch at 37/38 O'Connell Street, Dublin on 5 December 1994 had not been incorrectly or inaccurately recorded in the debit docket or the computerised Foreign Currency Held Ledger. More specifically, the Tribunal was satisfied that the totals for sterling and for foreign exchange *other* than sterling were not mistakenly interchanged or reversed.

6) Applying the customer buy rate applicable to US dollar amounts tendered for exchange not exceeding IR£2,500 in value (the more favourable of two published customer buy rates for the day) to US$45,000 produced a figure of exactly IR£28,772.90 (assuming the discretionary IR£5 commission was charged).

7) Foreign currency to the value of IR£29,254.97 was remitted by the branch on 5 December 1994 to Currency Services.

8) This remittance represented either sterling or dollars. The currency was remitted to Currency Services at a buy remit rate other than the published buy remit rate for either sterling or dollars.

9) Applying the published buy remit rate of the day for sterling to the remitted value of IR£29,254.97 produced a sum of Stg£28,895.13, a remittance that could not have taken place as it would have involved a sterling coin element.

10) The closest notional buy remit rate for sterling to the published buy remit rate of the day which, when applied to the figure of IR£29,254.97 yielded a round-figure sterling sum (including Stg£1 notes), was 25 points better (for the branch) than the published buy remit rate, or 42 points worse (for the branch) than the published buy remit rate. Such remit rates were extremely, if not absolutely, unlikely to have been applied in relation to a remittance of sterling by the AIB branch at 37/38 O'Connell Street, Dublin to Currency Services on 5 December 1994.

11) The application of a notional buy remit rate 4 points better than the published buy remit rate for US dollars, if applied to IR£29,254.97, would produce US$45,000.[29] This rate fell well within the 10 point margin of discretion which Currency Services would be expected to give to a remitting branch in circumstances where the remitting branch was being authorised to remit at a rate other than the published buy remit of the day.

The Tribunal considered whether the remitted value of IR£29,254.97 represented a transfer of sterling at a single buy remit rate, or alternatively represented two (or more) sterling amounts remitted at two or more buy remit rates. This issue was briefly canvassed with Ms Murtagh in the course of her cross-examination by Counsel for Mr Ahern. This suggestion raised the possibility that only a portion (albeit the larger portion, having regard to Mr. Ahern's evidence that the sum provided to Ms Larkin consisted of an amount of sterling close to Stg£30,000) of the foreign currency represented by IR£29,254.97 came from Ms Larkin, and that the balance represented sterling tendered by one or more customers other than Ms Larkin. However, the Tribunal was satisfied that this possibility was extremely unlikely, and indeed, improbable, for three reasons. Firstly, bank documentation indicated that sterling to the value of less than IR£2,000 was exchanged in the branch on the day. On its

[29] Rounded from US$44,999.994.

face, therefore, such documentation excluded as a matter of certainty that Ms Larkin (or any other customer or number of customers) had exchanged, in total, sterling in excess of that amount. The Tribunal accepted that, as a matter of the strongest probability, the said bank documentation had been written up correctly, thus establishing that sterling less than (in value) IR£2,000 had been exchanged in the branch on the day. Secondly, the fact that the application of the customer buy rate for exchanging US Dollar amounts exceeding, in value, IR£2,500, when applied to US$45,000 produced a figure of IR£28,772.90 (the exact amount of Ms Larkin's lodgement), indicated to the Tribunal that, as a matter of the strongest probability, the larger (by far) amount of foreign currency remitted from the branch to Currency Services for the day in question (the only possible currency being either Sterling or US dollars) was US Dollars, and was, again as a matter of the strongest possibility, comprised entirely of Ms Larkin's lodgement. Thirdly, given the fact that when notional buy remit rates within ten points of the published buy remit rate of the day were applied to the remitted sum (both in respect of it being sterling or US dollars), the only match identified was US$45,000 the Tribunal was satisfied that as a matter of the strongest probability, the remitted foreign currency was US$45,000, and not any amount of sterling.

The Tribunal was satisfied that the foregoing combination of established facts rendered it almost inconceivable that the remitted sum was sterling, be that sterling sourced to one customer, or a multiple of customers.

In summary, the evidence in relation to the remittance of IR£29,254.97 therefore established that:

a) The remitted foreign currency to the value of IR£29,254.97 could not have been sterling remitted at the published buy remit rate applicable on 5 December 1994.
b) The foreign currency to the value of IR£29,254.97 could not have been US dollars remitted at the published buy remit rate applicable on 5 December 1994.
c) The foreign currency amount to the value of IR£29,254.97 remitted to Currency Services must have been remitted at a special buy remit rate (within a margin of up to 10 points) on the published buy remit rate applicable to 5 December 1994, whether the foreign exchange was sterling or US dollars.
d) While the published buy remit rate for 5 December 1994 was and is known, records of special buy remit rates given occasionally by Currency Services were not maintained.

e) In the case of sterling, the application of notional buy remit rates marginally better (but less than 10 points better) than the published buy remit rate applicable on 5 December 1994 to the remitted value of IR£29,254.97 failed to produce any sterling sum without a coin element. The closest sterling sum (excluding coins) which could have been represented by a value of IR£29,254.97 was Stg£28,822, a notional special or varied buy remit rate 25 points better (for the branch) than the published buy remit rate of 0.9877, and would have involved a minimum of two Stg£1 notes.

f) In the case of sterling, the application to the remittance value of IR£29,254.97 of a notional special buy remit rate 42 points worse than the published buy remit rate produced a round-figure sum of Stg£29,108. A rate 42 points worse than the published rate could be excluded as a possibility and furthermore, such a sterling sum would have to have included, as a minimum, three Stg£1 notes.

g) Therefore, the IR£29,254.97 value of foreign exchange remitted to Currency Services for 5 December 1994 could not have and did not represent a sum of Stg£30,000 or any round-figure sterling sum.

h) In the case of US dollars, the application to the remittance value of IR£29,254.97 of a notional remit rate 4 points better than the published buy remit rate produced a round figure of US$45,000. A special remit rate 4 points better than the published buy remit rate of 1.5386 was well within the up-to-10 point variation range stated by Ms Murtagh as having been within the discretion of Currency Services.

i) Almost certainly, therefore, the foreign currency to the value of IR£29,254.97 remitted to Currency Services on 5 December 1994 was US$45,000.

12) The finding of fact by the Tribunal in 5) above, by itself, established as a fact that on 5 December 1994 the AIB branch of 37/38 O'Connell Street, Dublin purchased sterling from customers to a value of only IR£1,921.53, and therefore could not have received from Ms Larkin a sterling sum with an Irish pound value in excess of that figure.

THE TRIBUNAL'S CONCLUSION AS TO THE FOREIGN CURRENCY TENDERED FOR EXCHANGE BY MS LARKIN

7.115 The overwhelming weight of the evidence established as a matter of the strongest probability that:

1) Ms Larkin did not tender for exchange a sum of Stg£30,000 or any sterling sum on the 5 December 1994.

2) Ms Larkin did in fact tender for exchange a sum of US$45,000.

THE TRIBUNAL'S CONCLUSIONS ON THE CLAIMED HANDOVER BY MR WALL OF STG£30,000 TO MR AHERN

7.116 The Tribunal established as a matter of the strongest probability that the IR£28,772.90 lodged to the Larkin 011 account on 5 December 1994 had its origins in US$45,000 and not in any sterling sum. It therefore followed that the cash provided by Mr Ahern to Ms Larkin for lodgement to the account on 5 December 1994 was not approximately Stg£30,000, but was in fact $45,000.

7.117 The Tribunal therefore rejected in its entirety Mr Ahern's evidence that the money he left for collection for Ms Larkin for her to lodge in the bank on 5 December 1994 was Stg£30,000, or any sterling sum approaching that amount.

7.118 Mr Ahern did not account to the Tribunal as to what, in fact, the lodgement made at his behest to the Larkin 011 account on 5 December 1994 comprised. The Tribunal was satisfied that Mr Ahern knew that the content of the briefcase which he left for collection by Ms Larkin was US Dollars.

7.119 The Tribunal was satisfied that at all relevant times the funds lodged into the Larkin 011 account on 5 December 1994 were those of Mr Ahern.

7.120 Mr Ahern's failure to to provide a true account to the Tribunal as to the composition of the lodgement of IR£28,772.90 to the Larkin 011 account on 5 December 1994 has rendered the Tribunal unable to determine the probable source of this substantial amount of money.

7.121 Separately to its finding, as a fact, that the currency used to fund the lodgement of IR£28,772.90 was entirely US dollars and not sterling, the Tribunal, for a number of reasons, did not accept the evidence given to it by Mr Ahern and Mr Wall of the circumstances of the handing over of a substantial cash sum by Mr Wall to Mr Ahern in St Luke's on 3 December 1994.

7.122 The Tribunal rejected Mr Wall's evidence that he brought with him a sum of money in the region of Stg£30,000 from Manchester to Dublin on the weekend of 2 December 1994. Important aspects of Mr Wall's evidence to the Tribunal on this issue were simply unbelievable and incredible, including, in particular, the following:

- Although Mr Wall told the Tribunal that he had left large sums of money in hotels or in his car *'several times'*, the Tribunal believed it unlikely that an experienced businessman such as Mr Wall would have left a sum of approximately Stg£30,000 in a hotel wardrobe, and then leave the hotel for a number of hours to attend a function at another location.

- Had Mr Wall handed a sum of Stg£30,000, or a sum close to that figure, to Mr Ahern on 3 December 1994, the Tribunal believed it likely that both Mr Ahern and Mr Wall would have been certain as to the amount in question, and that Mr Ahern would have satisfied himself at the time as to the amount actually handed to him.
- The Tribunal also rejected as implausible Mr Wall's contention that he would have tendered Stg£30,000 or any approximate sum to Mr Ahern in early December 1994 when, to that point in time the furthest Mr Wall's acquisition of Beresford had progressed was that a booking deposit had merely been paid. A binding sale contract had not been executed.
- Mr Wall failed to provide any documentary proof as evidence that he had had approximately Stg£30,000 in his possession on the 3 December 1993 for provision to Mr Ahern.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION V : THE LODGEMENTS OF IR£11,743.74 ON 15 JUNE 1995 AND OF IR£19,142.92 ON 1 DECEMBER 1995

THE LODGEMENT OF IR£11,743.74 ON 15 JUNE 1995 TO ACCOUNT NO. 1/L/11620/015 (MS LARKIN'S 015 ACCOUNT)

8.01 An analysis of Ms Larkin's bank statements revealed that on 15 June 1995, IR£11,743.74 was lodged to the Larkin 015 account (a 28 days fixed account). This account had been opened by Ms Larkin on 5 December 1994 with a deposit of IR£50,000 transferred from two of Mr Ahern's bank accounts. Some six weeks later (19 January 1995) these funds were withdrawn in cash by Ms Larkin.[1]

8.02 The IR£11,743.74 lodged to this account on 15 June 1995 was withdrawn on 22 June 1995 and lodged to a separate account (the Larkin 031 account), a call/demand account opened by Ms Larkin on that date. The 031 account provided her with easier access to the funds. Ms Larkin told the Tribunal that the transfer was effected for this purpose.

8.03 In the memorandum prepared in advance of her private interview on 14 June 2006, Ms Larkin acknowledged lodging IR£11,743.74, given to her by Mr Ahern '*to pay for part of the fit out on 44 Beresford.*'[2] Ms Larkin did not reveal any foreign exchange element in that lodgement. In the course of his private interview on 5 April 2007, Mr Ahern accepted[3] that the lodgement to Ms Larkin's account on 15 June 1995 included sterling and Irish pounds.

8.04 AIB bank documentation discovered to the Tribunal revealed that the IR£11,743.74 lodged on 15 June 1995 was processed through the foreign exchange desk at the AIB branch at 37/38 Upper O'Connell Street, and that the lodgement consisted of two separate sums, namely IR£9,743.74 and IR£2,000. The handwriting on the lodgement docket showed that the AIB officials, Mr Philip Murphy and Mr Jim McNamara had processed the lodgement. While he did not have any recollection of the transaction, Mr Murphy acknowledged that the lodgement docket indicated that the IR£9,743.74 was likely to be a foreign exchange transaction.

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[1] The Tribunal's inquiries into bank accounts in the name of Ms Celia Larkin were prompted by information provided to it by Mr Ahern's solicitors on 7 February 2005 which included a reference to 'funds' having been transferred into Ms Larkin's bank accounts.

[2] No. 44 Beresford Avenue, Drumcondra, Mr Ahern's home from 1995.

[3] Mr Ahern initially told the Tribunal that he was *'not sure'* that the lodgement was sterling, but subsequently accepted that such was the case.

8.05 In the course of his sworn evidence, Mr Ahern accepted the composition of the lodgement and agreed, as suggested by Ms Larkin, that it was for the payment of bills relating to the refurbishment of No. 44 Beresford Avenue. In the course of her evidence to the Tribunal, Ms Larkin acknowledged (based on the bank documentation) that the lodgement on 15 June 1995 consisted of the Irish pound equivalent of Stg£10,000 and IR£2,000, but she had no recollection of the sterling component or why Mr Ahern had given her sterling on that occasion. Mr Ahern did not recall actually handing over the sterling or Irish pound sums to Ms Larkin which enabled her to make the lodgement in question, but agreed that he *'would have'* counted out the sterling to her.

8.06 The Tribunal learned that by application of one of the published customer buy rate for sterling on 15 June 1995 at AIB, 37/38 Upper O'Connell Street (i.e. 1.0263), a person tendering Stg£10,000 would have received IR£9,743.74 (assuming the IR£5 discretionary commission was not charged). This was the exact amount of the larger of the constituent sums of the lodgement on 15 June 1995. The branch's *'foreign notes held'* account on 15 June 1995 indicated that it had purchased sterling notes to the value of IR£12,798.65 on that day. This allowed for an exchange of Stg£10,000 to have taken place.

THE LODGEMENT OF IR£19,142.92 ON 1 DECEMBER 1995 TO MR AHERN'S 011 ACCOUNT

8.07 A sum of IR£19,142.92 was lodged into Mr Ahern's AIB 28 day fixed deposit account (the Ahern 011 account) at 37/38 Upper O'Connell Street on 1 December 1995.

8.08 This account was originally opened on 11 October 1994 to receive IR£24,838.49. This was the deposit claimed by Mr Ahern as being the fruits of the 'second goodwill loan' of circa IR£16,500 and the Manchester gift of circa Stg£8,000.

8.09 AIB documentation discovered to the Tribunal indicated that the IR£19,142.92 lodgement was processed at the branch's foreign exchange counter. An examination of the bank lodgement docket revealed two figures: IR£19,002.79 crossed out, and IR£19,142.92 inserted in its place. The branch's foreign currency held account for 1 December 1995 recorded purchases of sterling to the value of IR£19,734.04 and that the teller who processed the purchases also processed the lodgement of IR£19,142.92.

8.10 The application of two of the branch's published customer buy rates for sterling of 1 December 1995 revealed that Stg£20,000 sterling exchanged at a

buy rate of 1.0522 (for sums up to the value of IR£2,500) and 1.0445 (for sums up to the value of IR£10,000) produced Irish pound amounts of IR£19,002.79 and IR£19,142.92 respectively, assuming in each case that the discretionary commission of IR£5 was charged. These sums represented the two amounts appearing on the lodgement docket for the lodgement of IR£19,142.92 on 1 December 1995, the former crossed out, and the latter written in its place. The transaction accounted for 97 per cent of the exceptionally large volume of sterling purchased by the branch on that day.

8.11 Mr Ahern acknowledged to the Tribunal that the IR£19,142.92 lodged to his account on 1 December 1995 represented an Irish pound equivalent of Stg£20,000. Mr Ahern told the Tribunal that he had no recollection of how the Stg£20,000 sterling was paid into his account.

8.12 Although Mr Murphy of AIB had no recollection of processing the sterling exchange and the lodgement in question, a note in Mr Ahern's diary for 30 November 1995 indicated that Mr Ahern met with Mr Murphy in St Luke's late on the day prior to the day on which the lodgement was made. It was likely therefore that Mr Murphy either processed the lodgement himself, or arranged for a colleague to do so.

THE LODGEMENT AND WITHDRAWAL OF IR£50,000 BY MS LARKIN

8.13 On 5 December 1994, Ms Larkin opened the Larkin 015 account with a lodgement of IR£50,000, comprised of two sums, IR£28,000 and IR£22,000. The IR£28,000 came from Mr Ahern's Special Savings Account (SSA) the account which he had opened in AIB Upper O'Connell Street on 30 December 1993 with a lodgement of IR£22,500 (the claimed 'first goodwill loan'[4]) and topped up in April 1994[5] to its maximum limit of IR£50,000. The balance of the funds (IR£22,000) lodged to the Larkin 015 account on 5 December came from the Ahern 011 account (according to Mr Ahern, the proceeds of the claimed 'second goodwill loan' IR£16,500 and the circa Stg£8,000 '*Manchester dinner'* donation, but which in fact had its origin in a sterling only lodgement of £25,000 made to the Ahern 011 account on 11 October 1994).[6]

8.14 In her June 2006 memorandum (prepared for her 14 June 2006 meeting with the Tribunal) Ms Larkin advised the Tribunal that the reason for the lodgement of IR£50,000 to an account in her name on 5 December 1994 was to facilitate the expenditure on the fit-out of No. 44 Beresford Avenue. Mr Ahern told the Tribunal that he had decided to rent this house from Mr Michael Wall,

[4] See Section I.
[5] See Section II.
[6] See Section III.

and to contribute up to IR£50,000 to its refurbishment. It was noteworthy that at the time this decision was made, when, it is claimed, funds totalling almost IR£80,000 were made available to Ms Larkin for refurbishment purposes, Mr Wall was only in the process of purchasing the house. The purchase was not completed until March/April 1995, and Mr Ahern did not take up residence there until September 1995. The funds identified in evidence by Mr Ahern and Ms Larkin as having been provided for the refurbishment and fit-out of Beresford, a relatively new house, represented approximately 57 per cent of its market/purchase price.

8.15 On 19 January 1995 Ms Larkin withdrew in cash the IR£50,000 she had lodged to the Larkin 015 account on 5 December 1994. In the course of her private interview on 14 June 2006 with members of the Tribunal's legal team, Ms Larkin provided the following explanation for this withdrawal:

> *' . . . because we were going to do it in piecemeal, as in, you know, buy curtains and to do this, that and the other, we took the money out to hold it in cash. At that point I think the cash may have been kept in St Luke's, I think that is where it was.'*

8.16 Ms Larkin told the Tribunal that the IR£50,000 was withdrawn in cash so as to provide ready access to it to facilitate the expenditure on Beresford on a *'piecemeal'* basis. However, the withdrawal of this money from an AIB 28-day deposit account resulted in a loss of bank interest, and access to the funds by Ms Larkin was rendered more difficult in practical terms. Ms Larkin had easy access to the funds while they were in a deposit account in her own name, but had no immediate access to the cash while it was in Mr Ahern's office safe in St Luke's, Drumcondra, other than through Mr Ahern.

8.17 Ms Larkin stated she had withdrawn the funds from '*the Bertie account'* (the Larkin 015 account) because '*Bertie dealt in cash*' and she thought he '*felt more comfortable*' with cash.

8.18 When initially questioned by the Tribunal as to the circumstances in which the IR£50,000 was withdrawn from her bank account on 19 January 1995, Ms Larkin said that she had no recollection of actually withdrawing the monies or of handing the monies to Mr Ahern. While she claimed that she did not herself have a clear recollection as to the circumstances in which the IR£50,000 was actually withdrawn, Ms Larkin believed that she had withdrawn the money and handed it over to Mr Ahern because Mr Ahern had told her that this was in fact what happened.

8.19 On 24 July 2007, prior to giving evidence, Ms Larkin, through her solicitor, stated the following:

> *When Ms Larkin withdrew IR£50,000 on 19 January 1995 from the First Deposit Account on the instructions of Mr Ahern she collected a bag or parcel from Mr Philip Murphy of AIB on O'Connell Street. Mr Murphy had a bag or parcel ready for collection. Ms Larkin delivered that bag or parcel to Mr Ahern. Ms Larkin does not recollect looking into the bag or parcel and she did not see the contents. Ms Larkin took the contents to be the IR£50,000 cash withdrawal from the First Deposit Account and had no reason to think otherwise.*

8.20 On Day 755 (12 September 2007), when giving sworn evidence to the Tribunal, Ms Larkin explained her improved memory (in contrast to information she had furnished to the Tribunal over a year earlier in her memorandum) on the basis that, following her interview with the Tribunal on 14 June 2006, and discussions with Mr Ahern on the topic, her recollection had improved.

8.21 The Tribunal noted that although Ms Larkin credited Mr Ahern as having assisted her recollection of the events of 19 January 1995, he himself, on Day 762 (24 September 2007) professed to have no particular recollection of the day in question, save that he accepted that she had returned to him in cash the IR£50,000 which had been deposited on his instructions to the 015 account some six weeks earlier.

8.22 In the course of her evidence, Ms Larkin provided a graphic description of being driven to the AIB branch at 37/38 Upper O'Connell Street on 19 January 1995 by Mr Ahern, and of going into the bank while Mr Ahern waited for her in the car, and of returning from the bank with the IR£50,000 in cash, and of being driven by Mr Ahern to St Luke's in Drumcondra, and of her assumption and belief that Mr Ahern deposited the cash in his office safe.

8.23 Mr Murphy, in the course of his evidence to the Tribunal, did not recall the events as described by Ms Larkin, but did not deny that they had occurred as she suggested.

8.24 Ms Larkin told the Tribunal that she had no personal knowledge of a link between the IR£50,000 withdrawn by her on 19 January 1995 and handed to Mr Ahern and the subsequent sterling lodgements on 15 June and 1 December 1995. Ms Larkin said that she had no knowledge of where Mr Ahern obtained the Stg£10,000 or that he had held in his possession any sterling cash. Ms Larkin said that she had no recollection of Mr Ahern giving her Stg£10,000 in cash.

THE PURCHASE OF STG£30,000

8.25 Mr Ahern told the Tribunal that the sums of Stg£10,000 and Stg£20,000 which had, respectively, part-funded the lodgement of IR£11,743.74 on 15 June 1995 and fully funded the lodgement of £19,142.92[7] on 1 December 1995 were sourced from a fund of Stg£30,000, which he maintained he had purchased using some of the IR£50,000 in cash withdrawn by Ms Larkin from the Larkin 015 Account on 19 January 1995, following his request that she return to him the monies which had been lodged to that account on 5 December 1994.

8.26 In his sworn evidence to the Tribunal on Days 756 and 760, Mr Ahern stated that he himself purchased the Stg30,000 at AIB 37/38 Upper O'Connell Street, although he had no actual recollection of the event.[8] However, in evidence given by Mr Ahern later on Day 760, 20 September 2007 (by which time Mr Ahern was aware that AIB, following a request from the Tribunal, had confirmed that its records revealed that there had been no single purchase of Stg£30,000 within the relevant period) he introduced for the first time the possibility that someone other than himself might have purchased the sterling at his request, when he said '*whether* [I did] *that myself or whether I asked somebody to do it for me.'*

8.27 On Day 762, Mr Ahern, in the course of his evidence, stated to the Tribunal:

> '*What I believe I must have done, and this is as I said in my statement a few weeks ago that I was checking, I must have given it to somebody to change for me because I think I would recall if I changed it myself. The only banks I think I would have changed it are Drumcondra or in O'Connell Street. If I didn't change it there, perhaps in Drumcondra I could have changed in smaller amounts, but I'm not sure about that, but I doubt it. I think it's more likely I would have given it to somebody to change for me.'*

8.28 Mr Ahern himself doubted the possibility that he might have exchanged his cash for Stg£30,000 in tranches over a period of time.

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[7] (i) The first explanation to the Tribunal of the lodgement of IR£19,412.92 on 1 December 1995 was in the report prepared by Mr Peelo on Mr Ahern's behalf dated 20 April 2006. Mr Peelo did not refer to any sterling component in that lodgement.
(ii) The first disclosure to the Tribunal of the IR£11,743.74 was in Ms Larkin's statement to the Tribunal on 14 June 2006.
(iii) References by Ms Larkin in her statement to the Tribunal, and in the course of her private interview with the Tribunal on 14 June 2006, to the lodgement of IR11,743.74 did not indicate that it included sterling.

[8] In his private interview with the Tribunal Mr Ahern indicated that this transaction involved Mr Philip Murphy.

8.29 Also on Day 762, Mr Ahern advised the Tribunal that he had checked with the *'limited'* number of people within and outside his office to whom he might have entrusted the task of purchasing Stg£30,000 in cash, and that none of them had confirmed to him that they had done so.

8.30 Prior to Mr Ahern's sworn evidence, the Tribunal sought to establish from AIB if any of its customers had purchased Stg£30,000 at its branch at 37/38 Upper O'Connell Street, Dublin, between 19 January and 15 June 1995. Documentation provided by AIB showed that its branch records for the period in question established a daily average of IR£2,000 in sterling purchases by customers, and that the largest single sterling purchase in this period was the equivalent of IR£9,451.50. The Tribunal was further informed by AIB that its Drumcondra branch records (where Mr Ahern said he occasionally conducted banking business) did not reveal a single sale of Stg£30,000 to a customer within these dates. Mr Ahern confirmed in the course of his evidence to the Tribunal that he had checked with both AIB bank branches and indicated that he agreed that neither branch had conducted a single Stg£30,000 exchange within the said period.

8.31 Mr Murphy of AIB, with whom Mr Ahern usually dealt, had no recollection of a purchase by Mr Ahern of Stg£30,000. Mr Murphy acknowledged that the bank documentation recorded no such transaction.

8.32 The Tribunal was therefore satisfied that neither the AIB branches at 37/38 Upper O'Connell Street nor at Drumcondra had processed a single sale of Stg£30,000 to any customer, including Mr Ahern, within the period in question.

8.33 Neither of Mr Ahern's secretaries in 1995, namely Ms Grainne Carruth or Ms Sandra Cullagh, who were both entrusted on occasions with aspects of Mr Ahern's financial dealings, purchased Stg£30,000 on his behalf. Furthermore, prior to his sworn evidence to the Tribunal, Mr Ahern had not, in fact, asked Ms Carruth whether she had purchased a substantial sterling sum on his behalf in 1995. Ms Cullagh told the Tribunal that Mr Ahern had posed such a query to her approximately six or seven months prior to her giving evidence to the Tribunal.[9]

8.34 Ms Larkin advised the Tribunal that she was unaware of Mr Ahern's claimed Stg£30,000 purchase in 1995.

8.35 Mr Peelo's written report to the Tribunal in April 2006, on Mr Ahern's behalf, advised the Tribunal that the IR£19,142.92 lodged on 1 December 1995

[9] Ms Cullagh gave this evidence to the Tribunal on 19 December 2007.

consisted of unspent funds left over following expenditure of *'some'* IR£30,000 on Beresford which, the report claimed, had been made from the IR£50,000 cash withdrawn by Ms Larkin on 19 January 1995. Mr Peelo's report was silent on any sterling element of this lodgement.

MR AHERN'S EXPLANATIONS AS TO HIS REQUIREMENT FOR STG£30,000 IN EARLY 1995

8.36 On 5 April 2007 Mr Ahern advised the Tribunal that he had instructed Ms Larkin to withdraw IR£50,000 in cash from the Larkin 015 account in January 1995 on the basis that he had decided to allow Ms Larkin and Mr Wall take charge entirely of the Beresford refurbishment, including the utilising of monies (the IR£50,000 which had been lodged into the Larkin 015 account on the 5 December 1994) which Mr Ahern claimed was his contribution to the refurbishment.

8.37 While Mr Ahern stated that this had been his intention, it appeared to the Tribunal, as a matter of logic, that this instruction had the consequence of removing the already *de facto* control and access Ms Larkin had at that time over Mr Ahern's funds by virtue of the fact that as from 5 December 1994 the said funds were in an account controlled by Ms Larkin, whereas from January 1995 they were apparently placed in a safe to which Ms Larkin did not have access.

8.38 To that point in time (5 April 2007) the Tribunal's understanding, as informed from Ms Larkin's memorandum and her interview with the Tribunal on 14 June 2006, was that Mr Ahern, having in the first instance instructed Ms Larkin to open an account (which she did on 5 December 1994) to receive his funds and operate that account as Mr Ahern's contribution to the fit out of Beresford, subsequently instructed Ms Larkin to withdraw the funds so that Mr Ahern himself, who, as stated by Ms Larkin on 14 June 2006 was someone who '*always dealt in cash*', would then contribute to the refurbishment on a piecemeal cash basis, rather than Ms Larkin administering Mr Ahern's contribution via the Larkin 015 account.

8.39 When Mr Ahern was asked to explain why he would provide sterling cash to Mr Wall for the purposes of conducting refurbishment work in Dublin, Mr Ahern stated that Mr Wall '*operated in sterling*.' Mr Ahern stated:

> *'I was going to give it all or partially back to Mick Wall. I was certainly going to give him some of it. I was going to give some of it over for what the house costs would be. We had estimated that it was going to take about 50,000 to do up the house. We couldn't*

do that until we got our hands on the house. And I intended giving him over something, I was going to give it over to him in sterling.'

8.40 On Day 756, 13 September 2007, in the course of reading a statement under oath to the Tribunal, Mr Ahern provided, for the first time, a different reason for his intention to purchase Stg£30,000 and return it to Mr Wall. In that sworn statement, Mr Ahern told the Tribunal that his reason for the purchase of the Stg£30,000 was to reimburse Mr Wall for his earlier provision of approximately that amount for use in relation to Beresford, because he, Mr Ahern, had decided not to proceed with the arrangement to rent Beresford, and intended instead to purchase another house.

8.41 In the course of that sworn statement to the Tribunal, Mr Ahern elaborated as follows:

In 1994, Mick Wall was intending to purchase a residence in Ireland for his own use, he was setting up a business in Ireland, 44 Beresford was identified as a convenient residence. I entered into an agreement with him whereby I would rent the property from him with an option to purchase and he would stay there as when he required. In fact [he] *stayed there 10–20 times while I rented from him and indeed I purchased Beresford from him in 1997 . . . I was anxious to have a residence at the time I became Taoiseach as was then expected within a short period of time. Mick Wall paid a deposit on the property.*

As works were to be carried out on the house he and I agreed that the distribution of those costs. He made this contribution by way of a cash sum, given to me in St Luke's on the 3rd of December 1994, the sum was then lodged on the 5th of December 1994. Having gone from a situation where I was being viewed as a Taoiseach elect and the leader of Fianna Fáil in Government, I went in a short space of time to being a leader of Fianna Fáil in opposition. My circumstances were changing radically and fundamentally over a very short period of time. Having suffered a disappointment of not being elected Taoiseach in strained and unexpected circumstances, the urgency of proceeding with the arrangement in respect of Beresford was removed, indeed I changed my mind about proceeding with the arrangement with Wall in relation to Beresford. During the period after I decided that I was not proceeding with the arrangement with Mick Wall, I looked at a number of other houses which I considered purchasing. I looked at a number of houses in the Beresford Estate, Griffith Avenue area at that time.

Because I'd changed my mind about proceeding with 44 Beresford, and was now actively looking at acquiring a different property, I decided that I should return Mick Wall's contribution to him. In that context part of the

£50,000 that was withdrawn on the 19th of January for its then intended use in refurbishment of the house when purchased was actually used to purchase sterling with the intention of returning it to Mick Wall in light of my then change of mind. Eventually I decided I would not acquire any other house, I recall that after Mick Wall was injured in a car accident, Celia Larkin and I visited him in Manchester. During the visit we discussed the position in relation to Beresford and that we would proceed with the conservatory and refurbishment work. I had thus reverted to the original arrangement with Mick Wall hence the return of Mick Wall's contribution did not take place.

8.42 Mr Ahern told the Tribunal that the reason he changed the information provided to the Tribunal as to the purchase of Stg£30,000 was that in the period following his RTÉ interview in September 2007, and other media coverage relating to his personal finances, *'people'* had pointed out to him that he had actually looked at other houses with a view to purchasing, which was something that he had not personally recollected doing.

8.43 Mr Ahern said:

'The reason for that frankly is when all this was getting a lot of airtime last summer, people were pointing out to me that I did actually go look at houses, and that I did, that I was considering buying a house, people pointed that out to me which I didn't really recollect to be honest . . . .whether it was A, to give him [Mr Wall] *the money so that he could carry out the operation, either with Gerry Brennan or with Celia Larkin or whatever and that I changed it to give him that money, or whether I change it had because it had been subsequently pointed out to me by a number of people after* [I did] *the interview with you that I was still looking around for a house. And that recalled to me that there was a period that I was thinking of not going ahead with it. If it's the first reason or the second reason, it's still the same conclusion, that the reason that I changed the money, some of the 50,000, 30,000 approximately into sterling was either to give it to him to do the job, and finish the job, or to give it to him so that I would move on from the deal. It is either one. And I am not—I wouldn't have elaborated at all on the other one only that it was pointed out to me by a number of people and a number of auctioneers that I did actually look at a number of houses, and of course they brought that to my attention because it got a lot of prominence last year. I wouldn't have entered, raised the issue only for that and maybe I shouldn't have because I created confusion. I am sorry if I did that.'*

8.44 Mr Ahern told the Tribunal that he decided not to acquire any other house because Mr Wall was injured in a car accident, and that following a visit to Mr Wall by Mr Ahern and Ms Larkin he (Mr Ahern) and Ms Larkin made a decision to proceed with the arrangement previously entered into with Mr Wall.

8.45 In the course of examination by Counsel for the Tribunal on Day 760 (20 September 2007) Mr Ahern acknowledged that the 13 September 2007 (Day 756) was the first occasion on which he had advised the Tribunal that the reason for his purchase of sterling (to return to Mr Wall the Stg£30,000 claimed to have been brought to Dublin by Mr Wall on 3 December 1994[10] as his contribution to the renovation and associated costs of Beresford) was because he, Mr Ahern, did not intend to proceed with the arrangement.

8.46 By 13 September 2007 (Day 756) therefore, Mr Ahern had moved from his April 2007 position when he had stated that he had purchased Stg£30,000 sterling to give to Mr Wall to administer his, Mr Ahern's, contribution to the Beresford *'fit out',* to a position where his sworn testimony was that he had purchased Stg£30,000 in order to return to Mr Wall the money Mr Ahern was claiming Mr Wall had given him on 3 December 1994 as Mr Wall's contribution to the Beresford renovation.

8.47 Apparently, neither Ms Larkin nor Mr Wall was informed by Mr Ahern of his possible change of mind in January 1995. Ms Larkin said she was unaware that Mr Ahern had purchased Stg£30,000 to repay Mr Wall the funds advanced by him in connection with Beresford. Some eight days after the withdrawal of the IR£50,000 by Ms Larkin, Mr Wall paid a deposit of Stg£10,800 towards the purchase of Beresford, and was from that time contractually bound to complete the sale.

HOW MR AHERN UTILISED THE FUNDS OF STG£10,000 AND STG£20,000 LODGED TO THE LARKIN 015 ACCOUNT AND THE AHERN 011 ACCOUNT

8.48 The Stg£10,000 which was lodged together with IR£2,000 to the Larkin 015 account on 15 June 1995, and then transferred on 22 June 1995 to a new account - Account No. 1/L/11620/– 031 - (the Larkin 031 account) was intermingled with other funds in that account, and it was a matter of record that withdrawals were made from that account by Ms Larkin to fund expenditure on Beresford. Thus, Mr Ahern's '*fit out*' of Beresford was funded in part at least by the Stg£10,000.

[10] This money, it was claimed, was represented by the lodgement of IR£28,772.90 made to the Larkin 011 account on 5 December 1994 – a claim rejected by the Tribunal. See Section Four.

8.49 The Stg£20,000 which was lodged to the Ahern 011 account on 1 December 1995 remained on deposit until the monies were apparently (having passed through two other accounts of Mr Ahern's) utilised by Mr Ahern to fund or part fund disbursements by way of claimed loan repayments Mr Ahern made in 2006.[11]

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE LODGEMENTS OF IR£11,743.74 AND IR£19,142.92

8.50 Even if the Tribunal had not concluded (as it has) that the lodgement of IR£28,772.90 made on 5 December 1994 to the Larkin 011 account was not the product of an exchange of approximately Stg£30,000, and that in fact the source of this lodgement was a sum of US$45,000, and even if the Tribunal had not concluded (which it has) that, as a matter of probability, Mr Wall did not give Mr Ahern Stg£30,000 on 3 December 1994, the Tribunal nevertheless did not countenance as either credible or logical Mr Ahern's sworn testimony relating to the purchase by him of Stg£30,000.

8.51 If Mr Ahern's claim that Mr Wall provided him with approximately Stg£30,000 on 3 December 1994 had been true, then it appeared to the Tribunal that the logical step for Mr Ahern to have taken, if he was minded to return those funds to Mr Wall, was to instruct Ms Larkin to convert the funds in the Larkin 011 account — the account Mr Ahern, in evidence, claimed was the repository of the money which was claimed to have been provided by Mr Wall on 3 December 1994 — into sterling. That account contained only the money which was said to have been provided by Mr Wall, plus accrued interest. No such instruction was ever given to Ms Larkin.

8.52 The Tribunal did not accept as credible Mr Ahern's claim that he decided to abandon his plan to move into Beresford, and to pay Stg£30,000 sterling to Mr Wall without discussing the issue either with Mr Wall or with Ms Larkin. Both told the Tribunal that they were unaware of Mr Ahern's decision.

8.53 The Tribunal was led to the inevitable conclusion that its inquiries surrounding the lodgement of IR£19,142.92 to Mr Ahern's 011 account on 1 December 1995 and its subsequent inquiries as to the nature and source of the 15 June 1995 lodgement to the Larkin 015 account led to Mr Ahern constructing a Byzantine series of explanations, in an attempt to account for the certain fact that he made or caused to be made lodgements to those accounts which comprised significant sterling sums.

[11] See Sections I and III.

8.54 The Tribunal was satisfied that none of the varying explanations tendered by Mr Ahern was true.

8.55 Furthermore, the Tribunal firmly believed that Mr Ahern, in order to provide an explanation as to the source of the sums of Stg£10,000 and Stg£20,000 that were lodged to accounts in the name of Ms Larkin and himself in June and December 1995 respectively, wrongly identified the January 1995 withdrawal of IR£50,000 as being, in part, the source of these two sterling amounts.

8.56 Accordingly, from its consideration of the evidence, the Tribunal was satisfied that:

1) Mr Ahern did not, as he claimed, purchase Stg£30,000, either directly or through others, in the period 19 January to 15 June 1995.
2) The lodgements of IR£11,743.74 on 15 June 1995 and IR£19,142.92 on 1 December 1995 were unrelated to the IR£50,000 cash withdrawn by Ms Larkin from the Larkin 015 account on 19 January 1995.
3) Mr Ahern failed to account to the Tribunal as to the true circumstances whereby he came into possession of the sums of Stg£10,000 and Stg£20,000 lodged on 15 June 1995 and 1 December 1995 respectively.
4) The origins of the Stg£10,000 lodged on 15 June 1995 and the Stg£20,000 lodged on 1 December 1995 remain unaccounted for.

MR AHERN'S FAILURE TO ACCOUNT FOR THE SOURCES OF IN EXCESS OF STG£70,000 IN THE PERIOD 1994-1995

8.57 The Tribunal noted that the December 1995 Stg£20,000 lodgement to the Ahern 011 account was the last of a series of sterling lodgements (totalling Stg£70,500[12]) evident in bank accounts associated with Mr Ahern in the period March 1994 to December 1995, the true sources of which have not been accounted for by Mr Ahern.

MR AHERN'S USE OF THE IR£50,000 WITHDRAWN BY MS LARKIN ON 19 JANUARY 1995

8.58 In relation to the IR£50,000 cash withdrawal from the Larkin 015 account on 19 January 1995, the Tribunal concluded that some IR£40,000 of these monies, which Mr Ahern claimed were returned to him on 19 January

[12] Including Stg£25,000 found by the Tribunal to have sourced the lodgement to Mr Ahern's AIB account on 11 October1994, the stg£10,000 lodged to the Larkin 015 account on the 15 June 1995 and Stg£15,500 (in total) lodged between March and October 1994 to accounts in the Irish Permanent Building Society (IPBS) held respectively in the names of Mr Ahern and his daughters. The IPBS accounts are considered in Section VI. This figure of Stg£70,500 excludes the Stg£20,000 lodgement to the B/T account (Section VII).

1995, remain unaccounted for by him. Insofar as Mr Ahern can be said to have accounted for any portion of this cash sum, it was that he maintained that a lodgement made by Ms Larkin of IR£9,665 to the Larkin 031 account on 24 July 1995[13] came from that balance. Whether or not this was the case, the Tribunal was satisfied that at the time when he instructed Ms Larkin to withdraw IR£50,000 in cash on 19 January 1995 Mr Ahern had a specific purpose for so doing, but which purpose has not been disclosed to the Tribunal.

[13] See Section VIII.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION VI : MR AHERN'S IRISH PERMANENT BUILDING SOCIETY[1] (IPBS) ACCOUNTS

THE BACKGROUND

9.01 Mr Ahern opened two accounts (a deposit account and a cash extra, hereinafter referred to as a '*cash save'* account) in his own name with the Irish Permanent Building Society (IPBS) in Drumcondra, Dublin 9, on 31 January 1994. Deposit accounts had previously been opened in this branch of the IPBS in the names of Mr Ahern's then minor daughters Georgina Ahern and Cecelia Ahern.

9.02 Prior to giving sworn evidence to the Tribunal, Mr Ahern was asked by the Tribunal to provide an explanation as to the sources of funds lodged to his IPBS accounts between 31 January 1994 and 21 December 1995. The funds, as at 21 December 1995, amounted to a total of IR£39,720.11 funded by nine separate lodgements, exclusive of interest earned. Mr Ahern told the Tribunal that the purpose of opening this account on 31 January 1994 and lodging monies to it from time to time was to build a fund for the purchase of a house. At the same time as Mr Ahern was being asked by the Tribunal to explain the sources of the various lodgements, the PTSB (Permanent TSB, previously the IPBS) informed the Tribunal that it was not in a position to provide any copies of cheques relating to the lodgements.

THE CHEQUE-ATTRIBUTED LODGEMENTS TO THE DEPOSIT ACCOUNT AS QUERIED BY THE TRIBUNAL AND MR AHERN'S EXPLANATIONS

9.03 The IPBS deposit and cash save accounts were each opened with lodgements of IR£2,500. These lodgements were derived from a cheque for IR£5,000, with IR£2,500 being withdrawn in cash and used to open the IPBS cash save account while the balance was lodged direct to the deposit account.

9.04 PTSB provided the Tribunal with the account opening documentation, including the two lodgement slips, but was unable to provide a copy of the IR£5,000 cheque. Mr Ahern said that he had no particular recollection as to the source of the cheque, although he believed that it had been given to him as a political donation. Mr Ahern was asked to explain why he would lodge a portion of a cheque given to him as a political donation into a personal account in the IPBS which he had said was established to enable him to build up a fund to assist in

[1] The IPBS subsequently became Permanent TSB (PTSB).

the purchase of a house. Mr Ahern's explanation was that the IR£5,000 cheque was a '*personal political donation'*. He described such a donation in the following terms:

> *' . . . there are two distinct positions, when a company or an individual gives you money, which is for your constituency or gives you a donation for a constituency use. My practice is that I give it to my constituency and it's always been my practice. But at times, but not many times, an individual would give you money and say it is for your personal use but you tends*[tend] *to use that anyway in, as any politician will do, in expending money on issues in your constituency. So I mean, when I would be asked to buy, to participate in draws or raffles or give donations to humanitarian issues, I would give it out of my own money. I can't take it out of my constituency money.'*

9.05 He further stated:

> *'Well it depends who would actually give it to you. If somebody would give you sometimes a donation, and they would say that is for you, take it. But you'd still end up using it. I mean, in most weekends, I mean, I could spend four or five hundred euros in any weekend around the country in draws for cars, for clubs, for organisations. I have to use my own personal money to do that, every politician does.'*

9.06 The Tribunal was unable to establish the source of the IR£5,000 cheque from which the IR£2,500 lodgement was made to the deposit account on 31 January 1994.

9.07 On 23 March 1994, a cheque payment of IR£7,000 was lodged to Mr Ahern's IPBS deposit account. Mr Ahern told the Tribunal that this represented monies given to him by his late mother. No supporting documentary evidence was provided to indicate the source of this cheque.

9.08 On 23 May 1994 and 12 April 1995, sums of IR£1,000 (representing a cheque for IR£1,434.15 less IR£434.15 taken in cash) and IR£10,060.71 respectively were lodged to Mr Ahern's IPBS deposit account. No documentary evidence was available to explain the source of these lodgements. Mr Ahern told the Tribunal that he believed both represented salary cheques or portions of salary cheques paid to him.

9.09 On 21 December 1995 a cheque payment of IR£5,000 was lodged to Mr Ahern's IPBS deposit account. No documentary evidence was provided to indicate the source of this cheque. Mr Ahern told the Tribunal that it was his best

belief that the cheque represented monies given to him by his brother in connection with the estate of his late father.

THE CASH LODGEMENTS TO THE DEPOSIT ACCOUNT

9.10 Mr Ahern told the Tribunal in correspondence, and again in sworn evidence, that three separate lodgements to his deposit account made on 9 March, 9 May and 28 October 1994, amounting to a total of IR11,608.77, were an accumulation of salary cheques or portions of salary cheques. Mr Ahern had maintained no records in relation to them.

9.11 On 5 March 2008, subsequent to Mr Ahern's sworn evidence to the Tribunal on Day 825 (21 February 2008) relating to his IPBS account, PTSB informed the Tribunal that it was now in a position to provide additional information in relation to a number of the lodgements.

9.12 Information provided to the Tribunal by PTSB indicated that in a seven-month period between 9 March and 28 October 1994, cash sums totalling IR£15,716.20 were lodged to Mr Ahern's and his daughters' deposit accounts. The new PTSB information provided on this occasion indicated a link between these lodgements and sums totalling Stg£15,500 exchanged at the building society's Drumcondra branch. At the same time it provided this information to the Tribunal, PTSB provided the same information to Mr Ahern.

9.13 On 6 March 2008, the Tribunal wrote to Mr Ahern and advised him that his earlier information as to the sources of the IPBS cash lodgements appeared to be inconsistent with the information which had now been furnished to the Tribunal by PTSB. Mr Ahern was asked to confirm whether the lodgements of 9 March, 9 May and 28 October 1994 to his deposit account and the lodgements of 9 March and 9 May 1994 to his daughters' accounts were the proceeds of sterling exchange transactions as indicated in the documents furnished by PTSB to the Tribunal and to Mr Ahern.

9.14 Mr Ahern's response (dated 18 April 2008, some six weeks later) to this letter from the Tribunal was provided on 21 April 2008. He stated:

> *I do not have a clear recollection of the individual transactions in question. However in the light of the information recently provided by Irish Life & Permanent Plc and my efforts to recall the circumstances of that time, in all likelihood the lodgements are the proceeds of sterling exchange(s).*
>
> *Approximately £12,000–£13,000 pounds of the amounts lodged are likely to have been the result of the exchange by me of the proceeds of*

cashed salary/expenses cheques from punts into sterling. The remaining funds constituted sterling amounts accumulated over a number of years in connection with trips to the UK, and also part of the balance of sums won from sporting bets.

In respect of the majority of the sterling amounts, the original Irish punt amounts (which originated only in salary/expenses cheques) were exchanged for sterling with Mr Tim Kilroe, Manchester, United Kingdom. Part of the funds lodged probably resulted from sums of sterling accumulated over time and retained by me. Sterling amounts originally were obtained by exchanging my own money through banks or foreign exchange businesses. At this remove it is not possible to elaborate in any more detail.

. . . . In or around the early 1990s, I contemplated an investment opportunity (being the purchase of an apartment to be constructed) in Salford Quay, Manchester. Ultimately in late 1993, I decided not to proceed with the investment. The investment in question required an initial stake of funds. Between circa 1990 and 1993, I began to set aside cash from my salary cheques in an effort to raise funds for the initial stake. In that regard and within that time period on approximately 6occasions, I exchanged Irish punt amounts for sterling with Mr Tim Kilroe. Each transaction involved sums of between £2,000 and £3,000. I do not believe that any individual transaction exceeded £3,000 to the best of my memory. Eventually I concluded that I would not be in a position to participate in the investment through lack of funds. I retained the sterling amounts in my safe and I now assume I subsequently lodged the monies to my own and to my children's accounts in 1994. It had been my original belief that I had used this money as a float for my trips back and forth to the UK and for the purposes of sterling bets and had not lodged it to my accounts. However after studying the bank documentation, I can only conclude that I must have lodged these monies to my own and my children's accounts.

I have travelled and continued to travel to the UK, particularly Manchester on a regular basis. In that regard and for that purpose I used to retain sums of sterling and, in fact, still do so.

As is well known publicly, I am interested in horse racing and over the years I have placed bets on horse races. Over the period of time in question and subsequently I won various sums of money. Some of these would have been paid in sterling. As noted above, some of this money would have been retained in sterling and consequently it may well have formed part of the funds lodged.

9.15 Mr Ahern was recalled by the Tribunal to give sworn evidence on Days 868 and 869. He confirmed the information provided by him by the Tribunal, as set out in the above extract from his letter, and confirmed that the cash lodgements identified by PTSB as being linked to sterling were *'in all likelihood'* sums exchanged for sterling.

9.16 The information furnished by PTSB on 5 March 2008 and subsequently given in sworn evidence by officials of that organisation confirmed the following:

- On 9 March 1994 a sum of IR£4,119.59 was lodged to Mr Ahern's deposit account. Four minutes earlier, the teller who processed that lodgement exchanged Stg£4,000 for IR£4,119.59.
- On 9 March 1994, the same teller exchanged two amounts of Stg£1,000 cash into two sums each of IR£1,028.40, and the same amounts were immediately thereafter lodged into the accounts of Mr Ahern's then minor daughters.
- On 9 May 1994, a sum of IR£3,518.99 was lodged to Mr Ahern's deposit account. At the same time, two sums of IR£1,000 each were lodged to the accounts of Mr Ahern's daughters. The teller who had processed these lodgements seconds before then processed an exchange of Stg£5,450 cash into IR£5,518.99. The total sum lodged to Mr Ahern's account and to his daughters' accounts, namely IR£5,518.99, was the exact equivalent of the £5,450 sterling exchanged at the same time.
- A sum of IR£3,970.19 was lodged to Mr Ahern's IPBS account on 28 October 1994. In or about the same time, the same teller who processed the said lodgement exchanged Stg£4,000 for IR£3,970.19.

9.17 Mr Blair Hughes, manager of PTSB's Drumcondra branch, confirmed in his evidence that the cash lodgements to Mr Ahern's account on 9 March, 9 May and 28 October 1994, and to his daughters' accounts on 9 March and 9 May 1994, together with a small lodgement of IR£50.63 to Mr Ahern's account on 10 May 1994 were all linked to sterling exchanges amounting to Stg£15,500.

9.18 Lodgement dockets relating to most of the above lodgements were signed by Ms Gráinne Carruth, Mr Ahern's secretary at his constituency office in St Luke's in Drumcondra. In her evidence to the Tribunal, Ms Carruth said that she was unaware that Mr Ahern ever had an account in the IPBS/PTSB's Drumcondra branch, although she was aware that his daughters had accounts there, and she recalled on occasion lodging cash to those accounts for Mr Ahern. She said that she had no recollection of ever lodging sterling sums to any account on behalf of Mr Ahern, although she acknowledged that the relevant lodgement dockets contained her signature.

9.19 Both prior to and in the course of his sworn evidence to the Tribunal, Mr Ahern maintained that he accumulated in excess of IR£50,000[2] in cash savings during the period 1987 to December 1993, and that he had accumulated these savings from his State earnings as Lord Mayor of Dublin, as a TD, and as a Government minister. Mr Ahern told the Tribunal that these savings had been lodged into two AIB accounts in April and August 1994.[3] Mr Ahern at that time made no reference to additional savings. Based on the dates of lodgements into the IPSB accounts (including his daughters' accounts), and if, as claimed by Mr Ahern, these amounts represented cashed salary cheques which were in turn converted into sterling, and allowing for the fact that throughout 1994 Mr Ahern was incurring normal levels of expenditure in his personal life, this suggested that his savings, by early 1994, were significantly greater than IR£50,000–IR£54,000.

9.20 This issue was canvassed with Mr Ahern on Day 868 in the following exchange between him and Mr Desmond O'Neill, Counsel for the Tribunal:

> Q. *'Is it the case, and perhaps I'm wrong in this, Mr Ahern, that you had forgotten about the fact that you had been saving money in sterling or is it the case that you were at all times aware of that but you didn't consider that it was material to the Tribunal's inquiry?'*
>
> A. *'Well what the position was Mr O'Neill, that I had recalled that I had sterling and I think in previous occasions I have said that I had sterling. What I did not think that I ever lodged that sterling. I thought I had used that sterling over the years back and forward to Manchester, I had some holidays in England. I did not think I ever lodged that sterling. And the only time I accumulated, I did not recall that I had that amount of sterling, I did remember changing it but I thought I'd used it up over the years. And I think at all, when I have looked at my accounts originally I had earned over, in the period in question, my gross pay was about, my gross earnings were over £300,000.*
>
> *And when both I and Mr Peelo later and then when we went back over it again in greater detail, it would have. And I think I said this to you on Day 1 in the private sessions and subsequently. That I would have had somewhere between £80,000 and £90,000 remaining. I only remember £54,000 or around £54,000, which I had in sterling, both I put into my daughters' accounts in Irish pounds and the money that I lodged subsequently into an SSA, which we've been through many times. I do not recall lodging what I had in sterling into the accounts. I thought I used that as a float over the years. I do recall, and I did recall, that I had*

[2] This figure was variously referred to by Mr Ahern (or those representing him) as being IR£50,000, in excess of IR£50,000, between IR£50,000 and IR£54,000 or IR£54,000.

[3] See Section II hereof with regard to the claimed cash savings

changed some of my Irish pounds into sterling with Tim Kilroe. It was an idea I had for a while. It just was out of my range, it wasn't possible for me to do it. But that's—so I recall that but I did not recall lodging the money, I still don't recall lodging but I accept that I must have.'

9.21 The '*idea I had for a while'* referred to by Mr Ahern in the preceding paragraph was a reference to an investment opportunity which he said he had considered in the early 1990s. Mr Ahern told the Tribunal that in the early 1990s he had contemplated investing in the purchase of an apartment to be constructed in Salford Quay, Manchester, but that in late 1993 he changed his mind and did not proceed with the investment. Mr Ahern maintained that between approximately 1990 and 1993 he set aside cash from his salary cheques in an effort to raise funds for his initial stake in the Salford Quay investment, and that over this period on approximately six occasions he exchanged Irish pounds for sterling with his Manchester-based friend, Mr Tim Kilroe, and that each transaction involved sums of between £2,000 and £3,000. Mr Ahern told the Tribunal that he retained the sterling sums in his safe, and that it was now his assumption that he subsequently lodged these monies to his own and to his children's accounts in 1994. It had been his original belief that he had used this money as a *'float'* for trips back and forth to the UK, and for the purposes of placing sterling bets on horse races, and had not lodged it to his accounts. Mr Ahern told the Tribunal that following a study of the relevant banking documentation in 2008, he could only conclude that he must have lodged these monies to his own and to his children's accounts.

9.22 In the period March to October 1994, all of Mr Ahern's cash lodgements to his IPBS deposit account were in sterling.

9.23 It was also noteworthy that the Stg£4,000 which funded the lodgement to Mr Ahern's IPBS deposit account on 28 October 1994 was banked approximately two weeks after Mr Ahern lodged Stg£25,000 to an AIB account, on 11 October 1994.[4] Adding these sums together, Mr Ahern had available to himself Stg£29,000 within a two-week period[5].

[4] See Section III hereof

[5] For a consideration of another sterling lodgement made on 26 October 1994 see Section VII – the 'B/T account'.

WINNINGS FROM BETS ON HORSE RACES AS A SOURCE OF MR AHERN'S FUNDS

9.24 In the statement furnished to the Tribunal dated 18 April 2008, Mr Ahern advised the Tribunal for the first time that some of the funds lodged to the IPBS accounts might have been winnings from betting on horse racing. Mr Ahern stated the following:

> *As is well known publicly, I am interested in horse racing and over the years I have placed bets on horse races. Over the period of time in question and subsequently, I won various sums of money. Some of these would have been paid in Sterling. As noted above, some of this money would have been retained in Sterling and consequently it may well have formed part of the funds lodged.*

9.25 In the course of this statement, Mr Ahern also commented as follows (referring to the IPBS lodgements): '*The funds in question were not loans or donations. No person 'paid' this money to me with the exception of any monies I may have accumulated on sporting bets.'*

9.26 Mr Ahern confirmed the accuracy of the information provided in his statements to the Tribunal in the course of his sworn evidence on Day 868. Mr Ahern also confirmed in his evidence that he did have a clear recollection of having '*a few good wins over the years including one or two successful bets in 1996'*. He said he was certain that he lodged the 1996 winnings, the proceeds of which were in sterling, into his daughters' accounts.

9.27 Mr Ahern told the Tribunal that lodgements made to his daughters' accounts in 1996 (which were not the focus of inquiry by the Tribunal) consisted of about £8,000 from his sterling winnings at horse races in 1996.

9.28 In the course of his sworn evidence to the Tribunal on the following day, Mr Ahern said that having had the opportunity to check the position overnight, he was now stating that the figure of Stg£8,000 he had previously referred to as having funded lodgements to his daughters' accounts in 1996, and which he had sourced to winnings at horse races, was an incorrect figure, and was in fact two sums totalling Stg£5,500, and that, rather than the entire of the sum having been sourced to winnings (as he had previously stated), it was now his position that the funds may not have all been sourced to betting winnings. He added: '*. . . the one I recalled, it may not be all bets but certainly I would have had two or three bets. Three bets in 1996 that I recall.*'

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE IPBS LODGEMENTS

9.29 The Tribunal rejected Mr Ahern's contention that he had no recollection of lodging or causing to be lodged the Irish pound equivalent of Stg£15,500 over a period of approximately seven months in 1994 to his own account and to his daughters' accounts.

9.30 The Tribunal rejected as improbable Mr Ahern's evidence that having cashed (or caused to be cashed) his salary and expenses cheques, he intermittently conveyed that cash to the UK and there converted the cash into sterling, and then brought the sterling amounts to Dublin and there held them in his safe.

9.31 The Tribunal rejected Mr Ahern's evidence that he had saved money towards the purchase of an investment property in Manchester. It was particularly noteworthy that in his evidence prior to April 2008, Mr Ahern's only reference to property purchase was in relation to the purchase of a house in Dublin. Mr Ahern (prior to April 2008) made no reference to his intention, in the period 1990-1993, to purchase an investment property in Manchester or to his claim that he exchanged sums of Irish punts for sterling during this period for the purposes of saving sterling to fund that purchase.

9.32 Prior to April, 2008, when Mr Ahern was questioned by the Tribunal in relation to the Tribunal's then recently discovered information which suggested that lodgements to his, and his daughters IPBS accounts had been funded by sterling cash, Mr Ahern never made reference to any such accumulation of sterling.

9.33 In particular, it was noteworthy that when Mr Ahern gave evidence to the Tribunal in relation to the Manchester collection of approximately Stg£8,000 in a hotel owned by his friend the late Mr Kilroe he did not make any reference to the fact, as contended by him, that he regularly exchanged punts for sterling with Mr Kilroe on his visits to Manchester.

9.34 The Tribunal did not believe it to be credible that, if Mr Ahern's contention as to the source of the sterling was indeed correct, he would not have lodged the entire of the sterling cash into his IPBS deposit account or into another of his accounts by January/February 1994 at the latest. It was not credible that an accumulation of sterling savings would have been *'drip fed'* into his IPBS account over a period of months in the circumstances suggested by him. It therefore followed as a matter of probability that the sterling sums identified as the source

of the IPBS lodgements did not come into his possession in the period 1990–3, as he maintained.

9.35 The Tribunal was satisfied that no sterling cash fund, such as that described by Mr Ahern in evidence on Days 868 and 869, was accumulated by him in the years 1990 to 1993. In his earlier evidence to the Tribunal, Mr Ahern stated that all his accumulated savings (as of late 1993) which he stated amounted to IR£50,000 (or thereabouts) had been lodged to AIB accounts in April and August 1994[6]. Mr Ahern did not then maintain that he had also accumulated a significant sum in sterling or that he was saving money to invest in a Manchester property.

9.36 The Tribunal found it impossible to believe, if in fact such sums had been accumulated in the manner described by Mr Ahern, that he would have forgotten (as he claimed) that significant amounts of sterling accumulated for investment purposes were in fact lodged into bank accounts and not therefore used as a *'float'* for occasional trips to the UK.

9.37 Because the circumstances whereby he came into possession of the sterling sums lodged to his and his daughter's IPBS accounts remain unaccounted for by Mr Ahern, the Tribunal was unable to determine the source or sources of same.

[6] The Tribunal has found that while Mr Ahern did make lodgements totalling IR£50,000 in April and August 1994 no such cash savings had been accumulated by end 1993 - See Section II hereof

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION VII : THE B/T ACCOUNT

THE BACKGROUND

10.01 Mr Padraic O'Connor told the Tribunal in the course of his private interview with the Tribunal that it was his recollection that when Mr Richardson approached him in December 1993, seeking a financial contribution for Mr Ahern,[1] Mr Richardson was seeking similar contributions from other companies, and he had a vague recollection that Mr Richardson mentioned a competitor firm as one of these. Subsequently, in his sworn evidence to the Tribunal, Mr O'Connor doubted that Mr Richardson had mentioned an approach to any other stockbroking firms, and stated that it was now his belief that the issue of Mr Richardson approaching another stockbroking firm may have arisen in discussion between himself and his colleagues following Mr Richardson's approach to him. Mr Richardson denied making any such suggestion to Mr O'Connor.

10.02 Consequent upon what Mr O'Connor said in the course of his private interview, the Tribunal conducted a limited inquiry into this issue in relation to the years 1993 and 1994. While this limited inquiry did not reveal any other payments from stockbroking firms, the Tribunal learned, independently of that inquiry, that Davy Stockbrokers made a political contribution of IR£5,000 to Mr Ahern by cheque, dated 11 November 1992. Davy Stockbrokers' cheque journal recorded the cheque as a payment to '*BA*.' There was no evidence linking Mr Richardson to this payment.

10.03 The details on a copy of the Davy Stockbrokers' cheque provided to the Tribunal established that the cheque had been lodged to account no 2352605737 held in the Drumcondra branch of the Irish Permanent Building Society (IPBS).[2]

10.04 Having discovered that the ultimate destination of the Davy IR£5,000 cheque to Mr Ahern was an IPBS account, the existence of which had not previously been disclosed to the Tribunal, the Tribunal sought to ascertain if Mr Ahern had any beneficial ownership or use of this account. The Tribunal wrote to Mr Ahern on 30 November 2007. In the course of his sworn evidence to the Tribunal on Day 805 (21 December 2007), prior to replying to this correspondence, Mr Ahern acknowledged receipt of the Davy IR£5,000 cheque

[1] See Section I
[2] Later Permanent TSB (PTSB).

in November 1992, and indicated that the cheque might have been lodged to '*either the Building Trust or the house account*.' Mr Ahern told the Tribunal that the IR£5,000 payment was a political donation '*in the context of the* [1992] *general election.'*

10.05 The Tribunal proceeded to examine this account for the purposes of establishing if Mr Ahern had any beneficial ownership or use of the account.

10.06 The title of the account in the IPBS was '*B.T.'*[3] On the documentation relating to the opening of the account (which was signed by Mr Tim Collins), under the heading '*FIRST NAMES MR, MRS, MISS, MS*' was handwritten '*B.T.*' The space for the surname details was left blank.

THE OPENING OF THE B/T ACCOUNT

10.07 The B/T account was opened as a share (deposit) account at the IPBS branch at Drumcondra in Dublin by Mr Tim Collins, a close friend and associate of Mr Ahern, on 6 June 1989, with two cash lodgements of IR£5,000 and IR£2,285.71, which were processed by the bank one minute apart.

10.08 When opening the account Mr Collins signed the following written declaration: '*I hereby declare that this investment is my own property and that it is not made as nominee for any other individual or company.'*

10.09 The effect of this declaration was to confirm the B/T account to be the personal account of Mr Collins.

10.10 The address on the account was stated to be *'C/o IPBS, 130 Drumcondra, D.9.'* Mr Collins also directed IPBS to permit withdrawals from the account on his signature only.

10.11 The effect of the address on the account being the building society's own address was that no correspondence or statements relating to the account would leave the branch.[4]

[3] Documentation provided by PTSB indicated that, although the account's formal title was '*B.T.* — based on the account opening documentation—in most instances, including all the bank's computer records, it was referred to as '*B/T.'* On occasions (for example in handwritten lodgement documentation) the account was referred to as '*BxT'*, or '*BT.'* In one instance a lodgement identified the account as *'T Collins.'* Unless otherwise stated the title of the account in this Section is referred to as the B/T account.

[4] On 21 October 1994, a formal letter from Irish Permanent Plc enclosing a share certificate representing an allocation of free shares in that company was, in relation to the B/T account, addressed to - Mr Collins' home address.

10.12 Mr Collins told the Tribunal that the B/T account was not his personal property, and that it had been established as a '*sinking*' fund and/or a '*rainy day*' fund for use in the upkeep and maintenance of the St Luke's building in Drumcondra. The Tribunal was also advised that the account had been set up as a trustee account and that he was a '*trustee'* of same, notwithstanding the fact that the documentation relating to the opening of the account indicated that the account was his personal account. The other trustees were named as Mr Joe Burke, the late Mr Gerry Brennan, the late Mr Paddy Reilly and the late Mr Jim Keane.

10.13 Mr Collins was unable to explain to the Tribunal why the account had been set up in this manner, and why the address on the account was the building society's own address rather than the constituency office, St Luke's, in respect of which it was claimed that the account was intended to benefit.

10.14 Mr Ahern, Mr Richardson and Mr Burke also told the Tribunal that the purpose of the B/T account was to accumulate funds for the upkeep and maintenance of St Luke's, Drumcondra, and to ensure that the building ultimately passed to the Fianna Fáil Party without any liability arising on the part of the trustees of St Luke's. It was their belief that the account was to be funded by lodgements from contributors, golf classic fundraising events, and unneeded funds diverted from other constituency accounts or funds surplus to election contribution requirements. The account was, they contended, a constituency account but with a particular purpose associated with the building itself.

10.15 Mr Burke confirmed to the Tribunal that he was one of the '*trustees'* of the *'Building Trust'* account. He told the Tribunal that the decision to open the account was taken by a number of persons and that it was left up to Mr Collins as secretary of '*the organisation'* to open the account. Of particular concern to the members of the house committee of St Luke's in 1989, was the fact that the St Luke's building required extensive structural works to maintain it,[5] and it was therefore necessary to put money aside for this expenditure.

10.16 No contemporaneous written note or document of any nature was created in relation to a '*Building Trust'*, or in relation to the opening of the account, save the building society documentation.

[5] Mr Richardson referred to the need to undertake work to stabilise the building's foundations, and of there being '*ongoing work for a number of years.'*

10.17 Dublin Central constituency officials Mr Dominic Dillane[6] and Mr J. J. Murphy[7] also understood that the account had been established and maintained for this purpose (namely, the maintenance of the St Luke's building). The two men were added as signatories to the account in January 2008, after the Tribunal's discovery of its existence, at which time the account was re-named the: '*Building Trust/House Committee Account.'*

10.18 The only '*Trust*' document provided to the Tribunal relating to St Luke's was the Declaration of Trust made on 18 May 1988, at the time of the acquisition of St Luke's, which named the Trustees as Mr Des Richardson, Mr James Keane, Mr Tim Collins, Mr Paddy Reilly and Mr Joe Burke. These were not the same trustees as the named '*trustees*' of the '*building trust.'*

10.19 Mr Collins told the Tribunal that he had never been a member of the Fianna Fáil Party or any party cumann. Mr Collins said that he '*was just helping out*' in allowing himself to be the account holder for a Fianna Fáil account. Mr Collins said he did not know of the CDC [8] or what those letters stood for. Of the officers of the Dublin Central CDC in the period 1988 to 1996, he knew only one, Mr Chris Wall.

10.20 No cogent explanation was received by the Tribunal from either Mr Ahern, Mr Burke or Mr Collins as to why, in circumstances where, as they maintained, the account was opened for the benefit of St Luke's, Mr Collins had chosen to open the B/T account in his name alone, and with himself as sole signatory, rather than in the names of the individuals cited in the St Luke's Declaration of Trust or indeed in the names of the claimed *'trustees'* of the '*building trust'*, Messrs Collins, Burke, Brennan, Reilly and Keane. Nor was any cogent explanation provided for Mr Collins' failure to declare, when opening the account on 6 June 1989, that he was holding the B/T account as a '*trustee*' of the St Luke's '*Building Trust'*, or in a representative capacity, rather than declaring the account to be his own as he did.

10.21 Equally puzzling was the fact that in late 1994, at a time when Mr Collins said he had ceased to be active in St Luke's, he directed the IPBS to forward the B/T account related mail to his home address, rather than to St Luke's.

[6] Appointed treasurer of the CDC - Fianna Fáil Dublin Central Comhairle Dáil Cheantar - and a member of the house committee in 2001.
[7] Appointed second treasurer of the CDC and a member of the house committee in 2005.
[8] Comhairle Dáil Cheantar.

10.22 At the time of the opening of the B/T account, there was already in existence a bank account which had been used, and would continue to be used, to defray expenses (including capital expenses) associated with St Luke's. Approximately 18 months prior to the opening of the B/T account, the CODR deposit account had been opened, in advance of the purchase of St Luke's, with a lodgement of IR£22,955.13 transferred from the CODR current account. Monies held in the CODR accounts were used to fund the purchase of the building in 1988, and were used to fund structural works carried out on St Luke's in 1990. At that time sums of IR£30,000 (July 1991) and IR£5,000 (August 1991) were withdrawn from the CODR account to pay for such works. Moreover, the day-to-day running expenses of St Luke's were being met from the 'Bertie Ahern and Joseph Burke Constituency Office No. 1 A/c'[9] (hereinafter referred to as the Constituency No. 1 account). It was noteworthy to the Tribunal that neither the CODR account nor the Constituency No. 1 account appeared to have been 'trust' type accounts.

10.23 Mr Burke, when queried (in light of the foregoing) as to the need for a 'building trust' account, sought to justify the opening of the IPBS account in June 1989 on the basis that the funds going into this account were to be used for any '*ongoing repairs that would be required to St Luke's.'*

10.24 Mr Burke's evidence in this regard, and indeed the evidence of Mr Ahern and Mr Collins regarding the purpose of the B/T account, was, in the view of the Tribunal, inconsistent with events which occurred in 1999. In that year, a mortgage of IR£80,000 was taken out to pay for works apparently undertaken in 1991 and 1997. This loan was taken at a time when the B/T account had on deposit approximately IR£36,000, and at a time when it was claimed that the account was owed IR£30,000 as a result of a claimed loan made from the account in 1993 (see below). According to Mr Ahern, the ultimate cost of the repair works carried out was IR£89,000, but no recourse was made to the B/T account to fund any part of this expenditure. Indeed, monies which remained owing as a result of works carried out in 1991 were discharged from the mortgage taken out in 1999, again without any recourse to the B/T account. Furthermore, between 1989 and 2001 (according to the PWC report), significant expenditure on the upkeep of St. Luke's was discharged from the CODR account (IR£30,000 paid to builders in July 1991, IR£5,000 paid for roofing work in August 1991 and IR£5,000 paid for painting and decorating in October 1995).

[9] CODR was an abbreviation of Cumann O'Donovan Rossa. However, the account had nothing to do with the operation of the Cumann.

THE OPERATION OF THE B/T ACCOUNT

10.25 The documentation obtained by the Tribunal from PTSB established that following the opening of the account on 6 June 1989, a number of transactions took place on the account between that date and July 1995. From October 1995 to 2007, the account was effectively dormant (save for interest accruals).

10.26 Mr Collins testified that he had no dealings with the B/T account from 1995 until January 2008, when he requested a mandate form from the IPBS for the purpose of adding two other signatories to the account (members of Dublin Central CDC) and for the purpose of renaming the account as the '*Building Trust/House Committee Account*.'

10.27 The Tribunal was satisfied that this action was taken by Mr Collins, most probably after discussion with Mr Ahern, as a direct consequence of the Tribunal raising queries in November 2007 concerning the nature and purpose of the account.

10.28 Following the Tribunal's correspondence with Mr Ahern about the account, in late February 2008 the Tribunal was furnished with a document prepared by PriceWaterhouseCoopers (PWC) on the instructions of Mr Ahern in January 2008. Mr Denis O'Connor of PWC recorded Mr Ahern's instructions as follows: '*This account was set up in June 1989 to administer funds for the maintenance and upkeep of the property known as 'St Luke's.'* The PWC document was prepared on Mr Ahern's instructions as '*an Income and Expenditure Account for the Building Trust Account.'* It sought to reconcile the lodgements and withdrawals made on the B/T account from 1989 to 1995.

10.29 In the course of his evidence, Mr O'Connor acknowledged that with the exception of the one contemporaneous third party document (a cheque drawn on the account on 30 March 1993) which had been produced to PWC, the sources of information which were used to back PWC's reconciliation of the various lodgements and withdrawals on the B/T account were handwritten notes and oral updates provided by Mr Ahern in the course of two meetings and one telephone conversation in January/February 2008. Save for the aforementioned cheque and the undated compliments slip accompanying the Davy Stockbrokers cheque for IR£5,000, dated 11 November 1992, which stated '*Bertie, best of luck in the election Robbie K.'*, no contemporaneous source documentation was ever provided to Mr O'Connor.

10.30 Mr Ahern, in evidence, acknowledged that he was unable to give Mr O'Connor contemporaneous source materials to back the lodgements and withdrawals from the B/T account for the relevant period.[10] However, Mr Ahern claimed that through discussions with '*constituency officers*' in St Luke's, he had assembled information with which to brief PWC as to the source of most or all of the lodgements made to the account in the period 1989 to 1995 and as to the purpose for which withdrawals were made in the same period.

THE LODGEMENTS[11] TO THE B/T ACCOUNT 1989 TO 1995

10.31 The Tribunal established that the opening lodgement of IR£7,285.71 to the B/T account comprised two cash sums, one of IR£5,000 and one of IR£2,285.71. The second cash sum of IR£2,285.71 may have been a foreign currency sum exchanged for Irish pounds at that time. Neither Mr Collins nor any other witness was in a position to assist the Tribunal in identifying the sources of these cash sums. Mr Ahern raised with PWC the possibility that the uneven sum was linked to sterling.

10.32 In all, in the period from 6 June to 31 July 1989, nine lodgements totalling IR£15,135.71 were made to the B/T account, five of which were attributed in the PWC analysis as cash lodgements, and four as cheque lodgements.

10.33 Mr Collins, as the sole signatory on the account, claimed that he had no knowledge of the source of these lodgements save to state that they may have been General Election contributions. Notwithstanding this, PWC, on the basis of information from Mr Ahern, attributed the lodgements to named individuals/companies (claimed by Mr Ahern and Mr Collins as possibly being political donations made in the course of the 1989 General Election campaign). No third party contemporaneous documentation was provided to the Tribunal to verify the source of these lodgements.

10.34 On 29 May 1989, as verified by documentation furnished to the Tribunal by Fianna Fáil, some eight days prior to the opening of the B/T account another account was opened in AIB Drumcondra with the title '*Fianna Fáil NC Election Account.*'[12] The addressees on this account were Mr Ahern and Mr Burke and the address was '*C/o AIB, Drumcondra Road, Dublin 9.'* This other account was apparently opened to receive election contributions. Also in existence by 6 June 1989 was the account of Dublin Central CDC.

[10] With the exception of the Davy compliments slip.
[11] A lodgement of IR£20,000 on 26 October 1994 is considered separately below.
[12] A General Election was held on 15 June 1989

10.35 Three cheque lodgements of IR£5,000 each were made to the B/T account in 1990, 1991 and 1992. Mr Ahern told the Tribunal that these payments, from a named individual, were political donations.

10.36 On 25 August 1992, IR£19,000 was lodged to the B/T account. Bank documentation confirmed that this lodgement consisted of an IR£20,000 cheque less IR£1,000 withdrawn in cash. The source of the IR£20,000 was said to be a golf classic fundraising event. No evidence or explanation was available to the Tribunal as to the breakdown of this figure of IR£20,000, or the reason for the IR£1,000 cash withdrawal. Mr Collins was unable to explain how a golf classic fundraising event, which necessarily involved the accumulation of funds from a number of individuals or companies providing contributions of between IR£250 and IR£1,000, produced a single round figure cheque of IR£20,000.

10.37 On 18 July 1995, a cash lodgement of IR£10,000 was made to the account. No explanation or documentation was provided to the Tribunal as to the composition of this figure. The Tribunal was told that it related to the proceeds of a golf fundraising event at St Ann's Golf Club in Clontarf.

10.38 Documentation was provided to the Tribunal wherein reference was made to an '*inaugural Dublin Central Constituency Golf Classic'*[13] held in St Ann's Golf Club, Clontarf on 13 October 1997. Neither Mr Collins, nor any other witness, was in a position to explain why a golf classic fundraising event was described as being an '*inaugural'* golf classic in 1997 if, in fact, lodgements totalling IR£29,000 were attributable to such events two and five years previously.

10.39 With regard to the August 1992 lodgement of IR£19,000 to the B/T account, in the absence of backing documentation, and having particular regard to the fact that this lodgement comprised a single cheque for IR£20,000, the Tribunal considered it unlikely that this cheque lodgement was indeed the result of a golf classic, and to this extent, the source of this sum of IR£20,000 remains a mystery.

10.40 Equally, in the absence of any comprehensive explanation or contemporaneous record, the Tribunal was unable to conclusively determine the source of the 1995 IR£10,000 cash lodgement to the B/T account.

[13] This reference was contained in an undated letter addressed to 'Tony', from Mr Paul Kiely, Director Elections, Dublin Central Constituency (with its address at St. Luke's). The letter also referred to a commitment to eliminate the 'constituency debt', as soon as possible. At that time, there was in excess of IR£35,000 in the B/T account.

10.41 In 1993, IR£10,000 was lodged to the B/T account in two cheques, the cheque of 11 November 1992 for IR£5,000 from Davy Stockbrokers (already referred to) and a second cheque, identified by Mr Ahern as a political donation made to him by a third party, also in the course of the 1992 General Election. Mr Ahern told the Tribunal that it was the '*house committee'* which made the decision to lodge these monies to the B/T account. Mr Ahern said (referring to the '*house committee')*: *'they didn't require it for election purposes so they put it into that account. And that was their call to do it.'*

10.42 Mr Collins told the Tribunal that the five members of the '*house committee'* made the decision to lodge cheques into the '*Building Trust'* account as part of a process of accumulating a sinking fund for St Luke's.

10.43 Mr Collins claimed to have no recollection of discussing the Davy cheque or the other cheque with Mr Ahern, or of discussing into which account they might be lodged. On balance, the Tribunal did not accept that Mr Ahern was a stranger to the decision made to lodge the two cheques to the B/T account.

10.44 A General Election current account was opened in the name of '*Tim Collins/Fianna Fáil Election Account*' in AIB on 13 November 1992. This account was opened with an initial lodgement of IR£700. It appeared to be the only General Election account opened in 1992 connected with Mr Ahern's election campaign. Contrary to the situation in 1989, Dublin Central CDC opened an election account in 1992, with its addressee stated to be the CDC Joint Honorary Treasurer.

10.45 An analysis of this 1992 *'TC/Fianna Fáil'* election account established that for the period November to December 1992 the largest single lodgement was IR£2,500. For the month of November, lodgements ranged from approximately IR£100 to IR£1,000, with only two lodgements of IR£2,000. By 10 December 1992, the balance in the account stood at IR£28,478.25. Mr Collins was unable to assist the Tribunal as to whether the size of the Davy cheque and indeed the other IR£5,000 cheque had been a factor in the decision to lodge these monies to the B/T account, rather than to the '*TC/Fianna Fail*' account.

THE WITHDRAWALS[14] FROM THE B/T ACCOUNT BETWEEN 1989 AND1995

10.46 There were seven withdrawals from the B/T account between 1989 and 1995.

[14] A withdrawal of IR£20,000 is considered separately below.

10.47 On 31 July/1 August 1989 two cash sums, of IR£300 and IR£2,700, were withdrawn. The Tribunal was told that these cash withdrawals related to '*election costs'* and a '*post election function for Cumann members'* respectively.

10.48 There were cheque withdrawals of IR£1,000 on 30 March 1990 and IR£4,000 on 3 August 1990. These were attributed in the PWC document respectively to '*printing'* and the '*St Luke's opening function for FF organization/Cumann members.'*

10.49 Mr Collins, as the sole individual authorised to make withdrawals from the '*building trust'* account, was unable to explain to the Tribunal why General Election and entertainment expenses were being funded from an account being maintained as a long-term contingency fund for St Luke's, at a time, August 1990, when the 1989 '*Fianna Fail NC Election Account*' account boasted a credit balance in excess of IR£24,000.[15] The account addressees were stated to be Mr Ahern and Mr Burke.

10.50 On 21 July 1992 a sum of IR£29.99 was withdrawn and a cheque withdrawal of IR£3,000 was made on 31 July 1992 which was attributed to the '*summer function FF Cumann — local organization.'*

THE TWO IR£20,000 TRANSACTIONS IN 1994

10.51 On 26 August 1994, IR£20,000 in cash was, in effect, withdrawn from the B/T account.[16] Some two months later, on 26 October 1994, IR£20,000 cash was lodged to the B/T account. The PWC document prepared in January 2008 described the reason for the withdrawal as '*building renovation — works subsequently cancelled.'*

10.52 On 5 March 2008, PTSB informed the Tribunal that the IR£20,000 which had been lodged to the B/T account on 26 October 1994, was immediately preceded by a purchase by the same teller of Stg£20,000. It appeared therefore that the immediate source of the IR£20,000 lodgement was Stg£20,000 cash, exchanged for Irish punts at parity.

10.53 In January 2008, PWC described this lodgement as *'refund re cancellation of building renovations*.'

[15] At the time of the 3 August 1990 withdrawal of IR£4,000 for what was claimed to a be St Luke's *'opening function',* the Constituency No.1 account—intended to meet the day to day expenditure requirements of St Luke's—was overdrawn to the extent of IR£5,022.08. The CODR account - the account intended to meet the capital expenditure requirements of St Luke's—had a balance of IR£27,617.74 .

[16] By way of a cheque drawn by Mr Collins.

10.54 Mr Collins, Mr Burke and Mr Ahern all claimed that the August 1994 withdrawal was necessitated by the need to undertake structural repair works on St Luke's which, as stated by Mr Collins, was in danger of '*sinking*' in 1994. The Tribunal was told that the person entrusted with organising the repair works on the building was Mr Burke, because of his experience as a builder. The money was withdrawn in cash and made available to Mr Burke, in advance of any work being carried out on the house, and before the precise nature and extent of the work required or any potential contractors had been identified, in order to put him in a position to have the work done quickly and to be in a position to pay the contractors.[17] Mr Collins claimed that after withdrawing the IR£20,000 cash, he left the money in St Luke's for collection by Mr Burke. While Mr Collins claimed to have no recollection of the details of the handover of the money, he recollected that when leaving the money in the office of St Luke's he said to the person in the office, '*make sure Joe Burke gets that*.' Mr Collins '*imagined*' that Mr Burke had picked up the money. Mr Collins said that he had no recollection of being advised by Mr Burke what he did with the money.

10.55 Mr Burke told the Tribunal that following the withdrawal of IR£20,000 and the provision of that money to him in August 1994, it was realised that the work needing to be done on St Luke's was more complex than had earlier been contemplated, and that professional advice would be required in advance of the work being undertaken. In fact, no repair work was carried out to St Luke's in 1994. As already stated, no such repair works were carried out on St Luke's until 1999, some five years later.

10.56 According to Mr Burke, a decision was made to defer the structural work of St Luke's, and to return the IR£20,000 into the B/T account. A sum of IR£20,000 was lodged to the B/T account on 26 October 1994. Mr Burke told the Tribunal that this lodgement represented a payment into the account of a sum equal to the IR£20,000 withdrawn in cash approximately two months earlier. It was his belief that he left a sum of twenty thousand pounds in cash in St Luke's for collection by Mr Collins. Mr Collins, however, had no recollection of collecting the money or lodging it to the account.

10.57 The information provided by PTSB to the Tribunal indicated that the IR£20,000 lodged to the B/T account on 26 October 1994 represented an exchange from Stg£20,000. When asked to explain why the money had been returned by him in sterling, Mr Burke said that he was '*kind of stumbled as to say did I or didn't I'* return the money in sterling. He said it was possible that he may have done so, and that the money was probably sterling held by him in

[17] Mr Ahern told the Tribunal that IR£45,000 was still owed to a contractor at this time for work done to St Luke's prior to 1990.

connection with his public house refurbishment business, and his related purchase of memorabilia and salvage material in England. Mr Burke did not explain what he had done with the IR£20,000 that had been withdrawn two months earlier, other than to say that he had spent some of it.

10.58 No records were generated or maintained by Mr Collins, Mr Burke or anyone else in relation to the two IR£20,000 cash transactions.

10.59 Mr Ahern told the Tribunal that he was unaware, until apprised in March 2008 by the Permanent TSB, that the IR£20,000 lodged to the B/T account on 28 October 1994 had been a sterling lodgement.

THE LOAN OF IR£30,000 IN 1993

10.60 On 30 March 1993, IR£30,000 was withdrawn from the B/T account to fund a bank draft payable to a solicitor, Mr Patrick O'Sullivan (now deceased), in relation to the purchase of a house in Dublin occupied by elderly relatives of Ms Celia Larkin.

10.61 Based on information provided to it, PWC described the IR£30,000 withdrawal from the B/T account as a '*staff loan to family of employee.*' Mr O'Connor of PWC advised the Tribunal that he had given the withdrawal this description on the basis of information provided to him by Mr Ahern.

10.62 In 1993, Ms Larkin, who was Mr Ahern's partner at that time, was employed as a civil servant in the Department of Finance, and was also a constituency worker in St Luke's, Drumcondra.

10.63 Ms Larkin advised the Tribunal that in 1993 she decided to purchase a house which her elderly relatives were then renting as their family home, in order to provide them with security of tenure for their lifetimes. Ms Larkin said that she had spoken of her relatives' predicament, and their anxiety about keeping their home, with the late Mr Brennan, solicitor and with Mr Burke and Mr Collins. She said that she had not sought financial assistance. Sometime later Mr Brennan telephoned her to advise her that the house committee of St Luke's had decided to advance her a loan to facilitate the purchase of her relatives' house. It was Ms Larkin's understanding that the loan had been made available to her by the trustees of St Luke's, from an account known as the Building Trust account which she understood to be in existence for the purpose of providing funds for the renovation of St Luke's. Ms Larkin understood, from her discussions with Mr Brennan, that the loan of IR£30,000 was being made available to her '*at no cost*

to the account'[18] and was repayable on the death of the last of the three tenants in the property or when called upon by the trustees to repay the loan or in the event of the house being sold or there being a *'change of status'* in relation to the house.

10.64 Mr Burke and Mr Collins emphasised that the loan to Ms Larkin was made on humanitarian grounds. They assumed and expected that Mr Brennan would generate the necessary legal documentation relating to the loan. Although Mr Ahern suggested that a minute or note referring to the advance to Ms Larkin had been prepared, no contemporaneous documentary reference to the advance to Ms Larkin was made available to the Tribunal. Mr Ahern said that he had not seen any such document, but that it would have been Mr Brennan's *'nature'* to have prepared such a document. It appeared however that no contemporaneous documentation or record, formal or otherwise, was generated relating to the advance of IR£30,000 to Ms Larkin. No legal steps appeared to have been taken to protect the interests of the donor of the funds, an omission which the Tribunal found to be remarkable, particularly in circumstances where, having regard to the evidence of Mr Ahern and others, the provision of the loan to Ms Larkin was inconsistent with the stated nature and purpose of the account.

10.65 Mr Ahern told the Tribunal that he only became aware of the loan being made available to Ms Larkin, and the purpose of the loan, after the offer of the loan had been made to her, and after she had decided to accept it. Mr Ahern told the Tribunal that he had never been consulted by the '*trustees*' or members of the '*house committee*' in relation to the decision to offer the funds to Ms Larkin.

10.66 At the time the IR£30,000 was made available to Ms Larkin, the balance in the B/T account was IR£52,133.92. The IR£30,000 withdrawal resulted in a depletion of almost 58 per cent of the '*building trust'* funds. The IR£30,000 loan to Ms Larkin accounted for approximately 75 per cent of the purchase price of the house in which her elderly relatives were then living.

10.67 The loan of IR£30,000 to Ms Larkin in 1994 remained outstanding until its repayment on 4 February 2008, approximately three months after the Tribunal's discovery of its existence. Inclusive of interest, Ms Larkin repaid €45,510 to the treasurer of the Dublin Central constituency. The payee details on the cheque were completed by Ms Cullagh and the cheque was lodged to an account in the name of Fianna Fail Dublin Central.

[18] This was understood by the Tribunal as meaning full reimbursement to the account from which the funds were withdrawn, including lost interest.

10.68 Ms Larkin sought the assistance of Mr Ahern in ascertaining the interest due – hence Mr Ahern had provided her with the figure of €45,510, inclusive of interest. Furthermore Mr Ahern provided Ms Larkin with a short term loan of €40,000 to enable her to repay the money.[19] Ms Larkin stated that she duly repaid this loan to Mr Ahern when she obtained mortgage facilitates.

10.69 While Mr Ahern duly acknowledged, on Day 870, the active role played by him with regard to the repayment by Ms Larkin of the loan to Dublin Central Constituency, it was noteworthy that despite this active involvement, when initially queried by the Tribunal about the matter he appeared only able to give a somewhat vague account of the fact that the money had been repaid.

THE TITLE OF THE ACCOUNT

10.70 The Tribunal was interested in establishing what '*B/T*' stood for. Did this abbreviation stand for '*Building Trust*' as claimed by Mr Collins, Mr Burke, Mr Ahern and others, or for 'Bertie/Tim' (i.e. Mr Bertie Ahern and Mr Tim Collins?) All those associated with Mr Collins (who opened the account) and Mr Ahern denied that '*B/T*' was, or was ever intended to be, a reference to Mr Ahern and Mr Collins.

MR DAVID BYRNE'S OPINION

10.71 On 6 May 1997, Mr David Byrne SC prepared a report on the acquisition, financing and ownership of St Luke's, Drumcondra. Mr Byrne's opinion had been requested by Mr Brennan, solicitor, for the purpose of advising as to the ownership status of St Luke's, following media speculation (ongoing from as early as 1992) that Mr Ahern might have or have had a beneficial interest in the premises. The report was sought at a time when a General Election was imminent.

10.72 As evidence of the existence of the '*building trust'*, and as evidence of a written record documenting the loan of IR£30,000 to Ms Larkin, Mr Ahern relied on an undated document bearing the title '*David/Gerry*' which was produced to the Tribunal on 21 April 2008. This undated document appeared to be linked or associated with Mr Byrne's report.

10.73 Insofar as this document assisted the Tribunal, it was to the extent that in 1997, in unknown circumstances, but possibly in the course of written replies being furnished by Mr Brennan in response to queries from Mr Byrne, reference

[19] Mr Ahern actually initially provided the entire repayment sum to Ms Larkin, €5,510 of which had been immediately returned to him.

was made to the existence of a '*Building Trust Account*', unidentified as to source, and to '*the IPBS account*' having *'£34,000 in it*' and being '*owed £30,000 from the loan*' given to Ms Larkin's relatives '*through Celia.'* [20]

10.74 The Tribunal heard evidence from a number of personnel from the PTSB Drumcondra branch who knew of the existence of the B/T account. None of them were aware of any connection between the account and Fianna Fáil. None of them had heard the account being referred to at any time as the '*Building Trust'* account. Ms Elizabeth Smith, a part time employee at the IPBS branch from 1991 to 1993, and a full time employee from 1993 to 1996, and Mr Blair Hughes, the manager of the IPBS Drumcondra branch from 1993 to 1997, understood that B/T was an abbreviation for '*Bertie'* (Mr Ahern) and '*Tim'* (Mr Collins). Both knew Mr Collins as a customer in their branch.

10.75 Bank documentation furnished to the Tribunal revealed the existence of an account entitled '*D/T'* also held in the Drumcondra branch of the IPBS. The account title was acknowledged as being an abbreviation for '*Des/Tim',* meaning Mr Des Richardson and Mr Tim Collins (Mr Collins stated *'the D/T obviously means Des Richardson and Tim Collins'*). This account was opened in July 1991 and was operated by Mr Richardson and Mr Collins for their own business purposes, and was not connected to the Dublin Central constituency organisation or to Fianna Fáil.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE B/T ACCOUNT

10.76 The Tribunal was satisfied that the B/T account was opened by Mr Tim Collins in 1989 for purposes other than the upkeep and maintenance of St Luke's, Drumcondra. The Tribunal rejected entirely the evidence of Mr Collins, Mr Burke and Mr Ahern as to the claimed purpose of this account.

10.77 The B/T account was opened and operated in a markedly different fashion to that of other bank accounts associated with the Dublin Central constituency. Its opening and operation was to a very great extent kept secret, and active steps were taken by Mr Collins in 1989 and again in 1995 to ensure that correspondence and statements relating to the account were maintained within the IPBS branch or sent to Mr Collins' private address respectively, and not sent to the constituency office at St Luke's.

[20] Mr Ahern accepted that, in fact, the loan was provided to Ms Larkin herself, and not her relatives.

10.78 The Tribunal was satisfied that the B/T account was not created or maintained as a '*building trust*' account and that it was not established or operated as a fund for the upkeep and maintenance of St Luke's. Indeed the entire operation of the account from its inception in 1989 to January 2008 was the very antithesis of this claimed purpose.

10.79 The Tribunal has reached these conclusions notwithstanding the sworn testimony of Mr Liam Cooper, Mr Dominic Dillane and Mr J. J. Murphy, all of whom at some point since 1994 held the office of Joint Honorary Treasurer of Dublin Central CDC. The thrust of their respective testimonies on the B/T issue led the Tribunal to conclude that they had only a passing acquaintance with the B/T account. There was nothing in their testimonies to persuade the Tribunal that the B/T account was treated as a Dublin Central CDC account before approximately January 2008.

10.80 Equally, the Tribunal was satisfied that the B/T account was not an account used to fund political activity.

10.81 The Tribunal was satisfied that at the time of the opening of the account in 1989, the letters '*B*' and '*T*' in the account's title '*B/T*' stood for '*Bertie*' (Mr Ahern) and '*Tim*' (Mr Collins), in precisely the same manner as the letters '*D*' and '*T*' in a separate account within the same IPBS branch stood for '*Des*' (Mr Richardson) and '*Tim*' (Mr Collins).

10.82 The Tribunal was satisfied, as a matter of probability, that the B/T account was operated (at least until 1997) for the personal benefit of Mr Ahern and Mr Collins.

10.83 The Tribunal rejected in its entirety the evidence of Mr Collins and Mr Burke, and the belief expressed by Mr Ahern, as to the reasons and purpose for the withdrawal of IR£20,000 in August 1994. The Tribunal, in particular, rejected the evidence which suggested that the said sum was withdrawn to enable construction work to be carried out on St Luke's. The Tribunal considered as frankly incredible the evidence which suggested that the IR£20,000 was withdrawn to facilitate significant repair work to St Luke's in circumstances where (as it appeared to the Tribunal) professional advice as to the required work had not even been obtained, and no contractor had been identified or engaged. There appeared to the Tribunal to have been no logical or practical reason for withdrawing a very substantial sum in cash prior to its being required, and in the circumstances described by Mr Burke.

10.84 Until 26 August 1994, insofar as repair and renovation work was carried out on St Luke's, such works were entirely funded by the CODR account. It has furthermore been established conclusively that the subsequent repair works which were carried out on the building in 2000 were financed entirely without recourse to the B/T account.

10.85 The Tribunal was satisfied that the purpose for which the IR£20,000 cash was withdrawn in August 1994 was not connected with any intended repair or refurbishment of St Luke's. As a matter of probability, the Tribunal was satisfied that no such plans to carry out works on the building were made at that time. The true purpose of this IR£20,000 cash withdrawal or its use remains unexplained.

10.86 The Tribunal was further satisfied that the explanations for the transaction of 26 August 1994 as proffered by Mr Collins and Mr Burke were untrue.

10.87 Having regard to the finding of the Tribunal that the B/T account was operated for the benefit of Mr Ahern and Mr Collins, the probable beneficiaries of the IR£20,000 cash withdrawn on 26 August 1994 were either Mr Ahern or Mr Collins or both. The Tribunal was further satisfied that Mr Ahern and Mr Collins were at all relevant times in a position to advise the Tribunal of the purpose of this withdrawal but chose not to do so.

10.88 The Tribunal was satisfied that the IR£20,000 lodgement in October 1994 to the B/T account represented in fact Stg£20,000. The Tribunal was satisfied that the IR£20,000 lodged to the B/T account on 28 October 1994 was not a refund of the monies withdrawn some two months earlier and had no connection to those monies. The actual source of that money remains a mystery.

10.89 The Tribunal did not accept as true Mr Burke's evidence that he sourced the sterling from his business and that he left the twenty thousand pounds in cash in St Luke's for collection by Mr Collins.

10.90 The Tribunal rejected Mr Ahern's contention that he was unaware of the provision of funds to Ms Larkin of IR£30,000 in 1993 prior to the decision to advance this sum to her. The Tribunal believed that Mr Ahern was well aware of this decision at the time it was made and that he was involved in the making of that decision.

10.91 The Tribunal believed that Mr Ahern and Mr Collins were in a position to account to the Tribunal for the origins of substantial lodgements of IR£19,000 (being the proceeds of IR£20,000 cheque) and the IR£10,000 cash made to the B/T account on 25 August 1992 and 18 July 1995 respectively. They did not do so.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION VIII : THE RENTAL AND PURCHASE OF NO 44 BERESFORD AVENUE, DRUMCONDRA, DUBLIN (BERESFORD)

THE BASIS FOR THE TRIBUNAL'S INQUIRY INTO BERESFORD

11.01 In response to inquiries made by the Tribunal concerning the lodgement on 1 December 1995 of IR£19,142.92 to Mr Ahern's 011 account, the April 2006 Peelo report, *inter alia*, informed the Tribunal that the lodgement comprised the balance remaining from funds amounting to IR£50,000 provided by Mr Ahern to Ms Larkin for the '*fit out*' of Beresford on Mr Ahern's behalf. These funds were lodged to a 28 day fixed account in her name on 5 December 1994 (the Larkin 015 Account).

11.02 The Tribunal communicated with Ms Larkin arising from the information in Mr Peelo's report. Ms Larkin, in her June 2006 memorandum advised the Tribunal of the existence of the Larkin 015 account into which IR£50,000 of Mr Ahern's money had been lodged on 5 December 1994 and of the Larkin 011 account, the account into which IR£28,772.90 had been lodged on the same date.[1] This account, it was claimed, had been opened to accommodate monies provided by Mr Michael Wall in connection with the 'renovation' of Beresford. Ms Larkin also advised the Tribunal of a further account—the 031 Account (a call deposit account), opened in June 1995, also in connection with Beresford.

THE PURCHASE OF BERESFORD BY MR MICHAEL WALL

11.03 Mr Wall and Mr Ahern told the Tribunal that in or after April 1994 they informally agreed that Mr Wall would purchase a house in the Drumcondra area, and later agreed that Mr Ahern would rent the house from Mr Wall, and that he would have an option to purchase the house if he wished to do so. The search for a suitable home was largely undertaken by Ms Larkin.

11.04 At that time, Mr Wall was operating a successful coach business in Manchester, Wall's Coaches. Mr Wall said that he planned to set up a branch of that business in Dublin. Mr Wall's evidence was that he wished to buy a house in Dublin to use on his visits to the city which he anticipated would increase in number because of those business plans. Mr Ahern told the Tribunal that at the same time he wished to rent or buy a residence. He said that friends had advised him that it was preferable, for political considerations, that he cease to reside in his constituency premises, St Luke's.

[1] This lodgement is the subject of review in Section IV.

11.05 It was agreed that, on his visits to Dublin, Mr Wall would stay in the house purchased by him and rented by Mr Ahern.

11.06 Ms Larkin identified Beresford as a house suitable for purchase for Mr Wall and for renting by Mr Ahern. A decision was made by Mr Wall to purchase the house, although he did not view it prior to purchase.

11.07 By 30 March 1995, Beresford had been purchased by Mr Wall for IR£138,000. Mr Ahern's option to purchase was never legally formalised. Mr Ahern took up residence in Beresford in September 1995 and he stated that his occupation from then until 1997 was on foot of a tenancy arrangement, although that arrangement was not apparently the subject of a written tenancy agreement until 1997.[2]

11.08 Mr Wall did not subsequently open a branch of his coach business in Dublin.

THE COSTS INCURRED IN THE ACQUISITION OF BERESFORD

11.09 The legal aspects of the purchase by Mr Wall were dealt with by the late Mr Brennan, solicitor to both Mr Wall and Mr Ahern.

11.10 On 29 November 1994, Mr Brennan successfully tendered to purchase Beresford for IR£138,000 on behalf of Mr Wall, and on 1 December 1994 a booking deposit of IR£3,000 funded by a sterling cheque provided by Mr Wall was paid. The balance of the 10 per cent deposit, Stg£10,800, was paid on 3 February 1995, again with sterling funds provided by Mr Wall. The sale was closed in late March 1995, and the balance of the purchase price was paid to the vendor.

11.11 The sterling cheques were drawn on the UK bank account of Wall's Coaches. The purchase price balance was funded by an ICS mortgage for IR£96,600 in Mr Wall's name, and a transfer of IR£27,600 drawn on the UK account of Wall's Coaches.

11.12 In addition, two further sums, being a cheque for Stg£2,000 and cash of IR£6,000 were paid by Mr Wall to Mr Brennan in February/March 1995 in connection with the purchase of Beresford. The Stg£2,000 cheque was drawn on the UK account of Wall's Coaches.

[2] Mr Wall registered the tenancy agreement with Dublin Corporation.

11.13 The bank statements of Wall's Coaches Ltd to March 1995 reflect all but one (the cash payment of IR£6,000) of the monies (approximately IR£49,400) directly furnished by Mr Wall in connection with the purchase of Beresford.

11.14 The stamp duty payable on the purchase of Beresford, IR£8,442, was paid on 15 May 1995 with funds withdrawn from the Larkin 011 account into which IR£28,772.90[3] had been lodged on 5 December 1994.

THE POST-PURCHASE EXPENDITURE ON BERESFORD AND MR AHERN'S AND MR WALL'S CLAIMED CONTRIBUTION TO IT

11.15 Over a period of approximately three months from mid-1995, following the acquisition of Beresford, significant sums were expended on its refurbishment and renovation. Certain shortcomings in terms of interior decoration and dining facilities had been identified, and a decision was made that these were to be rectified by refurbishing the interior and by the addition of a conservatory.

11.16 Mr Ahern, Mr Wall and Ms Larkin told the Tribunal that there was in place an informal arrangement whereby Mr Wall, as the owner of the house, would fund works of a structural nature, while Mr Ahern, as the tenant, would fund internal decorative and refurbishment work, and that Ms Larkin would, in general, manage the entire project. To this end it was Mr Ahern's and Mr Wall's evidence, and Ms Larkin's understanding, that Mr Wall contributed a cash sum of approximately Stg£30,000,[4] and that Mr Ahern provided a sum of IR£50,000.[5] While Mr Wall was aware that Mr Ahern was to fund the internal refurbishment work in the house, he was unaware of the provision of IR£50,000 to Ms Larkin by Mr Ahern for that purpose.

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[3] See Section IV. It was claimed by Mr Ahern that this lodgement represented approximately Stg£30,000 which had been provided by Mr Wall on 3 December 1994 for utilisation in connection with Beresford. The lodgement in fact comprised $45,000 which had been exchanged on 5 December 1994 and lodged into the Larkin 011 account which was opened on that date to receive these funds.

[4] It was claimed that the circa Stg£30,000 cash sum was the source of the lodgement of IR£28,772.90 into a newly opened bank account in Ms Larkin's name on 5 December 1994. The Tribunal has found that the source of this lodgement was US$45,000 and was not a sterling sum provided by Mr Wall, as claimed by Mr Wall and Mr Ahern. See Section IV.

[5] This sum was transferred from bank accounts in Mr Ahern's name into an account (the Larkin 015 account) opened in Ms Larkin's name on 5 December 1994 and was subsequently withdrawn in cash by Ms Larkin on 19 January 1995, some six weeks later. Mr Ahern maintained that IR£30,000 of this sum was subsequently used to purchase sterling which he claimed was ultimately reconverted into Irish pounds and lodged into bank accounts in June and December 1995. The Tribunal has found that Mr Ahern did not purchase Stg£30,000 sterling in the period January/February/March 1995 (as suggested by Mr Ahern) or prior to 15 June 1995, which was the date when Mr Ahern provided sterling to fund a lodgement of IR£11,743.74 to the Larkin 015 account. The Tribunal also found that a lodgement of IR£19,142.92 into Mr Ahern's 011 account on 1 December 1995 (the claimed 'unspent funds' in relation to Beresford) did not have its origins in the IR£50,000 withdrawn by Ms Larkin on 19 January 1995, as claimed by Mr Ahern. See Section V.

11.17 The proposed expenditure represented in excess of 50 per cent of the purchase price of Beresford (IR£138,000).

THE MONIES SPENT ON THE REFURBISHMENT OF BERESFORD AND THEIR SOURCE

11.18 The bank records pertaining to accounts held in the names of Mr Ahern and Ms Larkin indicated the following:

1) The Larkin 011 Account which held the IR£28,772.90 lodged on 5 December 1994 was debited by IR£8,442 on 15 May 1995 to pay the stamp duty on Beresford.

2) This account was closed on 19 June 1995 following two withdrawals made on that date of IR£850 and IR£20,050.91.

3) Part of the IR£20,050.91 was withdrawn by the purchase of three drafts of IR£3,000, IR£5,250 and IR£2,116.20 (total IR£10,366.20) used to pay bills connected with the conservatory and interior works then being carried out on the house.

4) The balance of this IR£20,050.91 (a sum of IR£9,684.71) may have been lodged initially into the Larkin 015 account but was subsequently transferred on 22 June 1995 to a new account opened in Ms Larkin's name—the Larkin 031 account.

5) On 15 June 1995 Ms Larkin lodged to her 015 account a cash sum comprised of IR£2,000 and Stg£10,000, funds provided to her by Mr Ahern to discharge bills in connection to Beresford. These funds were transferred one week later into the Larkin 031 account. As set out elsewhere in this Report, Mr Ahern sought to attribute the sterling component of this lodgement to a portion of a sum of Stg£30,000 which he claimed he purchased using circa IR£30,000 of the IR£50,000 cash which had been returned to him by Ms Larkin on 19 January 1995.

11.19 The Tribunal has already found[6] that no such sterling purchase was made by Mr Ahern and that the Stg£10,000 Mr Ahern gave to Ms Larkin in June 1995 for lodgement, together with IR£2,000 cash, was not funded by the IR£50,000 cash returned to Mr Ahern in January 1995. The Tribunal has also found that the Stg£20,000 Mr Ahern lodged to the Ahern 011 Account on 1

[6] See Section V.

December 1995 (the claimed '*unspent funds*' on Beresford) did not have its origins in the IR£50,000 cash withdrawal made in January 1995[7].

11.20 The monies (IR£9,684.71) used to open the Larkin 031 account on 22 June 1995 had their origin in the US$45,000 Ms Larkin exchanged and lodged into the Larkin 011 account on 5 December 1994 on behalf of Mr Ahern, and in the provision by Mr Ahern to Ms Larkin, prior to 19 June 1995 of IR£2,000 cash and Stg£10,000 cash.

11.21 The Tribunal was satisfied that Mr Ahern had sole control of the funds lodged to this 031 account.

11.22 The bank statements for the 031 account indicated that on 24 July 1995 Ms Larkin made a further cash lodgement of IR£9,655. Mr Ahern's evidence was that he provided this cash sum to Ms Larkin to enable her to defray expenses in relation to Beresford. Mr Ahern maintained that the money came from the balance of the IR£50,000 January 1995 cash withdrawal (i.e. after Mr Ahern's claimed purchase of Stg£30,000 sterling) which Mr Ahern claimed he had kept in his safe.

DISBURSEMENTS MADE FROM THE LARKIN 031 ACCOUNT

11.23 Between 26 June and 6 November 1995, three withdrawals, of IR£10,000, IR£3,000 and IR£16,000, were made and used to pay Kinsella Interiors and All Seasons Conservatories for work done on Beresford.

11.24 Ms Larkin gave evidence (as did Mr Ahern), that she also obtained a bank loan of IR£3,000 in connection with the Beresford refurbishment in order to settle an account payable to Kinsella Interiors, for which she was reimbursed by Mr Ahern.

11.25 Thus, an analysis of the movements on the aforesaid accounts held in Ms Larkin's name showed that in the period May to November 1995 Mr Ahern, ostensibly a tenant, spent over IR£50,000 on refurbishment and structural works on Beresford. As indicated elsewhere in this Report, the source of these funds remains unexplained by Mr Ahern.

11.26 This total expenditure was roughly equal to what Mr Ahern alleged to the Tribunal he provided (IR£50,000) on 5 December 1994[8] as his financial contribution towards the *'fit out'* of Beresford.

[7] See Section V

11.27 While, therefore, Mr Ahern did indeed spend in excess of IR£50,000 on the structural and interior works carried out on the house, this expenditure, however, was not funded by the monies which were transferred into and withdrawn from the Larkin 015 account within a six-week period between 5 December 1994 and 19 January 1995.

11.28 Mr Ahern's contribution to the refurbishment of Beresford was funded by the utilisation of the US$45,000 which had been lodged, following its conversion, into the Larkin 011 account on 5 December 1994, by the provision of Stg£10,000 cash together with IR£2,000 cash deposited to the Larkin 015 account on 15 June 1995 and by the provision to her of IR£9,665 cash in July 1995 which may or may not have its origin in the IR£50,000 cash withdrawal from the Larkin 015 account on 19 January 1995.

THE RENTAL OF BERESFORD BY MR AHERN

11.29 Documentation provided to the Tribunal established that Mr Ahern paid Mr Wall a monthly rent of IR£450 between July 1995 and June 1997, and a monthly rent of IR£700 for the months of July, August and September 1997. The total rent paid by Mr Ahern was IR£13,250.

11.30 An annual registration document[9] was lodged with Dublin Corporation in May 1996, indicating a monthly rent of IR£450, and again in May 1997, indicating a monthly rent of IR£600. A formal tenancy agreement did not appear to have been executed for 1995 and 1996.[10] However, on 8 May 1997, a three-year tenancy agreement was executed by Mr Ahern and Mr Wall, despite the fact that Mr Ahern, only two weeks later, decided to purchase Beresford following the June 1997 General Election.

11.31 Mortgage repayments (plus the cost of associated life insurance cover) paid by Mr Wall between July 1995 and October 1997 amounted to approximately IR£30,000.

THE PURCHASE OF BERESFORD BY MR AHERN IN 1997

11.32 Mr Ahern acquired legal ownership of Beresford on 31 October 1997, having signed the contract to purchase from Mr Wall on 31 July 1997. The

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[8] This sum comprised £28,000 from Mr Ahern's SSA which had been opened on 30 December 1993 with a lodgement of IR£22,500 and which had been topped up in April 1994 to its maximum limit of £50,000, and by a transfer of £22,000 from Mr Ahern's 011 account. (which had been opened on 11 October 1994 with stg.£25,000)

[9] Pursuant to the requirements of the Housing (Registration of Rented Houses) Regulations 1996

[10] Mr Wall thought that such an agreement was executed, or that if not, one '*should have been*'.

purchase price was IR£180,000, which Mr Ahern funded with a mortgage for IR£150,000 from the IPBS, and IR£30,000 of his own funds withdrawn from his IPBS deposit account. Mr Ahern also paid IR£16,200 in stamp duty.

11.33 In April 1997, Gunnes Auctioneers provided a written market valuation of Beresford to Mr Ahern and Mr Wall. Curiously, Gunnes provided two valuations, one as of January 1997 of IR£185,000, and the other as of July 1995 of IR£140,000. Mr Ahern was unable to explain why Gunnes provided a valuation of the house as of July 1995.

11.34 It was noteworthy that there was, apparently, no allowance made for monies provided by Mr Ahern towards Beresford's refurbishment in 1995 (at a time when he was, supposedly, merely a tenant) against the purchase price which he was required to pay for the property approximately two years later.

THE APPLICATION BY MR WALL OF THE SALE PROCEEDS

11.35 Mr Wall lodged the net proceeds of the sale of Beresford to Mr Ahern, namely IR£89,865.87, to his account at Bank of Ireland, Galway, on 5 November 1997. Approximately one month later he withdrew IR£50,000 in cash from this account.

11.36 Mr Wall told the Tribunal that he withdrew this substantial sum of cash to purchase a stone-crushing machine at an upcoming plant auction in Co Meath which was then some '*weeks or months'* away. He did not, in fact, attend the auction or purchase any such machine. He told the Tribunal that he took the IR£50,000 in cash back to Manchester, where he placed it in a safe and spent it over a period of time, changing it from Irish pounds to sterling as and when required.

THE WILL OF 6 JUNE 1996

11.37 On 6 June 1996, one year following the purchase of Beresford by Mr Wall and its rental three months later to Mr Ahern, Mr Wall executed a Will, drawn up by his and Mr Ahern's solicitor, Mr Brennan, in which he bequeathed Beresford to Mr Ahern and in the event of Mr Ahern pre-deceasing him, to Mr Ahern's then two minor daughters.

11.38 Mr Wall had previously executed a will drawn up by his UK solicitor in relation to his considerable assets in the UK and in Ireland (other than Beresford). The will of 6 June 1996 dealt solely with Beresford. This will duly

provided that it was to operate independently of any other Will executed by Mr Wall.[11]

11.39 Mr Wall was married and had adult children. He told the Tribunal that he did not inform his wife or his children of his 6 June 1996 Will and that he only vaguely knew Mr Ahern's daughters.

11.40 Mr Wall's explanation to the Tribunal for his decision to bequeath Beresford to Mr Ahern was his anxiety to ensure that Mr Ahern should have the house in the event that anything happened to Mr Wall. Mr Wall added that, alternatively to Mr Ahern taking the house under the will (on Mr Wall's death) he, Mr Ahern, could, if he wished, pay Mr Wall's family for it. However his will did not so direct.

11.41 Mr Wall said that he realised that Mr Ahern had put a 'quite a *lot of effort'* into the house and that the house suited him. He was anxious that Mr Ahern would have the house to live in should anything happen to him. Mr Wall stated that there was '*no particular reason whatsoever'* why he had made a will leaving the house to Mr Ahern, and that '*it was something* [he] *wanted to do'.*

11.42 Mr Ahern told the Tribunal that he was unaware of Mr Wall's will of 6 June 1996 or of Mr Wall's intention to benefit him with a gift of Beresford, or to benefit his daughters should he pre-decease Mr Wall, until so informed by Mr Wall in a telephone conversation in 2007. Mr Ahern said that although he knew Mr Wall to be a very generous man, he did not understand why Mr Wall had made a will favouring him. Mr Ahern stated that had Mr Wall died, he would have insisted on paying the market value of Beresford to Mr Wall's family. Mr Ahern rejected the suggestion that Mr Wall executed the will in order to protect and preserve Mr Ahern's beneficial interest in the property, in the event of Mr Wall's death.

11.43 In a press statement released by Mr Ahern on 13 May 2007 Mr Ahern dealt with the issue of Mr Wall's will as follows:

> *Mr Wall made a supplementary Irish will, dealing only with this house, in addition to his main will, in which he left considerable property to his family. I did not know about this will last October. It was only brought to my attention earlier this year. There are a number of points about Mr Wall's will which are inconsistent with the suggestion that I actually owned the house at Beresford while renting it. They are as follows:*

[11] In Mr Walls' will of 6 June 1996 it was specifically declared that Beresford was not to form part of the residue of Mr Wall's estate for the purpose of any earlier will or testamentary disposition previously made by him.

a. Mr Wall bought the house in March 1995 and I rented it from him from May 1995. No will then existed.

b. The will was not made until the 6th June 1996 more than a year later. If it is alleged that the will proves my concealed ownership then logic would dictate that it be signed when the house was bought.

c. The fact is that I actually bought the house in 1997. I did not inherit it. I exercised the agreed option.

d. A will would be a meaningless legal document—if it was to protect my supposed ownership—as it could be revoked at any time and with no legal right to insist on a further will or any right to inherit the house.

However, most importantly of all I was unaware of the will, did not request it and did not seek that my solicitor put it in place. It was Mr Wall who—on his own initiative—decided that he should make the will, not I.

THE TRIBUNAL'S DISCOVERY OF THE EXISTENCE OF THE WILL

11.44 The Tribunal made an Order of Discovery against Mr Wall on 7 July 2006. In consequence of this order, Mr Ken Morris, Mr Wall's then solicitor, provided the Tribunal with the conveyancing file relating to Beresford. In its examination of this file, the Tribunal noted a memorandum referring to enquiries made of the Probate Office by personnel in the late Mr Brennan's office but the file did not include a copy of any will. This memorandum suggested that Mr Wall might have executed a will dealing only with Beresford.

11.45 On 19 July 2006, the Tribunal asked Mr Wall's solicitors to provide a copy of any such will. Mr Wall's solicitors replied on 27 September 2006 to the effect that Mr Wall had provided all documentation in his possession or procurement to the Tribunal. The will was not provided to the Tribunal and the Tribunal again wrote to Mr Wall's solicitors on 29 September 2006 seeking a copy of the document.

11.46 On 3 October 2006, Mr Wall swore an affidavit of discovery which contained no reference to a will.

11.47 Following an exchange of correspondence between the Tribunal and Mr Wall's solicitors between October 2006 and February 2007, Mr Wall was informed on 7 February 2007 that the Tribunal intended to question him in public on 6 March 2007. On 22 February 2007, Mr Wall's solicitors wrote to the Tribunal referring to relevant documentation which they said had been withheld from the Tribunal in error. A supplemental affidavit of discovery was sworn by Mr Wall on 26 February 2007, wherein reference to a will of 6 June 1996 was made. It had taken the Tribunal well over six months to obtain a copy of the will,

from the date it was first requested, and only then following repeated requests for its production and the notification of the Tribunal's proposal to question Mr Wall in public.

11.48 Mr Wall advised the Tribunal (both before and during his sworn evidence) that until 21 February 2007 he had had no recollection of making the Will.

THE TRIBUNAL'S CONCLUSIONS RELATING TO THE DISCLOSURE OF MR WALL'S WILL OF 6 JUNE 1996 TO THE TRIBUNAL

11.49:

1) Mr Wall wrongfully concealed the said will from the Tribunal in the period July 2006 to February 2007 and failed to fully comply with the Tribunal's Order for Discovery on 7 July 2006.

2) The Tribunal rejected as untrue Mr Wall's evidence that when swearing his first affidavit of discovery he did not recollect the existence of the will. The Tribunal was satisfied that at all relevant times, Mr Wall well recollected and knew that he had made a will in favour of Mr Ahern in 1996. Even if the Tribunal were minded to believe Mr Wall (which it was not), by 3 October 2006, the date of his first affidavit, Mr Wall could not have failed to recollect the will, as he had been put on notice by the Tribunal on 19 July 2006 of the existence of such document. In any event, the Tribunal rejected Mr Wall's contention that he had forgotten that he made a will in which he favoured Mr Ahern by the bequest of his house in Dublin.

THE TRIBUNAL'S CONCLUSIONS RELATING TO THE OWNERSHIP OF BERESFORD

11.50 The Tribunal was satisfied that Beresford was never beneficially owned by Mr Wall or intended to be beneficially owned by him. The property was in fact beneficially owned by Mr Ahern between 1995 and 1997, and was legally and beneficially owned by Mr Ahern from 1997 onwards. The Tribunal rejected as untrue the evidence of Mr Ahern and Mr Wall which suggested otherwise. The reasons for the Tribunal's aforesaid finding were based on the evidence heard by the Tribunal, and in particular the following:

1) The Tribunal has found[12] that the IR£28,772.90 lodged to the Larkin 011 account was not funded by a sum of Stg£30,000 (or a sterling sum close to that figure) said to have been provided to Mr Ahern by Mr Wall for the purposes of discharging costs associated with the purchase, refurbishment and renovation of Beresford. The IR£28,772.90 represented, in fact, US$45,000, the property of Mr Ahern, and was unconnected to Mr Wall.

2) The Tribunal was satisfied that the entire of the money spent on the refurbishment of Beresford was Mr Ahern's. The Tribunal found no evidence of any financial contribution by Mr Wall towards the building works or refurbishment of Beresford and it was satisfied that Mr Wall had no input, financial or otherwise, into the decisions which resulted in the structural and internal renovation works and refurbishment carried out on Beresford.

3) The Tribunal believed it incredible that Mr Ahern as a claimed tenant of Beresford would have expended almost IR£50,000 of his money over the course of approximately a four-month period in circumstances where not only did he not have any written tenancy agreement with Mr Wall, but he did not have any agreement as to how his expenditure would be accounted for in the event that his and Mr Wall's informal tenancy agreement failed to materialise or terminated, or in the event that Mr Ahern was to exercise his claimed 'option' to purchase. The Tribunal also found it to be remarkable that upon Mr Ahern's purchase of the legal title to the property in 1997, no allowance was made for the considerable expenditure undertaken by Mr Ahern on the property since 1995, if, as claimed, Mr Ahern had merely been a tenant therein.

4) The Tribunal was satisfied that the will executed by Mr Wall on 6 June 1996 was a mechanism designed to provide Mr Ahern with a degree of asset protection in respect of Beresford. The Tribunal was satisfied that the will was, in the circumstances, evidence of Mr Ahern's beneficial ownership of the property, and it believed that Mr Ahern was aware of its existence from its date of execution by Mr Wall.

5) Having regard to the £49,400 which was contributed by Mr Wall (of which all but £6,000 was paid by Walls Coaches, Mr Walls UK company) to the purchase costs of Beresford in the period December 1994 to March 1995, the Tribunal did not identify specific evidence that this money was

[12] See Section IV

reimbursed to Mr Wall (or his company), or how Mr Ahern and Mr Wall might have reconciled the mortgage repayments made by Mr Wall with the rent paid by Mr Ahern in the period 1995 to 1997. The Tribunal also noted the fact that the house, when transferred into the legal ownership of Mr Ahern had increased in value. It did not identify how this issue might have been addressed as between Mr Ahern and Mr Wall in 1997.

The absence of evidence as to how this matter was addressed (if at all) did not, in the view of the Tribunal, outweigh the preponderance of other factors which persuaded the Tribunal that the intended beneficial owner of Beresford from the time of its acquisition was Mr Ahern.

11.51 The Tribunal considered that Mr Walls' account of his reason for withdrawing IR£50,000 in cash from his Galway bank account and of his intended or actual expenditure of the cash was untrue and thus rejected his evidence on this issue. The Tribunal could not determine, on balance of probability, Mr Wall's purpose in withdrawing such a substantial sum in cash, or its likely ultimate destination or use.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 - SECTION IX : AN OVERVIEW OF THE UNEXPLAINED LODGEMENTS IN RELATION TO ACCOUNTS CONNECTED TO MR AHERN

THE LODGEMENTS

12.01 In the course of its inquiry into Mr Ahern's personal finances the Tribunal was satisfied that Mr Ahern did not truthfully account for the origins of specific cash lodgements made to accounts held in his name, the name of his then minor daughters and in the name of Ms Larkin.

12.02 The relevant lodgements were made to the various accounts between 30 December 1993 and 1 December, 1995 – a period of some 23 months.

12.03 They comprised the following:

- 30 December 1993: IR£15,000 cash lodgement (together with a cheque and draft for IR£2,500 and IR£5,000 respectively) made to an SSA in Mr Ahern's name.
- 25 April, 1994: IR£30,000 cash, the substantial portion of which (IR£27,164.44) was lodged the Ahern SSA, with the balance lodged to Mr Ahern's current account.
- 08 August, 1994 IR£20,000 lodged to an AIB account opened in the name of Mr Ahern's then minor daughters.
- 11 October, 1994 Stg. £25,000 lodged to the Ahern 011 account, opened on that date.
- March to October 1994 A total of Stg.£15,500 lodged in varying amounts to IPPS accounts held in the name of Mr Ahern and in the name of his then minor daughters.
- 5 December, 1994 US$45,000 lodged to the Larkin 011 account.
- 15 June, 1995 Stg. £10,000 (together with IR£2,000) lodged to the Larkin 015 account.
- 1 December, 1995 Stg. £20,000 lodged to the Ahern 011 account.

12.04 The Tribunal rejected the various explanations proffered by Mr Ahern as to how he came into possession of the funds which comprised the said lodgements. In particular, the Tribunal rejected the explanation of Mr Ahern (and others) regarding the origin of IR£15,000 cash which compromised part of the lodgement which opened the SSA on 30 December 1993. The Tribunal also rejected Mr Ahern's explanation as to how he came into possession of Irish punts sums of £30,000 and £20,000 and which comprised the lodgements made on 25 April 1994 and 8 August 1994 respectively.

12.05 Insofar as Mr Ahern, ultimately, acknowledged that the lodgements made to the IPBS between March and October 1994 and the lodgements made respectively to the Larkin 015 account and the Ahern 011 account on 15 June 1995 and 1 December 1995 had their origins in sterling, the Tribunal rejected Mr Ahern's explanation as to how he came into possession of such sterling amounts. Consequently, the origins of this sterling remain unexplained by Mr Ahern. Similarly, the Tribunal, having rejected the account proffered by Mr Ahern (and others) as to the make-up of the lodgement of IR£24,838.49 on 11 October 1994 and the Tribunal having found it to have been comprised solely of Stg£25,000, the origins of this sterling remains unexplained. The total unaccounted for sterling was Stg£70,500.

12.06 Equally, the Tribunal having rejected the evidence of Mr Ahern (and others) as to the make-up of the lodgement of IR£28,772.90 on the 5 December 1994, and the Tribunal having found that that lodgement had its origins in US$45,000, the circumstances whereby Mr Ahern came into possession of that amount of dollars remains unexplained.

12.07 The total Irish punt value of the aforementioned lodgements, for which Mr Ahern has failed to truthfully account, was IR£165,214.25.

THE B/T ACCOUNT

12.08 In the period 1992 to 1994, among the lodgements made to this account (an account, the Tribunal has found, which for a period of time was being operated for the benefit of Mr Ahern and Mr Collins, including the period 1992 to 1994) were IR£19,000 (from an IR£20,000 cheque) on 25 August, 1992, a lodgement of Stg£20,000 cash on the 26 October 1994 and a cash lodgement of IR£10,000 on the 18 July 1995.

12.09 The Tribunal was satisfied that neither Mr Ahern nor Mr Collins, the persons for whom, the Tribunal was satisfied, the account was being operated at the time of the lodgements, gave a truthful account as to the source of these monies.

12.10 The total Irish punt value of the aforesaid lodgements to the B/T account in the period 1992 to 1994 was IR£50,000.

CHAPTER TWO – THE QUARRYVALE MODULE

PART 10 – THE TRIBUNAL'S ADDITIONAL CONCLUSIONS

THE TRIBUNAL'S ADDITIONAL CONCLUSIONS ARISING FROM ITS INQUIRY CONCERNING MR AHERN'S PERSONAL FINANCES (THESE SHOULD BE READ AS AN ADJUNCT TO THE TRIBUNAL'S FINDINGS INDICATED IN THE FOREGOING EIGHT SECTIONS).

13.01 Those findings of fact which are adverse to Mr Ahern (and on occasion to others) clearly demonstrate that important aspects of Mr Ahern's evidence (and the evidence of others) were rejected by the Tribunal. Much of the explanation provided by Mr Ahern as to the source of the substantial funds identified and inquired into the course of the Tribunal's public hearings was deemed by the Tribunal to have been untrue.

13.02 The purpose of the Tribunal's inquiries into Mr Ahern's personal finances was to identify the sources of substantial lodgements and movements of funds into Mr Ahern's bank accounts, and other accounts associated with him, within a specific time period, and by so doing, establish or exclude a connection between any of these funds and Mr O'Callaghan, either directly or indirectly. Regrettably, the Tribunal's inquiries were rendered inconclusive for the reasons stated in the preceding paragraph. Because the Tribunal has been unable to identify the true sources of the funds in question it cannot therefore determine whether or not the payment to Mr Ahern of all or any of the funds in question were in fact made by or initiated or arranged, directly or indirectly, by Mr O'Callaghan, or, indeed by any other identifiable third party.

CHAPTER TWO – THE QUARRYVALE MODULE – PART 10 SECTION I

EXHIBITS

1. Report of Mr Peelo, dated 20 April 2006, on five specific lodgements to bank accounts associated with Mr Ahern, together with a further memorandum, dated 4 April 2007, containing explanatory charts of certain lodgements to bank accounts associated with Mr Ahern 1475

2. Payments analysis sheet of Willdover Ltd, December 1993..... 1489

3. Invoice believed to be dated 15 December 1993, from Willdover Ltd to Mr Sean Fleming, Fianna Fail.....1491

4. Bank draft dated 22 December 1993 for IR£5,000 payable to Mr Des Richardson.....1492

5. Invoice dated 14 December 1993 from Euro Workforce Ltd to NCB Group in the amount of IR£6,050.....1494

6. Bank statement of Willdover Ltd current account, December 1993..... 1495

7. Application for bank draft dated 22 December 1993 for IR£5,000 by Roevin..... 1496

8. Bank statement of Roevin Ireland Ltd, October 1992 to December 1993..... 1497

9. Bank statement of Roevin Ireland Ltd, September 1993 to September 1995.....1498

10. Statutory Revenue declaration form relating to the opening of a Special Savings Account dated December 1993, signed by Mr Ahern.....1499

11. Forensic report on the handwritten date on the above Revenue declaration form of December 1993.....1500

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TRIBUNAL OF INQUIRY INTO
CERTAIN PLANNING MATTERS
AND PAYMENTS: REF PTB 358

MR BERTIE AHERN T D - AN TAOISEACH

20 APR '06

Report prepared by Des Peelo FCA
Peelo & Partners, Chartered Accountants

Return to report

Peelo & Partners

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

1. **The purpose of this Report is to respond to the request, concerning five specific lodgements, at par. 2 of the Tribunal's letter dated 3 Mar '06 to Frank Ward & Company, Solicitors for Mr Ahern. This response also encompasses the further details regarding these lodgements as requested in the Tribunal's letter dated 30 Mar '06 to Frank Ward & Co.**

2. The circumstances and details of the foregoing Tribunal letters will already be known to readers of this Report and are not referred to herein except as necessary to do so.

3. This Report is based on the documents scheduled in Mr Ahern's Affidavits of Discovery 7 Feb '05 and 27 Mar '06, and on detailed discussions with Mr Ahern re the five lodgements as referred to in the foregoing Tribunal letters.

4. For the sake of completeness, we have confirmed that Mr Ahern did not have any sources of income, apart from his salaries as TD and Minister, during the period '89 to '02. These other possible sources of income are referred to in the Tribunal's letter dated 25 Oct '05 to Frank Ward and Company.

5. Prior to dealing with the queries on the particular five lodgements, it is helpful to explain some of the background involved, as set out below.

6. Mr Ahern separated from his wife, Mrs Miriam Ahern, in Jan '87. Whilst not a formal legal separation at that time, Mr Ahern left the family home and was accommodated through living with his mother and / or a small flat adjacent to Mr Ahern's constituency office in Drumcondra, Dublin 9. Mr Ahern continued to financially support his wife and their two children through maintenance in the normal way.

Peelo & Partners

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

7. [redacted]

8. [redacted]

9. During these seven years, Mr Ahern did not maintain any personal (current or deposit) bank or building society accounts. His salary and expense cheques were cashed, either by himself or by an assistant, and the monies necessary for the maintenance of Mrs Ahern and their two children were either given directly to Mrs Ahern or lodged in cash to the joint account of Mr and Mrs Ahern in AIB, Finglas, Dublin 11 (account No 55017-003). Mortgage repayments (IPBS) on the family home were made from this account.

10. Mr Ahern's personal expenditures during the circa seven years (ie, '87 to '93) were low and cash balances, net of his maintenance payments, were gradually accumulated over this period. (See also paragraph 16 (c) herein in this regard) These cash balances were kept in a safe in Mr Ahern's constituency office in Drumcondra and in his Department office. (The foregoing can be confirmed by a number of colleagues and / or assistants of Mr Ahern)

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

11. The Discovery made by Mr Ahern covers a number of bank and building society current and deposit accounts: most of which are of a routine nature and require no particular review or analysis. There are, however, four bank accounts that require some review / analysis with reference to the purpose of this Report, namely:

(All of these accounts were with AIB, 37 Upper O'Connell Street, Dublin 1, in the sole name of Mr Ahern)

No 00401.094	Loan	24 Dec '93 - 30 Jan '96
No 00401.177	Special Savings	30 Dec '93 - 12 Dec '94
No 1.A.04519.011	Deposit	11 Oct '94 - 5 Dec '94
No 00401.334	Deposit	9 Dec '94 - 1 Oct '98

12. A chart of transactions in these accounts is attached as an appendix to this Report. As explained later herein, four of the five lodgements on which queries have been raised by the Tribunal are referred to on this chart.

13. The loan of £19,115,97, taken out on 24 Dec '93, was to pay legal costs [redacted] The availability of this loan had been negotiated some time previously by Mr Ahern in anticipation of these costs.

14. The foregoing is the background and this Report now deals with each of the five specific lodgements on which queries have been raised by the Tribunal.

Peelo & Partners

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

15. *"£15,000 cash lodgement as part of a £22,500 composite lodgement to Allied Irish Banks, special savings account numbered 00401-177 on the 30th December 1993"*

(a) This £15,000 comprised six individual cash contributions of £2,500 each from the following persons:

Dave McKenna
Jim Nugent
Fintan Gunne RIP
Michael Collins
Charlie Chawke
Paddy Reilly RIP

(b) All of the foregoing are personal friends of Mr Ahern, known to him mainly through political life. At the time ([redacted], when Mr Ahern had no home the £15,000 (£22,500 in total) was intended as a goodwill loan to help fund his legal costs [redacted] The loan was unsolicited by Mr Ahern.

(c) As shown in the attached chart, £22,000 of this £22,500 was used to fund the repayments on the loan of £19,115.97 taken out re legal costs.

(d) There was no particular reason as to why the payments were made in cash. The lodgement was made by Mr Ahern. The identity of the AIB bank official who received the lodgement was most likely either Philip Murphy or Jim McNamara.

Peelo & Partners

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

16. *"£30,000 cash lodgement into Allied Irish Banks, special savings account numbered 00401-177 (£27,164.44 cash) and an amount in the sum of £2,835.56 in your client's current account numbered 0041-250 lodged on the 25th April 1994"*

(a) The £30,000 cash was entirely made up from cash balances of in excess of £50,000 accumulated by Mr Ahern over the circa seven years '87 to '93 (see paragraphs 9 and 10 above). Further clarification can be provided in this regard.

(b) As is apparent from the chart on page 10 of this Report, the £27,164.44 was the exact amount necessary to bring the Special Savings Account up to the maximum figure of £50,000 allowed in legislation for such an account. AIB made the necessary division of the £30,000 lodgement into the two components of £27,164.44 and £2,835.56.

(c) [redacted] He was therefore anxious, as best he could, to privately build up a capital sum over time for his own housing requirements. Mr Ahern was able to do this because his personal outgoings were modest.

(d) The lodgement of £30,000 was made by Mr Ahern. The identity of the AIB bank official who received the lodgement was Philip Murphy.

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

17. *"£20,000 cash lodgement into Allied Irish Banks account number 00004-096 in the name of Georgina and Cecilia Ahern on the 8th August, 1994."*

(a) As explained at paragraphs 9, 10 and 16 (c) above, Mr Ahern had accumulated cash balances of in excess of £50,000 over the seven years of '87 to '93.

(b) £30,000 of these cash balances was used as explained at paragraph 16 above. £20,000 was lodged to AIB account No 00004-096 in the name of Georgina and Cecilia Ahern on 8 Aug '94.

(c) [redacted] The two children of the marriage, Georgina and Cecilia, were teenagers and Mr Ahern was anxious to provide for their education, hence the money was set aside for this purpose. [redacted]

(d) The cash was lodged by Mr Ahern. The identity of the AIB bank official who received the cash was most likely either Philip Murphy or Jim McNamara.

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

18. *"Transfer in the sum of £24,838.49 to your clients 7-day fixed interest account at Allied Irish Banks numbered 04519/011 on the 11th October 1994".*

(a) Mr Ahern attended and spoke at a private dinner in Manchester, circa this time. The dinner was organised by 'Manchester - Irish' businessmen and Mr Ahern had attended similar dinners on previous occasions. The dinner was not organised as a fundraiser. At the end of the dinner, unsolicited by Mr Ahern, he was presented with cash of circa Sterling £8,000 made up by individual contributions from the attendance. There is no list of contributors in this regard. (John Kennedy, one of the Manchester businessmen involved and Senator Tony Kett, who attended the dinner, can confirm the foregoing)

(b) The exact amount of the sterling cash is not known. At the then (11 Oct '94) sterling / punt exchange rate of 0.9883, the sterling equivalent of Irish £7,938.49 was circa Sterling £7,845.61. (Note: Irish £7,938.49 + £16,500.00 = £24,438.49). The balance of Irish £16,500 in the lodgement was made up as follows:

Paddy Reilly*	£3,500	Barry English	£5,000
Joe Burke	£3,500	Dermot Carew	£4,500

*A different Paddy Reilly than listed at 15 (a)

All of the above persons are personal friends of Mr Ahern. The amounts were entirely unsolicited and represented a goodwill loan from friends towards building up Mr Ahern's personal finances re possible purchase of a house. [redacted]

(c) The lodgement of £24,838.49 was made personally by Mr Ahern. The AIB bank official who received the lodgement was either Philip Murphy or Jim McNamara.

Peelo & Partners

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

19. *"Transfer in the sum of £19,142.92 to your client's 7-day fixed interest account at Allied Irish Banks numbered 04519/011 on the 1st December 1995".*

(a) This was a return of monies from his then partner Celia Larkin which arose in the following circumstances.

(b) As shown on the attached chart, a total of £50,000 was given to Celia Larkin, for the purpose of organising on Mr Ahern's behalf the fit-out of the house below.

£22,000	5 Dec '94	Account No 1.A.004519.011
£28,000	6 Dec '94	Account No 00401.177

(c) Mr Ahern had rented a house at this time, with an option to purchase it (which he did circa Sep '97). Expenditures on household furnishings totalling some £30,000 (invoices available) were made from the foregoing £50,000 during '95.

(d) The sum of £19,142.92 was the balance remaining from the £50,000, and was re-lodged 1 Dec '95 to Mr Ahern's already existing AIB deposit account No 1.A.004519.011.

Peelo & Partners

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS:
REF: PTB 358. 20 APR '06

20. It is noted that all of the transactions referred to herein were carried out in the one branch of AIB at 37 Upper O'Connell Street, Dublin 1. There were no other banks or building societies involved.

I confirm my willingness to meet with representatives of the Tribunal to provide such further clarifications and assistance as may be required.

Des Peelo
20 Apr '06

Peelo & Partners
Chartered Accountants
38 Upper Grand Canal Street
Dublin 4

Tel: 6683903
Fax: 6685781
E-mail: peelo@indigo.ie

STRICTLY PRIVATE AND CONFIDENTIAL

TRIBUNAL OF INQUIRY INTO
CERTAIN PLANNING MATTERS
AND PAYMENTS: REF PTB 358

MR BERTIE AHERN T D - AN TAOISEACH

4 APR '07

Memorandum prepared by Des Peelo FCA,
Peelo & Partners, Chartered Accountants,
on the Instructions of Frank Ward & Co,
Solicitors for Mr Ahern

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS
REF: PTB358: 20 MAR '07

The purpose of this Memorandum is to provide explanatory charts re the various movements / transactions involving the lodgements set out in the Tribunal letter 2 Mar '07. All of the information herein has already been provided to the Tribunal.

These lodgements comprise:

22,500.00	30 Dec '93	
30,000.00	25 Apr '94	
(ie, 27,164.44 + 2,835.56)		See CHART ONE
20,000.00	8 Aug '94	
24,838.49	11 Oct '94	

19,142.92	1 Dec '95	
50,000.00	5 Dec '94	See CHART TWO
11,743.74	15 Jun '95	
9,655.00	24 Jul '95	

Note: The above transactions all took place over a period of circa the two years '94 and '95.

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS
REF: PTB358: 20 MAR '07

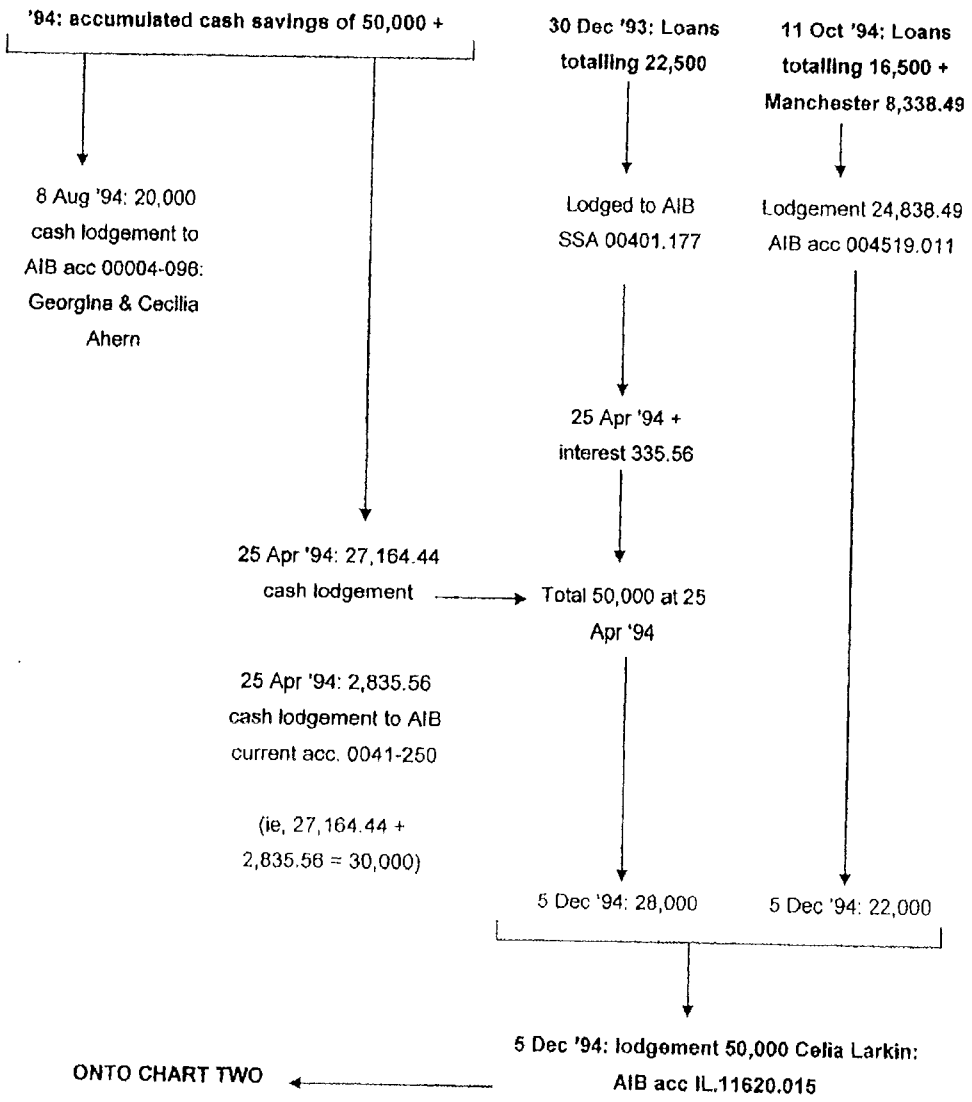


CHART ONE

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS
REF: PTB358: 20 MAR '07

FROM CHART ONE →

5 Dec '94: lodgement 50,000 Celia Larkin: AIB acc IL.11620.015

↓

19 Jan '95: cash 50,000 withdrawn and returned to Mr Ahern. Cash kept in constituency office

↓

22 Jun '95: Celia Larkin opens AIB acc IL.11620.031

↓

+ lodgement 9,684.71 from AIB acc II.11621.011 →

22 Jun '95: cash lodgement 11,743.74 from Mr Ahern

(first lodged to acc IL.11620.015 on 15 Jun '95, then transferred)

← Monies used for house expenditures

↓

24 Jul '95: cash lodgement 9,655 from Mr Ahern ←

Note: Starting with the 50,000 cash on 19 Jan '95, Mr Ahern lodged 11,743.74 + 9,655.00, total 21,298.74, to Celia Larkin acc no IL.11620.031. Other house expenditures were made in cash at this time (circa mid - later '95). The remaining cash balance of 19,142.92 was lodged on 1 Dec '95 to Mr Ahern's already existing AIB deposit acc I.A.004519.011 as it was no longer required.

CHART TWO

Return to report

1993					BANK CHARGES	WAGES	PERSONNEL AGENCY	INSURANCES
		B/F	68424 22	275 44	9609 49	4535 71	2404 18
NOV	22	Ref ITEM FEE	D	3 65	3 65			
		G. CARROTH	151	66 91		66 91		
	23	Ref ITEM FEE	D	3 65	3 65			
	23	DO	D	3 65	3 65			
		VILLAGE TRAVEL	152	158 -				
		Ref ITEM FEE	D	3 65	3 65			
		EIRCOM	153	110 80				
		TARMAC WORKFORCE } LEGALS	154	1827 60				
		DO	155	1240 -				
	26	Ref ITEM FEE	D	7 30	7 30			
	29	DO	D	3 65	3 65			
		EUROWORKFORCE	156	1429 32			1429 32	
		G. CARROTH	157	66 91		66 91		
	30	Ref ITEM FEE	B	10 95	10 95			
DEC		STAGED LIFE		475 10				475 10
		EASTERTIDE	D	1000 -				
		DO	D	843 74				
		Ref. Fee	D	10 95	10 95			
		G. CARROTH	158	66 91		66 91		
DEC	8	Ref FEE	D	3 65	3 65			
		TELECOM	159	158 86				
	10	Ref ITEM	D	3 65	3 65			
	13	BANK FEES	D	16 21	16 21			
	13	" INTEREST	D	167 37	167 37			
		G. CARROTH	160	66 91		66 91		
	14	SKB	D	37 02	37 02			
	14	WOODCHESTER BANK	D	572 84				
		Ref ITEM FEE	D	10 95	10 95			
		EIRCELL	161	117 79				
	20	Ref ITEM FEE	D	3 65	3 65			
		G. CARROTH	162	66 91		66 91		
		USA	163	500 -				
		E.S.B	164	111 -				
		GOLF OUTING PROMOTION	165	532 50				
		VILLAGE TRAVEL	166	1267 92				
		MITSUBISHI — XMAS RAFFLE PRIZE	167	1257				
		CHRISTMAS PRIZES (STAFF)	168	405 17				
		D. RICHARDSON	169	5000				
		KILDARE FUNCTION CANCELLED	170	2500				
			171					
		C/F	88 634 33	565 39	2944 04	5965 63	3879 18

Tel/Internet Post/ESB	Pension Annuity	VISA ESB	Prof. Fees	Insurance Bank	Office Equipment	Phone/Travel Costs	Subscriptions	Courses/Books
2,983 41	7091 56	3,300 -	NIL	2,556 51	3,916 14	12714 22	10,802 85	15277
						158 -		
110 80			1887 60 1210 -					
	1000 - 243 74							
158 86								
				572 84				
177 79								
111 -		500 -						
						582 50 1267 72		
						1757 - 403 12 1,500 - 2500 -	2500 =	2500
3481 86	8,935 30	3,300	3097 60	3129 35	3,916 14	21,382 76	13302 85	

Return to report

WILLDOVER LTD INVOICE

50 City Quay
Dublin 2
International Tel. No. 353-1-6718508
International Fax No. 353-1-6765149

Invoice Address

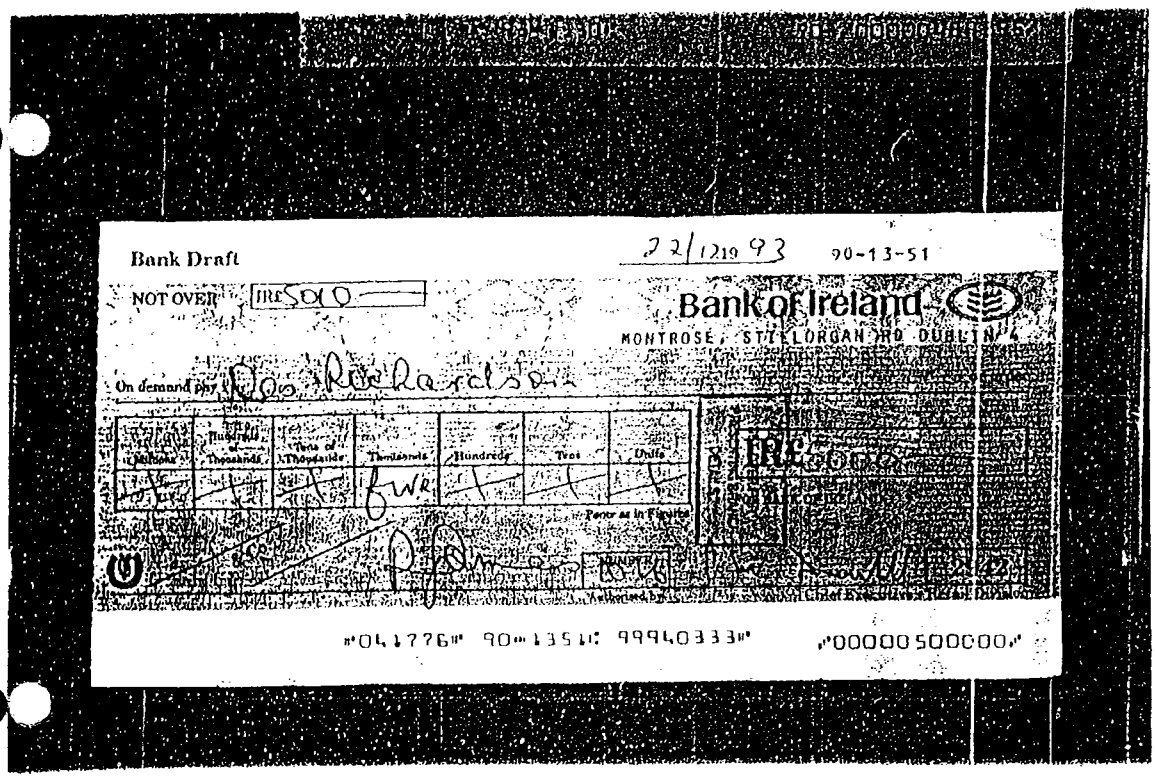
SEAN FLEMING
FLEMING FAIL
13 UPPER MERRION ST
DL

Invoice No. 2 Date 15.19.95 Page

FEES - DEBORAH BURKE (AS PER ATTACHED)	£3,744·00
FEES FOR D. RICHARDS (ON ACCOUNT)	£15,000
	£18,744·00

W.S. 58

Return to report



Bank Draft

22/12/93 90-13-51

NOT OVER IR£500

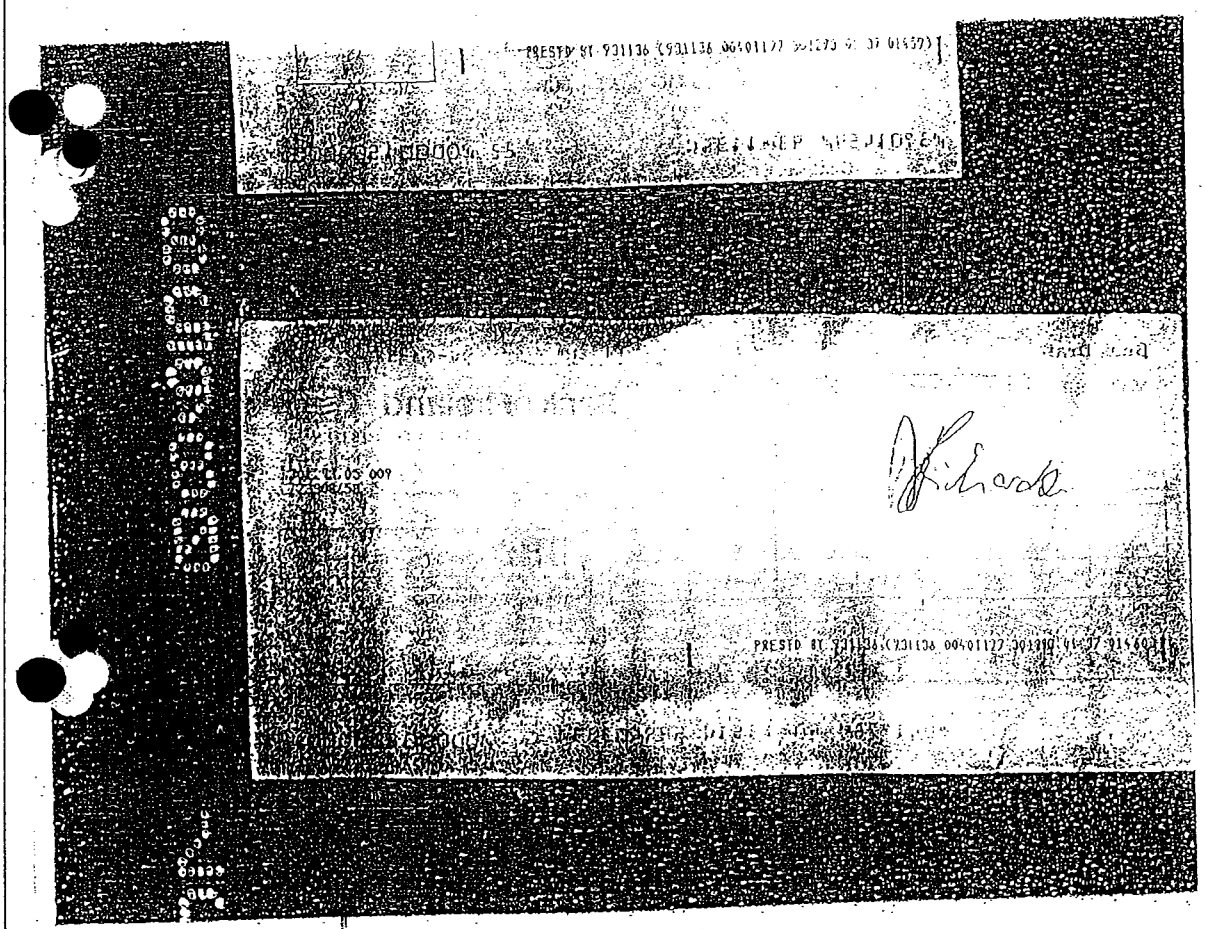
Bank of Ireland

MONTROSE, STILLORGAN RD DUBLIN 4

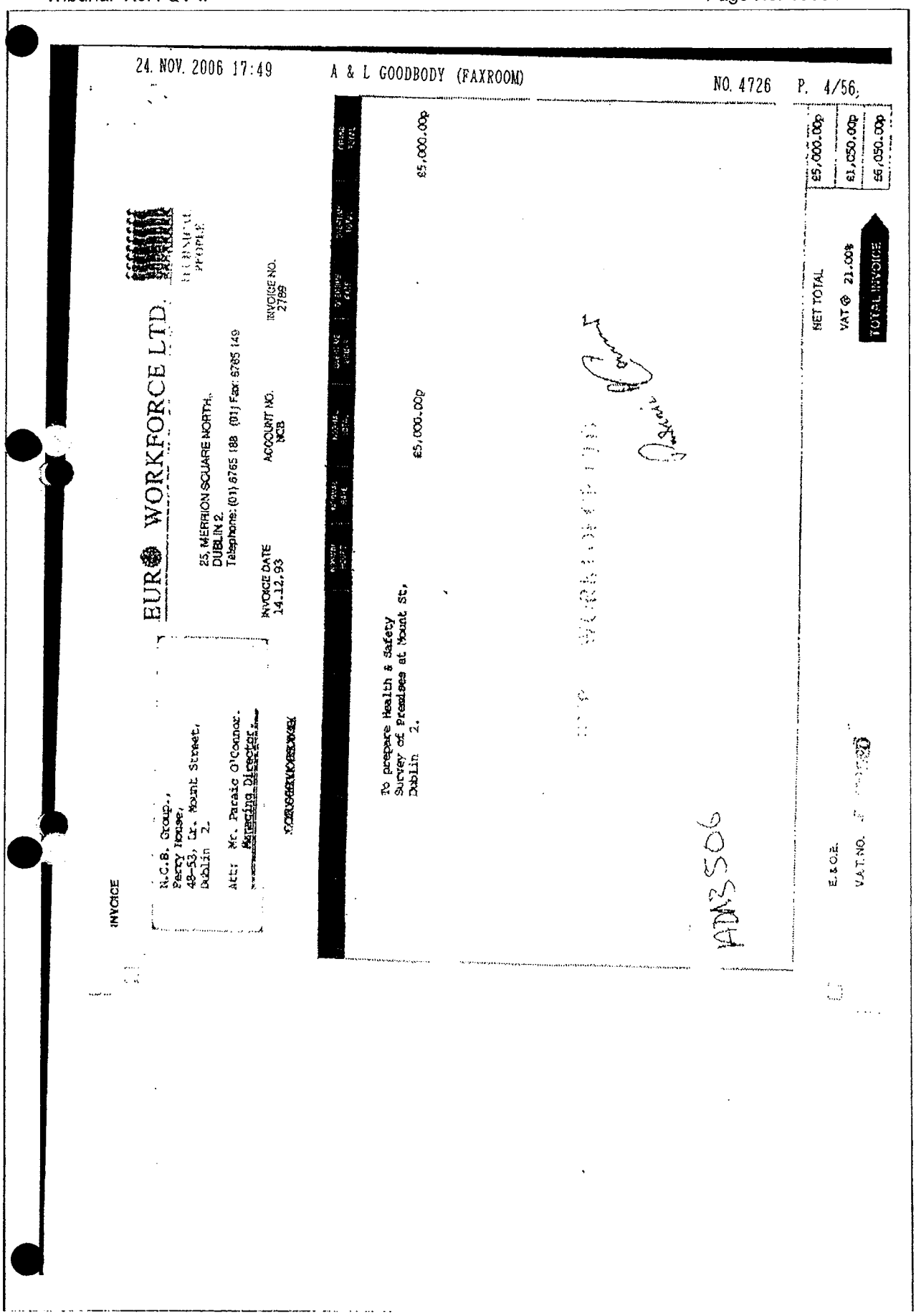
On demand pay Ryan Parkes & Co

IR£500

"041776" 90"135 1" 99940333" "000000500000"



Return to report



24. NOV. 2006 17:49 A & L GOODBODY (FAXROOM) NO. 4726 P. 4/56

EURO WORKFORCE LTD.

25, MERRION SQUARE NORTH,
DUBLIN 2.
Telephone: (01) 6765 188 (01) Fax: 6765 149

INVOICE

INVOICE DATE
14.12.93

ACCOUNT NO.
NCB

INVOICE NO.
2769

N.C.B. Group.,
Derry House,
48-53, Gr. Mount Street,
Dublin 2.

Att: Mr. Paraic O'Connor.
Managing Director.

To prepare Health & Safety Survey of Premises at Mount St, Dublin 2.	£5,000.00p
	£5,000.00p

NET TOTAL	£5,000.00p
VAT @ 21.00%	£1,050.00p
TOTAL INVOICE	£6,050.00p

E.&O.E.

VAT NO.

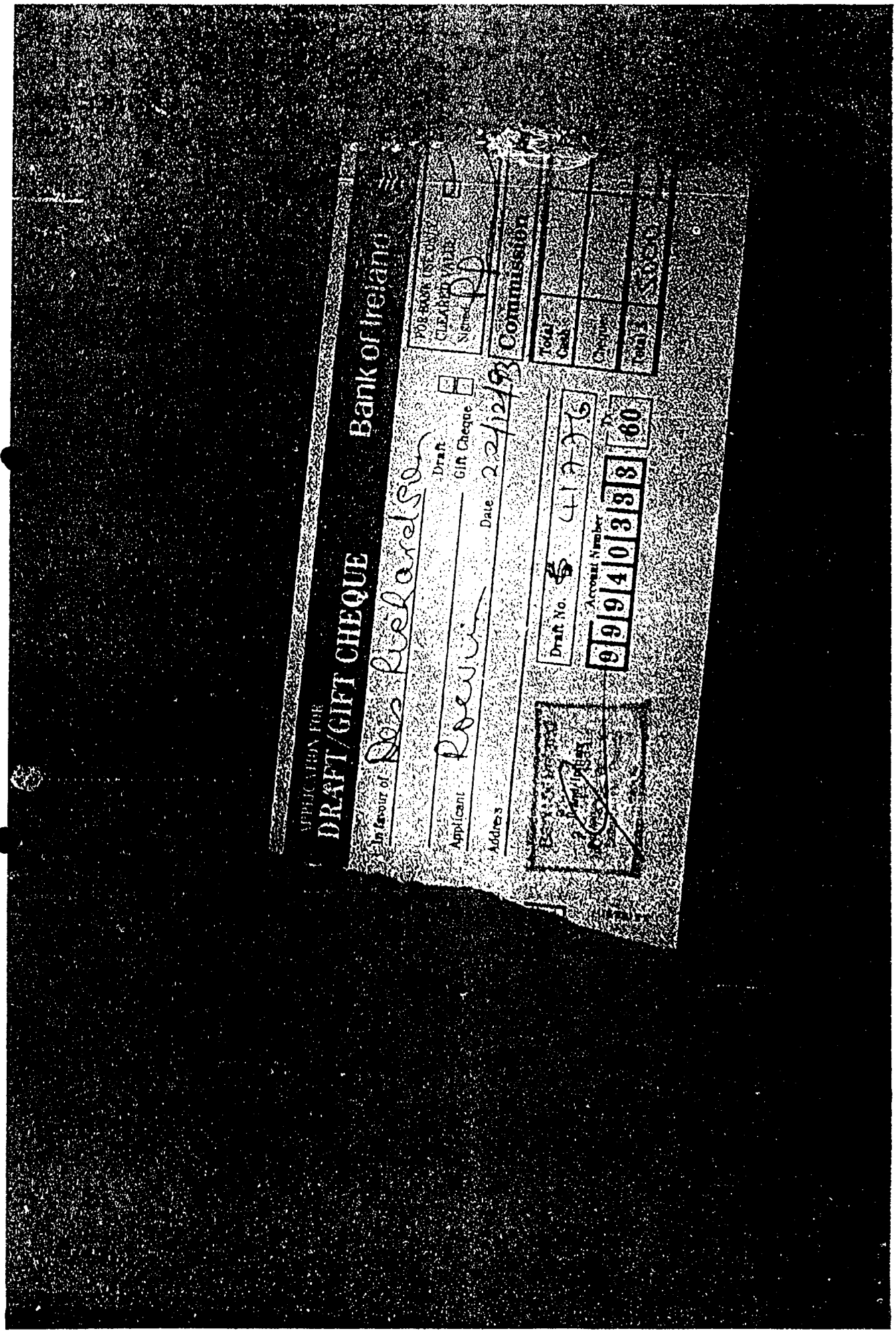
ADM 506

Return to report

WILLDOVER LTD
CURRENT ACCOUNT

3A WILLDOVER LTD N 06
/C
ACCOUNT NUMBER 37970502
STATEMENT: DUE 30DEC1993
CODE M SPAN 1 DAY 30 C
STAT 12 PRINT 30NOV1993

DATE	PARTICULARS		DEBIT	CREDIT	BALANCE
	LAST LEDGER 01DEC1993				
1993					
01DEC	BALANCE FORWARD				
08DEC	CHEQUE.	156	66.91		10346.41 OD
	REFERRAL ITEM(8)-FEE		3.65		
10DEC	CHEQUE.	159	158.86		10416.97 OD
	REFERRAL ITEM(8)-FEE		3.65		
13DEC	LEDGER-DETAILS ATTACHED		16.21		10579.48 OD
	INTEREST		167.37		
14DEC	CHEQUE.	160	66.91		10763.06 OD
	GUARDIAN ROY EXCH	DD	37.02		
	WOODCHESTER BANK	DD	572.84		
	REFERRAL ITEM(8)-FEE		10.95		
15DEC	DOR				11450.78 OD
20	DCHEQUE.	161	117.79	3000.00 E.W.	8450.78 OD
	REFERRAL ITEM(8)-FEE		3.65		
21DEC	EXPRESS/POST LODG				8572.22 OD
	CHEQUE	169	5000.00	18744.00 ✓FF	
	CHEQUE.	162	66.91	To DR a/c	
					5104.87 SUBTOTAL



Return to report

NAME & ADDRESS : CUSTOMER NO : 46216100 13 TERM : PRESENT BALANCE : 34930.94 E.F.T. DETAILS:

THE SECRETARY SOURCE : SD1351 RES INDICATOR : NET INT ACCRUED : 47.79 N.S.C. : 90135

ROEVIN IRELAND LTD DATE OPENED : 09/10/92 REPAYMENT : BOTH NET INT PAID YTD: 1222.96 BRANCH A/C NO : 96312390

25 MERRION SQUARE NORTH NEXT PAY DATE : 20/01/94 CUST. STATUS : OTHERS AMT LIENED : 0

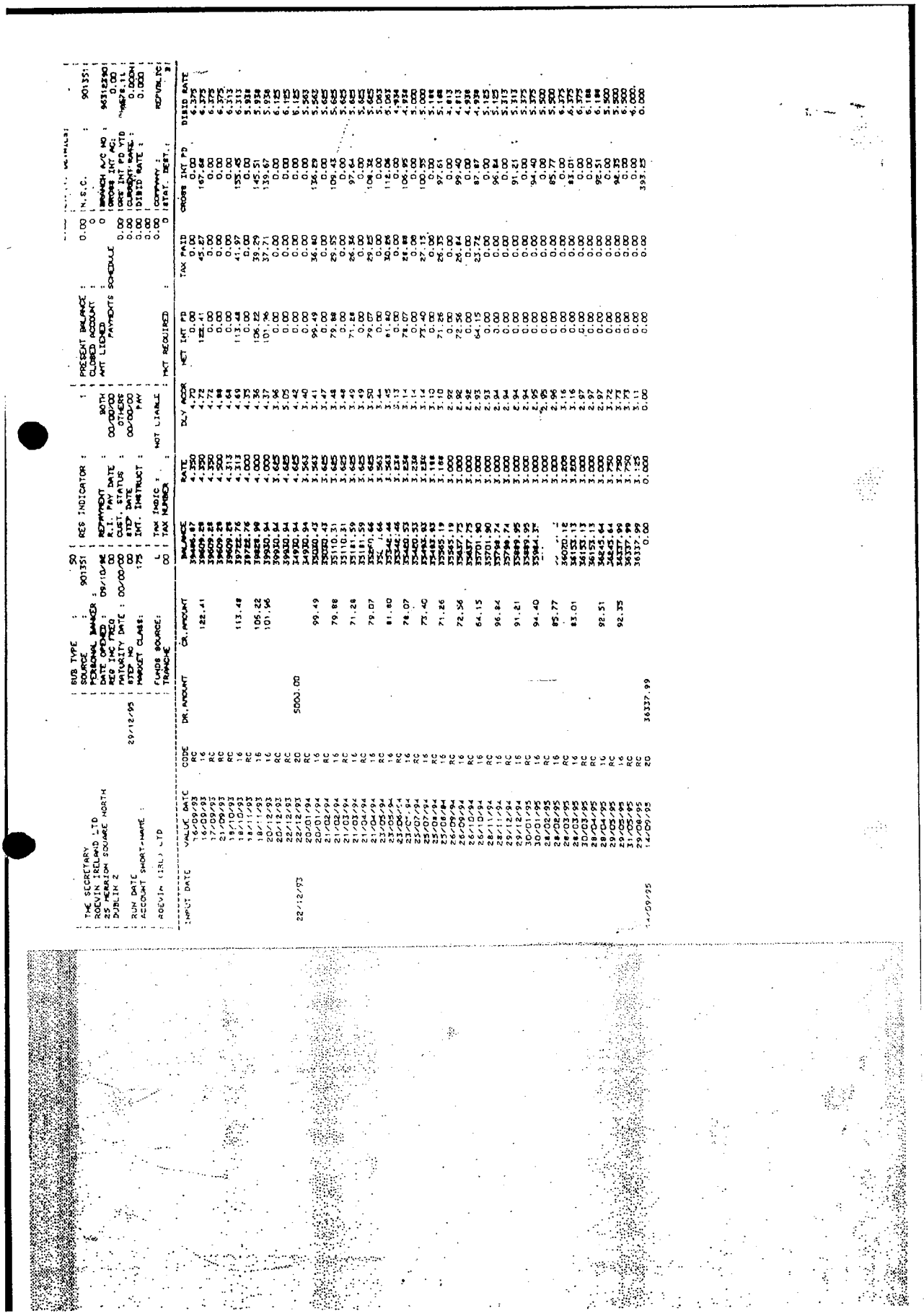
DUBLIN 2 MARKET CLASS: 175 INT. INSTRUCT : REDEPOSIT CURRENT RATE : 4.625

ACCOUNT SHORT-NAME : FUNDS SOURCE: TAX INDIC : FULLY LIABLE DIBID RATE : 6.125 COMPANY : REPUBLIC

ROEVIN (IRL) LTD

INPUT DATE	VALUE DATE	CODE	DR. AMOUNT	CR. AMOUNT	BALANCE	RATE	DLY ACCR	NET INT PD	TAX PAID	GROSS INT PD	DIBID RATE
	09/10/92	10		39000.00	39000.00	13.000	10.13	0.00	0.00	0.00	15.000
	09/11/92	RC			39000.00	12.500	9.74	0.00	0.00	0.00	14.625
	09/11/92	16		314.34	39314.34	12.500	9.82	314.34	116.26	430.60	14.625
16/11/92	13/11/92	20	2000.00		37314.34	12.500	9.32	0.00	0.00	0.00	14.625
	09/12/92	RC			37314.34	12.500	11.56	0.00	0.00	0.00	17.000
	09/12/92	16		281.85	37596.19	12.500	11.65	281.85	104.25	386.10	17.000
	11/01/93	RC			37596.19	19.000	14.28	0.00	0.00	0.00	20.000
	11/01/93	16		384.61	37980.80	19.000	14.43	384.61	142.25	526.86	20.000
	11/02/93	RC			37980.80	19.000	9.87	0.00	0.00	0.00	14.000
	11/02/93	16		447.42	38428.22	13.000	9.99	447.42	165.68	612.90	14.000
	11/03/93	RC			38428.22	9.000	6.91	0.00	0.00	0.00	10.400
	11/03/93	16		279.76	38707.98	9.000	8.96	279.76	103.47	383.23	10.400
	13/04/93	RC			38707.98	6.750	5.26	0.00	0.00	0.00	8.250
	13/04/93	16		229.93	38937.91	6.750	5.25	229.93	85.04	314.97	8.250
	13/05/93	RC			38937.91	6.000	4.67	0.00	0.00	0.00	7.500
	13/05/93	16		157.70	39095.61	6.000	4.69	157.70	58.33	216.03	7.500
	14/06/93	RC			39095.61	5.000	3.90	0.00	0.00	0.00	6.500
	14/06/93	16		150.12	39245.73	5.000	3.92	150.12	55.53	205.65	6.500
	14/07/93	RC			39245.73	4.750	3.72	0.00	0.00	0.00	6.250
	14/07/93	16		117.73	39363.46	4.750	3.73	117.73	43.55	161.28	6.250
	16/08/93	RC			39363.46	5.000	3.93	0.00	0.00	0.00	6.625
	16/08/93	16		123.41	39486.87	5.000	3.94	123.41	45.64	169.05	6.625
	16/09/93	RC			39486.87	4.350	3.43	0.00	0.00	0.00	6.375
	16/09/93	16		122.41	39609.28	4.350	3.44	122.41	45.27	167.68	6.375
	17/09/93	RC			39609.28	4.350	3.44	0.00	0.00	0.00	6.375
	21/09/93	RC			39609.28	4.500	2.56	0.00	0.00	0.00	6.375
	18/10/93	RC			39609.28	4.313	3.41	0.00	0.00	0.00	6.313
	18/10/93	16		113.48	39722.76	4.313	3.42	113.48	41.97	155.45	6.313
	18/11/93	RC			39722.76	4.000	3.17	0.00	0.00	0.00	5.938
	18/11/93	16		106.22	39828.98	4.000	3.18	106.22	39.29	145.51	5.938
	23/12/93	16		101.96	39930.94	4.000	3.19	101.96	37.71	139.67	5.938
	20/12/93	RC			39930.94	3.625	2.89	0.00	0.00	0.00	5.125
	22/12/93	RC			39930.94	4.625	3.69	0.00	0.00	0.00	6.125
22/12/93	22/12/93	20	5000.00		34930.94	4.625	5.23	0.00	0.00	0.00	6.125

Return to report



Return to report

Fax 20 Nov 2007 12:59 P002/002

B

Special Savings Account Other Than A Joint Account

Declaration and undertakings to a Deposit

A. Details of the risk taker

To: The Manager,
Allied Irish Banks, p.l.c.
AIB Finance Limited
AIB Capital Markets, p.l.c.
(delete as appropriate)

Address 37/38 Upper O'Connell St
Dublin 1.

B. Details of Special Savings Account to which this Declaration refers

Account number 00491177

Full name and address of account holder
BERTIE AHERN
161 LOWER DRUMCONDRA ROAD
DRUMCONDRA
Dublin 9.

C. The Declaration and Undertakings

I declare and undertake that I am aware that I may not do any of the following in relation to the Special Savings Account referred to at B:

- [illegible]
- [illegible]
- [illegible]

I undertake that if any of the above conditions cease to be satisfied I will notify you immediately.

D. Statement and undertaking in relation to Special Investments, i.e.

- Special Investment Policies
- Special Investment Units
- Special Portfolio Investment Accounts

I hereby state that the position in relation to the Special Investments set out above is as described at 4 below.
(Indicate here (a) or (b) as appropriate)

(a)
- I do not hold any of the above investments in addition to the Special Savings Account to which this Declaration refers.
- I undertake to notify you immediately if I acquire any of the above investments while continuing to hold the Special Savings Account to which this Declaration refers and to state the date I acquired that investment.

(b)
- I do hold one of the above investments in addition to the Special Savings Account to which this Declaration refers, and
- I have notified the relevant life assurance company, unit trust or broker that I hold the Special Savings Account.
- I do not hold more than one such investment in addition to the Special Savings Account covered by this Declaration and I am aware that I may not do so.
- I do not hold more than £20,000 in the special investment and I am aware that I may not do so.

Declaration - which must be signed

I hereby declare that the information given on this form is correct and I affirm the Declaration, statement and undertakings given at C and D.

Declarer's signature

Date 23/11/93.

GATSBY COURT
172 HOLLIDAY STREET
BIRMINGHAM B1 1TJ
TEL: 0121-643 0990
FAX: 0121-633 0288

PLANNING & PAYMENTS TRIBUNAL OFFICE
12 DEC 2007
RECEIVED

Your Ref: Our ref: 702/07/2

REPORT OF:

E.M. BARRATT, MNatSc, MSc, RFP

FOR:

Tribunal of Inquiry into

Certain Planning Matters & Payments

State Apartments

Dublin Castle, Dublin 2

RE: AIB BANK FORM

5th December 2007

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Your Ref:
Our Ref: 702/07/2

1. Qualifications

1.1. I am a Master of Natural Science, Master of Science and a Member of the Royal Society of Chemistry. I am a Registered Forensic Practitioner with the Council for the Registration of Forensic Practitioners (CRFP) in the speciality of Questioned Documents. The CRFP is the regulatory body for forensic practitioners and I am aware of and adhere to the Code of Conduct of the CRFP.

1.2. I am a Forensic Document Examiner; this has been my sole occupation since 2003. During the course of my work I have examined hundreds of cases involving documents and handwriting of unknown or disputed origin.

1.3. This company is equipped with electrostatic detection apparatus (ESDA), infra red video equipment, and all the normal facilities of a forensic document laboratory.

2. Scope of Expertise

2.1. Specialists in Questioned Documents all have an understanding of issues relating to handwriting and signatures and other aspects of document examination that routinely arise in their field. These include methods of examining documents to show their authenticity or to determine alterations to them; the examination and comparison of handwritings and signatures; and general examinations such as for indented impressions. Beyond this knowledge, practitioners must be aware of their own limitations and have an awareness of the more specialised examination methods other practitioners may be able to offer.

2.2. Specialists in handwriting and signatures examine examples of writing, usually to determine authorship. In addition to the general capabilities all examiners in this specialism must have, their expertise includes the interpretation of observations, taking into account many influences such as taught styles, natural variation, age and disguise; and offering an opinion of authorship which takes into account any constraints in the evidence.

2.3. Specialists in the other non-handwriting aspects of document examination examine all the other issues that arise routinely in this field such as how documents are produced (for example copying, printing, typing); the materials from which they are produced (for example paper, ink, other writing media); and general aspects such as impressions and folds in the paper.

2.4. Some related aspects require expertise in highly specialised fields such as security printing or the detailed analysis of specialised inks or papers. Experts in such areas may

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Your Ref:
Our Ref: 702/07/2

not necessarily have a detailed knowledge of the other aspects of questioned documents, but will often work in partnership with other document examiners to ensure that all aspects of the task are correctly addressed.

3. Instructions and Items Received

I have examined the item below at the instruction of the Tribunal of Inquiry into Certain Planning Matters & Payments. The item was delivered to our company premises by Peter Kavanagh on 4th December 2007.

AIB Bank Special Savings Account form for account 00401177

4. Purpose of Examination

I have examined the date on the AIB Bank form to determine whether or not it has been altered.

5. Background

5.1. Pens such as ballpoint pens and fluid-ink pens (e.g. fibre-tipped pens and rollerball pens) are produced by many manufacturers using a wide range of ink formulations. Many of these inks can be differentiated from one another by non-destructive techniques, usually by microscopic examination or by using specialised equipment that utilises infrared, ultraviolet and other light sources. Many inks that appear similar in colour to one another in normal visible light can exhibit very different appearances when viewed using different light sources because of the different properties of the mixtures of dyes used to make them. Where inks are found to be indistinguishable it does not necessarily follow that the same individual pen was used since pens containing the same ink are manufactured in large numbers.

5.2. It is also possible to use digital enhancement to emphasise differences between inks by the use of a desktop scanner and commercial image-editing software.

6. Findings

6.1. The date on the AIB Bank form has been written using blue ballpoint pen ink and now reads **23/12/93.** The figures **2** and **3** appear darker in visible light than the rest of the date. There are pen lines present that do not form parts of these two characters and in my

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Our Ref: 702/07/2

opinion there is conclusive evidence that the 'day' part of the date has been altered to read **23**.

6.2. I have examined the date on the AIB Bank form using microscopy, specialised lighting techniques and digital enhancement. It has not been possible to reveal any differences between the ink lines within the date. However, as noted above, where inks are found to be indistinguishable it does not necessarily follow that the same individual pen was used since pens containing the same ink are manufactured in large numbers.

6.3. I have examined the alteration microscopically in an attempt to decipher the original figures. The layouts of the other pen strokes are consistent with the shapes of the figures **1** and **4** and in my opinion, there is strong evidence that the original date on the AIB Bank form read **14/12/93**. I cannot completely exclude the possibility that the original figures were not 1 and 4, but I consider this to be unlikely.

6.4. I produce exhibits showing magnified images of the date as EMB/1 and EMB/2

7. Summary

In my opinion the date on the AIB Bank form has been altered and there is strong evidence that the original date was 14/12/93.

8. Scale of Opinions

Wherever possible, I use the following scale of opinions in expressing my conclusions:

CONCLUSIVE evidence (this may be **positive** or **negative**)

STRONG but not conclusive evidence (this may be **positive** or **negative**)

LIMITED evidence (this may be **positive** or **negative**)

INCONCLUSIVE

Elisabeth Barratt

5th December 2007

Document Evidence Ltd

Your Ref:
Our Ref: 702/07/2

I Elisabeth May Barratt declare that:

1. I understand that my duty is to help the Court and that this duty overrides any obligation to the party who has instructed me. I confirm that I have complied with my duty.

2. I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

3. I will notify those instructing me immediately and confirm in writing if for any reason this report requires any correction or qualification.

4. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent upon the outcome of the case.

Elisabeth Barratt

5th December 2007

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CHAPTER TWO – THE QUARRYVALE MODULE – PART 10 SECTION III

EXHIBITS

1. Tribunal's spreadsheet of Foreign Exchange calculations..... 1506

2. AIB lodgement docket for IR£19,142.92, dated 1 December 1995..... 1507

3. Handwritten AIB debit/withdrawal docket marked 'F/X Held' stamped 11 October 1994, in the sum of IR£27,491.95..... 1508

4. AIB printed Foreign Currency Held ledger dated 11 October 1994..... 1509

5. Extract from All Items report AIB O'Connell Street dated 11 October 1994, Teller no 12..... 1510

6. Statement from AIB internal "Foreign Notes in Transit" account dated 13 October 1994..... 1511

Type		Date	STE Deposit	BUY UP TO	ST Ex Rate	IRE Gross	Charge	IRE Net	
Foreign Note	1	11/10/1994	25,000.00	IR500	1.0212	24,481.00	5.00	24,476.00	
	* 2	11/10/1994	25,000.00	IR2500	1.0043	24,843.49	5.00	24,838.49	A
	3	11/10/1994	25,000.00	IR10000	0.9988	25,030.04	5.00	25,025.04	
	4	11/10/1994	25,000.00	Buy Remit	0.9918	25,206.14	5.00	25,201.14	
Commercial	5	11/10/1994	25,000.00	IR500	1.0095	24,764.74	5.00	24,759.74	
	6	11/10/1994	25,000.00	IR2500	1.0000	25,000.00	5.00	24,995.00	
	7	11/10/1994	25,000.00	IR10000	0.9940	25,150.91	5.00	25,145.91	
	8	11/10/1994	25,000.00	Buy Remit	0.9886	25,288.29	5.00	25,283.29	

Type		Date	STE Deposit	BUY UP TO	ST Ex Rate	IRE Gross	Charge	IRE Net	
Foreign Note	17	05/12/1994	30,000.00	IR500	1.0169	29,501.43	5.00	29,496.43	
	18	05/12/1994	30,000.00	IR2500	1.0021	29,937.13	5.00	29,932.13	
	19	05/12/1994	30,000.00	IR10000	0.9947	30,159.85	5.00	30,154.85	
	20	05/12/1994	30,000.00	Buy Remit	0.9877	30,373.60	5.00	30,368.60	
Commercial	21	05/12/1994	30,000.00	IR500	1.0055	29,835.90	5.00	29,830.90	
	22	05/12/1994	30,000.00	IR2500	0.9955	30,135.61	5.00	30,130.61	
	23	05/12/1994	30,000.00	IR10000	0.9895	30,318.34	5.00	30,313.34	
	24	05/12/1994	30,000.00	Buy Remit	0.9845	30,472.32	5.00	30,467.32	

Type		Date	STE Deposit	BUY UP TO	ST Ex Rate	IRE Gross	Charge	IRE Net	
Foreign Note	32	15/06/1995	10,000.00	IR500	1.0493	9,530.16	5.00	9,525.16	
	33	15/06/1995	10,000.00	IR2500	1.0340	9,671.18	5.00	9,666.18	
	* 34	15/06/1995	10,000.00	IR10000	1.0263	9,743.74	5.00	9,738.74	C V
	35	15/06/1995	10,000.00	Buy Remit	1.0191	9,812.58	5.00	9,807.58	
Commercial	36	15/06/1995	10,000.00	IR500	1.0375	9,638.55	5.00	9,633.55	
	37	15/06/1995	10,000.00	IR2500	1.0275	9,732.36	5.00	9,727.36	
	38	15/06/1995	10,000.00	IR10000	1.0215	9,789.53	5.00	9,784.53	
	39	15/06/1995	10,000.00	Buy Remit	1.0159	9,843.49	5.00	9,838.49	

Type		Date	STE Deposit	BUY UP TO	ST Ex Rate	IRE Gross	Charge	IRE Net	
Foreign Note	40	01/12/1995	20,000.00	IR500	1.0578	18,907.17	5.00	18,902.17	
	* 41	01/12/1995	20,000.00	IR2500	1.0522	19,007.79	5.00	19,002.79	X
	* 42	01/12/1995	20,000.00	IR10000	1.0445	19,147.92	5.00	19,142.92	D
	43	01/12/1995	20,000.00	Buy Remit	1.0371	19,284.54	5.00	19,279.54	
Commercial	44	01/12/1995	20,000.00	IR500	1.0560	18,939.39	5.00	18,934.39	
	45	01/12/1995	20,000.00	IR2500	1.0455	19,129.60	5.00	19,124.60	
	46	01/12/1995	20,000.00	IR10000	1.0395	19,240.02	5.00	19,235.02	
	47	01/12/1995	20,000.00	Buy Remit	1.0338	19,346.10	5.00	19,341.10	

V Appears that teller did not charge £5

X Error by teller adjusted from £19,002.79 to £19,142.92

Charge(s) Notes/Cheque purchase from customer
1% commission
£1 minimum
£5 maximum
All FX funds lodged £500- = charge of £5 maximum

BA Bertie Ahern
CL Celia Larkin

Buy remit rate suggested by AIB staff as not a used rate for public/commercial but rate for inter-bank transactions

Type		Date	STE Deposit Range: STE Deposit Charge	STE Deposit Range: STE Deposit No Charge	BUY UP TO	ST Ex Rate	IRE Gross	Charge	IRE Net
Foreign Note	1	11/10/1994	8,520.37	8,515.37	IR500	1.0212	8,343.49	5.00	8,338.49
	*2	11/10/1994	8,396.05	8,391.02	IR2500	1.0063	8,343.49	5.00	8,338.49
	3	11/10/1994	8,333.48	8,328.48	IR10000	0.9988	8,343.49	5.00	8,338.49
	4	11/10/1994	8,275.07	8,270.11	Buy Remit	0.9918	8,343.49	5.00	8,338.49
Commercial	5	11/10/1994	8,422.75	8,417.71	IR500	1.0095	8,343.49	5.00	8,338.49
	6	11/10/1994	8,343.49	8,338.49	IR2500	1.0000	8,343.49	5.00	8,338.49
	7	11/10/1994	8,293.43	8,288.46	IR10000	0.9940	8,343.49	5.00	8,338.49
	8	11/10/1994	8,248.37	8,243.43	Buy Remit	0.9886	8,343.49	5.00	8,338.49

Type		Date	US$ Deposit	BUY UP TO	US$ Ex Rate	IRE Gross	Charge	IRE Net	
Foreign Note	25	05/12/1994	45,000.00	IR500	1.5791	28,497.25	5.00	28,492.25	
	* 26	05/12/1994	45,000.00	IR2500	1.5637	28,777.90	5.00	28,772.90	B
	27	05/12/1994	45,000.00	Buy Remit	1.5386	29,247.37	5.00	29,242.37	
Commercial	28	05/12/1994	45,000.00	IR500	1.5715	28,635.06	5.00	28,630.06	
	29	05/12/1994	45,000.00	IR2500	1.5560	28,920.31	5.00	28,915.31	
	30	05/12/1994	45,000.00	IR10000	1.5500	29,032.26	5.00	29,027.26	
	31	05/12/1994	45,000.00	Buy Remit	1.5367	29,283.53	5.00	29,278.53	

Type		Date	STE Deposit Range: STE Deposit Charge	STE Deposit Range: STE Deposit No Charge	BUY UP TO	ST Ex Rate	IRE Gross	Charge	IRE Net
Foreign Note	48	05/12/1994	29,264.25	29,259.16	IR500	1.0169	28,777.90	5.00	28,772.90
	49	05/12/1994	28,838.33	28,833.32	IR2500	1.0021	28,777.90	5.00	28,772.90
	50	05/12/1994	28,625.38	28,620.40	IR10000	0.9947	28,777.90	5.00	28,772.90
	51	05/12/1994	28,423.93	28,418.99	Buy Remit	0.9877	28,777.90	5.00	28,772.90
Commercial	52	05/12/1994	28,936.18	28,931.15	IR500	1.0055	28,777.90	5.00	28,772.90
	53	05/12/1994	28,648.40	28,643.42	IR2500	0.9955	28,777.90	5.00	28,772.90
	54	05/12/1994	28,475.73	28,470.78	IR10000	0.9895	28,777.90	5.00	28,772.90
	55	05/12/1994	28,331.84	28,326.92	Buy Remit	0.9845	28,777.90	5.00	28,772.90

FX Summary Position

Bertie Ahern a/c's/Celia Larkin "Hominex" a/c's

Trx	Holder	A/C No	Date		Lodged IRE
A	BA	1/A/04519-011	11/10/1994		24,838.49
B	CL	11620-011	05/12/1994		28,772.90
C	CL	11620-015	15/06/1995	9,743.74	
				2,000.00	11,743.74
D	BA	1/A/04519-011	01/12/1995		19,142.92

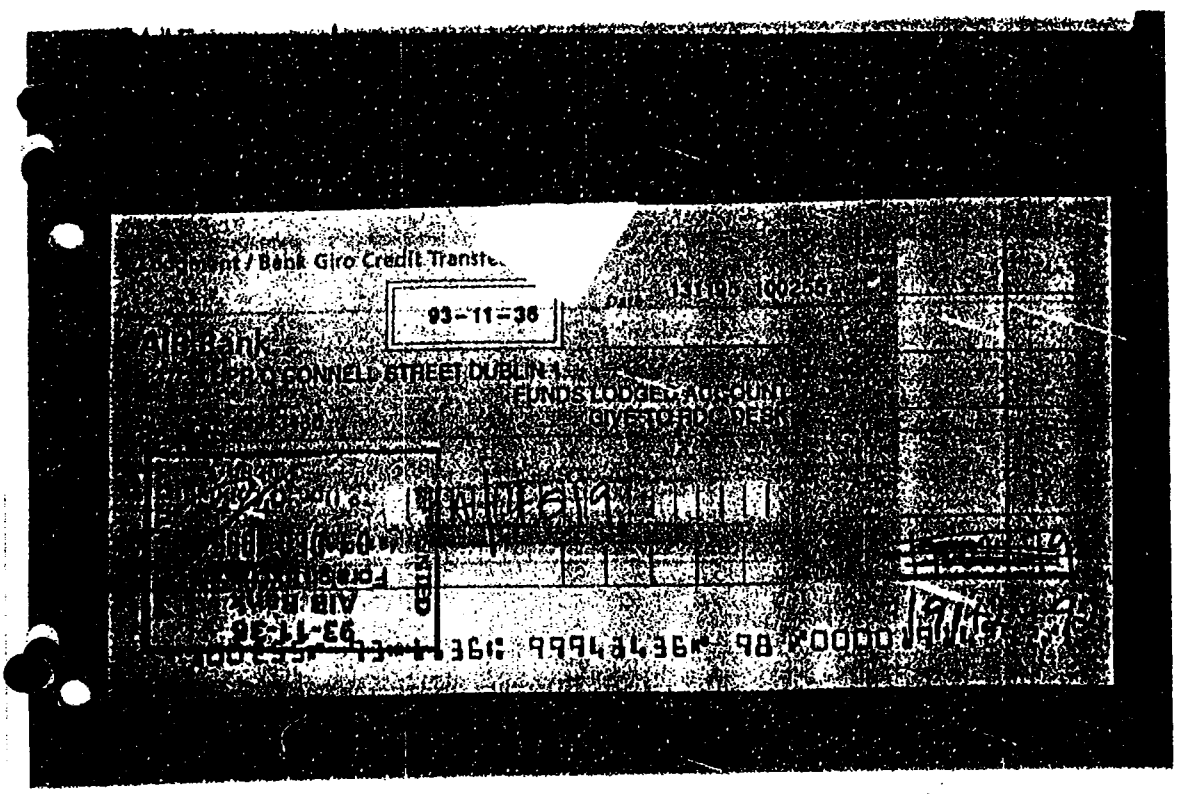
IRE	84,498.04
Domestic	2,000.00
IRE FX	82,498.04
FX	
STE	55,000.00
US$	45,000.00

CBOI F/X	STE	US$
11/10/1994	0.9888	
05/12/1994	0.9831	1.5324
15/06/1995	1.0196	
01/12/1995	1.0353	

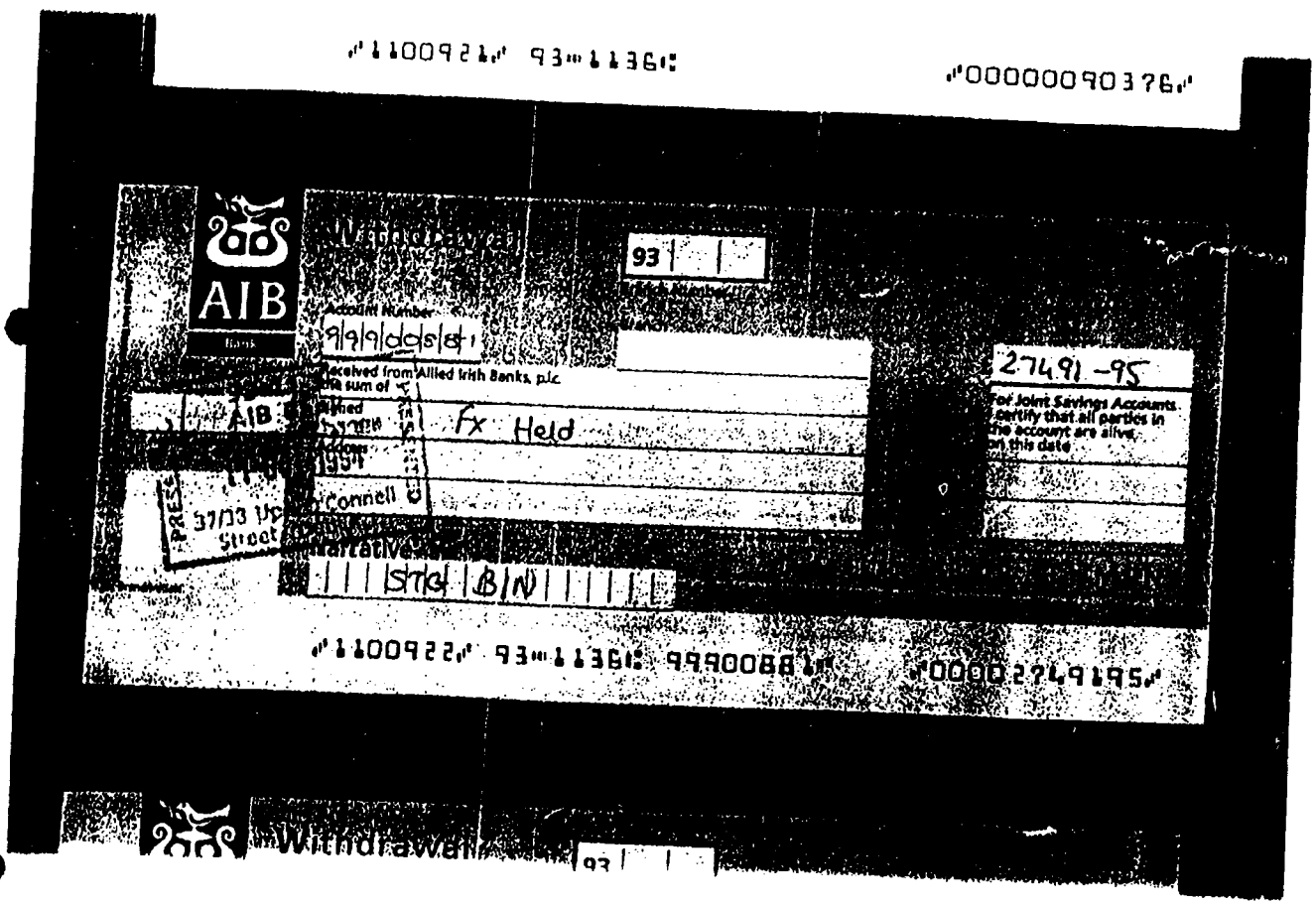
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ACCOUNT	878	T
CREDIT		BALANCE
		157.00
290.00		446.00
		736.00
290.00		1026.00
		1289.05
290.00	65.25	
	358.96	
	41.75DR	
290.00	128.15DR	
	161.63	
	125.24	
	6.89	
	515.26DR	
	317.61DR	
	317.39DR	
21 .00	27.39DR	
	119.39DR	
	194.39DR	

BANK MONEY ORDERS
AIB
57/58 UPR O'CONNELL ST.,
DUBLIN 1

99900-681 PAGE 3557 93-11-30

FOREIGN CURRENCY HELD

DATE	PARTICULARS	11OCT94 DEBIT	CREDIT	878 P BALANCE
4OCT94	BALANCE FORWARD			34076.64DR
5OCT94	B751510495 LODG		890.97	
	B751510494 LODG		1160.41	
	E751510072 FX B/N	1040.95		
6OCT94	751510071 STG B/N	1510.15		
	B792406157 FX S/N		1926.11	
	B792405931 STG SN		390.13	
	B772603751 FX B/N	664.80		
	B792405932 NOTE OR	5039.16		
7OCT94	B765708415 STG BN	601.80		
	B765708416 FX S/N		4733.62	
	B765708205 FX BN		1361.88	
10OCT94	B744510676 STG B/N	1171.27		
	B744510675 LODG	3513.03		
	B744510679 FX B/N		325.79	
	B744510660 STG B/N	1989.24	704.80	
11OCT94	B725205822 LODG	678.66		
	B725205823 LODG		1821.20	
	B725205827 FX B/N		994.51	
	B725205850 STG B/N	1211.66		
		27691.95		
				36565.96DR
				36592.07DR
				34954.76DR
				62479.97DR

THE MANAGER
A I B LTD
57/58 O'CONNELL ST
DUBLIN 1

DATE PARTICU

4OCT94 BALANCE FC

Return to report

C03
Date 11/10/94
Time 19:47:01

AIB BANK - ALL ITEMS REPORT
93-11-36

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Mnemonic ALR1_3

S40TRACER	AMOUNT	CODE	NSC	ACCOUNT	TELLER	SERIAL/NARRATIVE	FLAGS	XDATA	S4000Tracer
1000970	37.09	01	931136	99972548		Reversal : 1000968			755506050
1000971E	37.07	01	931136	99972548		N3986			

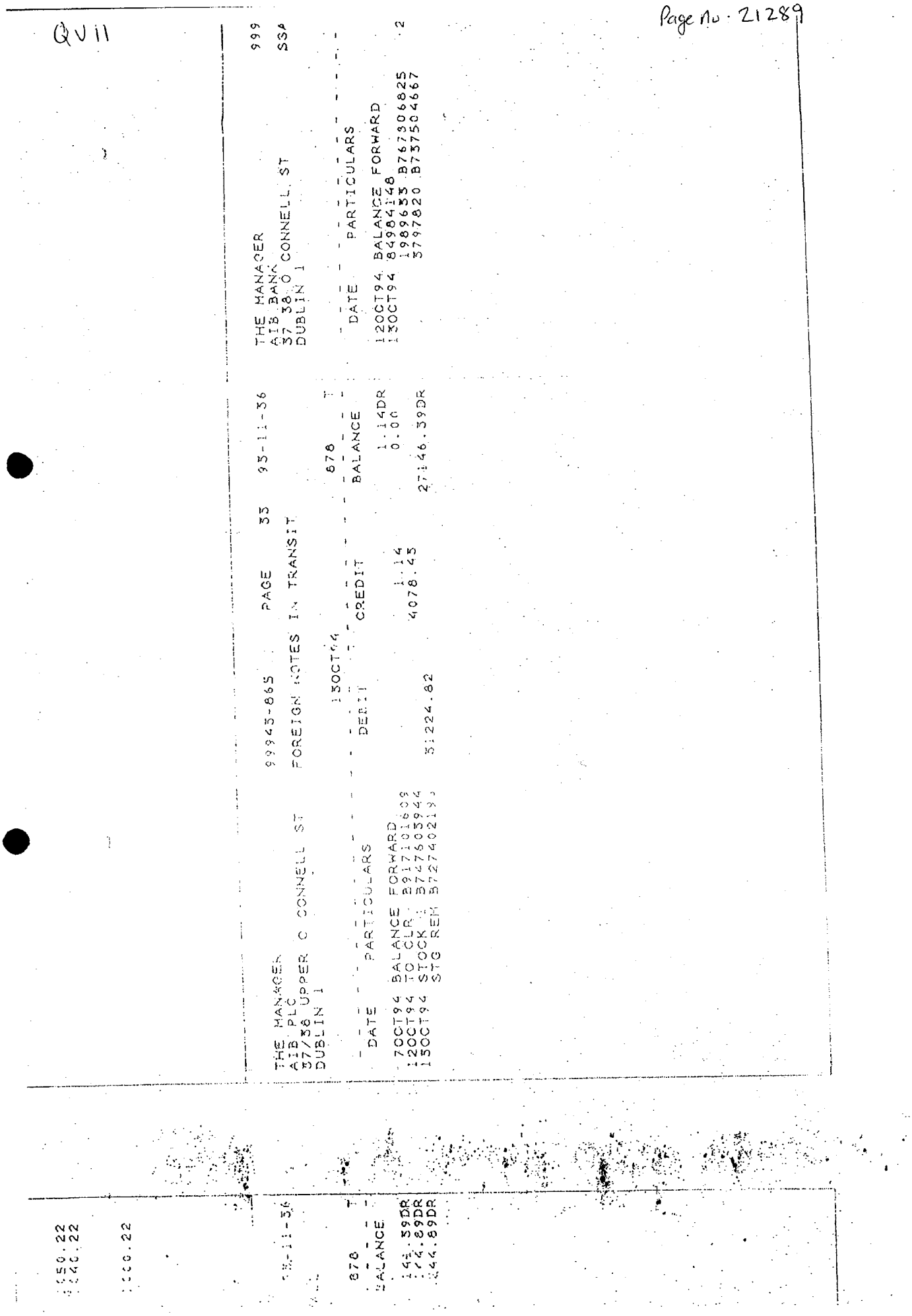
1000972 COIN= 0 NOTE= 0 REMITS= 0 ON US= 1
1 DAY= 0 2 DAY= 0 3 DAY= 0 4 DAY= 0

1000973B	24838.49	01	931136	99943436		B AHERN	
1000974B	31.74	01	931136	99972548		4 TCKS	
1000975N	948.50	01	931136	99949328		824206	755506051
1000976R	3.50	01	931136	99972548		FEE - FGN DRAFT	755506053
1000977B	590.65	01	931136	99949328		522975	
1000978R	3.50	01	931136	99972548		FEE - FGN DRAFT	755506054
1000979N	576.76	01	931136	99949328		113736	
1000980R	3.50	01	931136	99972548		FEE - FGN DRAFT	
1000981B	207.08	01	931136	99949447		757439	
1000982R	3.50	01	931136	99972548		FEE - STGDRAFT	755506055
1000983B	736.45	01	931136	62590057		USS CHQS	
1000984B	250.00	01	931136	53071380		53	755506056
1000985B	38.17	10	931330	10704044		014362	755506057
1000986N	24.12	01	931136	99949328		824205	755506058
1000987R	3.50	01	931136	99972548		FEE - FGN DRAFT	
1000988B	24.85	01	931136	99949447		757434	
1000989N	3.50	01	931136	99972548		FEE - STGDRAFT	755506059
1000990B	25.00	01	931136	03502054		LODG	
1000991B	4.08	10	985010	05190301			755506060
1000992B	28299.39	08	931136		12		755506061
1000993	3.50	01	931136	99972548		Reversal : 1000976	755506062
1000994	3.50	01	931136	99972543		Reversal : 1000978	
1000995	3.50	01	931136	99972548		Reversal : 1000980	
1000996		01	931136	99972548		Reversal : 1000982	
1000997		01	931136	99972548		Reversal : 1000987	

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QV11



THE MANAGER
AIB BANK
37 38 O CONNELL ST
DUBLIN 1

999 SSA

DATE PARTICULARS

120CT94 BALANCE FORWARD
130CT94 84984148
1989633 B767306825
3797820 B737504667

2

99943-865 PAGE 35 95-11-36

FOREIGN NOTES IN TRANSIT

878

DATE	PARTICULARS	DEBIT	CREDIT	BALANCE
		130CT94		1.14DR
			1.14	0.00
		4078.45		4078.45DR
		31224.82		27146.39DR

THE MANAGER
AIB PLC
37/38 UPPER O CONNELL ST
DUBLIN 1

DATE PARTICULARS

70CT94 BALANCE FORWARD 82171016
120CT94 BI-COLR 87276039
150CT94 STOCK 87274021
STG REM

878

BALANCE
1150.22
1146.22
1000.22
145.39DR
14.89DR
144.89DR

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CHAPTER TWO – THE QUARRYVALE MODULE – PART 10 SECTION IV

EXHIBITS

1. Letter from Frank Ward & Co to the Tribunal re Mr Ahern dated 7 February 1995.....1513

2. AIB remits of foreign currency to Head Office dated 7 December 1994..... 1515

3. AIB sterling exchange rates for 5 December 1994..... 1516

4. AIB dollar exchange rates for 5 December 1994..... 1517

5. Tribunal table of calculations applying a range of possible sterling remit rates to the sum of IR£29,254..... 1518

6. Tribunal application of possible sterling and US dollar remit rates to the sum of IR£29,254.97..... 1519

FRANK WARD & CO
SOLICITORS

Our ref: LG/AR

Your ref: POL/1

7th February, 2005

PLANNING AND PAYMENTS TRIBUNAL OFFICE
By Hand
PQR1358
RECEIVED

Ms. Susan Gilvarry,
Solicitor to the Tribunal,
Tribunal of Inquiry into Certain
Planning Matters and Payments,
Upper Castle Yard,
Dublin Castle,
Dublin 2.

Re: Our Client - An Taoiseach, Mr. Bertie Ahern T.D.
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Ms Gilvarry,

We refer to the Order for Discovery of 24th November 2004, made by the Tribunal and directed to our client. We also refer to the Tribunal's letter of 22nd November 2004 which indicated that in the first instance our client could limit production of documents to lodgements over £30,000. We now attach herewith an Affidavit of Discovery.

In addition, we attach herewith copies of documents itemised in the First Part of the First Schedule. If you wish to see any documents in their original form they will be made available to you for inspection.

The enclosed documentation relates to all of our client's accounts. I wish to confirm that since our client had no outstanding tax liabilities, he did not avail of any tax amnesty. Moreover as is clear from our client's accounts, there is no lodgement in the sum of £30,000 or £50,000. The book entry of £50,000 (which is inclusive of earned interest) in our client's AIB O'Connell Street Special Savings Account arises because the legislation governing the Special Savings Account Scheme limited the total amount in such accounts to £50,000.

As our client has already indicated to the Tribunal (and sworn in an affidavit arising from the previous allegations made by Mr. Denis

Frank Ward B.C.L.
Liam Guidera B.C.L., F.C.I.Arb.
.....
Gerry McKinney B.C.L., Dip. Eur. Law
Shani Power B.C.L., A.I.T.I.
Colm Hickey B.B.L.S.
Evelyn Savage B.A., Dip. Emp. Law
.....
Legal Executives
Vincent Costello B.Corp. Law, LL.M.
Brid O'Dwyer B.C.L., LL.M.
Patrick Ward B.A., LL.M.
Deirdre Thompson B.A., Intl.
Sarah Caulfield B.B.L.S.
Nessa Gardiner B.B.L.S.
.....
Accounts & Administration
Lorraine Staunton A.C.A.
Sirena Devine
Caitriona Tiernan

EQUITY HOUSE, UPPER ORMOND QUAY, DUBLIN 7
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Irish Document Exchange • DX 1007 Four Courts • VAT No: IE 4611203 G

"Starry" O'Brien) at no stage did he receive a donation or contribution from Owen O'Callaghan or any entity or person acting on his behalf.

In early 1987 our client separated from his wife Miriam Ahern. At this time there were a number of bank accounts in their joint names in the AIB Finglas branch and a building society mortgage account in the Irish Permanent Building Society in O'Connell Street. After the separation these accounts were solely operated by Mrs. Ahern although our client's name remained on the accounts. There was only one account in existence prior to 1993 in our client's own name but this was dormant.

Following the separation our client did not operate any bank account until the end of 1993. During this period, each of his salary cheques was cashed either by himself or by one of his staff. Our client paid a regular monthly sum in cash to his wife by way of maintenance. This was initially in the order of £1,300 per month in 1988 and increased subsequently with the passage of time. Most of this money was then lodged by her in the No. 1 joint current account (No. 55017-003) in AIB Finglas.

I am also instructed that in December 1994 our client transferred funds from his accounts at AIB Upper O'Connell Street (number 1A04519011 and 00409177) into the account of his then partner Ms Celia Larkin.

In accordance with previous correspondence and in particular your letter of 3rd November 2004, our client has not discovered documentation which relates to his position in Fianna Fáil. As the Tribunal is I presume aware the sum of £80,000 was donated to the Fianna Fáil Party by Mr Owen O'Callaghan and this donation is recorded in the accounts of the Party.

If the Tribunal has any queries in relation to any of the documents discovered please do not hesitate to contact us.

Yours sincerely,

Liam Guidera
Frank Ward & Co.

e-mail:liam@frankward.com

Return to report

QV 11

BP 12080

[REMITBK.XLW]RemitsBook

07/12/94

Date: 07/12/94
stg opened

Branch	Sort Code	Branch Name	£0.00	
AIB	930318	Cash services Dept.	£25,479.52	
AIB	930318	Cash services Dept.	£1,822.42	
AIB	930318	Cash services Dept.	£1,712.07	
AIB	930318	Cash services Dept.	£1,812.29	
AIB	930318	Cash services Dept.	£4,174.68	
AIB	930318	Cash services Dept.	£182.24	
AIB	930318	Cash services Dept.	£5,104.65	
AIB	930318	Cash services Dept.	£2,679.02	
AIB	930318	Cash services Dept.	£2,666.22	
AIB	930318	Cash services Dept.	£1,282.96	£46,916.07
AIB	931055	O'Connell St. 10/11	£16,712.25	
AIB	931055	O'Connell St. 10/11	£325.50	£17,037.75
[redacted]				
AIB	931152	St. Stephen's Green	£5,062.27	
AIB	931152	St. Stephen's Green	£5,199.53	£10,261.80
AIB	931160	Sth.Richmond St.	£10,630.76	
AIB	931233	Grafton Street 64	£1,023.02	
AIB	931330	Terenure AIB	£2,027.99	
AIB	932094	West St. 10/11	£3,039.21	
AIB	932159	Mary Street	£8,111.94	
AIB	932205	Phibsboro AIB	£16,248.54	
AIB	932450	Clambrassil St. 73	£3,255.00	
AIB	932450	Clambrassil St. 73	£6,476.26	£9,731.26
AIB	932515	Blanchardstown AIB	£1,012.45	
AIB	932523	Malahide	£10,124.53	
AIB	933368	Athy-AIB	£1,518.67	
AIB	933384	College St. 5	£3,561.95	
AIB	933406	Dun Laoghaire AIB	£9,117.62	
AIB	933678	Blackrock AIB	£3,543.59	
AIB	934119	Lissduggan C.D.	£30,018.19	
			£213,180.31	
(*)	Highlighted entry reads :			
AIB	931136	O'Connell St. 37/38	£29,254.97	

Return to report

Date: 15 DEC 94 On-line Banking - Ireland Division Screen: Z
Foreign Exchange BB013

STERLING PAGE: 2

FOREIGN NOTE RATES

BUY UP TO			BUY	SELL UP TO	
IR500	IR2500	IR10000	REMIT	IR500	IR2500
1.0169	1.0021	0.9947	.9877	0.9594	0.9667

COMMERCIAL RATES

BUY UP TO			BUY	SELL UP TO			SELL
IR500	IR2500	IR10000	REMIT	IR500	IR2500	IR10000	REMIT
1.0055	0.9955	0.9895	0.9845	0.9614	0.9778	0.9795	0.9805

SCREENS NOT FOR DISTRIBUTION OUTSIDE AIB

F1: Help F3: Retn F7: Prev F8: Next F10:SOff

Bond 1 Bond 2 Bond 3 Rem 1-

Tribunal Ref : QV II Page No: 19110

Tribunal Ref : AIB.BA 4.1 Page No: 72

Date: 5 DEC 94 On-line Banking - Ireland Division Screen: Z
Foreign Exchange BB013

US DOLLAR PAGE: 3

FOREIGN NOTE RATES

BUY UP TO		BUY	SELL UP TO	
IR500	IR2500	REMIT	IR500	IR2500
1.5791	1.5637	1.5386	1.5012	1.5088

COMMERCIAL RATES

BUY UP TO			BUY	SELL UP TO			SELL
IR500	IR2500	IR10000	REMIT	IR500	IR2500	IR10000	REMIT
1.5715	1.5560	1.5500	1.5367	1.5011	1.5267	1.5295	1.5310

SCREENS NOT FOR DISTRIBUTION OUTSIDE AIB

F1: Help F3: Retn F7: Prev F8: Next F10:SOff

Return to report

Tribunal Table of Calculations applying Remit Rates in the range 1.0500 - 0.9500 to IR£29,254.97 8/13

No		IR£	exR	ST£		LODG ST£	exR	IR£	REMIT VAR
582		29254.97	0.9919	29,018.00					
583		29254.97	0.9918	29,015.08					
584		29254.97	0.9917	29,012.15					
585		29254.97	0.9916	29,009.23					
586		29254.97	0.9915	29,006.30					
587		29254.97	0.9914	29,003.38					
588		29254.97	0.9913	29,000.45					
589		29254.97	0.9912	28,997.53					
590		29254.97	0.9911	28,994.60					
591		29254.97	0.9910	28,991.68					
592		29254.97	0.9909	28,988.75					
593		29254.97	0.9908	28,985.82					
594		29254.97	0.9907	28,982.90					
595		29254.97	0.9906	28,979.97					
596		29254.97	0.9905	28,977.05					
597		29254.97	0.9904	28,974.12					
598		29254.97	0.9903	28,971.20					
599		29254.97	0.9902	28,968.27					
600		29254.97	0.9901	28,965.35					
601		29254.97	0.9900	28,962.42					
602		29254.97	0.9899	28,959.49					
603		29254.97	0.9898	28,956.57					
604		29254.97	0.9897	28,953.64					
605		29254.97	0.9896	28,950.72					
606		29254.97	0.9895	28,947.79					
607		29254.97	0.9894	28,944.87					
608		29254.97	0.9893	28,941.94					
609		29254.97	0.9892	28,939.02					
610		29254.97	0.9891	28,936.09					
611		29254.97	0.9890	28,933.17					
612		29254.97	0.9889	28,930.24					
613		29254.97	0.9888	28,927.31					
614		29254.97	0.9887	28,924.39					
615		29254.97	0.9886	28,921.46					
616		29254.97	0.9885	28,918.54					
617		29254.97	0.9884	28,915.61					
618		29254.97	0.9883	28,912.69					
619		29254.97	0.9882	28,909.76					
620		29254.97	0.9881	28,906.84					
621		29254.97	0.9880	28,903.91					
622		29254.97	0.9879	28,900.98					
623		29254.97	0.9878	28,898.06					
624	Remit Rate	29254.97	0.9877	28,895.13					
625		29254.97	0.9876	28,892.21					
626		29254.97	0.9875	28,889.28					
627		29254.97	0.9874	28,886.36					
628		29254.97	0.9873	28,883.43					
629		29254.97	0.9872	28,880.51					
630		29254.97	0.9871	28,877.58					
631		29254.97	0.9870	28,874.66					
632		29254.97	0.9869	28,871.73					
633		29254.97	0.9868	28,868.80					
634		29254.97	0.9867	28,865.88					
635		29254.97	0.9866	28,862.95					
636		29254.97	0.9865	28,860.03					
637		29254.97	0.9864	28,857.10					
638		29254.97	0.9863	28,854.18					
639		29254.97	0.9862	28,851.25					
640		29254.97	0.9861	28,848.33					
641		29254.97	0.9860	28,845.40					
642		29254.97	0.9859	28,842.47					
643		29254.97	0.9858	28,839.55					
644		29254.97	0.9857	28,836.62					
645		29254.97	0.9856	28,833.70					
646		29254.97	0.9855	28,830.77					
647		29254.97	0.9854	28,827.85					
648		29254.97	0.9853	28,824.92					
649		29254.97	0.9852	28,822.00					
650		29254.97	0.9851	28,819.07					
651		29254.97	0.9850	28,816.15					
652		29254.97	0.9849	28,813.22					
653		29254.97	0.9848	28,810.29					
654		29254.97	0.9847	28,807.37					
655		29254.97	0.9846	28,804.44					
656		29254.97	0.9845	28,801.52					
657		29254.97	0.9844	28,798.59					
658		29254.97	0.9843	28,795.67					
659		29254.97	0.9842	28,792.74					
660		29254.97	0.9841	28,789.82					
661		29254.97	0.9840	28,786.89					
662		29254.97	0.9839	28,783.96					
663		29254.97	0.9838	28,781.04					
664		29254.97	0.9837	28,778.11					

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Tribunal application of possible Remit Rates to AIB FX Remit of IR£29,254.97 in either STE or US$ on 5th December 1994

Exchange Rates

		IR£500	IR£2500		BUY REMIT	CENTRAL BANK US$
US$	05/12/1994	1.5791	1.5837		1.5386	1.5326
	06/12/1994				1.5361	1.5307
	07/12/1994				1.5366	1.5309

		IR£500	IR£2500	IR£10000	BUY REMIT	CENTRAL BANK STE
STE	05/12/1994	1.0169	1.0021	0.9947	0.9877	0.9831
	06/12/1994	1.0165	1.0017	0.9943	0.9873	0.9798
	07/12/1994	1.0133	0.9988	0.9912	0.9842	0.9787

Buy Remit Rate

	STE	US$
05/12/1994	0.9877	1.5386
06/12/1994	0.9873	1.5361
07/12/1994	0.9842	1.5366

AIB Foreign Currency Held a/c 99900-881

Lodged IR£ equivalent	29,254.97	29,254.97
Remit Rate	0.9877	1.5386
Calculated Remit 5/12/94	28,895.13	45,011.70
Nearest STE/US$ to STE100/US$100	29,000.00	45,000.00

STE/US$ Rate Calculations (STE100/US$100 either side)

	A STE Amount	B IR£ Equivalent	C Rate Calculation (A/B)	D 4-Decimal Pt. Rate	AIB Remit Rate Difference	E IR£ Amount available to be lodged (A/E)	F Difference from 29254.97 (E-F)
1	28,500.00	29,254.97	0.9741944447377660	0.9742	(0.0135)	29,254.77	- 0.20
2	28,600.00	29,254.97	0.9778118678506810	0.9778	(0.0101)	29,255.32	0.35
3	28,700.00	29,254.97	0.9810298899639950	0.9810	(0.0067)	29,255.86	0.88
4	28,800.00	29,254.97	0.9844481129771110	0.9844	(0.0033)	29,256.40	1.43
5	28,900.00	29,254.97	0.9878663351902260	0.9879	0.0002	29,253.97	- 1.00
6	29,000.00	29,254.97	0.9912845578033410	0.9913	0.0036	29,254.61	- 0.46
7	29,100.00	29,254.97	0.9947027804164560	0.9947	0.0070	29,255.05	0.08
8	29,200.00	29,254.97	0.9981210030295710	0.9981	0.0104	29,255.59	0.62
9	29,300.00	29,254.97	1.0015392256426900	1.0015	0.0138	29,256.12	1.15
10	29,400.00	29,254.97	1.0049574482558000	1.0050	0.0173	29,253.73	- 1.24
11	29,500.00	29,254.97	1.0083756708689200	1.0084	0.0207	29,254.28	- 0.71

	A US$ Amount	B IR£ Equivalent	C Rate Calculation (A/B)	D 4-Decimal Pt. Rate	AIB Remit Rate Difference	E IR£ Amount available to be lodged (A/E)	F Difference from 29254.97 (E-F)
12	44,500.00	29,254.97	1.5211090626836160	1.5211	(0.0175)	29,255.14	0.17
13	44,600.00	29,254.97	1.5245272854449280	1.5245	(0.0141)	29,255.49	0.52
14	44,700.00	29,254.97	1.5279455080062390	1.5279	(0.0107)	29,255.84	0.87
15	44,800.00	29,254.97	1.5313637305675510	1.5314	(0.0072)	29,254.28	- 0.69
16	44,900.00	29,254.97	1.5347819531288620	1.5348	(0.0038)	29,254.63	- 0.34
17	45,000.00	29,254.97	1.5382001756901740	1.5382	(0.0004)	29,254.97	0.00
18	45,100.00	29,254.97	1.5416183982514850	1.5416	0.0030	29,255.32	0.35
19	45,200.00	29,254.97	1.5450366211279700	1.5450	0.0064	29,255.66	0.69
20	45,300.00	29,254.97	1.5484548437410800	1.5485	0.0099	29,254.12	- 0.85
21	45,400.00	29,254.97	1.5518730663542000	1.5519	0.0133	29,254.48	- 0.51
22	45,500.00	29,254.97	1.5552912889673100	1.5553	0.0167	29,254.81	- 0.16

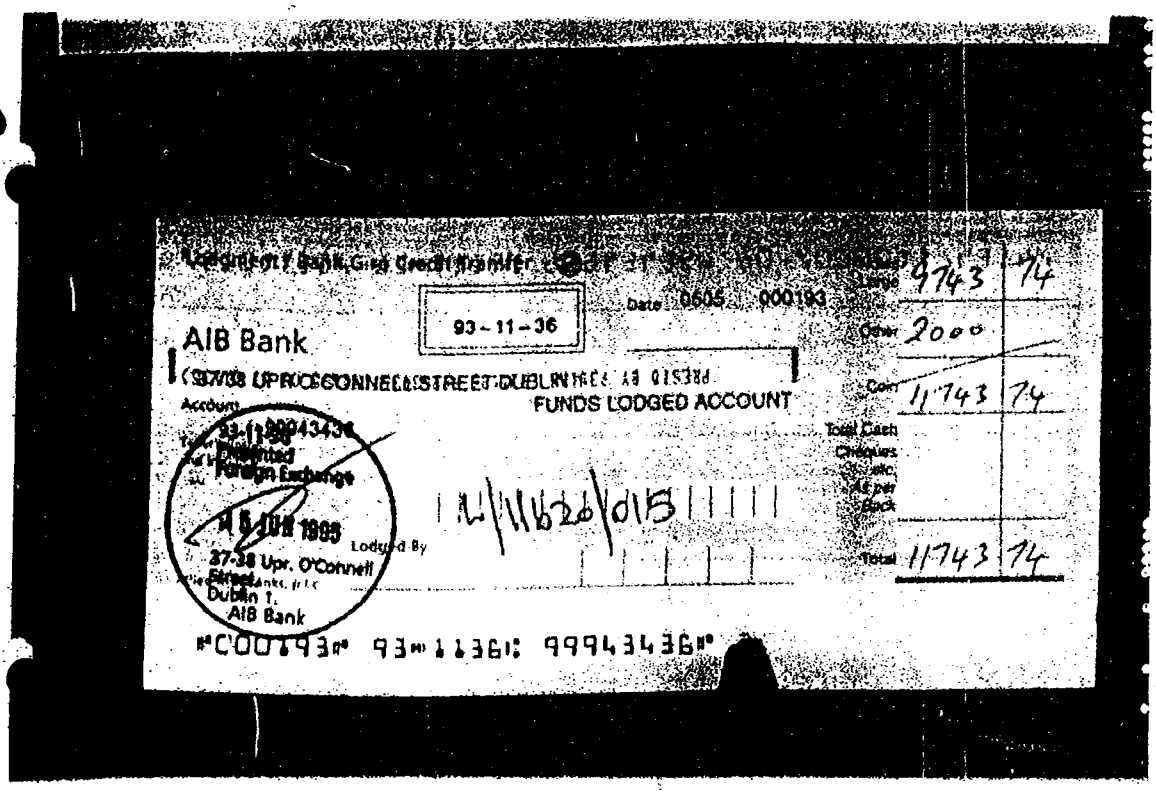
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CHAPTER TWO – THE QUARRYVALE MODULE – PART 10 SECTION V

EXHIBITS

1. AIB lodgement docket stamped 5 June 1995 in the amount of IR£11,743.74.....1521

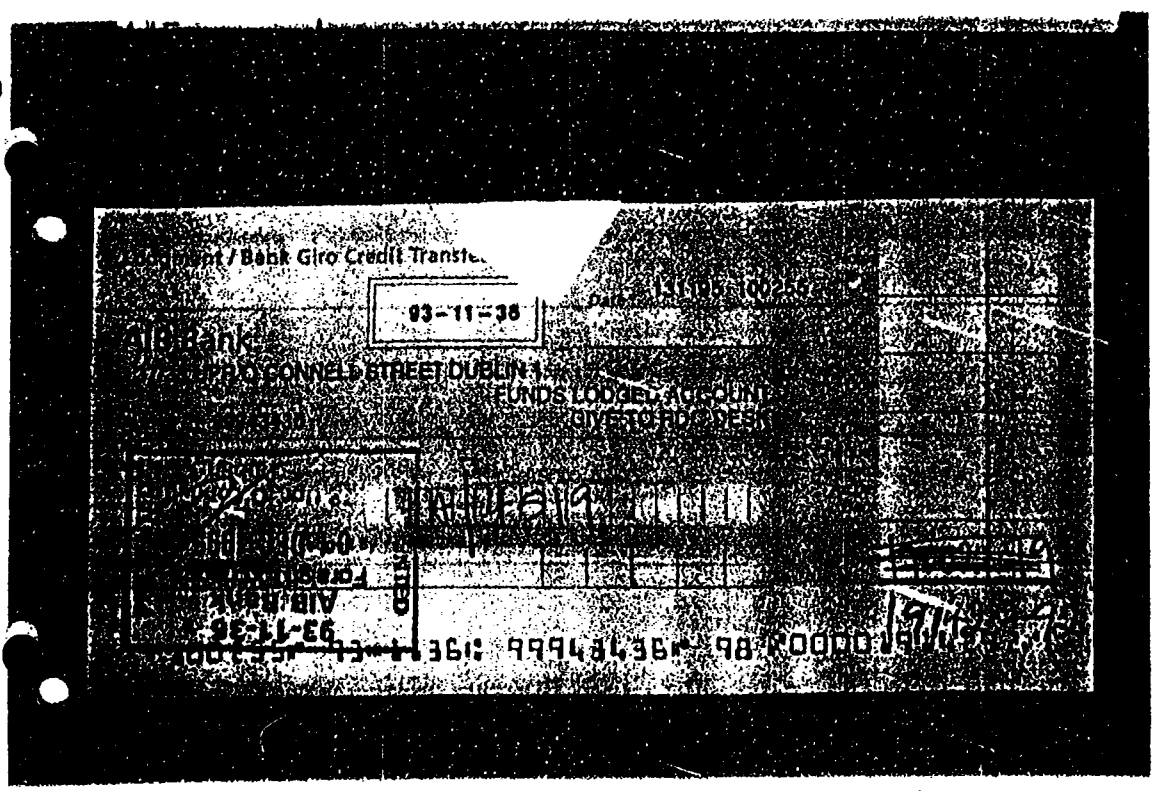
2. AIB lodgement docket stamped 1 December 1995 in the amount of IR£19,142.92.....1522



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Tribunal Ref : BA.ACCOUNTS 2.3 **Page No: 194**



CHAPTER TWO – THE QUARRYVALE MODULE – PART 10 SECTION VII

EXHIBITS

1. Returned paid cheque (front) dated 11 November 1992 in the amount of IR£5,000 drawn on the account of J & E Davy, payable to Bertie Ahern..... 1524

2. Returned paid cheque (back) dated 11 November 1992 in the amount of IR£5,000 drawn on the account of J & E Davy, payable to Bertie Ahern..... 1525

3. Account opening application form for an IPBS share account dated 6 June 1989 and signed by Tim Collins..... 1526

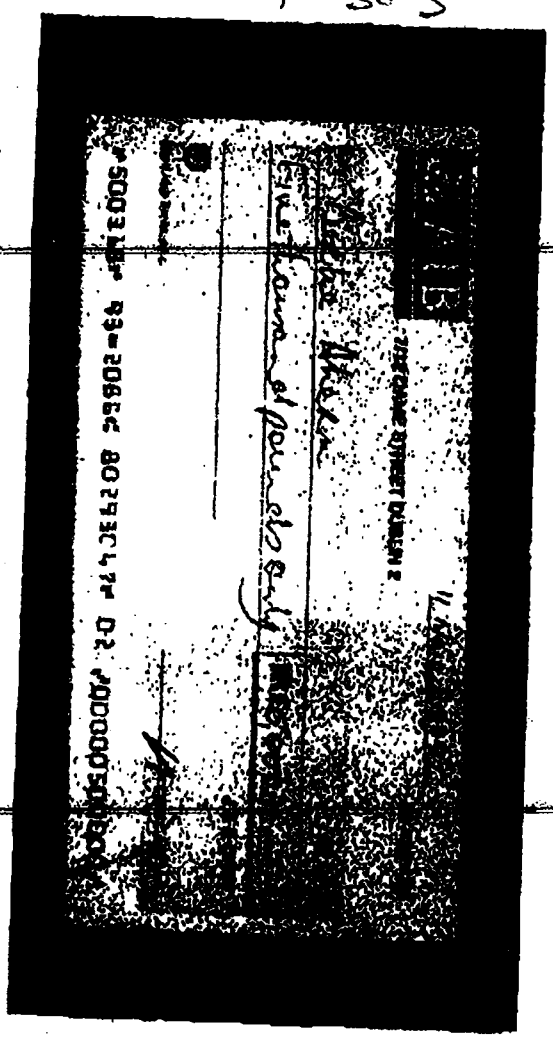
4. Letter from Paul Kiely, Dublin Central of Elections, to “Tony”, faxed on 1 October 1997..... 1527

5. Undated document headed ‘David / Gerry’..... 1528

Fax TO 6794626 16 NOV 2007 15:48 P.002

26804468

Ann Catherine
2 Pesos



MC NAMARA

932086

RECEIVED TIME 14. NOV. 15:48

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TO 6794626 P.003



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Application Form BLOCK LETTERS PLEASE — IRISH PERMANENT BUILDING SOCIETY

ACCOUNT TYPE Share ACCOUNT NUMBER 23526057JJ7 AMOUNT OF OPENING LODGEMENT IRE 7285.71

FIRST NAMES Mr Mrs Miss Ms		SURNAME	DATE OF BIRTH	OCCUPATION	OTHER ACCOUNTS WITH THE SOCIETY
B. T					Yes/No
					Yes/No
					Yes/No
					Yes/No

POSTAL ADDRESS c/o I.P.B.S., 30 Dawson St Dublin 2

CORRESPONDENCE

INTEREST INSTRUCTIONS Tick appropriate boxes. Please add interest to account half-yearly ✓ OR Please pay interest half-yearly/monthly.

If the interest is to be paid, please indicate method. Direct to Account address. To other account with the Society Account No

Other mandate [redacted] complete details:

[redacted] JOINT ACCOUNTS We authorise withdrawals from the account to be paid on the signature of

Tim Collins of us All Any One-Other instructions (Please give full details)

We hereby declare that this investment is for our own property, and that it is not made as a nominee for any other individual or company. We agree to be bound by the Rules of the Society. SIGNED (All Account holders must sign)

DATE 6/6/07

STRICTLY CONFIDENTIAL

Office of Director of Elections
Fianna Fáil
Dublin Central Constituency
St. Luke's,
161 Lr. Drumcondra Road,
Dublin 9.
Tel: 8374129
Fax: 8368877

Dear TONY

I am writing to invite you to The Fianna Fáil Dublin Central Constituency Golf Classic on Monday 13th October 1997 in St. Anne's Golf Club, Dublin.

In the aftermath of a very successful General Election Campaign, I am committed to ensuring that the constituency debt is eliminated as soon as possible.

With this goal firmly in mind we have arranged the Inaugural Dublin Central Constituency Golf Classic. I have selected St. Anne's Golf Club, the renowned 18 hole links course on North Bull Island, as the venue.

I would like to enlist your valued support for this golf outing which will be a great celebratory, sporting and social occasion. The day's golf will conclude with the Prize given ceremony and Banquet in St. Anne's Clubhouse. Marian McGuinness T.D., Senator Tony Kett and Senator Dermott Fitzpatrick will be in attendance.

Prizes will be presented on the night by An Taoiseach Bertie Ahern, T.D.

Your support will be greatly appreciated.

Yours Sincerely

Paul Kiely
Director of Elections
Dublin Central Constituency

Return to report

[redacted]

David/Gerry

As requested we checked the records on IV. The trust was set up and the C.D.D.R. account opened in November 1987. Tim was Secretary, Joe, Chairman, and the donors paid into the account (1987, 1988, 1989 and 1990). The loan was not required. The total figure was as per the list but there were some late payments. The 1989 election account was transferred into the C.O.D.R. account in January 1990 and the account is still current. There have been no lodgements since January 1995 as the Ethics in Public Office Act 1995 was brought into operationon 1st.January last year. The House Committee decided that all donations and fundraising were to go into the main account.

The trustees' decision of 1989 still holds that the C.O.D.R. account plus the election accounts of that year is for the trust, the Building Trust Account, is also under the house committee, to maintain and make provisions for ongoing maintenance and upkeep of St. Luke's, especially with the foundations and dampnes problems. If we extend the committee room that is a further large cost. Over £35,000 was paid out of the C.O.D.R. account in 1991 for renovations.

The IPBS Account has £34,000 in it but is owed £30,000 from the loan we gave to the Minogue/O'Keeffe ladies through Celia. This is available if we required it at short notice as per the conditions agreed. Future donations or fundraising will go through the main account as per instructions.

Under VII

While the trustees are not responsible for the day to day costs of St. Luke's, the House Committee has been made up of most of us and we are still organising the functions with the help of the office.

Return to report

CHAPTER TWO – THE QUARRYVALE MODULE – PART 10 SECTION VIII

EXHIBITS

1. Tender by Michael Wall for property at Beresford, Griffith Avenue, addressed to Gerard Brennan & Co Solicitors, dated 29 November 1994..... 1530

2. Will of Michael Wall in relation to the property at 44 Beresford Avenue, Drumcondra, dated 6 June 1996..... 1531

WALL'S DEVELOPMENTS LTD
Paston Road, Northenden, Manchester, M22 4TF
Telephone : 061-945 9080 Facsimile : 061-945 9070

GERARD BRENNAN & Co
SOLICITORS
27 MOUNT STREET UPPER
DUBLIN 2

29-11-94

RE PROPERTY SALE

DEAR MR BRENNAN.

PLEASE TENDER ON MY BEHALF FOR PROPERTY AT BERESFORD 44 GRIFFITH AVE. DUBLIN 9.

TENDER PRICE £138-000 SUBJECT TO GOOD TITLE

YOURS FAITHFULLY

Michael Wall

Return to report

I, **MICHAEL WALL** of 112 Wythenshawe Road, Northenden, Manchester, M23 OPA, England, make this as and for my last Will and Testament.

1. I intend this Will to deal solely and exclusively with my property at 44 Beresford Avenue , Drumcondra, Dublin 9 and this Will is not intended to alter or revoke any former Wills or other Testamentary dispositions at any time heretofore made by me.

2. I appoint my Brother Stephen Wall of Ashford, Cong, County Mayo, and Gerard M. Brennan of 27 Upper Mount Street, in the City of Dublin, to be my Executors.

3. **I GIVE DEVISE AND BEQUEATH** my property at 44 Beresford Avenue, Drumcondra, to my good friend Bertie Ahern T.D. for his own use and benefit absolutely.

4. In the event of the said Bertie Ahern pre-deceasing me then **I GIVE DEVISE AND BEQUEATH** my said property at 44 Beresford Avenue, Drumcondra, to Bertie Ahern's daughters Georgina and Cecilia in equal shares for their own use and benefit absolutely or to the survivor of them absolutely.

I APPOINT my said Executors to be Trustees of this my Will for all the purposes of the Conveyancing and Law of Property Acts, the Settled Land Acts, 1882-1890 and of the Trustee Acts.

I HEREBY DECLARE that either of my Executors and Trustees shall be competent to act for all such purposes including the receipt of capital monies.

I HEREBY DECLARE that my aforesaid property at 44 Beresford Avenue, Drumcondra, is not to form part of the residue of my estate for the purposes of any earlier Wills or other Testamentary dispositions heretofore made by me.

IN WITNESS WHEREOF I have hereunto signed my name this 6th day of JUNE. 1996.

Michael Wall

SIGNED PUBLISHED AND DECLARED by the said Michael Wall as and for his Last Will and Testament in the presence of us who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses this Will having been printed on the front side only of the foregoing two pages of A4 paper.

Regina Brennan
Secretary
27 Upper Mount Street,
Dublin 2

Gerard M. Brennan
Solicitor
27, Upper Mount Street
Dublin 2.

Return to report

CHAPTER THREE – THE CHERRYWOOD MODULE

INTRODUCTION

1.01 In this module the Tribunal inquired into attempts during the 1990s to rezone approximately 236 acres of undeveloped lands located close to the Cherrywood interchange on the M50. These lands were known as the Cherrywood lands and comprised a substantial portion of the lands of the Carrickmines Valley. The lands were contained in Maps 20 and 21 of the 1983 Dublin County Development Plan. Approximately two-thirds of the lands were zoned A (residential) at a density of 1 house per acre with septic tank. The balance of the lands was zoned B (agriculture) and G (amenity).

1.02 Eighty-four witnesses gave evidence to the Tribunal over 34 days between 17 May and 25 July 2006, and on 18 December 2006, and Cllr Jim Fahey also gave evidence on 6 February 2008.

1.03 In September 1989 Perivale Ltd, a company within the Monarch Group, completed the purchase of the lands from Mr Seán Galvin for approximately IR£10m.

1.04 The Monarch Group consisted of a number of incorporated companies some of which shared directors and engaged in similar types of business activity. These companies included:

- Cherrywood Developments Ltd (see also Perivale Ltd)
- Cherrywood Properties Ltd
- L&C Properties Ltd
- Monarch Properties Ltd (MPL)
- Monarch Properties Services Ltd (MPSL)
- Perivale Ltd: renamed Cherrywood Developments Ltd for a period, reverting to the name Perivale on 15 January 1991

In the course of the Report, any particular company (or employee of any particular company) in this Group, will be denoted by 'Monarch' for the sake of convenience, unless otherwise stated.

1.05 In 1990 Guardian Royal Exchange (GRE), a UK company, became joint venture partner with Monarch and they entered into a complex arrangement to develop the Cherrywood lands and to optimise their profitability. GRE and Monarch Properties Ltd (MPL) had been partners in the development of The Square shopping centre in Tallaght. In December 1990, Cherrywood Developments (previously Perivale) granted a lease of the lands to Cherrywood

Properties Ltd. Also in December 1990, the two beneficial owners of the lands, Mr Philip Monahan and Monarch Properties (MPL), issued 6 million new shares in Cherrywood Developments to GRE, subject to a lease in favour of Cherrywood Properties.[1] In effect, GRE had the controlling interest in Cherrywood Developments (the property owning company) while Monarch had the controlling interest in Cherrywood Properties.

1.06 Monarch and GRE[2] had in place an agreement whereby each would share equally the development costs associated with the development of the Cherrywood lands. This agreement provided that the development project manager was MPSL (Monarch Property Services Ltd) a Monarch company. The agreement operated in practice on the basis that Monarch, having discharged the necessary expenditure, would then proceed to recoup half of that expenditure from GRE.

1.07 In 1994, Monarch and its joint venture partners sold approximately 94 acres of the Cherrywood lands to William Neville & Sons for IR£7.6m. In September 1997 Monarch sold its Cherrywood lands to Dunloe Ewart Plc.

1.08 Between 1989, when Monarch acquired the lands, and 1997, when the bulk of the Cherrywood lands were sold, the lands' zoning was altered significantly. This rezoning was confirmed in 1998, the zoning having been changed from low-density residential, agricultural and amenity to higher density residential for one portion, the other portion being zoned partly for a district centre (including a generous retail element), and partly for a science and technology park.

MONARCH'S DEVELOPMENT OBJECTIVES

2.01 Monarch acquired the Cherrywood lands during the review period of the 1983 Dublin County Development Plan. As part of this review, between 1989 and 1990, Council officials (the Development Coordinating Committee) were engaged in preparing a report and maps which would comprise the Draft Development Plan for the Carrickmines Valley.

2.02 The Tribunal was satisfied that Monarch's main objective from the outset was that all of its lands would be rezoned for development, and more

[1] GRE later declared that it held 3 million of these shares in trust for another UK company, Aquis Estates Ltd (Aquis). On 22 December 1992, Perivale Ltd, then in liquidation, transferred its title to the lands to, *inter alia*, Aquis and GRE.

[2] The term 'Cherrywood project' is used in this module to describe the Monarch-driven project to rezone the Cherrywood lands for development in the course of the review of the development plans of 1983 and 1993 by Dublin and Dún Laoghaire Rathdown County Councils, insofar as those reviews related to the lands in the Carrickmines Valley.

particularly, that the density levels on all its residentially zoned lands would be increased, in order to maximise the commercial value of the lands. Monarch's other objective, from 1989, was to progress the construction of the sewage system that had been proposed for the Carrickmines Valley.

2.03 In 1989, Monarch retained the services of Mr Fergal MacCabe, an established architect and town planner, in connection with the Monarch lands. Mr MacCabe made two submissions to the Council on behalf of Monarch in 1989, both supporting residential development on the site, one on 3 July and the other on 30 November. In his evidence to the Tribunal, Mr MacCabe stated that the potential increase in the lands' residential density zoning, and the potential rezoning for development of the lands zoned B (agriculture) and G (amenity) depended on two key factors: the proposed line of the South Eastern Motorway (the SEM line) and the drainage of the lands.

2.04 In 1989, Mr MacCabe understood that Dublin County Council envisaged that development in the Carrickmines Valley would be restricted to lands east/north of the proposed South Eastern Motorway line. A substantial portion of Monarch's newly acquired lands was located to the south-west of the proposed line and was bisected by it. It was therefore in Monarch's interests that the line be altered to leave most or all of Monarch's lands east/north of the line, without bisecting or traversing the lands.

2.05 Monarch's strategy, probably largely devised and co-ordinated by Mr Philip Monahan, was three-pronged, and entailed the following:

1) Approaches were to be made at the highest political level, particularly in relation to the location of the SEM line and the completion of the Carrickmines Valley sewage system.
2) Contact was to be made and maintained between Monarch personnel and Dublin County Council officials in order to ensure early input into the Dublin County Development Plan insofar as it related to the Carrickmines Valley.
3) An extensive lobbying campaign of elected councillors was to be undertaken, to gain their support for Monarch's zoning proposals, including maximum residential density levels.

THE MONARCH EXECUTIVES

2.06 The following executives of Monarch were involved, to a greater or lesser extent, in the Cherrywood project. All, with the exception of Mr Philip Monahan, gave sworn evidence to the Tribunal in the course of the module.

- Mr Philip Monahan was the founder and main shareholder of the Monarch Group. He died on 3 August 2003. Mr Monahan identified the Cherrywood lands for purchase by Monarch in 1989, and spearheaded the Cherrywood project, until the lands were sold on to a third party in 1997.
- Mr Richard Lynn was the Cherrywood project's coordinator from approximately May/June 1989 to 1997. He was specifically engaged by Mr Monahan in 1989 for the Cherrywood project at the time that Monarch purchased the Cherrywood lands. Prior to his employment by Monarch, Mr Lynn was the Town Clerk in Dundalk, and in that capacity he worked with Monarch in relation to its Dundalk Shopping Centre development.
- Mr Dominic Glennane is a chartered accountant. He was financial director of the Monarch Group between 1991 and 1997 and held a 20 per cent shareholding in the Group.
- Mr Eddie Sweeney is a quantity surveyor. He was an employee of the Monarch Group from May 1974 until 1996 when he left Monarch. He was technical director and team leader for the Cherrywood project, working directly under Mr Monahan and Mr Glennane.
- Mr Noel Murray was the marketing director of the Monarch Group.
- Mr Pat Lafferty was chief architect for the Group.
- Mr Philip Reilly was the Group's development director and shopping centre manager.
- Mr Paul Monahan is Mr Philip Monahan's son, and is senior executive of the Monach Group. He was appointed managing director of Monarch Properties (MPL) in 2001, and gradually took over management of the Monarch Group between 2001 and 2003, becoming senior executive of the Group in 2003.

THE EARLY STAGES OF MONARCH'S CAMPAIGN TO REZONE CHERRYWOOD

APPROACHES MADE AT SENIOR POLITICAL LEVEL

3.01 Contemporaneous documentation provided to the Tribunal from the Department of the Environment and Local Government revealed that on 24 May 1989 (some 12 days following Monarch's agreement to buy the Cherrywood lands), a meeting took place between Mr Philip Monahan and Mr Pádraig Flynn, then Minister for the Environment. On 1 May 1989, the Department of the

Environment had granted Dublin County Council preliminary approval for the Carrickmines Valley sewage system. Based on an internal County Council memorandum of a meeting on 6 June 1989, this decision appears to have caused some surprise to senior County Council engineers.

3.02 In his evidence to the Tribunal, Mr Flynn said he had no recollection of discussing the Carrickmines sewage system with Mr Monahan. However, having regard to the evidence given to the Tribunal by Mr Monahan's then secretary, Ms Ann Gosling, who described Mr Monahan as a man who was prepared to raise at both national and local political level any issue that might affect his business interests, the Tribunal believed it likely that the Carrickmines sewage system was discussed by Mr Monahan and Mr Flynn.

3.03 It was also likely that, prior to his meeting with Mr Monahan on 24 May 1989 Mr Flynn was fully briefed by his department about Monarch's acquisition of the Cherrywood lands. Documentation discovered to the Tribunal by the Department of the Environment revealed that by 12 May 1989 a press cutting relating to the acquisition of the Cherrywood lands had been placed in the departmental file.

3.04 Mr Flynn's ministerial diaries indicated that meetings took place between him and Mr Monahan on 22 November 1989 and 12 February 1991. Although Mr Flynn claimed to have no recollection of what was discussed at these meetings, the Tribunal believed it likely that part, at least, of those discussions related to the Carrickmines sewage system and the proposed SEM line.

3.05 At an internal Monarch meeting on 24 January 1990, it was noted that Mr Eddie Sweeney was in a position to advise his Monarch colleagues that a political decision had been made to align the motorway on the western edge of the Monarch lands. The Tribunal believed it likely that the source of Mr Sweeney's knowledge was a briefing by Mr Monahan on the discussion he had had with Mr Flynn approximately two months earlier.

3.06 Another internal Monarch document noted that at a Monarch meeting on 3 May 1990, Mr MacCabe indicated that Mr Sweeney and the developer Mr Michael Cotter[3] intended to meet the Minister to impress on him the need for the work on the Carrickmines Valley sewage system to begin as soon as possible. Mr Sweeney believed that the intended meeting did not take place; Mr Flynn could not recall whether or not it had taken place.

[3] Mr Cotter was associated with another development company, Park Developments, which was also keen to see the commencement of the Carrickmines sewage scheme.

3.07 An internal Monarch memorandum of 5 July 1990 noted that Mr Lynn recommended that contact be made at ministerial level to ascertain the up-to-date position in relation to the proposed SEM line.

3.08 Both Mr Lynn and Mr Sweeney denied having any knowledge or recollection of meetings between Mr Monahan and Mr Flynn, or of the content of such meetings. The Tribunal found their evidence on this issue to be lacking in credibility.

3.09 Mr Flynn's ministerial diary for the year 1990 did not record any meeting between himself and Mr Monahan, and Mr Flynn was unable to produce his personal diary for that year. Mr Flynn told the Tribunal that he had no recollection of meeting representatives of Monarch in 1990. However, documentation provided by the Department of the Environment suggested that a meeting between Mr Monahan and Mr Flynn was certainly expected in December 1990.

3.10 In December 1990 the Water and Sanitary Services Section of the Department was in written communication with the Planning and Administrative Division about the Carrickmines Valley sewer. A footnote to this internal document (dated 6 December 1990) referred to the material required for *'meeting of P. Monaghan and Minister in relation to the rezoning of land.'* The Tribunal was satisfied that the reference was to Mr Philip Monahan.

3.11 This footnote suggested that the rezoning of the land was a topic of discussion between Mr Monahan and Mr Flynn. It appeared to contradict Mr Flynn's assertion that he would not have had reason to discuss the rezoning of the land because as the Minister he could not have had any role in the review of the Development Plan.

3.12 The Tribunal was unable to determine that zoning *per se* was the only subject likely to have been discussed by Mr Monahan and Mr Flynn. However, the Tribunal was satisfied that the obstacles that stood between Mr Monahan and his zoning ambitions for the Cherrywood lands, namely that the proposed SEM line bisected his lands, and the slow progress, as he perceived it, of the development of the Carrickmines sewer, were matters in respect of which he, at the very least, sought ministerial intervention between 1989 and 1991.

CONTACT WITH OFFICIALS OF DUBLIN COUNTY COUNCIL

3.13 At the same time as Monarch was making contact at ministerial level, and within weeks of its agreement to acquire the Cherrywood lands, Monarch was also in contact with Council officials involved in the preparation of the Draft

Development Plan for the Carrickmines Valley. Mr MacCabe's 3 July 1989 submission to the Council on behalf of Monarch indicated Monarch's desire that in the then forthcoming review of the 1983 County Development Plan its lands be considered for development at a density not exceeding 10 houses per acre. Meetings took place between representatives of Monarch and officials of Dublin County Council on 29 August and 22 September 1989.

3.14 These meetings were dominated by the issue of the SEM line. Subsequent to these meetings, Mr MacCabe submitted to the County Council a draft structural plan depicting Monarch's preferred options for the line's location. On 27 November 1989 Mr MacCabe sent a report prepared by himself, Dr Brian Meehan (planning consultant), and Muir Associates (consulting engineers) to the Council. The report suggested how Monarch's lands might be developed, and requested that it be referred on to the various Council technical departments which were preparing the Draft Development Plan for the Carrickmines Valley.

3.15 The minutes of the meeting of the Development and Coordinating Committee of Dublin County Council held on 15 February 1990 referred to a number of outstanding issues relating to the Carrickmines Valley, including the location of the SEM line and the provision and limitation of foul drainage (the sewer).

3.16 On 2 March 1990, Mr MacCabe was in a position to inform his Monarch colleagues that he had good reason to believe that the line most likely to be selected for the SEM by the Council Planning and Road Section was the westernmost line—which was option B on the draft urban structure map Mr MacCabe had submitted to the County Council in the autumn of 1989.

3.17 The Tribunal believed it likely that Mr Monahan was the source of Mr MacCabe's knowledge on this topic. By October 1990 the Council's Development Coordinating Committee's plans for the Carrickmines Valley were in the final stage of preparation.

DUBLIN COUNTY COUNCIL MEETINGS IN 1990 AND 1991

THE SPECIAL MEETINGS OF 18 OCTOBER, 16 NOVEMBER AND 6 DECEMBER 1990

4.01 At a special meeting of the Council held on 18 October 1990, the County Manager presented the planners' zoning proposals for the Carrickmines Valley, which were contained on Map DP90/123.[4] This plan proposed a new line for the

[4] See Exhibit 1.

SEM, located below the southern boundary of the Monarch lands in Cherrywood. The 1983 Plan had proposed an SEM line which bisected the Monarch lands.

4.02 The Manager's plan envisaged the entire Carrickmines Valley being zoned either residential or industrial, with development on both sides of the newly proposed line of the SEM. Two district shopping centres were planned, one at Ballyogan and another at Cherrywood. The Manager's report, which stated that services would be available for such development, was based on the Council's commitment to the construction of the Carrickmines Valley sewer. The then Deputy Planning Officer with Dublin County Council, Mr Willie Murray, agreed with Counsel for the Tribunal that the plan provided for on Map DP90/123 was a fairly radical proposal.

4.03 Map DP90/123 provided for the rezoning of almost all of Monarch's lands. It provided for a portion to be zoned for a town centre, and a portion to be zoned for industrial use adjacent to the town centre. It provided for a distributor road feeding into the newly proposed SEM, and for the balance of its lands (save for a small area zoned amenity in the vicinity of Tully Church) to be zoned for normal density residential use. In effect, Map DP90/123 substantially adopted almost the entire of the Monarch submission made to the County Council in November 1989.

4.04 With the publication in October 1990 of Map DP90/123, Monarch was satisfied, from the point of view of the future development prospects of its Cherrywood lands, with the zoning and residential density levels envisaged and proposed by the Manager and his planners.

4.05 At the meeting on 18 October 1990, Map DP90/123 was the subject of discussion and questioning by the councillors in relation to a number of topics, including whether the proposed plan was premature, whether it conflicted with the objective proposed for the development of the western towns, whether an area of high amenity would be prejudiced by the plan, whether the zoning being proposed was necessary, and whether the scale of the proposal was justified. This discussion was continued at a further meeting of Dublin County Council on 16 November 1990, on this occasion with the aid of overhead slides showing the existing and proposed zonings for the Carrickmines Valley.

4.06 At a special meeting of the Council held on 6 December 1990, councillors voted on the proposals based on Map DP 90/123. A motion proposed by Cllr E. McDonald and seconded by Cllr Betty Coffey that development be limited to the eastern side of the SEM was passed by 21 votes to 8 with 6 abstentions.

4.07 The passing of this motion resulted in a direction to the planners to prepare new maps outlining the revised proposals for the Carrickmines area. These maps (Maps 26 and 27) were duly produced. Monarch's lands were on Map 27.

THE SPECIAL MEETING OF 18 JANUARY 1991

4.08 The revised proposals were effectively agreed at a Council special meeting on 18 January 1991. On the newly prepared Map 27, the proposed line of the SEM remained south-west of the boundary of Monarch's Cherrywood lands. Monarch's lands therefore remained within the landtake in the Carrickmines Valley earmarked by the Council planners for rezoning and development. All of the zonings which had been designated on Map DP90/123 in relation to Monarch's lands were continued on Map 27.

4.09 The development proposals for lands south-west of the proposed SEM line were removed and the proposal for industrial development around the Carrickmines interchange on the proposed SEM was reduced substantially. These changes did not affect the Monarch lands.

4.10 The Tribunal was satisfied that Monarch was happy with Map 27. Although Map DP90/123 had been modified in terms of the areas to be zoned within the Carrickmines Valley as a whole, it nonetheless included almost the whole of Monarch's landtake in Cherrywood in its rezoning and residential density level provisions. Most importantly, from Monarch's point of view, the proposed line of the SEM remained below the southern boundary of Monarch's lands.

4.11 Mr Lynn told the Tribunal that Monarch had expected that the first public display of the Dublin County Draft Development Plan would include this map. However, notwithstanding the councillors' general acceptance of the map the position changed in May 1991.

THE SPECIAL MEETING OF 24 MAY 1991

4.12 At a special meeting of the Council held on 24 May 1991 the Manager provided the councillors with three options for the proposed first display of the 1991 Draft Development Plan:

1) The 1983 map to remain unchanged except for updating to take account of developments to date and adjustments of objectives (Map DP90/129A) or,
2) The adoption of Map DP90/123 or,

3) Maps 26 and 27 to be adopted in line with the councillors' agreement on 18 January 1991.

4.13 Had a vote been taken and supported by the councillors in respect of either Option 2 or Option 3 on 24 May 1991, Monarch's ambitions for the lands at Cherrywood (as set out in the November 1989 submission) would have been largely on track. Monarch would have succeeded in having its proposals incorporated in the first display of the 1991 Draft Development Plan, with the imprimatur of the Manager and the councillors.

4.14 However, Option 1 was approved by the councillors and it was agreed that the 1991 Draft Development Plan would identify the Carrickmines/Cherrywood lands as: '[in] *the 1983 Development Plan unchanged except for updating to take account of the developments to date and adjustments of objectives– Drawing number DP 90/129A refers.'*

4.15 The Tribunal was satisfied that, as a result of that vote, Monarch was faced in May 1991 with the reality that the councillors, as opposed to the Manager and his planners, were advocating the retention of the 1983 zonings, i.e., agriculture, high amenity and residential (with housing density levels limited to 1 house per acre) as good planning for its lands at Cherrywood.

4.16 Mr Lynn described the outcome of the 24 May 1991 meeting as returning Monarch '*back to square one'*, insofar as its development ambitions were concerned. Mr Lynn told the Tribunal that he believed the result on 24 May 1991 represented the councillors' desire to retain the status quo (the 1983 zonings) in respect of the Carrickmines Valley lands until after the Local Elections which were scheduled for 27 June 1991.

4.17 The Tribunal was satisfied that within six days of the vote of 24 May 1991, Monarch began an intensive lobbying campaign of councillors to support its rezoning objectives. The Tribunal was satisfied that within Monarch there was a belief or perception that the support of certain councillors could be secured in exchange for financial payments, and that a decision was made by the board of Monarch Property Services Ltd (MPSL) in 1991 to make payments to councillors in advance of the Local Elections which were held in June. It began a series of payments to a number of identified candidates standing in the June 1991 Local Elections.[5]

[5] This issue is considered elsewhere in this chapter.

PUBLIC DISPLAY OF 1991 DRAFT DEVELOPMENT PLAN

4.18 The Draft Development Plan, as shown on Map DP90/129A (Option 1), supported by the majority of the councillors on 24 May 1991, went on public display between 2 September and 3 December 1991. The proposals were transposed on to Maps 26 and 27. Map 27 included the Monarch lands.

4.19 Monarch had in fact gained in respect of its residentially zoned lands (residential density had increased from 1 to 4 houses per acre on piped sewage, the Manager having taken into consideration the advent of the sewer). However, the overall proposed zonings for Monarch's lands at Cherrywood in the 1991 Draft Plan were far removed from what it had envisaged in its 1989 submission, and indeed from what had been proposed in Map DP90/123 and on Map 27, as produced in January 1991.

4.20 On 2 December 1991, a written submission from Monarch was received by Dublin County Council. The submission proposed that the bulk of Monarch's lands be zoned residential at normal development density on an Area Action Plan, with provision for a district centre.[6]

4.21 There was considerable public opposition in the Cherrywood area to Monarch's plans. Following the written submission of December 1991, and an oral submission by Monarch to the Council on 5 March 1992, the Cherrywood Residents Association wrote to the Council objecting to the proposals, arguing that they were speculative, and against the common good.

MONARCH'S LOBBYING CAMPAIGN AND MR BILL O'HERLIHY

5.01 In late 1991, Monarch retained the services of public relations consultant Mr Bill O'Herlihy. Mr O'Herlihy's brief was to assist in altering the climate of opinion within the Carrickmines Valley region which largely opposed Monarch's ambition to rezone lands for development in the area, including increasing the residential density of lands already zoned residential.

5.02 Monarch's choice of Mr O'Herlihy was largely prompted by his known connections with the Fine Gael Party and in particular with Cllr Seán Barrett, then a Fine Gael TD and councillor in the Cherrywood area. Monarch understood Cllr Barrett to be a person of influence in the Cherrywood area and it was concerned with his known opposition to its plans for the Cherrywood lands.

[6] Mr MacCabe again made an oral as well as a written submission seeking both residential and district centre zoning on these lands.

5.03 Mr O'Herlihy gave detailed evidence to the Tribunal as to his role in Monarch's campaign. He described how he sought to garner support for the Monarch proposals both with the public and with councillors. His campaign included the preparation of a newsletter for distribution in the Cherrywood area, and the organisation of a number of '*road shows'* of which 14 took place in the area of Monarch's lands, as well as meetings at Monarch's offices in Harcourt Street and in the Royal Dublin Hotel, O'Connell Street, which the public and elected councillors were invited to attend. Those who attended were given the opportunity to examine Monarch's plans for the Cherrywood lands.

5.04 Mr O'Herlihy told the Tribunal that, while he did not perceive his role primarily as that of a canvasser or lobbyist of councillors, he did see it as his job to ensure councillors' attendance at the road shows. He was aware, as were the executives of Monarch, that ultimately the fate of Monarch's development ambitions for its lands in Cherrywood rested with the councillors.

MR O'HERLIHY'S DISCUSSION WITH MR LYNN

5.05 Mr O'Herlihy told the Tribunal about a discussion he had with Mr Lynn on 27 May 1992 in the Royal Dublin Hotel during which Mr Lynn indicated to him that it was necessary to make payments to councillors in order to achieve planning changes. The discussion took place during a break in the scheduled meeting of the County Council on that date, when Monarch's rezoning proposals were to be the subject of a vote by councillors.

5.06 Mr O'Herlihy said that he had initiated the discussion when he expressed the hope to Mr Lynn that the councillors would recognise the merit of Monarch's proposals. Mr Lynn had responded that quality and merit had nothing to do with the process and that if someone wanted to obtain a planning change or material contravention it had to be bought. Planning changes and material contraventions were, according to Mr Lynn, worth about IR£50,000 per year to councillors.

5.07 Mr O'Herlihy stated that he had been completely unaware of any practice whereby councillors were paid for their support, or indeed if any such payments had actually been made. Mr O'Herlihy said that it had never been suggested to him that he might be in any way involved in making or arranging such payments on behalf of Monarch, and he stated that he had never been involved in any such activity.

5.08 Mr O'Herlihy told the Tribunal that Mr Lynn advised him that it was the practice to establish a relationship with a *'lead'* councillor to whom money would

be paid, and who would then distribute money to other elected councillors in order to secure support for rezoning or material contravention proposals.

5.09 Mr O'Herlihy also stated that when he asked Mr Lynn whether Monarch had paid money to councillors relating to the Cherrywood project, Mr Lynn informed him that Monarch had paid IR£100,000. Mr O'Herlihy was unsure if Mr Lynn intended this to convey the impression that the IR£100,000 was entirely linked to the Cherrywood project alone. According to Mr O'Herlihy, Mr Lynn also stated that Monarch's lead councillor was Cllr Don Lydon.

5.10 Mr Lynn denied having any such conversation with Mr O'Herlihy. He denied knowledge of a system which involved payments to councillors. He took issue with the timing and location of the alleged conversation as described by Mr O'Herlihy, and in particular, he denied that on 27 May 1992 he had been at the Royal Dublin Hotel, where Mr O'Herlihy claimed this conversation occurred.

5.11 The Tribunal was satisfied that a discussion did in fact take place between Mr O'Herlihy and Mr Lynn on 27 May 1992 in the Royal Dublin Hotel, and that Mr O'Herlihy's account of that discussion, and in particular his recollection of the information provided to him by Mr Lynn, was accurate. In particular, the Tribunal was satisfied that Mr Lynn conveyed information to Mr O'Herlihy to the effect that Monarch had paid substantial sums to councillors in an effort to secure support for the rezoning of its Cherrywood lands, and that Mr Lynn informed Mr O'Herlihy that Cllr Don Lydon was the lead councillor involved in this activity as far as Monarch was concerned.

5.12 The Tribunal was conscious of Mr O'Herlihy's personal discomfort in revealing the details of a private discussion between himself and Mr Lynn, and it accepted that Mr O'Herlihy imparted those details honestly and in good faith, albeit with reluctance, and with the benefit of a clear recollection of the event. The Tribunal was satisfied that Mr O'Herlihy recounted accurately and honestly what had been stated to him by Mr Lynn. Moreover, the Tribunal was satisfied, based on the evidence of both Mr O'Herlihy and Mr Lynn, that the two men enjoyed a cordial and professional relationship during the course of Mr O'Herlihy's tenure as a public relations consultant for Monarch. The Tribunal was also satisfied that Mr O'Herlihy's retention by Monarch terminated on entirely cordial terms, and that at all relevant times Mr O'Herlihy carried out his functions for Monarch in an entirely proper and professional manner.

5.13 Mr O'Herlihy's evidence as to his discussion with Mr Lynn on 27 May 1992 was not considered by the Tribunal as direct evidence that Monarch in fact engaged in the practice of making payments to councillors for the purpose of

ensuring their support for the rezoning of its Cherrywood lands, but was simply evidence that a discussion on that particular topic had taken place.

5.14 However, following consideration of the evidence of a number of Monarch witnesses and of documentation discovered to the Tribunal by Monarch-related companies, the Tribunal was satisfied that by May 1992, Monarch had an established record of expenditures on politicians and councillors as part of its pursuit of its Cherrywood lands rezoning.

5.15 At the time of the discussions between Mr O'Herlihy and Mr Lynn on 27 May 1992, Monarch Property Services Limited had recorded in its YTD (year to date) general ledger report fiscal year 1992, under the heading 'G*eneral Promotion*', expenditures of IR£23,450, which was transferred from the '*Sponsorship*' and '*Promotion*' accounts in the same ledger, and there identified by initials or by name as being paid to candidates in the June 1991 Local Election. Moreover, in communications with its business partner GRE (April 1992), under the heading '*Cherrywood Properties Limited—Draft Development Plan Cashflow Projections*', Monarch had described some IR£22,150 of the IR£23,450 expended on the Local Election candidates as '*strategy consultancy fees*'. In the same communication of 28 April 1992, Monarch also apprised GRE that it was projecting further expenditure by way of '*strategy consultancy fees*' of IR£10,000 for May 1992 and IR£50,000 for June 1992. In an earlier version of the April 1992 schedule furnished to GRE in March 1992, Monarch had put the figure for future '*strategy consultancy fees*' at IR£75,000.

5.16 The Tribunal was satisfied that at the time of his discussion with Mr O'Herlihy, Mr Lynn was aware that substantial payments already had been made to identified councillors by Monarch, and he was also aware that Monarch was contemplating and planning further payments to councillors. This matter is dealt with in greater detail later in this chapter.

DUBLIN COUNTY COUNCIL MEETINGS IN 1992

THE SPECIAL MEETING ON 13 MAY 1992

6.01 Dublin County Councillors were advised that any proposals relating to Maps 26 and 27 should be submitted to the Council before 14 April 1992. Eleven motions relating to the Monarch lands were duly submitted. One of these motions was signed by Cllrs Don Lydon and Tom Hand. Mr Lynn told the Tribunal that he drafted this motion in conjunction with Cllr Lydon, and, to a lesser extent, Cllr Hand. That motion in effect sought to adopt Monarch's December 1991 submission, with some modifications. The most significant modification was a proposal that there be a cap on residential density of 5 houses per acre, (or a

total of 956 houses), and a scaled back town centre. This motion was lodged with Dublin County Council on 4 May 1992.[7]

6.02 None of the 11 listed motions was dealt with at the Council special meeting of 13 May 1992. The County Manager submitted a report at that meeting with particular reference to the Carrickmines Valley area. He produced a map, DP92/44, which proposed both motorway (SEM) and zoning changes to the 1991 Draft Development Plan. Mr Willie Murray agreed with the Tribunal that the main thrust of Map DP92/44 was directed towards Monarch's lands.

6.03 The Manager's new proposal was that the lands already zoned residential at a density of 4 houses per acre on piped sewage on the 1991 Draft Plan, should now be zoned A1P. This made provision for a new residential community in accordance with an approved Area Action Plan, at a density not exceeding 4 houses per acre with the provision that necessary community facilities be provided, such as a school, shops, appropriate road systems and open spaces. The Manager proposed that shopping facilities be confined to neighbourhood proportions, that the notional 1983 SEM line be moved further south-west, and that the lands that fell between the 'old' 1983 line and the proposed 'new' 1983 line, previously zoned agriculture, be zoned residential A1P.

6.04 These proposals, as set out in Map DP92/44, showed Monarch's area of residential zoning at A1P as increased and its area of land zoned B (agriculture) as reduced.

6.05 The benefit for Monarch of this proposal was that, once the 1993 Dublin County Development Plan was drawn up, there would be scope for immediate reconsideration of the residential density, allowing for it to be increased in the context of an Area Action Plan. Monarch's position had therefore improved considerably.

6.06 While Map DP92/44 had not taken on board in its entirety Monarch's submission of 2 December 1991, it was nevertheless the case that only Monarch's lands were benefiting from the A1P designation and they were further benefiting by the increase in the area that was to be zoned residential A1P.

6.07 The Tribunal was satisfied that by the time the Manager's proposals were made public in May 1992, Monarch had good reason to be satisfied with them.

[7] The deadline for motions had been extended.

THE SPECIAL MEETING OF 27 MAY 1992

6.08 Monarch initially envisaged that its December 1991 submission for increased zoning and density would go to a vote in May 1992 via the Lydon/Hand motion. However, the Tribunal accepted Mr Lynn's evidence that, since Map DP92/44 was effectively giving Monarch all it wanted in terms of zoning and increased density levels, a decision was taken by him and Mr Sweeney, prior to the vote on 27 May 1992, to ask Cllr Lydon to propose a motion supporting the Manager's proposals as set out in Map DP92/44.

6.09 The Tribunal believed that Monarch viewed Map DP92/44 as a testing mechanism for what might be achieved within the Council in terms of rezoning and density levels. If it failed, as a watered down version of Monarch's own submission, it was likely that the Lydon/Hand motion, if moved, would also fail.

6.10 At the special meeting of 27 May 1992, the Manager concluded his report in relation to DP92/44. A motion was then proposed by Cllr Lydon, and seconded by Cllr Colm McGrath seeking to have Map DP92/44 adopted and approved by the Council. This proposal was defeated by two votes.

6.11 Following this defeat, the Lydon/Hand motion which had been lodged at Monarch's behest was duly withdrawn. The Tribunal was satisfied that Cllr Lydon withdrew the motion after he consulted Mr Lynn.

6.12 There remained on the Council's agenda a number of other motions referable to the Monarch lands, the majority of which were effectively 'anti-Monarch'. These motions sought, by and large, to restrict residential zoning on Monarch's lands to 1 house per acre. At this stage, Monarch's position was that, at best, it might retain the 4 houses per acre zoning proposal contained in the 1991 Draft Plan. With the defeat of several of the 'anti-Monarch' motions, this outcome appeared likely.

6.13 There then followed a vote on a motion proposed by Cllrs Eamon Gilmore (DL) and Denis O'Callaghan (DL) which sought a C (district centre) zoning for lands in the Ballybrack/Loughlinstown area of the Carrickmines Valley, the bulk of which were owned by Monarch. Cllrs Gilmore and O'Callaghan gave evidence that the reason for their motion was the need to generate employment in the area. According to Cllr Gilmore, community leaders in the Loughlinstown/Ballybrack areas had sought such development. The two councillors decided its location having due regard to the provision of the Wyattville junction and the old Harcourt Street Railway line. According to Cllr Gilmore, the location did not arise as a consequence of any negotiations with

Monarch representatives. The Tribunal was satisfied to accept Cllr Gilmore's evidence in this regard.

6.14 The Gilmore/O'Callaghan proposal for a district centre was passed by 34 votes to 22 with 8 abstentions. The result was that lands largely in Monarch's ownership were zoned district centre.

6.15 After a further Gilmore/O'Callaghan motion seeking to restrict the number of units that might be developed on zoned land was defeated, the final motion on the Council's agenda was then put to a vote.

THE BARRETT/DOCKRELL MOTION

6.16 This motion, signed by Cllr Seán Barrett, proposed by him and seconded by Cllr J. H. Dockrell, was the last 'anti-Monarch' motion; like the previous such motions it sought to restrict residential density levels on the lands at Cherrywood (lands stretching from Glenamuck Road to Cherrywood Road, Loughlinstown) to 1 house per acre. The motion was passed by 36 votes to 24 with no abstentions. These changes were referred to as Changes 3, 4 (A) and 4 (B) on Map 27 of the 1993 Amendments to the 1991 Draft Development Plan which duly went on public display between 1 July and 4 August 1993.

6.17 The success of the Barrett/Dockrell motion meant that lands (including Monarch lands) which had been zoned in the first public display map at a density of 4 houses per acre on piped sewage were now to go to a second public display zoned A (residential) at a density of 1 house per acre. This was a substantial setback for Monarch's rezoning ambitions.

6.18 By this stage Monarch's position was no better than it had been when the Development Plan review began. Its only gain was the happenstance that the district centre zoning achieved with the success of the Gilmore/O'Callaghan motion included Monarch-owned lands.

6.19 The Tribunal was satisfied that the defeat of the Manager's proposal DP92/44 and the subsequent success of the Barrett/Dockrell motion, came as a surprise to Monarch. Given that the Manager had taken on board Monarch's December 1991 submission and had incorporated it in DP92/44, Monarch had had every reason for confidence in the run up to the May 1992 vote. Moreover, the Tribunal was satisfied that Monarch had been hopeful of wide-ranging councillor support given that two senior councillors, one Fianna Fáil and one Fine Gael (Cllrs Lydon and Hand respectively) were signatories to its motion.

6.20 Mr Lynn satisfied the Tribunal that he had established a close relationship with Cllrs Lydon and Hand over the course of the years 1991 and 1992. Furthermore (according to press reports), when Cllr Lydon, as directed by Monarch, spoke in support of the Manager's proposal DP92/44 he made a passionate case for the rezoning of the Monarch lands. Cllr Lydon's close relationship with Mr Lynn/Monarch was further evidenced by his efforts, after the vote held on 27 May 1992, to cast doubt on the legality and procedural correctness of the vote that had been taken on the Barrett/Dockrell motion, a move that proved unsuccessful.

6.21 The Tribunal was satisfied that, following the vote on 27 May 1992, Monarch was left in an invidious position. It had vigorously campaigned at senior political, county councillor and council official level, and much of its campaigning had yielded results. (For example, the proposed SEM line was no longer destined to bisect its lands, thereby allowing potential for further rezonings; the Carrickmines sewer was to be constructed, thereby allowing for increased residential density levels). Yet, after May 1992, it could not advance its zoning ambitions without a reversal of the effects of the Barrett/Dockrell motion.

6.22 The Tribunal was satisfied that, in anticipation of such a future vote, Monarch intensified its lobbying campaign, which it had begun in 1991, to persuade councillors to vote in sufficient numbers to reverse the effects of the Barrett/Dockrell motion. The Tribunal believed that much of Monarch's post-May 1992 campaign was centred on ensuring that Monarch would be perceived by councillors as politically supportive of them and as being generous in its financial support of certain county councilors.

MONARCH'S REZONING CAMPAIGN FROM MID 1992 TO END 1993

7.01 The Tribunal was satisfied that, after May 1992, Monarch personnel closely connected with its rezoning efforts understood that there would be only one further opportunity, before the new Development Plan was finalised, for Monarch to increase the density levels on its residentially zoned lands. This opportunity would arise in 1993 at the end of the Draft Development Plan's second statutory public display period.

7.02 Immediately after the May 1992 vote, Monarch continued to be hopeful that it might be able to advance the case for the rezoning of its B (agriculture) zoned lands. Ultimately it desisted from making a submission in this regard to the Council, after being informed by the Council that legal advice had been received to the effect that such a submission could not be made at that stage of the review process.

7.03 Accordingly, the Tribunal was satisfied that, by and large, the focus of Monarch's efforts in late 1992 and in 1993 was on how to undo the changes made to the density levels on its residentially zoned lands as a result of the passing of the Barrett/Dockrell motion. Equally, Monarch wished to ensure that the part of its land zoned C (district centre) as a result of the success of the Gilmore/O'Callaghan motion would retain that zoning.

7.04 The General Election in November 1992 (and the linked Seanad Election in January 1993) presented Monarch with the opportunity to contribute generously towards the election expenses of 22 councillors (as well as four national politicians). Some IR£22,450 was paid to identified councillors over a two to three month period for that stated purpose.

7.05 In March 1993, in expectation of a further round of Council meetings in the course of the continued review of the Development Plan, and more particularly that part of the plan relating to the Cherrywood area, and the need to lobby councillors for support, Monarch retained Mr Frank Dunlop's services.

MR FRANK DUNLOP'S RETENTION

8.01 Mr Dunlop's services were recruited by Monarch in March 1993 at a meeting on 8 or 9 March between him and Mr Sweeney (probably at Monarch's Harcourt Street offices in Dublin).[8] The decision to engage Mr Dunlop was made on the recommendation of Mr Liam Lawlor TD.

8.02 Mr Dunlop was engaged in particular to lobby elected members of Dublin County Council to support the rezoning of the Cherrywood lands. At the time of his retention, Mr Dunlop was well established as a lobbyist serving the rezoning aspirations of a number of developers/landowners in the course of the review of the Dublin County Development Plan.

8.03 At that time, Monarch was anxious to reverse the setback to the Cherrywood project in consequence of the success of the Barrett/Dockrell motion on 27 May 1992. Monarch was aware that there would be an opportunity to do so later in 1993, following the second public display of the 1993 Draft Development Plan. The Tribunal was satisfied that this was a critical period for Monarch in that it was its final opportunity to obtain improved zonings and increased residential density in the context of the review of the 1983 Plan. Moreover, success at the confirmation meeting was crucial in terms of Monarch's overall financial position.

[8] Mr Sweeney believed this meeting took place in Mr Dunlop's offices.

8.04 Unlike many of Mr Dunlop's engagements by other developers/landowners, the Cherrywood rezoning project had already been underway for some time (approximately four years) at the time of his retention by Monarch.

8.05 Mr Dunlop maintained that at the time of his retention in early March 1993, Mr Sweeney knew that, if the rezoning project was to be successful, councillors would (as Mr Dunlop put it) have to be paid money. Mr Dunlop told the Tribunal that in the course of his first meeting with Mr Sweeney, Mr Sweeney referred to the *'unreliability of politicians'*, and said to him: '*you have to do what I know you have to do.'*

8.06 Mr Dunlop interpreted this as knowledge on Mr Sweeney's part of Mr Dunlop's system of paying councillors for their votes.

8.07 In his October 2000 statement Mr Dunlop made no reference to actual words he attributed to Mr Sweeney. However, his 2003 narrative statement included the following reference to his and Mr Sweeney's initial meeting on 8 March 1993:

> *The only discussions with regard to payments to politicians was with Mr Sweeney who, at my original meeting with him, indicated that he knew that I would have to make payments to Councillors to achieve success. He said that he knew that this was the only way that things could get done.*

8.08 Mr Sweeney rejected Mr Dunlop's assertion that he was aware in March 1993 that councillors would *'have to be'* bribed to support the Cherrywood rezoning proposals, and/or that Mr Dunlop intended engaging in corrupt practices to this end. Mr Sweeney told the Tribunal that he had no recollection of uttering the alleged words, or any words or sentiments which might reasonably have indicated such knowledge on his part.

8.09 The Tribunal did not consider that the absence in Mr Dunlop's October 2000 statement of the words he later attributed to Mr Sweeney should be the sole determinant of Mr Dunlop's credibility on this matter. The Tribunal noted in particular that in that statement, Mr Dunlop had indicated by means of an asterisk in that section of this statement dealing with Cherrywood that Monarch knew of his corrupt activities.

8.10 At the time of Monarch's retention of Mr Dunlop on 9 March 1993, it had made payments, stated to be '*political contributions'* to TDs and councillors

amounting to approximately IR£59,100, and described in its books as the Cherrywood cost, according to the documentation provided to the Tribunal by Monarch.

DID MR SWEENEY UTTER THE WORDS ATTRIBUTED TO HIM BY MR DUNLOP?

8.11 The Tribunal was satisfied on the balance of probability that the words *'you have to do what I know you have to do'* or similar were uttered by Mr Sweeney.

8.12 Although these words were capable of being given an entirely innocent interpretation, as Mr Dunlop acknowledged in reply to Counsel for Mr Sweeney, Mr Dunlop's evidence was that he did not apply any such innocent interpretation to these words when they were uttered by Mr Sweeney.

8.13 The Tribunal was satisfied on the balance of probability that Mr Sweeney conveyed, in words he spoke to Mr Dunlop, that he knew that Mr Dunlop would have to make payments to councillors, and that he approved of that action.

8.14 The Tribunal was satisfied that Mr Dunlop was retained by Monarch in the knowledge that as part of his lobbying function it was likely he would pay money to certain councillors in return for their support. Factors which led the Tribunal to this conclusion included:

1) The nature of the financial arrangements entered into between Monarch and Mr Dunlop, particularly the manner in which a payment of IR£15,000 was made to him on 2 November 1993[9],
2) The culture and attitude towards rezoning which, the Tribunal was satisfied, existed within Monarch by 1993 and thereafter, as evidenced by the Tribunal's findings in relation to the Lynn/O'Herlihy issue, and, as evidenced by findings the Tribunal made regarding substantial cash expenditure by Monarch in the years 1992 to 1996, details of which are dealt with elsewhere in this chapter.

MR DUNLOP'S ONGOING DEALINGS WITH MONARCH PERSONNEL AFTER HIS INITIAL RECRUITMENT

8.15 Mr Dunlop was introduced to Mr Lynn and Mr Reilly as a Monarch lobbyist, on 9 March, the day after his meeting with Mr Sweeney. Mr Dunlop maintained that Mr Lynn resented his (Mr Dunlop's) appointment as a lobbyist.

[9] This matter is dealt with later in this chapter.

8.16 Despite Mr Lynn's denials of any significant contact with Mr Dunlop prior to this meeting, the Tribunal was satisfied that they would have met at regular intervals at special meetings of Dublin County Council, and that, as described by Mr Dunlop, discussions in a general sense would have taken place as to the progress or otherwise of the rezoning project.

8.17 The Tribunal was further satisfied that at the 9 March meeting with Mr Lynn and Mr Reilly the following matters were discussed:

1) Monarch's objective to reverse the consequences of the successful Barrett/Dockrell motion of 27 May 1992 in terms of residential density.
2) Monarch's objective to retain the C (district centre) zoning that had been achieved on its lands by reason of the successful Gilmore/O'Callaghan motion of 27 May 1992.
3) The extent of the political contacts made to date by Mr Lynn and Mr Reilly in Dublin County Council.
4) The manner in which the lobbying of councillors would be divided between Mr Dunlop and the Monarch executives Mr Lynn, Mr Reilly, Mr Sweeney and Mr Murray.

8.18 There was a dispute between Monarch and Mr Dunlop as to the extent of the contact that he had with Monarch personnel after his appointment. However, the Tribunal was satisfied, on the basis of Mr Dunlop's diary entries and telephone records (maintained by his secretary) that substantial contact did occur within the relevant period.

8.19 Mr Lynn claimed in evidence that he felt uneasy during Mr Dunlop's tenure. He maintained that Mr Dunlop had done no work for Monarch, that he was difficult to contact, and that when he was contacted he simply picked Mr Lynn's brains in relation to what contact he had established with various members of the County Council. Mr Lynn told the Tribunal he communicated his disquiet about Mr Dunlop to Mr Sweeney, the project leader. The Tribunal did not, however, consider that any such disquiet existed on the part of Mr Lynn, or indeed on the part of any other Monarch personnel. The Tribunal was fortified in this conclusion by the fact that between March and December 1993 Monarch personnel authorised substantial sums of money for payment to Mr Dunlop.

8.20 Mr Dunlop told the Tribunal that comments made to him by Mr Lynn subsequent to his retention by Monarch led him to believe that Monarch itself was engaged in payments of money to elected councillors. Mr Dunlop recalled references by Mr Lynn to councillors costing too much, and getting greedy. He specifically recalled Mr Lynn stating to him on one occasion: '*You would think these idiots would get their act together, there is so much money being spent on them.'*

8.21 Mr Lynn roundly rejected Mr Dunlop's evidence that he had expressed such sentiments.

8.22 The Tribunal believed it likely that Mr Lynn did indeed comment to Mr Dunlop that Monarch was making payments to elected councillors in connection with the review of the Development Plan. Having regard to the Tribunal's finding that Mr Lynn reported similar activity to Mr O'Herlihy in May 1992,[10] it was understandable that such candour would likewise have been a feature of discussions between himself and Mr Dunlop.

DUBLIN COUNTY COUNCIL MEETINGS IN 1993

THE SECOND PUBLIC DISPLAY OF THE DRAFT DEVELOPMENT PLAN IN JULY/AUGUST 1993

9.01 The Draft Development Plan, which included the lands in Carrickmines Valley, went on public display for the second time between 1 July and 4 August 1993. The lands, including the Monarch lands, that had been zoned residential in the 1991 Plan at a density of 4 houses per acre (10 houses per hectare) on piped sewage, were now zoned at a density of 1 house per acre (2 houses per hectare). Lands, including Monarch's lands, previously zoned agriculture and residential on the 1991 Plan, were now zoned for a district centre. Monarch's objective was to alter the residential density levels from 1 to 4 houses per acre, and to retain the district centre zoning. During the display period, Mr MacCabe made recommendations on behalf of Monarch and its partner GRE in respect of Change 3 (residential density).

9.02 Following the display period, the Manager issued a report on the Cherrywood area, in which he proposed a return to residential density of 4 houses per acre (10 houses per hectare) in respect of all the lands affected by the Barrett/Dockrell motion.

[10] See section on Mr O'Herlihy.

9.03 In advance of the next special meeting dealing with the Cherrywood lands, in November 1993, the Council received a number of motions, including one in the names of Cllrs D. Marren, L. Lohan, Betty Coffey, Liam T. Cosgrave and Ann Ormonde. This motion sought to increase the density of the residentially zoned lands to 4 houses per acre (10 houses per hectare), in respect only of the Monarch-owned lands. (The Manager's recommendations, on the other hand, proposed a similar outcome, but in respect of a greater area of land, which included the Monarch lands). The same councillors also sought to retain the district centre zoning which had been achieved on 27 May 1992, but on the basis that the retail element would be limited to neighbourhood size.

THE SPECIAL MEETINGS OF 3 AND 11 NOVEMBER 1993

9.04 The proposed changes on Map 27 were considered at special meetings of the Council held on 3 and 11 November 1993. Although Map 27 was on the agenda for the meeting on 3 November 1993, the motions concerning it were not finally considered by the councillors until 11 November 1993. The 3 November 1993 meeting, insofar as it related to the Carrickmines valley, was taken up with the Manager outlining his report to the members, and with a motion in the names of Cllrs F. Smith, F. Buckley and S. Misteil which sought to confirm Change 3 on Map 27, i.e. to retain the residential density on lands (including lands owned by Monarch) at 1 house per acre (2 houses per hectare).

9.05 The Smith/Buckley/Misteil motion was the first substantive motion put to a vote on 11 November 1993. This motion was defeated with 26 votes for and 44 against. Likewise, a motion in similar terms by Cllrs Gilmore and O'Callaghan seeking to confirm Change 3 and requesting an early Variation Plan for Dún Laoghaire-Rathdown[11] was defeated with 26 councillors voting for and 44 against. Subsequently, a motion proposed by Cllr D. Marren and seconded by Cllr Betty Coffey resolving to accept the Manager's recommendation in relation to Change 3 by deleting the 1993 amendments in respect of those lands outlined in red on an accompanying map (the Monarch lands only), with the balance of the lands to remain at 2 houses per hectare was passed by 44 votes to 27.

9.06 As a result of this vote, the residential density of 4 houses per acre (10 houses per hectare) was reinstated on Monarch's lands, while the balance of the lands (not owned by Monarch) which had been affected by Change 3 remained zoned residential at a density of 1 house per acre (2 houses per hectare).

[11] On 1 January 1994 Dublin County Council was broken into three local authority areas, of which one was Dún Laoghaire-Rathdown County Council (within whose functional area the Cherrywood lands lay).

9.07 A further motion by Cllrs Smith and Misteil to have a portion of the lands which had been zoned C (district centre) on 27 May 1992 revert to their agricultural zoning was unsuccessful.

9.08 The final motion relevant to Monarch taken on 11 November 1993 was proposed by Cllr Marren and seconded by Cllr Coffey. It sought to confirm the C (district centre) zoning on Monarch's lands while limiting the retail element to neighbourhood centre size (i.e. to confirm Changes 4 (A) and 4 (B), from B (agriculture) and A (residential) to C (town and district centre) having regard to the Manager's recommendation to limit the retail element to neighbourhood centre size only. This motion was passed by 46 votes to 4, with 12 abstentions.

9.09 At the conclusion of the special meeting on 11 November 1993 Monarch had achieved the objectives it had set itself in the wake of the 27 May 1992 vote: it had retained the district centre zoning for its lands, albeit with the retail element restricted to neighbourhood size, and, more importantly from its perspective, it had succeeded in having density levels of 4 houses to the acre reinstated on its lands zoned residential.

9.10 This result was formally reflected when the Dublin County Development Plan was adopted on 10 December 1993. The Plan showed the lands contained in Map 27 with the following zonings:

1) Portion of Monarch's lands zoned for residential use at a density of 4 houses per acre (10 houses per hectare) with piped sewerage.
2) Adjoining lands, not owned by Monarch, returned to their existing residential zoning, at a density of 1 house per acre.
3) Portion of Monarch's lands zoned agricultural.
4) Portion of Monarch's lands zoned for town and district centre with the retail element restricted to neighbourhood centre size.

MONARCH'S REZONING CAMPAIGN IN 1994 AND 1995

10.01 Although the development potential of Monarch's lands in Cherrywood was much improved as a consequence of the adoption of the Development Plan on 10 December 1993, approximately 67 acres of its approximately 236 acres were still zoned agricultural.

10.02 The Area Action Plan envisaged in the A1 zoning, following the break-up of the large area covered by Dublin County Council and the establishment of three new councils, and in particular the establishment of Dún Laoghaire-Rathdown County Council (within whose functional area the Cherrywood lands lay) on 1

January 1994, presented Monarch with a further opportunity to have all or a portion of its remaining lands rezoned for development.

10.03 At a meeting on 6 January 1994, Mr Willie Murray, planning officer for Dún Laoghaire-Rathdown County Council, and Monarch executives Mr Eddie Sweeney and Mr Pat Lafferty discussed the Monarch lands. A record of this meeting revealed that they discussed the concept of an Area Action Plan to be drawn up in respect of lands including Monarch's lands. Both sides appeared at this meeting to agree that the Area Action Plan was the vehicle under which the *'anomaly'* of the agriculturally zoned Monarch lands within the Cherrywood landtake could be raised. The record of the meeting noted that Mr Murray suggested to the Monarch representatives that the initiative to have the agricultural lands zoned to residential use could come from either the County Manager or the Dún Laoghaire-Rathdown councillors.

10.04 The draft Area Action Plan report prepared by Mr Richard Cremins (Acting Senior Planner) referred to the *'somewhat anomalous'* agricultural zoning that attached to some of Monarch's lands. This report concentrated almost entirely on Monarch's lands. The Manager presented the draft Area Action Plan to the Council's Planning and Tourism Committee on 23 May 1994 but it was agreed to defer consideration to a meeting of the Committee to be held on 29 June 1994.

10.05 It was also agreed at the 23 May meeting to defer further consideration of a motion concerning a science and technology park[12] put forward by Cllr Eamon Gilmore (DL) and Denis O'Callaghan (DL), and the location of such a park.

SPECIAL MEETING 29 JUNE 1994

10.06 On 29 June 1994, at a meeting of Dún Laoghaire-Rathdown County Council, the following deferred Gilmore/O'Callaghan motion was proposed and passed unanimously:

> *That this Committee welcomes the development of a Science and Technology Park in the Dún Laoghaire-Rathdown area and in order to encourage and facilitate such a development, the Council agrees to review the zoning of the lands at Cherrywood, Loughlinstown which are owned by Monarch Properties.*

10.07 Prior to this motion, Monarch had actively canvassed councillors on the concept of a science and technology park on Monarch's lands. Monarch had

[12] The Cherrywood lands had been identified in a feasibility study as a possible location for a science and technology park. The study was commissioned by partnership of key organisations in Dublin, set up with the support of the European Commission's SPRINT programme.

originally raised the concept with officials of Dublin County Council in 1993. There may have been general agreement that the concept could be raised again by Monarch when Dún Laoghaire-Rathdown Council came into being, although Mr Kevin O'Sullivan doubted that this was the case.

10.08 It was further agreed at the meeting of 29 June that:

1) The Council would write to the chairman of a Science and Technology Parks Working Group in the Department of Enterprise and Employment recommending Cherrywood as a suitable location for a science and technology park.
2) A delegation of councillors and council officials would meet with two Cabinet Ministers for the Administrative Area.
3) Copies of the draft Area Action Plan would be put on public display.

10.09 A working group comprising Cllrs Betty Coffey, Seán Barrett, Larry Butler and Eamon Gilmore was established following this meeting. The group held a number of meetings throughout the summer months of 1994 and was invited by the Minister for Commerce and Technology to meet with the Working Group on Science and Technology Parks within the Department of Enterprise and Employment to present a proposal to establish a science and technology park on lands at Cherrywood.

10.10 On 10 October 1994, a motion signed by Cllrs D. Lydon, R. Conroy and Liam T. Cosgrave was lodged with Dún Laoghaire-Rathdown County Council. This motion sought to direct the County Manager to initiate a Draft Variation of the 1993 Development Plan, (in relation to the Cherrywood area) to provide a science and technology park on a portion of Monarch's lands including a small portion zoned agricultural, and to provide for the residential rezoning of the remainder of those lands at a density of 6 houses per acre. This motion also sought the retention of 18 acres of the district centre zoning already provided for on Monarch's lands.

10.11 The Tribunal was satisfied that this motion was organised entirely at the behest of Mr Richard Lynn.

SPECIAL MEETING 14 NOVEMBER 1994

10.12 At this meeting, the County Manager proposed a Draft Variation of the 1993 County Development Plan (relating to the lands in Cherrywood). This included proposals that a portion of Monarch's agriculturally zoned lands be rezoned for use as a science and technology park, the balance of those

agriculturally zoned lands to be rezoned residential on piped sewage at a density of 16 houses per hectare, and that the existing district centre zoning on Monarch's lands be re-sited to lands owned by Monarch north of the Wyattville Road.

10.13 The Manager informed the elected members of ongoing negotiations between his officials and Monarch/GRE in relation to the proposed Council involvement in the science and technology park on Monarch's lands, and the acquisition of an equitable interest by the Council in those lands.

10.14 The Manager's proposals were passed by the elected members by 18 votes to 3 with no abstentions.

10.15 A draft of the proposed variation made at that meeting went on public display between 30 November 1994 and 10 March 1995.

THE SPECIAL MEETING OF 24 APRIL 1995

10.16 At a meeting on 24 April a resolution in terms supplied by the Manager, recommending that the draft variation as proposed be adopted without amendment, was passed by 23 votes to 1. As a result, all of Monarch's lands were zoned for development, including provisions for residential use, a district centre and a science and technology park. Different portions of its lands zoned for residential use had densities of 10 houses per hectare and 16 houses per hectare respectively.

THE 1993 DEVELOPMENT PLAN REVIEW

11.01 The review of the 1993 Development Plan for Dún Laoghaire-Rathdown began in May 1996.[13] By December 1996, the Manager was proposing that the first public display of the Plan would show Monarch's lands zoned A (residential), E1 (science and technology park) and C (district centre). It was also proposed that the density level restrictions on Monarch's lands be removed.

11.02 There was some opposition within the Council to the Manager's proposal to remove the residential density restrictions. On 4 February 1997 a motion was proposed seeking the re-introduction of the density limitations which had been in the 1993 Plan. A Manager's report in favour of removing the density restrictions was read at the meeting. No vote was taken on the motion.

[13] The review of the Dún Laoghaire Borough Development Plan began at the same time.

11.03 A motion to have the draft plan go on display with density level restrictions was put to a vote on 2 April 1997 but was unsuccessful.

11.04 The Draft Development Plan 1997 went on public display between 21 May and 22 August 1997. On that plan, Monarch's lands were divided into portions for residential use, a science and technology park, and a district centre.

11.05 Submissions were received from Monarch, in effect seeking 1) the extension of the E1 (science and technology) zoning to lands zoned agricultural which it had acquired after the 1993 County Development Plan had been varied in 1995, 2) an extension of the district centre zoning and 3) the removal of the restriction in relation to the retail area of the existing district centre zoning.

COUNTY COUNCIL MEETINGS 21 JANUARY, 16 JUNE AND 13 JULY 1998

11.06 At a special meeting of the County Council on 21 January 1998 the Manager's revised recommendation that the Cherrywood area be the subject of an Area Action Plan was approved. Motions to extend the science and technology park and extend the district centre zoning which were signed by Cllrs Lowry, Matthews, Liam T. Cosgrave and Conroy were passed by a majority of councillors.

11.07 A motion seeking to delete the retail cap restrictions on the district centre zoning, which was proposed by Cllrs Matthews and Liam T. Cosgrave, did not go to a vote, the councillors instead agreeing to accept the Manager's recommendation to replace the existing retail cap with a less restrictive one.

11.08 The Dún Laoghaire-Rathdown County Council Draft Development Plan 1997, containing the above changes as Changes 4, 5 and 15, went on public display between 7 April and 15 May 1998. These amendments were confirmed at a special meeting of the Council on 16 June 1998.

11.09 At that meeting, two motions received by the County Council which took issue with the proposal to extend a science and technology park zoning to the newly acquired agriculturally zoned Monarch lands were put to a vote and lost.

11.10 Monarch had achieved all its initial objectives with the adoption on 13 July 1998[14] of the Dún Laoghaire-Rathdown County Council Development Plan which included the above amendment to Map 10. The area for the science and technology park had been extended by the rezoning of agriculture zoned lands

[14] Monarch sold its lands in 1997 to another development company, Dunloe Ewart Plc in the course of the review which led to the adoption of the 1998 Dún Laoghaire-Rathdown County Council Development Plan.

which had been acquired by Monarch, the acreage of the district centre zoning had effectively been doubled, and the erstwhile restrictive retail cap had been replaced by a less restrictive one. Moreover, residential density levels no longer applied to Monarch's residentially zoned lands.

MONARCH CHEQUE PAYMENTS TO NAMED POLITICIANS AND POLITICAL PARTIES 1991–7

12.01 Monarch acknowledged cheque payments made between 1991 and 1997 to in excess of 60 named politicians (including payments to charitable or voluntary organisations on behalf of, or at the request of, named politicians), and to political parties, amounting to a total of IR£127,515.

12.02 These payments were made in the following amounts and years:

- 1991: IR£23,450.
- 1992: IR£35,650 (inclusive of payments made in January 1993 referrable to the November 1992 Dáil election and/or the January 1993 Seanad Election).
- 1993–7: IR£68,415 (excluding the payments made in January 1993 referrable to the Seanad Election).

12.03 In the course of written information, and in documentation furnished to the Tribunal in 2000, Monarch provided lists of recipients of such payments. Many of the recipients gave sworn evidence to the Tribunal. In almost all cases, they acknowledged receipt of the payments, although a number of them had either no recollection or only vague recollection of receiving the payments.

12.04 Approximately IR£6,550 of the total was paid to the Progressive Democrat Party (including IR£2,000 on 1 February 1994, stated in Monarch's books to be an 'interest free loan' to the party). These sums were probably solicited by Cllr Helen Keogh.

12.05 The Tribunal was satisfied that the information and evidence provided to it by Monarch and its witnesses accurately identified recipients of payments Monarch made by cheque to or on behalf of politicians and political parties in the period 1991 to 1997. The records submitted by Monarch which list the recipients of the payments totalling IR£127,515 made in the period from 1991 to 1997 are attached as Exhibit 2 in this chapter.

12.06 Monarch's stated position was that these payments were political contributions generally made in response to requests by individual politicians. Monarch maintained that payments were made to councillors/election

candidates in 1991 on foot of requests from them for assistance with expenses relating to the 1991 Local Elections. Monarch maintained that its 1992 payments were intended as assistance with expenses relating to the General Election in November 1992, and the linked Seanad Election in early 1993.

12.07 While the payments were heavily concentrated in the years 1991 and 1992,[15] around the times of the 1991 Local Elections, and the 1992 General Election (including the Seanad Election of January 1993) respectively, Monarch was unable to provide the Tribunal with any documentary evidence which supported its contention that such payments had been solicited.

12.08 Mr Sweeney told the Tribunal that he was unable to say why particular amounts were chosen for payment to particular politicians. Mr Reilly believed that the councillors chosen to receive payments were based on a list prepared by Mr Lynn. Mr Lynn took issue with Mr Reilly's evidence that he, Mr Lynn, had asked Mr Reilly to telephone people on the list and ask if they wanted political donations.

12.09 Mr Monahan's secretary, Ms Ann Gosling, expressed the view that paying councillors was *'a necessary evil'.*

12.10 In most instances, particularly in relation to payments made in 1991 and 1992, the recipients took issue with Monarch's claim that they had solicited payments. In those cases where recipients were questioned as to the reason for, or purpose of the payments, they categorised them as political contributions paid at the time of an election (Local, General, Seanad or By-Election).

12.11 While the Tribunal believed it likely that some individuals named as recipients of payments in 1991 and 1992 may have sought assistance from Monarch in the run-up to the elections, the Tribunal was satisfied to accept Mr Philip Reilly's evidence that, prior to the 1991 elections, Mr Lynn had asked him to identify from a list those people he felt should be telephoned by Monarch personnel with a view to offering them support for the election.

MONARCH CHEQUE PAYMENTS IN 1991

13.01 Monarch records, supported by sworn evidence, established that between May and October 1991 it expended IR£23,450 in favour of 39 named politicians, including a total of IR£400 to two political parties. The records indicated that the named politicians received donations towards their expenses

[15] Close to half of the total of IR£127,515 paid in the period 1991–7 was paid in the years 1991 and 1992.

as candidates in the June 1991 Local Elections. Of the 39, 26 were Fianna Fáil candidates, 8 were Fine Gael candidates, 4 were Progressive Democrat candidates and 1 was an Independent candidate.

13.02 The first of the recorded 39 payments to election candidates was on 30 May 1991, some six days after the County Council vote on 24 May, the result of which was a severe setback to Monarch's ambition to rezone much of its Carrickmines landholding.

13.03 The contributions ranged from IR£50 to IR£5,000,[16] with most of the politicians receiving payments of hundreds of pounds. Thirty of the recipients were elected councillors standing for re-election.

THE TREATMENT OF THE 1991 POLITICAL PAYMENTS IN MONARCH'S BOOKS

13.04 Mr Lynn, Mr Glennane and Mr Sweeney told the Tribunal that the payments to councillors were legitimate political donations relating to candidates in the Local Elections of June 1991, although no such specific designation is recorded in Monarch's books. These payments were allocated in Monarch's books as a cost to the Cherrywood project.

13.05 Neither Mr Lynn, Mr Glennane nor Mr Sweeney was prepared to accept responsibility for the decision to allocate these payments to councillors in Monarch's books as a cost to the Cherrywood project. Mr Glennane did, however, state that he believed that the councillors sought donations from Monarch because they knew that Monarch was involved with the Cherrywood lands.

13.06 In a letter he wrote to Mr Martyn Baker of GRE on 2 October 1992, Mr Sweeney stated: '*I am also enclosing a background memo as to the input of the Monarch Technical Team and also the political input made to date which you may find useful*.' While this letter was discovered to the Tribunal, the accompanying memo it referred to was not.

13.07 The Tribunal rejected the Monarch executives' stance as to the decision to allocate the so-called political payments as an expense to the Cherrywood project. The Tribunal was satisfied that this decision was taken at executive level within Monarch, and almost certainly involved Mr Lynn, Mr Glennane, Mr Sweeney and Mr Monahan.

[16] Cllr Tom Hand was the recipient of IR£5,000, the largest, by a multiple of 5, of any single payment to a councillor in 1991. This issue is considered later in this chapter.

13.08 Monarch's records showed that the IR£23,450 expended between May and October 1991 was posted within MPSL's general ledger, initially to the '*Sponsorship*' (IR£15,350) and '*Promotions*' (IR£8,100) accounts of MPSL and were transferred for year end 1992 to the '*General Promotion'* account, within that ledger. Mr Glennane stated that the purpose of this '*General Promotion*' account was to record payments made by MPSL regarded as having been expended for the purpose of promoting the Cherrywood development.

13.09 A working paper prepared by Monarch's auditors in January 1996 concerning expenditure under the heading '*General Promotion and Advertising*' provided an insight into Monarch's decision to categorise the 1991 payments to politicians under the categorisation '*General Promotion'* when it stated:

> *Items booked by the client under this heading relate to costs incurred which relate to particular properties under development, e.g. Monarch will spend money in an area on various forms of promotional activity if they are developing there. The reason behind this is to tray and sway/influence local opinion on the worthiness/good of their project in the area.*

13.10 The Tribunal was satisfied that the IR£23,450 expended on councillors was transferred to the Cherrywood general promotions account in April 1992 because it was a cost incurred, and perceived by Monarch to have been incurred, in pursuance of its objective to improve the zoning of its lands, and their density levels.

'*STRATEGY CONSULTANCY FEES'* AND MONARCH'S CLAIM FOR REIMBURSEMENT FROM GRE

14.01 Mr Lynn agreed in evidence that in his letter of 16 March 1992, to GRE seeking part reimbursement of sums expended to date on the Cherrywood project, he attached a schedule he had prepared which provided details of monies expended by Monarch on the Cherrywood project in the period to February 1992. This document, under the heading *'Cherrywood Properties Ltd—Draft Development Plan Cashflow Projections'*, also provided cash flow projections under various categories, including *'strategy consultancy fees'*. Expenditure of IR£25,000 per month under this category was projected for the months of March, April and May 1992.

14.02 This document, duly varied by Monarch in the interim, was resubmitted, dated 28 April 1992, to GRE and recorded expenditure by Monarch up to April 1992 of IR£22,150 described in the document as *'strategy consultancy fees.'*

14.03 Messrs Glennane, Sweeney and Lynn all agreed that this sum (the sum being claimed) was the substantial portion of the IR£23,450 paid by Monarch by way of political donations in the period May to October 1991. The Tribunal was satisfied that the claim made to GRE in 1992 for half of the IR£22,150 related to payments to councillors by Monarch in May/June 1991 in furtherance of its rezoning objectives for its Cherrywood lands.

14.04 Monarch was attempting to recover 50 per cent of that expenditure from GRE. It was at this time (April 1992) that the IR£23,450 previously recorded in MPSL's books under the headings *'Sponsorship'* and '*Promotions'* expenditure of MPSL, was transferred and thereby designated by Monarch to the '*General Promotion*' account as a specific cost relating to Cherrywood.

14.05 The Tribunal was satisfied that the '*strategy consultancy fees'* listed in the schedule of IR£22,150 resubmitted to GRE dated 28 April 1992 were for the most part the political payments that were specifically made by Monarch by cheque to named parties in the months of May and June 1991. The Tribunal was satisfied that the term '*strategy consultancy fees*' was used by Monarch to categorise payments by it to politicians, including councillors and political parties.

14.06 Consideration of internal Monarch memoranda by the Tribunal disclosed that GRE disputed payment of the *'strategy consultancy fees'*, and, that by July 1992 Monarch was continuing to bill GRE for those fees, by which time a cash sum of IR£3,000 had been added to the total claimed under *'strategy consultancy fees.'*

14.07 A perusal of Monarch books and records satisfied the Tribunal that, on 5 May 1992, the abovementioned IR£3,000 was obtained from the encashment of a cheque dated 5 May 1992[17] (which, according to the cheques payment book, was made payable to 'cash') and debited to a current account of MSPL on 7 May 1992. The Tribunal was further satisfied that it was expended in connection with Cherrywood. Moreover, someone within Monarch, most probably Mr Pat Cooling who worked within Monarch's cash department according to Mr Glennane, in a handwritten document entitled '*Cherrywood Costs May '92'*, went to the trouble of specifically attributing this IR£3,000 cash expenditure to '*strategy*'.

14.08 Both Mr Glennane and Mr Lynn told the Tribunal that they could not assist as to who in Monarch had made the decision to add the IR£3,000 cash expenditure to the *'strategy consultancy fees'* claim being made of GRE.

[17] The paid cheque was not available to the Tribunal.

Although Mr Glennane conceded that he signed the cheque for IR£3,000 made out to 'cash', neither he nor Mr Lynn could account to the Tribunal for what purpose IR£3,000 had been spent in the context of Cherrywood. Mr Glennane suggested that it might have been connected to the purchase of cars by Mr Monahan, a suggestion rejected by the Tribunal.

14.09 While conceding that the IR£3,000 cash expenditure was being claimed from GRE as a strategy consultancy payment, Mr Glennane disagreed that it could have been a political payment, while at the same time conceding that the balance of the *'strategy consultancy fees'* claim related solely to political payments made by Monarch to Local Election candidates in May/June 1991, as advised by Monarch to GRE in April 1992. Likewise, Mr Lynn rejected any suggestion that the IR£3,000 was a political payment, while agreeing it was he who had included it as a strategy consultancy fee in the claim to GRE. Neither Mr Glennane nor Mr Lynn were in a position to advise the Tribunal as to the purpose or beneficiary of this payment.

14.11 While the Tribunal was unable to identify the beneficiary or beneficiaries of this IR£3,000 cash payment, it was satisfied, on the balance of probability, that the sum was paid by Monarch to one or more councillors for the purposes of furthering its rezoning objectives. The Tribunal heard evidence that in early May 1992, Monarch was taking active steps to have issues concerning the rezoning of its lands brought before the Council.

14.12 In the course of its attempts to recoup from GRE 50 per cent of the 1991 *'strategy consultancy fees'* Monarch increased the figure expended to IR£27,850 to reflect costs that had been omitted from its earlier cost accumulation.

MONARCH'S CASH PROJECTIONS FOR MARCH–MAY 1992 FOR STRATEGY CONSULTANCY FEES

14.13 As already seen, Mr Lynn's schedule, prepared for GRE in March 1992, detailing Monarch's expenditure on Cherrywood under various categories had included, under the heading *'strategy consultancy fees'* future expenditure of IR£25,000 per month (total IR£75,000) for the period March to May 1992 inclusive.

14.14 In its revised version of the schedule, drawn up in late April 1992, Monarch apprised GRE of the requirement for IR£10,000 expenditure for *'strategy consultancy fees'* in May 1992 and IR£50,000 in June 1992.

14.15 Mr Lynn sought to explain this projected expenditure as merely the making of provision for the possibility of a By-Election or a General Election being held, whereupon Monarch would have been called on to make political donations.

14.16 The Tribunal believed, however, that a more likely rationale for these *'strategy consultancy fee'* projections was not Monarch's expectation of an election and a desire to support the democratic process, but rather a desire to have an agreement in place with GRE whereby whenever Monarch saw fit to make payments to politicians in order to promote its rezoning plans for Cherrywood, 50 per cent of these fees could be recovered from its joint venture partner. The Tribunal was satisfied that Monarch had within its contemplation that payment would be made to councillors in the course of its rezoning project irrespective of whether or not an election was called.

14.17 While the recovery of 50 per cent of the *'strategy consultancy fees'* continued as an issue between Monarch and GRE, by 27 July 1992 Mr Sweeney was continuing to project such fees on behalf of Monarch, which at that point totalled IR£10,000 for the period August to December 1992.

14.18 The Tribunal regarded Mr Sweeney's letter to GRE of 27 July 1992 as a prescient indicator of Monarch's approach to the Development Plan review process then underway in Dublin County Council. The Tribunal was satisfied that the IR£10,000 (included in Monarch's IR£63,500 Development Plan projected costs for August to December 1992) referred to in the letter was the sum Monarch expected it would need to pay councillors in the period August to December 1992, in the context of the Development Plan review.

14.19 At the same time as Monarch was considering making payments to councillors in the context of the ongoing review, Mr Sweeney was also advising GRE of the projected costs associated with any planning permission application (exclusive of appeal) that might be made in respect of Cherrywood. A schedule prepared by Mr Lynn and headed *'Cherrywood Properties Limited Planning Application Cashflow Projections'* was attached to Mr Sweeney's letter of 27 July. In that document, expenditure on a planning permission application was projected under different categories. A number of these categories were entirely normal such as land, environmental and retail impact surveys, quantity surveyors and similar items, such as might have been expected in such a process.

14.20 However, the costings also included the sum of IR£40,000 in *'strategy consultancy fees'*, designated by Monarch as payable in the third month of the planning process. The Tribunal was satisfied that the reference to **'***strategy*

consultancy fees', in this context was in reality Monarch's provision for payments to be made to councillors in the context of the planning application process.

14.21 The Tribunal was satisfied that the decision to make provision for payment of *'strategy consultancy fees'* into the future was taken at executive level within Monarch, and in all probability by Mr Glennane, Mr Sweeney, Mr Lynn and Mr Monahan.

MONARCH CHEQUE PAYMENTS IN 1992

15.01 Monarch's books recorded political payments totalling IR£33,850 as having been paid in the year 1992, with the bulk being paid to named individuals between 20 October and 16 December 1992 as General Election or Seanad Election expenses. A General Election was called on 5 November 1992 and took place on 25 November 1992. Polling in the Seanad Elections took place between 18 January and 1 February 1993. A portion of the IR£33,850 was paid as political contributions prior to October 1992 in relation to political fundraising events and golf outings, in amounts ranging from IR£50 to IR£1,000.

15.02 The recipient of the largest single payment prior to October 1992 was Cllr Tom Hand, who received IR£1,000 on 28 February 1992. Some nine months earlier, Monarch had paid a sum of IR£5,000 to Cllr Hand. Cllr Hand was not a candidate in the 1992 General or Seanad Elections.

15.03 Of the 26 election candidates who received contributions from Monarch in the period October to December 1992, 19 were elected members of Dublin County Council, of whom 10 were Fianna Fáil, 6 Fine Gael, 1 Labour, 1 Progressive Democrat and 1 Independent.

15.04 The Tribunal rejected the claims of Mr Lynn and Mr Sweeney that these contributions were paid in response to requests for funds from election candidates, and believed that the decision to make these payments to the named individuals for the most part was entirely that of Monarch.

15.05 Cllr Eamon Gilmore told the Tribunal of receiving a telephone call from Mr Lynn at about the time the 1992 General Election was called, with an offer of financial assistance. To Cllr Gilmore's credit, he declined this offer. Cllr Gilmore also told the Tribunal that Mr Lynn had made similar offers of financial assistance to him in either 1997 or 1999, which he had also declined. The Tribunal entirely accepted the truth of Cllr Gilmore's evidence.

15.06 Cllr Helen Keogh told the Tribunal that she returned a cheque in the sum of IR£500 sent to her from Monarch in November 1992. Cllr Keogh was a candidate in the General Election in November 1992. Cllr Keogh stated that she *'just was a bit uneasy about accepting a personal donation knowing that . . . there would be a lot of debate about the ongoing planning issues and so on.'* Cllr Keogh's testimony, like Cllr Gilmore's, assisted the Tribunal in concluding that the majority of the payments made by Monarch in 1992 were probably unsolicited.

15.07 Cllr Keogh had no recollection of having received a donation from Monarch in 1991 for IR£300, which appeared from Monarch documentation to have been paid to her. Cllr Keogh suggested the possibility that it was in fact paid or passed on to her Party, the Progressive Democrats.

15.08 The Tribunal was satisfied that as with its finding in respect of the 1991 political payments, the decision taken by Monarch in 1992 to make General Election and Seanad Election contributions to the councillors in question was motivated by its desire to ensure sufficient councillor support to achieve increased zoning and residential density levels on its Cherrywood lands.

15.09 The individual payments made by Monarch in the period October to December 1992 ranged from IR£400 to IR£5,000. The IR£5,000 was paid on 18 November 1992 to Mr Albert Reynolds, then Taoiseach, as a contribution to the General Election expenses of the Fianna Fáil Party. At the same time, IR£2,500 was sent to Mr John Bruton, leader of the Fine Gael Party, for the benefit of the Party.

15.10 Thirteen of the councillors who received payments from Monarch in the period October to December 1992 also received payments from Monarch in 1991.

15.11 While the records of the 1992 political payments showed contributions being made to a number of political parties and to one Independent candidate, it was nonetheless the conclusion of the Tribunal that at that time Monarch believed itself to have a special relationship with certain Fianna Fáil councillors. The Tribunal regarded Mr Monahan's letter of 18 November 1992 to Mr Reynolds as indicative of this special relationship.

15.12 In that letter to Mr Reynolds, Mr Monahan stated:

> [Monarch] *have been greatly assisted by your party members in Dublin County Council without whom it is fair to say, we would not have achieved the part-zoning which now obtains on the lands. Your members have been to the fore in encouraging good development based on proper*

> *planning criteria, endorsed by the Council's own professional staff. In so doing your party shows an admirable stance for a common sense approach to development and for being positive towards job creation. Unfortunately other parties who have been against all proposed developments during the Review of the Draft Development plan now appear to take the high road on job creation possibilities in the course of the General Election.*

Mr Monahan also stated in this letter that Monarch had, by that time, subscribed directly to members of the Fianna Fáil Party who were standing in the General Election. The Tribunal believed that this statement belied any suggestion by Mr Glennane, Mr Lynn and Mr Sweeney that the Monarch political payments were entirely in response to requests from candidates.

15.13 The payments made to two Fianna Fáil councillors (IR£2,500 to Cllr Lydon in December 1992 and a total of IR£3,000 to Cllr Wright in November/December 1992) respectively equaled and exceeded the IR£2,500 given by Monarch to Fine Gael.

15.14 In its books and records Monarch dealt with the IR£33,850 payments in the following manner:

- The payments of IR£5,000 and IR£2,500 respectively were paid from a Monarch Property Ltd bank account to the leaders of the Fianna Fáil and Fine Gael parties, and were ultimately posted to the '*sponsorship*' account within MPSL's books as a cost of the Cherrywood development.
- A substantial portion of the remaining balance of IR£26,350, including all of the individual payments made to General Election and Seanad candidates, was treated in MPSL's books in the same way as the 1991 payments, as a cost of the Cherrywood project.

THE TREATMENT OF THE 1992 POLITICAL DONATIONS IN MONARCH'S BOOKS AND RECORDS

15.15 The Tribunal was satisfied that, as with the 1991 payments, the fact that Monarch treated the 1992 political contributions in this manner in its books evidenced expenditures it incurred in the pursuit of its zoning objectives for its Cherrywood lands.

15.16 It was the Tribunal's conclusion that Monarch's treatment of payments to political parties, politicians and elected councillors was similar to the treatment of items of expenditure associated with its efforts to rezone its Cherrywood lands

in the context of the Development Plan review, and was regarded in the same light.

THE 1992 POLITICAL PAYMENTS AND MONARCH'S CLAIM FOR REIMBURSEMENT FROM GRE

15.17 Monarch had sought to recoup from GRE 50 per cent of its 1991 Local Election contributions, as a cost relating to Cherrywood. Monarch appeared to limit its attempts to recoup 50 per cent of the cost of the 1992 political contributions from GRE to the IR£7,500 paid to the party leaders of Fianna Fáil and Fine Gael. In evidence, Mr Glennane confirmed that Monarch sought to recoup 50 per cent of this expenditure, designated as a cost relating to Cherrywood, from GRE.

15.18 GRE took issue with Monarch's claim to recoup 50 per cent of these sums, and requested that the recoupment claim be resubmitted to them under the heading '*additional management fee*'. In response, Mr Sweeney of Monarch advised GRE on 13 July 1993 that the said sums totalling IR£7,500 '*were paid bona fide the parties concerned*', and therefore should not rank as payments envisaged under the heading '*additional Management Fee.*'

15.19 Both Mr Glennane and Mr Sweeney denied in evidence that Mr Sweeney's description of the payments to the leaders of the Fianna Fáil and Fine Gael Parties in November 1992 as *'bona fide'* implied that the balance of the political payments made by Monarch in 1992 were less than '*bona fide'*. The Tribunal believed, however, that by attributing the appellation *'bona fide'* to specific payments, Mr Sweeney was consciously recognising another category of expenditure being incurred by Monarch – namely, payments being made to certain politicians for the purposes of ensuring their support for Monarch's rezoning plans.

15.20 Ultimately, GRE did pay Monarch 50 per cent of the IR£7,500 claimed, most probably on foot of an invoice dated 29 June 1993.

MONARCH CHEQUE PAYMENTS IN 1993

16.01 Cheque payments to politicians and political parties recorded in Monarch's books in 1993 amounted to IR£5,520. Of this sum, IR£2,400 was attributed by Monarch in MPSL's books as a cost of Cherrywood. This figure included IR£800 given to Cllr Anne Ormonde (a contribution to her expenses in the Seanad Election of January/February 1993), IR£1,000 to Cllr Tony Fox,[18]

[18] This issue is dealt with elsewhere in this chapter.

£100 to Cllr Anne Devitt by way of fundraiser and two payments of IR£200 and IR£300 respectively to Fine Gael Dublin West and Fine Gael Dublin South West.

16.02 It was noteworthy that Cllrs Ormonde, Fox and Devitt, whose donations were accounted for as a cost of Cherrywood were members of Dublin County Council at the time.

16.03 It was the Tribunal's conclusion that the treatment of these payments in Monarch's books evidenced yet again Monarch's true understanding that the payments were not *bona fide* political donations, but were in fact monies that Monarch felt were required to be expended to achieve its zoning objectives. It was not the case, as suggested by Mr Glennane, that the payments were attributed to the Cherrywood project simply because *'they had to get posted somewhere.'*

16.04 The Tribunal was satisfied, however, that substantial payments were in fact made by Monarch to certain politicians and county councillors in 1993[19] using cash from cashing its own cheques.[20]

MONARCH CHEQUE PAYMENTS IN 1994

17.01 Monarch's records for 1994 identify payments to politicians or political parties amounting to IR£24,820. Included in this figure were the following:

- IR£3,000 paid on 28 July 1994 to 'A&L Lawlor', confirmed by Mr Glennane as a payment to Mr Liam Lawlor TD.[21]
- IR£15,000 paid on 19 September 1994 to PR firm Saatchi & Saatchi on behalf of the Fianna Fáil Party.

17.02 The balance of the IR£24,820 related in the main to donations to political parties through fundraisers and golf events.

17.03 Out of the IR£24,820, four payments (totalling IR£1,700) were attributed by Monarch in MPSL's books as a cost relating to Cherrywood. These payments were a Fianna Fáil constituency fundraiser (a payment of IR£1,000), and Fine Gael constituency fundraisers (payments of IR£100, IR£400 and IR£200 respectively).

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[19] See elsewhere in this chapter.
[20] This matter is considered in more detail elsewhere in this chapter.
[21] This payment is considered elsewhere in the Report.

THE IR£15,000 PAYMENT TO SAATCHI & SAATCHI

17.04 The Tribunal has established that IR£15,000 was paid by Monarch on 19 September 1994 to the PR firm of Saatchi & Saatchi on behalf of Fianna Fáil. According to Mr Glennane and Mr Sean Fleming, the then financial controller of Fianna Fáil, Mr Monahan made contact with Saatchi & Saatchi at the behest of someone, presumably within Fianna Fáil, with the objective of discharging a debt owed by Fianna Fáil to that PR firm. According to Mr Glennane, Mr Monahan had negotiated with Fianna Fáil the sum Monarch was prepared to pay in full and final discharge of the Saatchi invoice of IR£30,250. A figure of IR£15,000 was agreed.

17.05 The Tribunal noted the position adopted in evidence by Mr Glennane in relation to this payment when he said he had neither approved of, nor signed, the cheque for the payment. It appeared to the Tribunal that, according to Mr Glennane's version of events, while he knew that the payment was being made for Fianna Fáil, he believed it to be a waste of money. However, in contrast to this position, in the course of 1993, Mr Glennane signed a number of AIB cheques to cash and was thereby instrumental in facilitating access to, and the use of, large sums of cash. No one in Monarch, including Mr Glennane, was in a position to provide any credible account of the ultimate beneficiaries of these payments.

17.06 The Tribunal did not accept the evidence of Mr Glennane regarding these funds.[22] Equally, the Tribunal did not accept the evidence of Mr Glennane credible on the issue of the Saatchi & Saatchi cheque and believed that in all probability he acquiesced in the payment of the IR£15,000 'pick-me-up' on behalf of Fianna Fáil.

MONARCH POLITICAL PAYMENTS CASH PROJECTIONS 1994

18.01 There was no election at either local or national level in 1994. The European Parliament election was held in June 1994.

18.02 In a report prepared in June 1994 for GRE which incorporated future cash projections, Monarch made provision under the heading *'general promotion'* for General Election and Seanad Election expenditure *'two years hence'*. A total of IR£87,000 was projected under this heading.

[22] This issue is dealt with under the heading 'Monarch's cash payments 1992–6.'

18.03 Monarch likewise made provision under the heading *'zoning costs'* for expenditure of IR£10,000 on *'lobbying—entertainment'*.

18.04 Mr Glennane denied in evidence that he had any input in assessing what costs the Cherrywood project would absorb in the event of elections being held in 1996. Mr Lynn told the Tribunal that the IR£87,000 expenditure projected for the 1996 elections had been his assessment of what it would cost the Cherrywood project. While agreeing that this figure was a substantial increase on the amount of IR£33,850 recorded in respect of the 1992/3 General and Seanad Elections, Mr Lynn insisted that the IR£87,000 projection was only an estimated figure.

18.05 The Tribunal was satisfied that, in assessing its cost exposure on the Cherrywood lands in terms of future political payments at election time, Monarch took the same approach to the cost of rezoning Cherrywood as it had previously taken, namely, that payments to politicians/county councillors at election times were part and parcel of the cost of its land rezoning. The Tribunal noted that at the time of compiling the aforementioned figures Monarch had achieved some considerable success in the 1993 Plan (in particular, the increased residential density on its lands and the provision for a district centre). Monarch was continuing in its endeavours to achieve further rezoning and density increases. A science and technology park was the subject of discussion. Monarch was anxious to ensure that councillors would see it as a generous provider of funds, and would therefore be more inclined to support its proposals.

18.06 The Tribunal was satisfied that the cash projections furnished to GRE in 1994 were almost certainly the work of Mr Glennane, Mr Sweeney, Mr Lynn, and Mr Monahan. The Tribunal believed it likely that Mr Glennane, contrary to his contention, contributed to the content of the document.

MONARCH CHEQUE PAYMENTS IN 1995, 1996 AND 1997

MONARCH CHEQUE PAYMENTS IN 1995

19.01 Recorded payments to politicians or political parties in the Monarch books for 1995 amounted to IR£4,690, of which IR£2,500 was paid to Mr Liam Lawlor TD on 5 January 1995. The balance consisted of payments to political parties ranging between IR£100 and IR£1,000.

19.02 A total of IR£1,850 in respect of four of the six political party fundraising events (in respect of which Monarch had paid IR£2,190 in total) was posted as a cost to the Cherrywood project in MPSL's books.

19.03 No local or national election took place in 1995.

MONARCH CHEQUE PAYMENTS IN 1996

19.04 Monarch's records for 1996 identified IR£11,715 as having been paid to politicians and political parties in that year.

19.05 None of these payments, with the exception of a payment to Cllr Olivia Mitchell in the sum of IR£400, was attributed as a cost to the Cherrywood project in MPSL's books.

19.06 The Tribunal believed that the expenditures were not posted as a Cherrywood cost in MPSL's books (with the exception of the payment to Cllr Mitchell) because the Cherrywood stock account (where the Cherrywood attributed costs had ended up), held in MPSL's books, had been written off by Mr Glennane, in his capacity as financial director. Mr Glennane told the Tribunal that this decision was taken in January 1997. Hence the Tribunal concluded that, by January 1997, and thereafter, Monarch saw no point in attributing the 1996 payments to politicians as a cost of Cherrywood, having written off similar costs incurred in previous years.

MONARCH CHEQUE PAYMENTS IN 1997

19.07 Monarch's records in 1997 identified payments of IR£23,470 to named politicians or to political parties.

19.08 This expenditure was not attributed as a cost to the Cherrywood project in MPSL's books, probably again because Mr Glennane had by this time written off similar costs incurred in previous years.

19.09 Of the IR£23,470, one councillor (Cllr Mitchell) received IR£1,000 as a 'General Election contribution' while seven councillors (Cllrs O'Halloran, Fox, Ardagh, Keogh, Ormonde, M. J. Cosgrave and Hanrahan) received lesser sums. In that year, Monarch made General Election contributions amounting to IR£4,950 to Fianna Fáil, IR£5,000 to Fine Gael, IR£3,500 to the Labour Party, IR£3,000 to the Progressive Democrats and IR£1,000 to Democratic Left.[23]

[23] A General Election was held on 6 June 1997, followed by a Seanad Election (22 July–6 August 1997).

THE TRIBUNAL'S OBSERVATIONS AND CONCLUSIONS ON MONARCH'S CHEQUE PAYMENTS TO COUNCILLORS 1991–7

20.01 In the course of public hearings at the Tribunal, 46 of the 57 councillors who received payments by cheque from Monarch in the period 1991 to 1997 were examined on oath by the Tribunal in relation to those payments.

20.02 Information and evidence available to the Tribunal in respect of five councillors who had died before public hearings into the Cherrywood module had commenced, and who had received payments from Monarch in the period 1991 to 1997, was examined by the Tribunal to a limited extent in the course of its public hearings.

20.03 Payments to Mr Lawlor, a councillor until mid-1991, are dealt with elsewhere in this chapter.[24]

20.04 Individual payments to councillors by Monarch were usually within the range of IR£300 to IR£600 (with one councillor receiving IR£50). A small number of payments of IR£1,000 each were made, and one councillor received IR£5,000 in one payment.[25] A number of councillors received payments on a number of separate occasions, and in a small number of instances, sums amounting to some thousands of pounds were paid to individual councillors over a period of seven or eight years, commencing in mid 1991.[26]

20.05 In the majority of cases of payments to councillors by Monarch, the recipients were established, previously elected public representatives. In a minority of cases, payments were made to individuals standing for election for the first time.

20.06 The Tribunal considered two aspects of these payments separately: on the one hand, Monarch's reason and motivation for deciding to provide (in most instances) very generous financial support to individuals seeking election as councillors in 1991, and to the Dáil and/or Seanad in late 1992/early 1993; and, on the other hand, the acceptance of such payments by the individuals concerned.

20.07 While witnesses who represented Monarch during the years 1991 to 1997 maintained, in general, that the sums so expended were *bona fide* unconditional political contributions, the Tribunal was unable to accept this

[24] Payments from Monarch to Mr Lawlor exceeded IR£70,000.
[25] See Exhibit 3.
[26] Cllr Ned Ryan received a total of IR£3,000 in 1991/2, and IR£1,000 in 1996. Cllr Wright received a total of IR£3,300 in 1991/2. Cllr Michael Keating received a total of IR£2,600 in 1991/2. Cllr Finbar Hanrahan received a total of IR£2,095 in 1991, 1992 and 1997.

contention as being either truthful or accurate, or to accept that such a belief was ever truly held by the senior executives within Monarch who had knowledge of such payments.

20.08 The Tribunal was satisfied that the payments made to elected and *'would-be'* elected councillors were so made as an important feature of a systematic, organised, and concerted operation designed to ensure the greatest possible level of councillor support for the project to rezone the Cherrywood lands, and were not, as contended by Monarch, *bona fide* political donations to councillors (and individuals standing for election), as part of the democratic process. On the contrary, the system adopted by Monarch was the antithesis of the democratic process and was designed to corrupt councillors by way of inducement, to compromise the disinterested performance of the councillors' public duty to consider rezoning applications on their merit, having due regard to the concept of proper planning and the common good. The Tribunal was further satisfied that the payments were deliberately made at election time when it was known that election candidates were likely to incur expenditure in the course of their campaigns for re-election.

20.09 The purpose of this campaign, from Monarch's perspective, was to garner support for the rezoning proposals that were underway or imminent at the time of payment, and which would be presented to county councillors in the course of the review of the two Development Plans. There was a direct and identifiable association between the payments to councillors (or would-be councillors) and the pending or expected proposals to the County Council relating to the rezoning of the Cherrywood lands.

20.10 While the extent to which Monarch lobbied individual elected councillors (including lobbying conducted by its agents, such as Mr Dunlop) varied from councillor to councillor, the Tribunal was satisfied that most, if not all, of the recipients of Monarch's financial largesse should have known and probably did know in 1991, and almost certainly knew in 1992, that Monarch was behind the payments they received. They also knew that Monarch was closely and actively associated with the proposed rezoning of a substantial portion of the lands in Carrickmines, and that as such, it would require and was seeking their voting support at County Council meetings in order to ensure that rezoning (or the rezoning of as much of those lands as possible).

20.11 Many of the recipients of payments from Monarch protested that there was no link (and that there never could be any link) between the payment(s) made to them and the exercise of their vote at relevant County Council meetings, and that the payments did not influence them in their voting on motions relevant

to Monarch. The extent to which such payments did in fact induce councillors to consider the rezoning applications (and related or linked motions) in a manner which would or might benefit the Cherrywood lands was impossible to determine in all cases. The Tribunal was satisfied that some councillors who received payments from Monarch and who proceeded to exercise their votes in support of motions favourable to those lands, did so solely or primarily on the merits of the proposals, and with due regard to proper planning considerations and the common good. Notwithstanding this, the fact of the matter was that, viewed objectively, the acceptance of such donations by a politician from a landowner/developer who was seeking the rezoning of his lands, an aspiration which for the most part, as found by the Tribunal in its consideration of the making of the Development Plans, required to be voted on by individual councillors, served only to negate the required disinterested exercise by a councillor of that voting duty.

20.12 The appropriate position, and the position which ought to have been adopted by councillors (or individuals seeking political election), to whom Monarch made or tendered payments was as follows:

1) Where at the time of the receipt of the payment, the recipient councillor (or individual seeking political election) was aware of or suspected that the donor was (or represented) a developer/landowner whose lands were, or were likely to be, the subject of a rezoning motion or a motion linked to a rezoning motion within the Council of which he or she was an elected member, or was standing for such election, he or she should have rejected or returned such payment, or at the very least disclosed it and absented himself or herself from the exercise of his or her vote.
2) Where at the time of the receipt of the payment the recipient councillor (or an individual seeking political election) was unaware, or did not have reason to believe or suspected, that the donor was (or represented) a developer/landowner whose lands were or were likely to be, the subject of a rezoning motion or a motion linked to a rezoning motion within the Council of which he or she was an elected member, or was standing for such election, but subsequently became aware of such connection, that councillor should either have then returned the payment or disclosed it and absented himself or herself from the exercise of his or her vote.

20.13 In noted and commendable contrast to the position adopted by most councillors to whom payments were offered or paid by Monarch, Cllr Eamon Gilmore declined an offer of payment from Monarch in 1992.

20.14 Cllr Helen Keogh also returned a cheque for IR£500 sent to her by Monarch, in the same year.[27]

MONARCH'S CASH PAYMENTS 1992–6

21.01 The Tribunal was provided with documentary and oral evidence relating to substantial disbursements of cash sums by Monarch, particularly in the period from 1992 to 1996. In most of these instances there was an absence of documentary evidence which would have identified the recipient of these cash disbursements, and a distinct lack of information on the part of the witnesses who gave sworn evidence to the Tribunal as to the purpose of the payments and the identity of the recipients of such payments.

21.02 The common practice adopted by Monarch in relation to such cash payments was to make company cheques payable to cash or to Allied Irish Banks (AIB), to cash the cheques, and then use the cash for the purpose for which it was intended. Mr Cooling, Monarch's bookkeeper, was instrumental in arranging many of the cash withdrawals. Nevertheless, when questioned by the Tribunal he could not explain the purpose of such withdrawals or identify their recipients.

21.03 Important features of the cash withdrawals examined by the Tribunal were that they were designated as an expense of the Cherrywood project, and that they were attributed in MPSL's books to either '*Promotion open days*', '*Sponsorship*' or '*General Promotion*' accounts. All sums were duly included in MPSL's Cherrywood stock/WIP (work in progress) as having been paid by MPSL on behalf of the Cherrywood project. In the narrative section of the Cherrywood-related accounts in MPSL's books, figures alone were recorded, without any attribution or designation identifying the recipients, beneficiaries, or purpose of these expended cash sums. Almost all the sums were round-figure amounts.

21.04 The cash sums expended in the years 1992 to 1996 amounted to IR£162,885, as follows:

- 1992: IR£18,000
- 1993: IR£41,885
- 1994: IR£42,500
- 1995: IR£49,000
- 1996: IR£11,500

[27] Equally commendable was the decision taken by Cllr Pat Rabbitte and his (then) political party to return a payment of money to Mr Frank Dunlop. This matter is considered elsewhere in the report.

CASH PAYMENTS 1992

21.05 Monarch's books and records refer to the expenditure of IR£3,000 in cash in early May 1992.[28] The cheque payments book identified a cheque for IR£3,000 dated 5 May 1992 attributed to '*Cherrywood*', and the payee as *'cash'*. A handwritten list of outlays entitled '*Cherrywood costs May 1992*' identified this payment as *'cash—IR£3,000—strategy'*.

21.06 As already set out, half of this sum of IR£3,000 was subsequently included in a reimbursement claim to Monarch's partner GRE, and was categorised as *'strategy consultancy fees'*. The Tribunal has already concluded as to the likely purpose of this expenditure.

21.07 Mr Glennane was unable to assist the Tribunal in identifying the purpose and/or beneficiaries of two cash sums of IR£10,000 and IR£5,000 in November 1992.

21.08 Monarch's books identified a cheque payment on 17 November 1992 of IR£10,000 to AIB. This cheque was cashed. The payment was allocated in Monarch's books as a Cherrywood cost, but without identifying the purpose or beneficiary of the money. Eleven of a further 26 payments entered on the same page of the cheque payments book as the cheque for IR£10,000 represented payments to identified politicians for sums ranging from IR£400 to IR£1,000.

21.09 On 19 November 1992, Monarch's books likewise identified a cheque payment of IR£5,000 to AIB. This cheque was cashed. As with the cheque of 17 November 1992, the payment was allocated in Monarch's books as a Cherrywood cost, but without identifying the purpose or beneficiary of the money. In the page of the cheque payments book in which this cheque to AIB for IR£5,000 was entered, two of the remaining 27 entries represented payments to identified politicians, each for IR£500. The IR£5,000 cheque was recorded immediately between the two cheque payments to politicians.

21.10 A General Election was held on 25 November 1992.

21.11 Although Mr Glennane was Monarch's financial director, he was unable to explain the purpose or beneficiary of the IR£15,000 cash obtained in November 1992. He suggested that it might have been used to buy bank drafts, but acknowledged that had this been so, the purpose and/or the beneficiary of the funds would have been recorded.

[28] See also section on *'Strategy consultancy fees'*.

21.12 Mr Cooling, Monarch's bookkeeper, satisfied the Tribunal that he cashed the two cheques in question and handed the cash to whichever Monarch executive had requested it. He did not name the executive/s concerned. The Tribunal was satisfied that these cash sums were disbursed by Monarch to one or more individuals in the course of the 1992 General Election.

CASH PAYMENTS 1993

21.13 Cash payments amounting to IR£41,885 were recorded in Monarch's books and records between 11 October and 7 December 1993. This total figure was broken down as follows:

- 11 October: IR£1,985
- 12 October: IR£3,000
- 31 October: IR£4,500
- 1 November: IR£2,000
- 2 November: IR£2,500
- 2 November: IR£3,000
- 2 November: IR£5,000
- 2 November: IR£5,000
- 2 November: IR£6,000
- 3 November: IR£5,000
- 10 November: IR£900
- 7 December: IR£3,000

21.14 All these cash sums (which may have included Monarch's cheques exchanged for bank drafts in some instances) were posted in *'general promotion'* or *'sponsorship accounts'* as a cost of the Cherrywood project.

21.15 Mr Glennane was unable to provide any definite information on the purposes of these payments, or the recipients' identities. He could not shed light on who ultimately received the funds in question (other than to suggest Mr Monahan). The payments were disbursed over a period of just eight weeks in 1993. Mr Glennane speculated that Mr Monahan might have used some or all of these cash sums to purchase cars and antique furniture, or to provide himself with ready cash in the lead-up to Christmas. He speculated that the sums in question may have been incorrectly posted to the Cherrywood project. He conceded that no receipts, invoices or other documentation relating to the cash sums were available, other than the record in Monarch's books.

21.16 Mr Glennane dismissed totally any suggestion that cash payments as recorded in MPSL's books for Cherrywood went to politicians or that county councillors had been bribed with these funds.

21.17 Mr Glennane stated that he was unable to assist the Tribunal as to who made the decision to attribute this cash expenditure as a cost of Cherrywood. He suggested that whoever had posted the expenditure to the *'sponsorship'* account or *'general promotion'* account may or may not have sought direction as to where specifically such expenditure was to be posted. According to Mr Glennane, the emphasis would have been on posting the expenditure somewhere in MPSL's books and, if wrongly posted, the error would be corrected at the end of the year. Mr Glennane told the Tribunal that inappropriate postings would not generally have come to his attention.

21.18 Mr Glennane agreed that the first two October 1993 payments (IR£1,985 and IR£3,000) had been posted to the Cherrywood sponsorship account, and he agreed that such postings indicated these payments had been made to sway or influence local opinion.

21.19 Of the payments which had been attributed in the Cherrywood general promotions account as a cost of Cherrywood, Mr Glennane agreed that Mr Lynn had sought recoupment of 50 per cent of the following five cash payments: the 2 November IR£6,000 payment, the 3 November IR£5,000 payment, the further 2 November IR£5,000 payment, the 7 December IR£3,000 payment, and the 2 November (L & C) payment of IR£2,500, a total of IR£21,500. In March 1994 he had written to GRE in support of the claim, enclosing a detailed breakdown of these sums as having been expended on the Cherrywood project under the heading '*Community/PR'* (5021).

21.20 Mr Glennane agreed that other than the list of expenditure provided by Mr Lynn to GRE, Monarch could not and had not produced any invoices or documents to back up these cash payments and he agreed that there was no documentation within Monarch as to what these funds were truly used for.

21.21 Mr Glennane suggested that Monarch officers would not knowingly have reclaimed expenditure from GRE if they had known that it was used by Mr Philip Monahan to buy items such as cars and antiques.

21.22 Mr Lynn was also unable to shed light on the purpose of the large cash expenditure by Monarch during this eight-week period in 1993, although he was responsible for the inclusion of the figure of IR£21,500 in the Monarch reimbursement claim made to GRE.[29] Mr Lynn told the Tribunal that when he raised questions relating to this expenditure with Monarch's accounts

[29] Monarch was seeking 50 per cent of this figure.

department, he was referred to Mr Monahan, but he never in fact discussed these payments with him.

21.23 Mr Sweeney similarly could not provide any explanation to the Tribunal as to this cash expenditure in 1993.

CASH PAYMENTS 1994

21.24 Monarch expended some IR£42,500 in cash associated with the Cherrywood project in 1994. This figure was broken down as follows:

- 27 May: IR£10,000 (L&C Ansbacher account)
- 15 June: IR£10,000 (L&C Ansbacher account)
- 16 June: IR£7,000
- 12 August: IR£1,000
- 6 October: IR£10,000
- 20 December: IR£4,500

21.25 All of these cash sums were posted to MPSL's '*general promotion*' account and ultimately formed part of the Cherrywood stock WIP ('*work in progress*') within MPSL.

21.26 Two cheques were drawn on MPSL's AIB current account made payable, according to its cheque payments book, to Ansbacher Bankers Ltd in the sum of IR£10,000 each on 27 May and 15 June 1994 respectively. On 16 June and 12 August 1994, cheques for IR£7,000 and IR£1,000 respectively were cashed. On 6 October 1994, IR£10,000 was withdrawn from AIB in cash, and on 20 December 1994 a cheque for IR£4,500 was cashed.

21.27 As with the 1993 cash payments, none of these cash expenses, as detailed by Monarch, were supported by any available invoice, a fact which was noted by Monarch's auditors. Mr Cooling agreed that, from a general accounting point of view, if the funds in question had been paid to a supplier or creditor of Monarch, an invoice (or other supporting documentation) vouching same would have been available, and the postings would have been made to a creditors' ledger on MPSL's books, and not the general promotions account, as occurred.

21.28 Mr Glennane's evidence in relation to these transactions was that he was not in a position to identify the ultimate recipients and he again suggested that Mr Monahan was the person likely to have been in receipt of these funds. Mr Glennane suggested that the IR£20,000 Ansbacher cash might have been obtained to make repayment on a loan.

21.29 In relation to the IR£7,000 in cash obtained on 16 June 1994, Mr Glennane did not believe that there was any connection between it and a decision made by Dún Laoghaire-Rathdown County Council to initiate a variation of the 1993 Development Plan for a science and technology park.[30] In particular, Mr Glennane saw no connection between the IR£7,000 cash being obtained on 16 June 1994 and the preparation on the same day by Mr Lynn of a list of councillors whose voting support was considered imperative by Monarch. However, the Tribunal was satisfied that such a connection probably existed, and was known by Mr Glennane and his colleagues.

21.30 In respect of the IR£1,000 cash obtained in August, Mr Glennane believed that sum would have been obtained by Mr Monahan.

21.31 Mr Glennane disputed that there was any connection between Monarch being put in funds to the tune of IR£10,000 on 6 October 1994 and a motion signed on 10 October at the behest of Monarch for the provision of a science and technology park. Again, the Tribunal has concluded that there was such a connection, and the Tribunal was satisfied that such a sum was duly distributed by Monarch to certain unidentified councillors.

CASH PAYMENTS 1995

21.32 In 1995 Monarch made cash disbursements associated with the Cherrywood project to the tune of IR£49,000. This figure was broken down as follows:

- 19 April: IR£8,000
- 26 April: IR£2,000
- 25 May: IR£5,000
- 1 June: IR£5,000
- 21 July: IR£2,000
- 26 July: IR£1,000
- 10 August: IR£1,500
- 26 September: IR£4,000
- 27 September: IR£5,500
- 4 December: IR£5,000
- 4 December: IR£2,500
- 11 December: IR£7,500

[30] On 29 June 1994 a motion was passed unanimously by the Tourism Committee of Dún Laoghaire-Rathdown County Council welcoming the suggestion of a science and technology park, with the Council agreeing to review the zoning of Monarch's lands at Cherrywood.

21.33 Remarkably, despite being Monarch's financial director, Mr Glennane was unable to provide any definite explanation for any of the 12 cash amounts making up the total of IR£49,000. He had no recollection of the amounts ever being queried by the company auditors or at board level, or of anyone requesting information from him relating to any of these transactions.

21.34 Mr Cooling, Monarch's bookkeeper, acknowledged that this *'sea of cash',* for which there was no auditors' trail, was expended by Monarch in connection with the Cherrywood project.

MONARCH CASH PAYMENTS 1996

21.35 In 1996 Monarch made disbursements in cash amounting to IR£11,500, consisting of two payments of IR£5,000 each in January and one payment of IR£1,500 in March.

21.36 Each sum was attributed in MPSL's books as a cost associated with the Cherrywood project.

21.37 As was the case with cash expenditure in earlier years, none of the witnesses associated with Monarch was in a position to provide a satisfactory explanation to the Tribunal as to the purpose of the cash payments, or the identity of recipients.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE CASH PAYMENTS

22.01 The Tribunal was satisfied that a significant portion of Monarch's cash expenditure of IR£162,885 in the years 1992 to 1996 consisted of secret payments to certain elected councillors as part of its campaign to secure support for its rezoning project. While the Tribunal was unable to establish the identity of such individuals, it was satisfied that such payments were made.

22.02 Such expenditure was almost certainly corrupt. Those persons likely to have participated in this activity or to have known of it included Mr Monahan, Mr Lynn, Mr Glennane and Mr Sweeney.

22.03 The Tribunal was satisfied that the books and records of Monarch were so ordered as to conceal the true nature and identity of the ultimate recipients of such funds.

22.04 The Tribunal was satisfied that at all relevant times Mr Monahan, Mr Glennane, Mr Sweeney and Mr Lynn were parties to the deliberate concealment of the identity of the recipients of these funds in Monarch's books. In particular, the Tribunal did not accept Mr Glennane's claim to ignorance of the purpose of these cash payments to be unconvincing given his role as financial director for Monarch.

22.05 In relation to the IR£41,885 cash payments recorded between 11 October and 7 December 1993, the Tribunal rejected as completely implausible Mr Glennane's evidence that the probable purpose of these payments was to put Mr Monahan in funds to buy cars or antiques or to have cash at Christmas time. Not a single documentary record, memorandum or otherwise to underpin Mr Glennane's belief in this regard was provided to the Tribunal.

22.06 Equally implausible was Mr Glennane's contention that postings to the books of MPSL were done *'willy-nilly'* and that any errors in such postings were corrected at year's end. There was no documentary evidence to suggest that any *'error'* in posting the IR£41,885 cash expenditure to the *'sponsorship'* or *'general promotions'* account was ever detected or sought to be corrected by Monarch personnel. The Tribunal was therefore satisfied that this expenditure was correctly posted. The Tribunal was also satisfied that by posting the payments to these accounts in MPSL's books, Monarch recorded expenditure that had in fact occurred in connection with the Cherrywood lands.

22.07 Due to the manner in which the expenditures were recorded, namely by the insertion of the cash figure expended only, the Tribunal was satisfied that there was a deliberate policy decision on the part of Monarch to conceal the true purpose of these payments.

22.08 The Tribunal considered it significant that in no instance of the 1993 cash payments inquired into did Monarch identify the recipient. Specifically, the portion of the Cherrywood general promotions account in which the cash payments totalling IR£21,500 (the subject of a claim to GRE for 50 per cent recoupment) were posted, do not identify either the recipient, beneficiary or purpose of these payments. This is all the more extraordinary to the Tribunal when other entries in the Cherrywood general promotions account are considered. For example, in respect of entries covering transactions carried out between 7 September 1993 and 11 February 1994, Monarch went to the trouble of diligently recording the identity of the recipient of as little as IR£5.

22.09 It appeared that 50 per cent of this expenditure was recouped by Monarch from GRE in 1994 as a Cherrywood related expense.

22.10 The Tribunal was satisfied that there was a connection between the significant cash withdrawals made by Monarch from its accounts between 11 October and 7 December 1993 and a motion or motions listed for hearing on 3 November 1993 (but ultimately dealt with on 11 November 1993) with the potential to adversely affect Monarch's rezoning ambitions for its lands.

22.11 The Tribunal considered it significant that some IR£33,000 of the IR£41,885 expended by Monarch between 11 October and 7 December 1993 in connection with Cherrywood was expended in that same period. The timing of this expenditure, coupled with the manner in which it was treated in Monarch's books, led the Tribunal inexorably to the conclusion that all or a substantial portion of it was to certain councillors in exchange for their vote on Monarch linked proposals.

22.12 The Tribunal was satisfied that Mr Glennane, Mr Sweeney and Mr Lynn were aware at all material times of the purpose for which these funds were being used.

22.13 For the reasons already expressed in respect of the 1993 cash payments of IR£42,500, the Tribunal was also satisfied that in all likelihood a substantial portion of the cash obtained by Monarch from its bank accounts in 1994 was paid to certain elected councillors in Dún Laoghaire-Rathdown County Council. In particular, the Tribunal was satisfied that Monarch used the cash amounts obtained in June and October 1994 for making payments to certain councillors for their vote and support in Monarch linked proposals.

22.14 In relation to the 1995/6 cash withdrawals, the Tribunal was likewise satisfied that all or a substantial proportion of this expenditure (IR£49,000 in 1995 and IR£11,500 in 1996) was incurred by Monarch in making payments to certain councillors in Dún Laoghaire-Rathdown County Council and/or other politicians.

22.15 The Tribunal believed that at least a portion of these payments were made to certain elected councillors in return for their support for proposals which were voted on/agreed to in April 1995 at Dún Laoghaire-Rathdown County Council, and which enabled Monarch to achieve a science and technology park zoning, and, more importantly, an increased residential density levels on a portion of its residentially zoned lands.

22.16 The Tribunal was also satisfied that, notwithstanding the adoption in April 1995 of the variation to the 1993 Plan, Monarch continued to make payments to elected councillors in Dún Laoghaire-Rathdown County Council (and possibly other politicians) throughout 1995, ensuring that such individuals would remain 'on side' when the 1993 Plan, as varied, came under review. Such a review commenced in mid-1996. The Tribunal was satisfied that in the course of contemplating that review, Monarch's objective was to achieve even greater levels of residential/industrial/town centre zoning for its lands at Cherrywood, and to achieve greater residential density levels on all of its residentially zoned lands. The Tribunal believed that as far as Monarch was concerned, this objective could only be achieved if ongoing payments were being made to certain councillors or other politicians.

22.17 Insofar as the Tribunal satisfied itself that unattributed cash payments were made to certain unidentified councillors in the years 1992 to 1996, the Tribunal was satisfied that such payments were corruptly made by Monarch and corruptly received by the recipients.

22.18 The Tribunal was satisfied that no attempt was made by Monarch to recoup 50 per cent of the 1994-6 cash expenditure from GRE, although it was possible that some of these cash sums were incorporated in 'management' fees included in a recoupment claim to GRE.

THE MONARCH PAYMENTS TO POLITICIANS - AN OVERVIEW

23.01 Monarch's campaign to rezone its Cherrywood lands for development commenced in earnest (in 1991) in the lead up to the special meeting of 13 May 1992 and concluded on 13 July 1998 with the adoption by Dún Laoghaire-Rathdown County Council of its revised development plan. County Council meetings and votes of councillors in 1990 and 1991 paved the way for the Cherrywood rezoning project.

23.02 Undoubtedly, based on the evidence given to the Tribunal, enormous sums of money were paid to a wide range of councillors or aspiring councillors in Dublin County Council prior to 1 January 1994 and in Dún Laoghaire-Rathdown County Council subsequent to that date.

23.03 The Tribunal identified up to IR£290,400 in Monarch's books, comprised of cheque payments to identified individuals and political parties and cash payments to unidentified individuals. It is satisfied that much of this was paid by

Monarch to politicians and political parties between 1991 and 1997 in connection with the Cherrywood rezoning project. This sum excluded payments made by Monarch to Mr Dunlop, or disbursements by Mr Dunlop to councillors for the purposes of securing support for the rezoning of the Cherrywood lands, and does not include all of the payments to Mr Lawlor.

23.04 The most significant concentration of cheque payments occurred in 1991 and in 1992. Of the total sum, approximately IR£127,515 was paid by individual cheque payments to identified politicians and/or political parties. Approximately IR£162,885, as found by the Tribunal, was disbursed in cash to unidentified politicians. The vast majority of this IR£162,885 cash disbursement occurred at pivotal times in the course of Monarch's campaign to rezone its Cherrywood lands. In the view of the Tribunal, this expenditure constituted a major financial assault on the democratic process.

23.05 The cash payments made in 1992 totalled IR£18,000 while in the years 1993, 1994 and 1995, cash sums exceeding IR£40,000 per annum were disbursed. In 1996 cash payments were made totalling IR£11,500.

MONARCH PAYMENTS TO MR DUNLOP

24.01 The Tribunal established that the sum of IR£85,000 was recorded in Monarch's books as the total of monies it paid to Mr Dunlop, of which IR£80,000 was paid between March and December 1993, with the balance of IR£5,000 being paid in August 1995.

24.02 Payments made by Monarch to Mr Dunlop were miscalculated by both parties in information they provided to the Tribunal prior to the relevant oral evidence being heard.

24.03 Monarch maintained that it paid Mr Dunlop a total of IR£52,500, being IR£47,500 between May and December 1993 and IR£5,000 in August 1995. Monarch asserted these figures in information it provided to the Tribunal on 22 June 2000, and again in a draft written statement submitted by Mr Monahan to the Tribunal on 10 April 2003.

24.04 On 30 May 2006, shortly before the commencement of the public hearings of the Cherrywood Module, and after the Tribunal had furnished Monarch with a brief of documentation relevant to the module, Monarch revised its claim of a total payment of IR£52,500 and said that the correct figure for the amount paid to Mr Dunlop was IR£85,000.

24.05 Mr Dunlop, on the other hand, maintained in 2000 that he had received a total of IR£25,000 in two separate payments, IR£10,000 and IR£15,000. He supported this assertion by furnishing to the Tribunal, with his October 2000 statement, two remittance advices in the sums of IR£15,000 and IR£10,000, dated 11 and 12 March 1993 respectively. At the end of the year 2000, therefore, the Tribunal had two conflicting accounts as to the amount of money Monarch had paid Mr Dunlop. On Monarch's version, a total of IR£52,500 had been paid, and it had cited the first payment of IR£10,000 as having been made on 26 May 1993. Yet on Mr Dunlop's version of events, within days of his meeting Mr Sweeney on 8 March 1993, he had been paid his fee of IR£25,000 in two tranches.

24.06 On 9 May 2001, having been informed by the Tribunal that Monarch had stated that it had paid him IR£52,500, Mr Dunlop advised the Tribunal that he had received IR£75,000 from Monarch. He attached a schedule compiled by his accountants Coyle & Coyle showing the breakdown of the sum of IR£75,000 to which he now admitted. Mr Dunlop subsequently revised this figure down to IR£60,000, his accountants having removed a figure of IR£15,000 from their previous schedule on the basis that payments to Mr Dunlop from Monarch had been over-stated.

24.07 However, despite Mr Dunlop's revision of the initial figure of IR£25,000 up to IR£60,000 in 2001, there remained a difference of IR£25,000 between the total the Tribunal had established Mr Dunlop had been paid (IR£85,000) and the figure he was suggesting.

24.08 The Tribunal believed, based on an analysis of documentation furnished to it by Monarch and by Mr Dunlop, that Mr Dunlop received a minimum of IR£85,000 from Monarch.

24.09 Mr Sweeney and Mr Glennane maintained that Monarch's initial agreement with Mr Dunlop was for a monthly retainer of IR£4,000 of which IR£25,000 was paid up front. Monarch told its partner, GRE, that Mr Dunlop was being paid IR£4,000 per month. Mr Dunlop rejected the evidence relating to an agreement for a monthly retainer.

24.10 The evidence disclosed to the Tribunal did not support the suggestion of a monthly retainer of IR£4,000 (or any other monthly sum) as having been agreed with, or paid to, Mr Dunlop.

IR£15,000 PAID ON 11 MARCH 1993

24.11 Frank Dunlop & Associates Ltd recorded receipt of a payment of IR£15,000 from Monarch on 11 March 1993. The payment was lodged to the account of Frank Dunlop & Associates Ltd (as part of a composite lodgement of IR£16,604) on 12 March 1993 and was duly debited from the AIB bank account of MPSL.

IR£10,000 PAID ON 12 MARCH 1993

24.12 Monarch paid Mr Dunlop IR£10,000 by cheque on 12 March 1993. While accepting that he received this cheque, Mr Dunlop was unable to say precisely where or how it was negotiated. It was not lodged to the Frank Dunlop & Associates Ltd bank account.

24.13 An AIB bank statement showed a lodgement of IR£1,000 on 12 March 1993 to the AIB College Green account of Mr Frank and Mrs Sheila Dunlop at AIB College Street. Mr Dunlop accepted that it was possible that he cashed the IR£10,000 cheque on that day and that IR£9,000 in cash was retained and a sum of IR£1,000 lodged to the account.

24.14 The sum of IR£10,000 was debited to the AIB bank account of MPSL in March 1993. The Tribunal was not furnished by either Monarch or Frank Dunlop & Associates Ltd with any invoice to underpin either of these payments.

IR£10,000 PAID ON 26 MAY 1993

24.15 The next documented payment to Mr Dunlop on MPSL's cheque payments book was IR£10,000 on 26 May 1993. Monarch's discovery to the Tribunal revealed that it had in its possession an invoice from Mr Dunlop dated 10 April 1993 in the sum of IR£10,000 plus VAT (i.e. IR£12,100). Mr Dunlop's discovery failed to yield a copy of this invoice or other reference to it. The invoice discovered by Monarch was marked 'Paid 1 June 1993' although no cheque or debit in this amount (IR£12,100) has been located or identified in MPSL's cheque payments book or bank statements.

24.16 What did appear from Monarch's discovery was that on 26 May 1993 a cheque was drawn on MPSL's AIB current account payable to Frank Dunlop & Associates Ltd in the sum of IR£10,000. This was signed by Mr Glennane and Mr Cooling.

24.17 While Mr Dunlop initially conceded that, given the existence of a remittance advice from Monarch to him dated 26 May 1993 (in Monarch's

discovery), and evidence of the IR£10,000 cheque being debited to MPSL's bank account on 3 June 1993, he must have received the payment, he changed his evidence after seeing the cheque in question. According to Mr Dunlop, the signature '*Frank Dunlop*' on the back of the cheque endorsing it was not his. He professed not to have any recollection of the cheque.

24.18 Investigations by the Tribunal, and evidence from Mr Patrick Murphy, proprietor of Clearys Public House in Inchicore, Dublin, established that the Monarch cheque for IR£10,000 made payable to Mr Dunlop, dated 26 May 1993, was in fact cashed by Mr Liam Lawlor in Mr Murphy's public house. The back of this cheque was endorsed '*Frank Dunlop*' and also carried the word '*Clearys'*. The Tribunal concluded that this Monarch cheque for IR£10,000 made payable to Mr Dunlop, dated 26 May 1993, was in fact cashed by Mr Liam Lawlor in Mr Murphy's public house.

24.19 Mr Glennane acknowledged in evidence that the likely recipient of the proceeds of the IR£10,000 was indeed Mr Lawlor, but he disagreed with the suggestion that anyone in Monarch, including Mr Monahan, would have given the cheque to Mr Lawlor.

24.20 The Tribunal has considered a number of scenarios whereby a Monarch cheque made payable to Mr Dunlop would fall into Mr Lawlor's hands. Mr Dunlop's position was that he could not recollect giving a third party cheque to Mr Lawlor and he had no recollection in this instance of handing any such cheque to Mr Lawlor.

24.21 By May 1993 Mr Lawlor was in receipt of a number of cheques from Monarch, most notably two 'Comex' cheques totalling IR£56,300, paid to Mr Lawlor in October 1990 by a Monarch related company, L&C, which dealt with Monarch's Tallaght shopping centre development. Equally, there was documentary evidence that later in 1993 Mr Lawlor was in receipt of other payments from Monarch, both directly and indirectly,[31] via an entity named Prague Strategic Studies, and otherwise. Therefore, had Monarch wished to put Mr Lawlor in funds, it had a number of options available for doing so without using Mr Dunlop's name.

24.22 Despite Mr Dunlop's protestations, the Tribunal was satisfied that the most likely manner in which this cheque for IR£10,000 ended up in Mr Lawlor's hands was that Mr Dunlop gave it to him.

[31] Via Mrs Hazel Lawlor.

THE INVOICE DATED 10 APRIL 1993 AND THE IR£10,000 CHEQUE DATED 26 MAY 1993

24.23 On Day 661 Mr Dunlop denied that the invoice dated 10 April 1993 had emanated from his office. He contended that the typeface was not of the type used by his office, and he pointed out that the invoice was not numbered. All other Frank Dunlop & Associates Ltd invoices from Mr Dunlop to Monarch were numbered.[32]

24.24 The Tribunal was satisfied that this invoice was generated by someone within Monarch either with or without Mr Dunlop's consent. The Tribunal was satisfied that this was done so that Monarch could furnish GRE with an invoice supporting its claim for recoupment of 50 per cent of Mr Dunlop's fees. This *'Frank Dunlop'* invoice was provided to GRE in December 1993 together with a Monarch payment certificate dated 1 June 1993.

24.25 As already stated, neither Monarch nor Mr Dunlop's discovery disclosed any payment of IR£12,100 to Mr Dunlop on 1 June 1993 or on any other date. By June 1993 the only recorded payments to Mr Dunlop, apart from the cheque of 26 May 1993, were the two cheques of IR£15,000 and IR£10,000 paid in March 1993. By June 1993 Monarch had invoiced GRE for 50 per cent of the IR£25,000 which they said they had paid *'on account to Mr Dunlop in March'.* GRE rejected Monarch's claim.

24.26 It appeared to the Tribunal that Monarch, either of its own accord or with Mr Dunlop's acquiescence, chose to generate a Frank Dunlop & Associates Ltd invoice to comply with GRE's demand that its payments to Mr Dunlop adhere to the monthly retainer arrangement for which GRE was contending. It may have been that this 10 April 1993 invoice was created only when Monarch ultimately furnished GRE, in December 1993, with another two of Mr Dunlop's invoices so as to recoup 50 per cent of the amount they had by then paid Mr Dunlop.

24.27 The Tribunal saw no direct correlation between the 10 April 1993 invoice and the cheque dated 26 May 1993 payable to Mr Dunlop, which ended up in Mr Lawlor's possession. The Tribunal considered it more likely that this cheque was paid in the same manner as the previous two cheques paid to Mr Dunlop in March 1993, namely that a request emanated from him that he needed more

[32] However, on occasion Mr Dunlop issued Frank Dunlop & Associates Ltd invoices without a number.

money, and the May 1993 IR£10,000 cheque was then paid to him without a corresponding invoice.

24.28 The Tribunal was satisfied that the payment of this sum of IR£10,000, albeit encashed in Mr Lawlor's favour, constituted a payment by Monarch to Mr Dunlop.

TWO PAYMENTS OF IR£7,500 EACH PAID ON 1 JULY AND 17 SEPTEMBER 1993

24.29 Frank Dunlop & Associates Ltd provided Monarch with an invoice dated 19 May 1993 in the sum of IR£12,396.69 plus VAT at IR£2,603.31, a total of IR£15,000. The invoice was numbered 834 and was marked *'paid 19/5 and 17/9/93'*. While Monarch's discovery of documentation to the Tribunal did not include a copy of invoice no. 834, Mr Dunlop's discovery did include a copy of this invoice.

24.30 Mr Dunlop told the Tribunal that this invoice was paid in two tranches, IR£7,500 on 1 July 1993 and IR£7,500 on 17 September 1993. Documentary evidence suggested that the two sums were lodged to the bank account of Frank Dunlop & Associates Ltd on 2 July and 17 September respectively as part of composite lodgements.

IR£15,000 PAID ON 2 NOVEMBER 1993

24.31 Monarch's discovery of documentation to the Tribunal produced an invoice from Frank Dunlop & Associates Ltd dated 2 November 1993 for IR£15,000 with no VAT (cited VAT exempt). A cheque from Monarch for that sum duly issued on that date and was negotiated, presumably by Mr Dunlop, on that date. It was not lodged to the account of Frank Dunlop & Associates Ltd. The Monarch payment was authorised by Mr Sweeney.

24.32 The invoice in question stated that the service provided by Mr Dunlop was the *'provision of media and communications training'* for 1993/4.

24.33 Mr Dunlop acknowledged to the Tribunal that he never provided media or communications training or services to Monarch, and this was acknowledged by both Mr Sweeney and Mr Glennane in the course of their evidence. Neither Mr Glennane nor Mr Sweeney was in a position to offer the Tribunal any explanation as to why the invoice included this incorrect information, or why it was VAT exempt. Mr Sweeney told the Tribunal that he did not recollect noticing that the invoice was VAT exempt.

24.34 Mr Glennane did not see any connection between the payment of IR£15,000, VAT-free, on 2 November 1993, on foot of an invoice which included an erroneous description of the services provided to Monarch by Mr Dunlop, and the Cherrywood lands motion scheduled for a meeting of Dublin County Council on 3 November 1993. Mr Lynn told the Tribunal that he was unaware of any payments to Mr Dunlop at this time.

24.35 Unusually, the VAT-exempt invoice was not submitted by Monarch to GRE for partial reimbursement. No credible explanation for this was given to the Tribunal.

24.36 Mr Dunlop's diary for 2 November 1993 recorded a scheduled meeting between himself and Mr Sweeney. Although Mr Sweeney denied this, the Tribunal believed it likely that at that meeting Mr Dunlop was provided with a cheque for IR£15,000 from Monarch, and that Mr Sweeney was aware or believed that the payment (and its urgency) was linked to the special meeting of Dublin County Council scheduled for the following day when motions affecting Monarch's interest were on the agenda. The Tribunal also believed it likely that Mr Sweeney was aware of the need to place Mr Dunlop in funds to pay councillors for their support for Monarch's rezoning project.

24.37 This payment was made to Mr Dunlop at approximately the same time (October and November 1993) as Monarch disbursed cash payments for which no credible explanation was provided to the Tribunal. The Tribunal concluded that all or a portion of these cash disbursements by Monarch were used to bribe elected councillors to support Monarch's rezoning proposals.

24.38 By 2 November, 1993, the total paid to Mr Dunlop amounted to IR£65,000.

IR£15,000 PAID 21 DECEMBER 1993

24.39 Monarch records indicated that a cheque for IR£15,000 was paid to Mr Dunlop on 21 December 1993 *'on a/c'*.

24.40 Documentation discovered to the Tribunal by Monarch included an invoice (no. 955) from Frank Dunlop & Associates Ltd dated 6 December 1993, claiming fees of IR£25,000 plus VAT (a total of IR£30,250) and *'miscellaneous'* costs of IR£927.22 plus VAT. The invoice total was IR£31,371.94.

24.41 However, an invoice with the same number and date was identified in Mr Dunlop's discovery of documentation to the Tribunal, addressed to Monarch,

claiming professional fees of IR£17,500 plus VAT (IR£21,175) together with *'miscellaneous'* costs of IR£927.22 plus VAT. The total of this invoice was IR£22,296.94.

24.42 This issue became further complicated when a third invoice numbered 955 and dated 6 December 1993 came to light. It was contained in Monarch's discovery of documentation to the Tribunal. It claimed the sum of IR£22,296.94, but allowed credit to Monarch for IR£15,000, leaving the figure outstanding as IR£7,296.94. This invoice was faxed by Frank Dunlop & Associates Ltd to Monarch on 4 May 1994.

24.43 The sum of IR£15,000 actually paid by Monarch to Frank Dunlop & Associates Ltd on 21 December 1993 was lodged to the company's bank account on that date.

24.44 No credible explanation was provided to the Tribunal by Mr Dunlop or Mr Glennane as to how three invoices with the same number were generated, each containing different information.

24.45 The Tribunal did not accept as true, the evidenceprovided to the Tribunal by both Mr Dunlop and Mr Glennane in relation to this payment, and the reasons for the multiple, but similarly numbered, invoices.

IR£5,000 PAID IN AUGUST 1995

24.46 In August 1995 Monarch paid IR£5,000 by cheque to Frank Dunlop & Associates Ltd. It appeared to have been lodged to that company's bank account.

24.47 This payment brought the total sums paid by Monarch to Mr Dunlop to IR£85,000.

HOW MR DUNLOP DEALT WITH THE IR£85,000 RECEIVED FROM MONARCH

24.48 The Tribunal was satisfied that the IR£85,000 paid by Monarch to Mr Dunlop was dealt with by him as follows:

- IR£50,000 was lodged to the Frank Dunlop & Associates Ltd bank account.
- IR£10,000 was cashed by Mr Dunlop and part was paid into one of his *'war chest'* accounts.
- IR£15,000 paid on 2 November 1993 was cashed by Mr Dunlop.
- IR£10,000 was given to Mr Lawlor.

SUCCESS FEE

24.49 Frank Dunlop & Associates Ltd issued an invoice to Monarch on 14 December 1993 for IR£50,000 plus VAT. This represented a success fee being claimed by Mr Dunlop.

24.50 Mr Dunlop maintained that Monarch never paid him a success fee. While he issued the invoice on 14 December 1993 he said this was done following a discussion with Mr Sweeney and Mr Glennane in which he was urged to claim a success fee in order to see how far such a claim would be entertained.

24.51 Documents discovered to the Tribunal by Monarch indicated that the question of Mr Dunlop's success fee was the subject of correspondence and discussion between Monarch (as represented by Mr Sweeney) and GRE as far back as September 1993. Correspondence to GRE from Monarch on 28 September 1993 made reference to the agreement of a success fee payment of IR£50,000 to Mr Dunlop.

24.52 On being asked to account for the fact that the documentary evidence available to the Tribunal established that by September 1993 payments totalling IR£50,000 had been paid to Mr Dunlop, Mr Sweeney told the Tribunal that Mr Monahan had advised him that a success fee of IR£50,000 had been agreed with Mr Dunlop. It was Mr Sweeney's understanding that Mr Dunlop had been paid a success fee at this time.

24.53 However, the Tribunal rejected Mr Sweeney's evidence on this issue because, as of September 1993, no County Council vote had taken place since Mr Dunlop had been first retained (March 1993), and there was therefore no basis on which he could have considered himself entitled to a 'success fee'.

24.54 Neither Mr Sweeney nor Mr Glennane was in a position to identify any financial record within Monarch indicating a payment to Mr Dunlop of the IR£50,000. The only payment to Mr Dunlop that followed upon the two invoices he issued to Monarch in December 1993 (i.e. the 6 December 1993 invoice for IR£31,371.04[33] and the 14 December invoice for IR£50,000 plus VAT) was the

[33] In fact, two invoices, with the same date and number, were generated by Frank Dunlop Associates, for different amounts (IR£22,296.94 and IR£31,371.94). Only the latter was paid. Mr Dunlop was unable to explain why two invoices had been generated, but suggested that there may have been a re-negotiation of the amount of the invoice.

cheque issued on 21 December 1993, for IR£15,000. Mr Glennane described this payment to Mr Dunlop as a payment on his general account, including a success fee, but he was unable to identify any document or record suggesting that the IR£15,000 was part of a success fee.

24.55 The Tribunal was unable to determine exactly what arrangements existed between Mr Dunlop and Monarch in relation to a success fee.

24.56 It was clearly convenient for Mr Glennane and Mr Sweeney to insist to the Tribunal that portion of the IR£85,000 paid to Mr Dunlop contained a success fee, as this assertion tended to lend credence to their evidence as to the terms of Mr Dunlop's retention. The thrust of that evidence (which was rejected by the Tribunal) was that Mr Dunlop had been engaged on a monthly fee of IR£4,000. Had this been in fact the case, the records should have indicated that Mr Dunlop, by December 1993, had received IR£36,000 (plus VAT). Yet the records established that by this time Mr Dunlop had been in receipt of IR£80,000, IR£65,000 of which had been paid to him before any 'success' had been achieved by Monarch.

24.57 Ultimately the Tribunal was satisfied that Monarch paid Mr Dunlop a significant amount of money in pursuit of its objective to increase the permitted residential density of its lands, in the knowledge that Mr Dunlop would pay some of this money to certain councillors.

24.58 In the Tribunal's view, the flurry of activity in December 1993 between Mr Dunlop and Monarch, and between Monarch and GRE, concerning the exchange of invoices, was merely a calculated manoeuvre by Monarch to produce documentary support to assist in recouping from GRE 50 per cent of the money paid to Mr Dunlop.

MONARCH'S RECOUPMENT FROM GRE IN RELATION TO MR DUNLOP

25.01 Evidence to the Tribunal established that Monarch issued GRE with four invoices seeking to recoup 50 per cent of what Monarch described as fees paid to Mr Dunlop between April and December 1993, pursuant to a IR£4,000 per month retainer agreement. Monarch also sought 50 per cent of a IR£50,000 success fee they claimed was paid to Mr Dunlop. The total amount claimed from GRE was IR£52,030.

25.02 Three of the Monarch invoices, dated 12 July 1993, 31 August 1993 and 10 December 1993 respectively, claimed 50 per cent of the money Monarch claimed it had paid Mr Dunlop on a monthly basis.

25.03 The fourth invoice sought 50 per cent of a IR£50,000 plus VAT success fee paid to Mr Dunlop.

25.04 When Monarch wrote to GRE on 15 December 1993, it attached three invoices from Frank Dunlop & Associate in support of its claims.

25.05 These invoices were:

- The 10 April 1993 invoice for IR£12,100
- The 6 December 1993 invoice no. 955 for IR£31,371.94
- The 14 December 1993 invoice no. 1251 for IR£50,000 plus VAT, total IR£60,500.

25.06 This latter invoice was accompanied with confirmation by Monarch that Mr Dunlop was paid on 14 December 1993 (the same date as the invoice). The description of work on the invoice was *'success fee'*.

25.07 On foot of the four Monarch invoices forwarded to GRE, underpinned by the three Frank Dunlop & Associates Ltd invoices, GRE duly paid Monarch IR£52,030. By virtue of this payment Monarch recouped more than half of the monies which its own accounts record as having been paid to Mr Dunlop in 1993.

THE TRIBUNAL'S CONCLUSIONS ON THE MONARCH PAYMENTS TO MR DUNLOP

26.01 The Tribunal was satisfied that Mr Monahan, Mr Glennane, Mr Sweeney and Mr Lynn knew of the essential purpose of Mr Dunlop's engagement – that is, the lobbying of county councillors with the corrupt payment of money (where deemed by Mr Dunlop as being necessary) in order to ensure their support for motions promoting the rezoning of the Monarch lands in Cherrywood.

26.02 Mr Dunlop was paid a minimum of IR£85,000 between 1993 and 1995 with the two objects of:

1) Remunerating and rewarding him for the effort he was to expend in promoting the Cherrywood project.

2) Providing him with funds for disbursement to councillors in the course of the Cherrywood project to ensure their support for that project.

26.03 In the absence of any agreement between them, both Mr Dunlop and Monarch separately engaged in a process of misinforming the Tribunal of the total amount of payments made by Monarch to Mr Dunlop in circumstances where they probably expected that the Tribunal would not embark on a detailed investigation of such payments in the course of the Cherrywood module.

26.04 The manner in which Monarch disbursed payments to Mr Dunlop in 1993 assisted the Tribunal in reaching its finding that, on the balance of probability, such payments were, at least in part, made for the purposes of enabling Mr Dunlop to make corrupt payments to councillors. The payments did not follow any particular pattern nor were they paid in accordance with an agreed schedule of payments, expressly or by implication. Furthermore, on occasion, these payments were made without any explanatory invoices, sometimes without VAT.

26.05 Frank Dunlop & Associates Ltd's invoices, on occasion containing false information, were generated for the purposes of enabling Monarch to reclaim 50 per cent of their face value from GRE. These invoices did not always accurately represent the amounts paid on foot of them to Mr Dunlop. Invoices may also have been generated for other purposes.

MONARCH AND MR LIAM LAWLOR TD (FF)

27.01 Mr Lawlor was a Fianna Fáil county councillor until mid-1991, and a TD until 2002. He had not represented the Cherrywood area of Co. Dublin in either capacity. The Tribunal was satisfied from documentation it examined that, between October 1990 and 1996, Mr Lawlor received payments amounting to at least IR£72,800 from Monarch.[34] Save in the case of two of these payments (IR£2,500 paid in 1995 and IR£1,000 paid in 1996), Monarch's books and records did not identify Mr Lawlor as the recipient of the payments.

27.02 The Tribunal considered each of the payments and such documentary trail as was found to exist in relation to them.

27.03 In a document provided to the Tribunal on 29 January 2001, Mr Lawlor informed the Tribunal that he had received IR£40,000 from Monarch in *'political donations'* and *'consultancy fees'*. On 9 April 2002, Mr Lawlor advised the Tribunal that the IR£40,000 figure was estimated and constituted political

[34] Exclusive of the IR£10,000 Monarch cheque paid to Mr Dunlop, but cashed by Mr Lawlor.

contributions towards election campaigns and running his constituency office. In a letter dated 18 June 2003, Mr Lawlor revised the IR£40,000 figure downwards to IR£30,000, without providing any explanation for this revision.

27.04 In June 2000, Monarch advised the Tribunal through its solicitors that it had made political donations to Mr Lawlor totalling IR£6,500 (IR£3,000 in 1994, IR£2,500 in 1995, and IR£1,000 in 1996).

27.05 This total significantly underestimated the sums which the Tribunal established were actually paid by Monarch to Mr Lawlor. The documentary trail examined by the Tribunal showed that between 1990 and 1996 some IR£72,800 was paid.

PAYMENTS TO MR LAWLOR IN 1990

27.06 On 16 October 1990, L&C Properties recorded in its cheque payments book two payments of IR£28,000 and IR£28,300 respectively made to Comex Trading Corporation.

27.07 Comex Trading Corporation was a fictitious entity[35] used by Mr Lawlor for the purposes of generating false invoices as a basis for obtaining funds.[36]

27.08 On 26 October 1990, the payment of IR£28,300 was lodged to the Bank of Ireland account of Economic Reports Ltd, an entity beneficially owned by Mr Lawlor. While the Tribunal has not identified the manner in which Mr Lawlor dealt with the second Comex cheque for IR£28,000, it was satisfied that he did indeed receive that payment.

27.09 The reason for these payments was not clarified. Mr Glennane and Mr Sweeney claimed that they were unaware of Comex Trading Corporation and its use by Mr Lawlor to generate invoices and receive funds, and they were unable to explain what services he had provided to Monarch in return for such funding.

27.10 Mr Sweeney's evidence was that he had not retained Comex in the context of the Tallaght development and that he did not know that Comex was an entity used by Mr Lawlor for raising invoices until apprised of that fact by the Tribunal.

27.11 Mr Glennane's evidence was that he could not recall if he had been aware, in October 1990 that two payments had been made to Comex. He too told

[35] Acknowledged as such by Mr Lawlor in an affidavit sworn for the High Court on 21 January 2002.
[36] See section on Mr Lawlor.

the Tribunal that he only became aware of the Lawlor/Comex connection when it was brought to his attention by the Tribunal. Mr Glennane denied authorising any payment to Mr Lawlor in 1990, via Comex or otherwise.

27.12 Mr Sweeney told the Tribunal that Mr Monahan had introduced Mr Lawlor to him, and that he understood Mr Lawlor's involvement with Monarch in 1990 to relate to the Tallaght shopping centre development, and more particularly, the provision of advice in relation to it on Monarch's dealings with Dublin Corporation and Dublin County Council. Mr Sweeney was unable to say if Mr Lawlor had assisted Monarch in achieving tax designation status for the Tallaght development.

27.13 While he had not been privy to any of the negotiations that undoubtedly took place between Mr Lawlor and Mr Monahan in relation to monies paid to Mr Lawlor in 1990, Mr Sweeney rejected a suggestion Mr Lawlor made in his correspondence with the Tribunal, namely, that Mr Sweeney, together with Mr Monahan, had paid Mr Lawlor approximately IR£40,000 by way of political donations and/or consultancy fees. In the course of his evidence, Mr Sweeney described how Mr Monahan had telephoned him in either 2001 or 2002 to ask if he (Mr Sweeney) had given IR£40,000 to Mr Lawlor.

THE TREATMENT OF THE LAWLOR/COMEX PAYMENTS IN L&C'S BOOKS

27.14 The Tribunal considered the manner in which payments to Mr Lawlor/Comex were treated in L&C Properties' books to be significant.

27.15 In the first instance the expenditure was recorded in the L&C Properties Ltd cheque payments book as two cheques to '*Comex Trading Corp*'. In the L&C Ltd general ledger report for 1991, the payments were designated as '*strategy plan*' in the nominal ledger account professional and consultant fees.

27.16 The two October 1990 payments were the only payments designated as 'strategy plan' fees in L&C's books (relating to professional and consultant fees for the fiscal year 1991). The Tribunal considered it significant that the word 'strategy' as a description of a payment to a politician was used by Monarch in the context of its Cherrywood project. It was under the heading '*Strategy Consultancy Fees'* that, in 1992, Mr Lynn claimed from GRE 50 per cent of the monies expended in 1991 on politicians/councillors, and it was under this same category that he projected future expenditure in the context of the rezoning of the Cherrywood lands.[37]

[37] See above.

27.17 The Tribunal noted with interest the timing of the payments made to Mr Lawlor. They were made upon the completion of the Tallaght shopping centre project,[38] and at a time when the draft plans for the Carrickmines Valley were in the process of being presented to the members of Dublin County Council.

27.18 The Tribunal was satisfied that in 1990 Monarch personnel were conscious of the potential influence which Mr Lawlor could exercise in the context of the review of the 1983 Development Plan.

27.19 The Tribunal was satisfied that, from Monarch's perspective, Mr Lawlor was being remunerated in October 1990 for services previously provided by him in relation to its Tallaght development, and in contemplation of future services that he might provide in respect of ongoing developments, including Cherrywood. For reasons better known to Monarch, and which no Monarch witness has shared with the Tribunal, Monarch went to considerable efforts in its books to conceal the nature of the service provided by Mr Lawlor when it used the term *'strategy plan'*. Mr Glennane suggested that the term may have been taken from Mr Lawlor's invoice.

27.20 Although through-out 1990 Mr Lawlor was an elected TD and an elected member of Dublin County Council, the manner of the October 1990 payments to him and their treatment in L&C Properties' books, coupled with the way in which he dealt with at least one of the cheques, belied his suggestion that payments he received from Monarch were political donations. It was the view of the Tribunal that there could be no justification for the payment by Monarch, or the acceptance by Mr Lawlor, of a sum of IR£56,300 in 1990 in circumstances where, the Tribunal was satisfied, both Monarch and Mr Lawlor knew that Dublin County Council had embarked on its consideration of rezoning proposals for the Carrickmines valley. The timing of the two payments of IR£28,000 and IR£28,300, coupled with their designation in Monarch's books and records as '*strategy plan*' (a term akin to that used by Monarch in 1992 to describe payments it had made to Local Election candidates in 1991) led the Tribunal to concluded that the payments were, in part at least, connected to Mr Lawlor's role as an elected member of Dublin County Council. In all the circumstances, these payments were corrupt.

NO PAYMENTS TO MR LAWLOR IN 1991 AND 1992

27.21 Curiously, Mr Lawlor was not identified as a recipient of a payment from Monarch at the time of the 1991 Local Elections (in which he lost his Council seat), or the 1992 General Election (in which he retained his Dáil seat), although

[38] The centre was opened on 23 October 1990.

large numbers of his fellow councillors and TDs were generously supported in one or both elections. Monarch records did not identify Mr Lawlor as a recipient of any payment in 1991 or 1992, a fact which surprised Mr Sweeney. It was possible that some of the cash payments made to unidentified individuals were, in fact, paid to Mr Lawlor.

PAYMENTS TO MR LAWLOR IN LATE 1993

27.22 Monarch appeared to have paid Mr Lawlor, indirectly, three times in late 1993, the payments totalling IR£10,000. In none of these instances was Mr Lawlor named or designated the recipient of these funds.

27.23 On 23 November 1993, a payment of IR£3,000 was made to Mrs Hazel Lawlor, Mr Lawlor's wife. This was probably done at the behest of Mr Lawlor.

27.24 On 22 December 1993, and on 31 December 1993, two cheques for IR£4,000 and IR£3,000 respectively were paid to *'cash'*. They were attributed in MPSL's cheque payments book as payments to '*Prague Strategic Studies'*. Both cheques were cashed in the Lucan branch of Bank of Ireland, where Mr Lawlor had a bank account.

27.25 The Tribunal was satisfied that *'Prague Strategic Studies'* was a fictitious entity, and may have been used by Mr Lawlor for the purpose of generating one or more false invoices to facilitate payments from Monarch.

27.26 Because of the reference to 'Invoice' in the *'Prague Strategic Studies'* entry in MPSL's books, the Tribunal considered it reasonable to conclude that Mr Lawlor may have provided an invoice styled 'Prague Strategic Studies' to Monarch. MPSL's books suggested that a sum of IR£10,000 was invoiced and paid. The Tribunal considered it possible that the IR£3,000 Mrs Lawlor received, and the cheques for IR£4,000 and IR£3,000 cashed by Mr Lawlor, were the sums paid out by Monarch in satisfaction of this invoice.

27.27 Mr Glennane was unable to provide a credible explanation as to why such payments had been made to Mr Lawlor. His suggestion that the payments related to a *'Prague Project'* with which Monarch was involved, was almost certainly incorrect.

27.28 The '*Prague Project'* was a description used to identify a business arrangement then ongoing between Monarch and Mr Ambrose Kelly which involved Mr Lawlor. MPSL's books clearly identified Mr Kelly as the recipient of funds in relation to that business arrangement.

27.29 The Tribunal did not accept that Mr Lawlor's involvement in the Monarch/Kelly *'Prague Project'* (which appeared never to have become a reality) was the real reason why Monarch paid him IR£10,000 between November and December 1993. The Tribunal considered it more likely that Mr Lawlor was being remunerated by Monarch in the context of the Cherrywood rezoning project and the Development Plan review at that time. By 10 December 1993, the Development Plan for County Dublin had been finalised. By virtue of successful votes on Monarch-related motions on 11 November, Monarch had retained the district centre zoning on its lands and had had reinstated density levels of 4 houses per acre on its residentially zoned lands.

27.30 While Mr Lawlor was not a councillor in November 1993, the Tribunal was nevertheless satisfied that in the run up to the November 1993 votes, Monarch perceived him as a person with influence over certain Fianna Fáil councillors within the Council. Consequently, the Tribunal concluded that the payments made to Mr Lawlor in November and December 1993 were likely to have been made in this context.

27.31 Mr Sweeney denied that Mr Lawlor lobbied councillors to support the Cherrywood project, although he accepted that Mr Lawlor may have attended meetings with Mr Dunlop at which the lobbying of councillors was discussed.

27.32 Mr Lynn denied having any involvement with Mr Lawlor after May 1991, but accepted that Mr Lawlor was influential and knowledgeable in planning matters in Dublin County Council.

27.33 In a one-page document provided by Monarch to the Tribunal, purporting to refer to payments it made to Mr Dunlop between March and September 1993 in connection with the Cherrywood project, there appeared handwritten references to the November/December 1993 payments to Mrs Lawlor and to Prague Strategic totalling IR£10,000, suggesting an association between these three Lawlor payments and the Cherrywood project itself.

27.34 Furthermore, in its MPSL books, Monarch specifically attributed the 23 November 1993 payment of IR£3,000 to Mrs Lawlor as a cost in connection with the Cherrywood lands.

27.35 The Tribunal noted that Mr Glennane's diary contained seven references to Mr Lawlor, and one reference to Mrs Lawlor between 17 November and 15 December 1993. It was likely therefore that Mr Glennane's knowledge of these payments, and his knowledge of Mr Lawlor's association with Monarch in November/December 1993 was greater than he indicated to the Tribunal.

Indeed, the Tribunal regarded it as incredible that Mr Glennane, having regard to his position as, in effect, financial controller, did not have an intimate knowledge of the payments to Mr Lawlor, and their purpose.

PAYMENTS TO MR LAWLOR IN 1994–6

27.36 In their 'political payments' list for 1991 to 1997, Monarch listed payments of IR£2,500 in 1995 and IR£1,000 in 1996 to Mr Lawlor. It further attributed a payment of IR£3,000 designated to *'A & L Lawlor'*, made in July 1994, as a payment to Mr Lawlor.

THE TRIBUNAL'S CONCLUSIONS ON THE PAYMENTS TO MR LAWLOR

27.37 The Tribunal was satisfied that:

1) The bulk of the payments made to Mr Lawlor were for purposes other than political.
2) The total sum of IR£56,300 paid in October 1990 was, in all probability, connected to assistance Mr Lawlor rendered to Monarch in relation to the Tallaght shopping centre development and the campaign to rezone Cherrywood.
3) The IR£10,000 paid to Mr Lawlor in November/December 1993 was paid in connection with the rezoning of the Cherrywood lands.

27.38 The Tribunal was satisfied that Mr Glennane, Mr Sweeney and Mr Lynn did not fully disclose to the Tribunal their knowledge as to the services provided to Monarch by Mr Lawlor, and the manner and detail in which payments to him were effected and accounted for.

27.39 The Tribunal was satisfied that, while Mr Lawlor mostly dealt with Mr Monahan in connection with Monarch issues, the three named executives were at all times fully aware of Mr Lawlor's involvement with Monarch, and were probably aware of the extent of the payments made to him in the period 1990 to 1996.

27.40 Both Monarch and Mr Lawlor failed to provide the Tribunal with correct information as to the payments by Monarch to Mr Lawlor in the period 1990 to 1996.

PAYMENTS TO COUNCILLORS BY MONARCH AND MR DUNLOP

28.01 In the course of private interviews with the Tribunal's legal team in 2000, Mr Dunlop named Cllrs Lydon and Hand as two members of Dublin County Council to whom he had paid money in return for their support for the rezoning of

the Cherrywood lands. No sworn evidence was given to the Tribunal of payments by Mr Dunlop to either Cllr Lydon or Cllr Hand in connection with the Cherrywood lands.

28.02 In his written statement to the Tribunal in October 2000, Mr Dunlop named Cllrs Fox and McGrath as recipients of money in return for their support for the Cherrywood proposals. Neither had been referred to by Mr Dunlop, in the context of Cherrywood, in the course of the Tribunal's private interviews in 2000. Mr Dunlop neither repeated nor withdrew the allegation of payments to Cllrs Lydon and Hand in that statement.

ALLEGED PAYMENTS BY MR DUNLOP TO CLLR TONY FOX (FF)

28.03 Cllr Fox was an elected councillor during the years between 1991 and 1997, having been first elected to Dublin County Council in 1985. He transferred to Dún Laoghaire-Rathdown County Council from early 1994 and was Cathaoirleach in 1996/7. Cllr Fox invariably described himself as pro development. He generally voted in favour of rezoning land for development and voted at all relevant times in favour of proposals which promoted or assisted the rezoning of Monarch's Cherrywood lands, as did a number of other councillors.

28.04 Mr Dunlop alleged that he paid IR£2,000 in cash to Cllr Fox in return for his agreement to support the rezoning of Monarch's Cherrywood lands. Mr Dunlop described Cllr Fox as a *'key'* figure within Dublin County Council.

28.05 Mr Dunlop consistently gave evidence to the Tribunal, in a number of modules, that he and Cllr Fox were regularly in contact during the course of the review of the Dublin County Development Plan, and that he had on a number of occasions paid Cllr Fox sums of money, at his request, in order to secure his support for the rezoning of specific parcels of land in the course of the Development Plan review. Mr Dunlop stated in the course of his evidence in the Cherrywood module: *'Hardly a week passed that I would not have discussed matters with Tony Fox.'*

28.06 Mr Dunlop recalled lobbying Cllr Fox to support the rezoning of the Cherrywood lands and discussing it with him. It was his belief that he initiated contact with Cllr Fox in relation to the Cherrywood lands shortly after his retention by Monarch in early March 1993. On being approached, Cllr Fox had stated that he would have to be given '*something*' for his support.

28.07 Mr Dunlop told the Tribunal that Cllr Fox commented to him that Monarch had been *'mean'*. Mr Dunlop interpreted this comment as a reference by Cllr Fox

to his belief that Monarch had either failed to pay him money, or had paid him inadequately, in return for his support for Monarch's Cherrywood project. (Monarch records indicate that Monarch paid Cllr Fox IR£600 in 1991 as a political contribution, and IR£1,000 in late January 1993[39] as a contribution to election expenses in the November 1992 General Election, an election in which Cllr Fox was not a candidate.)

28.08 Mr Dunlop stated that payment of the IR£2,000 was not made until after the vote of 11 November 1993. He was unable to confirm to the Tribunal exactly when or where the payment was made save that it was likely to have been paid at one of the usual locations where he met Cllr Fox – i.e. Dublin County Council, its environs, or Cllr Fox's home.

28.09 Although Cllr Fox acknowledged to the Tribunal that there was contact between himself and Mr Dunlop during the review of the 1983 Development Plan, and that Mr Dunlop had lobbied him for his support for various developments in the course of that review, he maintained that he did not know of Mr Dunlop's role as a lobbyist for Monarch. Cllr Fox recalled being lobbied by Monarch personnel in relation to the rezoning of the Cherrywood lands, but claimed that Mr Dunlop had never raised the issue with him.

28.10 The Tribunal heard evidence of telephone contact between Cllr Fox and Mr Dunlop's office. While Cllr Fox did not necessarily accept the accuracy of the telephone records maintained by Mr Dunlop's secretary, he agreed that he did on occasion telephone Mr Dunlop's office. Cllr Fox suggested that many or all of these calls were simply return calls made to him in the first instance by Mr Dunlop.

28.11 Cllr Fox strongly denied requesting any payment from Mr Dunlop and, more specifically, denied that he received IR£2,000 or any sum from Mr Dunlop in relation to the Cherrywood lands. On a number of occasions in the course of his sworn evidence to the Tribunal in this and other modules, Cllr Fox denied that he had ever received money from Mr Dunlop by way of political donation or for any other purpose.

28.12 The Tribunal rejected Cllr Fox's evidence that he was unaware that Mr Dunlop had been retained by Monarch. The Tribunal was satisfied to accept Mr Dunlop's evidence that he lobbied Cllr Fox in relation to Cherrywood and it preferred Mr Dunlop's evidence that the question of money arose in the course of such lobbying endeavours. The Tribunal was assisted in reaching this

[39] See below.

conclusion by Mr Dunlop's clear recollection of Cllr Fox's reference to Monarch as being '*mean*'.

28.13 As to whether or not Mr Dunlop paid IR£2,000 to Cllr Fox as he alleged, the Tribunal preferred Mr Dunlop's evidence on that issue to that of Cllr Fox and was therefore satisfied that Mr Dunlop did in fact pay IR£2,000 cash to Cllr Fox shortly after the Dublin County Council vote on 11 November 1993, and that he did so, in effect, at Cllr Fox's request, and that the payment was corrupt.
In preferring Mr Dunlop's testimony over that of Cllr Fox, the Tribunal also took cognisance of the fact that Cllr Fox was satisfied to accept a cheque for IR£1,000 from Monarch in January 1993 (by way of claimed election contribution) in circumstances where, as matters transpired, he had been neither a General Election nor a Seanad Election candidate. These circumstances suggested to the Tribunal a willingness on the part of Cllr Fox to accept money in the absence of any '*election*' reason for so doing (even if it would have been justifiable, which it was not).

28.14 The Tribunal was satisfied that throughout 1993, and subsequently, there was frequent contact, including telephone contact, between Mr Dunlop and Cllr Fox. It was acknowledged by Cllr Fox that there was extensive contact between himself and Mr Lynn in the period 1991 to 1997.

PAYMENTS TO CLLR TONY FOX BY MONARCH

28.15 Records provided to the Tribunal by Monarch indicated that it paid Cllr Fox sums of money totalling IR£2,160 in the period between mid June 1991 and early 1997. A further payment of IR£250 made by Monarch on 14 April 1994 may have been passed by Cllr Fox to the Fianna Fáil Party. In addition, payments of IR£250 and IR£300 were made by Monarch in respectively February 1995 and March 1997 to Bradford Rovers Football Club in Cllr Fox's electoral area, both sums having been solicited as a contribution to the club by Cllr Fox.

THE PAYMENT OF IR£600 ON 5 JUNE 1991

28.16 Monarch's books indicated that it paid a cheque for IR£600 to Cllr Fox on 5 June 1991 and that the cheque's purpose was *'local election expe*nses'. Similar sized payments, and a number of smaller and larger payments, were made to a large number of other councillors who were standing for re-election in the 1991 Local Elections. Cllr Fox told the Tribunal that he did not solicit this payment. He also told the Tribunal that at the time he received the payment of IR£600 in 1991, it was the largest election contribution he had received.

THE PAYMENT OF IR£1,000 ON 29 JANUARY 1993

28.17 Monarch paid IR£1,000 to Cllr Fox on 29 January 1993 and claimed that this was as a contribution towards his expenses in the November 1992 General Election.[40]

28.18 Mr Lynn's evidence was that when Cllr Fox told him that he was contemplating running in the General Election he advised Cllr Fox that he would recommend to Monarch that he be given financial support. Cllr Fox told the Tribunal that in contemplation of running for the General Election he wrote to Monarch for financial support and believed he had done so at Mr Lynn's suggestion. No such letter has been located by the Tribunal in the discovered Monarch's records.

28.19 Cllr Fox was not selected by the Fianna Fáil convention as a candidate for either the General or Seanad Elections 1992/3.[41] Cllr Fox told the Tribunal that while he had decided to stand in the General Election in 1992 he failed to get a party nomination for either the Dáil or Seanad.

28.20 Despite this, on 29 January 1993, some two months or so after the Dáil election in which Cllr Fox failed to secure a nomination, Monarch contributed IR£1,000 to Cllr Fox, a sum matching that paid by Monarch to 7 politicians who were in fact candidates in the 1992 General Election. Cllr Fox acknowledged that this payment of IR£1,000 in early 1993 was at that time the largest contribution ever received by him at election time.

28.21 The Tribunal believed that this payment was made to Cllr Fox on this occasion to ensure his support for Monarch's zoning plans for Cherrywood.

THE PAYMENT OF IR£280 ON 14 JUNE 1996

28.22 Monarch's records indicated that it paid a cheque for IR£280 to Cllr Fox on 14 June 1996, and that its stated purpose was '*golf fundraiser*'.

28.23 Cllr Fox acknowledged that he solicited this payment from Monarch.

[40] Monarch records indicated that a cheque for IR£1,000 was paid to Cllr Fox on 29 January 1993 with its purpose being described as *'general election 1992.'*

[41] The 1992 General Election commenced with the Dáil election which was called on 5 November and which was held on 25 November 1992 and concluded with the Seanad Election for which polling took place between 18 January and 1 February 1993.

THE PAYMENT OF IR£280 ON 13 FEBRUARY 1997

28.24 Monarch's records indicated that it paid a cheque for IR£280 to Cllr Fox on 13 February 1997, with its purpose stated as '*golf outing*'. Cllr Fox acknowledged that he solicited this payment from Monarch.

CLLR FOX'S VOTING RECORD

28.25 There was no record of Cllr Fox having voted on the McDonald/Coffey motion[42] at the special meeting of Dublin County Council held on 6 December 1990.

28.26 On 24 May 1991, Cllr Fox was recorded as voting against Option 1 (Map DP90/129A), a proposal that did not favour Monarch's rezoning ambitions. This map, as subsequently amended, went on statutory public display in the period September to December 1991.

28.27 On 27 May 1992, Cllr Fox voted in favour of adopting Map DP92/44 (the Manager's map), a proposal favourable to Monarch's interests. This motion was not successful. On the same date Cllr Fox voted against the successful Barrett/Dockrell motion which severely hampered Monarch's ambitions for increased-density residential zoning for its lands.

28.28 Cllr Fox supported the Monarch position at the special meeting of 11 November 1993 of Dublin County Council by voting in favour of increasing the residential density for Monarch's lands to 4 houses per acre, having earlier been lobbied by Mr Lynn and, the Tribunal was satisfied, by Mr Dunlop for this support.

28.29 On 5 May 1992 Cllr Fox signed and probably lodged a motion seeking to move the line of the SEM further west to facilitate a golf course. He did so at the request of Mr Lynn and Mr Lafferty of Monarch. Mr Lafferty had earlier brought Cllr Fox to view the proposed SEM line, on the ground.

28.30 While Monarch was not associated with the golf course, if this motion had succeeded, it would have significantly increased the area of its lands available for residential use. Cllr Fox agreed that if this motion had been successful, this would have been a favourable outcome for Monarch.

[42] See above.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO PAYMENTS TO CLLR FOX BY MONARCH

28.31 The Tribunal was satisfied that:

i. Cllr Tony Fox probably solicited (although not in writing) the payment of IR£1,000 from Monarch made in late January 1993, although he had not been a candidate in either the November 1992 General Election or the subsequent Seanad Election. His probable soliciting of the IR£1,000 payment in late 1992 arose in circumstances where some six months previously he had done Monarch's bidding by lodging a motion, the objective of which was to enhance Monarch's chances of having a greater portion of its lands rezoned. Cllr Fox, at both the time he solicited and received the payment was aware that he would, in his capacity as a councillor, be in the future required to consider the issue of rezoning of Cherrywood lands. In all the circumstances, this payment was corrupt.

ii. While Monarch's motivation in paying IR£600 to Cllr Fox at the time of the 1991 Local Elections was corrupt, in that it was intended to compromise the disinterested performance by Cllr Fox of his duties as a councillor, its acceptance by Cllr Fox was in the circumstances improper.

iii. The payments of IR£280 in June 1996, and IR£280 in February 1997 were probably perceived by both donor and recipient as *bona fide* political donations.

28.32 Cllr Fox received, in total, a payment of between IR£4,000 and IR£5,000 from Monarch and its agent Mr Dunlop over a period of two to three years.

ALLEGED PAYMENT TO CLLR COLM MCGRATH (FF) BY MR DUNLOP

28.33 Mr Dunlop told the Tribunal that he paid a sum of IR£2,000 in cash to Cllr Colm McGrath in return for his support for the Monarch proposals for the rezoning of the Cherrywood lands. Mr Dunlop stated that he paid Cllr McGrath this money following the 11 November 1993 vote, which had been supported by Cllr McGrath and many other councillors. It was Mr Dunlop's belief that he paid Cllr McGrath in or at either Cllr McGrath's Clondalkin office, the Royal Dublin Hotel on O'Connell Street, the Gresham Hotel on O'Connell Street, the environs of Dublin County Council, or the Green Isle Hotel in Clondalkin, Co. Dublin.

28.34 Mr Dunlop told the Tribunal that when he lobbied Cllr McGrath to support the rezoning of the Cherrywood lands, Cllr McGrath said to him *'fine, it'll cost you.'*

28.35 Mr Dunlop said that he then negotiated with Cllr McGrath, and eventually they agreed a payment of IR£2,000.

28.36 Cllr McGrath rejected Mr Dunlop's evidence that he had been paid IR£2,000 or that he had been paid in return for his support for the rezoning of the Cherrywood lands. He rejected the suggestion that he would ever have stated to Mr Dunlop that his support would come at a cost. He acknowledged being lobbied by Mr Dunlop, but he did not specifically recollect being lobbied by him in relation to Cherrywood, save on one occasion where he acknowledged to Mr Dunlop that he was supportive of Monarch's proposals. Cllr McGrath told the Tribunal that he never knew that Monarch had retained Mr Dunlop's services. He said that if he and Mr Dunlop did speak of Cherrywood, the discussion was of a general nature.

28.37 Cllr McGrath told the Tribunal that it was never *'clear'* to him that Mr Dunlop had been retained by Monarch. He described Mr Dunlop as *'hovering on the wings of it, seemed to be hovering on the background.'*

28.38 Cllr McGrath rejected Mr Dunlop's suggestion that he was a *'key figure'* within the County Council.

28.39 Cllr McGrath acknowledged that there was frequent contact between himself and Mr Dunlop in 1993. Telephone records maintained by Mr Dunlop's secretary suggested that he and Mr Dunlop were in regular telephone contact. For example, these records indicated 21 occasions between March and October 1993 when Cllr McGrath contacted Mr Dunlop's offices. Cllr McGrath did not suggest that any of these telephone records were forged, but would not confirm that any of them were accurate. He suggested that he was probably returning calls originally made to him by Mr Dunlop.

28.40 The Tribunal was satisfied that Cllr McGrath knew from shortly after Mr Dunlop's retention by Monarch in early March 1993 that Mr Dunlop had been so retained, and that Cllr McGrath was extensively lobbied by Mr Dunlop to support the rezoning of the Cherrywood lands.

28.41 The Tribunal rejected Cllr McGrath's evidence that he had had only a general discussion with Mr Dunlop about the rezoning of the Cherrywood lands.

28.42 The Tribunal was satisfied that Mr Dunlop did in fact pay Cllr McGrath a sum of IR£2,000 in cash after the special meeting of Dublin County Council on 11 November 1993, and that he did so in response to a request for payment by Cllr McGrath. The said payment was a corrupt payment.

PAYMENTS TO CLLR MCGRATH BY MONARCH

28.43 Monarch records discovered to the Tribunal revealed the following payments recorded as having been made to Cllr Colm McGrath:

- 5 June 1991: IR£600 Monarch recorded the purpose of this payment as *'local election expenses*'. Cllr McGrath told the Tribunal that he *'possibly'* solicited this payment.
- 17 November 1992: IR£500 Monarch recorded the purpose of this payment as *'general election expenses'*. Cllr McGrath told the Tribunal that this payment was sent to him *'probably'* in response to a fundraising brochure being sent to Monarch.
- 3 July 1996: IR£500 Monarch's records state the purpose of this payment as *'golf classic'.* On 4 May 1996, Cllr McGrath wrote a letter to Mr Philip Monahan, addressing him as '*Dear Philip'*, seeking a contribution to his General Election *'war chest'*. Cllr McGrath received a cheque for IR£500 on 3 July 1996. In his evidence to the Tribunal, Cllr McGrath stated his belief that he had only met Mr Monahan on one occasion.
- October 1996: IR£500 Monarch's records indicate that this payment was made on 3 October 1996. In the course of his evidence to the Tribunal, Cllr McGrath acknowledged receipt of this IR£500 from Monarch as a contribution towards a *'golf classic'* fundraising event.
- May 1999: IR£500. This payment was recorded by Monarch as being in respect of a *'golf classic'*. Local Elections were held on 10 June 1999.

28.44 While Cllr McGrath acknowledged receiving the donations from Monarch, he had no specific recollection of them. He believed that he probably solicited these payments. He denied any connection between any payments to him from Monarch and the support he had given its proposals up to December 1993.

28.45 In correspondence with the Tribunal, Cllr McGrath acknowledged that he had been lobbied *'on several occasions'* by Mr Lynn, and that he had contact with Mr Philip Reilly**.** He was unable to recollect any contact with Mr Monahan, Mr Sweeney or Mr Glennane.

28.46 In a letter to the Tribunal of 14 December 2000 in response to a request for information, before he gave sworn evidence, Cllr McGrath stated through his solicitor, that *'I received unconditional political donations . . . from . . . Monarch Limited. The . . . donations typically IR£500, were in cheque form and lodged to my bank account'* and *'Monarch Properties and/or Mr Richard Lynn supported my fundraisers with unconditional cheque donations which were lodged to my bank account.'*

28.47 In 1990 Cllr McGrath voted in favour of the successful McDonald/Coffey motion limiting development of the Carrickmines Valley to the east of the then proposed SEM line. On 24 May 1991 Cllr McGrath voted against Option 1—a motion that did not favour Monarch but was successful. In 1992 and 1993 Cllr McGrath voted in favour of motions which facilitated or supported the rezoning of Monarch's lands. On 27 May 1992, he seconded Cllr Lydon's motion in relation to Map DP92/44, which was a Council proposal favourable to Monarch's ambitions for the lands. Cllr McGrath had no recollection of what precisely prompted him to second the motion. He suggested that it may have been merely that he was sitting beside Cllr Lydon at the time, or it may have been out of common courtesy, or it may have been a desire to facilitate a debate on a proposal.

28.48 In his sworn evidence to the Tribunal, Cllr McGrath provided the following explanation:

> *'If a colleague had a motion before the floor and was proposing a motion, courtesy alone was enough reason . . . enough to second somebody's motion. Because without a seconder a motion doesn't fly and it falls. So common courtesy sometimes just was the reason why some people seconded motions. To get them on the floor for debate and then to be dealt with by the Council. So there may necessarily have been no motive or no reason behind sometimes seconding a motion. But I would be fairly confident in that case I was happy to second that motion because I supported it.'*

28.49 Cllr Lydon told the Tribunal that he believed Cllr McGrath *'just stood up and seconded it.'*

28.50 Cllr McGrath agreed that he had been lobbied by Mr Lynn and Mr Reilly to support the Cherrywood rezoning motion in the names of Cllrs Lydon and Hand. He accepted that prior to the 27 May 1992 meeting, he had discussed the proposal with *'various representatives from Monarch'*, and particularly with Mr Lynn and Mr Reilly. He said he had no recollection of being asked to support the Monarch proposal, but accepted that he may have discussed with Mr Reilly *'in general terms who might be likely to support it'*. Cllr McGrath voted in favour of the successful Marren/Coffey motion on 11 November 1993, resulting in increased density on Monarch's residentially zoned lands.

28.51 The Tribunal was satisfied that on those occasions when Cllr McGrath received cheque payments from Monarch, of IR£600 on 5 June 1991 and IR£500 on 17 November 1992, he was aware of Monarch's interest in the Cherrywood lands and of the fact that those lands were the subject of rezoning

proposals, and that motions to facilitate that end would come before the council of which he, Cllr McGrath, was a member, and that he would be called upon to exercise his vote in relation to such proposals. The fact that Cllr McGrath proceeded to participate in those votes, having solicited and received the aforementioned payments, was entirely inappropriate. Until January 1994, Cllr McGrath was in a position, by virtue of the casting of his vote, to assist Monarch in its rezoning ambitions for the Cherrywood lands. Thus his acceptance of payments, and the possibility of he, himself, having solicited the payments made to him in 1991 and 1992, compromised him in the required disinterested performance of his duties as a councillor in the making of a development plan.

28.52 While Monarch maintained that the payments it made to Cllr McGrath, and in particular the payments of IR£600 on 5 June 1991 and of IR£500 on 17 November 1992, were *bona fide* political contributions, the Tribunal was satisfied that this was not the case. The Tribunal believed that the purpose of these payments was to ensure and copper-fasten Cllr McGrath's support for Monarch's project to rezone its Cherrywood lands, and that accordingly Monarch's purpose in making these payments was corrupt.

PAYMENTS BY MONARCH EXCEEDING IR£3,000 TO CLLR TOM HAND (FG PAYMENTS TO CLLR HAND)

29.01 The Tribunal inquired into the involvement of Cllr Hand with Monarch, and more specifically his involvement in the Cherrywood project. It did so primarily because of the evidence that Monarch had paid him IR£5,000 in 1991 and IR£1,000 in 1992. These sums represented the largest payments to an identified councillor by Monarch in the period 1991/2.

THE PAYMENT OF IR£5,000 IN 1991

29.02 Records discovered to the Tribunal by Monarch revealed the payment of IR£5,000 to Cllr Hand on 30 May 1991. The records indicated the purpose of this payment to be *'local election expenses'.*

29.03 This payment represented by far the largest single payment of those Monarch made to 39 councillors between 30 May and 13 June 1991. The polling date for the Local Elections in 1991 was 27 June 1991. Only four councillors, besides Cllr Hand were favoured with cheques of four figures each receiving IR£1,000 each. The remaining 34 recipients were paid sums of less than IR£1,000.

29.04 Mr Sweeney suggested that the size of the IR£5,000 donation might have meant that it was intended for the Fine Gael Party, rather than for Cllr Hand himself. This was merely speculation on Mr Sweeney's part.

29.05 Mr Lynn also told the Tribunal that he had understood this payment was made on the basis that Cllr Hand intended to apportion the sum among Fine Gael Dublin County Council candidates in the Local Elections. Mr Lynn told the Tribunal that, when seeking a financial contribution from Monarch, Cllr Hand was *'acting . . . like . . . the election agent for all candidates and outgoing councillors for the local election. And he pulled the wool over my eyes very nicely'.* The Tribunal was not provided with any evidence to support Mr Lynn's contention that Monarch in fact understood that Cllr Hand intended to share the IR£5,000 payment with fellow Fine Gael candidates, or that Cllr Hand did in fact distribute any portion of this sum.

29.06 The Tribunal was satisfied that Mr Lynn did not, contrary to what he stated in evidence, believe or understand that Cllr Hand intended to use Monarch's payment to him of IR£5,000 to benefit fellow Fine Gael County Council Local Election candidates. There was no evidence to suggest that Cllr Hand in fact disbursed anything from this fund to colleagues and the Tribunal was satisfied that no such disbursement occurred.

29.07 In a letter to the Tribunal dated 22 June 2000, Monarch's solicitors stated that the payment to Cllr Hand was a *'total contribution'* to Fine Gael in the Dún Laoghaire-Rathdown area.

29.08 It was noteworthy that the Monarch records clearly identified the payment of IR£5,000 as a payment to Cllr Hand alone for his election expenses. Furthermore, the records indicated that seven Fine Gael Local Election candidates (excluding Cllr Hand) were identified as also receiving individual payments, ranging from IR£300 to IR£600, including a payment of IR£50 to Fine Gael candidate Cllr Ridge. In those circumstances the Tribunal rejected Monarch's explanations, as provided to the Tribunal in correspondence and in evidence, for the provision of IR£5,000 to Cllr Hand.

29.09 Monarch did not seek a receipt or receive acknowledgement from Cllr Hand following the payment of IR£5,000.

29.10 The Tribunal was satisfied that the payment of IR£5,000 was paid by cheque to Cllr Hand and was intended solely for his use.

THE PAYMENT OF IR£1,000 IN 1992

29.11 Monarch records indicated that a cheque for IR£1,000 was paid to Cllr Hand on 28 February 1992. The purpose of this payment was stated in the Monarch books to be '*fundraiser'.*

29.12 This payment to Cllr Hand had some interesting features. He was the only councillor paid anything in the first seven months of 1992. Individual payments to other councillors/candidates in the General Election held on 25 November 1992 (and the Seanad Election of early 1993) did not begin until 20 October 1992. In total, 26 councillors/candidates were paid. The great majority were paid sums of IR£1,000 or less.

29.13 No explanation was provided to the Tribunal as to why a decision was made to benefit Cllr Hand to the extent of IR£1,000 on 28 February 1992, at a time when no election was underway, or was even expected, other than Mr Sweeney's suggestion that payments to councillors, while normally made at election time, could also be made at other times, and that in most cases Monarch would make a donation if requested. Mr Sweeney could not recall a single instance when such a request was refused. It was noteworthy that the IR£1,000 payment was made to Cllr Hand some three months prior to his signing a motion (together with Cllr Lydon) seeking the rezoning of the Cherrywood lands.

THE LYDON/HAND MOTION 27 MAY 1992

29.14 At a special sitting of Dublin County Council held on 27 May 1992, one of the motions lodged with the Council (on 4 May 1992) was in the names of Cllrs Lydon and Hand. That motion sought to rezone the bulk of the Monarch lands in Cherrywood for residential purposes at a density of 4 houses per acre, and to provide for retail and hotel development in a smaller portion of the lands. This motion was withdrawn by Cllr Lydon following consultation between himself and Mr Lynn.

29.15 The Tribunal was satisfied that Cllr Hand knew, both on the occasion in 1991 when he was paid IR£5,000 and the occasion in 1992 when he was paid IR£1,000 by Monarch, that Monarch had an interest in lands which were the subject of rezoning proposals which had come, or were likely to come, before the County Council of which he, Cllr Hand was a member, and that he would be called upon to vote on those proposals. The acceptance by Cllr Hand of sums of IR£5,000 and IR£1,000 in 1991 and 1992 respectively compromised the requirement that he discharge his duties as an elected representative in a disinterested manner. The scale of the payment made by Monarch to Cllr Hand in 1991 can only be regarded as extraordinarily large, particularly when compared

to the amounts other Local Election candidates received. While the Tribunal has rejected Mr Lynn's evidence that the provision of IR£5,000 to Cllr Hand was intended for disbursement among local Fine Gael election candidates (including Cllr Hand), it was satisfied, given the general thrust of Mr Lynn's evidence, that a discussion took place between them prior to the provision of the IR£5,000. It was therefore probable that Cllr Hand sought this amount of money, and that his request was readily acceded to by Monarch. The Tribunal was also satisfied that when seeking such a large payment Cllr Hand was aware of Monarch's rezoning ambitions for its lands. The Tribunal has already found that Monarch's motive in making such payments to Cllr Hand in 1991 was corrupt.

29.16 Although the Tribunal did not identify evidence sufficient to link the payments to Cllr Hand totalling IR£6,000 specifically to any particular agreement by him to support County Council motions relating to Cherrywood, it was satisfied, on the balance of probability, that Monarch, in making these payments to Cllr Hand in 1991/2, and Cllr Hand in receiving those payments did so expressly or by implication on the understanding that Cllr Hand would provide that support. As such, the payments were corrupt.

PAYMENTS BY MONARCH EXCEEDING IR£3,000 TO CLLRS G. V. WRIGHT (FF) AND DON LYDON (FF)

PAYMENTS TO CLLR WRIGHT

30.01 Cllr Wright was an elected councillor in Dublin County Council from 1985 to the end of 1993, and from the beginning of 1994 was a member of the newly established Fingal County Council. Cllr Wright acknowledged that he was the '*whip'* of the Fianna Fáil councillor group in Dublin County Council from June 1991 to December 1993, and he was also the whip and leader of the Fianna Fáil group in the Senate from 1991.

30.02 Records disclosed to the Tribunal by Monarch indicated that Cllr G. V. Wright received a total of IR£3,300 in three payments from Monarch in the period 1991/2. These were:

- IR£300 on 13 June 1991, stated in Monarch's records to be in respect of '*local election expenses'.*
- IR£1,000 on 17 November 1992, stated in Monarch's records to be in respect of '*Gen. election expenses'.*
- IR£2,000 on 16 December 1992, stated in Monarch's records to be in respect of *'Senate election expenses'*.

30.03 Elections took place in or around the payment dates as indicated above and Cllr Wright was a candidate in those elections.

30.04 In his written statement to the Tribunal on 17 November 2004, Cllr Wright stated that he had received IR£1,000[43] from Monarch. He provided similar information to the Fianna Fáil internal inquiry of 2000. Subsequently, in a further written statement to the Tribunal dated 2006, Cllr Wright commented on the disclosure to the Tribunal by Mr Monahan/Monarch of payments to him of IR£300 in 1991 and of IR£1,000 and IR£2,000 in 1992, a total of IR£3,300. In that statement, Cllr Wright maintained that he had no recollection of the IR£300 and the IR£2,000 payments, but he accepted that he had received them, suggesting that they may have been sent by post to his constituency office in Malahide, and lodged to his bank account by a member of his staff. The implication was that these two payments had been received in Cllr Wright's constituency office, and a staff member had lodged them unknown to him.

30.05 Cllr Wright described his accounts into which political donations were lodged as quasi-political accounts from which expenses associated with his political work were then discharged.

30.06 In his sworn evidence to the Tribunal, Cllr Wright acknowledged that he recalled the IR£2,000 payment in December 1992, but believed he was out of his constituency office on the day of its arrival.

30.07 Cllr Wright did not believe that he had solicited any of the three payments. In relation to the 1991 IR£300 payment he told the Tribunal '*I have no record of any request'*.

30.08 Cllr Wright supported Monarch's proposals on those occasions when issues relating to them came before the Council. In particular, Cllr Wright supported the proposals favouring Monarch's interests at the special meeting of Dublin County Council on 27 May 1992 and voted against proposals which were in opposition to those interests. He likewise supported Monarch at the special meeting of 11 November 1993.

30.09 Cllr Wright told the Tribunal that he had been pro development, and that his support for Monarch's proposals was consistent with his approach to rezoning proposals coming before the Council in relation to other, non Monarch, lands. In particular, Cllr Wright told the Tribunal that he favoured development which included a residential component, and would provide employment.

30.10 Cllr Wright acknowledged that he had been lobbied by Mr Monahan, Mr Lynn and Mr Murray of Monarch. Mr Lynn had done most of the lobbying. The

[43] Mistakenly referred to as euros in Cllr Wright's statement.

latter's expenses claim forms submitted to Monarch referenced his meetings with Cllr Wright (and with other councillors), meetings which continued even after the break-up of Dublin County Council in January 1994. Cllr Wright stated that Mr Murray was also a local political supporter in his Malahide constituency. He recalled one occasion when he was visited by Mr Lynn in his Malahide constituency office.

30.11 The Tribunal did not accept Cllr Wright's 2004 contention that he had a recollection of having received only one payment from Monarch, namely IR£1,000. Furthermore, the Tribunal rejected Cllr Wright's position, as stated by him to the Tribunal in 2006, that, while acknowledging receipt of the three Monarch payments totalling IR£3,300, he still had no recollection of the receipt of the IR£300 payment in 1991 or the IR£2,000 payment in December 1992.

30.12 The Tribunal did not believe it to be credible that Cllr Wright did not at that time recollect the three payments from Monarch.

30.13 The acceptance of such donations by Cllr Wright compromised the required disinterested performance of his duties as a councillor in the making of the Development Plan, particularly in circumstances where, at least from May 1992, he could have been in no doubt about Monarch's rezoning ambitions for its lands.

30.14 The Tribunal was satisfied that Monarch's payments to Cllr Wright, totalling IR£3,300 within an 18-month period, were not *bona fide* political contributions, particularly having regard to the substantial total sum involved. On the contrary, the payments were part of a systematic financial assault by Monarch on elected councillors/candidates, designed to secure support and favouritism in respect of proposals coming before the Council seeking the rezoning of Monarch's lands in Cherrywood, or proposals which, if successful, would facilitate the rezoning of its lands. As such, the payments, from Monarch's perspective, were corrupt.

PAYMENTS TO CLLR DON LYDON (FF)

30.15 Cllr Lydon was an elected member of Dublin County Council between 1985 and the end of 1993. He was a councillor in Dún Laoghaire-Rathdown County Council from January 1994. He represented the Stillorgan ward, an area adjacent to the Cherrywood lands.

30.16 Monarch records disclosed to the Tribunal indicated that Monarch paid a total of IR£3,100 to Cllr Lydon in 1991 and 1992, as follows:

- IR£600 on 5 June 1991, stated in Monarch's books to be for *'local election expenses.'*
- IR£2,500 on 16 December 1992, stated in Monarch's books to be for *'Seanad election expenses.'*

30.17 Local Elections were held in June 1991, and a Seanad Election was held in early January 1993.

30.18 Dublin County Council records to the period ending 31 December 1993 indicated that on 24 May 1991 Cllr Lydon voted against Option 1.[44] Option 1 did not favour Monarch, and was adopted by a majority vote.

30.19 Cllr Lydon had a specific involvement with two motions listed for the special meeting of Dublin County Council on 27 May 1992. The first motion (the Lydon/McGrath motion) was lost by a margin of two votes, and the second (the Lydon/Hand motion) was withdrawn by Cllr Lydon. The second motion[45] was lodged with the County Council on 4 May 1992, having been signed by Cllr Lydon and Cllr Tom Hand.

30.20 Mr Lynn told the Tribunal that he had drafted this motion, following consultation with Cllr Lydon, and possibly also Cllr Hand.

30.21 Mr Lynn also told the Tribunal that he had prepared a '*position paper'* outlining arguments in favour of the proposal, and that this was distributed to most councillors, including, probably, Cllr Lydon who was to propose the Lydon/Hand motion. Mr Lynn said that he provided Cllr Lydon with the information which enabled him to take the issue to the floor of the chamber.

30.22 The withdrawal of the Lydon/Hand motion from the meeting on 27 May 1992 took place following a conversation between Cllr Lydon and Mr Lynn, immediately outside the Council chamber, after Cllr Lydon had beckoned Mr Lynn to leave his seat in the public gallery to discuss the matter with him.

30.23 Following the defeat of the Lydon/McGrath motion, and the withdrawal of the Lydon/Hand motion, two further motions were passed that day, one proposed by Cllr Gilmore and the other proposed by Cllr Seán Barrett.

[44] See section on Cllr Lydon.

[45] The motion in the names of Cllrs Lydon and Hand sought to rezone the bulk of Monarch lands in Cherrywood for residential purposes at a density of 4 houses per acre, and to provide for retail and hotel development in a smaller portion of the lands.

30.24 On 14 November 1994 a motion listed before a special meeting of Dún Laoghaire-Rathdown County Council was signed by Cllrs Conroy, Lydon and Liam T. Cosgrave. That motion proposed the creation of a science and technology park on a portion of Monarch's lands. Mr Lynn told the Tribunal that he drafted this motion and obtained the signatures of the three councillors. Cllr Conroy believed he signed the motion at the request of a fellow councillor, and not by anyone associated with Monarch.

30.25 Cllr Lydon acknowledged that he had been lobbied by Monarch over a number of years, and particularly in 1992. Cllr Lydon told the Tribunal that he knew Mr Lynn very well, and met him *'often'*. Mr Lynn described himself as having been close to Cllrs Lydon and Hand and said that both gave him plenty of their time which he found to have been *'invaluable'*. Cllr Lydon said he also knew Mr Sweeney of Monarch, and had discussed the science and technology park proposal with him. Cllr Lydon said he did not recollect being lobbied by Mr Philip Reilly of Monarch, whom he had met on a number of occasions, but acknowledged that he knew Mr Reilly was lobbying for Monarch, and that Mr Reilly had mentioned the Monarch lands to him.

30.26 Cllr Lydon acknowledged receiving the sums of IR£600 in June 1991 and IR£2,500 in December 1992 from Monarch. This latter payment was the largest single payment made by Monarch to an identified councillor in 1992, out of a total of 26 individual payments to identified councillors in relation to the Dáil and Seanad Elections in late 1992/early 1993.

30.27 Cllr Lydon, in his evidence to the Tribunal, tended to minimise the level of contact between himself and Mr Lynn. He told the Tribunal:

> *'Well I doubt if you would believe this but I hardly ever discussed Cherrywood with him (Mr Lynn). It was mostly just a bit of – I like meeting him because he was a bit of craic and after a few minutes with him, you were laughing. He was a very sociable man and after meetings, he would buy drinks or meals or food for anybody irrespective of Party or creed or anything else.'*

And

> *'I am sure he mentioned Cherrywood and naturally from time to time but – I would be supportive of Cherrywood, I wanted to see development in that area from way back because it wasn't a matter that if it was going to be developed, it was only a matter of when. The whole area from Stepaside down through Sandyford, Ballyogan, Carrickmines, down to Cherrywood, down to Druids Glen had to be built on.'*

And

'No, he probably asked me early on and I would say yes, I am very supportive of it and he'd probably leave it at that, he wouldn't keep asking you.'

30.28 The Tribunal heard other evidence indicating significant and frequent level of contact between Cllr Lydon and representatives of Monarch (for example, an invoice dated 29 February 1992 provided to Monarch by Mr Bill O'Herlihy, Monarch's PR representative, referred to, *inter alia*, a two-hour meeting between Monarch and Cllr Lydon on 11 February 1992). Cllr Lydon doubted that he had ever met anyone for as long as two hours. He did, however, accept that he met Mr O'Herlihy in relation to Monarch in February 1992.

30.29 Cllr Lydon told the Tribunal that Mr Lynn asked him to sign and propose the Lydon/Hand motion for the special meeting of Dublin County Council on 27 May 1992. He agreed to do so on the basis that the proposal to zone land for a district centre be changed to a neighbourhood centre, with provision for a hotel development. He did so because he was conscious that there was concern within the community that a very large retail development in Cherrywood might damage Dún Laoghaire shops. Cllr Lydon told the Tribunal that he believed Mr Lynn had chosen him to sign and propose the motion because of his, Mr Lynn's, belief that a councillor more closely associated with the Dún Laoghaire area would not wish to support the proposal because of potential local opposition to it. Cllr Lydon said that he signed and proposed the motion because it was, in his opinion, a *'good development.'*

30.30 Cllr Lydon said that as a matter of courtesy he had informed Mr Lynn of his intention to withdraw the Lydon/Hand motion on 27 May 1992. It was his view that it was pointless to proceed with that motion in the face of the defeat of the Manager's proposed motion (the Lydon/McGrath motion).

30.31 Mr Lynn opined that there was a conflict between the two motions, and that Cllr Barrett's motion should not have proceeded once Cllr Gilmore's had passed. Cllr Lydon had subsequently raised this technical or procedural issue at a later meeting in an unsuccessful attempt to reopen the matter. This was done at Mr Lynn's request.

30.32 While Cllr Lydon acknowledged raising at a subsequent councillors' meeting the procedural/technical issue following the passing of the Gilmore/Barrett motions on 27 May 1992, and that Mr Lynn had requested him to do so, he maintained that it was his intention to do so in any event. Cllr Lydon dismissed as *'cheeky'* the contention, in a letter written to GRE by Mr Lynn on

behalf of Monarch on 17 June 1992, that the Gilmore/Barrett procedural issue had been raised by Cllr Lydon 'on our behalf'.

30.33 The Tribunal was satisfied that Cllr Lydon was viewed by Monarch as an important councillor, particularly in 1992/3, in the context of its proposals to rezone their lands in Cherrywood, and that Cllr Lydon facilitated Monarch at crucial stages within that period and when requested to do so by Monarch.

30.34 The receipt by Cllr Lydon of sums totalling IR£3,100 from Monarch (whether or not they were solicited by him) within an 18-month period in 1991/2, in circumstances where he knew that lands in which Monarch had an interest were to be the subject of proposals coming before Dublin County Council facilitating or seeking the rezoning of those lands for development, and in respect of which Cllr Lydon would be called upon to exercise his vote, compromised the requirement incumbent on Cllr Lydon that he exercise his functions as an elected representative in a disinterested fashion. The acceptance by him of a sum of IR£2,500 in December 1992, in the wake of the role he played as an active promoter of Monarch's interests within the Council (by virtue of his actions in May 1992 in both signing and promoting motions supportive of Monarch), strongly indicated the extent of Cllr Lydon's abuse of his role and duty as an elected representative in the course of the review of the Development Plan.

30.35 The Tribunal rejected Monarch's contention that the payments of IR£600 in June 1991 and IR£2,500 in December 1992 were bona fide political contributions whether or not one or both had been solicited. Monarch's primary purpose in making the payments was to ensure Cllr Lydon's support for its proposals relating to the Cherrywood lands and to ensure that he would do their bidding in that regard. As such, the said payments were made with a corrupt intention.

THE INVOLVEMENT OF MR RICHARD LYNN

31.01 Mr Richard Lynn took up employment with Monarch in 1989. Previously, he had been the Town Clerk in Dundalk, Co. Louth and while in that position became known to Mr Philip Monahan. Mr Monahan/Monarch were the developers involved in the Dundalk shopping centre.

31.02 Mr Lynn was engaged by Monarch at the time it was purchasing the Cherrywood lands and was appointed project coordinator. He was retained specifically to promote the Cherrywood rezoning project in the review of the 1983

Dublin Development Plan. Mr Lynn left Monarch in 1997 when the Cherrywood lands were sold to Dunloe Ewart.

31.03 Mr Lynn forged links with a number of elected county councillors (particularly Cllrs Lydon and Hand) in Dublin County Council, and with Council officials. He engaged in regular and frequent lobbying of councillors designed to persuade them (or a significant number of them) of the merits of the various proposals that would come before them by way of motions in the course of the review of the Dublin County Development Plan. The practice of lobbying councillors in the absence of payment (or expectation of payments) was itself legitimate, and generally provided developers, landowners and other interested groups with a means of informing elected county councillors and officials about issues relevant to zoning and planning.

31.04 However, the Tribunal was satisfied that in the course of his extensive lobbying activities, Mr Lynn tapped into the very considerable financial resources made available to him by Monarch and used them to influence many of the elected councillors to promote and support Monarch's ambition to rezone as much of its landbank at Cherrywood as possible. The emphasis was on residential development, and increasing the density of housing to the greatest possible extent.

31.05 The Tribunal was satisfied that Mr Lynn masterminded the Monarch strategy of making generous payments of money to large numbers of councillors at election time for the purposes of ensuring their support for the Monarch project to rezone its Cherrywood lands. Moreover the Tribunal was satisfied that Mr Lynn was instrumental in the disbursement of cash payments to certain unidentified councillors, which were funded from the substantial cash withdrawals made from accounts associated with Monarch in the years 1992 to 1996. These payments were disbursed while Monarch's campaign to rezone its lands was ongoing and were part of Monarch's corrupt campaign to inundate councillors with generous cash payments either on the basis of their express agreement to support that campaign within the County Council, or on the expectation that they would do so. Such payments were a cynical and corrupt attempt to compromise the disinterested performance of the duties of elected representatives.

31.06 As previously stated, the Tribunal considered that this blatant use of money constituted an abuse of the democratic system in that it enabled Monarch to seek to influence the voting patterns of elected councillors while exercising their public duty to make decisions in the course of the review of the Dublin County Development Plan. More particularly, the Tribunal considered that

it was a means of influencing or persuading significant numbers of elected councillors to support rezoning proposals favouring the Cherrywood lands and, in consequence enormously increasing the monetary value of those lands.

THE INVOLVEMENT OF MR PAUL MONAHAN

32.01 Mr Paul Monahan is the late Mr Philip Mohahan's son. He was appointed managing director of Monarch Properties in 2001. Between that date and August 2003 approximately, he gradually took over the management of the Monarch Group.

32.02 Mr Monahan told the Tribunal that he did not discuss details of Monarch's business with his father prior to his death on 3 August 2003, even during the period when his father knew himself to be terminally ill. Mr Monahan informed the Tribunal that as a result he was not in a position to assist the Tribunal in relation to the Monarch group's activities associated with the Cherrywood lands in the early 1990s.

32.03 The Tribunal believed it likely that Mr Paul Monahan knew significantly more about the events of the early 1990s than he suggested.

CLLR SEÁN BARRETT (FG) AND MR MICHAEL SMITH

33.01 Cllr Seán Barrett was a Fine Gael councillor for County Dublin between June 1974 and November 1982, and between June 1991 and December 1993. He was an elected Dún Laoghaire-Rathdown councillor between January 1994 and November 1994. Cllr Barrett was appointed a Government minister in 1994. He was an opponent of the proposals to rezone the Cherrywood lands and particularly opposed residential development for the lands which exceeded 1 house per acre.

33.02 Cllr Barrett's opposition to the Monarch proposals was known in the early 1990s.[46] It was known to his fellow elected councillors, to the Monarch executives and to the public relations consultant, Mr Bill O'Herlihy who had been engaged by Monarch in late 1991 to lobby elected councillors to support the Monarch proposals, and in particular Fine Gael councillors including Cllr Barrett.

33.03 Mr Michael Smith was an environmental activist in the early 1990s. He was a known opponent of Monarch's plans to rezone and develop the Cherrywood lands. He, with a friend and fellow barrister, Mr Colm Mac Eochaidh,

[46] At least from early 1991/2.

was responsible for advertising[47] through a firm of Newry solicitors on 3 July 1995 for information relating to corruption in the planning system in Ireland, which was indirectly instrumental in the 1997 Oireachtas decision to establish this Tribunal of Inquiry.

33.04 Cllr Barrett described how, in the course of his weekly advice clinic, he was approached by a man whom he was unable to identify, and never met again. This man offered him IR£80,000 approximately to act in a professional consultancy basis promoting a swapping of lands in Cherrywood, owned by Monarch, with other lands in the Killiney/Dún Laoghaire area which in turn would be the subject of development.

33.05 Cllr Barrett rejected the approach, and emphasised to the man that he would oppose the suggested development of the Killiney/Dún Laoghaire lands. Cllr Barrett's memory of this event was vague but he was certain that it had occurred, and he clearly viewed it with disquiet.

33.06 Cllr Barrett told the Tribunal that following this event, he was the subject of newspaper articles some of which suggested or hinted that he had accepted a large sum of money in return for persuading Fine Gael councillor colleagues to vote in favour of the Monarch plans for the Cherrywood lands, while he continued himself to oppose it.

33.07 Cllr Barrett roundly denied that he had engaged in any such activity. He was adamant that his opposition to the Monarch plans for the development of Cherrywood was genuine and consistent, while at the same time emphasising that he *'had no objection to ultimately development taking place in this particular area . . . at a later stage when there would be proper debate and discussion through the local council, i.e. Dún Laoghaire-Rathdown County Council.'*

33.08 Cllr Barrett acknowledged that he received a payment of IR£600 from Monarch on 5 June 1991, which he said was unsolicited. Monarch's cheque payments book identified this payment as a donation towards Cllr Barrett's Local Election expenses. Cllr Barrett told the Tribunal that this donation was not used by him personally, and was handed over to the local Fine Gael Party organisation.

33.09 Monarch cheque payments book also identified a IR£500 donation paid to Cllr Barrett on 19 November 1992 in relation to the General Election which was held at that time. Cllr Barrett had no recollection of this donation, and the

[47] *The Irish Times* and the *Irish Independent* editions of 3 July 1995.

Monarch cheque had on its reverse side a bank account number which Cllr Barrett did not recognise. It was therefore possible that Cllr Barrett never received this payment, and remained unaware of it until it was disclosed in the course of the Tribunal's inquiries.

33.10 Mr Michael Smith described an incident which occurred in 1992 at a time when he was actively protesting against Monarch's development plans for Cherrywood. He told the Tribunal that he was approached by Mr Philip Monahan and became involved in a heated exchange of words with him. Mr Smith stated that Mr Monahan alleged to him that Cllr Barrett was being paid money by Monarch in return for ensuring that Fine Gael councillors would support the Monarch proposals for Cherrywood, while he would continue his personal opposition to it. Mr Smith said that Mr Monahan also alleged that he had placed his bloodstock insurance business with Cllr Barrett.

33.11 Mr Smith acknowledged that he repeated this allegation to various individuals, including a constituency colleague of Cllr Barrett. He also told *Phoenix Magazine* which, while not publishing details of the allegation of money being paid to Cllr Barrett by Monarch, did publish the allegation that Mr Monahan's bloodstock business had been placed with Cllr Barrett.

33.12 Cllr Barrett told the Tribunal that none of Mr Monahan's insurance business had been placed with him at any time. Cllr Barrett also told the Tribunal that, at the time, because of his full-time involvement in politics, he was not involved in the day-to-day running of his insurance business.

33.13 The Tribunal accepted Mr Smith's evidence that in the course of a heated exchange of words with Mr Monahan in 1992, Mr Monahan made serious allegations against Cllr Barrett to the effect that Monarch had paid, or was paying, money to Cllr Barrett to ensure Fine Gael councillor support for the Monarch proposals to develop the Cherrywood lands, and that Mr Monahan had favoured Cllr Barrett with his bloodstock insurance business. The Tribunal was, however, satisfied that neither allegation was true.

33.14 The Tribunal was satisfied that Cllr Barrett at the material time was a genuine opponent of Monarch's plans to develop the Cherrywood lands, and that he did not seek to persuade or influence his fellow Fine Gael councillors to support those plans in any way.

CHAPTER THREE – THE CHERRYWOOD MODULE

EXHIBITS

1. Dublin County Council Draft Development Plan Map 1990 DP90/123..... 1632

2. Monarch Property Services YTD (Year to date) General Ledger Report Fiscal Year '92 showing posting of the expenditure of IR£23,450..... 1633

3. Cherrywood Properties Ltd Draft Development Plan Cash Flow Projections showing *inter alia* 'Strategy Consultancy Fees' of IR£22,150 up to April '92, IR£10,000 for May and £50,000 for June totalling IR£82,150 together with councillor list showing breakdown of IR£22,150..... 1638

4. Motion and accompanying map proposing zoning of Cherrywood lands signed by Cllr Lydon and Cllr Hand, received within the Council on 4 May 1992..... 1640

5. (i) Monarch Property Services Ltd 'Payments Cash Book' recording 'Cash' payment of IR£3,000 on 5 May 1992, (ii) manuscript note entitled '*Cherrywood Costs May '92'* showing the word '*Strategy*' beside Cash IR£3,000, (iii) Monarch Property Services YTD (Year to date) General Ledger Report Fiscal Year '93 showing IR£3,000 posted to 'Promotions' a/c and (iv) Monarch Property Services Ltd bank statement in respect of a current account held at Clanbrassil Street branch AIB Bank showing debit of IR£3,000..... 1642

6. Letter dated 18 November 1992 from Mr Philip Monahan to Mr Albert Reynolds TD, Taoiseach, enclosing IR£5,000 contribution to the '*general expenses of your party for this General Election'*..... 1646

7. Letter dated 13 July 1993 from Mr Edward Sweeney to Mr Martyn Baker, Managing Director, GRE Properties Ltd..... 1647

8. Saatchi & Saatchi Advertising Ltd invoice for IR£30,250 to Monarch Properties dated 24 February 1994..... 1649

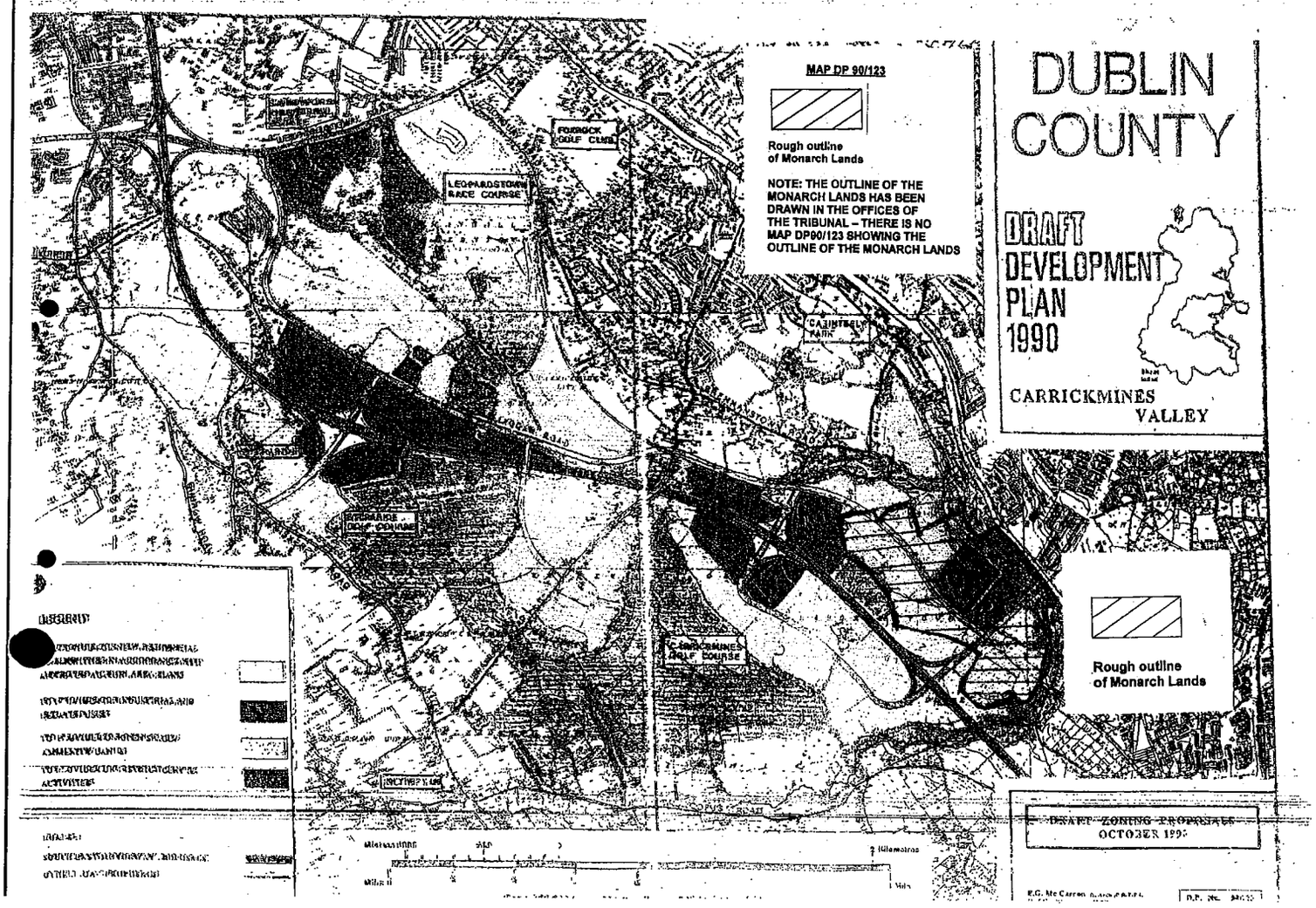
9. Monarch Properties Ltd cheque and reverse of cheque to Frank Dunlop & Associates dated 26 May 1993 in the sum of IR£10,000..... 1650

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13. Letter dated 22 June 2000 to Tribunal from Noel Smyth & Partners, solicitors for Monarch, setting out list of donations to elected representatives and officials together with accompanying schedules..... 1654



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Monarch Property Services

YTD General Ledger Report

Fiscal Year 92

CLD Page: 386

Control	Description	Jrnl	Trx	Trx Date	Mo/Yr	Ref	Rev Adj	Supplier	Curr	Debit Amt.	Credit Amt
V56 00924	Pay #8 Cert #660	APIV	0011	27/01/92	09 92	5801	5801	2010199		3017.86	
								3017.86		3017.86	
								ACCOUNT TOTAL		3017.86	
Account 66601 201 Computer Consultancy;								Opening Bal		200.00	0.00
V56 00487	Lotus Dis WP SC Billing	APIV	0024	28/05/91	01 92	3440	3440	2010282		200.00	
V56 00561	VAT Software Modification	APIV	0011	30/07/91	03 92	3993	3993	2010282		150.00	
MKF 00698	Change to G/L/ Salaries	APIV	0009	25/06/91	04 92	4394	4394	2010282		300.00	
MKF 00698	Modification Dunning Letters	APIV	0010	30/07/91	04 92	4395	4395	2010282		300.00	
MKF 00698	Software Service	APIV	0011	29/08/91	04 92	4396	4396	2010282		218.75	
V56 00694	Sales S/tem, Rapid Inv Entry	APIV	0023	27/09/91	05 92	4683	4683	2010282		1650.00	
V56 00694	G/L Inquiry OB Monthly M/ments	APIV	0024	27/09/91	05 92	4684	4684	2010282		450.00	
V56 00739	Trf Multigroup Database	APIV	0026	31/10/91	06 92	4953	4953	2010282		1800.00	
V56 00739	Software M/ance 011191-310192	APIV	0027	31/10/91	06 92	4954	4954	2010282		218.75	
V56 90094	M/ance Charges @ 011290-200291	IO91	0005	31/10/91	06 92	1091	0	0		840.25	
MKF 00784	Cr Re Inv 210568	APIV	0010	21/06/91	06 92	4965	4965	2010282			2340.00-
MKF 00784	M/Ance Chg 01/09/91-30/11/91	APIV	0011	17/10/91	06 92	4966	4966	2010282		3192.00	
MKF 00784	M/ance Chg 01/09/91 - 310591	APIV	0012	24/07/91	06 92	4967	4967	2010282		3192.00	
MKF 00784	M ance Chg 01/06/91 31/08/91	APIV	0013	24/07/91	06 92	4968	4968	2010282		3192.00	
MKF 00784	M Ance 1/05/90	APIV	0014	31/08/90	06 92	4969	4969	2010282		218.75	
MKF 00784	M Ance Chg 01/12/90 280291	APIV	0015	31/12/90	06 92	4970	4970	2010282		218.75	
V56 00830	Relocation of Workstation	APIV	0001	30/11/91	07 92	5199	5199	2010282		25.00	
V56 00830	Move Dis System to Dlk S.C.	APIV	0006	30/11/91	07 92	5204	5204	2010282		150.00	
V56 00830	Moving of PC	APIV	0007	30/11/91	07 92	5205	5205	2010282		25.00	
V56 00830	Diff between Inv & S/ment Amt	APIV	0009	31/08/90	07 92	5207	5207	2010282			10.50-
V56 00830	Diff between Inv & S/ment Amt	APIV	0010	31/08/90	07 92	5208	5208	2010282			3.50-
V56 00830	S/ware Contract June 91-Aug 91	APIV	0011	30/05/91	07 92	5209	5209	2010282		218.75	
V56 00868	Repair Printer - 081091	APIV	0010	19/12/91	08 92	5449	5449	2010282		25.00	
V56 00901	Software M/ance Chg 0192-1292	APIV	0041	31/01/92	09 92	5704	5704	2010282		1180.00	
MKF 01009	Contract 01.03.92 -310592	APIV	0048	26/02/92	10 92	6041	6041	2010282		218.75	
MKF 01042	Bad Depts Cust Database	APIV	0008	31/03/92	12 92	6384	6384	2010282		1400.00	
V56 01002	Wang M/ance Chgs	ARIV	0001	30/04/92	12 92	1026	1826	0			2062.50-
MKF 01114	Moving Screen From Dis to V5	APIV	0023	29/04/92	12 92	6691	6691	2010282		25.00	
MKF 01141	Cr Re Inv 404859+ 404860	APIV	0022	29/04/92	12 92	6721	6721	2010282			214.99-
MKF 01141	Cr Re Inv 404859 404860	APIV	0022	29/04/92	12 92	6721	6721	2010282			25.00-
								14952.26		19408.75	4656.49-
								ACCOUNT TOTAL		14752.26	
Account 66611 201 Time Sheet Package;								Opening Bal		0.00	0.00
V56 00863	Software Support	APIV	0016	15/12/91	08 92	5283	5283	2010620		265.00	
V56 00863	Timax	APIV	0017	15/12/91	08 92	5284	5284	2010620		660.00	
								925.00		925.00	
								ACCOUNT TOTAL		925.00	
Account 66651 201 Philip A McArdle;								Opening Bal		3036.75	0.00
V56 00487	Sale of Gas Co - Bridge St	APIV	0027	01/05/91	01 92	3435	3435	2010193		2800.00	
V56 00487	Sale of Gas Co - Bridge St	APIV	0027	01/05/91	01 92	3435	3435	2010193		236.75	
								6073.50		3036.75	
								ACCOUNT TOTAL		3036.75	
Account 66701 201 Duffys - Professional Fees;								Opening Bal		0.00	0.00
V56 01006	P. B. Gunne	APIV	0001	30/04/92	12 92	6599	6599	2010457		840.00	
V56 01006	P. B. Gunne	APIV	0001	30/04/92	12 92	6599	6599	2010457		85.43	
V56 01006	D. O'Connell	APIV	0002	30/04/92	12 92	6600	6600	2010427		418.00	
V56 01006	D. O'Connell	APIV	0002	30/04/92	12 92	6600	6600	2010427		33.88	
								1377.31		1377.31	
								ACCOUNT TOTAL		1377.31	
Account 66801 201 Sponsorship								Opening Bal		550.00	0.00

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VS6 00500	ST. BERNARD LADIES GOLF SOC	0591	0015	03/05/91	01 92	3410	0	0		300.00	
VS6 00501	BALLYBRACK A.C.	0591	0015	10/05/91	01 92	3441	0	0		200.00	
MKF 00574	ISPCC	0491	0002	22/05/91	01 92	3514	0	0		50.00	
VS6 00504	T.B. - ff	0691	0005	05/06/91	02 92	3608	0	0		1000.00	
VS6 00504	C. McG - FF	0691	0006	05/06/91	02 92	3610	0	0		600.00	
VS6 00504	S.B. - FG	0691	0007	05/06/91	02 92	3611	0	0		600.00	
VS6 00504	W.H. - FF	0691	0008	05/06/91	02 92	3612	0	0		600.00	
VS6 00504	T.F. - FF	0691	0009	05/06/91	02 92	3613	0	0		600.00	
VS6 00504	D.L. - FF	0691	0010	05/06/91	02 92	3614	0	0		600.00	
VS6 00504	F.H. - FF	0691	0021	06/06/91	02 92	3621	0	0		600.00	
VS6 00504	M Mc G - FF	0691	0022	06/06/91	02 92	3622	0	0		600.00	
VS6 00504	P.H. - FF	0691	0023	06/06/91	02 92	3623	0	0		1000.00	
VS6 00504	S.C. - IND	0691	0024	06/06/91	02 92	3624	0	0		600.00	
VS6 00504	N.R. -FFN	0691	0028	05/06/91	02 92	3607	0	0		1000.00	
VS6 00505	M.H. - FF	0691	0006	11/06/91	02 92	3640	0	0		300.00	
VS6 00505	M.K. - FG	0691	0007	11/06/91	02 92	3641	0	0		600.00	
VS6 00505	P.M. - FF	0691	0008	11/06/91	02 92	3642	0	0		300.00	
VS6 00505	T.R. - FG	0691	0012	11/06/91	02 92	3644	0	0		50.00	
VS6 00505	M.L. - FG	0691	0013	11/06/91	02 92	3645	0	0		600.00	
VS6 00505	H.K. - PD	0691	0014	11/06/91	02 92	3646	0	0		300.00	
VS6 00505	C.J. - PD	0691	0015	11/06/91	02 92	3648	0	0		300.00	
VS6 00506	L.Mc M. FG	0691	0013	13/06/91	02 92	3664	0	0		600.00	
VS6 00506	S.T. PD	0691	0020	11/06/91	02 92	3672	0	0		300.00	
VS6 00506	C. Q. PD	0691	0021	11/06/91	02 92	3673	0	0		300.00	
VS6 00506	J.L.	0691	0028	13/06/91	02 92	3682	0	0		300.00	
VS6 00506	J.G.	0691	0029	13/06/91	02 92	3683	0	0		300.00	
MKF 00576	John Gilbride FF	0691	0002	30/06/91	02 92	3684	0	0		300.00	
MKF 00576	C Gallagher	0691	0003	13/06/91	02 92	3685	0	0		300.00	
MKF 00576	Cathal Boland FG	0691	0004	13/06/91	02 92	3686	0	0		300.00	
MKF 00576	L L Mulvihill FF	0691	0005	13/06/91	02 92	3687	0	0		300.00	
MKF 00576	GV Wright FF	0691	0006	13/06/91	02 92	3688	0	0		300.00	
MKF 00576	M Cosgrove FF	0691	0007	13/06/91	02 92	3689	0	0		300.00	
MKF 00576	S Brook FF	0691	0008	13/06/91	02 92	3690	0	0		300.00	
MKF 00576	S Ardagh FF	0691	0009	13/06/91	02 92	3691	0	0		300.00	
MKF 00576	S Tierney	0691	0010	13/06/91	02 92	3692	0	0		600.00	
MKF 00576	L Craven FF	0691	0011	13/06/91	02 92	3693	0	0		300.00	
VS6 00547	RE: FRAN HURLEY	0691	0004	24/06/91	02 92	3729	0	0		2000.00	
VS6 00548	Dundalk Classic Races	0691	0013	07/06/91	02 92	377716	0	0		3600.00	
VS6 00580	DUNDALK GOLF CLUB	0791	0002	17/07/91	03 92	3890	0	0		1246.00	
VS6 00580	DUNDALK GOLF CLUB	0791	0003	17/07/91	03 92	3891	0	0		510.00	
VS6 00580	FRAN HURLEY	0791	0004	17/07/91	03 92	3892	0	0		3500.00	
VS6 00576	PD	0791	0024	05/07/91	03 92	3801	0	0		300.00	
MKF 00693	Decanters	APIV	0017	30/08/91	04 92	4308	4308	2010210		974.91	
MKF 00698	Adv Design	APIV	0013	30/04/91	04 92	4398	4398	2010110		84.00	
VS6 00672	Dundalk Show Society	0891	0019	26/08/91	04 92	4142	0	0		1000.00	
CLD 00686	Dlk. Golf Club - Score Cards.	APIV	0005	25/07/91	05 92	4494	4494	2010065		515.00	
VS6 00691	Decanter	APIV	0003	07/09/91	05 92	4573	4573	2010210		168.51	
CLD 00696	Celebrity Golf Classic TM.	0991	0014	04/09/91	05 92	4183	0	0		3336.00	
CLD 00696	Glennane Hocket Club/Golf Day.	0991	0026	11/09/91	05 92	4196	0	0		334.00	
CLD 00707	Corporate Day Dlk. Golf Club.	0991	0017	18/09/91	05 92	4251	0	0		142.00	
MKF 00727	Reg Tech Colg DLK Best Student	1091	0018	21/10/91	06 92	4454	0	0		100.00	
MKF 00728	Irish YOuth Foundation	1091	0002	22/10/91	06 92	4463	0	0		200.00	
CLD 00740	Tallonstown Gun Club.	1091	0005	01/10/91	06 92	4343	0	0		200.00	
CLD 00740	Sponsorship St. Vincent DePaul	1091	0008	01/10/91	06 92	4344	0	0		35.00	
CLD 00741	F/Gael - D.S.W.	1091	0012	03/10/91	06 92	4360	0	0		100.00	
VS6 00737	Canteen Cutlery	APIV	0045	24/06/91	06 92	4879	4879	2010210		181.62	
VS6 00738	RHA Gala Banquet	APIV	0032	08/10/91	06 92	4891	4891	2010595		1500.00	
VS6 00738	Microtek Scanner (Dlk & School	APIV	0036	11/10/91	06 92	4899	4899	2010598		1510.00	
VS6 00827	Inv already posted in L&C	APIV	0031	30/04/91	07 92	5037	5037	2010110			84.00-
VS6 00848	Imperial Stages Rally	1191	0003	28/11/91	07 92	4755	0	0		375.00	
VS6 00856	Inv posted to incorrect A/C	APIV	0006	25/07/91	07 92	5260	5260	2010065			515.00-
CLD 00842	RE:Mon. Prop. Knockaire Stakes	1191	0003	08/11/91	07 92	4618	0	0		5000.00	
MKF 00810	M Van Dessel Choir	1291	0026	06/12/91	08 92	4811	0	0		150.00	
MKF 00812	Re Rehab Louth People of Year	1291	0002	13/12/91	08 92	4862	0	0		250.00	
VS6 00866	Trophy Re: Knockaire Stakes	APIV	0002	15/11/91	08 92	5380	5380	2010629		120.00	
VS6 00864	Model Gifts & Photoframe	APIV	0014	17/12/91	08 92	304	304	2010624		94.21	
VS6 00863	RTV - Vidoe (PM)	APIV	0012	19/12/91	08 92	5279	5279	2010414		482.64	
VS6 00863	Miniphoto (PM)	APIV	0021	17/12/91	08 92	5288	5288	2010197		550.06	
VS6 00863	H. Moore	APIV	0022	18/12/91	08 92	5289	5289	2010174		400.50	
VS6 00863	Pens & China	APIV	0023	16/12/91	08 92	5290	5290	2010170		137.89	
VS6 00872	Ref: Mini-Photo	1291	0025	18/12/91	08 92	92174	0	0			550.00-
VS6 00922	Inv paid M/card	APIV	0013	18/12/91	08 92	5790	5790	2010174			485.00-
CLD 00906	F.F. Race night.	0192	0003	08/01/92	09 92	4980	0	0		50.00	
VS6 00913	The Lions Club	0192	0010	29/01/92	09 92	5119	0	0		200.00	

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VS6 90187	Rev Credit Note 5790	APAJ	0001	31/01/92	09 92	90187	90187	2010174	485.00	
VS6 00964	Order St. John of God	0292	0011	04/02/92	10 92	5163	0	0	100.00	
VS6 00964	FG Race Night	0292	0013	04/02/92	10 92	5168	0	0	200.00	
VS6 00969	Ballybrack B/ball Club	0292	0002	19/02/92	10 92	5274	0	0	250.00	
VS6 00969	I.S.P.C.C.	0292	0007	19/02/92	10 92	5278	0	0	50.00	
VS6 00969	Labour/Dub S.W.	0292	0008	19/02/92	10 92	5279	0	0	300.00	
MKF 01026	FF Dun Laoghaire	0392	0021	13/03/92	11 92	5482	0	0	200.00	
MKF 01027	National Healing Centre	0392	0003	18/03/92	11 92	5494	0	0	200.00	
MKF 01027	Loughlinstown Boys FC	0392	0004	18/03/92	11 92	5495	0	0	100.00	
MKF 01027	Knock Golf Aouting	0392	0005	18/03/92	11 92	5496	0	0	90.00	
MKF 01027	B Golf Society	0392	0006	18/03/92	11 92	5497	0	0	200.00	
MKF 01027	Sponsorship	0392	0011	19/03/92	11 92	5498	0	0	10.00	
MKF 01027	Slogadh 92	0392	0020	19/03/92	11 92	5502	0	0	250.00	
MKF 01027	A/Bishop M Quade Jnr School	0392	0046	20/03/92	11 92	5517	0	0	250.00	
MKF 01028	Ballybrack Comm Assoc	0392	0014	24/03/92	11 92	5519	0	0	120.00	
MKF 01028	Bluemoon Theatre Comm	0392	0017	24/03/92	11 92	5522	0	0	100.00	
MKF 01028	Ballrbrack Athletic Club	0392	0018	24/03/92	11 92	5524	0	0	100.00	
MKF 01028	Cairnscoil Dun Dealgan	0392	0020	24/03/92	11 92	5529	0	0	100.00	
MKF 01029	Ballybrack Football Club	0392	0005	24/03/92	11 92	5540	0	0	60.00	
VS6 00981	Boy Scouts of Irl	0392	0005	01/03/92	11 92	5332	0	0	200.00	
VS6 00982	T.H. - FG	0392	0024	28/02/92	11 92	5375	0	0	1000.00	
VS6 00983	St. Josephs Boys Club	0392	0014	04/03/92	11 92	5403	0	0	1000.00	
VS6 00986	Shanganagh Park House	0392	0004	10/03/92	11 92	5453	0	0	50.00	
MKF 01044	Roscommon GAA	0492	0013	02/04/92	12 92	5585	0	0	30.00	
MKF 01044	Budget 1992	0492	0015	02/04/92	12 92	5589	0	0	200.00	
MKF 01046	Dun Laoghaire Horse Show	0492	0022	08/04/92	12 92	5641	0	0	200.00	
MKF 01048	St Columcille Hospital	0492	0004	14/04/92	12 92	5699	0	0	50.00	
MKF 01048	Loughinstown Summer Project	0492	0005	14/04/92	12 92	5700	0	0	250.00	
MKF 01048	St Annes National School	0492	0006	14/04/92	12 92	5701	0	0	60.00	
MKF 01049	Ballybrack Boys F.C	0492	0011	15/04/92	12 92	5717	0	0	350.00	
MKF 01054	Dun Laoghaire Festival	0492	0029	24/04/91	12 92	5750	0	0	200.00	
MKF 01054	Dun Laoghaire Chsamber Commerc	0492	0030	24/04/91	12 92	5751	0	0	100.00	
VS6 90265	Order of Malta	0492	0005	30/04/92	12 92	0492	0	0	350.00	
VS6 90422	Trf to Cherrywood Promotion	0492	0002	30/04/92	12 92	0492	0	0		15350.00-
								36018.54	52452.54	16984.00-
								ACCOUNT TOTAL	35468.54	

Account 66802 201 Promotions — Opening Bal 8324.00 — 0.00

MKF 00558	Lladro Etc	APIV	0016	25/06/91	01 92	3497	3497	2010533	1406.53	
MKF 00558	Irish Gifts	APIV	0017	25/06/91	01 92	3498	3498	2010533		1406.53-
MKF 00558	Glasses/Decanter	APIV	0029	02/05/91	01 92	3509	3509	2010210	224.00	
MKF 00575	T Hans FG	0591	0017	30/05/91	01 92	3557	0	0	5000.00	
MKF 00575	J Fahey FF	0591	0018	30/05/91	01 92	3558	0	0	1000.00	
VS6 00510	J.D.	0591	0004	31/05/91	01 92	3567	0	0	500.00	
VS6 00510	J.H.	0591	0005	31/05/91	01 92	3568	0	0	300.00	
VS6 00510	S.H.	0591	0006	31/05/91	01 92	3569	0	0	300.00	
VS6 00510	O.H.	0591	0007	31/05/91	01 92	3570	0	0	1000.00	
MKF 00577	Dundalk Classis Races	0691	0011	21/06/91	02 92	3726	0	0	150.00	
VS6 00561	NEUTRON SOUND	APIV	0015	15/07/91	03 92	3979	3979	2010558	195.00	
VS6 00562	R.O ONEILL	APIV	0017	22/07/91	03 92	4017	4017	2010210	973.55	
MKF 00691	Photos Dundalk Gold Club	APIV	0013	08/08/91	04 92	4236	4236	2010700	142.00	
MKF 00691	Photographs	APIV	0035	12/08/91	04 92	4258	4258	2010117	115.00	
CLD 00707	Flowers.	0991	0013	18/09/91	05 92	4249	0	0	25.00	
MKF 00729	Flowers	1091	0002	24/10/91	06 92	4492	0	0	20.00	
MKF 00731	Re: Winedrinks Ltd	1091	0022	07/10/91	06 92	452719	0	0	4389.10	
CLD 00742	Inst of Chtd Accountants	1091	0035	08/10/91	06 92	4400	0	0	450.00	
MKF 00783	Buffet & L/town Race Course	APIV	0039	21/11/91	07 92	5198	5198	2010616	810.00	
MKF 00783	Buffet @ L/town Race Course	APIV	0039	21/11/91	07 92	5198	5198	2010616	496.02	
MKF 00783	Buffet @ L/town Race Course	APIV	0039	21/11/91	07 92	5198	5198	2010616	23.10	
MKF 00809	Flowers	1291	0020	03/12/91	08 92	4793	0	0	20.00	
MKF 00814	Chocolate	1291	0018	20/12/91	08 92	4937	0	0	19.45	
MKF 00814	Supervalue Chocolate	1291	0023	29/12/91	08 92	4941	0	0	72.00	
VS6 00866	Drinks	APIV	0013	17/12/91	08 92	5395	5395	2010495	1051.35	
VS6 00866	Xmas Party	APIV	0016	14/12/91	08 92	5398	5398	2010630	5769.10	
VS6 00866	Xmas Cards	APIV	0026	09/12/91	08 92	5408	5408	2010442	175.00	
VS6 00867	Xmas Cards	APIV	0012	31/12/91	08 92	5421	5421	2010262	9.12	
VS6 00867	Xmas Cards	APIV	0018	23/12/91	08 92	5428	5428	2010262	39.52	
VS6 00864	Coat Rack & Hangers (Xmas Pty)	APIV	0011	04/12/91	08 92	5303	5303	2010623	17.10	
VS6 00864	Decorations Xmas Party M/arch	APIV	0032	04/12/91	08 92	5325	5325	2010625	595.00	
VS6 00865	Baseball Caps	APIV	0004	13/12/91	08 92	5335	5335	2010509	9.00	
VS6 00865	Bewleys (Chocolates)	APIV	0005	13/12/91	08 92	5336	5336	2010626	200.70	

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VS6 00877	Christmas Cards	APIV	0019	19/12/91	08	92 5478	5478	2010442	66.00	
VS6 00877	Quinns (Drinks)	APIV	0022	20/12/91	08	92 5481	5481	2010633	1476.00	
VS6 00877	Hire of Wine Glasses	APIV	0027	28/12/91	08	92 5486	5486	2010257	112.56	
VS6 00898	Flowers	APIV	0006	03/01/92	09	92 5573	5573	2010097	607.02	
VS6 00898	Flowers	APIV	0007	03/01/92	09	92 5574	5574	2010097	20.00	
VS6 00898	Drinks	APIV	0010	04/01/92	09	92 5577	5577	2010487	33.00	
VS6 00900	Invites to Xmas Drinks	APIV	0019	14/01/92	09	92 5645	5645	2010599	723.86	
VS6 00902	Findlaters - (JS)	0192	0008	02/01/92	09	92 4950	0	0	65.00	
VS6 00902	Flowers	0192	0031	06/01/92	09	92 4965	0	0	20.00	
VS6 00911	FF Race Night	0192	0020	21/01/92	09	92 5097	0	0	100.00	
MKF 00890	Flowers	APIV	0019	21/11/91	09	92 5733	5733	2010097	202.48	
VS6 00912	Flowers	0192	0010	23/01/92	09	92 5069	0	0	20.00	
VS6 00964	Sheilas Flower Shop	0292	0008	03/02/92	10	92 5154	0	0	23.00	
VS6 00968	Flowers/Plants	0292	0021	19/02/92	10	92 5263	0	0	26.77	
VS6 00971	Flowers - BB	0292	0019	26/02/92	10	92 5326	0	0	25.00	
VS6 00963	Xmas Cards (JS)	APIV	0030	22/01/92	10	92 5940	5940	2010262	8.64	
VS6 00975	Flowers (Xmas)	APIV	0049	30/03/92	11	92 6196	6196	2010678	245.10	
MKF 01024	Food Drinks reception	APIV	0023	04/12/91	11	92 6259	6259	2010631	1619.30	
MKF 01024	Clockroom Hire Staff	APIV	0023	04/12/91	11	92 6259	6259	2010631	55.00	
MKF 01026	International Club	0392	0026	16/03/92	11	92 5487	0	0	1750.00	
VS6 00981	Flowers - JM	0392	0004	01/03/92	11	92 5331	0	0	15.00	
JMC 02016	paints mechants hall	APIV	0014	06/04/92	12	92 6466	6466	2010117	106.00	
VS6 01011	Credit Note 4230	APIV	0006	09/04/91	12	92 6606	6606	2010110		900.00-
VS6 01011	Artwork,Bromides for Nice Ad	APIV	0007	28/02/91	12	92 6607	6607	2010110	884.00	
VS6 01011	Credit Note 4229	APIV	0008	09/04/91	12	92 6608	6608	2010110		282.00-
VS6 01011	Wines	APIV	0024	06/02/91	12	92 6624	6624	2010475	390.45	
MKF 01113	Cr Note	APIV	0021	14/01/92	12	92 6655	6655	2010539		265.73-
MKF 01114	FIACCI Presentation	APIV	0013	23/04/92	12	92 6683	6683	2010467	30.00	
VS6 90422	Trf to Cherrywood Promotion	0492	0003	30/04/92	12	92 0492	0	0		8100.00-
								31490.56	34120.82	10954.26-
								ACCOUNT TOTAL	23166.56	

Account 66809 201 Monarch Brochure — Opening Bal 36.00 — 0.00

VS6 00485	CHROMACOPY	APIV	0008	10/05/91	01	92 3351	3351	2010047	36.00	
VS6 00558	CHROMACOPY	APIV	0023	22/07/91	03	92 3887	3887	2010047	216.00	
MKF 00689	Chromacopy	APIV	0041	12/08/91	04	92 4148	4148	2010047	54.00	
MKF 00689	Laser A3 A4 Prints	APIV	0042	12/08/91	04	92 4149	4149	2010047	309.60	
MKF 00691	Artwork	APIV	0011	31/08/91	04	92 4234	4234	2010110	2767.00	
CLD 00685	Laser A4 Print.	APIV	0021	30/09/91	05	92 4460	4460	2010047	68.85	
CLD 00686	Chromacopy	APIV	0001	30/09/91	05	92 4487	4487	2010093	112.50	
CLD 00692	A4 Colour Print.	APIV	0041	31/07/91	05	92 4565	4565	2010117	35.50	
VS6 00734	Laser A4 Print	APIV	0038	30/10/91	06	92 4738	4738	2010047	113.40	
VS6 00737	Negs, 40 Copies, Amendments	APIV	0040	09/10/91	06	92 4851	4851	2010467	6000.00	
MKF 00779	Laser A4 Prints	APIV	0010	12/11/91	07	92 5073	5073	2010047	236.25	
VS6 00830	Laser Copies	APIV	0026	29/11/91	07	92 5225	5225	2010615	108.30	
VS6 01004	Artwork	APIV	0007	30/04/92	12	92 6584	6584	2010110	88.00	
								10181.40	10145.40	
								ACCOUNT TOTAL	10145.40	

Account 66841 201 British Steel Seminar; — Opening Bal 0.00 — 0.00

VS6 00603		ARIV	0020	06/09/91	02	92 1738	1738	0		322.42-
VS6 00603		ARIV	0021	06/09/91	02	92 1739	1739	0		322.42-
VS6 00603		ARIV	0022	06/09/91	02	92 1740	1740	0		322.42-
VS6 00603		ARIV	0023	06/09/91	02	92 1741	1741	0		322.42-
VS6 00603		ARIV	0024	06/09/91	02	92 1742	1742	0		322.42-
VS6 00684	Dupe SLides	APIV	0015	30/07/91	04	92 4432	4432	2010021	2214.72	
								602.62	2214.72	1612.10-
								ACCOUNT TOTAL	602.62	

Account 66851 201 Advertising, 18 Earlsfort Tce — Opening Bal 1373.30 — 0.00

MKF 00558	Adv 18 Et Office	APIV	0018	16/05/91	01	92 3499	3499	2010126	1160.00	
MKF 00558	18 Fs Office Let	APIV	0019	31/05/91	01	92 3500	3500	2010126	71.10	
MKF 00558	18 Ft office let	APIV	0021	24/05/91	01	92 3501	3501	2010126	71.10	
MKF 00558	Adv 18 Et For Sa	APIV	0022	24/05/91	01	92 3502	3502	2010126	71.10	
VS6 00497	IRISH TIMES	APIV	0001	29/06/91	02	92 3747	0	0	71.10	

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27/01/93 17:15

Monarch Property Services

YTD General Ledger Report

Fiscal Year 92

Control	Description	Jrnl	Trx	Trx Date	Mo/Yr	Ref	Rev Adj	Supplier Curr	Debit Amt.	Credit Amt
MKF 01010	Assess Value of Land	APIV	0016	24/02/92	10 92	6059	6059	2010850	2500.00	
								2500.00	2500.00	
								ACCOUNT TOTAL	2500.00	
Account 73233 201	Irish Productivity Centre;							Opening Bal	0.00	0.00
V56 00975	Report on Jobs @ C/teely	APIV	0059	25/03/92	11 92	6205	6206	2010680	7200.00	
								7200.00	7200.00	
								ACCOUNT TOTAL	7200.00	
Account 73234 201	Fergal McCabe;							Opening Bal	0.00	0.00
MKF 01141	# 5 Cert 724	APIV	0008	30/04/92	12 92	6707	6707	2010172	1000.00	
								1000.00	1000.00	
								ACCOUNT TOTAL	1000.00	
Account 73241 201	JAMES MURPHY;							Opening Bal	0.00	0.00
JMC 90357	Pd by L&C Road Consultancy	0492	0002	30/04/92	12 92	90357	0	0	30000.00	
								30000.00	30000.00	
								ACCOUNT TOTAL	30000.00	
Account 73251 201	Sheila Dunne;							Opening Bal	0.00	0.00
CLO 00707	Planning Search Cherrywood	0991	0043	13/09/91	05 92	4231	0	0	107.50	
V56 00986	Re: Gold Club Hse @ C/teely	0392	0032	13/03/92	11 92	5475	0	0	52.50	
								160.00	160.00	
								ACCOUNT TOTAL	160.00	
Account 73501 201	Centre for Retail Studies;							Opening Bal	0.00	0.00
V56 00734	Geodemogrpahics Sth Co Dublin	APIV	0055	29/10/91	06 92	4716	4716	2010601	1210.00	
								1210.00	1210.00	
								ACCOUNT TOTAL	1210.00	
Account 73502 201	Market Research Bureau of Irl;							Opening Bal	0.00	0.00
V56 00953	Market Research Survey	APIV	0001	19/02/92	10 92	5910	5910	2010665	3375.00	
V56 00976	Market Research Survey (2nd)	APIV	0009	19/03/92	11 92	6217	6217	2010665	3375.00	
								6750.00	6750.00	
								ACCOUNT TOTAL	6750.00	
Account 73510 201	General Promotion;							Opening Bal	0.00	0.00
V56 00913	Pd's Fundraising Lunch	0192	0002	27/01/92	09 92	5109	0	0	200.00	
V56 00975	Chq Presentation Scouts B/brac	APIV	0057	09/03/92	11 92	6204	6204	2010117	85.25	
V56 00975	Prints B/brack School	APIV	0058	09/03/92	11 92	6205	6205	2010117	25.50	
V56 00984	An Taisce	0392	0007	04/03/92	11 92	5416	0	0	15.00	
MKF 01040	Photo Shanganagh House	APIV	0016	19/03/92	12 92	6324	6324	2010519	108.00	
MKF 01040	Phtot McQuaids School	APIV	0017	19/03/92	12 92	6325	6325	2010519	60.00	
MKF 01040	Prints Shangang House	APIV	0019	19/03/92	12 92	6327	6327	2010519	45.00	
MKF 01041	Video Re A Bishop McQuaid	APIV	0022	18/03/92	12 92	6372	6372	2010673	93.50	
MKF 90311	Hietskie	0492	0001	30/04/92	12 92	0492	0	0	38.79	
MKF 01114	Video Editing	APIV	0009	31/03/92	12 92	6678	6678	2010673	85.00	
V56 90373	PR Expense	0492	0001	30/04/92	12 92	0492	0	0	10.00	
V56 90373	Flowers	0492	0003	30/04/92	12 92	0492	0	0	30.38	
V56 90422	Trf £15350 p/tion &£8100 S/hip	0492	0001	30/04/92	12 92	0492	0	0	23450.00	
								24246.42	24246.42	
								ACCOUNT TOTAL	24246.42	
Account 73511 201	Mediawise;							Opening Bal	0.00	0.00

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CHERRYWOOD VILLAGE.

CHERRYWOOD PROPERTIES LTD.

DRAFT DEVELOPMENT PLAN CASH FLOW PROJECTIONS

	PAID TO 31/1/92	ADDITIONAL	FEB. '92	Mar-92	Apr-92	TOTAL	MAY	JUNE	TOTAL
FERGAL MCCABE	£14,628					£14,628	£10,000	£5,000	£29,628
DR. BRIAN MEEHAN						£0	£9,000	£5,000	£14,000
CENTRE FOR RETAIL STUDIES	£3,560					£3,560			£3,560
FENTON SIMONS	£25,000		£5,000			£30,000	£5,000		£35,000
MUIR ASSOCIATES	£17,781					£17,781	£3,000		£20,781
BRADY SHIPMAN MARTIN	£19,219		£11,295			£30,514			£30,514
ARCHAEOLOGY:						£0			£0
- DR. B. O'RIOR	£1,850					£1,850	£2,500	£500	£4,850
- SITE WORKS						£0		£2,500	£2,500
IRISH ENGINEERING SURVEYS	£16,500					£16,500	£2,000		£18,500
IRISH GEOLOGICAL SURVEYS	£1,805					£1,805	£1,000		£2,805
PUBLIC RELATIONS OF IRELAND	£6,675	£1,711	£3,975		£3,368	£15,729	£5,000	£2,000	£22,729
CENTRUM DESIGNS	£14,992		£27,999			£42,991			£42,991
DAVID MURPHY - MODELMAKER	£9,262		£3,264			£12,526			£12,526
[illegible]AWISE	£10,000		£23,268			£33,268			£33,268
[illegible]RAPHY	£1,498	£302	£672		£437	£2,909			£2,909
MC[illegible]ANS LTD. (STATIONERT/	£1,500	£1,759				£3,259			£3,259
GRAFFITI DESIGN	£870					£870			£870
SMALL AMOUNTS MPSL LEDGER	£818					£818			£818
SUNDRY ADMINISTRATION	£32,674					£32,674	£5,000	£5,000	£42,674
STATIONERY		£6,224		£472	£2,197	£8,893	£1,000	£1,000	£10,893
SHEILA DUNNE		£108				£108			£108
CLYDE PLANT LTD. - TEST HOLES		£220				£220			£220
MIKE MURPHY P.R.		£5,000				£5,000			£5,000
VALUATIONS		£500			£2,500	£3,000			£3,000
O'SULLIVAN GRAPHICS		£24				£24			£24
ORDNANCE SURVEY		£116				£116			£116
MATERIALS		£419	£228			£647			£647
PEMBROKE P.R.		£3,750			£4,196	£7,946	£3,000	£3,000	£13,946
CHROMACOPY		£42	£651	£297		£990	£1,000	£1,000	£2,990
AUDIO SERVICES			£1,733			£1,733			£1,733
R.T.E.			£2,648		£4,073	£6,721	£1,500		£8,221
M.R.B.I.			£3,375			£3,375			£3,375
CITY PUBLISHERS			£10,775			£10,775			£10,775
WELDCO			£450			£450			£450
AYCOM FACILITIES			£487		£85	£572			£572
SIOBHAN O'DEA			£1,520			£1,520			£1,520
DRAWING CENTRE			£87			£87			£87
[illegible]ED SIGNS			£3,130			£3,130			£3,130
[illegible]ND PROMOTIONS			£2,421	£1,393	£759	£4,573			£4,573
LOCAL RADIO			£544		£464	£1,008			£1,008
NEWSPAPER ADV					£317	£317			£317
MPS LTD. (S/PAYTS TO 20/2/92)		£3,631				£3,631			£3,631
PETTY CASH TO 20/2/92 (PER SCH)		£277				£277			£277
WAGES		£1,715				£1,715			£1,715
INSURANCE		£462				£462			£462
MEDIA TRAINING						£0	£5,000		£5,000
NEWSHEET						£0	£11,000		£11,000
COURTESY PERSONNEL						£11,639			£11,639
COMMUNITY CONTRIBUTIONS						£0	£5,000	£5,000	£10,000
STRATEGY CONSULTANCY FEES						£22,150	£10,000	£50,000	£82,150
S.A.S.						£3,028			£3,028
IRISH PRODUCTIVITY CENTRE						£0	£7,500		£7,500
QUINN PATTERSON -ADV.						£16,435			£16,435
TOTAL	£178,632	£26,460	£106,550	£8,801	£61,981	£382,424	£87,500	£80,000	£549,924

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28/4/92

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		£
TH	FG	5,000
JF	FF	1,000
OH	FF	1,000
JB	FF	2,000
JH	FF	300
NR	FF	1,000
TB	FF	1,000
BH	FF	600
DL	FF	600
TF	FF	600
CMcG	FF	600
MMcG	FF	600
FH	FF	600
PH	FF	600
JD	FF	300
LMcM	FG	600
PM	FF	300
ML	FG	600
HK	PD	300
CT	PD	300
TR	FG	50
MK	FG	600
MH	FF	300
BC	PD	300
SA	FF	300
SB	FF	300
ST	PD	300
SR	FF	600
CQ	PD	300
SB	FG	600
MK	FG	600
		£22,150

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3(1)(A)(i)

ITEM - 1117 - DUBLIN COUNTY COUNCIL DRAFT DEVELOPMENT PLAN 1991

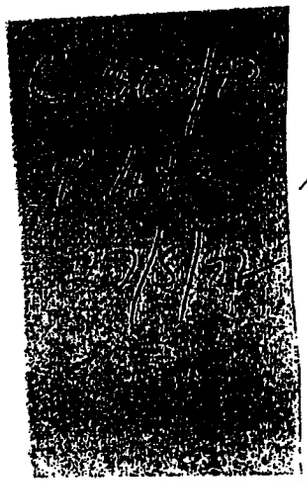
We propose that the lands, the subject of the above submission, be zoned according to the attached map and

we further propose that the submission in relation to the lands at Cherrywood, Loughlinstown be amended to provide

: that the residential Zoning A1 have a density not exceeding an average of 12 houses per hectare with the parks taken into account i.e. less than 5 houses per acre (or 17 houses per hectare excluding the public parks area - 6.6 houses per acre) or in any event provide for not more than 956 housing units and

: that the retail element be subject to a detailed retail impact assessment and in any event be substantially reduced from the proposed 120,000 sq.ft. to a maximum of 80,000 sq.ft. retail space for the currency of the plan and that the reduced retail space be replaced by a leisure based activity e.g. an hotel, thus ensuring no job losses occur through the retail reduction and

: that the Council obtain an undertaking from the Developers that they will use their best endeavours to complete the development within five years from the date the Development Plan is finally adopted and hand over to the Council, if it so requests, the areas designated Zone F on the attached map.

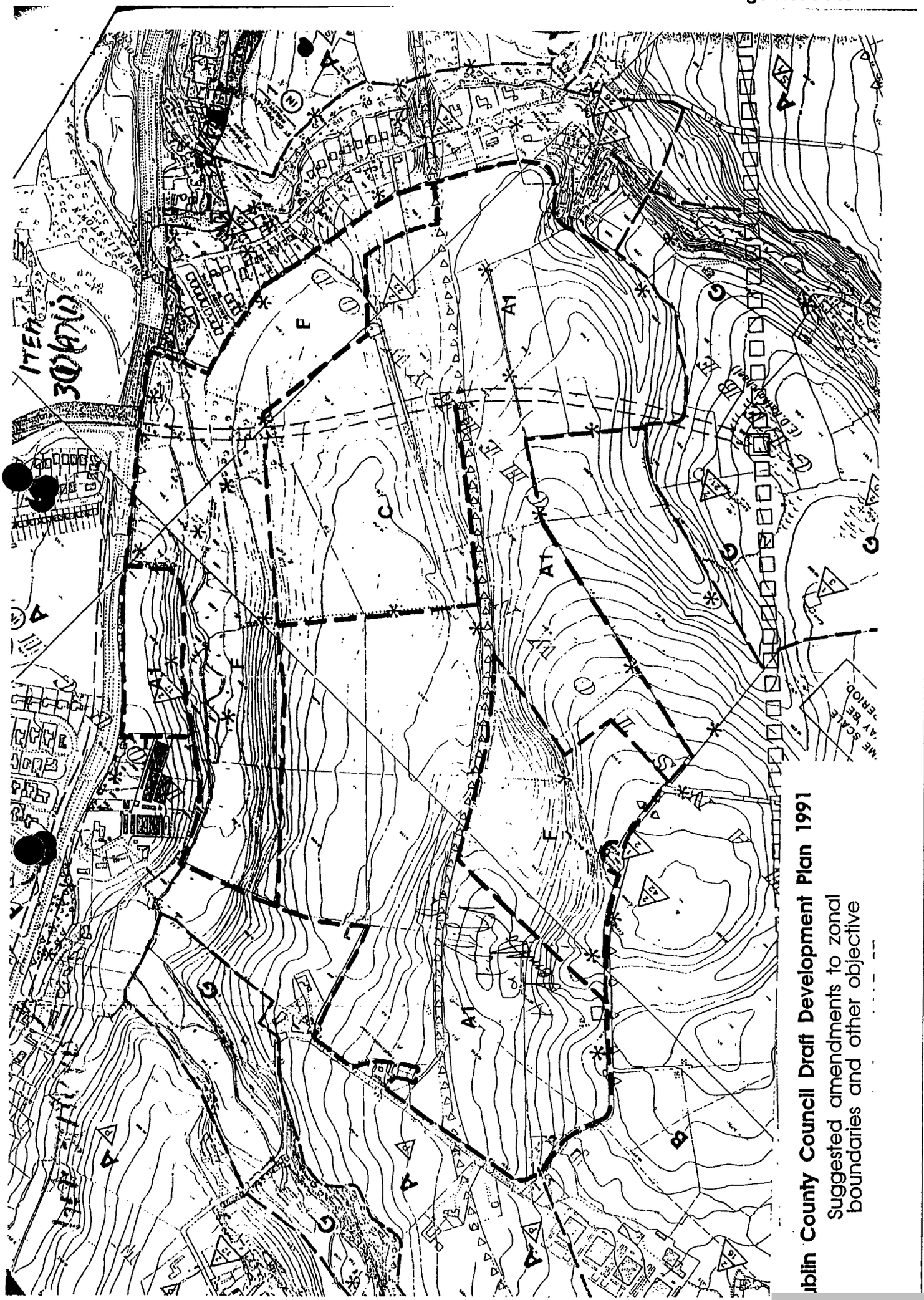


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DUBLIN COUNTY COUNCIL
PLANNING DEPT.
RECEIVED
4 MAY 1992

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PAYMENTS CASH BOOK

MONARCH PROPERTIES SERVICES LTD.

	DATE	NAME	CHEQUE NUMBER	DISCOUNT	PAYMENTS (DEBIT) CHEQUE AMOUNT	CREDITORS AMOUNT	OTHER AMOUNT	ADJUSTMENTS
	BROUGHT FORWARD							
1	6.5.92	Cash	cbw wtd		£ 3000 00			
2	7.5.92	A Cosmy Petty Cash			£ 398 87			
3	7.5.92	Acorn Property Services Pay Roll			£ 5666 73			
4	8.5.92	Mozella Jee			£ 44 65			
5	8.5.92	Shell UK Ltd			£ 103 10			
6	8.5.92	J Shuwood			£ 4,083 00			
7	6.5.92	Messrs Ellis & Co Solicitors			£ 258 63			
8	6.5.92	Rozanne Ltd			£ 481 63			
9	6.5.92	MC Roberts Ltd re discharge			£ 24 14			
10	6.5.92	City Public Health Dept			£ 4,567 00			
11	6.5.92	Lloyds Bank * Payment Stopped 19/5/92	*		£ 1897 00			
12	6.5.92	Gas Showroom Dudley			£ 153 58			
13	6.5.92	Mid Shires Gas			£ 1,878 96			
14	6.5.92	Mail Mercury			£ 237 00			
15	6.5.92	Swidbar Wine Merchants			£ 33 00			
16	6.5.92	P Dept.			£ 2460 00			
17	6.5.92	Connolly Corporation			£ 1471 00			
18	6.5.92	MC Roberts Ltd			£ 850 15			
19	6.5.92	J C Rogers			£ 167 00			
20	6.5.92	Bromwich Water Supply Cancelled			£ 396 00			
21	6.5.92	Sheerpeak Ltd			£ 558 76			
22	6.5.92	Electric			——			
23	6.5.92	Brian Kemp & Co			£ 227 70			
24	6.5.92	Contractors Utility			£ 50 00			
25	6.5.92	Dyno Energy	to bank 6.5.92		£ 998 88			
26	06/01	Wood Hall Hotel Mrs Lord Ltd	(Mrs)		£ 311 66			
27	6.5.92	Brian Dudley Associates			£ 496 00			
28	6.5.92	Rentokil UK & NOD			£ 582 00			
	CARRIED FORWARD							

Postal Postal
Balance 19.05.92 Balance 19.05.92
(CBbPL) (CBbPL)

MONARCH PROPERTIES SERVICES LTD.

May 1992 (3) S

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Cherrywood Costs May '92

Dept of Archaeology	Resistivity Survey	1032.24	
Cash		~~3000.00~~	Geology
Papers		70.00	
Frames / Photo Album		30.47	
Petty Cash Items		218.43	Sundries
+ mobile Phones		500.00	
St. Brigids Boys School		150.00	
Postage		12.20	
		5013.34	

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22/10/93 16:00 — YTD General Ledger Report

Fiscal Year 93

Control	Description	Jrnl Trx	Trx Date Mo/Yr Ref	Rev Adj	Supplier Curr	Debit Amt.	Credit Amt
VS6 01037	Westmintown Golf Club	0592 0003	19/04/92 01 93 5935	0	0	250.00	
VS6 01039	C/wood S/ganagh Summer Project	0592 0009	27/05/92 01 93 5971	0	0	300.00	
VS6 01039	L/town Majorettes	0592 0010	25/05/92 01 93 5976	0	0	250.00	
VS6 01039	M/town Park Presentation	1192 0024	25/11/92 07 93 7126	0	0	5.00	
VS6 01321	MK - FG	1292 0022	16/12/92 08 93 7236	0	0	1000.00	
VS6 01346	NL - FF	1292 0023	16/12/92 08 93 7237	0	0	2500.00	
VS6 01346	LO - FF	1292 0024	16/12/92 08 93 7238	0	0	2000.00	
VS6 01346	NR - FF	1292 0025	16/12/92 08 93 7239	0	0	2000.00	
VS6 01346	MK - FG	1292 0009	31/12/92 08 93 1292	0	0		1000.00-
VS6 90644	Trf to 73510	1292 0007	31/12/92 08 93 1292	0	0		2500.00-
VS6 90645	Trf to 73510	1292 0004	31/12/92 08 93 1292	0	0		2000.00-
VS6 90645	Trf to 73510	1292 0006	31/12/92 08 93 1292	0	0		2000.00-
VS6 90645	Trf to 73510	0393 0024	12/03/93 11 93 7691	0	0	50.00	
VS6 01402	Ballybrack Boys FC	0393 0016	19/03/93 11 93 7727	0	0	300.00	
VS6 01401	Lord Mayor Loughlinstown Fund	0393 0013	29/03/93 11 93 7786	0	0	29.10	
VS6 01503	Lord Mayors Dance	0493 0010	30/04/93 12 93 0493	0	0	7500.00	
VS6 90855	Trf Sponsorship FF/FG						
					9784.10	16334.10	7500.00-
					ACCOUNT TOTAL	8834.10	

Account 73521 201 Newspaper Advertising:

					Opening Bal	60.00	0.00
VS6 01036	Advert " The Loudspeaker "	0592 0003	13/05/92 01 93 5911	0	0	60.00	
					120.00	60.00	
					ACCOUNT TOTAL	60.00	

Account 73651 201 Pembroke PR:

					Opening Bal	12046.63-	0.00
VS6 90410	Accrue per Creds Rec	0492 0003	30/04/92 01 93 0492	0	0		12264.00-
VS6 01057	Gen Exp & Apt Employ Potential	APIV 0015	13/05/92 01 93 6035	6835	2010539	217.37	
VS6 01154	T/script & Tapes LJ0492-280592	APIV 0029	10/06/92 04 93 7454	7454	2010539	484.03	
					23609.23-	701.40	12264.00-
					ACCOUNT TOTAL	11562.60-	

Account 73652 201 Frank Dunlop & Assoc:

					Opening Bal	0.00	0.00
VS6 01570	Fee Re Public Affairs Strategy	APIV 0006	10/04/93 12 93 9320	9320	2010968	10000.00	
					10000.00	10000.00	
					ACCOUNT TOTAL	10000.00	

Account 73654 201 Cherrywood P.R. - M. Murphy:

					Opening Bal	0.00	0.00
VS6 90805	Pd by I&C	0493 0005	30/04/93 12 93 0493	0	0	1577.02	
					1577.02	1577.02	
					ACCOUNT TOTAL	1577.02	

Account 73671 201 Promotion Open Days:

					Opening Bal	4185.99	0.00
VS6 01035	Print Village News & Leaflets	APIV 0008	08/05/92 01 93 6733	6733	2010660	10545.00	
VS6 01035	Overcharge on Commercial Prod	APIV 0012	20/05/92 01 93 6737	6737	2010675		200.00-
VS6 01057	" # 8 : Cart 736 "	APIV 0014	31/05/92 01 93 6834	6834	2010613	183.36	
VS6 01043	Postage	0592 0010	01/05/92 01 93 5810	0	0	12.20	
VS6 01044	Cash Chq 5822 (050592)	0592 0020	01/05/92 01 93 5822	0	0	3000.00	
VS6 01036	Telephone	0592 0010	14/05/92 01 93 5918	0	0	110.00	
VS6 01036	Cash	0592 0011	14/05/92 01 93 5918	0	0	280.00	
VS6 01036	Wine,Chees,&CC	0592 0012	14/05/92 01 93 5918	0	0	145.00	
VS6 01041	Cash £ 369.00	0592 0007	27/05/92 01 93 6019	0	0	369.00	
VS6 01072	Various P/Cash Items	0592 0007	11/05/92 01 93 5876	0	0	218.43	
VS6 01039	Travel - OB	0592 0002	22/05/92 01 90 5961	0	0	68.00	
VS6 90803	Reverse Accrual @ 300492	0592 0003	30/04/93 01 93 0493	0	0		10545.00-
VS6 01077	Classic Hits 230292-280292	APIV 0026	13/02/92 02 93 6924	6924	2010675	394.00	
VS6 01077	Classic Hits 150292	APIV 0027	12/02/92 02 93 6925	6925	2010675	220.00	
VS6 01077	Rock 104 020492 - 040492	APIV 0064	30/04/92 02 93 6962	6962	2010670	154.00	
VS6 01077	Lighting Stand Brackets	APIV 0086	28/04/92 02 93 6984	6984	2010668	40.00	
VS6 01079	Petty Cash Items	0592 0009	03/06/92 02 93 6065	0	0	326.00	

Statement of Account with Allied Irish Banks, p.l.c.
CURRENT ACCOUNT

AIB

Branch Number
93-24-50

73 CLANBRASSIL ST. DUNDALK

Page Number
1444

THE SECRETARY
MONARCH PROP SERVS LTD
MONARCH HOUSE
57 HARCOURT STREET
DUBLIN 2

Date of Statement
7MAY92

Account Number
53121-088

MONARCH PROPERTIES SERVICES
LIMITED

LENDING RATE AT DATE OF STATEMENT 13.50%

Date	Particulars	Debit £	Credit £	Balance £
6MAY92	BALANCE FORWARD			36992.67DR
	005798	1001.53		
	005810	111.60		
	005813	38679.79		83171.89DR
	005815	6386.30		
	000464		4167.89	
7MAY92	LODG 000465		4718.32	
	LODG 53121328 ERROR.		200000.00	
	FEE - STOP CK	3.00		
	005716	390.00		
	005739	30.38		
	005753	51.45		
	005795	889.39		
	005809	186.00		
	005816	22000.00		
	005817	11695.97		
	005822	3000.00		
	005823	398.81		81402.59
	005824	5666.73		

SURCHARGES-SEE NOTICE AT BRANCH
Overdrawn balances are marked DR

Standard conditions printed overleaf
Thank you for banking with A.I.B.

Return to report

FF 18.5.04 - 12

Directors:
Philip P. Monahan
Dominick Glennane
Edward Sweeney

Monarch Properties Ltd.

Monarch House, 57 Harcourt Street, Dublin 2.
Telephone: 01-784200 Fax: 01-784414

INDUSTRIAL AND COMMERCIAL PROPERTY DEVELOPMENT

18th November, 1992

Mr. Albert Reynolds TD,
Taoiseach,
Leader of Fianna Fail Party,
13 Upper Mount Street,
Dublin 2.

Ref. 2518
£5,000
567

Dear Taoiseach,

We have pleasure in making a contribution to the general expenses of your Party for this General Election. We all agree that what this country now needs is a strong, united government to provide the right atmosphere to make it attractive to invest in the development of the country.

As you are aware, we in Monarch together with our partners Guardian Royal Exchange, London, are in a position to commence a major development in Loughlinstown, Co. Dublin, but are caught in the throes of the Review of the County Dublin Development Plan which is holding up developments. We have been greatly assisted by your Party Members on Dublin County Council, without whom it is fair to say, we would not have achieved the part-zoning which now obtains on the lands. Your Members have been to the fore in encouraging good development based on proper planning criteria, endorsed by the Council's own professional staff. In so doing, your Party shows an admirable stance for a common sense approach to development and for being positive towards job creation. Unfortunately other parties who have been against all proposed developments during the Review of the Draft Development Plan, now appear to take the high road on job creation possibilities in the course of the General Election.

I am pleased also to advise you, Taoiseach, that we have also subscribed directly to Members of your Party who are running in this General Election.

Wishing you all the best in your endeavours.

Yours sincerely,
MONARCH PROPERTIES LIMITED

Philip

Philip Monahan
CHAIRMAN

2046m/16.

Return to report

Directors:
Philip P. Monahan
Dominick Glennane
Edward Sweeney

Monarch Properties Ltd.

Monarch House, 57 Harcourt Street, Dublin 2.
Telephone: 01-784200 Fax: 01-784414

INDUSTRIAL AND COMMERCIAL PROPERTY DEVELOPMENT

13th July 1993

Mr. Martyn Baker,
Managing Director,
GRE Properties Limited,
17 Bruton Street,
London, W1X 7AH,

Re: Invoices Submitted on Cabinteely

Dear Martyn,

Thank you for your letter of 7th inst. with regard to the above and note that you have passed for payment Invoice Nos. 2059, 2060, 2061 and 2063.

I note that you feel that the Proforma Invoice for the balance of the £500,000 i.e £270,000 and the payment thereof, relies on the completion of documentation vis-a-vis Tallaght. This was not part of our understanding of the agreement as we had sought to keep these two matters quite separate and perhaps you would re-look at this situation in terms of part payment as this is a great deal of money to be outstanding.

As regards Invoice 2062 and your reference to the two payments of £2,500 and £5,000, you will note that these sums were paid bona fide to the parties concerned. They therefore would not rank within the payments envisaged which had been disbursed through the additional Management Fee and I therefore feel that they could not be written out in the way that you suggest.

Regarding item No. 6 - Invoice No. 2066: I note that you wish to delete the £4,100 paid to Noel Smyth & Partners being expenditure solely for the company. However, you will note from the Third Party Schedule estimated at £18,500 (further copy attached) that these sums had been estimated at £5,000 but in the event and, as I have already explained, having regard to the requests made, have exceeded that sum. I will cancel Invoice No. 2066 in the gross sum of £20,370 and reissue Invoice No. 2069 for £16,270 (taking account of the £4,100) leaving your contribution at £8,135 plus VAT.

Your item No. 4 - Invoice No. 2064: I am prepared to cancel Invoice No. 2064 and reissue Invoice No. 2068 at £4,000 per month for April, May, June and July if you feel that you should pay only on a monthly basis. Please note that Frank Dunlop & Associates were engaged from April and requested that part of their payment be "up front" before they would take on the assignment. That is the reason for the payment by us of £25,000 to date.

Cont'd...

Your item No. 5 - Invoice No. 2065: I am surprised that you have not authorised payment of this invoice. It is incorrect to say that attendance at the conference arose from any connection with the Chamber of Commerce. At my request Richard had been in touch with Anthony Padfield and had faxed him details of the conference in your absence and had requested that a representative of GRE should also attend. The outcome of the conference has been used to good effect, with Councillor Donal Marren and Deputy Eamon Gilmore in particular and may yet provide us with the mechanism of obtaining an acceptable zoning on Cherrywood. I would ask you to re-look at this matter again, as it is all tied up with our need to optimise the land zoning and to possibly attain industrial zoning to enable the development of Dublin Science & Technology Park. We will need your full support in this approach.

I suggest a further meeting in the next two weeks to get a very clear line on a number of things including the industrial zoning, costs to the end of the year and strategy of preparation of planning permission. With this in mind I will contact Paula to suggest a suitable date.

I thank you for your prompt attention to the invoices that I left with you and I would appreciate if you would arrange early payment of the ones indicated above. If you have any difficulty with the matters I have referred to in this letter please let me know.

Many thanks.

Yours sincerely,
MONARCH PROPERTIES LIMITED

Edward Sweeney
DEVELOPMENT DIRECTOR

Encs.

2089m/26-27.

Return to report

SAATCHI & SAATCHI ADVERTISING LIMITED

4 CLONSKEAGH SQUARE, DUBLIN 14. TELEPHONE 2698844. TELEFAX 2698912.

INVOICE

Invoice No: 000391

Monarch Properties,
Monarch House,
57 Harcourt Street,
Dublin 2

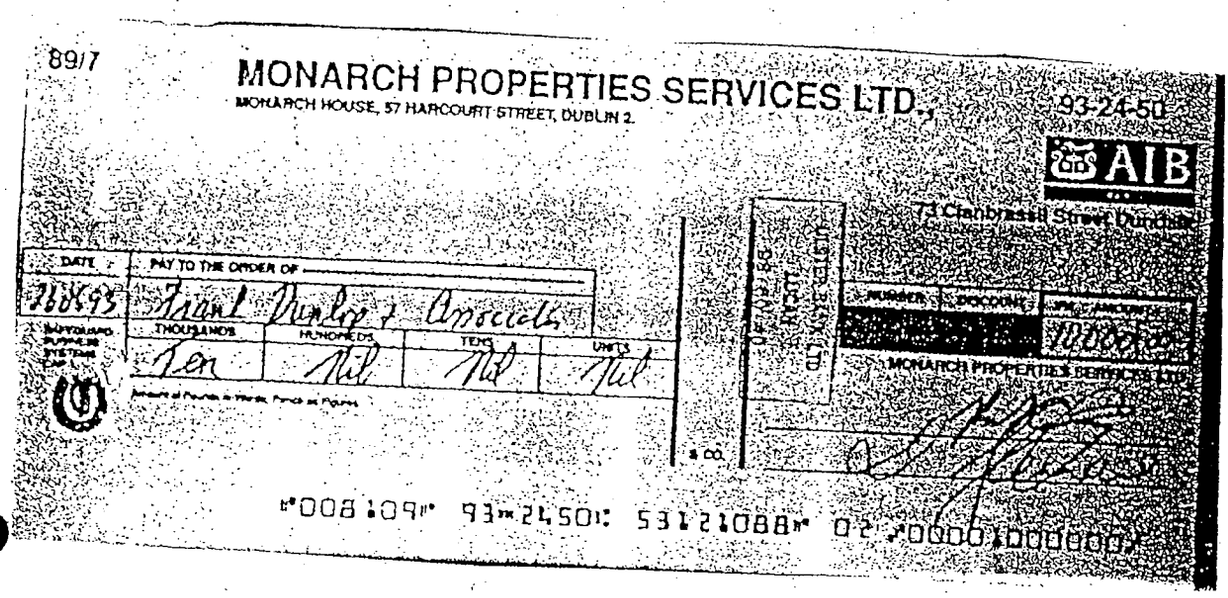
24th February 1994

To: Market research and Consultancy Services for 1994.		25,000.00
	V.A.T. @ 21%	5,250.00
		30,250.00

£25,000 in total received.
20/9/94

FF 20 - 88

Return to report


89/7

MONARCH PROPERTIES SERVICES LTD.,
MONARCH HOUSE, 57 HARCOURT STREET, DUBLIN 2.

93-24-50

AIB
73 Clanbrassil Street Dundalk

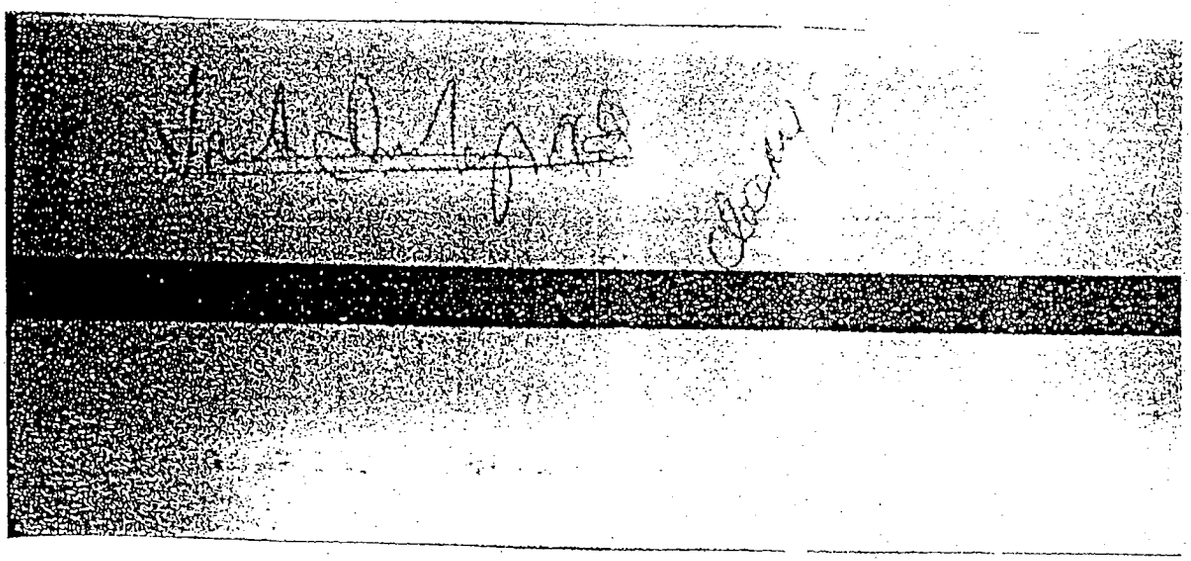
DATE
7/6/93

PAY TO THE ORDER OF
Brian Dunlop & Associates

THOUSANDS: Ten | HUNDREDS: Nil | TENS: Nil | UNITS: Nil

MONARCH PROPERTIES SERVICES LTD.

"008109" 93-24-50: 531 21088" 02 "0000 000000"



Return to report

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

MONARCH PROPERTIES SERVICES LTD.,
MONARCH HOUSE,
57 HARCOURT STREET,
DUBLIN 2

10th April, 1993

INVOICE - REF. CW/SOUTH

To Agreed Fee Re: Public Affairs Strategy and its Implementations.	£10,000
V.A.T. @ 21%	£ 2,100
	£12,100

P. Lavin

CERTIFIED A TRUE COPY OF ORIGINAL

MONARCH PROPERTIES SERVICES LTD.

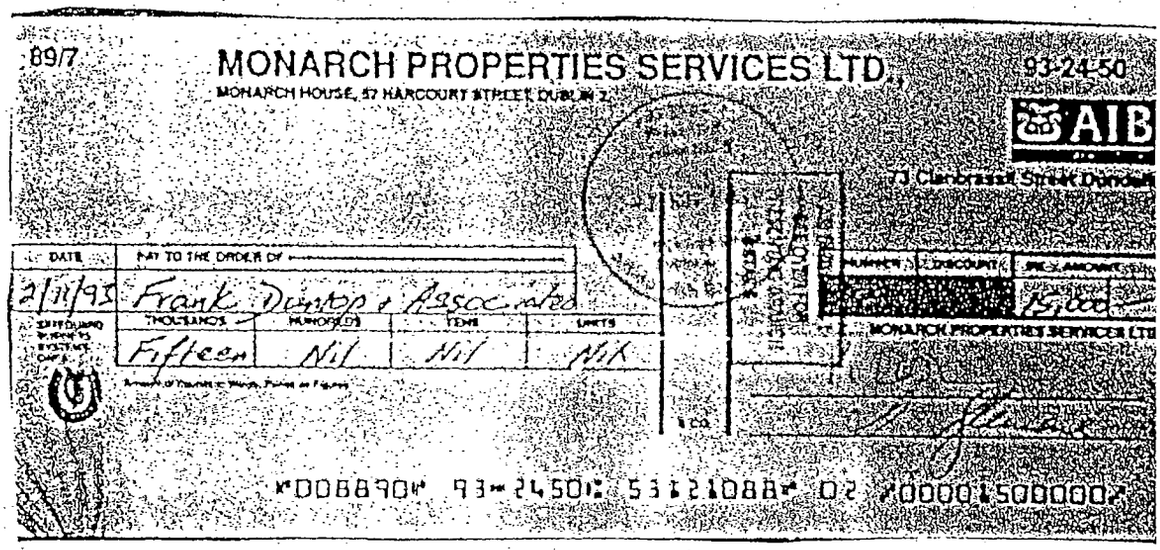
PAID
1 JUN 1993

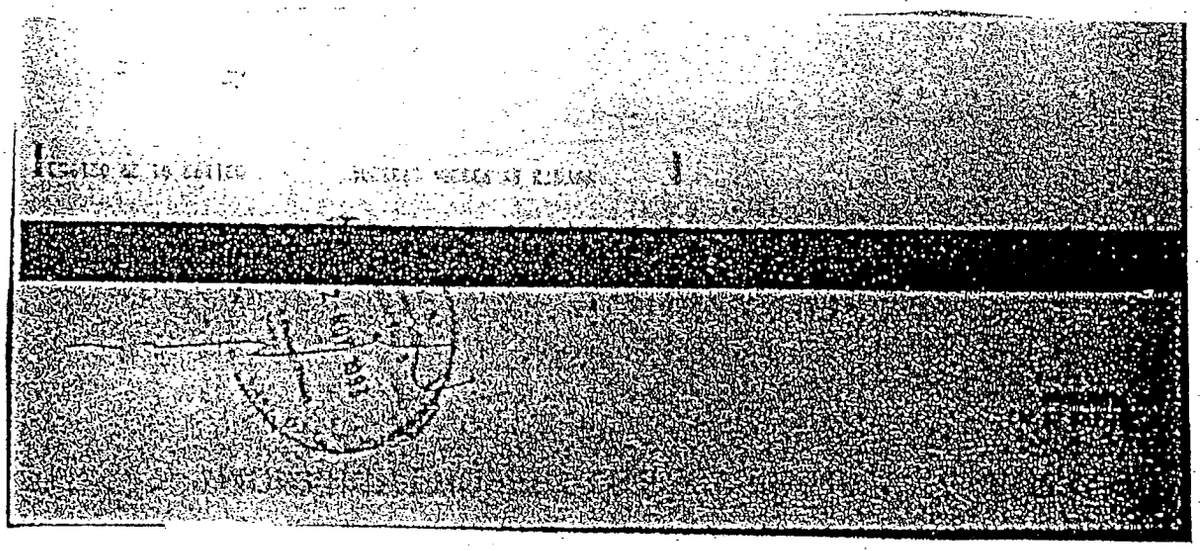
OK

VAT NO: 6547261-I

Registered in Ireland No. 149861

Return to report





Return to report

FRANK DUNLOP

& ASSOCIATES

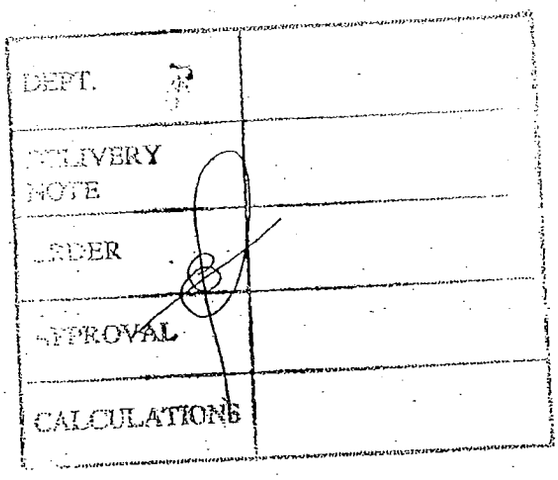
Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577

Monarch Properties Services Ltd.,
Monarch House,
57 Harcourt Street,
Dublin 2.

2nd. November, 1993

INVOICE NO. 2461

To the provision of media and communications training for 1993/94	IR£15,000.00
VAT Exempt	00.00
Total	IR£15,000.00



Return to report

MONARCH 2 - 2

Noel Smyth & Partners

22 Fitzwilliam Square,
Dublin 2.
Tel: (01) 632 1000
D.D.E. 109 005.
Fax No. 661 3979.
Vat No. 6606001G

Solicitors
Commissioners for Oaths

Noel M. Smyth
Ronan Hannigan
T. Colman Bermingham

Anita Kerrigan

Our Ref:	Your Ref.	Date
RH/YOS	PTB/208	22nd June, 2000

Strictly Private & Confidential
Open Addressee Only
Marie Ann Howard,
Solicitor,
Tribunal of Enquiry into certain
Planning Matters and Payments,
Upper Castle Yard,
Dublin Castle,
Dublin 2.

PLANNING AND PAYMENTS TRIBUNAL OFFICE
23 JUN 2000
RECEIVED

RE: PHILIP MONAHAN, MONARCH PROPERTIES LIMITED AND THE MONARCH GROUP
DONATIONS AS TO ELECTED REPRESENTATIVES AND OFFICIALS

Dear Ms. Howard,

I refer to previous correspondence in the above regard and enclose herewith for your attention list of contributions prepared by my client which payments are set out in chronological order and extracted from the cheque payment journal and details the reference to payees and reflects the recitals on said cheques.

All contributions made by the Monarch Group were made by cheque.

In relation to the 1991 List, all of the contributions are believed to have arisen on foot of requests for assistance to defray local election expenses, save as set out no records have been located in this regard.

In respect of the contribution of the 30th May shown as "T. Hand FG" – same was a total contribution to the Fine Gael, Dun Laoghaire/Rathdown area.

In respect of the 1992 List, the payments in October, November and December were contributions to defray expenses in respect of the General Election and the Senate Election.

There are two further payments in the 1993 list in this regard.

Again it is believed that these contributions would have arisen on foot of requests for assistance to defray such expenses and no records have been located in this regard.

Return to report

MONARCH 2 - 3

Noel Smyth & Partners,

In respect of the 1993 List, these would have arisen on foot of requests for assistance and some records exist to support same.

In respect of the 1994 List a similar position would arise and in addition on the 28th July of that year a cheque was written to "A & L Lawlor" in the amount of £3,000.00. Our clients believe that this may have been a political contribution made to deputy Liam Lawlor. No documentation supporting this payment has been located.

In respect of the 1995 List and the 1996 List it is believed that all such contributions would have arisen on foot of requests, again some documentary evidence is available.

In respect of the period 1998 –1999 – 2000 the records show two payments being made, namely:-

1. 28th April 1999 – contribution of £200 to Fine Gael
2. 18th April 2000 – contribution of £100 to PD's.

We would advise that Frank Dunlop & Associates were engaged by the Monarch Group in 1993 to provide PR Consultancy Services to the Group in relation to the Cherrywood Project. Included in the List is the dates and amounts inclusive of VAT of payments for such work.

We trust the above is in order and if you require any further information you might contact the writer.

Yours sincerely,

pp-Martin Kearney
Ronan Hannigan
NOEL SMYTH & PARTNERS

MONARCH 2 - 4

ORIGINAL

Date	Payee	Purpose	Amount
1991			
30-May	J. Fahey, FF	Local Election Expenses	1,000
30-May	T. Hand, FG	Local Election Expenses	5,000
31-May	J. Daly, FF	Local Election Expenses	500
31-May	O. Hammond, FF	Local Election Expenses	1,000
31-May	J. Hannon, FF	Local Election Expenses	300
31-May	S. Haughey, FF	Local Election Expenses	300
5-Jun	S. Barrett, FG	Local Election Expenses	600
5-Jun	T. Boland, FF	Local Election Expenses	600
5-Jun	T. Fox, FF	Local Election Expenses	600
5-Jun	B. Harvey, FF	Local Election Expenses	600
5-Jun	D. Lydon, FF	Local Election Expenses	600
5-Jun	C. McGrath, FF	Local Election Expenses	600
5-Jun	N. Ryan, FF	Local Election Expenses	1,000
6-Jun	F. Hanrahan, FF	Local Election Expenses	600
6-Jun	P. Hickey, FF	Local Election Expenses	1,000
6-Jun	S. Lyons, Ind	Local Election Expenses	600
6-Jun	M. McGennis, FF	Local Election Expenses	600
11-Jun	M. Hanrahan, FF	Local Election Expenses	300
11-Jun	M. Keating, FG	Local Election Expenses	600
11-Jun	H. Kehoe, PD	Local Election Expenses	300
11-Jun	M. Lynch, FG	Local Election Expenses	600
11-Jun	P. Madigan, FF	Local Election Expenses	300
11-Jun	Senator L. McMahon, FG	Local Election Expenses	600
11-Jun	C. Quinn, PD	Local Election Expenses	300
11-Jun	T. Ridge, FG	Local Election Expenses	50
11-Jun	S. Terry, PD	Local Election Expenses	300
11-Jun	C. Tyndal, PD	Local Election Expenses	300
13-Jun	S. Ardagh, FF	Local Election Expenses	300
13-Jun	C. Boland, FG	Local Election Expenses	300
13-Jun	S. Brock, FF	Local Election Expenses	300
13-Jun	M.J. Cosgrave, FG	Local Election Expenses	300
13-Jun	L. Creaven, FF	Local Election Expenses	300
13-Jun	C. Gallagher, FF	Local Election Expenses	300
13-Jun	J. Geraghty, FF	Local Election Expenses	300
13-Jun	J. Gilbridge, FF	Local Election Expenses	300
13-Jun	J. Larkin, FF	Local Election Expenses	300
13-Jun	L. Mulvihill, FF	Local Election Expenses	300
13-Jun	Orchard Auctioneers (S. Riney, FF)	Local Election Expenses	600
13-Jun	G. V. Wright, FF	Local Election Expenses	300
5-Jul	Progressive Democrats	Function	300
3-Oct	Fine Gael Dublin South West	Function	100

1992			
Date	**Payee**	**Purpose**	**Amount**
8-Jan	Fianna Fail	Fundraiser	50
21-Jan	Fianna Fail	Fundraiser	100
27-Jan	Progressive Democrats	Fundraiser	200
4-Feb	Fine Gael Dublin North West	Fundraiser	200
19-Feb	Labour Party Dublin South West	Fundraiser	300
28-Feb	T. Hand, FG	Fundraiser	1,000
13-Mar	Fianna Fail Dunlaoghaire	Fundraiser	200
18-Mar	Brian Lenihan Golf Society	Golf Outing	200
1-Jun	Fianna Fail Headquarters	Fundraiser	200
4-Aug	F. Fahey TD, FF	Golf Outing	250
12-Aug	Fine Gael Golf Classic	Golf Outing	600
20-Oct	L. Lohan, PD	Gen. Election Expenses	400
13-Nov	F. Hanrahan, FF	Gen. Election Expenses	1,000
13-Nov	B. Lenihan, FF	Gen. Election Expenses	1,000
13-Nov	S. Lyons, Ind	Gen. Election Expenses	750
13-Nov	M. McGennis, FF	Gen. Election Expenses	1,000
13-Nov	A. Ormonde, FF	Gen. Election Expenses	750
17-Nov	C. Boland, FG	Gen. Election Expenses	400
17-Nov	B. Coffey, FF	Gen. Election Expenses	1,000
17-Nov	M. Flaherty, FG	Gen. Election Expenses	500
17-Nov	C. McGrath, FF	Gen. Election Expenses	500
17-Nov	M. Taylor, Lab	Gen. Election Expenses	500
17-Nov	G.V. Wright, FF	Gen. Election Expenses	1,000
18-Nov	J. Bruton - Leader FG	Gen. Election Expenses	2,500
18-Nov	C. Flood, FF	Gen. Election Expenses	500
18-Nov	J. Hannon, FF	Gen. Election Expenses	500
18-Nov	M. Harney, PD	Gen. Election Expenses	1,000
18-Nov	M. Keating, FG	Gen. Election Expenses	1,000
18-Nov	C. O'Connor, FF	Gen. Election Expenses	500
18-Nov	A. Reynolds, Leader FF	Gen. Election Expenses	5,000
18-Nov	T. Ridge, FG	Gen. Election Expenses	500
19-Nov	S. Barrett TD, FG	Gen. Election Expenses	500
19-Nov	Senator S. Haughey, FF	Gen. Election Expenses	750
19-Nov	N. Owen, FG	Gen. Election Expenses	500
16-Dec	M.J. Cosgrove, FG	Senate Election Expenses	1,000
16-Dec	M. Keating, FG	Senate Election Expenses	1,000
16-Dec	D. Lydon, FF	Senate Election Expenses	2,500
16-Dec	N. Ryan, FF	Senate Election Expenses	2,000
16-Dec	G.V. Wright, FF	Senate Election Expenses	2,000

1993			
Date	**Payee**	**Purpose**	**Amount**
18-Jan	A. Ormond, FF	Senate Election 1992	800
29-Jan	T. Fox, FF	Gen. Election, 1992	1,000
19-Mar	A. Devitt, FG	Tickets - Fundraiser	100
23-Mar	C. Hilliard T.D., FF	Golf Fund Raiser	1,000
1-Apr	Fianna Fail Fundraising	Fundraiser	600
6-May	Fianna Fail	Fundraiser - Co. Louth	1,000
6-May	Fine Gael Dublin West	Fundraiser	200
28-May	FG Dublin South West	Fundraiser	300
23-Jun	H. Keogh T.D., PD	Tickets - Fundraiser	100
8-Jul	Fine Gael Golf Classic	Golf	100
7-Sep	N.Owen T.D., FG	Golf	200
15-Oct	FF Golf Classic	Golf	120

1994			
Date	**Payee**	**Purpose**	**Amount**
20-Jan	T. Morrissey, FG	Golf	500
1-Feb	Progressive Democrats	Fundraiser (Interest-free loan, Helen Keogh)	2,000
7-Mar	Fianna Fail	(2x£150 tickets)	300
14-Mar	FF Dunlaoghaire Constituency	Fundraiser - Lunch, St. Patrick's Day (B. Coffey)	1,000
30-Mar	Fine Gael Dunlaoghaire Constituency	Fundraiser	100
14-Apr	C. Boland, FG	Lunch Fundraiser	200
14-Apr	Fianna Fail Golf Classic	Golf (T. Fox)	250
22-Apr	FG Golf Classic	Golf (O. Mitchell)	400
5-May	Fianna Fail	Tickets	50
5-May	GATT Seminar	FG - For Seminar	200
5-May	Progressive Democrats	Tickets	200
16-May	Fine Gael Euro Fund	Fundraiser	100
1-Jun	Labour Golf Classic	Golf	500
1-Jun	P. Madigan - Election Fund	Fundraiser	100
29-Jul	Fianna Fail	Fundraiser	120
9-Sep	Fine Gael	Fundraiser	200
19-Sep	Saatchi and Saatchi	Fianna Fail - Headquarters Fundraising	15,000
30-Sep	Fine Gael Dublin North	Golf (N. Owen)	400
28-Oct	Fine Gael - Swords branch	Lunch	200

1995			
Date	**Payee**	**Purpose**	**Amount**
5-Jan	L. Lawlor	Political Contribution	2,500
26-Jan	Progressive Democrats	Fundraiser	200
4-May	Fianna Fail Dunlaoghaire	Fundraiser	250
4-May	Fine Gael	Fundraiser	240
18-May	Progressive Democrats	Tickets	100
22-May	Fine Gael Dunlaoghaire	Fundraiser	1,000
1-Jun	Fine Gael Dublin West	Fundraiser	200
1-Dec	Fianna Fail	Fundraiser	200

MONARCH 2 - 9

1996			
Date	**Payee**	**Purpose**	**Amount**
11-Jan	Clr. O. Mitchell	FG - Fundraiser	400
11-Ma	Betty Coffey, FF	St. Patrick's Day Lunch	1,300
28-Ma	Clr. T. Morrissey, FG	By Election Expenses	750
28-Ma	Clr. N. Ryan	By Election Expenses	1,000
29-Ma	Clr. S. Lyons, Ind	By Election Expenses	500
29-Ma	Clr. Michael O'Donovan, Lab	By Election Expenses	500
29-Ma	Clr. John O'Halloran, Ind	By Election Expenses	500
29-Ma	Clr. Sheila Terry, PD	By Election Expenses	500
12-Apr	Clr. Sean Ardagh, FF	Lunch Fundraiser	250
12-Apr	Fine Gael Golf Classic	Golf, Liam Cosgrave	400
25-Apr	Progressive Democrats	Fundraiser	500
26-Apr	Clr. J. O'Halloran	MS Fundraiser	250
2-May	Progressive Democrats	Tickets	50
23-May	Clr. R. Greene	Tickets	45
29-May	Fine Gael Business Dinner	Lunch	200
14-Ju	Clr. T. Fox	Golf Fundraiser	280
27-Ju	Helen Keogh, PD	Lunch	200
3-Jl	C. McGrath, FF	Golf Classic	500
15-Jul	L. Lawlor - Golf Classic	Golf	1,000
23-Aug	Clr. Larry Lohan	Tickets - PD	250
26-Se	N. Owen TD	FG - Golf Outing	400
25-Oct	David Andrews TD, FF	Fundraiser	1,000
1-Nov	Senator Brian Hayes Senator	FG - Fundraiser	100
1-Nov	Senator A.Ormond	Fundraiser	600
14-Nov	Anne Devitt, FG (Swords)	Lunch	240

MONARCH 2 - 10

Date	Payee	Purpose	Amount
1997			
6-Feb	Clr. John O'Halloran	MS Contribution	500
13-Feb	Tony Fox, FF	Golf Outing	280
21-Feb	S. Ardagh, FF	Lunch	250
28-Feb	Helen Keogh TD	PD - Lunch Fundraiser	500
5-Mar	Senator Anne Ormond	FF - Golf Outing	400
14-Mar	Clr. Helen Keogh	PD - Tickets	100
26-Mar	Clr. Olivia Mitchel, FG	Gen. Election Contribution	1,000
4-Apr	Brian Lenihan, TD	Golf Classic	500
3-Jun	Michael J. Cosgrove	Gen. Election Contribution	495
3-Jun	Democratic Left - Dublin South West	Gen. Election Contribution	1,000
3-Jun	Fianna Fail - Head Office	Gen. Election Contribution	3,950
3-Jun	Fianna Fail - Dublin North	Gen. Election Contribution	1,000
3-Jun	Fine Gael - Head Office	Gen. Election Contribution	3,000
3-Jun	Fine Gael - Dunlaoghaire Rathdown	Gen. Election Contribution	1,000
3-Jun	Fine Gael - Dublin North	Gen. Election Contribution	1,000
3-Jun	Finbarr Hanrahan, FF	Gen. Election Contribution	495
3-Jun	Labour Party	Gen. Election Contribution	1,000
3-Jun	Labour Party - North Kerry	Gen. Election Contribution	2,500
3-Jun	Progressive Democrats - Dublin S.West	Gen. Election Contribution	3,000
18-Jul	Labour Golf Classic	Golf - Mt. Juliet	1,000
13-Aug	James Connolly Golf Classic	Golf	400
5-Sep	Pat Rabitte - Election Fund	Gen. Election Contribution	100

MONARCH 2 - 11

Monarch Payments to Frank Dunlop & Associates	
Date	**Amount**
1993	
May-26	10,000
Sep-17	7,500
Nov-02	15,000
Dec-21	15,000
1995	
Aug-01	5,000
Total	**52,500**

Return to report

CHAPTER FOUR - BALLYCULLEN BEECHILL MODULE

INTRODUCTION

1.01 Forty witnesses gave evidence when this module, which concerned an inquiry into the rezoning of two plots of land with which Mr Christopher Jones Senior (Mr Jones) was associated, was heard in public over 18 days between February and March 2006 and 1 February 2007. A small number of documents relating to Mr Liam Lawlor's involvement with these lands were read into the record on Day 916 (28 October 2008). Information provided by or on behalf of four deceased councillors, Cllrs Jack Larkin, Cyril Gallagher, Séamus Brock and Tom Hand, was also read into the record during the course of this module.

1.02 In 1948 Mr Jones acquired a controlling interest in, and became managing director of, H. A. O'Neil Ltd, then a small plumbing contracting company ('O'Neils').

1.03 From the mid-1960s onward Mr Jones became involved, as an investor and director, in a variety of trading companies. These included shopping companies, radiator manufacturers, steel tube manufacturers and a building company as a minority shareholder. In the early 1970s the directors of O'Neil's and the other companies with which Mr Jones was involved decided to come together and seek a quotation in the Stock Exchange for an informally constituted group of companies under a holding company to be called the Jones Group Plc. In 1972 O'Neil's and the other relevant companies became wholly-owned subsidiaries of the Jones Group which achieved its quotation in the Stock Exchange in 1973 with 38 per cent of the share capital being held by Mr Jones and his family interest. From December 1972 to June 1993 Mr Derry Hussey was financial director of the Jones Group and a director of many of its subsidiaries including Beechill Properties Ltd. He held no shares in Beechill Properties Ltd and less than 1 per cent of the Jones Group. He was a non-executive director of a number of companies connected with Mr Jones, including Ballycullen Farms Ltd.

BALLYCULLEN FARMS LTD

1.04 In 1963, on Mr Jones' proposal, O'Neil's bought a farm of 194 acres in Ballycullen in south Co. Dublin. A further 25 acres adjoining the farm were added to the holding in 1967/8. These lands were contained in Folios 2381 and 16077 of the Register of Freeholders County of Dublin and lay to the east of the Ballycullen Road and south-west of the Southern Cross motorway — the M50. Apart from a very small portion zoned A1 (to provide for new residential communities in accordance with an approved area action plan at 5 houses per

acre) these lands were zoned B (to protect and provide for the development of agriculture) in the 1983 Dublin County Development Plan.

1.05 Since it was never intended that the Ballycullen farm would form part of the public group, as it was deemed inappropriate for a public company to own and conduct a farm, the farm was transferred in December 1972 into a new subsidiary, Ballycullen Farms Ltd, a company owned by the same people who had owned O'Neil's and in the same proportions, namely 77 per cent by Mr Jones, 9 per cent by Ms A. O'Neil (a shareholder in O'Neil's) and 14 per cent by Mr Gerard Jones and his family. In 1973 Mr Jones acquired Ms O'Neil's 9 per cent interest through a trust company, C. J. Trust Company. Mr Gerard Jones' interest in Ballycullen Farms came into the ownership of Mr Jones in November 1996. By 2002 Ballycullen Farms Ltd no longer owned any lands at Ballycullen.

1.06 By the early 1970s the farm had become a successful dairy operation with a prize-winning pedigree Friesian herd. Mr Jones gave evidence that its operation was becoming progressively more difficult to run because the character of the area had changed over ten years from largely rural to largely urban. Housing developments had been constructed near and around the farm, and therefore it was decided to move the farm operation to a more rural area. In the early 1970s, in anticipation of ultimately moving the dairy operation from Ballycullen, Mr Jones acquired through a family trust an established dairy farm in Kinnegad and the dairy operation moved there in the mid 1990s. In 1974 Mr Jones had acquired a 300 acre farm in Dunshaughlin, Co. Meath which was run as a dry stock farm.

BEECHILL PROPERTIES LTD

1.07 In the early 1970s Beechill Properties Ltd, which at the end of 1972 became a wholly owned subsidiary of the Jones Group, acquired a property comprising about 4.9 acres in Clonskeagh at the junction of Clonskeagh Road and Beaver Row on the south side of the river Dodder in Dublin. This property consisted of offices, workshops and stores, including a large storage shed which had been let on a short lease. These lands (Beechill lands) later became the headquarters of the Jones Group.

1.08 The lands were zoned F (to preserve and provide for open spaces) in Map 15 of the 1983 Dublin County Development Plan although the area where the property was situated was originally used for light industry use and offices. By the mid-1980s it had become almost completely an office area, and the Jones Group had substantially reduced or discontinued its workshop and storage usage at the site. In 1995/6 the Beechill property was sold by public tender for IR£3m.

1.09 At a special meeting of Dublin County Council held on 10 May 1990 the members '*noted'* the proposed change of the zoning from F (open space) to E (industrial) on these Beechill lands which were contained in Map 23 of the 1990 Draft Dublin Development Plan, a proposed change which carried over in the published 1991 Draft Development Plan which went on public display between September and December 1991.

1.10 A motion signed by Cllrs Don Lydon (FF) and Tom Hand (FG) was received within the Council on 28 September 1992 resolving that the Beechill lands be zoned for office use compatible with extensive office use of adjoining lands. It was proposed to a special meeting of the Council held on 16 October 1992. The Manager recommended that the motion not be passed as it could not be implemented in its current form since there was no zoning category of 'office use' in the Draft Development Plan. The Manager's recommendation that a specific objective be included in the written statement to facilitate development of offices at this location was adopted. Map 23 of the Dublin County Development Plan 1993 amendments to the 1991 Draft Development Plan showed these lands zoned E with a specific local area objective *'to facilitate the development of offices at Beechill Court'* when it went on public display between July and August 1993.

1.11 At a special meeting of the Council on 2 November 1993, the Manager's report recommending confirmation of these changes was adopted without a vote and as a result the lands were zoned E in the 1993 Dublin County Development Plan with the inclusion in the written statement of the specific objective *'to facilitate the development of offices.'*

MR FRANK DUNLOP'S RETENTION

2.01 Mr Dunlop was retained in February 1991 as a lobbyist by Mr Jones to assist in the campaign by Ballycullen Farms Ltd to rezone its lands. Mr Dunlop's retention arose in the context of a provision in the Dublin County Draft Development Plan, published by the Manager in 1990, that some 32 hectares (77 acres) of the Ballycullen lands would be rezoned from F (open space) to E (industrial) with the remainder of the lands to retain their 1983 zonings.

2.02 On foot of a proposal by the Council's planning department to rezone a portion of the Ballycullen lands for industrial use, a submission was made to the Council on 7 February 1991 by Mr Seán O'Laoire of Murray O'Laoire Architects, Mr Jones' professional advisors, seeking such industrial zoning. However, this proposal did not find favour with a number of councillors, and by 8 February 1991 motions had been submitted in the names of Cllrs Breda Cass, Mary Muldoon, Eithne FitzGerald and Alan Shatter seeking a reversion to B

(agriculture) of the 32 hectares (77 acres) proposed to be rezoned industrial in the 1990 Draft Development Plan.

2.03 Notwithstanding its submission on this issue, it did not appear that Ballycullen Farms Ltd took any steps to ensure that a motion would be brought before the County Council seeking industrial zoning for a portion of the Ballycullen lands. The last date on which such a motion could have been brought was 15 February 1991.

2.04 In addition to the opposition of Cllrs Cass, Muldoon, FitzGerald and Shatter to the planners' proposal for industrial zoning for some 77 acres, it appeared that Mr Jones himself came under pressure from local TDs to ease the campaign he was waging to change the agricultural zoning on his lands. Mr Jones maintained that in early 1991 both Mr Séamus Brennan TD[1] and Mr Tom Kitt TD (Mr Kitt was also a councillor in early 1991) had met with him to make such a request. Mr Jones told the Tribunal that he did not accede to this request. It was Mr Jones' evidence that in early 1991 it was his intention to go '*full steam ahead'* with his rezoning campaign.

2.05 The Tribunal concluded that by the time Mr Jones first met with Mr Dunlop on 21 February 1991 he recognised and appreciated that his attempts during the then ongoing review of the 1983 Development Plan to secure residential and other zoning for his Ballycullen lands would likely be met with opposition, both from elected members of the County Council and from various other interested persons or groups who were keen to ensure that the lands retained their agricultural zoning.

2.06 Mr Dunlop credited Mr Liam Lawlor TD with an involvement in his retention as a lobbyist by Mr Jones. The latter did not recollect any such involvement by Mr Lawlor. However, the Tribunal believed it probable, by virtue of Mr Lawlor's ongoing association with Mr Jones regarding the Ballycullen lands, and by virtue of Mr Dunlop and Mr Lawlor's close association, that Mr Dunlop was recommended to Mr Jones by Mr Lawlor.

2.07 According to Mr Dunlop, he advised Mr Jones during their first meeting that the review of the Development Plan provided an opportunity to make a submission to the County Council to seek a change of zoning for the lands. Mr Dunlop said that he suspected that Mr Jones had already taken advice from Mr Lawlor on this issue. Mr Dunlop also testified that he apprised Mr Jones of the need to lobby councillors in support of Ballycullen Farm Ltd's rezoning proposals

[1] The late Mr Séamus Brennan TD did not recollect meeting Mr Jones in relation to the lands.

and informed him of the role played by councillors in bringing rezoning motions before the Council. An undated note, furnished by Mr Dunlop to the Tribunal, which was probably made by Mr Dunlop in the course of his 21 February 1991 meeting with Mr Jones, suggested that the name of Cllr Tom Hand had been raised by either Mr Dunlop or Mr Jones at their meeting.

2.08 Mr Dunlop next met Mr Jones on 12 April 1991, a meeting which was followed some three weeks later by the first of a series of 13 payments made to Mr Dunlop between May 1991 and July 1995, amounting to a minimum of IR£61,420.83.

2.09 On 30 May 1991 the motions in the names of Cllrs Cass, Muldoon, FitzGerald and Shatter (opposing the Manager's plan to rezone a portion of the lands industrial) were passed, without objection, by the members of the County Council. The result was that when the Draft Development Plan 1991 was put on first public statutory display on 2 September 1991 the Ballycullen lands retained their B (agricultural) zoning, as provided for in the 1983 Development Plan.

2.10 Mr Dunlop again met with Mr Jones on 12 and 20 June 1991, and following those meetings Mr Dunlop wrote to Mr Jones on 1 July 1991 advising him of the need for Ballycullen Farms Ltd to make a submission to the County Council on their rezoning proposals for the lands, during the period of the first public statutory display. Mr Dunlop attached to his letter an *'action plan'* for the weeks of 22 and 29 July 1991 and the week of 19 August 1991, urging Mr Jones to put in place the necessary professional teams (such as architects, design consultants, town planners and public affairs/PR consultants) to assist the company in its rezoning campaign. Mr Dunlop also advised Mr Jones that from 29 July 1991 '*on-the-ground contacts'* with residential and community groups should commence.

2.11 Following meetings by Mr Dunlop with Mr Jones on 23 and 25 July 1991, Mr Jones wrote to Mr Dunlop on 29 July 1991 advising him that two employees of Ballycullen Farms Ltd, Mr Oliver Brooks and Mr Frank Brooks, were willing to provide assistance in the rezoning campaign for the lands. The evidence established that both men had close connections with Fianna Fáil and were happy to assist in lobbying councillors on behalf of Ballycullen Farms Ltd.

2.12 Mr Dunlop submitted a comprehensive '*Draft Action Plan*'[2] to Mr Jones on 30 August 1991 (probably in the course of a meeting with him which took

[2] See Exhibit 1.

place on that date) which contained a more detailed outline of the procedures within the County Council pertaining to its Development Plan.

2.13 Mr Dunlop also outlined to Mr Jones what his proposed '*public affairs programme'* would comprise and he advised, *inter alia*:

> *Given the previous history of interaction with both planners and elected members vis-à-vis the Ballycullen lands we propose an intensive public affairs programme during the public display period but not before the finally agreed submission is ready. Copies of the submission, together with detailed maps in respect of our proposals will be made available to those elected members with whom we will have contact. It is vitally important that this contact is unified and cohesive. We recommend that all contact, unless otherwise required, be made by Frank Dunlop. This is a matter for discussion with Mr Jones.*
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> *The most important points of contact relate to the new electoral county of South Dublin. There are 26 elected members in this electoral area. Within reason, and where judged appropriate, each one will have to be contacted and given a briefing as to what is proposed.*

2.14 Mr Dunlop proceeded to list, in his preferred order of priority, the twenty-six members of the South County Dublin Council electoral area. He then went on to refer to other *'important points of contact'*, listing another ten councillors.[3]

2.15 Mr Dunlop identified three government ministers: Mr Séamus Brennan TD, Ms Mary Harney TD and Mr Chris Flood TD, as persons who should also be briefed on Mr Jones' rezoning proposals. He recommended that these individuals should be contacted either by Mr Jones alone or Mr Jones and Mr Dunlop.

2.16 In the course of his '*Draft Action Plan'* Mr Dunlop set out a proposed action schedule for the month of September 1991, recommending that the *'public affairs programme'* should begin on 30 September 1991.

2.17 Mr Dunlop continued to liaise closely with Mr Jones in the last quarter of 1991, meeting with him and his professional advisers on 16 September. The Tribunal was satisfied that these meetings were likely to have focused on the proposals being prepared by Mr Jones' professional advisers for submission to the County Council during the ongoing statutory display period. This submission

[3]By 30 August 1991 Mr Dunlop was in possession of a list of the newly elected councillors which was provided to him on that date by Mr Lawlor.

was lodged on 3 December 1991, on behalf of Ballycullen Farms Ltd, seeking A1 (residential) zoning for 56.08 hectares of its lands, and F (open space) zoning for the balance of the lands (21 hectares).

2.18 Following the expiry of the first statutory display period on 3 December 1991, and the period permitted for the making of oral representations on the proposed Draft Plan (March 1992), the County Council's special meetings to consider the next stage of the Draft Development Plan commenced on 10 April 1992.[4]

2.19 As of January 1992 Mr Dunlop was contemplating, in the context of such consideration of the Draft Plan, that it would be Summer 1992 at the earliest before Map 20,[5] on which the Ballycullen lands were located, would be before the Council for consideration.[6]

2.20 Mr Dunlop's diary recorded three scheduled meetings with Mr Jones, on 5, 19 and 25 March 1992, and a further meeting on 2 April 1992. The Tribunal was satisfied that these meetings were likely to have been concerned with the relatively imminent requirement (given Mr Dunlop's belief that the Ballycullen rezoning issue would be determined by the Council in May/June 1992 as per his letter of 9 April 1992 to Mr Jones) that a motion to rezone the lands be prepared and signed by a councillor or councillors.[7]

2.21 The documentary evidence provided to the Tribunal by Mr Dunlop suggested that Mr Jones, and to a lesser extent Mr Hussey, were in frequent telephone contact with him from April 1992 onwards. Equally, from the month of April 1992, both Mr Dunlop's diary and the telephone records maintained by his secretary disclosed regular, and on occasions almost daily contact between Mr Dunlop and councillors. The Tribunal was satisfied that one of the matters in respect of which Mr Dunlop was having such contact was the Ballycullen rezoning, although this was only one of a number of rezoning proposals with which he, as a lobbyist, was concerned in 1992.

2.22 It appeared that by mid-1992 liaison by Mr Dunlop and Mr Jones (and other persons connected with Ballycullen Farms Ltd) had commenced in earnest.

[4] In January 1992 the Council was of the view that the new Development Plan would be finalised by December 1992. This in fact did not happen until December 1993.

[5] Mistakenly referred to by Mr Dunlop as Map 19 in his letter to Mr Jones of 20 January 1992.

[6] This did not happen until October 1992.

[7] By 14 April 1992 Mr Jones himself was alert to this possibility in advance of his meeting with Cllr Lydon.

2.23 On 8 April 1992 Mr Dunlop wrote to Cllr Cass, then a known opponent of the Ballycullen rezoning proposals, seeking a meeting between her and Mr Jones.

2.24 In a letter of 15 April 1992, probably in response to Mr Jones' faxed request to him on 14 April 1992, and probably in expectation of the Ballycullen rezoning proposal being the subject of Council deliberations in mid-June 1992, Mr Dunlop advised Mr Jones, *inter alia*, as follows:

> *Because we have a submission to the Plan requesting rezoning of the lands at Ballycullen from agriculture to residential we require a motion to be submitted NINE (9) working days before the date on which our map will be considered. This motion must be signed by a Councillor and be accompanied by a relevant map and the area for rezoning outlined in red. The map must also be signed by the Councillor, specifically within the red boundaries.*
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> *I attach the text of the motion.*

2.25 In early June 1992, via Mr Hussey, Mr Dunlop was provided with a condensed version, prepared by Murray O'Laoire, Architects, of the submission which had been lodged with the Council on 3 December 1991. Murray O'Laoire's letter of 2 June 1992 to Mr Hussey, enclosing the document in question, stated, *inter alia*:

> *Please find enclosed note on submission to Draft Dublin County Development Plan in respect of the above as requested at our meeting on Friday. I think that Frank Dunlop should take this and polish it up/improve it for whatever audience it is intended. I have kept it to one page on purpose as I suspect that no more will be read by any councillor. You will see that I have included the A1 zoned lands at 90 acres as suggested at the meeting. Further discussions with Dr Brian Meehan suggest that the horse trading I discussed will take place but obviously if Frank Dunlop's feeling for the councillors is that a lesser figure could swing the vote then getting some rezoning takes precedence.*

2.26 It is clear from the above quoted extract that by mid-1992 Mr Jones and his professional advisers, including Mr Dunlop, were expecting that, in order to achieve A1 residential zoning on the Ballycullen lands, they might have to settle for residential zoning on a somewhat smaller acreage than that proposed in the December 1991 submission (as would prove to be the case).

2.27 Meetings took place between Mr Dunlop and Mr Jones on 29 May, 15 June and 22 July 1992. By 30 June 1992 Mr Dunlop was in possession of the map, prepared by Murray O'Laoire, which was required to be attached to any motion brought before the Council seeking the rezoning of the lands.

2.28 In or about the month of July/August 1992 Mr Dunlop was retained by Beechill Properties Ltd/Mr Hussey as a lobbyist to provide assistance to that company in its campaign to have the zoning status of its lands at Beechill regularised. By the time of Mr Dunlop's retention as a lobbyist, he had already had dealings with Mr Hussey through the latter's involvement (albeit less than that of Mr Jones) in the campaign to rezone the Ballycullen lands.

2.29 As the Beechill issue was not considered or expected to be controversial,[8] the meetings between Mr Dunlop and Mr Jones/Mr Hussey which took place on 17 and 31 August, 11 and 17 September[9] and 19 and 27 October 1992 probably continued to concern the much more controversial issue of the rezoning of the Ballycullen lands.

2.30 By September 1992 Mr Jones/Ballycullen Farms Ltd had resolved to limit their A1 (residential) proposal to 24.6 hectares (60 acres) as was evident from a draft letter prepared by Mr Dunlop for Mr Jones to send to Cllr Cass.[10]

2.31 As of 28 September 1992 Mr Dunlop had procured the signature of Cllrs Lydon and Hand on a motion[11] proposing the rezoning to A1 (residential) of 60 acres of the Ballycullen lands with the remaining lands proposed to be rezoned F (open space).

2.32 It was likely that a topic of discussion at the meetings which took place between Mr Dunlop and Mr Jones on 19 and 27 October 1992 was the lodging by Cllr Muldoon and others of motions seeking to retain the 1983 Development Plan B (agriculture) zoning for the Ballycullen lands. These motions, (together with the Lydon/Hand motion) were to come before the councillors on 29 October 1992. Mr Jones met with Cllr Muldoon in October 1992 to put his case for his rezoning proposals to her. Cllr Muldoon, however, remained steadfastly opposed to such proposals and voted accordingly on 29 October 1992.

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[8] The zoning of these lands was regularised by the Council on 16 October 1992 without a vote though a motion had been lodged on 28 September 1992 in the names of Cllrs Lydon and Hand seeking such regularisation. On 2 November 1993 the regularisation of the zoning status of these lands was confirmed. No objections were received from the public.

[9] Mr Lawlor was in attendance at the 17 September meeting.

[10] Cllr Cass duly supported A1 (residential) zoning for 60 acres albeit with residential density limited to 360 houses in total—such density proposal having been put before the Council by Cllr Cass together with Cllr Hannon.

[11] See Exhibit 2.

2.33 On 12 October 1992 Mr Jones met with Cllr John Hannon (FF) at Wynn's Hotel, Dublin, a meeting organised by Mr Dunlop although he was not present. The Tribunal accepted that Cllr Hannon gave his support for A1 (residential) zoning and F (open space) zoning for the lands following undertakings given by Mr Jones to Firhouse Community Council, as advised to Mr Hannon by letter from Mr Jones on 27 October 1992. On 29 October 1992, Cllr Hannon, together with Cllr Cass, successfully sought an amendment to the Lydon/Hand motion, which restricted density levels on the lands to 360 houses.

2.34 Mr Dunlop's next meeting with Mr Jones took place on 4 November 1992. This meeting followed the rezoning on 29 October 1992 of some 24.6 hectares (60 acres) of the land to A1 (residential) (albeit with restricted density) with the balance of the lands being zoned F (open space).

2.35 On 6 November 1992 Mr Dunlop received a cheque for IR£11,000 from Mr Jones. By this date Mr Dunlop (as appeared from documentary evidence available to the Tribunal) had received a total of IR£35,500. Of the seven payments which comprised this total, three had been paid by Ballycullen Farms Ltd (two in 1991 and one on 20 February 1992), one payment was made on 28 August 1992 by Beechill Properties Ltd, and the remaining payments (early May, 11 August and 6 November 1992) were made by way of personal cheque from Mr Jones. Mr Dunlop's eighth payment, a IR£2,500 personal cheque from Mr Jones, was received by him on 9 December 1992.

2.36 In the course of his evidence, Mr Dunlop was asked to explain why, on 29 July 1992 in the course of discussions with Mr John Aherne of AIB regarding the provision of a loan (for Citywest) he advised Mr Aherne that by November 1992 he expected to be in receipt of IR£50,000 from Ballycullen Farms Ltd. Mr Dunlop denied that any one sum of IR£50,000 was paid to him between 29 July and the end of November 1992. The documentation available to the Tribunal established that in the period in question (July to November 1992) Mr Dunlop received a total of IR£21,000, made up of three payments of IR£2,500, IR£7,500 and IR£11,000, paid on 11 and 28 August and 6 November 1992 respectively.

2.37 Save for telephone contact made to Mr Dunlop's office by Mr Jones in May 1993, and the issuing of an invoice for IR£7,500 by Frank Dunlop & Associates Ltd to Mr Hussey of Beechill Properties Ltd on 8 January 1993, there appeared to have been little communication between Mr Dunlop and Mr Jones and/or Mr Hussey in the first half of 1993.

2.38 Regular contact between Mr Dunlop and Mr Jones resumed in September 1993, probably in the context of the expiry of the second statutory public display period of the 1993 amendments to the 1991 Draft Development Plan. This display took place between 1 July and 4 August 1993, in the course of which a number of objections concerning the proposal were received by the Council, as displayed on the draft map, to zone the Ballycullen lands A1 (residential) and F (open space).

2.39 In the lead-up to the special meeting of 28 October 1993, scheduled to deal with the Ballycullen lands, motions were submitted by Cllrs Muldoon (FG), Shatter (FG), Doohan (Lab.), and Buckley (Lab.) seeking to reverse the A1 (residential) zoning achieved for the lands a year previously. Moreover, Cllr Muldoon had lodged a further motion which sought to reverse the F (open space) zoning that had been achieved for the balance of the lands. The objective of these motions was to restore agricultural zoning status to the entire of the Ballycullen lands.

2.40 On Day 609 Mr Dunlop described the renewed contact he had with Mr Jones in late 1993 as '*renewed panic'*, in view of the motions which had been lodged objecting to the residential and open space zoning for the lands.

2.41 Mr Dunlop's renewed contact with Mr Jones coincided with Mr Jones' provision to him of a cheque for IR£2,000 on 3 October 1993. Mr Dunlop, in evidence, described this payment as effectively the resumption of his retainer as a lobbyist. Throughout October 1993 there was regular contact between Mr Dunlop and Mr Jones. Moreover, on 5 October 1993, Mr Jones met separately with Cllrs Lydon and Wright. The Tribunal was satisfied that during the month of October 1993 Mr Dunlop (and probably Mr Jones and others associated with Ballycullen Farms Ltd) continued the intensive campaign of lobbying councillors and it was probable that the level of contact which Mr Dunlop had with named councillors, evident from the documentation supplied by him, related to, *inter alia*, the Ballycullen rezoning issue.

2.42 On 21 October 1993, Mr Dunlop met with Mr Jones who paid him IR£6,000. An analysis of Mr Dunlop's office telephone records indicated that on 22 October 1993 Mr Dunlop directed his staff to telephone Mr Jones and advise him '*not to worry, Frank Dunlop will contact him later this evening*', advice that presumably was in response to Mr Jones' concern that the zoning achieved on the lands might not be confirmed by the councillors.

2.43 Immediately prior to the special meeting of the Council on 28 October 1993, the proposed zoning of the Ballycullen lands was (since 29 October 1992) as follows:

- 24.3 hectares zoned A1, to provide for new residential communities in accordance with approved area action plans (360 houses in total at a density of 6 or less houses per acre)
- 52.78 hectares, zoned F, to preserve and provide for open space and recreational amenities
- Ballycullen House to be preserved for heritage centre purposes.

2.44 At the special meeting on 28 October 1993, motions tabled by Cllrs Muldoon and Shatter which proposed that the Ballycullen lands revert to their pre 29 October 1992 zoning status (agriculture) were defeated by substantial majorities. Consequently, the rezoning of the Ballycullen lands on 29 October 1992 was confirmed on 28 October 1993 (with minor changes), with those lands now zoned as follows:

- 24.3 hectares zoned A1, to provide for new residential communities in accordance with approved area action plans (360 houses in total, at a density of 15 houses per hectare),
- 52.78 hectares zoned F, to preserve and provide for open space and recreational amenities,
- Ballycullen House to be preserved for heritage centre purposes.

2.45 Subsequent to the adoption on 10 December 1993 of the 1993 Development Plan, regular contact between Mr Dunlop and Mr Jones continued, albeit on a lesser scale than during the review period. Mr Dunlop's records indicated that contact was made in February 1994 (including a payment to Mr Dunlop of IR£6,050), May, June, August, September and October, 1994. It is likely that such contact concerned ongoing discussions between Mr Jones/Ballycullen Farms Ltd and the Council concerning a mapping error — the 1993 Development Plan showed some 31.6 hectares (77 acres) of the Ballycullen lands zoned A1 (residential) as opposed to the 24.6 hectares (60 acres) which had been voted for by councillors in 1992 and 1993.

2.46 Also in 1994, in the course of the drawing up by South Dublin County Council of a Draft Action Plan for the area, negotiations took place between Ballycullen Farms Ltd and the County Council relating to Ballycullen's purchase of some 8.75 acres of County Council lands. These negotiations were conducted with a view to Ballycullen Farms Ltd returning to the County Council the 8.75 acres (together with an additional 11.2 acres of its own lands) for use as open

space. Ballycullen Farms Ltd's objective was to seek an increase in residential density on its residentially zoned lands from 6 houses to the acre to 8 houses to the acre — an objective which would require a material contravention vote of South Dublin County Council, given that it contravened the 1993 Development Plan.[12]

2.47 Mr Dunlop told the Tribunal that he did not make representations to councillors regarding the mapping error that had been discovered regarding Ballycullen's residentially zoned lands. Mr Dunlop also maintained that he did not play any role in relation to the ongoing negotiations between Ballycullen Farms Ltd and the County Council in Ballycullen's bid to obtain increased density, and that he did not engage in the lobbying of councillors of South Dublin County Council in the course of their consideration of a Draft Action Plan for the area.

2.48 Mr Dunlop could not say why Mr Jones' diary for the 5 September 1994 contained the entry '*payment Frank Dunlop.'* Mr Dunlop did not believe he received a payment at that time. There was no documentary evidence available to the Tribunal of a payment being made to Mr Dunlop in September 1994.[13]

2.49 Mr Jones' diary for 13 October 1994 recorded a meeting with Mr Dunlop. Mr Dunlop accepted as '*probable'* that that he met Mr Jones on 13 October 1994 notwithstanding the absence of an equivalent entry in his diary. Some seven days later (20 October 1994) Mr Dunlop received a cheque for IR£9,075.

2.50 There was minimal contact between Mr Dunlop and Mr Jones in 1995. In July of that year Frank Dunlop & Associates Ltd's cash receipts book recorded the receipt of IR£295.83, attributable to the Jones Group, although Mr Dunlop was unable to explain the reason for that payment or the amount.

2.51 There was no evidence of any communication between Mr Dunlop and Mr Jones in 1996. Mr Dunlop's diary for 1997 recorded only one meeting with Mr Jones on 7 February. This note may have referred to a meeting with either Mr Jones or Mr Christopher Jones Junior.

2.52 Mr Dunlop's diary for 1 December 1998 recorded a meeting with Mr Jones at the County Club, Dunshaughlin. Mr Dunlop could not give a reason for a meeting with Mr Jones on that date. He rejected any suggestion that he and Mr Jones might have discussed the Tribunal (by then in existence for over a year,

[12]This was duly achieved in February 1996.

[13]The next recorded payment was 20 October 1994.

notwithstanding that the Tribunal had been in contact with Mr Dunlop by 1 November 1998.[14]

2.53 Mr Dunlop accounted for the note '*Davenport re Jones'* in his diary for 3 December 1998 as a reference to the involvement by Frank Dunlop & Associates Ltd with a sponsorship initiative of O'Neils, one of the companies associated with the Jones Group.

PAYMENTS MADE TO MR DUNLOP IN RELATION TO THE BALLYCULLEN/BEECHILL LANDS

3.01 Between May 1991 and July 1995 substantial sums of money were paid to Mr Dunlop by Mr Jones Senior, Ballycullen Farms Ltd and Beechill Properties Ltd.

3.02 On 7 May 1991 Frank Dunlop & Associates Ltd was paid IR£2,500 by way of cheque from Ballycullen Farms Ltd. As there was no definite trace of this cheque being lodged to any account, the Tribunal assumed that the cheque was cashed by Mr Dunlop. Mr Dunlop acknowledged the possibility that a cash lodgement to his Irish Nationwide Building Society (INBS) *'warchest'* account of IR£2,300 on 8 May 1991 may have represented part of the IR£2,500 payment from Ballycullen Farms. Mr Jones' accompanying letter was suggestive of a previous fee having been paid to Mr Dunlop, although Mr Dunlop had no recollection of any payment prior to May 1991.

3.03 On 10 September 1991 Ballycullen Farms Ltd paid Mr Dunlop a cheque for IR£5,000. Mr Jones' accompanying letter stated:

> *I am enclosing herewith a cheque for IR£5,000 which is the agreed first instalment of the IR£15,000 fee agreed for the PR work required in promoting the rezoning proposal of the Ballycullen lands.*

This cheque may have been part lodged or part cashed or entirely cashed. This payment may have formed a portion of the IR£9,953.40 lodged to a Frank Dunlop & Associates Ltd bank account on 13 September 1991.

3.04 While Mr Dunlop believed that invoices may have issued in respect of these two sums (totalling IR£7,500) none were identified from documentation furnished to the Tribunal by Mr Dunlop or by Ballycullen Farms Ltd. If invoices were indeed issued, it was unlikely that they included a VAT element, given their

[14]The Tribunal's first letter to Mr Dunlop was dated 6 October 1998.

round-figure amounts. Ballycullen Farms attributed both payments to '*dev. Fund*' in its accounts.

3.05 On 20 February 1992[15] Frank Dunlop & Associates Ltd issued an invoice[16] to Ballycullen Farms Ltd for '*professional education and training services*'[17] in the sum of IR£5,000 (with VAT at 0 per cent). Ballycullen Farms Ltd paid this invoice by cheque.[18] The attributed payee on the cheque stub was '*Frank Dunlop*' with the words '*BC Development'*. This cheque for IR£5,000 was negotiated at an AIB bank; IR£4,250 was lodged to a joint account in the names of Mr Dunlop and his wife and the balance was retained in cash. When questioned about this payment on Day 606 Mr Dunlop was unable to give an explanation as to why VAT was billed at 0 per cent, save that he said that the question of whether VAT would be applied in respect of a particular invoice could arise as a result of a conversation with the client. However, his evidence was that he did not have a recollection of speaking about this matter to Mr Jones or to anyone on his behalf.

3.06 On a date in early May 1992 Mr Jones paid Mr Dunlop a cheque drawn on his personal account payable to '*cash*' for IR£2,000. The cheque was subsequently endorsed by Mr Dunlop, and presumably cashed by him.[19]

3.07 On 11 August 1992 Mr Jones again wrote a cheque for Mr Dunlop drawn on his personal account payable to '*cash*', in the sum of IR£2,500. On 16 September 1992 IR£2,200 of this cheque was lodged to an account of Frank and Sheila Dunlop at AIB, College Street, with IR£300 being retained in cash by Mr Dunlop.

3.08 The Tribunal first became aware of the May 1992 and the August 1992 cheques on 3 March 2006 when Mr Jones' solicitors wrote to the Tribunal identifying two cheques from Mr Jones' personal account payable to *'cash'*. They had not previously been discovered to the Tribunal. There was also a third cheque paid to *'cash'* in Mr Jones' discovery on 3 March 2006, which was subsequently identified by the Tribunal as a payment made to Cllr Lydon on 9 December 1993.

[15] Mr Dunlop was at this time engaged in intensive lobbying of councillors to support the rezoning of the Ballycullen Farm's lands, as he then expected that the relevant motion would come before the councillors in June 1992.

[16] See Exhibit 3.

[17] This invoice description did not represent or describe the services provided by Mr Dunlop to Ballycullen Farms.

[18] See Exhibit 4.

[19] In April 1992 Mr Jones also paid IR£2,000 to Cllr Lydon (by way of cheque payable to cash).

3.09 On 28 August 1992 a cheque for IR£7,500 was paid to Frank Dunlop & Associates Ltd by Beechill Properties Ltd. The cheque was sent with a letter signed by Mr Hussey. The Tribunal was satisfied that this payment was made subsequent to the furnishing by Mr Dunlop of either an invoice dated 18 August 1992 or an undated 'fee note', both of which specified, though worded slightly differently, the provision of '*professional services in respect of public affairs communications programme and training*'. Both documents showed VAT at 0 per cent. This cheque appeared to have been authorised by Mr Hussey. Mr Hussey accepted that Beechill Properties Ltd paid this sum to Mr Dunlop in relation to the Beechill rezoning project. There was no record of this cheque having been lodged to the accounts of Frank Dunlop & Associates Ltd, or to any account operated by Mr Dunlop. The Tribunal believed that, as a matter of probability, Mr Dunlop cashed this cheque.

3.10 The fact that there were in existence an invoice and a separate '*fee note,'* each for IR£7,500, in August suggested that Mr Dunlop received a second payment of IR£7,500 in August 1992. Mr Hussey said it was his belief that both documents related to the one identified payment of IR£7,500, while Mr Dunlop said it was possible that he received two payments of IR£7,500 each.

3.11 On 6 November 1992 (eight days after the Ballycullen rezoning vote in Dublin County Council), a cheque[20] was paid to Mr Dunlop by Mr Jones, drawn on his personal account in the sum of IR£11,000. It was accompanied by Mr Jones' letter which stated '*Dear Frank, Enclosed herewith cheque as agreed. Many thanks for all your help*.' The cheque was sent to Mr Dunlop following a meeting with Mr Jones at the Goat Grill on 4 November 1992. Mr Dunlop suggested that this payment included a '*success fee'* of IR£2,500. However this was not so, as Mr Dunlop was paid this sum of IR£2,500 (the success fee) on 9 December 1992. The cheque for IR£11,000 was part cashed and part lodged by Mr Dunlop. A portion of that payment, IR£2,500, was lodged to the personal account of Mr Dunlop and his wife at AIB. Mr Dunlop told the Tribunal that the retained cash amount of IR£8,500 was used to bribe councillors in relation to the review of the Development Plan. At around this time, Mr Dunlop had accumulated cash funds of at least IR£73,500, being the IR£8,500 from Mr Jones, a sum of IR£10,000 from Davy Stockbrokers and IR£55,000 withdrawn in cash after a transfer of IR£70,000 by Riga Ltd (Mr Owen O'Callaghan).

3.12 On 9 December 1992 Mr Dunlop received another cheque in the sum of IR£2,500 drawn on the personal account of Mr Jones. Mr Dunlop accepted that this payment probably came about following a discussion he had with Mr

[20] See Exhibit 4.

Jones on 4 November 1992 about the payment of a success fee. Mr Jones' letter which accompanied the cheque made reference to the payment being made to '*clear the Ballycullen re-zoning account.'*

3.13 Discovery made by Mr Dunlop revealed that on 8 January 1993 Frank Dunlop & Associates Ltd issued an invoice for IR£7,500 (with no VAT element) to '*Mr Derry Hussey, Beechill Properties Ltd.*', described as '*To second tranche of agreed fee re zoning of lands at Beechill'.* The copy invoice furnished by Mr Dunlop to the Tribunal bore the following note in manuscript '*CR Note 12/1/93'*. There was no evidence available to the Tribunal suggesting that this invoice was ever discharged.

3.14 On 3 October 1993 Mr Dunlop was paid IR£2,000 by Mr Jones, again by cheque drawn on Mr Jones' personal bank account.

3.15 On 21 October 1993 a cheque was paid to Mr Dunlop in the sum of IR£6,000 drawn on the personal account of Mr Jones payable to '*Frank Dunlop*'. This cheque was cashed by Mr Dunlop, and a portion of the proceeds (IR£1,750) lodged to an account (No. 12909006) of Mr Dunlop and his wife at AIB.

3.16 The cheques for IR£2,000 dated 3 October 1993 and for IR£6,000 dated 21 October 1993 paid to Mr Dunlop by Mr Jones from one of his personal accounts were paid in the same month as the rezoning vote in relation to the Ballycullen lands came onto the Council agenda (28 October 1993). By October 1993 the Ballycullen rezoning was again a contentious issue, with a number of motions having been lodged with the Council seeking to have the rezoning obtained on 29 October 1992 reversed. The Tribunal found it significant that Mr Jones paid Mr Dunlop in such a manner at this time. No invoices were furnished to the Tribunal by either Mr Jones or Mr Dunlop in relation to these payments, and it was likely that no invoices were in fact furnished by Mr Dunlop.

3.17 On 3 February 1994 Mr Dunlop was paid IR£5,000 plus VAT at 21 per cent (total IR£6,050) following the issuing of an invoice by Frank Dunlop & Associates Ltd dated 3 February 1994 to Mr Hussey of Jones Group Plc. This cheque, together with other monies, formed part of a composite lodgement in the amount of IR£11,737 to the bank account of Frank Dunlop & Associates Ltd.

3.18 Receipt of the cheque was recorded in the cash receipts book of Frank Dunlop & Associates Ltd as being from the Jones Group. This was the first occasion on which any of the payments received by Mr Dunlop to that date were formally recorded in the cash receipts book of Frank Dunlop & Associates Ltd. Mr Dunlop believed that Mr Hussey would have requested VAT invoices for

payments from Beechill. This 3 February 1994 invoice issued by Frank Dunlop & Associates Ltd to '*Derry Hussey, Jones Group Plc*' probably followed a meeting which took place between Mr Dunlop and Mr Hussey on the same date. It is probable that one of the matters discussed at that meeting was the fact that on 31 December 1993 Frank Dunlop & Associates Ltd had issued an invoice to Mr Hussey '*Jones Group Plc*' for IR£7,500 plus VAT (IR£9,075) for work described as '*To third tranche of agreed fee re zoning of lands at Beechill'.* On 3 February 1994 Frank Dunlop & Associates Ltd ostensibly cancelled this invoice by the issuing of a credit note to Mr Hussey in the sum of IR£9,075 (IR£7,500 plus VAT).

3.19 Mr Dunlop apparently received a further payment from Jones Group Plc on 20 October 1994 in the sum of IR£9,075. This payment would appear to have been made on foot of the invoice sent by Frank Dunlop & Associates Ltd on 31 December 1993 (ostensibly cancelled on 3 February 1994) as was evident from the manner in which Mr Dunlop noted receipt of this payment. Mr Hussey denied that this payment was made to Mr Dunlop.

3.20 The cheque was duly cashed by Mr Dunlop. Documents discovered by Mr Dunlop revealed that a portion of this encashed cheque was applied by him to a business venture with which he was associated in Navan, Co. Meath.

3.21 On 31 July 1995, Jones Group Plc paid Frank Dunlop & Associates Ltd a sum of IR£295.83. That cheque was lodged to the account of Frank Dunlop & Associates Ltd on 2 August 1995.

3.22 The Tribunal was therefore satisfied that at a minimum the total sums paid to Mr Dunlop by Mr Jones and/or Ballycullen Farms Ltd and/or Beechill Properties Ltd and/or Jones Group Plc amounted to IR£61,420.83. The correct total may have been in excess of this figure.

3.23 This sum of IR£61,420.83 was considerably in excess of what was first disclosed by Mr Dunlop to the Tribunal. In his earliest dealings with the Tribunal Mr Dunlop maintained that he received a total of IR£17,500 from the Jones' interest, comprising an agreed fee of IR£15,000 and a success fee of IR£2,500. Mr Dunlop maintained this position until he gave evidence on Day 606.

3.24 Information originally supplied to the Tribunal by Mr Jones/Ballycullen Farms Ltd/Beechill Properties Ltd, and prior to evidence being given to the Tribunal by Mr Jones and Mr Hussey identified a total of IR£26,000[21] only as having being paid to Mr Dunlop.

[21]Comprised of IR£2,500 on 7 May 1991; IR£5,000 on 10 September 1991; IR£5,000 on 20 February 1992; IR£11,000 on 6 November 1992; IR£2,500 on 9 December 1992.

3.25 Neither Mr Dunlop, Mr Jones nor Mr Hussey gave an explanation as to the significant discrepancy between the figures provided to the Tribunal prior to the public hearings in which their sworn evidence was taken and the amounts disclosed in the course of that evidence. The significant under-calculation was identified by the Tribunal in the course of its examination of documentation discovered by the parties.

3.26 On Day 148 in a list entitled '1991-1993 (inclusive)' being developments with which he was connected and in respect of which he bribed councillors Mr Dunlop attributed the receipt by him of IR£17,500 to 'Ballycullen Farms near Rathfarnham'. When compiling his October 2000 statement, Mr Dunlop again only made reference to having received a total of IR£17,500 in the period '*1991 – 1993 inclusive'*. This was notwithstanding his provision of documentation to the Tribunal, by way of discovery, which showed receipt of approximately IR£43,420.83 from Mr Jones/Ballycullen Farms Ltd/Beechill Properties Ltd (itself an underestimation). Thus in this statement Mr Dunlop underestimated the amount of money he received from interests associated with the Ballycullen/Beechill lands to the extent of approximately IR£43,920.83 (at a minimum).

3.27 In relation to the payments made to Mr Dunlop by Ballycullen Farms Ltd/Beechill Properties Ltd/Mr Jones between 1991 and 1994, the following features were evident:

- The majority of the payments claimed by Mr Dunlop were claimed without VAT, and paid in round-figure sums. Many of the cheques, it appeared, were cashed, with considerable monies being retained by Mr Dunlop and the balances of monies being lodged into personal bank accounts operated by Mr Dunlop and his wife (and possibly on one occasion being lodged to one of his *'warchest'* accounts).
- Only two of the payments received by Mr Dunlop were lodged to the account of Frank Dunlop & Associates Ltd, namely the 3 February 1994 and 31 July 1995 payments, and those appeared also to have been the only payments formally recorded in the books of Frank Dunlop & Associates Ltd. It was also possible that a portion of the IR£5,000 payment of 10 September 1991 was lodged as part of a composite lodgement of IR£9,953.40 to the account of Frank Dunlop & Associates Ltd on 13 September 1991.
- Few of the payments made by Mr Jones and/or Ballycullen Farms Ltd to Mr Dunlop appear to have been preceded by the issuing of an invoice by Mr Dunlop.

- Six out of a total of 13 payments (of which the Tribunal had documentary evidence) were payments made to Mr Dunlop from Mr Jones' personal funds, and were not therefore evident from the accounts of Ballycullen Farms Ltd (or of Jones Group Plc).
- The documentary evidence suggested that two of the 13 documented payments to Mr Dunlop/Frank Dunlop & Associates Ltd (specifically of 3 February and 20 October 1994) were made on foot of invoices issued to Mr Hussey.
- On Day 620 Mr Hussey disputed that Beechill Properties Ltd made any payments to Mr Dunlop after the August 1992 payment. The Tribunal noted, however, that for whatever reason Mr Dunlop directed the invoice of 3 February 1994 (and indeed the 31 December 1993 invoice, ostensibly cancelled on 3 February 1994) to Mr Hussey.
- Few of the hallmarks of ordinary business dealing that might be expected to operate as between a service provider (Frank Dunlop/Frank Dunlop & Associates Ltd) and a business enterprise (Mr Jones/Ballycullen Farms Ltd) appeared to attach to the payments Mr Dunlop received from either Mr Jones and/or Ballycullen Farms Ltd. The Tribunal noted, in particular, that Mr Dunlop himself and not Frank Dunlop & Associates Ltd was named as payee on many of the round-figure payments and, on occasions, cheques were made out to '*cash*'. Many of the round-figure payments were made at crucial times in the rezoning of, in particular, the Ballycullen lands.

3.28 Mr Dunlop was unable to provide any satisfactory explanation as to why some payments were made to him on foot of invoices while others were not. His explanation for frequently part cashing and part lodging the cheques was that he needed to retain significant amounts of cash in the course of the review of the Development Plan. He retained the cash in order to have funds from which payments were made to councillors so as to secure their support for various rezoning motions which were at that time moving through the Council in the course of the review of the Dublin County Development Plan.

WERE MR JONES AND/OR MR HUSSEY AWARE OF MR DUNLOP'S PRACTICE OF BRIBING COUNCILLORS IN RELATION TO REZONING ISSUES?

4.01 In the course of his evidence to the Tribunal on Day 607, Mr Dunlop confirmed the content of a written statement he made to the Tribunal on 15 October 2004 to the effect that both Mr Jones and Mr Hussey understood, at the time he was retained by them in relation to the Ballycullen/Beechill lands, that

councillors were to be bribed in order to ensure the successful rezoning of these lands.

4.02 In that statement, Mr Dunlop stated:

> *In the discussions leading up to the agreement regarding fees Mr C*hris Jones indicated to me that he was aware that *councillors would be required to be paid and that if they were not there was no hope for land such as his to be rezoned. I informed him then, and subsequently Derry Hussey at a later meeting, that 'the ways* of the world*' would have to apply. Mr Jones said that he was fully aware of the situation but that people such as himself had no option but to comply. I concluded that Mr Chris Jones was aware of the system then pertaining in Dublin County Council. There* was no doubt in my mind that both Messrs Jones and Hussey knew that payments to certain *councillors would be necessary not only to get the required motion signed but to ensure its passage through the Council. Mr Chris Jones agreed to this procedure being* used in respect of the Ballycullen farm *lands. Separately Mr Hussey, at a meeting with me, acknowledged that payments to councillors would be required in respect of the lands surrounding the offices of Jones Group Plc at Beechill. However, this matter was* not discussed in specific *detail.*

4.03 Mr Dunlop also stated in evidence that, as far as he was concerned, Mr Jones had '*unambiguously*' conveyed to him his awareness of the '*system*'. Mr Dunlop stated that Mr Jones had said to him that he was *'fed up giving money to political parties'* and that he had acquiesced when Mr Dunlop had stated that '*the ways of the world would have to apply*' and said '*I know you are going to have to do what you are going to have to do'*. Mr Dunlop said that Mr Jones knew that councillors would have to be paid. Mr Dunlop was less specific as to what allowed him to conclude from what Mr Hussey had said that he was aware that such payments would be made to elected councillors. Mr Dunlop said that he stated to Mr Hussey that '*the ways of the world*' would have to apply, and that Mr Hussey responded '*ok fine*'.

4.04 Mr Dunlop had met Mr Hussey primarily in the context of having been retained to assist in the rezoning of the Beechill lands. Mr Dunlop met Mr Jones and Mr Hussey in relation to the Ballycullen lands, but Mr Dunlop dealt primarily with the former in relation to those lands. Mr Hussey did not attend the initial meetings between Mr Dunlop and Mr Jones.

4.05 In the course of his evidence on Day 607 Mr Dunlop stated as follows:

'The point that I was making earlier and that I wish to make now again is that in contrast to we'll say getting monies from a developer who says I am giving you this money and I know you have to give money to councillors and I have had to do it myself previously, which was the instance in one module that we dealt with previously, or in another module which has not been dealt with, where for example monies were given to me and taken back because the developers said I will pay the councillor myself, I am looking after him myself, none of that took place in this instance. This was a discussion between two and on occasion three people in relation to the process at Dublin County Council. Neither Mr Jones nor Mr Hussey ever said to me we want you to give X amount of money to X councillor, or we know you will be giving X amount of money to X councillor, or out of this 15,000 or whatever amount of money it happens to be, you will give this amount. It is a recognition on their part that there is a system involved, given their history with the lands.'

4.06 Also on Day 607, the following exchange between Counsel for the Tribunal and Mr Dunlop took place:

Q. 212 'Are you telling the Tribunal that Mr Jones told you unambiguously that he knew councillors would need to be paid, to get his lands rezoned?'
A. 'Well the answer to that is yes.'
Q. 213 'So you had a conversation with Mr Jones in which Mr Jones told you he knew councillors needed to be paid?'
A. 'He knew that the way the system of the world operated.'
Q. 214 'That is one . . .'
A. 'The ways of the world.'
Q. 215 'That is one phrase Mr Dunlop, the phrase, what you have said is that Mr Jones indicated to me that he was aware the councillors would require to be paid. I suggest there is a world of difference between that statement and knowing how the ways of the world work?'
A. 'Well there may well be. Depending on which way you approach the matter, what is at issue here to put it simpliciter is whether or not the participants in this development namely Mr Jones and Mr Hussey, but we are dealing with Mr Jones now, in my view, as a result of my initial meetings with him and there were hundreds of meetings with him as you well know, was he aware that a system applied in Dublin County Council where councillors needed to be paid? My view is yes, he did. He was so aware.'
Q. 216 'Yes but your opinion or conclusion Mr Dunlop that Mr Jones knew a system pertained or your belief that Mr Jones knew it is one thing?'
A. 'Yes.'

Q. 217 'A statement that Mr Jones agreed with you that you would implement that procedure on his behalf is a different matter.'
A. 'Yes. Well felicity of language he may well, he agreed with me that given the background to the whole scenario, whatever was required to be done to get the thing moving. Now that does not necessarily as I have said to you earlier on mean that he said to me 'I want you to pay Hand or Lydon' or whatever', he did not.'
Q. 218 'No, it has always been your position Mr Dunlop that insofar as the specifics are concerned you never discuss specifics, in other words who would have to be paid with Mr Jones or Mr Hussey?'
A. 'Correct.'

4.07 Mr Dunlop also stated:

'Yes, Ms Dillon, you see, in the context of the clinical atmosphere in which you deal with these things now, these are meetings that take place with intelligent, reasonable, honourable people who know what business is about, who have been dealing in the construction industry for the best part of 30 years and it does not require, on any given occasion, for somebody to say 'I want you to pay X, Y and Z'. The culture of the meeting, the atmosphere of the meeting, the circumstances of the meeting, to any reasonable, outside, objective person would indicate that the context was that the ways of the world would apply.'

4.08 Mr Dunlop intimated that the fact that Mr Jones had involved Mr Lawlor in the project to rezone the Ballycullen lands was further confirmation for him that Mr Jones was aware that councillors would have to be paid if the project to rezone the lands was to be successful.

4.09 On Day 607 Mr Dunlop was questioned as follows:

Q. 604 'Are you saying because you understood Mr Lawlor had an involvement in Ballycullen or with Mr Jones that that was a factor that led you to believe that Mr Jones was aware of the system that pertained in Dublin County Council?'
A. 'Well I am glad you brought that point up because without coat trailing in relation to a dead man or a man who is recently deceased, that is a factor. I mean I don't know who the contact was made by, whether it was by Chris Jones to Liam Lawlor or whether Liam Lawlor made the contact to Chris Jones, or whether Liam Lawlor was invited to make contact with Chris Jones by somebody else, I just don't know. But the very fact that Liam was involved in some fashion or other or whatever detail we may know or not know from here on in, yes would have been a blip on the

horizon in relation to any knowledge, you know actual, implied, constructive or otherwise that Mr Jones might have in relation to the system.'

4.10 Later Mr Dunlop expanded on this, stating that Mr Lawlor's entry on to the horizon '*raised a flag*'. Mr Dunlop opined as follows:

'Liam wasn't shy about explaining matters to people. Now by saying that I am not under any circumstances saying that Liam Lawlor explained a system or what needed or need not to be done or what he said I would or would not do for Chris Jones, but he was not shy when it came to saying what was required.'

4.11 Mr Dunlop acknowledged that notwithstanding his belief that both Mr Jones and Mr Hussey appreciated that the '*ways of the world'* meant having to make payments to councillors, he, Mr Dunlop, did not ever specifically say to them that he was going to have to pay money to councillors. Mr Dunlop maintained that such a disclosure on his part '*just wasn't part of the culture'* and Mr Dunlop stated '*and certainly in the context of those two gentlemen they never asked, and I never gave information. Either on request or voluntarily.'*

4.12 Mr Dunlop further maintained that, notwithstanding the absence of direct dialogue between himself and Mr Jones and Mr Hussey on the issue of payments to councillors, '*My belief arising out of the discussions I had with both men was that they were aware*'.

4.13 Both Mr Jones and Mr Hussey vehemently denied that they knew or had any awareness of Mr Dunlop's activities in bribing councillors, or that he was to involve himself in the payment of money to councillors in the course of the project to rezone the Ballycullen and Beechill lands.

4.14 In evidence on Day 620 Mr Jones denied ever making the statements attributed to him by Mr Dunlop and he denied that Mr Dunlop had ever said to him that '*the ways of the world would have to apply*'. As far as Mr Jones was concerned he had '*never heard that comment in my life from anybody*' including Mr Dunlop. Mr Dunlop had never discussed making payments to councillors with him, save a discussion they had had regarding Cllr Hand. Mr Jones told the Tribunal, however, that between February and June 1991, he had had a conversation with Mr Dunlop in which Mr Dunlop had raised the issue of political donations. This issue, according to Mr Jones, was raised in light of the then impending Local Elections (June 1991).

4.15 On Day 620 the following exchange took place between Counsel for the Tribunal and Mr Jones:

Q. 247 'Did Mr Dunlop ever discuss with you the fact that councillors were going to have to be paid to secure their support?'

A. 'No but he indicated that the elections which were on around the time of our zoning, that he would have to make donations to some of these councillors as political donations'.

Q. 248. 'Can you remember- So the election took place I think in June of 1991?'

A. 'That's right, yes.'

Q. 249 'And you must have had that conversation with Mr Dunlop before that, isn't that right?'

A. 'I would think, so, yes.'

Q. 250 'And I think your first contact with Mr Dunlop, from the documentation, appears to be February of 1991, isn't that right?'

A. 'That's correct.'

Q. 251 'So sometime between February and June of 1991, you had a conversation with Mr Dunlop or a meeting with Mr Dunlop, in which Mr Dunlop discussed making political contributions to councillors. Is that right?'

A. 'Yes. We didn't go into any detail on that, Ms Dillon. He made comments regarding donations, but I mean, I didn't see anything wrong with that.'

Q. 252. 'What did Mr Dunlop say, can you remember, Mr Jones?'

A. 'Well that these elections were on the way and he said that we had to make political donations, which I had to make as well.'

Q. 253. 'When you say you had to make political donations, was that for the local election in 1991?'

A. 'Yes. There was a general election some time fairly soon afterwards.'

Q. 254 'Yes. I think that was November 1992?'

A. ''92, yes. I'm not very certain about the dates but . . .'

Q. 255 'Well the local election was I think June of 1991?'

A. 'Yes.'

Q. 256 'Before the local elections, Mr Dunlop said to you that he was going to have to make payments to the councillors for the local elections, isn't that right?'

A. 'Donations.'

Q. 257 'Donations. And did you say to him that you too were going to have to made donations?'

A. 'I don't think so.'

Q. 258 'I thought you said a moment ago that you said to him that you'd have to make donations as well?'

A. 'Well no. I'm saying to you that I also had to make donations.'

Q. 259 'You didn't say that to [. . .] Mr Dunlop?'

A. 'I may well have done.'

4.16 In evidence on Day 620 Mr Hussey stated that he had never had any discussion with Mr Dunlop about payments to councillors in relation to the Ballycullen lands, and insofar as Beechill was concerned, there had never been a suggestion that anyone was going to have to be paid. According to Mr Hussey, he had never considered any issue or question of corrupt payments being made in relation to Ballycullen or Beechill. Mr Dunlop said that Mr Hussey did not attend his initial meetings with Mr Jones, and he only recalled Mr Hussey being present at meetings concerning Ballycullen once or twice.

4.17 Mr Dunlop first mentioned the Ballycullen lands to the Tribunal on Day 148 and identified the names of Mr Jones and Mr Hussey in the context of naming land owners/developers who had retained him and paid him money as a lobbyist. On Day 148 Mr Dunlop referred to the Ballycullen lands as '*relatively innocent*' and involving *'two very honourable people'*.

4.18 In the course of his private interview with the members of the Tribunal's legal team on 11 May 2000, and in a discussion of the Ballycullen rezoning issue, Mr Dunlop stated the following:

> *'People whose bona fides were quite genuine came to me. I did allude to that. One of those that I did say the other day was old Chris Jones of the Jones Group. Old Chris Jones had been run around the place ragged for a variety of political entities because obviously Chris didn't know the system or wasn't prepared to or Derry Hussey, his financial controller was saying not on or whatever. And I eventually got called in. I specifically suspect that also in that case I was called in as a result of some contact with Liam Lawlor. I have no proof, none whatsoever. But definitely the disbursements of money to politicians was never discussed with Chris Jones and or Derry Hussey.'*

4.19 On Day 607, Mr Dunlop acknowledged that this statement by him in the course of his private interview on 11 May 2000 was inconsistent with part of his statement made in October 2004 and with evidence given to the Tribunal as to his belief that Mr Jones and Mr Hussey were aware of his intention to pay bribes to councillors.

4.20 In a subsequent private interview with the members of the Tribunal's legal team on 18 May 2000, Mr Dunlop stated the following:

> *'I told Mr Jones and on occasion Mr Hussey but certainly Mr Jones that the ways of the world would have to apply and he said he was fully aware of that and he said that he had difficulties in the context of one Fine Gael, two Fine Gael councillors, Breda Cass who was then in Fine Gael and subsequently left, and Mary Muldoon.'*

In the course of his evidence on Day 607 Mr Dunlop emphasised that his references on 18 May 2000 to Cllrs Cass and Muldoon was not intended to suggest any impropriety on their part, and evidence heard by the Tribunal did not establish any such impropriety. On the contrary, the evidence established that Cllrs Muldoon and Cass conducted themselves at all relevant times as conscientious and honourable councillors.

4.21 In the course of his October 2000 statement, Mr Dunlop had not placed an asterisk beside the reference to '*Ballycullen Farm*'. The placing of an asterisk beside the names of particular lands was Mr Dunlop's way of indicating that he believed the landowner/developer associated with those lands knew of his practice of making corrupt payments to councillors. On Day 607 Mr Dunlop was unable to explain why he had not done so notwithstanding the fact that he had referred to the '*ways of the world'* discussion he had had with both Mr Jones and Mr Hussey. He sought to explain this failure on the basis that no direct or specific words had been used or instruction given by either Mr Jones or Mr Hussey to him to pay money to named councillors. On Day 607 he went on to say:

> *'That's the only explanation for the absence of the asterisk and also in the context of, and maybe blindsiding myself by my—I mean, my relationship with Mr Jones, I mean this is somewhat a little bit difficult, I have a high regard for Mr Jones, I do believe he is an honourable man, he is a distinguished gentleman, he is of the old school, and I am not suggesting that because of that I didn't put the asterisk in front of the Ballycullen Farm names, but I am trying to explain to you the difference in the circumstances that I apply in each, in relation to each development, where there is a clear knowledge on the part of some people saying look I know you are going to have to give money to councillors I had to do it myself or here is money to give to councillors and take it back because I am going to do it myself.'*

4.22 Mr Dunlop, however, accepted in evidence that, notwithstanding the reference to '*the ways of the world'* in the October 2000 statement, he had not in that statement attributed corrupt knowledge to Mr Jones or Mr Hussey. However, he went on to do so more directly in his October 2004 statement. He agreed that '*nothing dramatic*' had happened between October 2000 and

October 2004 which enabled him to be more conclusive about his level of awareness on the part of Mr Jones and Mr Hussey about his, Mr Dunlop's, corrupt activities.

4.23 The Tribunal noted that, from the outset, Mr Dunlop was adamant in his recollection that he had used the phrase *'the ways of the world'* to both Mr Jones and Mr Hussey when discussing the work he would have to do to get the lands rezoned. The Tribunal was satisfied that some such words were used, and were used in the context of the timeframe in which Mr Dunlop was retained. Mr Dunlop's initial meetings with Mr Jones occurred in February and April 1991, the April meeting occurring some two months prior to the Local Elections. Mr Jones himself, while denying ever having heard or acquiesced with the phrase *'the ways of the world'* told the Tribunal that one of the matters he did discuss with Mr Dunlop was the payment of political donations to councillors in the context of the then upcoming Local Elections. Mr Dunlop denied having such a discussion with Mr Jones. The Tribunal was satisfied, however, that such a discussion probably did take place between the two.

4.24 The Tribunal was also satisfied that Mr Jones took on board the perceived need to make 'political donations' in the course of his project to have the Ballycullen lands rezoned. Mr Jones himself acknowledged making political donations to a number of councillors in relation to the Local Elections in 1991, albeit long after those elections had taken place.

4.25 There was no evidence before the Tribunal of substantial payments being made by Mr Jones to politicians in the period up to or during the June 1991 Local Elections, apart from Mr Jones' cheque of 19 June for IR£1,000 to Fianna Fáil (apparently sent to the then Taoiseach, Mr Charles J. Haughey, following the receipt of a request for political donations) and the Lawlor/Comex payments of IR£5,000 (1990/1) and IR£7,500 (July 1991).[22]

4.26 There was evidence of Mr Jones having made a payment to Cllr Lydon of IR£2,000 in April 1992, some days after they had met to discuss Cllr Lydon's support for the Ballycullen rezoning motion.

4.27 Moreover, there was evidence of a substantial number of payments made to a number of councillors either by Mr Jones and/or Ballycullen Farms Ltd and/or on his/its behalf at the time of the November 1992 General Election (including to councillors who were not candidates in that election). These disbursements were made within weeks of the Beechill/Ballycullen rezoning

[22]See Mr Lawlor and his use of 'Comex' to obtain funds.

votes in October 1992 and were made at a time when these rezonings remained on the County Council agenda, by virtue of the need for County Council confirmation meetings which ultimately occurred in October 1993.

4.28 On Day 621 Mr Jones was asked how he had decided to make donations if as he acknowledged, he had never met some of the councillors given donations in November 1992. He replied '*that must have taken some inspired view of it or something'* and stated that he must have received some assistance '*from people that were part of the scene in the council'.* Mr Jones did not believe that he had discussed the matter in any detail with Mr Dunlop. With regard to the claimed discussion with Mr Dunlop prior to the June 1991 Local Election (when Mr Dunlop had said that donations would have to be made), Mr Jones could not recall if Mr Dunlop had named those to whom donations would have to be given.

4.29 The Tribunal was satisfied that in all probability Mr Jones/Ballycullen Farms Ltd made the 'political donations' in the knowledge that, (as Mr Dunlop had indicated), the '*ways of the world*' would have to apply.

4.30 The largesse of the political donations on the part of Mr Jones/Ballycullen Farms Ltd, which occurred *after* the retention of Mr Dunlop, was noteworthy. None of the recipients of this largesse, with the exception of Cllr Hand,[23] had apparently previously been the recipients of political contributions from Mr Jones/Ballycullen Farms Ltd. Cllr Lydon, a key player in the Ballycullen rezoning, who was unacquainted with Mr Jones prior to April 1992, was the recipient from him of some IR£9,000 over a 20-month period. Cllr Wright was the recipient of IR£5,000 from Mr Jones in November 1992. In all, within weeks of the first vote on the Beechill/Ballycullen rezoning issues, Mr Jones/Ballycullen Farms Ltd paid out approximately IR£20,000 as political donations. In addition, IR£1,000 was paid to Cllr Hand by Mr Hussey/Beechill, probably after October 1992 and IR£17,500 in total was paid to Mr Lawlor by Mr Jones/Ballycullen Farms Ltd by the end of December 1992. Therefore, by the year ending December 1992, Mr Jones/Ballycullen Farms Ltd and Mr Hussey/Beechill had paid out approximately IR£40,000 to politicians who were involved with the rezoning of the Ballycullen/Beechill lands. In December 1993 Cllr Lydon received a sum of IR£2,000 (part of the IR£9,000 referred to above) from Mr Jones and Cllr Hand received a second IR£1,000 sum from Mr Jones, via Mr Dunlop. (Mr Dunlop denied knowledge of this payment.)

[23]Mr Jones made political contributions to Cllr Hand prior to (and subsequent to) 1992. Such contributions were in the region of IR£200/IR£300 at election time.

4.31 Although Mr Dunlop expressed his belief that both Mr Jones and Mr Hussey were aware of the perceived need to pay particular councillors in order to secure their support for rezoning proposals by virtue of having acquiesced when he stated '*the ways of the world*' would have to apply, and of being close business associates, the Tribunal was satisfied that only Mr Jones had a full awareness of this perceived need.

4.32 The evidence heard by the Tribunal established two important facts which, when considered together, led it to conclude as a matter of probability that Mr Jones was, as Mr Dunlop believed, aware of the perceived need to pay councillors to achieve the rezoning of land. These were:

- The number, circumstances, timing and total amount of payments made by Mr Jones from his personal funds to Mr Dunlop, rather than through company funds
- The number, circumstances, timing and total amount of payments made by, or organised by, Mr Jones directly to councillors who were directly involved in voting for motions relevant to the project to rezone the Ballycullen/Beechill lands.

4.33 Mr Hussey confirmed to the Tribunal that he arranged a payment of IR£1,000 to Cllr Hand from Beechill Properties Ltd, probably sometime in late 1992, with some unease or reluctance on his part, following a request to do so by Mr Dunlop, and in the knowledge of Cllr Hand's involvement in rezoning and planning issues relating to lands both in Ballycullen and Beechill. Subsequently, Mr Hussey declined to organise a second payment to Cllr Hand, requested by Mr Dunlop, and was probably unaware that Mr Jones later made that second payment, also in the sum of IR£1,000, to Cllr Hand from his (Mr Jones') personal funds.

4.35 The Tribunal was not satisfied on the balance of probability that Mr Hussey possessed the degree of knowledge and awareness of Mr Dunlop's actual or intended practice of paying councillors to support the rezoning of land that Mr Dunlop suggested.

ALLEGED PAYMENTS TO COUNCILLORS

ALLEGED PAYMENTS TO COUNCILLORS OTHER THAN BY MR DUNLOP

5.01 The Tribunal undertook a detailed inquiry into payments alleged to have been made to councillors by, or on behalf of, Mr Jones, Mr Hussey, Ballycullen Farms Ltd, Beechill Properties Ltd, (or any related companies or entities) in the early 1990s.

5.02 In total, approximately IR£25,000[24] was alleged to have been paid to councillors by or on behalf of the individuals/companies referred to in the previous paragraph.

5.03 The Tribunal was advised by oral evidence or by reference to Ballycullen/Beechill records that the following payments were made to the following councillors in the period 1992/3:

- IR£9,000 in 1992/3 to Cllr Don Lydon (FF) (IR£2,000 on 27 April 1992, IR£5,000 on 12 November 1992 and IR£2,000 on 9 December 1993)
- IR£5,000 in November 1992 to Cllr G. V. Wright (FF)
- IR£2,000 in 1992/4 to Cllr Tom Hand (FG)
- IR£250 on 24 November 1992 to Cllr Tony Fox (FF)
- IR£500 on 19 November 1992 to Cllr Colm McGrath (FF)
- IR£1,000 in the year ending December 1992 to Cllr Cyril Gallagher (FF) (Mr Jones believed that this payment was handed over by Mr Oliver Brooks.)
- IR£500, possibly in 1992, to Cllr John O'Halloran (Lab)
- IR£500 on 16 November 1992 to Cllr Larry Butler (FF)
- IR£1,000 in the year ending December 1992 to Cllr Liam Creaven (FF)
- IR£1,000 in the year ending December 1992 to Cllr M. J. Cosgrave (FG) (Mr Jones believed that this payment was handed over by Mr Oliver Brooks.)
- IR£1,000 in the year ending December 1992 to Cllr Ned Ryan (FF)
- IR£1,000 in November 1992 to Cllr Anne Ormonde (FF) (probably made by Mr Frank Brooks)
- IR£500 or IR£600 in the year ending December 1992 to Cllr Sheila Terry (PD/FG)
- IR£500 in the year ending December 1992 to Cllr Michael Keating (FG)
- IR£500 in the year ending December 1992 to Cllr Charlie O'Connor (FF)
- IR£250 in the year ending December 1992 to Cllr Marian McGennis (FF) (Cllr McGennis did not accept that she received this payment)
- IR£1,000 in November 1992 to Cllr John Hannon (FF)
- IR£250 in the year ending December 1992 to Cllr Brock (FF)

Each of the foregoing alleged payments was considered separately by the Tribunal.

[24] Additionally, IR£500 was paid to Mr Séamus Brennan TD, and IR£2,500 was paid to Mr Tom Kitt TD.

ALLEGED PAYMENTS TO COUNCILLORS BY MR DUNLOP

5.04 Mr Dunlop alleged that he made the following payments in relation to the Ballycullen/Beechill lands rezoning projects to the following councillors in 1992:

- IR£2,000 in October 1992 to Cllr Don Lydon (FF)
- IR£2,000 in October 1992 to Cllr Tom Hand (FG)
- IR£1,000 in October 1992 to Cllr Tony Fox (FF)
- IR£1,000 in October/November 1992 to Cllr Liam T. Cosgrave (FG)
- IR£1,000 in October 1992 to Cllr Colm McGrath (FF)
- IR£1,000 in October/November 1992 to Cllr Cyril Gallagher (FF)
- IR£1,000 in October/November 1992 to Cllr Jack Larkin (FF)
- IR£1,000 in October/November 1992 to Cllr Seán Gilbride (FF)
- A payment of not less than IR£500 being part of a composite IR£5,000 payment alleged by Mr Dunlop to have been paid to Cllr John O'Halloran (Lab/Ind) in the course of the making of the 1993 Development Plan.

The foregoing alleged payments were each considered separately by the Tribunal.

5.05 Motions crucial to the specific rezoning of the Ballycullen/Beechill lands were voted on by councillors at meetings of Dublin County Council on the following dates:

- 16 October 1992 (Beechill)
- 29 October 1992 (Ballycullen)
- 28 October 1993 (Ballycullen)
- 2 November 1993 (Beechill)

5.06 Elections were held on the following dates:

- Local Elections: 27 June 1991
- General Election: 25 November 1992
- Seanad Election: January/February 1993

There were no elections in 1993 (other than the Seanad Election in January/February 1993).

CLLR DON LYDON (FF)

ALLEGED PAYMENTS TO CLLR LYDON BY MR JONES

6.01 Mr Jones made payments totalling IR£9,000 to Cllr Lydon between April 1992 and December 1993. A further payment was made to Cllr Lydon in the sum of IR£500 in 1999.

6.02 On 27 April 1992, Mr Jones paid a cheque in the sum of IR£2,000 to Cllr Lydon, drawn on his personal bank account. The cheque was made payable to '*cash'*, and was lodged (as part of a larger lodgement) to a joint savings account, in the names of Cllr Lydon and his wife, in Bank of Ireland on the following day.

6.03 Although Mr Jones recalled meeting Cllr Lydon on '*a couple of occasions',* he could not recall with certainty if they met on, or close to 27 April 1992 (the date of the cheque), but agreed that it was possible that they did so. Mr Jones stated that he could have posted the cheque to Cllr Lydon. He acknowledged, however, that he and Cllr Lydon may have met around this time as he, Mr Jones, wanted to discuss the forthcoming Ballycullen rezoning motion with Cllr Lydon.

6.04 Mr Jones told the Tribunal that when he and Cllr Lydon met they discussed money in the context of the financial strain which Cllr Lydon led Mr Jones to believe he was under '*with all of these various campaigns he was going for, the Senate and the local elections.*'

6.05 In the following exchange between Counsel for the Tribunal and Mr Jones on Day 621 Mr Jones was asked to explain the reason for the payment of IR£2,000 to Cllr Lydon in April 1992:

Q. 266 'Now, why would you have paid 2000 pounds to Mr Lydon?'

A. 'The only explanation I can give you is that I gave it to you before, was that I had a lot of—I wouldn't say, but sympathy with Mr Lydon. Because he seemed to be under both mentally and financial strain to cope with all of these various campaigns that he was going for, the Senate and the local elections. That's all I can say.'

Q. 267 'At the meetings that you had with Mr Lydon, regardless of when they took place, did he discuss with you the financial strain that he was under?'

A. 'Yes.'

Q. 268 'Did he talk about how expensive things were?'

A. 'Yes.'

Q. 269 'So you were discussing money with Mr Lydon?'

A. 'I was, indeed, yes.'

Q. 270 'And was it your impression or did you understand from Mr Lydon that he was looking for a contribution or assistance from you?'
A. 'Well he didn't ask me for any assistance. But I kind of got the impression that he needed it.'
Q. 271 'Right. And who would have raised the topic of the financial strain that he was under or his financial affairs?'
A. 'Well I think it would have come out in the discussion of having to travel the whole country to mount the campaign for the Senate and deal with the local authority at the same time.'
Q. 272 'But if you did meet him in April 1992, what you wanted to discuss with Cllr Lydon was the motion, isn't that right?'
A. 'It would appear so from the correspondence, yeah.'
Q. 273 'And in the course of that discussion Mr Lydon raised with you, as best you recollect, is the financial strain under which he then perceived himself to be?'
A. 'Well, I wouldn't put it as directly as that. We discussed the various implications of what he was going to go through. And I took it that there was serious money involved in all of this.'

6.06 Cllr Lydon acknowledged to the Tribunal that a meeting took place between himself and Mr Jones (whom he described in evidence invariably as '*a lovely gentleman'*, and *'a remarkable man'*) in April 1992 in Mr Jones' offices at Beechill in Clonskeagh, Co. Dublin, and that during this meeting the rezoning of the Ballycullen lands was discussed. Cllr Lydon told the Tribunal that he was impressed with aspects of the project. Cllr Lydon said that in the course of this meeting, Mr Jones indicated to him that he wished to give him something towards his election campaign. He was presented with a cheque for IR£2,000, either at that meeting or shortly afterwards. Cllr Lydon stated that Mr Jones had expressed his appreciation to him for professional help he had provided to a third party. This was a reference to Cllr Lydon's work as a psychologist with the St John of God Hospital. Nevertheless, Cllr Lydon told the Tribunal that he considered the IR£2,000 payment to be a political donation.

6.07 There was no election scheduled for the period in or around April 1992. The closest previous election was the Local Election in 1991, and the closest subsequent election was the general election of November 1992 (with the linked Seanad Election in January/February 1993). Cllr Lydon agreed that the April 1992 cheque was the first political donation he had received from Mr Jones.

6.08 Mr Jones made a second payment to Cllr Lydon, in the sum of IR£5,000, on 12 November 1992 by way of a personal cheque[25] payable to '*Mr Don Lydon*'. Mr Jones acknowledged to the Tribunal that, in deciding to pay Cllr Lydon the IR£5,000, he took account of the assistance rendered by him in signing a motion for Ballycullen and supporting its rezoning. Mr Jones did not accept, as maintained by Cllr Lydon, that the cheque had been given to him in the Goat Grill. Mr Jones believed that he would have subsequently sent it to Cllr Lydon. He told the Tribunal that at the meeting with Cllr Lydon in November 1992 his impression of Cllr Lydon was that of a '*distressed'* man, a man '*unsure',* as he advised Mr Jones, of his decision to try to become a full-time politician.

6.09 In his evidence to the Tribunal, Cllr Lydon stated that the payment was probably made in the course of what he described as a chance meeting between the two men at the Goat Grill public house in Co. Dublin. This meeting occurred shortly after the motion to rezone the Ballycullen lands had been passed on 29 October 1992. That motion had been signed by Cllr Lydon and Cllr Hand. Cllr Lydon told the Tribunal that in the course of their chance meeting, and to his surprise, Mr Jones wrote him a cheque drawn on his personal account, in the sum of IR£5,000. Cllr Lydon told the Tribunal that Mr Jones conveyed to him his appreciation for his support in relation to the recent Ballycullen rezoning motion.

6.10 As to the reason why he was paid IR£5,000, Cllr Lydon stated, in the course of his evidence: *'Because of the election had been called and there was a Senate election coming up. That's why he gave me the donation. When we discussed the size of it, he said again, it was an appreciation for what I had done.'*

6.11 Cllr Lydon also told the Tribunal that Mr Jones '*obviously thanked me for my support, or seconding the thing or whatever it was and then went on to talk about other things. He is a very amiable man.*'

6.12 Cllr Lydon described the IR£5,000 payment as '*an awful lot of money'*, and confirmed that it was probably one of the two largest[26] donations he had ever received.

6.13 Cllr Lydon told the Tribunal that the amount of the payment '*astounded'* him, and he believed it again reflected Mr Jones' appreciation of the professional assistance he had provided to a third party known to Mr Jones. Cllr Lydon maintained that while he regarded the payment as a political donation

[25] See Exhibit 6.

[26] The other being, according to Cllr Lydon, IR£2,500 received from Monarch Properties.

made in the context of the then forthcoming Seanad Election he had not viewed the payment as having been made in gratitude for his involvement in the October 1992 rezoning motions.

6.14 On Day 613, Cllr Lydon was asked the following question: '*Why would you take* [something] *from somebody who you felt was giving you money in appreciation for voting in support. Did you not see anything wrong with that?*' Cllr Lydon responded: *'Not in the slightest. No, I mean why would there be anything wrong with it, I mean—if he wants to give me money, it's his business. I am delighted to accept it*.'

6.15 Cllr Lydon was then asked: *'Surely it's your business as well. I mean did it not dawn on you that this looks like a payment for supporting the rezoning?*' Cllr Lydon replied: *'No. You see Mr Jones is a Fianna Fáil man.*'

6.16 Cllr Lydon told the Tribunal that Mr Jones gave donations '*left right and centre to everybody all over the place.'*

6.17 The following exchange then took place between the Tribunal and Cllr Lydon:

> *Q. 'If you had voted against the rezoning, do you think he would have given you money?'*
> *A. 'I must give you an honest answer to that, I think he probably would, he's that kind of man. One of nature's gentleman.'*
> *Q. 'So even if you had voted against it, he would have given you [the payment]'*
> *A. 'I would say he might have given me a donation, maybe. Because he is a remarkable man.'*
> *Q. 'That would make him a remarkable man. But anyway, you don't see anything wrong in the proximity [between the vote and the payment]?'*
> *A. 'Sure the whole thing was over at that stage. I mean there was no big deal with about it. He probably said I am very appreciative of what you did and I said nothing to it and then he went on to discuss the other matter again and the reason for the size of the cheque was because of what I had done before and he said we were very, very appreciative. I think he said something like if—maybe it was that or the other meeting, something along we can never repay you. He may tell you different when he sees you but that's the way I remember it.'*

6.18 While the payment of April 1992 in the sum of IR£2,000 was lodged to a joint savings account in the names of Cllr Lydon and his wife, the IR£5,000

payment made to Cllr Lydon on 12 November 1992 was lodged to a Bank of Ireland account in the sole name of Cllr Lydon's wife, on 11 December 1992.

6.19 On approximately 9 December 1993 a cheque payable to cash in the sum of IR£2,000, drawn on Mr Jones' personal account, was given to Cllr Lydon, and was subsequently lodged to a Bank of Ireland joint account in the names of Cllr Lydon and his wife.

6.20 Mr Jones' diary for 5 October 1993 recorded a scheduled meeting between himself and Cllr Lydon (*'Don Lydon 6.o.c.'*)[27] The Tribunal was satisfied that such a meeting probably took place despite an absence of recollection of the meeting on the part of both Mr Jones and Cllr Lydon. (In fact, Cllr Lydon expressed a doubt that it had taken place.) The meeting was in the period shortly prior to Dublin County Council meetings in October/November 1993 when the Council's agenda included rezoning issues relating to the Beechill and Ballycullen lands.[28] When it was put to Mr Jones (by Tribunal Counsel) that he and Cllr Lydon had in common at this time an interest in the (then) forthcoming confirmation meeting relating to the rezoning of the Ballycullen lands, Mr Jones said '*I'm sure it must be, yes.'*

6.21 It appeared to the Tribunal that neither Mr Jones nor Mr Hussey was concerned about the Beechill proposal at this juncture, as their objective for these lands had been achieved in the previous year, without recourse to a Council vote, and they did not expect that any difficulty would arise on 2 November 1993 when the matter came up for confirmation. This view was proved correct, and the Beechill rezoning was confirmed by the County Council on 2 November 1993.

6.22 However, the Ballycullen rezoning was a different matter. While these lands had been rezoned on 29 October 1992 for open space and residential development (albeit with restricted density) on foot of a motion signed by Cllrs Lydon and Hand on 28 September 1992, on 12 October 1993 councillors were notified of the lodgement of a number of motions seeking to have the zoning revert to the previous agricultural zoning. The Tribunal was satisfied that it was in this context that Mr Jones and Cllr Lydon met on 5 October 1993. It was likely that at this meeting they discussed Cllr Lydon's ongoing support, and the need to counter any proposal seeking to return the Ballycullen lands to agricultural zoning.

[27] See Exhibit 7

[28] Dublin County Council meetings were subsequently scheduled and took place on 28 October and 2 November 1993 in relation to, respectively, the Ballycullen and Beechill lands.

6.23 On 28 October 1993 the Muldoon/Shatter motions which sought to have the lands revert to agricultural zoning were defeated. The zoning of the lands was therefore confirmed residential and open space on 28 October 1993.

6.24 In a letter dated 3 November 1993,[29] some days following the successful outcome of the Ballycullen rezoning project, Mr Jones wrote to Cllr Lydon in the following terms: '*Dear Don, Thank you indeed for your nice letter and your kind remarks. I need hardly say we are deeply indebted to you for all your help. I will contact you shortly and arrange to meet for a chat some evening.'*

6.25 Cllr Lydon agreed that it was in the aftermath of this success that he must have written to Mr Jones, hence the reference to his, Cllr Lydon's, '*nice letter'.*

6.26 The '*chat'* referred to in that letter almost certainly took place when the two men met in the Goat Grill on 8 December 1993. In his diary for that date Mr Jones, who stated that he quite frequently met people in the Goat Grill for lunch, had the following entry '*Goat Lunch*'. On 9 December 1993 a payment of IR£2,000 was made to Cllr Lydon. The cheque[30] was made payable to '*cash'*.

6.27 Both Mr Jones and Cllr Lydon maintained that the three payments (made in April and November 1992 and December 1993, and totalling IR£9,000) were political donations to Cllr Lydon. In relation to the IR£5,000 cheque paid to Cllr Lydon, dated 12 November 1992, Mr Jones acknowledged that in making the payment he had taken into account Cllr Lydon's assistance in signing a motion and in the rezoning of the Ballycullen lands. Mr Jones also acknowledged that his 9 December 1993 payment of IR£2,000 to Cllr Lydon '*could well be*' in discharge of his '*indebtedness'* to Cllr Lydon, as he saw it. The Tribunal was satisfied that the payments, and in particular the size of the payments, were prompted by a sense of appreciation or gratitude on the part of Mr Jones for the important role that had been and was going to be played by Cllr Lydon in successfully promoting the rezoning of the Ballycullen and Beechill lands as they meandered their way through the rezoning process in the Council.

6.28 Cllr Lydon maintained that his support for the rezoning of these lands was based on the merit of the proposals, and that Mr Jones' contributions in no way represented a payment in return for support, either past or future. The Tribunal was entirely satisfied, however, that the reason Mr Jones and Cllr Lydon

[29] See Exhibit 8.
[30] See Exhibit 9.

met in April 1992 was to discuss Cllr Lydon's support for the rezoning of the Ballycullen lands and, more particularly, to discuss the possibility of Cllr Lydon signing a motion to rezone the lands. It was a fact that by October 1992 Cllr Lydon was a signatory to two motions connected with Mr Jones' interests, one in relation to the Ballycullen lands and the other relating to the Beechill property. The Tribunal was satisfied that by 14 April 1992 Mr Jones was preparing for his forthcoming meeting with Cllr Lydon, hence his fax to Mr Dunlop requesting that he be provided with *'the text of the submission that Don Lydon has to make to the Council'*. The Tribunal was satisfied that what was being requested by Mr Jones was the text of a motion that was to be signed by Cllr Lydon.[31]

6.29 Irrespective of whether any document was shown to Cllr Lydon by Mr Jones on the day they met, the Tribunal was satisfied that they discussed the necessity for a rezoning motion for the Ballycullen lands. The Tribunal was equally satisfied, even accepting Mr Jones' account of what was communicated to him by Cllr Lydon regarding the latter's '*financial strain*', that what was being communicated to Mr Jones by Cllr Lydon (and in all probability understood by Mr Jones) was that Cllr Lydon was making a request for money in return for his support and in return for his signature to any motion to rezone the Ballycullen lands.

6.30 The Tribunal was satisfied that Mr Jones and Cllr Lydon met in the Goat Grill in or about November 1992. The Tribunal accepted Mr Jones' evidence that Cllr Lydon once again apprised him of the financial strain he was under and that Mr Jones conveyed to him his appreciation of his contribution to the successful outcome of the vote of 29 October 1992. The Tribunal was satisfied that the Ballycullen rezoning was the primary motive for the payment of the IR£5,000 to Cllr Lydon, particularly since both Mr Jones and Cllr Lydon appreciated in November 1992 that the lands would again feature on the County Council agenda sometime in 1993 (following the second statutory public display of the Draft Development Plan). As such, the payment of IR£5,000 was in reality a cynical exercise on the part of Mr Jones designed to ensure Cllr Lydon's continuing support for the Ballycullen rezoning. The Tribunal had no doubt that the size of the cheque reflected Cllr Lydon's ongoing importance to Mr Jones.

6.31 The Tribunal did not accept Cllr Lydon's explanation for his receipt of the cheque and believed that this explanation was tendered by him in order to obscure the link that might otherwise appear to have existed between his support and his signature for the Ballycullen rezoning proposal, and the payment to him of IR£5,000 within approximately 14 days of the first vote. The Tribunal

[31] In April 1992, it was expected that the County Council's special meeting to deal with the Ballycullen lands would take place in the summer.

noted that the Council records did not indicate any disclosure made by Cllr Lydon of the receipt of money from Mr Jones.

6.32 The Tribunal was satisfied that the December 1993 payment of IR£2,000 to Cllr Lydon was directly linked to the support provided by him for the rezoning of the Ballycullen lands and that such payment was, in all probability, agreed by Cllr Lydon and Mr Jones during the course of their meetings of 5 October or 8 December 1993 in the context of the confirmation of the zoning achieved on 28 October 1993. It may well have been that this request was couched in terms of the '*financial strain*' imposed on Cllr Lydon's political career but the Tribunal had no doubt but that once again Cllr Lydon had communicated to Mr Jones that he was seeking money for support he was providing (or had provided) in the context of the Ballycullen and Beechill rezonings. The Tribunal considered it significant that the payment made to Cllr Lydon was made by way of cheque payable to '*cash'*.

6.33 The Tribunal was satisfied that the said payments totalling IR£9,000, particularly having regard to the manner in which they were paid, did not constitute bona fide political donations to Cllr Lydon whether or not those payments were made at or close to the time of an election. (In fact, only the second payment was made at the time of an election.)

6.34 Cllr Lydon was an elected public representative who actively engaged in the review of the Dublin County Development Plan, together with other elected councillors. Part of that review included motions to rezone lands in Ballycullen and Beechill in which Mr Jones had an interest, which interest was well known to Cllr Lydon. As such, the Tribunal was satisfied that Cllr Lydon abused his position as a councillor, in that he presented himself to Mr Jones as an individual who was prepared to provide crucial support for Mr Jones' rezoning ambitions, while at the same time both seeking, and displaying, a willingness to accept substantial payments of money.

6.35 Notwithstanding Mr Jones' assertions to the Tribunal that Cllr Lydon never made support for the rezonings conditional on receipt of financial support, the Tribunal was satisfied that in the course of discussions between Mr Jones and Cllr Lydon, Cllr Lydon discussed his own financial pressures or difficulties, whether real or contrived, in the hope or expectation that Mr Jones would pay him money, which indeed he did.

6.36 The Tribunal was also satisfied that Cllr Lydon expressly or by implication sought the payment of money from Mr Jones in circumstances in which Mr Jones was led to believe that Cllr Lydon's support for the rezoning of

the Ballycullen lands was dependent upon his receipt of substantial sums of money.

6.37 The Tribunal was satisfied that the payments made to Cllr Lydon by Mr Jones amounting to IR£9,000 over a 20-month period in 1992/3 were inextricably linked to Cllr Lydon's support for, in particular, the rezoning of the Ballycullen lands. The Tribunal was satisfied that all these payments were, in reality, solicited by Cllr Lydon, at a time when Mr Jones was engaged in a process which required, or had recently required, councillors to exercise their vote in relation to specific motions relating to lands in which Mr Jones had an interest. The Tribunal was satisfied that the three payments totalling IR£9,000 were solicited and paid in connection with the rezoning of the Ballycullen lands and were intended to influence by inducement the disinterested performance by Cllr Lydon of his public duties as an elected councillor. The said payments were corrupt.

6.38 The Tribunal rejected any likely connection between any portion of the IR£9,000 paid to Cllr Lydon and professional services provided by him to a third party known to Mr Jones.

6.39 According to Cllr Lydon, the IR£500 he received in 1999 was given as a result of what was effectively a 'round robin' letter he had sent seeking financial support in the context of the 1999 Local Elections. The Tribunal noted that at the time of this payment Cllr Lydon's electoral ward was within Dún Laoghaire-Rathdown County Council but that the Ballycullen lands, following the break-up of Dublin County Council in January 1994, were within the remit of South Dublin County Council. The Tribunal noted therefore that at the time of this payment Cllr Lydon was not a councillor within the Council area in which the lands were situated, a factor which, together with the fact that Mr Jones' zoning ambitions for the lands had been achieved by this time, probably accounted for Mr Jones being less generous to Cllr Lydon at this time than previously.

THE SEQUENCE AND MANNER OF DISCLOSURE BY MR JONES OF THE PAYMENTS MADE TO CLLR LYDON

6.40 On 10 November 2003 the Tribunal received a statement from Mr Jones attached to which was a schedule in which Cllr Lydon was listed as having received IR£7,000 of political donations as of 31 December 1992. Discovery of documentation made by Mr Jones subsequently included, *inter alia*, a copy of the November 1992 IR£5,000 cheque which comprised part of that IR£7,000.

6.41 On 8 March 2006, on the eve of his sworn testimony to the Tribunal, Mr Jones' solicitors furnished to the Tribunal a large number of copies of cheques which included the April 1992 'cash' cheque which had been lodged to the account of Cllr Lydon and his wife. Also included in the batch of copy cheques was the cheque for IR£2,000 dated 9 December 1993 made payable to cash, which bore on its reverse side the Bank of Ireland account number 89256888. This was an account of Cllr Lydon. In the course of his testimony to the Tribunal Mr Jones accepted that he had made this payment in December 1993, in addition to the payments previously acknowledged as payments to Cllr Lydon.

THE SEQUENCE AND MANNER OF THE DISCLOSURE BY CLLR LYDON OF PAYMENTS HE RECEIVED FROM MR JONES

6.42 On 26 January 2006 Cllr Lydon, through his solicitors, provided a statement to the Tribunal which, *inter alia*, stated the following:

> *Our client recollects that he was a candidate for election to the Seanad following upon the General Election of November 1992. The Seanad campaign would have commenced at the time of the General Election with the Seanad election concluding in the early part of 1993. During the course of the Seanad campaign, Mr Chris Jones gave our client by way of a donation the sum of IR£5,000. Our client believes to the best of his recollection that the overall contribution made by Chris Jones amounted to about IR£7,000. Evidence in regard thereto was given by our client to the Tribunal at a previous hearing.*

6.43 Prior to furnishing this statement and prior to his sworn evidence in this module, Cllr Lydon had, in a letter to the Tribunal dated 5 June 2002, identified the April 1992 IR£2,000 cheque payable to cash as having been received from Mr Jones and having been duly lodged as part of a composite lodgement of IR£2,505.68 to his and his wife's joint bank account. Cllr Lydon had previously informed the Tribunal (in the course of the Carrickmines Module) that he had received two cheques for IR£5,000 during the 1992 election campaign, one of which he had identified as being from Mr Jones.

6.44 On 29 November 2004, in response to queries raised by the Tribunal in relation to a series of lodgements to his wife's Bank of Ireland current account, including a lodgement of IR£10,000 on 11 December 1992, Cllr Lydon's solicitors identified Mr Jones as the donor of the IR£5,000 (being half of the said lodgement) and gave as the reason for its receipt professional counselling services provided by Cllr Lydon to relatives of Mr Jones in his capacity as a clinical psychologist.

6.45 On Day 613, during the course of his sworn evidence, Cllr Lydon conceded that the information provided on his behalf by his solicitors was incorrect in that he no longer contended that the reason for the payment of IR£5,000 was remuneration for professional services. However, he continued to give the work he had done in a professional counselling capacity as a reason for the *amount* received by way of (as claimed by him) political donation from Mr Jones.

6.46 While Cllr Lydon, in the course of his evidence on Day 613, outlined his recollection as to how he came to receive the IR£2,000 in April 1992, and the IR£5,000 in November 1992, he did not allude to the fact that in December 1993 he had been in receipt of a further IR£2,000 'cash' cheque from Mr Jones. On Day 719, following his recall as a witness by the Tribunal to explain this payment, Cllr Lydon acknowledged that he had received this cheque in December 1993. Cllr Lydon attributed his failure to that point to disclose the payment to the fact that, although he had received copy bank statements for the relevant period, the bank statements for December 1993 had been omitted by his bank. He conceded on Day 719 that merely looking at the lodgements recorded in such bank statements would not of itself have informed him of the source of such lodgements. Cllr Lydon's evidence was that he had no recollection of the receipt of this cheque, though when the copy cheque was produced by the Tribunal he accepted that he had received it.

6.47 On his first day giving sworn evidence in this module, Cllr Lydon told the Tribunal that, following his receipt of the IR£5,000 cheque from Mr Jones in November 1992, he received no further money from that source, and that he had no recollection of meeting Mr Jones after the meeting in November 1992 other than going to '*see him one day just to say hello'* despite being shown an entry in Mr Jones' diary for 5 October 1993 which noted '*Don Lydon 6 o'clock, Goat'.* Cllr Lydon accepted, however, that such a meeting may have taken place.

6.48 While Cllr Lydon acknowledged in sworn evidence on Day 613 that, following the vote of 29 October 1993, he had in all probability written to Mr Jones (as reflected in Mr Jones' letter to him of 3 November 1993) and while he acknowledged that Mr Jones had obviously written to him on 3 November 1993 suggesting meeting for a chat, Cllr Lydon did not believe that such a further meeting had taken place. The Tribunal did not accept that Cllr Lydon on Day 613 was unable to recollect his 5 October 1993 meeting with Mr Jones. Moreover, it appeared inconceivable to the Tribunal that when providing information to it prior to Day 613, and when giving evidence on that day, Cllr Lydon failed to recollect

the payment made by Mr Jones in December 1993. Cllr Lydon's evidence in this respect was rejected by the Tribunal.

ALLEGED PAYMENT TO CLLR LYDON BY MR DUNLOP

6.49 Mr Dunlop alleged that Cllr Lydon received IR£2,000 from him in return for signing and supporting the motions seeking the rezoning of the Beechill and Ballycullen lands which came before the County Council on 16 October and 29 October 1992 respectively. Mr Dunlop also alleged that he paid IR£2,000 to Cllr Lydon's co-signatory on these motions, Cllr Hand.

6.50 On Day 146 Mr Dunlop identified Cllr Lydon on his confidential list headed '*Preliminary List*' as one of 16 councillors who had requested monies from him as bona fide political donations. At this time in his evidence to the Tribunal, Mr Dunlop was maintaining that he had not made any improper or corrupt payments to councillors and that any payments he had made were legitimate political donations, a stance he subsequently altered significantly.

6.51 However, Cllr Lydon was not identified on any of the following three confidential lists that Mr Dunlop later provided to the Tribunal:

- The list headed *'1991 local election contributions'* provided on Day 147. This listed councillors numbered 1 to 16 to whom Mr Dunlop said he had made payments totalling IR£112,000[32] in cash, out of withdrawals from his 042 Rathfarnham account, in the course of the 1991 Local Election (none of which payments related to Ballycullen because the Ballycullen motion was not lodged until 28 September 1992 with the related vote in October 1992).

- The list headed *'1992 list'* provided on Day 148 listing councillors numbered 17 to 30 to whom Mr Dunlop said he had made payments in 1992 out of a withdrawal of IR£55,000 from the Rathfarnham account. Mr Dunlop had by then conceded that he had made certain improper or corrupt payments.

- The list without a heading (which for convenience the Tribunal shall refer to in this report as *'the continuation list')* that was also provided on Day 148 as a continuation of the 1991 Local Election list and the 1992 list, containing a list of councillors numbered 31 to 38. These names, which had already appeared on the 1991 Local Election list and the 1992 list,

[32]On Day 606 (8 February 2006) he accepted that he was there identifying '*improper'* payments.

were of councillors to whom Mr Dunlop said he made other payments at other times.

6.52 Since Cllr Lydon was absent from all three lists, he was not cross-referenced as a recipient of monies in relation to the Ballycullen lands in the course of a specific cross-referencing exercise conducted by Mr Dunlop on Day 148. In this exercise, the names of the councillors he had cited on the three lists were each cross-referenced against the names cited on a further confidential list headed '*1991–1993 (inclusive)*', brought pre-prepared to the witness box and provided by Mr Dunlop to the Tribunal also on Day 148. On this list, *'the composite list of persons from whom* [he] *received various sums of money*', Mr Dunlop identified the developers who had provided him with money in connection with the review of the Development Plan.

6.53 Ballycullen Farms Ltd was identified at item number 2 on the 1991–1993 list.

6.54 However, on 11 May 2000, some two days after he provided three lists (*'the 1992 list*, *'the continuation list'* and the *'1991–1993 list'*), in the course of a private interview with the Tribunal's legal team, Mr Dunlop named Cllr Lydon and Cllr Hand as recipients of money in relation to the Ballycullen lands.

6.55 In his private interview, Mr Dunlop advised the Tribunal that on a number of occasions he visited Cllr Lydon at his place of work at St John of God, Stillorgan, Co. Dublin, and that on a number of occasions he gave him money in amount of *'two, two and a half grand'* . Mr Dunlop also stated that Cllr Lydon certainly would have received money in relation to Ballycullen.

6.56 Mr Dunlop repeated this assertion in a number of subsequent statements, albeit with some slight variation, prior to giving his sworn evidence to the Tribunal. For example, on 18 May 2000, Mr Dunlop told the Tribunal at private interview that Cllr Lydon received a payment of *'something of the order of two,two and a half grand*' and referred to this level of payment as the '*going rate*' for payments to councillors.

6.57 Cllr Lydon informed the Fianna Fáil inquiry in May 2000 that he had received a cheque for IR£1,000 from Mr Dunlop as a payment for election purposes in the period 1991–2. In a statement to the Tribunal on 13 December 2000, Cllr Lydon stated that he had received a payment of IR£1,000 from Mr Dunlop '*back in the early nineties'* which he believed was for the 1993 Seanad election, being one of only two political donations received by him from Mr Dunlop, the other being at the time of the Local Elections in 1999.

6.58 Mr Dunlop maintained in his statement made to the Tribunal on 11 February 2003, that prior to his appearance at the Tribunal in April 2000, he was contacted by Cllr Lydon for the purposes of ascertaining what could be said (to the Tribunal) by way of explanation as to the reason for the IR£1,000 cheque payment. Mr Dunlop stated that at the time Cllr Lydon said he wanted to categorise the payment as a legitimate donation relating to the 1993 Seanad Election, unconnected to any Dublin County Council vote. Mr Dunlop maintained that he had concurred with this suggestion and it was mutually agreed that no reference would be made to any other payments.

6.59 Mr Dunlop alleged that he and Cllr Lydon reached an agreement for a payment of IR£2,000 when Mr Dunlop had made an approach to Cllr Lydon for his signature to the motions for the rezoning of the Ballycullen and Beechill lands. Mr Dunlop alleged that Cllr Lydon's request was couched in terms of what he, Mr Dunlop, was going to do for Cllr Lydon, and that on that basis IR£2,000 had been agreed. Mr Dunlop maintained that his arrangement with Cllr Lydon was most probably concluded in September 1992, prior to the submission of two motions to the Council.

6.60 During the period of the Development Plan review, Mr Dunlop met with Cllr Lydon at his place of work in Stillorgan, save on one or two occasions when they met in the environs of the County Council offices. Mr Dunlop believed that his arrangement with Cllr Lydon regarding the Ballycullen/Beechill lands was concluded at Cllr Lydon's place of work, as it was normally at that location that he met Cllr Lydon. Mr Dunlop maintained that he would have paid Cllr Lydon at his place of work. Mr Dunlop claimed to have paid Cllr Lydon on the morning of 2 October 1992. He said he may have called to see Cllr Lydon by prior arrangement and there paid Cllr Lydon IR£2,000 cash in an envelope. This money was sourced from the confluence of funds which he had available to him at the time, including at least IR£12,500 received by Mr Dunlop from Mr Jones/Ballycullen Farms Ltd/Beechill Properties Ltd.

6.61 Mr Dunlop's diary for 10 September 1992[33] recorded a meeting with Cllr Lydon. On 11 September Mr Dunlop had a meeting with Mr Jones. As a matter of probability, the proposed Ballycullen/Beechill rezoning motions were discussed with Cllr Lydon on 10 September 1992. The Tribunal was satisfied that at some point between 10 and 28 September 1992 (most likely between 17 and 28 September, given the contents of Mr Lawlor's fax to Mr Jones of 17 September), Cllr Lydon, in the presence of Mr Dunlop, appended his signature to

[33] See Exhibit 10.

three motions relating to the Ballycullen lands, one of which, dated 28 September 1992, was ultimately submitted to the County Council. Likewise, within the same timeframe, Cllr Lydon signed a motion relating to the Beechill lands dated 28 September 1992, which was ultimately lodged with the County Council. Although, unusually, neither motion bore the date-received stamp of the County Council, the Tribunal was satisfied that the motions were received by the County Council in advance of the special meetings dealing respectively with the Beechill and Ballycullen lands.

6.62 Mr Dunlop's diary recorded a scheduled meeting for 2 October 1992 between himself and Cllr Lydon. Cllr Lydon claimed to have no recollection of a meeting with Mr Dunlop on 2 October, 1992 but did not dispute its having taken place. It was likely, according to Mr Dunlop, that it was at this meeting that he handed over the IR£2,000 cash in an envelope to Cllr Lydon but Cllr Lydon denied that he had received any such payment.

6.63 On 30 September 1992 (two days previously), Mr Dunlop's record of telephone messages received by his office recorded a call from Cllr Lydon. The Tribunal was satisfied that at some point between 30 September and the morning of 2 October 1992, an arrangement was made for Mr Dunlop to call to Cllr Lydon's workplace. Cllr Lydon stated that in all his time as a councillor, he never voted for, or voted against, or abstained on a motion in response to a receipt of money from Mr Dunlop. He claimed that the only monies he had received from Mr Dunlop were two political donations, one was an unsolicited donation of IR£1,000 by way of cheque from Frank Dunlop & Associates Ltd received during his 1993 Seanad campaign, and the other was a donation for approximately IR£200 by cheque from Frank Dunlop & Associates Ltd in 1999 for the Local Election campaign in response to a request to him and to others for support.

6.64 Cllr Lydon was asked in the course of his evidence why Mr Dunlop would visit him in his office in Stillorgan to ascertain if he would support a proposal being promoted by him when the opportunity for such brief discussion arose easily when they regularly met in the environs of the County Council at the time of meetings. Cllr Lydon suggested that Mr Dunlop '*used to go around visiting people all over the place.'*

6.65 Indicative of the close relationship between Mr Dunlop and Cllr Lydon was the following response given by Cllr Lydon on Day 613, relating to one or more meetings between the two men in early October 1992: *'he* [Mr Dunlop] *would come into my office and he always went through the same thing. He came into my office and sometimes he would be rushing and most of the time, he*

would rare [sic] *sit down, he would say I'm proposing something, will you support it and I would say yes and then he would go on and talk about himself.'*

6.66 In a letter from Cllr Lydon's solicitors in January 2006, it was stated on his behalf that to the best of his recollection he had had no contact with Mr Dunlop in relation to the Beechill/Ballycullen lands. In that written statement, Cllr Lydon advised the Tribunal of his acquaintance with Messrs Oliver and Frank Brooks, employees of Mr Jones over a period of 15–20 years. This acquaintance had come about through their and Cllr Lydon's shared connections through Fianna Fáil. He had made the acquaintance of Mr Jones at about the time when the question of the rezoning of the Ballycullen lands was being mooted.

6.67 While Cllr Lydon conceded in the course of his evidence that the documentation which had been circulated to him by the Tribunal prior to the public hearings in this module suggested that he must have had contact with Mr Dunlop in relation to the Ballycullen/Beechill lands, and that such contact dated back to a time shortly prior to the relevant motions being lodged with the County Council, it was his recollection that at this time there was telephone contact, but no face-to-face contact between himself and Mr Dunlop. Cllr Lydon said that initially he did not know that Mr Dunlop was involved with the Ballycullen lands and that his contact was then with Mr Oliver Brooks of Ballycullen Farms.

6.68 In evidence Cllr Lydon claimed not to have been aware that Mr Dunlop had been retained by Mr Jones from February 1991 onwards and further claimed not to have known of Mr Dunlop's involvement in relation to the rezoning of the lands. Cllr Lydon also denied that he was aware that, subsequent to February 1991, Mr Dunlop had also been retained on behalf of the Beechill lands

6.69 Cllr Lydon stated that, if the issue of the Ballycullen rezoning was mentioned between himself and Mr Dunlop in the period post April 1992, it would have been only in passing by the latter, among a myriad of other rezoning issues Mr Dunlop had spoken to him about. Cllr Lydon's evidence was that while he could not be sure, his belief was that Mr Dunlop may well have assumed that he, Cllr Lydon, was supportive and '*on board'*, in relation to Ballycullen.

6.70 Cllr Lydon's evidence in this regard was rejected by the Tribunal. The Tribunal was satisfied that Cllr Lydon did know of Mr Dunlop's involvement with the lands from at least April 1992, if not from 1991. The Tribunal was satisfied that both in his written communications with the Tribunal in January 2006 and in the course of his testimony, Cllr Lydon endeavoured to play down the level of his contacts and meetings with Mr Dunlop in relation to the Ballycullen/Beechill lands.

6.71 On 14 April 1992 Mr Jones faxed Mr Dunlop requesting that he be provided with a text of a *'submission'* that Cllr Lydon was to make to a meeting of the Council. Mr Dunlop's office telephone records of 22 April 1992 indicated an attempt by Cllr Lydon to speak by telephone to Mr Dunlop. These records also revealed contact by Cllr Lydon at times when the issue of the Beechill and Ballycullen rezoning were before the Council, and when it was expected that the Ballycullen/Beechill lands issue would ultimately come before the councillors.

6.72 Cllr Lydon told the Tribunal that while he could not recall, and did not therefore deny, a meeting of 2 October 1992 with Mr Dunlop, he denied receiving IR£2,000 from Mr Dunlop at any such meeting, as alleged by Mr Dunlop.

6.73 In the course of an examination of the accounts of Cllr Lydon and his wife, it was noted that there was a lodgement of IR£1,900 in cash to a joint account held by himself and his wife on 8 October 1992, six days after the meeting between him and Mr Dunlop, which was also the occasion when Mr Dunlop claimed he paid Cllr Lydon the sum of IR£2,000. Cllr Lydon explained this lodgement as '*cash in hand*' and he explained that he normally kept in excess of IR£10,000 in cash to enable himself and his wife to buy and sell antiques, and that such sums would have been withdrawn from his and his wife's bank accounts. Cllr Lydon said he and his wife often withdrew and re-lodged money and moved money between accounts in order to keep the accounts '*alive*'.

6.74 The rezoning of the Ballycullen and Beechill lands was at all times supported by Cllr Lydon as it made its way through the Council, and particularly in the crucial rezoning motions which were held on 29 October 1992 and 28 October 1993.

6.75 The Tribunal was satisfied that, as a matter of probability, Mr Dunlop did indeed pay Cllr Lydon IR£2,000, and that it was paid in return for Cllr Lydon's support for the rezoning of the Ballycullen/Beechill lands. The Tribunal was satisfied that Mr Dunlop had a clear recollection of the payment and the circumstances in which it was paid and the reasons for its payment. The propensity displayed by Cllr Lydon in subtly requesting and accepting substantial sums of money from Mr Jones, *inter alia*, assisted the Tribunal in rejecting Cllr Lydon's denial that he sought or received money from Mr Dunlop. The said payment constituted an inducement intended to compromise the disinterested performance of public duties on Cllr Lydon's part, and was corrupt.

6.76 It was therefore the case that Cllr Lydon received a total of IR£11,000 in connection with his support for the rezoning of the Ballycullen/Beechill lands in the period 1992/1993. The payments in question were corrupt payments.

PAYMENTS MADE TO CLLR LYDON IN RELATION TO THE BALLYCULLEN/BEECHILL LANDS: A SUMMARY

6.77 The Tribunal was satisfied that Cllr Lydon was corruptly paid and corruptly received a total of IR£11,000 in connection with the Ballycullen/Beechill lands, summarised as follows

- IR£2,000 on 27/28 April 1992, paid by Mr Jones, from his personal funds.
- IR£5,000 on 12 November 1992, paid by Mr Jones, from his personal funds.
- IR£2,000 on 9 December 1993, paid by Mr Jones, from his personal funds.
- IR£2,000 on or about 2 October 1992, paid in cash by Mr Dunlop.

CLLR G. V. WRIGHT (FF)

ALLEGED PAYMENTS TO CLLR WRIGHT BY MR JONES

7.01 In his written statement to the Tribunal dated 7 November 2003, Mr Jones identified two political donations which he said he made to Cllr Wright. The first of these was in the sum of IR£500 made on 31 December 1992. Mr Jones described this donation as '*local elections Donation'*. The second payment to Cllr Wright was of IR£500 made on 27 May 1997, and described by him as '*Political Donations.'*

7.02 In a second statement from Mr Jones dated 23 February 2006, Mr Jones disclosed that the information provided by him to the Tribunal on 7 November 2003 in relation to the first payment to Cllr Wright was erroneous, and that the payment was in fact a sum of IR£5,000. By way of explanation for his initial error, Mr Jones stated that his bank had in the interim found a cheque[34] made payable to Cllr Wright in the sum of IR£5,000 dated 12 November 1992. In his 2006 statement, Mr Jones confirmed the second payment of IR£500 to Cllr Wright on 27 May 1997.

7.03 The payment of IR£5,000 in November 1992 was made from Mr Jones' personal funds, some days following the announcement of a general

[34] See Exhibit 11.

election. When asked in the course of his evidence why he had made the payment, Mr Jones replied: '*Well I considered Mr Wright to be very important deputy insofar as he was a very senior deputy in the north county area. So I felt that he would influence his colleagues in support of my motion. So for that reason I thought I'd treat him generously.*'

7.04 Mr Jones agreed with a suggestion put to him by his own Counsel that while he had hoped that Cllr Wright would influence fellow councillors to support the rezoning of the Ballycullen lands, he did not intend '*any form of impropriety or wrongdoing or wrongful influence'* in relation to Cllr Wright.

7.05 Mr Jones was asked the following question: '*When you were making this donation to Mr Wright, would you have been keeping in mind Mr Wright's support in October '92 for the supporting of the Ballycullen lands*'. Mr Jones responded: '*Oh, I would of course, yes.'*

7.06 At the time of the IR£5,000 payment, Cllr Wright was the Fianna Fáil whip in the County Council.

7.07 The successful Ballycullen lands rezoning motion was dealt with by the County Council on 29 October 1992, approximately two weeks prior to the payment of IR£5,000 to Cllr Wright. In explaining to the Tribunal why Mr Wright received IR£5,000 for the 1992 general election campaign, and only IR£500 for the 1997 election campaign, Mr Jones stated as follows: *'Well, I felt that in the IR£5,000 payment that he would influence the councillors on my behalf. And I thought that it was sort of a genuine gesture to him as a donation for all of the years that we knew him and so on. I don't think he was in any danger when I gave him the 500.'*

7.08 Cllr Wright acknowledged receipt of the 1992 and 1997 payments. However, he confessed to having no recollection of how the IR£5,000 cheque arrived to him or how or where he had negotiated this cheque. Cllr Wright described himself as a pro-development councillor (and was well known to be so), and supported the Ballycullen rezoning on its merits. He and Mr Jones had known each other for twenty or thirty years, although, despite his having been in politics at the time for eleven years, the IR£5,000 payment (which Cllr Wright described as a political contribution) was the first such payment to him by Mr Jones. Cllr Wright did not recollect why Mr Jones had paid him the IR£5,000, but it was his belief that Mr Jones may have thought that there was a possibility that he, Cllr Wright, would be elected to the Dáil in 1992. Cllr Wright intimated that this payment was unrelated to his voting support for the rezoning of the Ballycullen lands approximately two weeks previously.

7.09 Cllr Wright acknowledged that Mr Jones lobbied him in relation to the rezoning of the Ballycullen and Beechill lands.

7.10 Mr Jones' diary recorded a scheduled meeting between himself and Cllr Wright at Buswells Hotel at 12 pm on 5 October 1993, shortly prior to the Ballycullen confirmation motion on 28 October 1993. Mr Jones acknowledged that the issue of common interest to both himself and Cllr Wright at that meeting was the confirmation vote later that month.

7.11 In 2000, Cllr Wright told the Fianna Fáil inquiry that he received a payment of IR£500 from Ballycullen Farms. Cllr Wright said that he recalled receiving IR£500 from Mr Jones and receiving a donation from Mr Jones in 1992, hence his belief that the donation made in that year and the donation made in that amount were one and the same. When asked why he had failed to inform the Fianna Fáil inquiry of the IR£5,000 payment from Mr Jones/Ballycullen Farms in 2000, Cllr Wright said that he did not recollect receiving such a payment. Cllr Wright suggested that at the time he provided information to the Fianna Fáil inquiry, knowing that he had received a payment from Mr Jones/Ballycullen Farms in 1992, he incorrectly stated it to have been IR£500 (rather than IR£5,000) because he said that he confused the payment with a payment of IR£500 which he received from Mr Jones in 1997. Cllr Wright maintained that this confusion on his part continued until he received documentation from the Tribunal in advance of his sworn evidence to the Tribunal. Cllr Wright agreed that it was only when informed by the Tribunal that it had in its possession a copy of Mr Jones' cheque for IR£5,000, that he acknowledged receipt of this payment in 1992.

7.12 The Tribunal noted that, in response to queries about a lodgement of IR£20,550 to his ICS Building Society account, Mr Wright advised the Tribunal in a statement dated 31 May 2000 that part of this lodgement included a IR£500 political donation from Ballycullen Farms.

7.13 Cllr Wright had two meetings with the Fianna Fáil inquiry. In its report he was recorded as having claimed that he received IR£500 from Ballycullen Farms for the 1992 General Election campaign. He was further recorded as having mentioned that he might have received a donation from Mr Jones and as stating that he was still seeking confirmation of it.

7.14 Subsequent to the meetings, Cllr Wright communicated with the Fianna Fáil inquiry by letter dated 18 May 2000, with five appendices attached.

The letter was included as an Appendix to the inquiry report. In paragraph 3 of that letter Cllr Wright stated:

> *In relation to Appendix 5*[35] *and again arising from (1)*[36] *it has not been possible to access the appropriate documentation so as to respond comprehensively to your specific enquiry. However, wishing to co-operate to the best of my ability I have over the past week made contact, based on my best recollection, with contributors. I am now in a position to advise the details set out in Appendix 5 arising from the responses of these contacts.*

7.15 In Appendix 5, under a heading '*Political Donations*', Cllr Wright continued as follows:

> *As stated in my covering letter, following telephone contact, the following donations have been confirmed for the 1992 election:*
> 1. *Malahide Marina Ltd — IR£2,500,*
> 2. *Andeliu Ltd — IR£1,000,*
> 3. *Monarch Properties — IR£1,000,*
> 4. *Ballycullen Farms — IR£500.*

7.16 In his evidence to the Tribunal on Day 613, Cllr Wright conceded that notwithstanding what was contained in the letter of 18 May 2000 and Appendix 5, he had not made any approach to Mr Jones or Ballycullen Farms. Nor had he sought such confirmation from Mr Jones prior to responding to queries posed by the Tribunal in the year 2000. Cllr Wright acknowledged that his written communications to the Tribunal, and indeed to the Fianna Fáil inquiry, were incorrect insofar as they each suggested that he had made contact with Mr Jones in order to ascertain any political contributions received in 1992.

7.17 In the course of his evidence, Cllr Wright agreed that his recollection of having been in receipt of a cheque for IR£5,000 from Mr Jones in November 1992 was prompted by the Tribunal's advice to him that it had received a copy of the relevant cheque.

7.18 A question arose as to why, when Cllr Wright was himself under inquiry by Fianna Fáil in 2000, he did not seek to make contact with Ballycullen Farms or with Mr Jones. The Tribunal concluded that Cllr Wright's lack of action in 2000, or indeed subsequently, in relation to ascertaining what payments he had received from Mr Jones, was itself suggestive of a desire on his part to leave the

[35] This Appendix was headed 'Political Donations'.
[36] A reference to the first point in his letter concerning the absence of records.

issue of the IR£5,000 cheque received by him in November 1992 in abeyance, in the hope or expectation that the cheque might never be identified.

7.19 The Tribunal believed it extremely unlikely that Cllr Wright had forgotten about a cheque for IR£5,000 received by him in November 1992. This cheque was one of three IR£5,000[37] sums he received for the November 1992 general election campaign. Equally, the Tribunal found it extremely unlikely that Mr Jones had also forgotten about making the IR£5,000 payment to Cllr Wright, or confused the payment with one of IR£500. Mr Jones could not offer any explanation for this mistaken recollection. The question arose as why neither Cllr Wright nor Mr Jones recalled the IR£5,000 cheque from Mr Jones. The Tribunal did not believe it credible on the part of Cllr Wright or Mr Jones that, while they could apparently recall a payment of IR£500 from Mr Jones, they apparently could not recall a payment ten times its size.

7.20 The Tribunal was satisfied the the primary motivation in Mr Jones' IR£5,000 payment to Cllr Wright in November 1992 was not a desire to assist him in relation to his political expenses associated with the General Election at that time. In its view, that sum was in fact paid in recognition of the support previously given by Cllr Wright to Mr Jones in relation to the Ballycullen/Beechill lands rezoning projects and for the purposes of ensuring Cllr Wright's support in the confirmation vote in the following year in relation to the Ballycullen lands and also to ensure that Cllr Wright would exert influence on his Fianna Fáil councillor colleagues to support the Ballycullen rezoning project. The Tribunal was satisfied that the payment was an attempt to influence by inducement Cllr Wright's disinterested performance of his public duties. The said payment was corrupt.

7.21 The acceptance by Cllr Wright of IR£5,000 from Mr Jones in November 1992, in the wake of his vote in support of the rezoning of the Ballycullen lands some two weeks previously, and in the knowledge that the rezoning issue would again come before the Council prior to the completion of the Development Plan, deprived Cllr Wright of any entitlement to categorise the payment as a political contribution unconnected to his support for the rezoning of the lands. The payment to Cllr Wright and his acceptance thereof blatantly compromised the required disinterested performance of his public duty as a councillor. Having accepted the substantial sum of money from Mr Jones, Cllr Wright continued to exercise his vote in October 1993, effectively supporting Mr Jones' project, and he did so without disclosing the receipt of that payment to the Council or to his fellow councillors. This payment was corrupt.

[37] In November 1992 Cllr Wright received a cheque payment of IR£5,000 from Mr Owen O'Callaghan and a cash payment of IR£5,000 from Mr Dunlop.

7.22 Cllr Wright was unable to assist the Tribunal as to what he did with this IR£5,000. A perusal of his bank records did not assist him as to what might have become of the cheque. He agreed with Tribunal Counsel that he may well have cashed the cheque. On 18 November 1992 Mr Wright made a lodgement of IR£20,550 to his ICS Building Society account. In a statement to the Tribunal, Cllr Wright stated that he believed that that lodgement probably comprised the following: the IR£5,000 received from Mr O'Callaghan in November 1992; a Malahide Marina Ltd donation of IR£2,500; an Andelu Ltd donation of IR£1,000; a Monarch Properties donation of IR£1,000 and IR£500 attributed by him as a Ballycullen Farms donation (now proved not to be the case). While Cllr Wright had also sought to include in this lodgement a cash donation of IR£5,000 he had received from Mr Dunlop in November 1992 as part of the aforementioned lodgement, he ultimately accepted that the IR£5,000 cash received from Mr Dunlop could not have formed part of the lodgement of IR£20,550, as bank documentation showed that that lodgement was comprised of cheques only.

7.23 In all these circumstances, the Tribunal believed that Mr Jones' IR£5,000 cheque may have been part of this IR£20,550 lodgement.

7.24 Mr Jones and Cllr Wright met on 5 October 1993, according to an entry in Mr Jones' diary[38] for that date. The entry stated: '*GV. Buswells 12 oc'.*

7.25 This meeting took place approximately three weeks prior to the confirmation vote relating to the Ballycullen lands on 28 October 1993. Mr Jones probably met Cllr Lydon later on 5 October 1993. The Tribunal was satisfied that both meetings probably included a discussion relating to the then forthcoming confirmation meeting at Dublin County Council relating to the Ballycullen lands. Mr Jones stated that one of the reasons for his meeting with Cllr Wright in October 1993 was the expectation that Cllr Wright would use his influence as the Fianna Fáil whip in the Council to ensure that the Ballycullen rezoning would be confirmed.

7.26 By the time Cllr Wright and Mr Jones met on 5 October 1993, Cllr Muldoon and others had submitted motions seeking to have the residential and amenity zoning achieved for the Ballycullen lands in October 1992 removed so that the lands would revert to B zoning. The Tribunal was satisfied that the meeting Mr Jones had with Cllr Wright was to ensure that the latter would exert influence on his Fianna Fáil colleagues to support the Ballycullen rezoning proposal.

[38] See Exhibit 7.

CLLR TOM HAND (FG)

ALLEGED PAYMENTS TO CLLR HAND BY BEECHILL PROPERTIES AND MR JONES

8.01 During the course of the rezoning of the Ballycullen and Beechill lands, Cllr Hand was the recipient of two payments of IR£1,000 from Mr Hussey (Beechill Properties Ltd) and Mr Jones respectively.

8.02 According to Mr Hussey, the first payment to Cllr Hand was made following a request for payment conveyed to him through Mr Dunlop. Mr Dunlop denied any knowledge or involvement on his part in relation to this payment. The payment was made by Beechill Properties Ltd on the instructions of Mr Hussey. The payment was made at some point following the successful rezoning of the Beechill lands in October 1992.[39]

8.03 In his evidence, Mr Hussey recalled the request for payment made to him in the following terms:

> *'My recollection is that Dunlop contacted me and said that Hand wanted his political subscription. And I said, I think I said is that so. And I was surprised. I don't suppose I was amazed but I was surprised. So I said to him well [what] sort of subscription is he talking about. And I think he said 1000 pounds. So I said I'll think about that. And I am sure I discussed it with Denis McGee and Chris. And I was tempted to say that you can have no subscription. That seemed a little churlish. Another option was to give him less than he was looking for. I think collectively we decided for what you'd say that it wasn't worth it and get rid of it and pay him.'*

8.04 Mr Hussey's recollection was that this political subscription was paid after October 1992 by a Beechill Properties Ltd cheque payable to Cllr Hand. The actual date could not be confirmed, as the Beechill accounts were no longer available. Mr Hussey could not recollect whether the cheque had been given directly to Cllr Hand or given to Mr Dunlop for transmission on to him.

8.05 Beechill Properties Ltd proceeded to pay the IR£1,000. Previous political donations to Cllr Hand had been in the region of IR£200–IR£300.

8.06 Mr Hussey strongly rejected any suggestion that the payment of IR£1,000 was improper or corrupt, or that he was paying Cllr Hand for assisting,

[39] In his written statement to the Tribunal dated 25 November 2003 Mr Hussey suggested that the payment to Cllr Hand was made in 1993. However, later, in his sworn evidence to the Tribunal, Mr Hussey suggested that the payment was probably made after October 1992.

or supporting, the motion to rezone the Beechill lands. Mr Hussey categorised the payment of IR£1,000 as a political donation.

8.07 Mr Hussey told the Tribunal that he had earlier (in 1991 or 1992) met Cllr Hand on the advice of Mr Dunlop. Beechill Properties Ltd was anxious to regularise a planning deficiency on its property as a result of the Jones Group offices being built on the lands of Beechill Properties Ltd, which did not have the correct zoning for such development. Cllr Hand was the local councillor in Clonskeagh where the Beechill lands were situated. In the course of the meeting between Mr Hussey and Cllr Hand, Cllr Hand had indicated to Mr Hussey that he did not foresee any difficulty in having the situation regularised, and had undertaken to talk to planners in the Council in relation to the issue. Ultimately, the Beechill issue was resolved at a meeting of Dublin County Council on 16 October 1992, without a vote.

8.08 While Mr Dunlop accepted that Mr Jones and Mr Hussey met with Cllr Hand at his suggestion, he said that he had not recommended that a payment be made to Cllr Hand. Mr Dunlop denied acting as an intermediary in relation to any payment to Cllr Hand. Mr Dunlop said he was unaware that Mr Jones had himself previously subscribed to Cllr Hand.

8.09 Mr Hussey said that Cllr Hand did not request payment at the time they met in relation to the Beechill issue.

8.10 Mr Hussey's evidence to the Tribunal was that until he saw the Tribunal's circulated brief of documentation in 2006 he had been unaware that a motion signed by Cllr Hand and Cllr Lydon in relation to the Beechill site had been lodged with the County Council prior to the special meeting of 16 October 1992. He was uncertain as to when he became aware that by October 1992 a motion had been signed and tabled by the two councillors in relation to the Ballycullen lands. It was his belief, after having spoken to Mr Dunlop and Cllr Hand, that all that was necessary was to point out to the County Council planners that there was an anomaly in the zoning of Beechill that needed correction. As far as Mr Hussey was concerned, there was no question '*of a vote here or of a resolution.'*

8.11 Mr Hussey said he received a second request for a second payment to Mr Hand, again through Mr Dunlop. Mr Hussey refused to make a second payment. However (according to Mr Jones) following an approach from Mr Dunlop to Mr Jones, that second payment, also IR£1,000, was made to Cllr Hand by Mr Jones from his own personal funds.

8.12 Mr Jones said that while he had not been privy to the first payment that was made to Cllr Hand by Mr Hussey on behalf of Beechill Properties Ltd, he accepted that the payment was in fact made.

8.13 Mr Jones recounted to the Tribunal how Mr Dunlop had come to him asking him to make a donation to Cllr Hand after Mr Hussey/Beechill Properties Ltd had refused Mr Dunlop's second request on his behalf. Mr Jones recalled that Mr Dunlop telephoned him and '*suggested that Tom Hand wasn't satisfied that he had* [been] *rewarded sufficiently for what he did.'*

8.14 Mr Jones agreed to make the payment. While he believed that he had made such payment by way of personal cheque drawn on his own account, made payable to Mr Dunlop, he accepted that no cheque drawn on his account made payable either to Mr Dunlop or to Cllr Hand had been furnished to the Tribunal. Mr Jones accepted that it was possible that the cheque he had given Mr Dunlop for Cllr Hand may have been made out to cash. He had, on other occasions, written cheques for Mr Dunlop payable to cash and he had also done so with respect to Cllr Lydon.

8.15 Mr Jones' explanation to the Tribunal for making the payment to Cllr Hand, in the face of Mr Hussey's refusal to do so, was that he wished to defuse what he perceived as an unnecessary row developing between Mr Hussey, Mr Dunlop and Cllr Hand. Cllr Hand was, according to Mr Jones, a local councillor highly thought of and he, Mr Jones, did not wish to have any '*indifference*' with him, so he paid the money.

8.16 While Mr Jones was adamant that he had paid Cllr Hand IR£1,000 he could not be sure as to when he had done so, but agreed with Tribunal Counsel that the payment could have been made as late as 1994. This possibility was suggested by two entries in his, Mr Jones' diary, one on 23 March 1994 with the reference to '*Tom Hand'* and some other undecipherable word beside it, and one on 14 June 1994 which recorded '*Derry re Tom Hand'.* Mr Jones conceded that this latter reference could well have been a reminder to him to talk to Mr Hussey about Mr Hand, in the context of the IR£1,000 request from Mr Dunlop on behalf of Cllr Hand.

8.17 Cllr Hand had played a particularly supportive role in relation to the projects to rezone the Ballycullen and Beechill lands. With Cllr Lydon, he was a co-signatory of the successful motion to rezone the Ballycullen lands on 29 October 1992 and a signatory to the motion to regularise the Beechill lands. Cllr Hand also voted against the Muldoon/Shatter proposal.

8.18 Cllr Hand died in June 1996, and therefore did not give sworn evidence to the Tribunal.

8.19 The Tribunal was satisfied that a payment of IR£1,000 was made to Cllr Hand by Beechill Properties Ltd, probably in 1992 and it accepted Mr Hussey's evidence that Mr Dunlop was instrumental in making the request on behalf of Cllr Hand. The Tribunal also accepted Mr Hussey's evidence that subsequently Mr Dunlop came to him on a second occasion seeking a further IR£1,000 for Cllr Hand. The Tribunal further accepted Mr Jones' evidence that a cheque was given to Mr Dunlop in the context of a second request having been made of Mr Hussey and refused by him.

8.20 It was probable that the cheque Mr Dunlop received from Mr Jones for Cllr Hand was made payable to cash. The Tribunal heard evidence of instances where cheques drawn on Mr Jones' Rathgar branch AIB account payable to 'cash' had ended up in Mr Dunlop's hands. In particular, the Tribunal had copies of two such cheques, one dated 11 August 1992 and the other apparently dated 7 May 1992.

8.21 In those circumstances, the Tribunal was satisfied that Mr Dunlop received a cheque from Mr Jones for Cllr Hand sometime in either 1993 or (more probably) 1994. The Tribunal believed it likely that the cheque for IR£1,000 or its value was ultimately paid to Cllr Hand by Mr Dunlop.

8.22 The Tribunal was satisfied that Cllr Hand sought a payment of money from Mr Hussey and/or from Mr Jones in the context of the assistance Cllr Hand was providing in relation to both the Beechill and Ballycullen lands.

8.23 The Tribunal was satisfied that Cllr Hand solicited payments of IR£1,000 on two occasions and that both requests were made on his behalf by Mr Dunlop.

8.24 The Tribunal was satisfied that when Mr Hussey made the first payment of IR£1,000 to Cllr Hand, probably through Mr Dunlop, he did so reluctantly and in circumstances where he felt he had little choice but to pay. The Tribunal concluded that Mr Hussey's reluctance to make the payment to Cllr Hand stemmed from his probable belief that Cllr Hand was abusing his position as a councillor in making such a request to a party he knew to have an interest in land which was the subject of rezoning proposals which had come, or would come, before the Council.

8.25 On Day 620, when questioned as to when Mr Dunlop came to him looking for a political contribution for Mr Hand, Mr Hussey's response was as follows: *'I can't pretend to you that I could put a date exactly on that. I don't know. I suspect it was probably after October '92 but I wouldn't be at all sure.'*

8.26 In relation to the first IR£1,000 payment to Cllr Hand from Mr Hussey, the Tribunal was satisfied that in all probability he received this payment by means of a Beechill Property Ltd cheque.

8.27 The evidence adduced by Mr Jones to the Tribunal was that in the years prior to 1992 Cllr Hand, as a local councillor, had received no more than IR£200–IR£300 by way of political contributions to his election campaigns. Mr Hussey's testimony to the Tribunal on Day 620 was that while he/Beechill Properties Ltd had made political contributions of IR£1,000 and perhaps more to *'individuals'* on occasions, such sums had not been paid to councillors prior to the 1992 payment of IR£1,000 to Cllr Hand.

8.28 In response to further questioning, Mr Hussey agreed that he knew Mr Jones was paying subscriptions to politicians out of his own pocket, which subscriptions Mr Hussey regarded as expenses relating to the rezoning of Ballycullen.

8.29 The Tribunal was satisfied, therefore, that Mr Hussey could not have perceived the IR£1,000 Beechill Properties Ltd paid to Cllr Hand as anything other than an expense of Beechill Properties Ltd.

8.30 Irrespective of the manner in which the request for IR£1,000 for Cllr Hand was couched by Mr Dunlop in his discussion with Mr Hussey, the Tribunal believed that Mr Hussey was alert to the link between the request for the payment on behalf of Cllr Hand and Cllr Hand's endeavours in relation to the Beechill rezoning issue. Mr Dunlop's role was likely also to have alerted him to this link. Mr Hussey said he had contemplated giving Cllr Hand nothing. The Tribunal was satisfied that Mr Hussey was uncomfortable with the idea that Cllr Hand was seeking money, and probably doubted that such a payment was a bona fide political donation, and instead considered it to be inappropriate and stemmed from an abuse by Cllr Hand of his role as an elected councillor.

8.31 The Tribunal believed that in all probability, the Beechill payment of IR£1,000 to Cllr Hand was regarded as a *fait accompli* by Mr Hussey, and the Tribunal concluded that while Mr Hussey may well have felt unease in 1992 at making the payment (which was apparent to the Tribunal in the manner in which Mr Hussey described his response to Mr Dunlop's initial request, and indeed

from his refusal of the second request), it was nevertheless considered expedient by the company to make such a payment. In all those circumstances, the Tribunal considered the Beechill Properties Ltd payment to Cllr Hand was not a *bona fide* political donation. It was, in reality, a reward for providing support as a councillor in a rezoning matter.

8.32 Concerning the second payment of IR£1,000 requested by Mr Dunlop for Cllr Hand, the Tribunal was satisfied that in handing over a cheque to Mr Dunlop for Cllr Hand, Mr Jones had, in all probability, fewer reservations than Mr Hussey about making such a payment. The Tribunal was fortified in this conclusion by the matter-of-fact manner in which Mr Jones made '*political donations*' at the time of the 1992 November General Election to councillors whom he did not know (although some of them may have been known to his employees, Messrs Frank and Oliver Brooks), and indeed in some instances to councillors who were not candidates in the General Election. Furthermore, the Tribunal was satisfied that after his encounter with Cllr Lydon in April 1992, Mr Jones was no stranger to the coincidence of a landowner approaching a councillor seeking support for a rezoning motion and a request (be it direct, indirect, or implied) for a '*political donation'* from that councillor. The Tribunal therefore rejected Mr Jones' evidence that he gave a cheque to Mr Dunlop for Cllr Hand in order to defuse a row. Rather the Tribunal concluded that the rationale behind the giving of such a cheque was more likely a desire to ensure that Cllr Hand remained supportive of the Ballycullen rezoning/residential development endeavours, and gratitude for his previous support.

8.33 The Tribunal, in arriving at its conclusions in relation to the alleged payments to Cllr Hand, took account of the fact that Cllr Hand is deceased and therefore was unable to give evidence to the Tribunal. Nonetheless, in view of the evidence given by Mr Jones, Mr Hussey and Mr Dunlop, the Tribunal was satisfied that Cllr Hand did request and receive the payments in question. The Tribunal was satisfied that unexplained lodgements made to Cllr Hand's accounts certainly allowed for the possibility of his having received IR£1,000 in 1992 from Beechill Properties Ltd. In November 1992 alone, Cllr Hand lodged some €35,000 to his bank account at National Irish Bank. In total, between 2 November 1992 and 8 February 1993, some IR£55,000 was lodged to his accounts for which no explanation was provided to the Tribunal.

8.34 The Tribunal was satisfied that in the circumstances, Cllr Hand corruptly sought two payments of IR£1,000 each from Mr Hussey/Beechill Properties Ltd, through Mr Dunlop. Cllr Hand solicited these payments on the basis of his past support for the rezoning of the Beechill lands. In making the two payments of IR£1,000 each, Mr Hussey and Mr Jones probably felt that, in the

circumstances, and having regard to Cllr Hand's position as a councillor, they had little choice but to make the payments.

ALLEGED PAYMENT TO CLLR HAND BY MR DUNLOP

8.35 On Day 145, in response to questions as to whether any councillor had asked him for money with regard to the Quarryvale rezoning, Mr Dunlop listed Cllr Hand alone. On Day 146, Mr Dunlop also listed Cllr Hand as a person who requested what Mr Dunlop was then referring to as legitimate political donations.

8.36 The Tribunal noted that, while Cllr Hand's name appeared on Mr Dunlop's list of 19 April 2000 (Day 147) entitled *'1991 local election contributions'* where he was designated a recipient of what Mr Dunlop later maintained (on Day 606) were corrupt payments by way of Local Election contributions he had made in 1991, Cllr Hand's name did not appear on Mr Dunlop's '*1992*' list, prepared on Day 148, which Mr Dunlop stated contained the names of those who had been paid in 1992, at the time of the General Election, out of the 042 Rathfarnham account.

8.37 Mr Dunlop's explanation for this was that, when compiling the list, he had focused on payments he made at the time of the 1992 General Election, rather than of payments generally for that year. The Tribunal accepted this explanation.

8.38 Cllr Hand's name appeared on a list made by Mr Dunlop on Day 148 which identified persons he claimed to have paid at times other than around the Local Election of 1991 and in 1992. Moreover, the Tribunal noted that on Day 148 Mr Dunlop cross-referenced Cllr Hand's name to Ballycullen Farms. By 11 May 2000, Mr Dunlop had told the Tribunal at a private interview of his payment to Cllr Hand in relation to Ballycullen, and the Tribunal noted that in a further private interview with the Tribunal on 18 May 2000 Mr Dunlop mentioned Cllr Hand in the context of the Ballycullen lands. In Mr Dunlop's subsequent statements to the Tribunal of October 2000, and in his more detailed statement relating to the Ballycullen lands rezoning furnished in 2004, Cllr Hand was listed as the recipient of monies.

8.39 Mr Dunlop alleged in his 15 October 2004 statement that he paid Cllr Hand and Cllr Lydon a sum of IR£2,000 each in cash for their signatures on two motions which came before Dublin County Council on 16 and 29 October 1992, relating to the Beechill and Ballycullen lands respectively. Mr Dunlop said that Cllr Hand had requested a payment of IR£5,000 but had agreed to accept IR£2,000.

8.40 The Tribunal was satisfied, as a matter of probability, that Cllr Hand received IR£2,000 from Mr Dunlop, and that this payment was in response to a request made by Cllr Hand for financial recompense for his signature to the motion in question. While the Tribunal could not be definitive as to when exactly the monies were handed over by Mr Dunlop, it was likely that they were paid, as alleged in evidence by Mr Dunlop, on 2 October 1992.[40] There was a record in Mr Dunlop's diary of a meeting with Cllr Hand for 9.45 am on that date. Mr Dunlop told the Tribunal that this meeting had taken place at Cllr Hand's home, and that he had travelled there from Stillorgan where he had earlier that morning met with and paid Cllr Lydon IR£2,000 in cash. However, the Tribunal noted that whereas Mr Dunlop claimed that he paid Cllr Hand at 9.45 am in Dundrum, his telephone records for 2 October 1992 showed that at 11.10 am Cllr Hand telephoned Mr Dunlop and left the following message: '*In DCC, can get him at Information Desk, need to get the stuff in to him there, not at home'.* The telephone records also noted Cllr Hand contacting Mr Dunlop's office on two further occasions on that date. Although Mr Dunlop could not explain what '*stuff*' Cllr Hand had expected to be given, he rejected any suggestion that the message left by Cllr Hand was a euphemism for the payment that had been agreed between them. Mr Dunlop maintained that Cllr Hand would not have sought money over the telephone.

8.41 In assessing Mr Dunlop's credibility on whether, as he maintained, he had paid Cllr Hand IR£2,000 for the Ballycullen/Beechill motion, the Tribunal took account of the extraordinary level of contact which took place between Cllr Hand and Mr Dunlop in the period from July to October 1992. While the Tribunal was satisfied that the Ballycullen/Beechill motion was not the sole reason for this, it was satisfied that the Ballycullen and Beechill projects were at least two of the matters about which Cllr Hand contacted Mr Dunlop during this period. There were two occasions, on 13 and 21 July 1992 respectively, when Cllr Hand made telephone contact with Mr Dunlop and an entry in Mr Dunlop's diary for 23 July 1992 indicated a meeting of the two men at '*lunch*'. Contact from Cllr Hand in the second week of August 1992 was followed with a meeting with Cllr Hand on 13 August 1992. According to Mr Dunlop, at this meeting Cllr Hand probably updated him about County Council matters and may have sought a further meeting. On 17, 19 and 25 August 1992, Mr Dunlop's telephone records showed contact with Mr Dunlop's office by Cllr Hand. There was further telephone contact between Cllr Hand and Mr Dunlop's office on 28 and 31 August 1992.

[40] In his October 2004 written statement to the Tribunal, Mr Dunlop stated his belief that he had paid Cllr Hand and Cllr Lydon on 2 October 1992, while in his February 2006 statement, he suggested that the payment date was 29 September or 2 October 1992.

8.42 Mr Dunlop's telephone records showed that contact between himself and Cllr Hand on 2 September 1992 was followed on 4 September by Cllr Hand leaving a message advising Mr Dunlop of the scheduled dates for development planning meetings for September, October and November 1992. Mr Dunlop's telephone records showed Cllr Hand making contact with his offices on 8, 25 and 30 September 1992. Mr Dunlop stated in his February 2006 statement that he met Cllr Hand in his home on 28 September 1992 and in a restaurant on the following day.

8.43 The Tribunal considered Mr Dunlop's telephone records of 5, 6, 8 and 9 of October 1992 which recorded telephone contact from Cllr Hand. In addition, Mr Dunlop's diary indicated that meetings between him and Cllr Hand were scheduled for 6 and 8 October 1992. The Tribunal believed that they concerned, at least in part, the Ballycullen rezoning. The Tribunal noted that on 2 October 1992 Cllr Mary Muldoon had lodged a motion seeking to keep the B zoning for the Ballycullen lands. This motion was subsequently proposed by Cllr Muldoon and seconded by Cllr Eithne FitzGerald. This matter was almost certainly a topic of discussion between Cllr Hand and Mr Dunlop.

8.44 On 13 October 1992 Cllr Hand apprised Mr Dunlop of where he could be contacted. Similarly, on 15 October 1992 (the eve of the scheduled meeting relating to the Beechill lands), Cllr Hand telephoned Mr Dunlop twice, and apprised him of his whereabouts. In addition, telephone calls from Cllr Hand were logged on 12 and 14 October 1992.

8.45 Mr Dunlop's telephone records established that on 16 October 1992 four telephone calls were received from Cllr Hand with a further four being received on 19 October 1992. These were followed by two attempted telephone contacts on 21 and 23 October 1992. Mr Dunlop had no doubt that the 16 October 1992 telephone calls related to the Beechill lands.

8.46 On 23 October 1992 Mr Dunlop's telephone records noted the following: *'11:15 Tom Hand—said Beechill and Ballycullen O.K.'* While Mr Dunlop could not explain the reference to Beechill (that issue having been dealt with without a vote on 16 October 1992) he stated that the message left by Cllr Hand intended to advise him that the Ballycullen rezoning motion was likely to pass.

8.47 In the two days prior to the Ballycullen zoning vote of 29 October 1992, Cllr Hand made contact with Mr Dunlop's office and made further contact on the morning of the vote. On that occasion, Cllr Hand telephoned Mr Dunlop's office at 9.30 am and advised Mr Dunlop that Cllr Hand would be at the Council offices from 12.30 pm. It was a feature of many of Cllr Hand's telephone contacts with

Mr Dunlop's office that they seemed to arise out of a desire on Cllr Hand's part to advise Mr Dunlop as to his whereabouts at particular times or dates.

8.48 The Tribunal was satisfied that as a matter of probability Mr Dunlop paid IR£2,000 in cash to Cllr Hand at Cllr Hand's request, in return for his signature on two motions which came before Dublin County Council on 16 and 29 October 1992 relating to the Beechill and Ballycullen lands respectively. This payment was corrupt.

8.49 An analysis of Cllr Hand's finances in the period 2 November 1992 to 8 February 1993 indicated that within a period of a few weeks of the date when Mr Dunlop alleged that he paid IR£2,000 in cash to Cllr Hand, 2 October 1992, Cllr Hand lodged a total of IR£35,000 to his National Irish Bank account, as follows: IR£22,000 on 2 November 1992, IR£3,000 on 3 November 1992 and IR£10,000 on 16 November 1992. No explanation was provided to the Tribunal as to the sources of these lodgements.

CLLR TONY FOX (FF)

ALLEGED PAYMENTS TO CLLR FOX BY MR JONES

9.01 Mr Jones told the Tribunal that he paid IR£250 to Cllr Fox on 24 November 1992. A letter which accompanied the payment stated: '*Enclosed herewith contribution to the campaign expenses which I have no doubt are pretty heavy at this time. With best wishes and thank you for all your help.'*Cllr Fox accepted that he may have received this payment, and suggested that it was known that he was contemplating standing for election to the Seanad in early 1993. In fact Cllr Fox did not so stand.

9.02 According to Mr Jones, the expression of gratitude in that letter related to the support Cllr Fox had provided for the rezoning of the Ballycullen lands in the Council on 29 October 1992. Cllr Fox also supported the Ballycullen lands rezoning on 28 October 1993. The Tribunal believed that, in the circumstances, Cllr Fox's acceptance of this money was entirely inappropriate.

ALLEGED PAYMENT TO CLLR FOX BY MR DUNLOP

9.03 Mr Dunlop alleged that he paid Cllr Fox a sum of IR£1,000 in return for his support for the rezoning of the Ballycullen/Beechill lands, and that the payment was made in the environs of Dublin County Council in O'Connell Street in Dublin immediately prior to or after 16 October 1992, or on 29 October 1992.

9.04 Although he had no specific memory of where and when the payment was made, Mr Dunlop claimed to have a specific memory of speaking to Cllr Fox about money. Mr Dunlop's evidence was to the effect that in the course of lobbying Cllr Fox for his support for the Ballycullen lands rezoning in April 1992, Cllr Fox requested payment from him. Mr Dunlop said that Cllr Fox used the words '*It's going to cost you*' or words of similar meaning. Mr Dunlop believed that he probably gave the money in cash to Cllr Fox in an envelope.

9.05 Mr Dunlop was requested, in the course of his evidence, to outline the circumstances in which he and Cllr Fox spoke of money. While Mr Dunlop was unable to date precisely the occasions when he and Cllr Fox spoke of money, he told the Tribunal, referring to Cllr Fox, that '*he would have mentioned money very early on in my lobbying of him'.* Mr Dunlop estimated this to have taken place sometime in April 1992.

9.06 Mr Dunlop was asked: 'Do *you remember the context in which this discussion took place?*'

9.07 Mr Dunlop answered:

> *'I remember the context of my telling him that I needed his support. I was lobbying for his support. And that I recollect him saying to me at some stage when I told him, I am not specifically saying it was at the very beginning but that I told him that Don Lydon was going to be, I was going to approach Don Lydon to sign it . . . He mentioned money in the very early meetings that took place in relation to the lobbying.'*

9.08 Mr Dunlop made the allegation of the payment to Cllr Fox in relation to the Ballycullen/Beechill lands on a number of occasions, and in a number of the statements from 2000, up to and including his sworn evidence to the Tribunal.

9.09 Cllr Fox was adamant that he never received money from Mr Dunlop for any purpose whatsoever throughout his political career. He was fairly certain that Mr Dunlop never lobbied him in relation to the Ballycullen lands, although he acknowledged that Mr Frank Brooks, an employee of Ballycullen Farms Ltd, may well have done so.

9.10 Cllr Fox supported both the Beechill and Ballycullen rezonings.

9.11 Telephone records maintained by Mr Dunlop's secretary suggested that two calls were made by Cllr Fox to Mr Dunlop on 15 October 1992, the day prior to the special meeting of the County Council relating to the rezoning of the Beechill lands. One of these calls was said to inform Mr Dunlop that Cllr Fox was

about to leave for the Council offices and could be contacted there, and the second call sought to inform Mr Dunlop of Cllr Fox's arrival at the Council offices.

9.12 In his evidence to the Tribunal, Cllr Fox acknowledged that he may have made the telephone calls to Mr Dunlop's office on 15 October 1992, but he had no recollection of having done so, and in any event could not account for their purpose, other than to suggest that he was simply returning telephone calls made to him earlier by Mr Dunlop. Cllr Fox was certain that the calls did not relate to either Ballycullen or Beechill. Cllr Fox accounted for his contact with Mr Dunlop in 1992 on the basis that it related to the Texas Homecare material contravention issue and the Quarryvale rezoning, both of which were unconnected to Ballycullen/Beechill.

9.13 On Day 147, Cllr Fox appeared on Mr Dunlop's list entitled '*1991 local election*', as an individual to whom Mr Dunlop made payments in 1991, claimed by Mr Dunlop to have been corrupt, under the cover of the Local Election. However, Cllr Fox did not appear on Mr Dunlop's '*1992*' list as a recipient of payments in 1992. Mr Dunlop explained this omission by claiming that he was focused on the general election in compiling that list and not other payments made in 1992.

9.14 On Day 148, Cllr Fox's name appeared on the list compiled by Mr Dunlop of persons he paid at times other than the 1991 and 1992 elections. In the course of a private interview with the Tribunal on 18 May 2000, Mr Dunlop said that Cllr Fox had '*probably*' received money in relation to Ballycullen. Cllr Fox was listed as a recipient of money in relation to the Ballycullen lands in Mr Dunlop's 2000, 2004 and 2006 statements.

9.15 The Tribunal was satisfied that Cllr Fox was lobbied by Mr Dunlop to support the rezoning of the Ballycullen lands, and that the telephone contact between Cllr Fox and Mr Dunlop's office on 15 October 1992 probably related, in part at least, to the then forthcoming motions seeking the rezoning of the Beechill and Ballycullen lands.

9.16 The Tribunal was satisfied as a matter of probability that Cllr Fox was paid IR£1,000 by Mr Dunlop in 1992 in return for his support for the rezoning of the Ballycullen lands. This payment was corrupt. In reaching this conclusion, the Tribunal was assisted by Mr Dunlop's clear recollection that he had made such a payment, and his recollection of the comments (referred to in the paragraph above) made by Cllr Fox at the time on the subject of payment.

CLLR COLM MCGRATH (FF)

ALLEGED PAYMENT TO CLLR MCGRATH BY BALLYCULLEN FARMS

10.01 The Tribunal was satisfied that Mr Frank Brooks, representing Ballycullen Farms Ltd, made a payment of IR£500 to Cllr McGrath on 19 November 1992, and was reimbursed by Ballycullen Farms in respect of that outlay. Cllr McGrath did not deny receiving the payment.

10.02 Cllr McGrath's political endeavours continued to be supported by the Jones interests by way of a contribution of IR£500 made on 10 October 1996, and a contribution of IR£500 to a golf classic in May 1999.

10.03 The 19 November 1992 payment of IR£500 was said to have been a political donation made at the time of a general election in which Cllr McGrath was standing. Cllr McGrath stated that this payment was made in the context of a golf classic fundraising event.

10.04 At the time the said payment was made, Cllr McGrath had in the recent past supported the Ballycullen and Beechill rezoning projects, and, close to 12 months later, he again supported the rezoning of the Ballycullen lands.

ALLEGED PAYMENT TO CLLR MCGRATH BY MR DUNLOP

10.05 On Days 147 and 148, Mr Dunlop provided lists of councillors to whom he said political donations were paid in relation to the 1991 Local Elections and the 1992 general election, and Cllr McGrath's name appeared under both headings. On Day 148 Cllr McGrath's name appeared on a list compiled by Mr Dunlop of people he identified as having been paid money by him at times other than the time of the elections in 1991 and in 1992. However, Mr Dunlop did not list Cllr McGrath in any capacity in connection with Ballycullen Farms on his '*cross referencing'* list. Nor did Mr Dunlop make reference to Cllr McGrath in connection with Ballycullen/Beechill in the course of his interviews with the Tribunal in private sessions on 11 and 18 May 2000. However, in written statements made to the Tribunal on 9 October 2000, 15 October 2004 and 6 February 2006, Mr Dunlop alleged that he had paid a sum of IR£1,000 to Cllr McGrath in return for his support for the Ballycullen/Beechill rezoning projects.

10.06 Cllr McGrath made a written statement to the Tribunal on 14 December 2000 in which he acknowledged receipt of '*unconditional political*

donations' from Mr Dunlop, in amounts ranging from IR£500 to IR£2,000, both in cheques and in cash. Cllr McGrath said that the purpose of such donations was to assist him with election and constituency expenses. On 24 January 2006, Cllr McGrath made a further statement to the Tribunal in which he denied any contact with Mr Dunlop in relation to the Ballycullen/Beechill rezoning project.

10.07 Mr Dunlop claimed to have paid IR£1,000 by agreement to Cllr McGrath in relation to the Ballycullen/Beechill lands sometime between 1 October and 15 November 1992. Mr Dunlop claimed that the payment was handed over either before or after the County Council special meetings of 16 or 29 October 1992. Mr Dunlop did not give a specific location for the payment, save that he said he made it either in the environs of the County Council or at the Royal Dublin Hotel, or at the Gresham Hotel, or at Conway's public house.

10.08 Under cross-examination by Cllr McGrath, Mr Dunlop stated that Cllr McGrath's request for monies from him fitted into three categories: 1) political contributions, 2) discharge of a debt owed by Cllr McGrath for IR£10,700,[41] and 3) monies for his support for Mr Dunlop's rezoning projects. Mr Dunlop denied Cllr McGrath's assertions that he had been inconsistent in his evidence, or in the manner in which he had prepared lists during his appearances before the Tribunal in 2000. In the course of his cross-examination, Cllr McGrath challenged Mr Dunlop as to how he, Cllr McGrath, who believed himself to be the recipient of legitimate political donations, could have realised that monies given to him by Mr Dunlop were intended as bribes. Mr Dunlop responded by stating that on a number of occasions when Mr Dunlop had approached Cllr McGrath for support for rezoning matters, Cllr McGrath had commented that the review of the County Dublin Development Plan by the councillors was '*creating multi-millionaires of people and they were getting nothing out of it'.*

10.09 Cllr McGrath further put it to Mr Dunlop that he had worked closely with Mr Dunlop to assist many of his clients because of his natural instinct to oblige people. Cllr McGrath suggested to Mr Dunlop that he and Mr Dunlop had had a lot of contact in relation to one particular matter and that he, Cllr McGrath, was a '*quasi-official member*' of the actual Quarryvale project team. Mr Dunlop agreed with this suggestion, and pointed out that he had used similar language to describe Cllr McGrath's role in his narrative statement to the Tribunal in relation to Quarryvale.

10.10 Cllr McGrath denied receiving IR£1,000 from Mr Dunlop or receiving any money in return for his support for the Ballycullen and Beechill rezoning. Cllr

[41] Mr Dunlop was subsequently reimbursed by Mr Owen O'Callaghan.

McGrath accepted that he had received IR£500 from Mr Jones/Ballycullen Farms through Mr Frank Brooks in 1992, and was adamant that this was a political donation to him or to his constituency at the time of an election.

10.11 In the course of the cross-examination of Mr Dunlop, Cllr McGrath denied that he had been in receipt of any money from Mr Dunlop in relation to the Ballycullen/Beechill rezoning project. Cllr McGrath maintained that Mr Dunlop would have known that it was unnecessary to bribe or attempt to bribe him to support a rezoning motion to facilitate development, as his pro-development stance was well known. Cllr McGrath remarked that Ballycullen was '*an eminently suitable development'.*

10.12 Evidence given to the Tribunal suggested frequent and regular contact between Mr Dunlop and Cllr McGrath during the review of the Dublin County Development Plan.

10.13 Cllr McGrath claimed he received a payment in cash from Mr Dunlop amounting to IR£2,000 in 1992, and that this payment was handed over to him wrapped in a newspaper.[42] According to Cllr McGrath, this payment was a political donation, and had nothing to do with the Ballycullen or Beechill lands. Cllr McGrath received other political donations on other occasions from Mr Dunlop.

10.14 Although Cllr McGrath denied that Mr Dunlop had lobbied him in relation to the Ballycullen or Beechill lands, he accepted that Mr Dunlop may have spoken to him in passing about the issue.

10.15 The Tribunal was satisfied that Mr Dunlop did lobby Cllr McGrath to support the Ballycullen and Beechill rezonings, and it absolutely rejected Cllr McGrath's suggestion that these rezonings were only mentioned to him in passing by Mr Dunlop.

10.16 In the period leading up to the Beechill/Ballycullen rezoning issues being dealt with by the County Council, there was extensive contact between Mr Dunlop and Cllr McGrath. This was particularly evident in the months of August, September, October and November 1992. In particular, between 4 June and 28 September 1992 there were approximately 19 telephone contacts recorded between Cllr McGrath and Mr Dunlop's office. In the period October to November 1992, there were approximately 13 such contacts. Cllr McGrath did not deny the

[42] See the chapters relating to the Carrickmines and Quarryvale Modules for a more detailed review of this payment.

extensive contact, but maintained that it was largely to do with the Quarryvale rezoning project. It may well have been the case that the majority of Cllr McGrath's and Mr Dunlop's contacts and meetings in the latter half of 1992 were in connection with the Quarryvale rezoning project, but the Tribunal was nevertheless satisfied that on occasions, particularly during the months of August to October 1992, Mr Dunlop spoke to Cllr McGrath in relation to the Ballycullen and Beechill lands. Indeed, Cllr McGrath did not seriously dispute this. However, insofar as he accepted that he had been lobbied in relation to Ballycullen/Beechill he seemed to suggest that such lobbying occurred in the course of contact with Messrs Frank and Oliver Brooks, with whom he was acquainted. Cllr McGrath stated that by the time the relevant vote arose in relation to the lands in question, he was aware that the Brooks brothers were working for Mr Jones. The Tribunal was satisfied that Cllr McGrath was lobbied by the Brooks brothers.

10.17 Cllr McGrath was the beneficiary of a donation from Mr Jones in November 1992, some weeks after the Ballycullen rezoning vote.

10.18 On the question of whether, as a matter of probability, Mr Dunlop paid Cllr McGrath IR£1,000 to support the Ballycullen/Beechill rezoning project, the Tribunal believed the evidence of Mr Dunlop to be more credible than that of Cllr McGrath. The Tribunal took into consideration the manner in which Cllr McGrath received money from Mr Dunlop on other occasions. It was clear that Cllr McGrath had received and admitted receiving cash payments from Mr Dunlop. It was also apparent to the Tribunal (from evidence given in the Quarryvale module) that Cllr McGrath was comfortable about asking Mr Dunlop for financial assistance. The Tribunal believed it probable that Cllr McGrath had, as claimed by Mr Dunlop, complained to Mr Dunlop that he and his fellow councillors were making millionaires out of landowners who brought zoning proposals before the County Council, while councillors were receiving nothing.

10.19 The Tribunal believed it likely that Cllr McGrath received this payment of IR£1,000 from Mr Dunlop sometime in October/November 1992. This was a corrupt payment.

CLLR CYRIL GALLAGHER (FF)

ALLEGED PAYMENT OF IR£1,000 TO CLLR GALLAGHER BY BALLYCULLEN FARMS LTD

11.01 Mr Oliver Brooks, an employee of Ballycullen Farms, told the Tribunal that he delivered a Ballycullen Farms cheque in the sum of IR£1,000 to Cllr Gallagher in November 1992. Mr Brooks recalled Cllr Gallagher expressing surprise at the receipt of this payment. While the date of the payment was not

established, it was likely that it was made in or about November 1992, at the time of the November 1992 general election, a time when a number of other councillors received payments.

11.02 Cllr Gallagher had supported the Ballycullen rezoning in October 1992, and would go on to support it in October 1993.

ALLEGED PAYMENT OF IR£1,000 TO CLLR GALLAGHER BY MR DUNLOP

11.03 Mr Dunlop told the Tribunal that he paid a sum of IR£1,000 to Cllr Gallagher out of funds provided to him by Mr Jones. Mr Dunlop said that that payment was made around the time of the October 1992 votes relating to the Ballycullen/Beechill lands in Dublin County Council and that the payment was made in the environs of Dublin County Council. Mr Dunlop maintained that the reason and purpose for the payment was to secure Cllr Gallagher's support for the rezoning of the lands at Ballycullen and Beechill.

11.04 Mr Dunlop first mentioned Cllr Gallagher in the context of the Ballycullen/Beechill rezonings, in his October 2000 statement to the Tribunal. He listed Cllr Gallagher as a recipient of IR£1,000 in later statements he made to the Tribunal, in 2004 and 2006, in relation to the Ballycullen/Beechill lands. Mr Dunlop did not refer to Cllr Gallagher as a recipient of money in relation to Ballycullen/Beechill lands in the course of his private interview by the Tribunal in May 2000.

11.05 On Day 147, Mr Dunlop provided a list to the Tribunal entitled '*1991 local election'* and included Cllr Gallagher as a recipient of a payment at that time paid under the cover of the Local Elections. Cllr Gallagher's name did not appear in his '*1992*' list. Mr Dunlop's explanation for this was that in compiling this list he had concentrated on payments made at the time of the November 1992 general election, rather than 1992 payments generally.

11.06 The Tribunal noted, however, that on a further list provided by Mr Dunlop on Day 148, of persons (already on the previous list) paid at times other than the Local Election in 1991 and 1992, Cllr Gallagher's name did appear but was not cross-referenced by Mr Dunlop to the Ballycullen lands.

11.07 Cllr Gallagher died on 20 March 2000, and did not therefore give sworn evidence to the Tribunal. Prior to his death, Cllr Gallagher provided information on a voluntary basis to the Tribunal, in the course of which he denied receiving any corrupt or improper payments in relation to any rezoning or planning matter. In the course of a private interview with the Tribunal on 15

March 1999, Cllr Gallagher provided details of his bank accounts, and specifically denied having a Post Office account. However, subsequent to his death in 2000, the Tribunal learned that he had had in fact a Post Office savings account into which deposits amounting to approximately IR£43,500 had been made between 1 January 1991 and 12 January 1998, many of them in large round-figure sums, the sources of which remain unknown to the Tribunal.

11.08 While the Tribunal was satisfied that Mr Dunlop did indeed make corrupt payments to Cllr Gallagher in return for his support in rezoning motions in other modules, it was not satisfied that Mr Dunlop paid him IR£1,000 specifically in relation to the Ballycullen/Beechill lands. In particular, Mr Dunlop did not provide the Tribunal with any account of the circumstances in which Cllr Gallagher sought payment from him in connection with those lands. The Tribunal also noted that Mr Dunlop did not identify Cllr Gallagher as a recipient of any such payment in the course of his private interview by the Tribunal on 11 May 2000.

CLLR SEÁN GILBRIDE (FF)

ALLEGED PAYMENT OF IR£1,000 TO CLLR GILBRIDE BY MR DUNLOP

12.01 Mr Dunlop told the Tribunal that he paid Cllr Gilbride a sum of IR£1,000 in return for his voting support for the rezoning of the Ballycullen/Beechill lands, and that the payment was made *'immediately prior to or after 16 October or 29 October 1992'*. Mr Dunlop told the Tribunal that the payment was solicited by Cllr Gilbride.

12.02 Mr Dunlop also stated in evidence that the payment to Cllr Gilbride was handed over either in the offices of Dublin County Council, at the Gresham Hotel Dublin, at Conway's public house, or the Royal Dublin Hotel in O'Connell Street, Dublin. In a statement made to the Tribunal in 2006, Mr Dunlop identified the place of payment as being the environs of Dublin County Council offices in O'Connell Street, Dublin.

12.03 Mr Dunlop told the Tribunal that he believed he discussed the Development Plan review, including the Ballycullen lands, with Cllr Gilbride in early September 1992. Mr Dunlop's diary recorded meetings with Cllr Gilbride on 8 and 9 September 1992.

12.04 Mr Dunlop indicated that when he sought support from Cllr Gilbride, Cllr Gilbride '*indicated during the course of that meeting what had entailed'*. A payment of IR£1,000 was agreed. Mr Dunlop had no doubt but that Cllr Gilbride required payment of money in return for his support. Mr Dunlop recalled instances when he had sought Cllr Gilbride's support for a rezoning issue, not

necessarily the Ballycullen/Beechill rezonings, when Cllr Gilbride told him that his support '*would cost'* him. On occasions Mr Dunlop suggested that discussions with Cllr Gilbride included a reference by him to the effect that he, Mr Dunlop, would have to '*look after Jack'.* Mr Dunlop understood this to mean Cllr Jack Larkin. Mr Dunlop could not be definite as whether Mr Gilbride made reference to Cllr Larkin at the time they discussed the Ballycullen/Beechill rezoning.

12.05 Mr Dunlop also told the Tribunal that he and Cllr Gilbride were in frequent contact during the review of the Development Plan, and that Cllr Gilbride (although a member of the Fianna Fáil party) would telephone Mr Dunlop on a regular basis to apprise him of discussions which Cllr Gilbride had had with individuals within Fine Gael in relation to the Development Plan review. Cllr Gilbride advised Mr Dunlop on likely support from within Fine Gael in relation to rezoning projects with which Mr Dunlop was associated.

12.06 Mr Dunlop's list, provided to the Tribunal on Day 146, of the persons he was then describing as having sought legitimate contributions from him, did not include Cllr Gilbride as such an individual. Mr Dunlop, when questioned on this issue on Day 606, stated: *'He, in the context of the 1991 local election he—let me put it another way, he received monies from me in the context of the 1991 local election, applicable to a specific item, but how, whether you describe that as a legitimate political contribution or not, it was in cash.'*

12.07 Mr Dunlop told the Tribunal that it was his recollection that Cllr Gilbride had never sought a bona fide or legitimate election or political contribution from him.

12.08 In the list entitled '*1991 local election'* provided by Mr Dunlop to the Tribunal on Day 147, Cllr Gilbride was identified as having received IR£12,000 from Mr Dunlop in 1991. Mr Dunlop attributed this money to '*a separate development*'. Cllr Gilbride's name was absent from a similar list (the '*1992'* list), also provided by Mr Dunlop to the Tribunal on Day 147. Mr Dunlop later explained this omission on the basis that when compiling this list, he was concentrating more on individuals who had received monies at the time of the 1992 general election (November 1992) rather than individuals who had received monies generally in 1992.

12.09 Cllr Gilbride's name was on a list provided to the Tribunal by Mr Dunlop on Day 148 of individuals who received payments from him at times other than the Local Election 1991 or the general election 1992.

12.10 Mr Dunlop did not refer to Cllr Gilbride when providing information to the Tribunal in relation to the Ballycullen lands in the course of private interviews with the Tribunal on 11 and 18 May 2000.

12.11 Mr Dunlop referred to Cllr Gilbride's name in a written statement provided by him to the Tribunal in October 2000. Cllr Gilbride's name subsequently appeared in that context in later statements provided by Mr Dunlop, in 2004 and 2006.

12.12 Cllr Gilbride denied receiving IR£1,000, or any sum, from Mr Dunlop in relation to the rezoning of lands at Ballycullen or Beechill. He denied receiving money at any stage in return for his voting support on any rezoning matter. He maintained that the only sum he ever received from Mr Dunlop was IR£2,000 in cash as a bona fide political donation at the time of the 1991 Local Elections.

12.13 Mr Dunlop's diaries and telephone records, as maintained by his secretary, for the period September to December 1992 indicated 24 recorded contacts between Cllr Gilbride and Mr Dunlop, of which three were meetings. Cllr Gilbride acknowledged that there was a significant level of contact between himself and Mr Dunlop, and he conceded that these telephone records were probably accurate. Cllr Gilbride had earlier given sworn evidence to the Tribunal that he had not in fact engaged in extensive or frequent contact with Mr Dunlop. Cllr Gilbride believed that most of his contact with Mr Dunlop related to the Quarryvale issue.

12.14 Cllr Gilbride was asked to provide an explanation for a lodgement of IR£1,550 to his and his wife's joint bank account on 5 October 1992. Cllr Gilbride initially told the Tribunal that this was a refund of tax, but subsequently he confirmed that it was a payment from another developer unconnected to the Ballycullen/Beechill lands.[43] Cllr Gilbride accounted for a lodgement of IR£1,000 in cash on 9 October as a contribution from a relative, unconnected to his political life. In earlier correspondence with the Tribunal, Cllr Gilbride identified a lodgement of IR£1,200 on 18 September 1992 as County Council/VEC expenses, but in evidence he stated this to have been a tax refund. Cllr Gilbride stated that, to the best of his recollection, lodgements of IR£700 on 10 October 1992 and IR£600 on 13 October 1992 related to County Council expenses, although he had no records in relation to them.

12.15 The Tribunal was satisfied that Mr Dunlop lobbied Cllr Gilbride in relation to the Ballycullen/Beechill rezonings.

[43] See the Quarryvale Module.

12.16 The Tribunal was satisfied that Mr Dunlop paid IR£1,000 to Cllr Gilbride in return for his support for the rezoning of the Ballycullen/Beechill lands, and that the payment was solicited by Cllr Gilbride. The Tribunal was satisfied that the payment was an attempt to influence by inducement the disinterested performance on the part of Cllr Gilbride of his public duties. The payment was corrupt.

CLLR JACK LARKIN (FF)

ALLEGED PAYMENT OF IR£1,000 TO CLLR LARKIN BY MR DUNLOP

13.01 Mr Dunlop told the Tribunal that he paid a sum of IR£1,000 to Cllr Larkin in return for the councillor's support for the motion to rezone the Ballycullen lands. He said he paid Cllr Larkin in the environs of Dublin County Council or at the Royal Dublin Hotel in O'Connell Street, or the Gresham Hotel in O'Connell Street, or Conway's public house off O'Connell Street in Dublin. Mr Dunlop's best belief was that he paid over the money in Conway's, a place in which he and Cllr Larkin often met. He suggested that the payment was made between 1 October 1992 and 15 November 1992.

13.02 Mr Dunlop maintained that Cllr Larkin solicited this payment in return for his support and that the sum of IR£1,000 was agreed between them.

13.03 Mr Dunlop did not identify Cllr Larkin as a recipient of a payment relating to the Ballycullen lands until his statement in October 2000. Prior to that statement, Mr Dunlop had indicated to the Tribunal that only three councillors were paid in relation to the Ballycullen lands. Cllr Larkin was not identified as one of the three. Cllr Larkin's name was mentioned by Mr Dunlop on Day 146 in a list which Mr Dunlop provided to the Tribunal of requests that were made of him by politicians for what he described as legitimate political contributions. On Day 147 Cllr Larkin's name appeared on Mr Dunlop's list entitled '*1991 local election*' as the recipient of payments Mr Dunlop described on Day 606 (8 February 2006) as corrupt payments given under the aegis of the 1991 Local Elections. However, Cllr Larkin's name did not appear on Mr Dunlop's '*1992 list*', given on Day 147, where he dealt with payments he claimed to have made out of the 042 Rathfarnham account in 1992—payments Mr Dunlop later clarified as having been made in the course of the 1992 general election.

13.04 Neither did Cllr Larkin's name appear on Mr Dunlop's other list given on Day 148. This was the list of the persons on the 1991 and 1992 lists he claimed to have paid at times other than the time of the Local Election in 1991

or in 1992. He was not mentioned in relation to the Ballycullen lands in the course of private interviews on 11 or 18 May 2000.

13.05 Cllr Larkin was first named by Mr Dunlop as a recipient of money in his October 2000 statement, and thereafter his name appeared in Mr Dunlop's two further statements made in relation to the Ballycullen/Beechill lands in 2004 and 2006.

13.06 Cllr Larkin was not present at the meetings of Dublin County Council on either 16 or 29 October 1992 and thus did not participate in any voting on those dates related to the Ballycullen/Beechill lands or any other rezoning matter.

13.07 Evidence given to the Tribunal suggested that Cllr Larkin was a hospital in-patient between 9 September and 4 December 1992, and that he spent a considerable period in a nursing home after that hospital confinement. It was within this period that Mr Dunlop indicated to the Tribunal that he had paid IR£1,000 to Cllr Larkin. Evidence to the Tribunal also indicated that Cllr Larkin was not present at Dublin County Council meetings between 13 July 1992 and some time prior to 17 December 1992. It was within this period that the Beechill and Ballycullen motions were successfully voted through by the Council. Cllr Larkin's absence during this lengthy period was almost certainly as a direct consequence of ill-health.

13.08 The Tribunal was unable to accept Mr Dunlop's evidence about his dealings with Cllr Larkin in relation to the Ballycullen/Beechill lands. In his earlier evidence to the Tribunal, Mr Dunlop had set the time parameters for his payment to Cllr Larkin, and indeed other councillors, as being between 1 October and 15 November 1992. When it was brought to his attention that it was physically impossible for him to have paid Cllr Larkin in the environs of the County Council during this timeframe, Mr Dunlop sought to extend the timeframe to before 9 September 1992 and beyond 18 November 1992. This did not strike the Tribunal as credible. Accordingly, the Tribunal believed that while Mr Dunlop may well have spoken about the Ballycullen/Beechill lands with Cllr Larkin (given that a meeting between the two on 2 September 1992 was recorded in Mr Dunlop's diary), the Tribunal was not satisfied that the evidence suggested that a payment of IR£1,000 was made to Cllr Larkin by Mr Dunlop in relation to the lands. It seemed to the Tribunal that had Cllr Larkin approached Mr Dunlop seeking payment of IR£1,000 at some point following his discharge from the nursing home after 18 October 1992, in circumstances where he had not been in a position to vote for Mr Dunlop's project, this event would have imprinted itself on Mr Dunlop's memory.

CLLR LIAM T. COSGRAVE (FG)

ALLEGED PAYMENT TO CLLR COSGRAVE BY MR DUNLOP

14.01 Mr Dunlop alleged that he paid Cllr Liam T. Cosgrave IR£1,000 in cash in return for his support for the rezoning of the Ballycullen/Beechill lands prior to or after 16 October 1992, or 29 October 1992. Mr Dunlop told the Tribunal that he paid Cllr Cosgrave in the environs/vicinity of Dublin County Council.

14.02 On Day 146 (18 April 2000), Mr Dunlop prepared a list called the '*Preliminary List'* in which he identified 16 members of Dublin County Council as having requested money from him, but as bona fide political donations. Cllr Cosgrave was one of the 16. Mr Dunlop's position therefore as of that date was that any payments made by him to councillors were legitimate political donations.

14.03 On Day 147 (19 April 2000), Mr Dunlop prepared a list entitled '*1991 local election contributions'.* The purpose of this list was to explain how Mr Dunlop had expended all or some of the money, totalling IR£112,000 withdrawn from his 042 Rathfarnham account. In that list, Mr Dunlop identified what in his opinion were improper payments from that account. Cllr Cosgrave was not included in that list. This list, however, dealt only with payments made by Mr Dunlop in 1991, and therefore would not include any payments made by him in relation to the Ballycullen lands issue, as that matter did not arise until 1992.

14.04 On Day 148 (9 May 2000), Mr Dunlop provided the Tribunal with the '*1992 list'*. In that list, which he had prepared overnight and which he brought with him to the witness box, he sought to identify individuals to whom he made improper or corrupt payments in 1992, in the context of explaining the withdrawals from his Rathfarnham account. That list identified Cllr Cosgrave as being a recipient of IR£5,000 (the Newtownpark Avenue payment). It did not make any reference to a payment of IR£1,000 which Mr Dunlop claimed he paid to Cllr Cosgrave in connection with Ballycullen, an omission Mr Dunlop accounted for by the absence of the '*road map'*[44] when preparing the list.

14.05 A further list was prepared on Day 148 by Mr Dunlop with a list of names numbered 31 to 38, which Mr Dunlop said was a continuation of the 1991 election list and the 1992 list. Another list headed '*1991–1993 (inclusive)'* was also prepared by Mr Dunlop on Day 148. This identified the developers he said provided him with money in connection with the review of the County Dublin Development Plan.

[44] This reference to a *'road map'* is a reference to development plan documentation such as minutes of the special meetings at which the review of the Development Plan was considered etc.

14.06 In the course of a cross-referencing exercise conducted on Day 148 in relation to the 1991 election list, the 1992 list and the '*continuation'* list (with the names numbered 31 to 38) on the one hand, and the 1991–3 (inclusive) list on the other hand, Mr Dunlop identified Cllr Cosgrave as a person to whom he paid money in relation to Ballycullen Farms.

14.07 In a subsequent private interview with the Tribunal, Mr Dunlop did not identify Cllr Cosgrave as a person who was paid in connection with the Ballycullen lands. The persons he identified as having been paid money by him in relation to the Ballycullen/Beechill lands were Cllrs Lydon, Hand and Fox.

14.08 Cllr Liam Cosgrave was identified as a recipient of IR£1,000 in relation to the Ballycullen lands in Mr Dunlop's statement of October 2000 and again in his statement of 15 October 2004. In a further statement provided by Mr Dunlop to the Tribunal in February 2006, Cllr Cosgrave was omitted from his list of recipients of IR£1,000 payments.

14.09 Mr Dunlop maintained that his earlier omission of Cllr Cosgrave as a recipient of money in relation to Ballycullen, in his February 2006 statement, was due to an oversight on his part.

14.10 Cllr Cosgrave denied receiving money from Mr Dunlop in relation to the Ballycullen/Beechill rezonings. Cllr Cosgrave told the Tribunal that Mr Dunlop had not lobbied him in relation to those projects and he denied any knowledge of Mr Dunlop's involvement as a lobbyist in these projects.

14.11 Cllr Cosgrave acknowledged the receipt from Mr Dunlop of what he described as '*several legitimate political donations'*. Cllr Cosgrave said that most of these contributions were in the region of IR£500 to IR£1,000, that the majority of them were paid by cheque, and that they were always specifically categorised by Mr Dunlop as election contributions. In a statement made to the Tribunal on 28 March 2003, Cllr Cosgrave stated that Mr Dunlop made political donations to him amounting to IR£6,000 between 1992 and 1999, including IR£3,000 within the 1992/3 period. In the course of his sworn evidence to the Tribunal, Cllr Cosgrave claimed he received IR£2,000 in cash as a political donation from Mr Dunlop between 11 and 26 November 1992 at the time of the general election in which he was a candidate. Cllr Cosgrave emphatically denied that he received the IR£1,000 payment which Mr Dunlop claimed to have paid him for his support for the Ballycullen rezoning

14.12 Cllr Cosgrave acknowledged that he had had contact with Mr Dunlop in the period October/November 1992. He did not deny, based on Mr Dunlop's office record of telephone calls, that he contacted Mr Dunlop's offices on 15 October 1992 (the eve of the Beechill special meeting of 16 October 1992) and 29 October 1992 (the day of the Ballycullen motion). Cllr Cosgrave supported the Ballycullen motion. The Beechill motion was carried without any vote.

14.13 The Tribunal rejected Cllr Cosgrave's evidence that he had not been lobbied by Mr Dunlop in relation to the Ballycullen/Beechill lands. It was clear to the Tribunal that Cllr Cosgrave was in fairly regular contact with Mr Dunlop during the making of the 1993 Development Plan, in particular during the October 1992 period. It was extremely unlikely that Mr Dunlop would not have availed of the opportunity in the lead-up to both votes to lobby Cllr Cosgrave to support the Beechill and Ballycullen projects in circumstances where Mr Dunlop and Cllr Cosgrave were in contact on the dates of both votes.

14.14 As a matter of probability, the Tribunal was satisfied that the payment identified by Mr Dunlop, namely IR£1,000, was paid by him to Cllr Cosgrave, and that this was paid in connection with the Ballycullen/Beechill rezoning project, and more specifically his support for it, and that this fact was known to Cllr Cosgrave. The said payment was therefore a corrupt payment.

CLLR JOHN O'HALLORAN (LAB.)

ALLEGED PAYMENT OF A DONATION TO A CHARITY ASSOCIATED WITH CLLR O'HALLORAN

15.01 Mr Jones identified Cllr O'Halloran as the recipient of a donation of IR£3,000 in support of a charity with which he was associated, in the year ending 31 December 1992. Cllr O'Halloran acknowledged that he received a charitable donation, but stated that the amount was much less than the suggested sum of IR£3,000. Cllr O'Halloran also stated that he did not participate in a charity walk in 1992. Mr Oliver Brooks, an employee of Ballycullen Farms, told the Tribunal that it was his belief that Mr Jones' figure of IR£3,000 as the amount of that charitable donation was erroneous, that the correct figure was IR£500, and that it was paid in either 1992 or 1997.

15.02 The Tribunal believed there to have been insufficient evidence to determine when Mr O'Halloran may have received the IR£500 or any other sum from the Jones group, whether by way of charitable donation or otherwise.

15.03 Cllr O'Halloran was present at the meeting on 16 October 1992 at which the Beechill rezoning motion was adopted without a vote, but was not present for the Ballycullen rezoning vote on 29 October 1992. Cllr O'Halloran

voted against the Muldoon/Shatter motion to revert the Ballycullen farm lands to an agricultural zoning on 28 October 1993.

ALLEGED PAYMENT TO CLLR O'HALLORAN BY MR DUNLOP

15.04 Mr Dunlop alleged that Cllr O'Halloran solicited a payment when Mr Dunlop asked him to support the Ballycullen rezoning, and he arranged a payment of money in the lead-up to the vote on Ballycullen. Mr Dunlop was unable to recall the precise amount paid to Cllr O'Halloran in relation to Ballycullen.

15.05 Cllr O'Halloran denied the payment of any money to him by Mr Dunlop in relation to the Ballycullen rezoning project. He did not attend or vote in relation to the Ballycullen rezoning at the County Council meeting of 29 October 1992. He supported the confirmation of that rezoning in October 1993, and voted in support of a material contravention on 12 February 1996 for the construction of 600 houses on the Ballycullen lands.

15.06 Cllr O'Halloran maintained that he had never been lobbied in any way by Mr Dunlop in relation to the Ballycullen lands, and did not believe that he was lobbied by anyone in relation to that project. He recalled being lobbied by Messrs Frank and Oliver Brooks, employees of Ballycullen Farms Ltd, in relation to a separate planning issue. Cllr O'Halloran told the Tribunal that, although he knew Mr Dunlop was a lobbyist in relation to a number of land holdings and was aware of his frequent presence in and around the County Council, it was his recollection that Mr Dunlop had only lobbied him in relation to the Quarryvale development. Cllr O'Halloran maintained that he had only become aware of Mr Dunlop's involvement in Ballycullen /Beechill through the Tribunal.

15.07 Mr Dunlop's records indicated telephone contact by Cllr O'Halloran on a number of occasions in September 1992, in addition to a scheduled meeting on 16 September 1992, at which, according to Mr Dunlop, the Ballycullen lands (and other Development Plan issues) were discussed. Mr Dunlop's office recorded telephone contact by Cllr O'Halloran on 15 October 1992 (the eve of the Beechill special meeting) and Cllr O'Halloran's name appeared in Mr Dunlop's diary for a meeting at 8.30 pm on the same day. While Mr Dunlop believed that the Ballycullen/Beechill matter may well have been mentioned by him to Cllr O'Halloran on that date, a project other than Ballycullen/Beechill (namely Quarryvale) had in fact been the focus of that particular meeting. Mr Dunlop told the Tribunal that he would have neither agreed to pay Cllr O'Halloran nor paid him at that meeting.

15.08 Mr Dunlop's telephone records showed contact made by Cllr O'Halloran on 20 October 1992, when a message was left for Mr Dunlop advising him that Cllr O'Halloran was at the County Council. Further telephone contact by Cllr O'Halloran was recorded on 22 October 1992.

15.09 Mr Dunlop accepted that Council records showed that Cllr O'Halloran was not in attendance for the Ballycullen zoning vote on 29 October 1992. Mr Dunlop, in evidence, maintained that payment was nevertheless made to Cllr O'Halloran. According to Mr Dunlop, Cllr O'Halloran received something in the order of IR£500 or, as described by him on another occasion, *'a small sum'.*

15.10 Mr Dunlop's office telephone records indicated two telephone calls from Cllr O'Halloran to his office on 3 November 1992. Mr Dunlop's diary for 4 November 1992 indicated that a meeting took place on that date between Mr Dunlop and Cllr O'Halloran. Mr Dunlop stated his belief that 4 November 1992 was the date on which he paid a sum in the order of IR£500 to Cllr O'Halloran.

15.11 Cllr O'Halloran said he was not in a position to dispute the accuracy of Mr Dunlop's diary and telephone records as he could not recall *'each time'* he spoke to Mr Dunlop. Cllr O'Halloran maintained that the only development matter he discussed with Mr Dunlop was Quarryvale.

15.12 In the course of his evidence, Cllr O'Halloran was queried about the contacts he had had with Mr Dunlop in the period from September to November 1992 and about meetings recorded in Mr Dunlop's diary. While he could not confirm such contact, he did not dispute Mr Dunlop's telephone records of contact on 1 September 1992, and two calls at 3 pm on 10 September 1992, on which day Cllr O'Halloran left a message for Mr Dunlop. Likewise, on 14 September 1992 Cllr O'Halloran was recorded as requesting Mr Dunlop to call him, and Cllr O'Halloran appeared to telephone back at a later stage to query why Mr Dunlop had not made contact. Cllr O'Halloran agreed that telephone contact made on 15 September 1992 and on the morning of the next day was likely to have been connected to the meeting scheduled in Mr Dunlop's diary for 16 September 1992. While Cllr O'Halloran agreed that this meeting may well have taken place, he maintained that it was in relation to Quarryvale, and denied any suggestion that Ballycullen had been discussed.

15.13 Mr Dunlop's telephone records also noted an entry referable to Cllr O'Halloran on 17 September 1992.

15.14 Cllr O'Halloran did not dispute further telephone contact on 3 November 1992, nor did he dispute that he may have met Mr Dunlop on 4

November 1992 as suggested by an entry in Mr Dunlop's diary. While he could not recollect such a meeting, any such meeting would have been in relation to Quarryvale. He denied, as alleged by Mr Dunlop, that he was paid money in relation to Ballycullen on 4 November 1992.

15.15 In his early dealings with the Tribunal, Cllr O'Halloran stated that he had received a political donation from Mr Dunlop in the sum of IR£2,500 in 1996, at the time of a By-Election (this donation was recouped by Mr Dunlop from Mr Owen O'Callaghan). He later advised the Tribunal that he received a cash payment of IR£500 from Mr Dunlop sometime between 1991 and 1993, and that this payment had been made in the vicinity of the County Council offices. He recalled Mr Dunlop advising him on one occasion of his intention to make the contribution, and recalled being paid the contribution on a second occasion. The payment had been made by Mr Dunlop without explanation. Cllr O'Halloran could not say what led Mr Dunlop to give him IR£500 in cash. Mr Dunlop had handed it over to him at the County Council offices and had not explained why. He, Cllr O'Halloran, had not at the time related it to any election campaign. Cllr O'Halloran believed that the IR£500 cash may have been preceded by receipt by him of a cheque for IR£250 from Frank Dunlop & Associates Ltd. Cllr O'Halloran also acknowledged that he received a IR£500 cheque from Mr Dunlop at the time of the 1999 Local Elections (from which he withdrew as a candidate).

15.16 The Tribunal did not accept Cllr O'Halloran's contention that he was unaware of Mr Dunlop's retention as a lobbyist in connection with the Beechill/Ballycullen lands, and believed it likely that Cllr O'Halloran was lobbied by Mr Dunlop to support one or both of these projects.

15.17 The Tribunal was satisfied that there was a significant level of contact between Mr Dunlop and Cllr O'Halloran, both at face-to-face meetings and informally at the time of County Council meetings. The Tribunal does not believe it credible that Mr Dunlop would not have canvassed Cllr O'Halloran's support for all or most of the land rezonings with which he was involved.

15.18 Cllr O'Halloran was initially named by Mr Dunlop as a recipient of monies from him in relation to the Ballycullen lands in his October 2000 statement. He was again named in a later statement furnished to the Tribunal in 2004 by Mr Dunlop.

15.19 On Day 146, when apprising the Tribunal of people he said sought legitimate political contributions from him, Mr Dunlop did not name Cllr

O'Halloran. Neither did Cllr O'Halloran's name appear in Mr Dunlop's '*1991 local election*' list.

15.20 In his list headed '*1992*', Mr Dunlop did not list Cllr O'Halloran as a person who received monies from him in 1992, in relation to the general election.

15.21 Nor did Cllr O'Halloran's name appear on the list furnished by Mr Dunlop on Day 148, of persons (already named in the earlier 1991 and 1992 lists) Mr Dunlop claimed to have paid at times other than the Local Election of 1991, or the general election in 1992. Equally, Cllr O'Halloran's name was absent from Mr Dunlop's '*cross referencing*' list, prepared on Day 148, in which he purported to cross reference payments to certain developments, including Ballycullen Farms. No mention was made of Cllr O'Halloran in connection with Ballycullen when Mr Dunlop was privately interviewed by the Tribunal on 11 and 18 May 2000.

15.22 Although the Tribunal took account of the fact that Cllr O'Halloran did not vote on 29 October 1992, the Tribunal was not satisfied that this factor could be the sole determinant in relation to Mr Dunlop's allegation against Cllr O'Halloran.

15.23 The Tribunal rejected Cllr O'Halloran's claim that he was unaware of Mr Dunlop's involvement in the Ballycullen/Beechill rezoning projects. In Cllr O'Halloran's own words, Mr Dunlop was '*a constant presence*' in the County Council. The Tribunal was satisfied that extensive contact took place between Cllr O'Halloran and Mr Dunlop in the course of the preparation of the Development Plan, and, while it may well have been the case that a substantial part of that contact related to the Quarryvale rezoning project, in which Cllr O'Halloran was an active participant, it was not the case that all of Mr Dunlop's and Cllr O'Halloran's dealings related to this project. It was inconceivable that Mr Dunlop would not have sought the support of Cllr O'Halloran, given Mr Dunlop's active lobbying role for Mr Jones and Ballycullen Farms. The Tribunal preferred the evidence given by Mr Dunlop to that given by Cllr O'Halloran, and believed it likely that at some point, probably between 1 September and mid-October 1992, Cllr O'Halloran and Mr Dunlop discussed the Ballycullen/Beechill lands.

15.24 For the Tribunal's conclusions relating to the allegations of payments to Cllr O'Halloran, see Chapter Two, Part 7.

CLLR SÉAMUS BROCK (FF)

ALLEGED PAYMENT TO CLLR BROCK BY MR JONES

16.01 According to Mr Jones, Cllr Brock received a sum of IR£250 from him in the year ending 31 December 1992 as a '*local election*' donation. Mr Jones wrote to Cllr Brock on 24 November 1992 in the following terms:

> *Dear Séamus*
> *Enclosed herewith a contribution to the campaign expenses, which I have no doubt are pretty heavy at this time.*
> *With best wishes and thank you for all your help.*
> *Yours sincerely,*
> *Chris Jones.*

16.02 Mr Jones said he believed that his donation to Cllr Brock was in respect of the Local Elections which had been held approximately 18 months earlier. Mr Jones understood that Cllr Brock had not been a candidate in the November 1992 general election.

16.03 Cllr Brock voted in favour of the rezoning of the Ballycullen lands on 29 October 1992, and he again supported the confirmation of that rezoning in October 1993.

16.04 Cllr Brock died in May 1994, and therefore did not have the opportunity to provide a statement or evidence to the Tribunal. Nevertheless, the Tribunal was satisfied that Cllr Brock received this payment.

CLLR LARRY BUTLER (FF)

ALLEGED PAYMENT TO CLLR BUTLER BY MR JONES

17.01 Mr Jones sent a cheque in the sum of IR£500 to Cllr Butler on 16 November 1992, accompanied by a letter stating: '*Dear Larry, Enclosed a contribution to the campaign expenses, which I have no doubt will be pretty heavy and thank you for all your help*.'

17.02 Mr Jones told the Tribunal that the '*help'* for which he thanked Cllr Butler was a reference to the Ballycullen rezoning motion on 29 October 1992. Mr Jones also stated that the '*campaign'* referred to in his letter was the 1991 Local Election held approximately 18 months previously.

17.03 Cllr Butler voted in favour of the rezoning of the Ballycullen lands on 29 October 1992 and again supported the confirmation process in relation to those lands in October 1993.

17.04 Cllr Butler was not a candidate in the general election of November 1992 (or the Seanad election in January/February 1993) although he did engage in political fundraising at that time in relation to the campaign.

17.05 Cllr Butler told the Tribunal that if he was fundraising for the 1992 elections he would have forwarded donations received to the Fianna Fáil Party, or alternatively lodged the money to his own account and sent a sum of equal value to the Fianna Fáil Party. Cllr Butler agreed that it was possible that Mr Jones' donation was the source of a lodgement of IR£500 made to his account on 30 November 1992. He agreed that his bank records did not reflect any immediate payment to the Fianna Fáil Party of IR£500. The Tribunal believed it probable that the lodgement to Cllr Butler's account did indeed represent Mr Jones' payment of IR£500. Cllr Butler agreed that the 1992 political donation he received from Mr Jones appeared to be the first such political support from him and, save for IR£50 in 1995, no further financial support came to him from that source.

17.06 The Tribunal was satisfied that the payment of IR£500 was intended to compromise Cllr Brock's disinterested performance of his duty as a councillor. Cllr Brock's acceptance of the payment was improper.

CLLR LIAM CREAVEN (FF)

ALLEGED PAYMENT TO CLLR CREAVEN BY MR JONES

18.01 Mr Jones advised the Tribunal of his belief that Ballycullen Farms made a '*local election*' donation to Cllr Creaven in the sum of IR£1,000 in the year ending December 1992. The Local Elections had been held approximately 18 months previously. Mr Jones said he never met Cllr Creaven.

18.02 Although Mr Creaven's name was included on Mr Jones' schedule, and Mr Jones gave sworn testimony that it was his belief that the IR£1,000 was paid to Cllr Creaven, no contemporaneous documents were furnished to support the existence of such a payment. Cllr Creaven agreed that he was at that time friendly with Mr Oliver Brooks, an employee of Mr Jones, and could not therefore exclude the possibility of having received a donation in that context, although he was at pains to emphasise that he had no recollection of such a donation.

18.03 Lodgements made to Cllr Creaven's bank account in the relevant period, although capable of including a payment of IR£1,000, did not particularly assist the Tribunal in its efforts to determine whether Cllr Creaven had received IR£1,000 from Mr Jones.

18.04 Cllr Creaven agreed that he had failed to recollect a contribution from Ballymore Homes when he first engaged with the Tribunal and indeed when speaking to the Fianna Fáil inquiry in 2000.

18.05 The Tribunal took the view that, having regard to the strength of Mr Jones' belief that the payment had been made, coupled with the fact of Cllr Creaven's friendship with Mr Oliver Brooks during the relevant time period, Mr Creaven probably did receive IR£1,000 from Mr Jones, most probably in or about November 1992. Cllr Creaven voted in favour of the Ballycullen rezoning and went on to support it again in October 1993. This payment was corrupt, and ought not to have been accepted by Cllr Creaven in circumstances where he was almost certainly aware of the association between its donor and the lands which were to be the subject of consideration by councillors in the course of their review of the Development Plan.

CLLR M. J. COSGRAVE (FG)

ALLEGED PAYMENT TO CLLR M. J. COSGRAVE BY MR JONES

19.01 Mr Jones advised the Tribunal that he paid a cheque of IR£1,000 to Cllr M. J. Cosgrave in the year ending December 1992, and that it was likely paid by his employee, Mr Oliver Brooks, using a Ballycullen Farms cheque. Cllr Cosgrave was a candidate in the Seanad Election of January 1993.

19.02 Cllr Cosgrave advised the Tribunal that he had no recollection of any such payment from Mr Jones. He agreed that his recollection could be faulty, as had proven to be the case when dealing with the Fianna Gael inquiry in 2000 and again when inquiries were initially made of him by the Tribunal when he had failed to recollect a contribution of IR£1,000 from Ballymore Homes to his 1993 Seanad election campaign.

19.03 Cllr Cosgrave had supported the rezoning of the Ballycullen lands on 29 October 1992 and voted against the Muldoon/Shatter motion. Despite the lack of any contemporaneous records or memory on his part, the Tribunal was satisfied that Cllr Cosgrave was probably the recipient of IR£1,000 from Mr Jones, most likely given to him by Mr Oliver Brooks, whom he knew.

CLLR NED RYAN (FF)

ALLEGED PAYMENT TO CLLR RYAN BY MR JONES

20.01 Mr Jones advised the Tribunal that he paid IR£1,000 as a '*local election*' contribution to Cllr Ryan in the year ending 31 December 1992. The Local Elections were held some 18 months previously.

20.02 Cllr Ryan told the Tribunal that this contribution of IR£1,000 was given to him by Mr Oliver Brooks in respect of the Seanad election in January/February 1993, in which he was a candidate.

20.03 Cllr Ryan said that the IR£1,000 donation was both unsolicited and unexpected, and was the largest donation received by him in 1992. He said that its payment was not connected to his support for the rezoning of the Ballycullen lands. Nevertheless, the payment was made and received at a time when Cllr Ryan would have known of the fact that the donor was associated with lands which were being considered for rezoning by the Council. Cllr Ryan's acceptance of the money in these circumstances was entirely inappropriate.

20.04 Cllr Ryan supported the rezoning of the Ballycullen lands on 29 October 1992, and voted against the Muldoon/Shatter motion.

CLLR ANNE ORMONDE (FF)

ALLEGED PAYMENT TO CLLR ORMONDE BY MR JONES

21.01 Documentation furnished to the Tribunal by a firm of accountants acting for Ballycullen Farms Ltd indicated that a payment of IR£1,000 had been made by Ballycullen Farms to Cllr Ormonde in or about May 1991. Cllr Ormonde was unable to recollect any such payment, and doubted that she had received such a payment. The Tribunal was unable to determine whether a donation was in fact made to her in May 1991.

21.02 Cllr Ormonde advised the Tribunal that she received a cheque for IR£1,000 from Mr Jones in November 1992, although her name did not appear on the schedule of recipients of such payments furnished to the Tribunal by Mr Jones. Cllr Ormonde believed that this cheque had been given to her by Mr Frank Brooks of Ballycullen Farms Ltd in connection with the general election in November 1992, in which she was a candidate, and in which Mr Brooks acted as her election agent. The Tribunal accepted Cllr Ormonde's evidence that such a sum was received by her from Mr Jones.

21.03 Mr Jones made a payment of IR£5,000 to Cllr Ormonde on 31 October 1996 in response to a request from her for a political donation in relation to the then forthcoming general election. In March 1998, Ballycullen Farms Ltd discharged a bill amounting to IR£747.29 for the printing of posters used by Cllr Ormonde in the course of her general election campaign in the previous year and due to be paid by her.

21.04 Cllr Ormonde also received a political donation from Mr Jones in the sum of IR£400 on 13 May 1997, in addition to a further political donation of IR£500 on 31 May 1999.

21.05 Cllr Ormonde voted in favour of a material contravention motion at a meeting of South Dublin County Council on 12 February 1996, which provided for the construction of 600 houses on the Ballycullen lands.

CLLR SHEILA TERRY (PD)

ALLEGED PAYMENT TO CLLR TERRY BY MR JONES

22.01 Mr Jones identified Cllr Terry as a recipient of either IR£500 or IR£600 in the year ending 31 December 1992. Mr Jones told the Tribunal that he believed this donation had been made through either Mr Frank Brooks or Mr Oliver Brooks of Ballycullen Farms Ltd.

22.02 Cllr Terry had no recollection of receiving any such donation. She accepted, however, that she had been lobbied to support the rezoning of the Ballycullen lands, probably by Mr Dunlop and Mr Oliver Brooks, and Ballycullen's agricultural advisor, Mr Vincent Flynn, whom she knew. She also recalled visiting the lands with Mr Flynn, at Mr Oliver Brooks' request.

22.03 Mr Oliver Brooks stated that he had no recollection of making such a payment, but accepted in evidence that when the schedule was being compiled by him, together with Mr Frank Brooks and Mr Jones, Cllr Terry's name had been added to the list of recipients for the year ending December 1992 in the belief that such a payment had been made.

22.04 In the circumstances the Tribunal was unable to determine if, in fact, Cllr Terry received a sum of £500 or £600 from Mr Jones.

22.05 Cllr Terry supported the rezoning of the Ballycullen lands on 29 October 1992, and voted against the Muldoon/Shatter motion.

CLLR MICHAEL KEATING (FG)

ALLEGED PAYMENT TO CLLR KEATING BY MR JONES

23.01 Mr Jones advised the Tribunal that Cllr Keating received IR£500 from him in the year ending 31 December 1992. He told the Tribunal that he made this donation personally to Cllr Keating in Cllr Keating's home (which was close to his own) in 1992, having been advised to contact him by Mr Dunlop.

23.02 Cllr Keating maintained that he did not know Mr Jones and had no recollection of receiving any donation from him, although he conceded that a donation might have gone directly to his constituency organisation at the time of the November 1992 general election, in which he was a candidate.

23.03 Cllr Keating supported the rezoning of the Ballycullen lands on 29 October 1992 and also voted against the Muldoon/Shatter motion.

23.04 The Tribunal was satisfied that Cllr Keating did receive IR£500 from Mr Jones in the year ending 31 December 1992, and that it was paid personally to him by Mr Jones in Cllr Keating's home. The Tribunal rejected Cllr Keating's denial of any knowledge of the payment and his statement that he did not know Mr Jones.

23.05 Mr Jones' schedule recorded a further election donation as having been made on 30 June 1996. Cllr Keating's belief was that all such donations would have been received by his constituency organization rather than himself personally, since his retirement from politics in 1995.

CLLR CHARLIE O'CONNOR (FF)

ALLEGED PAYMENT TO CLLR O'CONNOR BY MR JONES

24.01 Mr Jones advised the Tribunal that Cllr O'Connor was paid IR£500 in the year ending 31 December 1992. Cllr O'Connor acknowledged receiving this sum at the time of the November 1992 general election, in which he was a candidate. His recollection was that the cheque arrived by post.

24.02 Mr Jones told the Tribunal that the payment to Cllr O'Connor was intended as a donation towards Cllr O'Connor's general election campaign. He described Cllr O'Connor as having been very helpful in relation to the rezoning of the Ballycullen lands. Cllr O'Connor had voted in favour of the rezoning of the Ballycullen lands on 29 October 1992 and voted against the Muldoon/Shatter motion.

24.03 Cllr O'Connor received further political donations from Mr Jones in 1996 and in 2002 of IR£500 and €650 respectively.

24.04 On 16 October 1992, Cllr O'Connor was present in Dublin County Council, when the assembled councillors '*agreed*' to the Manager's recommendation that a proposal to include a specific objective to facilitate the development of offices at the Beechill location be adopted. On 2 November 1993, Cllr O'Connor was again present in Dublin County Council when the

councillors '*confirmed'* an amendment '*to facilitate the development of offices*' on the Beechill lands without a vote.

24.05 Cllr O'Connor voted in favour of the material contravention motion in February 1996, facilitating the construction of 600 houses on the Ballycullen lands.

24.06 Cllr O'Connor's acceptance of IR£500 from Mr Jones in late 1992 was, in the circumstances, entirely inappropriate.

CLLR MARIAN MCGENNIS (FF)

ALLEGED PAYMENT TO CLLR MCGENNIS BY MR JONES

25.01 Mr Jones advised the Tribunal that he paid IR£250 to Cllr McGennis in the year ending 31 December 1992, through his employee Mr Oliver Brooks, who knew Cllr McGennis.

25.02 Cllr McGennis told the Tribunal that she had no recollection of receiving a donation of IR£250 from Mr Jones or Mr Brooks, and doubted that she had done so. Cllr McGennis was certain that she had never met Mr Jones. She said she knew Mr Oliver Brooks, but not in 1992. Cllr McGennis was a candidate in the November 1992 general election.

25.03 Mr Brooks told the Tribunal that he had a vague recollection of Cllr McGennis soliciting a contribution from him in relation to a fundraiser she was then organising.

25.04 The Tribunal is satisfied that Cllr McGennis received £250 from Mr Jones in 1992.

25.04 Cllr McGennis voted in favour of the rezoning of the Ballycullen lands on 29 October 1992, and against the Muldoon/Shatter motion.

CLLR JOHN HANNON (FF)

ALLEGED PAYMENT TO CLLR HANNON BY MR JONES

26.01 While Cllr Hannon's name did not appear on Mr Jones' schedule as having received a donation in the year ending 31 December 1992, Mr Jones told the Tribunal that he recollected a payment of IR£1,000 to Cllr Hannon at the time of the November 1992 general election. This payment was made through Mr Frank Brooks.

26.02 Cllr Hannon accepted that the payment had been received by him, and stated that it was unsolicited. Mr Jones, while acknowledging that Cllr Hannon did not solicit a donation from him, stated that Cllr Hannon did seek his support for the then upcoming election, in return for his vote.

26.03 Cllr Hannon, together with Cllr Breda Cass, was instrumental in placing a motion before the County Council on 29 October 1992 seeking to restrict the residential density on the lands which were the subject of a residential rezoning motion proposed by Cllrs Lydon and Hand. The Hannon/Cass motion was passed unanimously, and when the Ballycullen lands were ultimately rezoned on 29 October 1992, they were rezoned with restricted residential density.

CLLR HANNON'S CLAIMED RECEIPT OF A CASH DONATION IN NOVEMBER 1992 FROM MR DUNLOP

26.04 Cllr Hannon told the Tribunal that in November 1992, during the course of the general election campaign, he received an unsolicited payment in cash from Mr Dunlop. Cllr Hannon said that Mr Dunlop telephoned him and made an appointment to visit him in his home, without explaining the purpose of his visit. Mr Dunlop duly called to Cllr Hannon in his home and handed him an envelope in which there was either IR£500 or IR£1,000 in cash.

26.05 Mr Dunlop claimed to have no recollection of the payment, or of ever visiting Cllr Hannon in his home, or of even knowing his address.

26.06 Cllr Hannon said that he viewed the payment of either IR£500 or IR£1,000 from Mr Dunlop as a political donation, and, according to his letter to the Tribunal of 2 May 2000, it had '*nothing whatsoever to do with any vote I cast as a council member of Dublin Co Council at any time'.*

26.07 In spite of Mr Dunlop's denial of making any such payment to Cllr Hannon, the Tribunal was satisfied from Cllr Hannon's own evidence that he had received either IR£500 or IR£1,000 from Mr Dunlop in November 1992. While there was no evidence to suggest that the payment was in any way directly connected to Cllr Hannon's support within the County Council for any particular rezoning project, the Tribunal believed that Cllr Hannon must have known, at the time he received such a payment from Mr Dunlop, that this payment was given in the context of Mr Dunlop's ongoing involvement in a number of rezoning issues, albeit in the course of an election campaign. In those circumstances, the payment was corrupt.

26.08 Cllr Hannon voted in favour of the rezoning of the Ballycullen lands on 29 October 1992 and also voted against the Muldoon/ Shatter motion.

26.09 Cllr Hannon voted in favour of the material contravention vote in 1996, in which the Ballycullen lands' zoning was altered to permit the construction of 600 houses.

26.10 Cllr Hannon also received IR£500 from Ballycullen Farms in 1999.

The payments by Mr Jones to Cllrs Brock (FF), Butler (FF), Creaven (FF), M. J. Cosgrave (FG), Ryan (FF), Keating (FG), O'Connor (FF), McGennis (FF), Hannon (FF), Fox (FF), McGrath (FF), Gallagher (FF) and Ormonde (FF)

27. 01 In his narrative to the Tribunal on 7 November 2003, Mr Jones stated the following:

> *Throughout my business career I've made and continue to make personal and corporate contributions to political parties and to politicians/public representatives. Many of these were made over the extended period while I endeavoured, as described above, to secure the re-zoning of the Ballycullen lands. Subscriptions were made at times in response to requests, and I also made a number of donations to community and charitable organisations with which a local councillor may have been associated in their particular area. More generally however the subscriptions were for expenses for local or general elections. I enclose . . . a schedule setting out the subscriptions and donations made by me or on my behalf. They were made normally by cheque through BFL (Ballycullen Farms Ltd). At times the cash situation in BFL was such that I had to pay them out of my personal funds. Oliver and Frank Brooks made a number of subscriptions, which are included in the schedule, and either BFL or I reimbursed Oliver and Frank in respect of subscriptions they made.*

27.02 The Tribunal was satisfied that Mr Jones and Messrs Frank and Oliver Brooks availed of the opportunity presented by the general election in November 1992 to indicate to certain councillors their appreciation of what had been achieved by the vote of 29 October 1992, and to ensure that such councillors remained supportive into the future. While the Tribunal accepted Mr Jones' evidence that he contributed to the political campaigns of others in November 1992, (for example, Mr Tom Kitt TD, and Mr Séamus Brennan TD), and not just councillors who had voted on 29 October 1992, the Tribunal noted that all of the councillors who, the Tribunal was satisfied, received the election donations voted in favour of the Ballycullen rezoning. Mr Jones told the Tribunal that one of the

factors he took into account in making the decision to donate to a councillor was whether or not the councillor had been supportive of the Ballycullen rezoning.

27.03 The Tribunal did not accept the evidence of Mr Jones that the majority of the payments made to councillors in November 1992 were in effect bona fide political donations referable to the 1991 Local Election—an election that had taken place almost 18 months previously. The Tribunal concluded that the primary objective of the November 1992 payments was to consolidate councillors' support for the Ballycullen rezoning. Mr Jones' evidence when responding to Tribunal Counsel's questions as to why he was so generous to Cllr Wright was particularly instructive in this regard, and the Tribunal considered it indicative of the mindset that prevailed at that time.[45] The Tribunal considered the making of the payments to have been wholly improper. Where donations were solicited by councillors, the response to such requests on the part of Mr Jones and the Ballycullen Farm's interest can best be described as a cynical exercise, designed to advance the rezoning project. While Mr Dunlop denied knowledge of the Jones/Ballycullen Farms/Brooks payments, and expressed surprise at them, the Tribunal was satisfied that to some extent Mr Jones' largesse in November 1992 was influenced by what he said he was told by Mr Dunlop when they met in 1991.

27.04 Mr Jones, in making such payments, engaged in a practice which in the circumstances was designed to compromise the disinterested performance of councillors' duties in the course of their obligation to make the Development Plan. Mr Jones' actions were therefore, in all the circumstances, corrupt.

27.05 Apart from specific instances, the Tribunal was unable to determine conclusively which councillors received donations directly from Mr Jones and which received them through the two Brooks brothers. The Tribunal was satisfied, however, that the councillors who received cheques through the Brooks brothers were left in no doubt as to the source of such payments. The Tribunal believed it to be inconceivable that these councillors did not appreciate and were not aware of the proximity in time between the 29 October 1992 vote on the Ballycullen lands and the receipt, approximately 3–4 weeks later, of donations from the promoter of that rezoning proposal.

27.06 The Tribunal was unable to determine the extent to which, if at all, any of these councillors proceeded to support the rezoning of the Ballycullen lands in 1993 as a direct consequence of receiving payment from, or on behalf of Mr Jones, in late 1992.

[45] Mr Jones paid IR£5,000 to Cllr G. V. Wright in November 1992.

27.07 The Tribunal was satisfied that the councillors' acceptance of money from, or on behalf of, Mr Jones, in circumstances in which they knew that the donor of the payments had an interest in lands which were, or were likely to be, the subject of a rezoning motion in which they, in their capacity as elected councillors, might, or would exercise their vote, was improper. If viewed objectively, the acceptance of such donations by a councillor from a landowner/developer who was seeking the rezoning of lands, an aspiration which for the most part, as found by the Tribunal in its consideration of the making of development plans, required to be voted on by individual councillors, served only to negate the required disinterested exercise by a councillor of that voting duty.

27.08 The acceptance of money in such circumstances, were it publicly known, could reasonably be expected to give rise in the minds of the members of the public to a perception that such payments influenced councillors in their decision-making role (including such influence as they might exercise over others). It is the view of the Tribunal that such a perception is likely to reduce the public's confidence in the integrity of the office of an elected councillor.

MR LIAM LAWLOR TD (FF)

PAYMENTS TO MR LAWLOR IN RELATION TO THE BALLYCULLEN/BEECHILL LANDS

28.01 A cheque in the sum of IR£5,000 was drawn against Mr Jones' personal bank account and paid to Mr Lawlor. Mr Jones described the payment as a political donation solicited by Mr Lawlor relating to the 1991 Local Elections, which were held in June 1991.

28.02 In a statement of information provided to the Tribunal by Mr Lawlor on 29 December 2000, (the '*B42*' list) Mr Lawlor referred to a payment of IR£5,000 to him from the '*Jones Group Ltd*', and categorised this, and other payments, as '*income, including political contributions, donations and consultancy fees being approximate and as recollected by Mr Lawlor in respect of the period 1973 to 2000*'. In an affidavit sworn by Mr Lawlor on 8 April 2002, he again referred to a payment of IR£5,000 from Mr Jones, referring to it as a contribution to an electoral campaign of the 1990s. Mr Lawlor's belief in April 2002 was that the payment had been made to him in cash, and expended by him in the course of an election campaign.

28.03 When questioned on Day 620, Mr Jones stated that the IR£5,000 cheque given to Mr Lawlor had been drawn on his personal bank account and his belief was that the cheque had been made out to Mr Lawlor and not '*to cash*'. Mr

Hussey recalled a payment of IR£5,000 made to Mr Lawlor in the period 1990/1991, and of being informed in early 1991 by Mr Jones that the payment in question was '*a political subscription*'.

28.04 The Tribunal was satisfied that Mr Jones made a payment of IR£5,000 to Mr Lawlor in early to mid-1991, and that the payment was made by way of cash, or a cheque made payable to cash.

THE PAYMENT OF IR£7,500

28.05 Ballycullen Farms Ltd issued a cheque on 30 July 1991 to Comex Trading Corporation[46] in the sum of IR£7,500 in response to an invoice from Comex Trading Corporation dated 29 July 1991 and issued to the '*Jones Group*'.

28.06 Local elections (in which Mr Lawlor stood as a candidate and lost his seat) were held in June 1991.

28.07 In his evidence to the Tribunal, Mr Jones said that subsequent to the first payment of IR£5,000 to Mr Lawlor, Mr Lawlor had again requested further donations from him. Mr Jones said that he had advised Mr Lawlor that he was not in a position to pay him more money by way of political donation, but that a further payment could be made on foot of an invoice to be provided by Mr Lawlor for services rendered regarding Ballycullen. It was on this basis that Mr Lawlor furnished the Comex invoice. The Comex invoice provided by Mr Lawlor to Mr Jones (and discovered by Mr Jones to the Tribunal) bore on its face an address in Surrey, UK. The Tribunal was satisfied that the invoice, although generated by Mr Lawlor, was bogus.

28.08 Mr Jones described the figure of IR£7,500 as having been a compromise figure agreed by the parties at the time, Mr Lawlor having requested more. Asked on Day 620 as to why he had required an invoice from Mr Lawlor by way of Comex or other invoice, Mr Jones had replied as follows: *'Well I thought he was, the donation for his status in the whole electoral scene at whatever, 12 and a half, was getting a bit excessive. And he had given me advice, I mean, there was no question or doubt about that.'*

28.09 In an affidavit sworn by Mr Lawlor on 21 January 2002, Mr Lawlor stated that he was requested by Mr Jones to provide him with an invoice to cover a payment of IR£7,500. In that affidavit Mr Lawlor stated:

[46] See Exhibit 12.

> *With regard to paragraphs 23 and 25 of [the] affidavit, I was asked by Mr Jones to provide him with an invoice to cover the payment of IR£7,500 and I generated an invoice using Comex headed paper for this purpose. Once again I neither have nor had any interest whatsoever in Comex Trading Corporation, which was one of Mr [Michael] Quinn's companies . . .*

28.10 Comex was one of the entities identified by Mr Lawlor in May 2002 to the Tribunal as used by him for the purposes of creating invoices.

28.11 In a letter to Mr Lawlor on 5 September 2001, Mr Jones confirmed the payment to Mr Lawlor of IR£7,500 on foot of an invoice provided by him in the name of Comex Trading Corporation. In that letter, Mr Jones stated that the payment was for '*consultancy advice*'.

PAYMENT OF IR£2,000

28.12 In documentation provided to the Tribunal by way of discovery by Mr Jones, a further payment of IR£2,000 to Mr Lawlor was identified. A cheque for IR£2,000 dated 16 November 1992[47] accompanied a letter of that date from Mr Jones to Mr Lawlor, which stated as follows: '*Enclosed herewith a contribution towards the campaign expenses. It's going to be tough going and the best of luck. Thank you also for all your good advice.'*

28.13 Mr Lawlor advised the Tribunal that the cheque for IR£2,000 was lodged to a bank account in the name of Mrs Hazel Lawlor, Mr Lawlor's wife, on 19 November 1992.

PAYMENT OF IR£3,000

28.14 On 10 December 1992, Mr Jones wrote to Mr Lawlor, enclosing a cheque for IR£3,000.[48] The letter read: '*Dear Liam, Enclosed herewith contribution towards the Election expenses. Congratulations on your re-election*.'

28.15 Mr Lawlor was re-elected a TD for the Dublin West constituency in the November 1992 general election.

28.16 No information regarding this cheque was provided by Mr Lawlor.

[47] See Exhibit 13.

[48] See Exhibit 14.

28.17 A lodgement to Mrs Hazel Lawlor's AIB account on 14 December 1992 in the sum of IR£3,000 may represent the IR£3,000 paid to Mr Lawlor by Mr Jones on 10 December 1992.

28.18 In his evidence to the Tribunal, Mr Jones professed to have no recollection of these payments of IR£2,000 and IR£3,000, although he accepted that he had made them to Mr Lawlor.

PAYMENT OF IR£300

28.19 Mr Lawlor's discovery to the Tribunal on 4 May 2001 included a copy of a cheque for IR£300 drawn on Mr Jones' personal account and dated 20 May 1993. A letter from Mr Jones accompanying the cheque indicated that it was a contribution towards a fundraising event at the Royal Hospital in Kilmainham, Co. Dublin.

MR LAWLOR'S INVOLVEMENT WITH MR DUNLOP AND MR JONES IN THE CONTEXT OF THE BALLYCULLEN LANDS

28.20 Mr Dunlop told the Tribunal that it was his belief that he was retained by Mr Jones in February 1991 on the recommendation of Mr Lawlor. Mr Dunlop recalled Mr Jones alluding to advice he had received by Mr Lawlor when they met for the first time in February 1991, and he suspected that Mr Lawlor was at that time in receipt of money from Mr Jones.

28.21 Mr Lawlor was a councillor in Dublin County Council until he lost his seat in the Local Elections of June 1991. Mr Lawlor was also at that time, and subsequently for many years, a TD in the Dublin West constituency.

28.22 Throughout the period 1991 to 1993, there was considerable contact between Mr Lawlor and Mr Dunlop, and it was likely that at least some of this contact related specifically to the proposals to rezone the Ballycullen lands. Mr Dunlop saw Mr Lawlor as a person of influence within the Fianna Fáil group of councillors on Dublin County Council, notwithstanding the fact that Mr Lawlor had lost his Council seat in June 1991.

28.23 The Tribunal was satisfied that by 1990 an established relationship existed between Mr Jones and Mr Lawlor and that the underlying basis for that relationship was the rezoning of the Ballycullen lands. Although Mr Jones admitted to a prior casual acquaintance with Mr Lawlor through their mutual business interests, and believed Mr Lawlor's interest in the Ballycullen lands first manifested itself in 1990/91, when he had been advised by Mr Lawlor during a

Fianna Fáil fundraising event to take on a business partner in relation to the project, the Tribunal was satisfied that in the years prior to 1990 Mr Lawlor had direct involvement in the efforts then being made to change the zoning status of the lands in question. Documents discovered by Mr Jones revealed that as far back as January 1988, Mr Jones' planner, Mr O'Malley, was making reference to Mr Lawlor's engagement with County Council officials and others in relation to the lands. Mr Lawlor was at that time himself an elected councillor.

28.24 Mr Jones and Mr Lawlor were known to each other from the 1980s, and Mr Lawlor provided advice to Mr Jones from the late 1980s in relation to, particularly, the rezoning of the Ballycullen lands. Mr Jones told the Tribunal that in 1990/91, he was advised by Mr Lawlor to take on a development partner with '*credibility*' in relation to the Ballycullen lands. Mr Lawlor introduced Mr Jones to Mr Joe Tiernan, an established developer, as a partner with '*credibility*'. Although negotiations took place between Mr Jones and Mr Tiernan, they did not enter into an agreement. Sums totalling IR£17,800[49] were paid to Mr Lawlor either directly or indirectly, by Mr Jones and/or Ballycullen Farms Ltd in the period 1990–93, and were the subject of inquiry by the Tribunal.

28.25 The Tribunal was satisfied that Mr Lawlor's interest in assisting Mr Jones' efforts in relation to the zoning status of the lands continued and that he played an active role in that regard up to October 1992 when the lands were rezoned.

28.26 Evidence to the Tribunal left it in no doubt but that Mr Lawlor was a valued advisor to Mr Jones during the currency of the Ballycullen rezoning campaign. For example, Mr Lawlor met with Mr Jones on 17 September 1992, some seven weeks prior to the Ballycullen rezoning vote, and on the same day he faxed a letter providing detailed advice to Mr Jones as to the steps to be taken to progress the Ballycullen rezoning project.

28.27 It was particularly in the context of this involvement that the four payments to Mr Lawlor by Mr Jones, of IR£5,000 (early 1991), IR£7,500 (July 1991), IR£2,000 (November 1992), and IR£3,000 (December 1992) were considered by the Tribunal.

28.28 The Tribunal was satisfied that the primary reason for the four payments to Mr Lawlor was recognition of the assistance provided by Mr Lawlor to Mr Jones in his capacity as an elected public representative. While Mr Jones

[49] IR£5,000 and IR£7,500 in 1991; IR£2,000 in November 1992; IR£3,000 in December 1992 and IR£300 in May 1993.

admitted as much in relation to the July 1991 payment to Comex, there was every indication that the rationale behind the other payments was similar, notwithstanding that the IR£5,000 was paid prior to the then expected Local Election of June 1991, and the IR£2,000 and IR£3,000 were paid immediately before and after the 1992 general election. In correspondence with Mr Lawlor on 16 November 1992, Mr Jones himself connected the IR£2,000 contribution to the '*good advice*' received from Mr Lawlor, to assist Mr Jones' rezoning endeavours.

28.29 None of the four payments to Mr Lawlor bore the hallmarks of legitimate political donations. In relation to the first two payments, the Tribunal was satisfied that they were paid following a request by Mr Lawlor. The request for, and payment to, Mr Lawlor of IR£5,000 in early 1991, at a time when Mr Lawlor was a sitting councillor, and at a time when he was fully apprised of Mr Jones' then and future intentions regarding the Ballycullen lands, was wrong and corrupt. These findings apply equally to the IR£7,500 Comex payment. The fact that Mr Lawlor was not a councillor at the time he received the IR£7,500 at the end of July 1991 did not, in the view of the Tribunal, diminish this finding in any way. The arrangement arrived at by Mr Jones and Mr Lawlor as to how this payment could be facilitated was, the Tribunal was satisfied, evidence of the fact that neither Mr Jones nor Mr Lawlor viewed this payment as anything other than a payment made for services rendered by Mr Lawlor.

28.30 The Tribunal was satisfied that the said payments amounting to IR£17,500 made by Mr Jones to Mr Lawlor in 1991/2, having regard to the fact that Mr Lawlor was at the material times an elected representative (including an elected councillor at the time of the first payment), and in that capacity in a position to exercise his vote and to influence fellow councillors, up to June 1991, and thereafter continue to exercise influence over councillors in his capacity as a TD, were corrupt.

CLLR PAT RABBITTE (DL)

29.01 Evidence to the Tribunal suggested that Cllr Rabbitte was lobbied by both Mr Dunlop and Mr Jones for his support for the rezoning of the Ballycullen/Beechill lands, although Cllr Rabbitte denied that Mr Dunlop lobbied him, and denied being aware that Mr Dunlop was associated with the Ballycullen lands. He voted in favour of the motion to rezone the Ballycullen lands on 29 October 1992 but did not attend the confirmation meeting on 28 October 1993. In this period, Cllr Rabbitte was the local Democratic Left councillor in the Tallaght area, the area in which the lands were situated, and a TD for Dublin South West.

29.02 Cllr Rabbitte was one of three Democratic Left councillors who had voted in favour of the rezoning of the Ballycullen lands on 29 October 1992. Prior to voting on that motion, Cllr Rabbitte had been lobbied by Mr Frank Brooks and Mr Oliver Brooks of Ballycullen Farms, and had, at their invitation, viewed the lands. The Brooks brothers had apprised him of the non-viability of the lands as a working farm, having regard to their location in a built-up urban area.

29.03 Cllr Rabbitte told the Tribunal that a discussion with his party colleagues prior to the vote on 29 October 1992 would have taken place as a matter of routine.

29.04 Cllr Rabbitte did not attend the special meeting of Dublin County Council on 28 October 1993 when the rezoning of the Ballycullen lands was confirmed, because of a commitment in Dáil Eireann. However, Cllr Rabbitte's two party colleagues, Cllrs Billane and Tipping voted to reverse the Ballycullen rezoning for which they had voted a year previously.

29.05 Cllr Rabbitte explained Cllrs Billane's and Tipping's change of view in relation to the rezoning of the Ballycullen lands by reference to a decision of Democratic Left to withdraw support for that rezoning. This decision was taken following media reports suggesting that the voting by some councillors on the rezoning of lands in the course of the review of the Dublin County Development Plan may have been improper or questionable. It also followed a discussion between Cllr Rabbitte and the journalist Mr Frank McDonald in relation to, amongst other issues, the rezoning of the Ballycullen lands in 1992.

29.06 Mr Dunlop in his evidence stated that, following the calling of the general election in early November 1992, he visited Cllr Rabbitte at his home and gave him a sum of IR£3,000 in cash as a political donation.[47] Mr Dunlop stated that he advised Mr Rabbitte that the donation was being made on behalf of a small number of Mr Dunlop's clients. Mr Dunlop told the Tribunal that he was certain that he referred to the name of Mr Jones and Cllr Rabbitte's support for Ballycullen at the time of making the donation. Mr Dunlop first made reference to his having mentioned Mr Jones' name to Mr Rabbitte in the course of his evidence to the Tribunal on Day 609. This issue had not been referred to in his earlier evidence to the Tribunal, nor in prior statements made to the Tribunal in relation to a payment to Cllr Rabbitte.

[47] On Day 148, Cllr Rabbitte's name had appeared on Mr Dunlop's '1992' list (of recipients of election contributions) at no 23, as a recipient of IR£3,000 cash, with a note stating that the sum had been later returned to him by means of a cheque.

29.07 Mr Dunlop maintained that in his selection of Cllr Rabbitte as a recipient of election funds, he was in reality engaged in '*a little bit of forward thinking',* having regard to the possibility that Cllr Rabbitte might be involved in a government. In fact Cllr Rabbitte did not become a member of the government that was elected following the 1992 general election. Cllr Rabbitte was appointed a Minister of State in the 'Rainbow' coalition government that was established on 15 December 1994.

29.08 Mr Dunlop claimed that Cllr Rabbitte readily accepted the donation. Mr Dunlop was certain that the payment constituted a legitimate political donation and did not carry with it any suggestion of a bribe, nor was it in any way motivated by any improper purpose. However, Mr Dunlop stated he would not have made the donation if Cllr Rabbitte had not voted in favour of the rezoning of the Ballycullen lands.

29.09 Cllr Rabbitte acknowledged that he received a cash political donation from Mr Dunlop in his home in November 1992, and that it was unsolicited. However he was certain that the amount was IR£2,000, and not IR£3,000, as claimed by Mr Dunlop. A party colleague of Cllr Rabbitte, Cllr Tipping, recalled being informed at the time that Mr Dunlop's payment to Cllr Rabbitte was IR£2,000.

29.10 In the course of his sworn evidence, Mr Dunlop acknowledged that, although he believed that the sum paid to Cllr Rabbitte in November 1992 was IR£3,000, it was possible that the sum was IR£2,000.

29.11 In the course of a private interview on 11 May 2000, Mr Dunlop told the Tribunal: '*I gave it to him, I have said to you IR£3,000, unless he provides the cheque and he says it was for IR£2,000. I would believe it then that it was for IR£2,000*.'

29.12 Cllr Rabbitte told the Tribunal that Mr Dunlop, having called to his home, stated to him that he wished to make a small donation to him on behalf of a small number of clients. Questioned by the Tribunal as to how he had interpreted this statement, Cllr Rabbitte said that the issue as to the identity of a small number of clients was not pursued at the time. Cllr Rabbitte said that he almost immediately told Mr Dunlop that the question as to whether or not the donation could be accepted would have to be considered by the Democratic Left party, which had a procedure in place for dealing with such issues.

29.13 Cllr Rabbitte said that the encounter between himself and Mr Dunlop lasted approximately half an hour. In the course of that meeting, Mr Dunlop

placed an envelope on Cllr Rabbitte's desk. Cllr Rabbitte said he only checked the content of the envelope and became aware of the amount of money involved after Mr Dunlop had left his house. Cllr Rabbitte said that in the course of their meeting, they discussed the election campaign, and particularly the question of Fianna Fáil's likely loss of seats and the Labour Party's likely gain of seats. Mr Dunlop advised Cllr Rabbitte at the meeting that he had been hastily recruited by Fianna Fáil to work as an election coordinator in its headquarters.

29.14 Cllr Rabbitte called into question Mr Dunlop's suggestion that his diary entry on 11 November 1992 (and which read '*PR at home'*)was a reference to their meeting in his home. Cllr Rabbitte accepted that there was some contact between himself and Mr Dunlop around this time, but remained certain that Mr Dunlop's visit to his home was unexpected. A record of telephone contact with Mr Dunlop's office for 10 November 1992 suggested that Cllr Rabbitte telephoned Mr Dunlop's office on that date.

29.15 Following the donation, a discussion was held between Cllr Rabbitte and his director of elections and other Democratic Left party colleagues, at which the decision was made to return the IR£2,000 donation to Mr Dunlop. A cheque to Mr Dunlop was duly dispatched, drawn on the Democratic Left party bank account. Mr Dunlop acknowledged receiving the cheque for IR£2,000.

29.16 Cllr Rabbitte told the Tribunal that the decision of his party to return the money to Mr Dunlop was made on his recommendation. Cllr Rabbitte explained that the basis for the decision was that it was perceived by himself and by his party that the payment was inappropriate in circumstances in which both he and the other Democratic Left councillors were required to vote in the context of the review of the Dublin County Development Plan on matters in which Mr Dunlop had an interest.

29.17 Cllr Rabbitte said that he telephoned Mr Dunlop prior to returning the cheque in order to explain the reasons why it was being returned. Cllr Rabbitte said that the decision to return the IR£2,000 donated by Mr Dunlop in the form of a cheque, rather than physically returning the cash itself, was taken for reasons of practicality. Cllr Tipping told the Tribunal that the decision to return the donation in the form of a cheque was made so as to ensure that there would be a record of the donation and its return, and this was done on Cllr Rabbitte's recommendation.

29.18 Cllr Rabbitte returned the cheque with a letter which read as follows:

> *Dear Frank,*
> *I refer to our discussion at the weekend and now enclose cheque as promised. I repeat that no offence is intended and I hope you will understand that. The decision was aimed at drawing a distinction between decisions pending and ones already decided* [in] *the normal way before the Election was called.*

THE TRIBUNAL'S CONCLUSIONS

29.19 As a matter of probability, having regard to the entry in Mr Dunlop's diary, the Tribunal concluded that Mr Dunlop's visit to Cllr Rabbitte's home took place on 11 November 1992. The Tribunal accepted the evidence of Cllr Rabbitte to the effect that the sum given to him by Mr Dunlop in his home in November 1992 was IR£2,000. It was satisfied that the sum was received by Cllr Rabbitte as a political donation, and that it was returned to Mr Dunlop in the form of a cheque drawn on the account of the Democratic Left party in December 1992, for the reasons stated. The Tribunal was satisfied to accept as a fact that the cash sum offered to Cllr Rabbitte by Mr Dunlop was IR£2,000, and not IR£3,000 having regard in particular to Cllr Rabbitte's evidence and that the fact that the cheque sent to Mr Dunlop returning the funds was for an amount of IR£2,000. The Tribunal also took account of the concession which Mr Dunlop himself made in the course of his private interview on 11 May 2000.

29.20 Cllr Rabbitte, having been paid IR£2,000 in cash by way of a political donation by Mr Dunlop in November 1992 at the time of the 1992 General Election, subsequently, through the Democratic Left party returned this donation (by way of cheque) to Mr Dunlop. The Tribunal was satisfied that Cllr Rabbitte and his Democratic Left colleagues returned the donation because of their appreciation of the inappropriateness of retaining it, in circumstances where Cllr Rabbitte and his colleagues were, as councillors, engaged in the making of a Development Plan for Dublin County Council and in circumstances where they were aware of Mr Dunlop's active involvement as a lobbyist for landowners engaged in pursuing land rezonings.

THE BROWN THOMAS MEETING

29.21 Mr Dunlop and Cllr Rabbitte agreed that they met by chance in Brown Thomas in Grafton Street in Dublin in 1997 or 1998, following the establishment of the Tribunal. The two men agreed that in the course of their brief discussion, reference was made to the Tribunal. Mr Dunlop claimed that Cllr Rabbitte, referring to the Tribunal and its inquiries, had stated to him that he '*presumed*

that that matter between us would never arise', which Mr Dunlop understood to be a reference by Cllr Rabbitte to the payment and return of the IR£2,000.

29.22 Cllr Rabbitte rejected Mr Dunlop's evidence on this issue. Cllr Rabbitte acknowledged, however, that shortly before this chance encounter, Mr Dunlop had telephoned him to enquire if Cllr Rabbitte recalled the exact amount of what Mr Dunlop referred to in the course of the telephone call as '*a certain non-donation'*, which Cllr Rabbitte understood to be a reference to the payment to him of IR£2,000 and its return to Mr Dunlop, in 1992.

29.23 Cllr Rabbitte advised the Tribunal that his reason for not referring to the IR£2,000 payment when providing information to the Tribunal by way of letter on 31 January 2000, was his belief that the said payment did not constitute a donation to him, as it had been returned to Mr Dunlop.

29.24 The Tribunal was satisfied that in their chance encounter in Brown Thomas in 1997 or 1998, following the establishment of the Tribunal, Cllr Rabbitte had not stated to Mr Dunlop, as alleged by Mr Dunlop, that he '*presumed that that matter between us would never arise'* in the Tribunal. The Tribunal was satisfied that at no time did Cllr Rabbitte inappropriately conceal reference to the payment of IR£2,000 and its return.

29.25 This decision was both commendable and correct.

CHAPTER FOUR – THE BALLYCULLEN / BEECHILL MODULE

EXHIBITS

1. Frank Dunlop & Associates submission dated 30 August 1991 re strategy for Ballycullen lands..... 1770

2. Motions dated 28 September 1992 signed by Cllrs Don Lydon and Tom Hand and accompanying maps..... 1778

3. Invoice from Frank Dunlop & Associates to Ballycullen Farms dated 20 February 1992, cheque stub 501384 (20/2) and Ballycullen Farms compliments slip dated 20 February 1992..... 1782

4. AIB cheque dated 6 November 1992 to Mr Frank Dunlop for IR£11,000 from Mr C Jones and copy letter of same date from Mr C Jones enclosing the cheque..... 1785

5. Copy front and back of cheque made payable to 'cash' dated 27 April 1992 and given to Cllr Don Lydon by Mr C Jones..... 1787

6. Copy front and back of cheque dated 12 November 1992 from Mr C Jones and made payable to Mr Don Lydon..... 1788

7. Pages from Mr Jones' diary, 4-10 October 1992..... 1789

8. Copy letter to Senator Don Lydon from Mr Chris Jones, 3 November 1993..... 1790

9. Copy front and back of cheque dated 9 December 1993 payable to 'cash' and signed by Mr C Jones and given to Mr Don Lydon..... 1791

10. Pages from Mr Dunlop's diary 7-13 September 1992..... 1792

11. AIB cheque from Mr C Jones dated 12 November 1992 to Mr G V Wright in the sum of IR£5,000..... 1793

12. Cheque stub dated 30 July 1991 recording payment of IR£7,500 to 'Comex Trading' from 'B/C/ Development', copy invoice to Jones Group from Comex Trading Corp dated 29 July 1991 for IR£7,500..... 1794

13. Copy front and back of cheque for IR£2,000 to Mr Liam Lawlor TD from Mr C Jones dated 16 November 1992..... 1796

14. Copy front and back of cheque for IR£3,000 to Mr Liam Lawlor from Mr C Jones dated 10 January 1992..... 1797

[redacted]

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FRANK DUNLOP

& ASSOCIATES

Return to report

SUBMISSION RE. STRATEGY

FOR

BALLYCULLEN LANDS

STRICTLY PRIVATE AND CONFIDENTIAL

SUBMITTED BY:
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FRANK DUNLOP & ASSOCIATES,
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TELEPHONE: 613543

30TH AUGUST, 1991

STRICTLY PRIVATE AND CONFIDENTIAL

LANDS AT BALLYCULLEN

DRAFT ACTION PLAN

(SUBMITTED TO MR. CHRIS JONES, FRIDAY, 30TH AUGUST, 1991)

1. CONTEXT:

Previous efforts vis-a-vis planning applications and re-zoning motions failed. The reasons for this failure are now irrelevant.

It is now necessary to work within the parameters and the specific timeframe of the public display of the County Dublin Draft Development Plan. The public display begins in a variety of locations throughout the county on Monday next, 2nd September, and will last for a full three months until Tuesday, 3rd December, 1991 (see attached public notice).

2. PROCEDURE:

Any individual or group is entitled to comment on, or make a submission to the County Council regarding specific provisions of the Draft Plan. Members of the public are also entitled to request a hearing and their views will be recorded by two Council officials who will incorporate such views into the officials' report to the elected members. Such comments and submissions are collated and filed until the display period has been completed. Each elected member is circulated with a copy of the maps used for the public display, together with copies of the comments and submissions made. A schedule of special meetings of the Council, specifically to consider the Plan, will be organised, probably beginning in mid-January, 1992. At those meetings each map, and the relevant comments and submissions, will be discussed in full, beginning with the North of the County and working South. The final decisions on the submissions will not be taken at these meetings but will be deferred to a further schedule of meetings, probably in [redacted].

When the elected members have finally considered and voted on all maps and submissions the County Council will display the agreed version of the Plan in public, for one month only. This display is for information only. Any comments from the public, be it individuals or groups, are not germane to the content of the Plan. They are regarded merely as observations.

When this month-long display has been concluded the Draft Plan is then officially promulgated as the Development Plan for County Dublin for a five year period.

3. Given the details outlined in paragraph 2 above it is now imperative to act as follows:

(a) **SUBMISSION:**

A detailed, fully integrated plan comprising:

- Business Park
- Residential
- Leisure (possible Golf Course)

must now be prepared by the architects, Murray O'Laoighre, which will form the basis of the submission by Mr. Jones to the Draft Development Plan display.

It is important to establish conclusively that no Environmental Impact Study is required until such time as an actual Planning Application is being made. We do not envisage a Planning Application being made until such time as we consider it of benefit in our interface with both planners and elected members.

TIMESCALE: IMMEDIATE
(see attached schedule of action)

RESPONSIBILITY: M U R R A Y
O'LAOGHAIRE

(B) PUBLIC AFFAIRS PROGRAMME:

Given the previous history of interaction with both planners and elected members vis-a-vis the Ballycullen lands we propose an intensive public affairs programme during the Public Display period but not before the finally agreed submission is ready. Copies of the submission, together with detailed maps in respect of our proposals will be made available to those elected members with whom we will have contact. It is vitally important that this contact is unified and cohesive. We recommend that all contact, unless otherwise required, be made by Frank Dunlop. This is a matter for discussion with Mr. Jones.

The most important points of contact relate to the new electoral County of South Dublin. There are 26 elected members in this electoral area. Within reason, and where judged appropriate, each one will have to be contacted and given a briefing as to what is proposed.

The following is our suggested programme of contacts, in order of priority:

Stanley Laing (FG, Chairman) Terenure
Breda Cass (PD) Tallaght/OldBawn
Michael Keating (FG) Greenhills
Pat Rabbitte (WP) Tallaght/OldBawn
Don Tipping (WP) Greenhills
Marie Mullarney (GR) Rathfarnham
Alan Shatter (FG) Rathfarnham
Mary Muldoon (FG) Rathfarnham
Pat Upton (Lab) Terenure

Cait Keane (PD) Terenure
Catherine Quinne (PD) Tallaght/Rathcoole
Eamon Walsh (Lab) Terenure
Mick Billane (WP) Tallaghe/Rathcoole
Therese Ridge (FG) Clondalkin
Colm Tyndall (PD) Clondalkin
Peter Brady (FG) Lucan
John O'Halloran (Lab) Lucan
Gus O'Connell (Community) Lucan

John Hannon (FF) Tallaght/Oldbawn
Ann Ormonde (FF) Rathfarnham
Sean Ardagh (FF) Terenure
Charlie O'Connor (FF) Tallaghe/Rathcoole
Margaret Farrell (FF) Greenhills
Colm McGrath (FF) Clondalkin
Finbarr Hanrahan (FF) Lucan

Mervyn Taylor (Lab) Greenhills

Other important points of contact will be:

G.V. Wright (FF Whip) Fingal County (Malahide)
Tom Hand (FG) Dun Laoghaire-Rahtdown (Clonskeagh)
Tom Kitt (FF) Dun Laoghaire-Rathdown (Dundrum)
Sean Barrett (FG) Dun Laoghaire-Rathdown (Glencullen)
Richard Conroy (FF) Dun Laoghaire-Rathdown (Ballybrack)
Liam Cosgrave (FG) Dun Laoghaire-Rathdown (Dun Laoghaire)
Betty Coffey (FF) Dun Laoghaire-Rathdown (Dun Laoghaire)
Marian McGennis (FF) Fingal (Mulhuddart)
Ned Ryan (FF) Fingal (Castleknock)
Sean Lyons (Community) Fingal (Castleknock)

There will also be a need to brief the following Government Ministers:

Seamus Brennan, TD
Mary Harney, TD
Chris Flood, TD

Contact with the above will be wither by Mr. Jones alone or Mr. Jones with Frank Dunlop.

PROPOSED ACTIONS SCHEDULE

MONDAY, 16TH SEPTEMBER '91:	Full meeting of: - Mr. Jones - Architects - Town Planners - Oliver Brookes - Frank Dunlop to finalise all elements of submission, including maps, drawings, colour, brochure and text.
MONDAY, 23RD SEPTEMBER '91:	Full meeting of: - Mr. Jones - Architects - Town Planners - Oliver Brookes - Frank Dunlop to review all elements of submission and to give imprimatur for submission.
TUESDAY, 17TH SEPTEMBER '91:	Submission re. Ballycullen lands to be made to: The Principal Officer, Planning Department, Dublin Co. Council, Block 2, Irish Life Centre, Lower Abbey Street, Dublin 1. It is recommended that the submission be accompanied by a request for a hearing with officials of the Council.

It also is recommended that a new name be given to the development, such as

(a) Ballycullen Business Park;

(b) Ballycullen Enterprise Park;

(c) Ballycullen Homes etc.

This is for consideration.

MONDAY, 30TH SEPTEMBER '91: Public Affairs Programme begins.

A report on all contacts made in the course of the programme will be made in writing by Frank Dunlop on the Friday of each week beginning on 4th October and continuing until such time as the programme is completed.

Return to report

FD.ST 1 - 70

1 (5)(9)

RE. MAP NO.

That Dublin County Council hereby resolves that the land at Ballycullen be zoned A1 and F as identified on the attached map.

The A1 area comprising 24.3 hectares and the area to be zoned F comprising 52.78 hectares.

It is proposed to preserve Ballycullen House for Heritage Centre purposes.

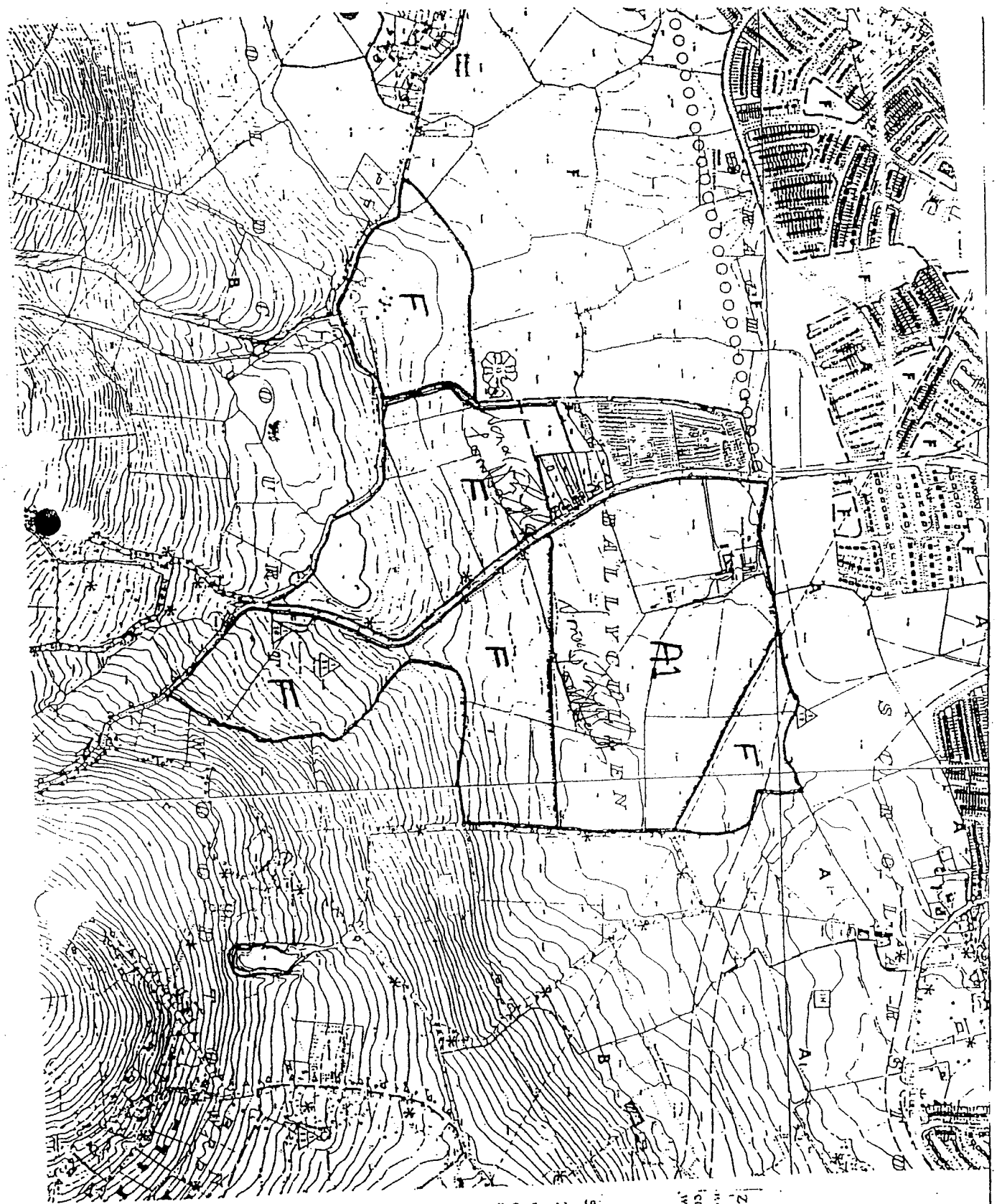
The attached map has been signed for identification purposes by the proposer and seconder of this motion.

Signed;

Monday, 28th September 1992

Return to report

FD.ST 1 - 71



24.3 hectares [60 acres

Zoning Objective ' A1'

"To provide for new reside
communities in accordance
with approved action area

52.78 hectares [130 acres]

Zoning Objective 'F'

" To preserve and provide
open space and recreation
amenities"

PROPOSED

NEW ZONING LAYO

Murray O'La

ASSOCIA

ARCHITECTS PLANNERS URBAN

BALLYCULLEN

SITE LOCATION/CONTOUR MAP

FD.ST 1 - 72

O. 25

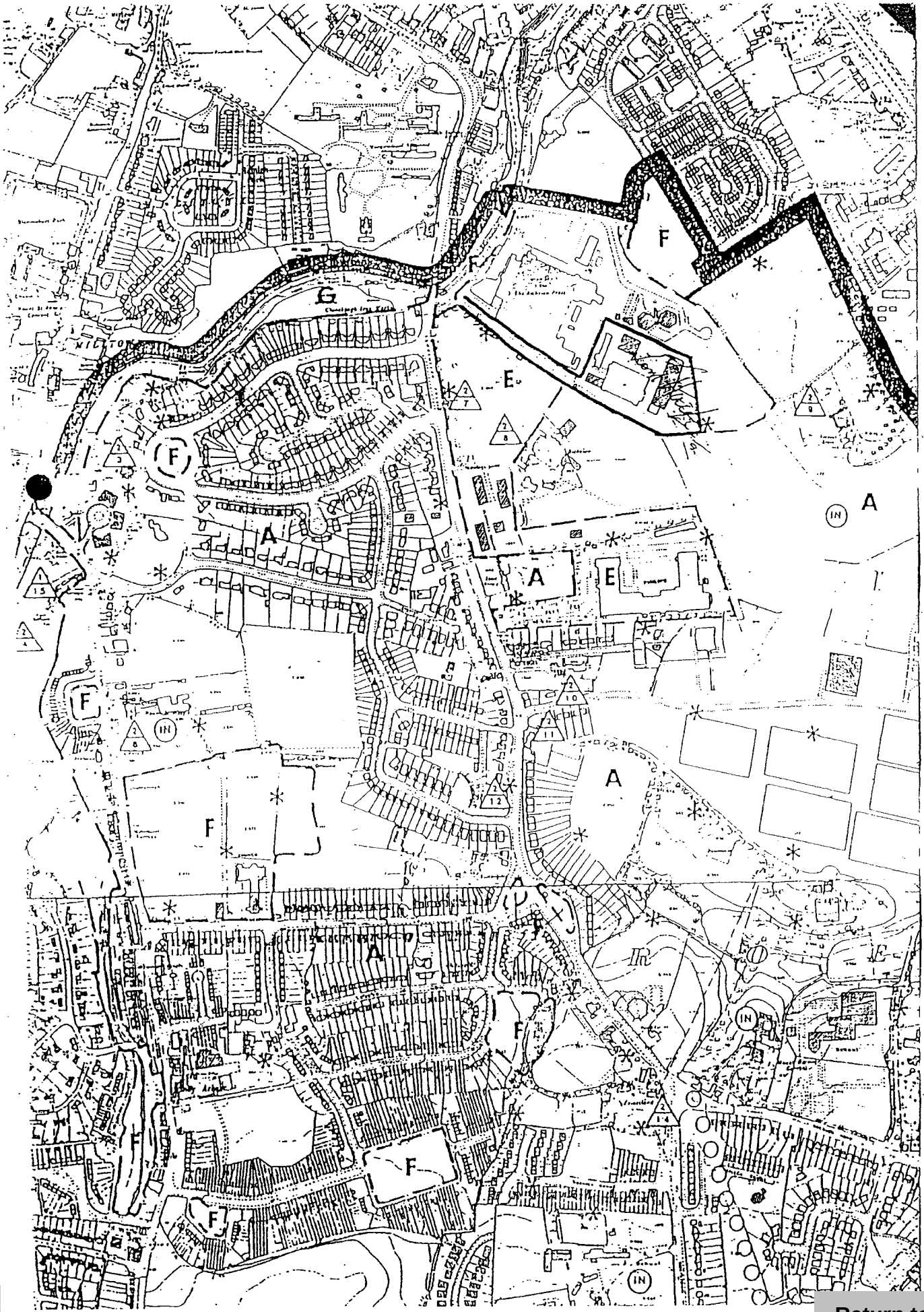
RE. MAP NO. 23

That Dublin County Council hereby resolves that the area identified on the attached map be zoned for office use to be compatible with the extensive office uses on the adjoining properties.

Signed; Tom Hand
Donal T. Lyons

Monday, 28th September 1992

FD.ST 1 - 73



Return to report

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Ms June Murphy,
Ballycullen Farms,
c/o The Jones Group,
Beech Hill,
Clonskeagh,
Dulbin 14.

20th February 1992

Invoice

To professional education and training services £5,000.00

VAT @ 0% ——

£5,000.00

chq. 1384
20/2/92

472

20/2 19

Frank Dunlop

BC Development

IR£ 5,000=

501384

BALLYCULLEN FARMS LTD. · BEECHILL CLONSKEAGH DUBLIN 4 · PHONE 01-2694300

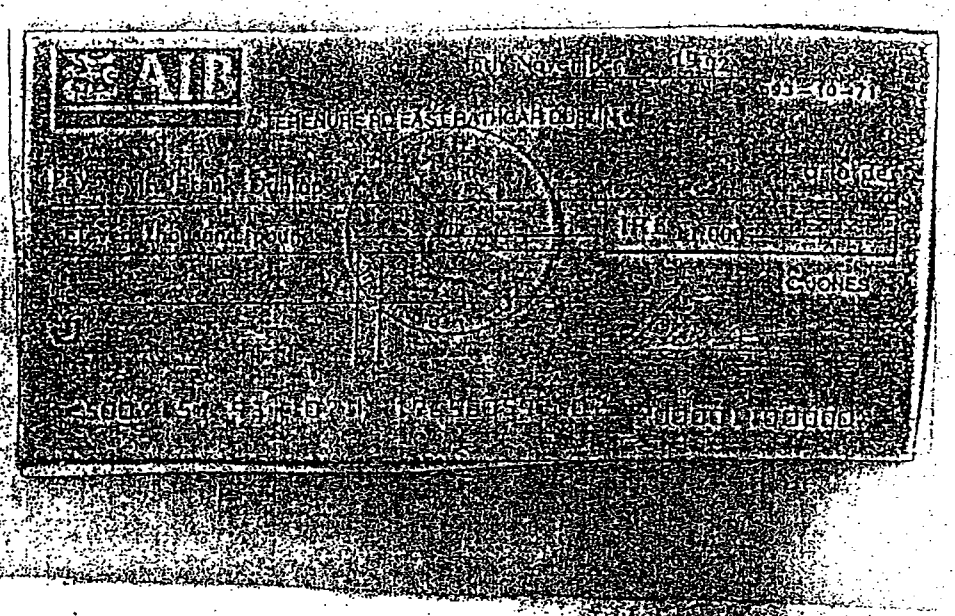
20th. Feb. '92 £5000.00 paid

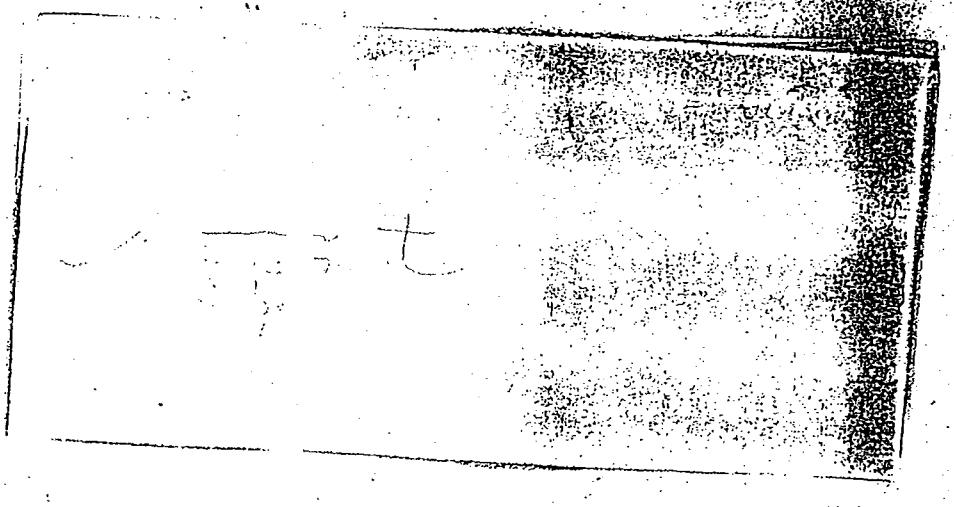
Ballycullen Farms

With Compliments

Return to report

Tribunal Ref : BALLYCULLEN/BEECHILL BRIEF **Page No: 3138**





1477

$ BALLYCULLEN

Mr. Frank Dunlop,
Frank J. Dunlop & Associates Ltd.,
25 Upr. Mount Street,
DUBLIN, 2.

6th November, 1992
CJ/MO'S

£11,000 - 00
C. JONES - No. 500715

Dear Frank,

Enclosed herewith cheque, as agreed.

Many thanks for all your help.

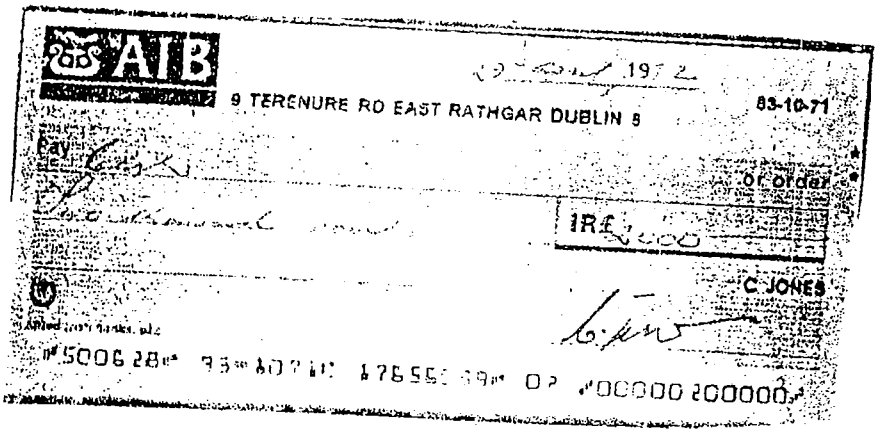
With best wishes,

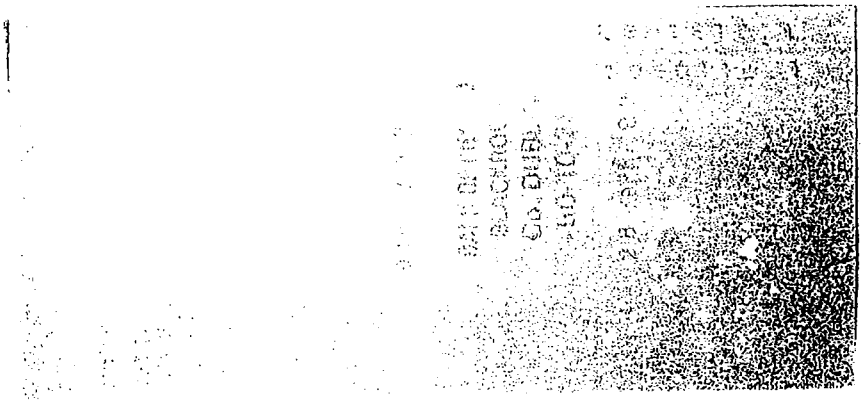
Yours sincerely,

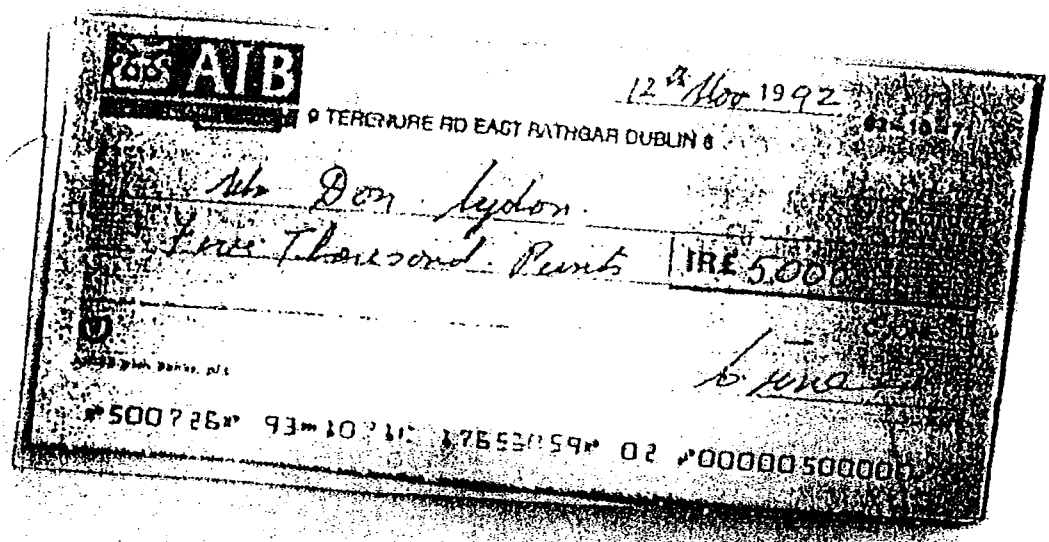
Chris Jones

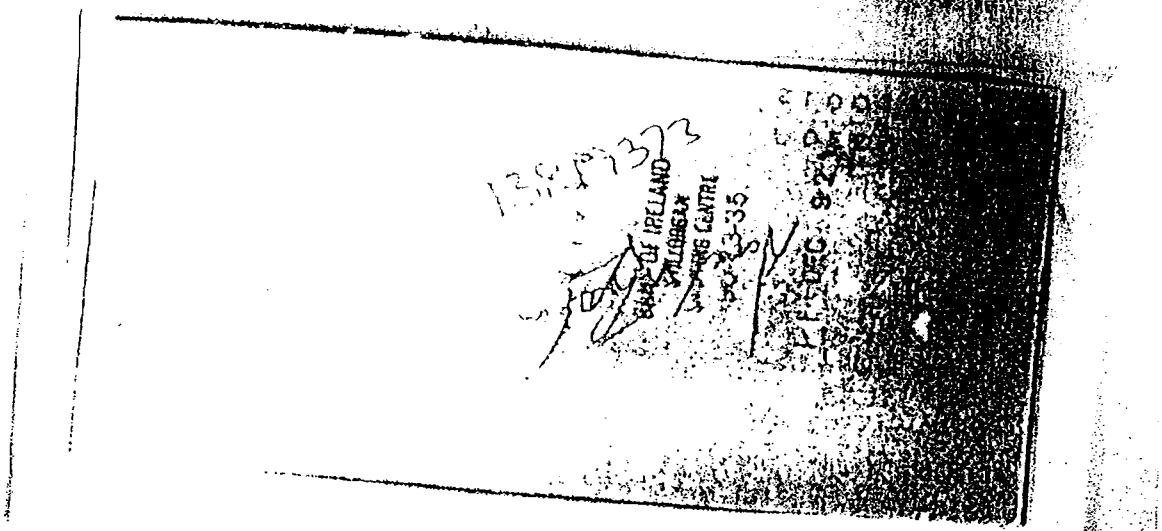
509

Return to report


AIB
9 TERENURE RD EAST RATHGAR DUBLIN 6
83-10-71
Pay
Or order
IR£
C JONES




AIB
9 TERENURE RD EAST RATHGAR DUBLIN 6
12th Nov 1992
Mr Don Leydon
Two Thousand Pounds
IR£ 5,000


BANK OF IRELAND
DEC

1476

OCTOBER 1993

4 Monday 277-88. WEEK 40

5 Tuesday 278-87. WEEK 4

6 Wednesday 279-86. WEEK

1993 OCTOBER

WEEK 40. 280-85

Thursday 7

9-30 a.m. James Group Board Meeting

Dinner Ancient Rally

7.30 Ennis

7.30 Jones Engineering

WEEK 40. 281-84

Friday 8

C.I.E. Leixlip

9 Saturday WEEK 40. 282-83

WEEK 40. 283-82 Sunday 10

Return to report

3rd November, 1993

Senator Don Lydon,
'Santo Antonio',
Stillorgan Park Avenue,
Stillorgan,
Co. Dublin.

Dear Don,

Thank you indeed for your nice letter and your kind remarks.

I need hardly say we are deeply indebted to you for all your help. I will contact you shortly and arrange to meet for a chat some evening.

Kindest personal regards,

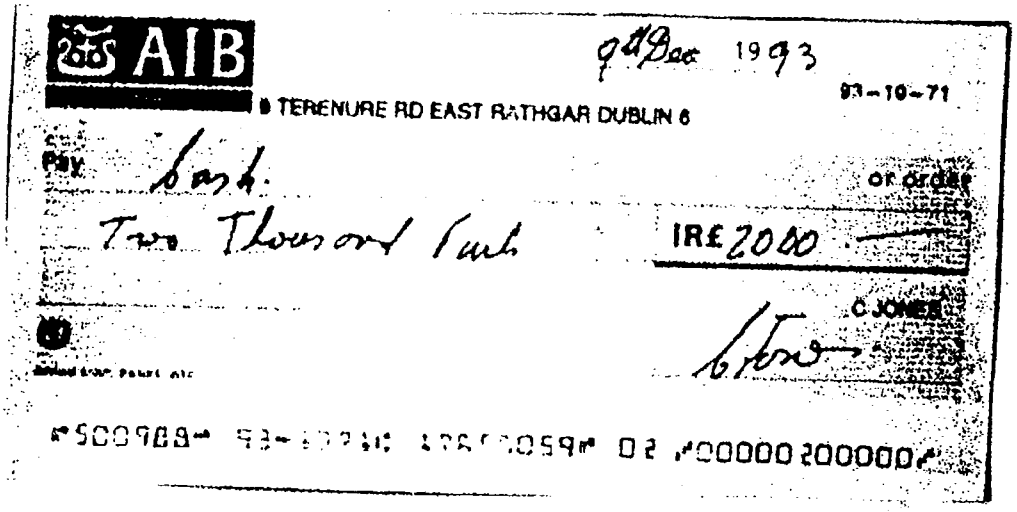
Yours sincerely,

514

Chris Jones

Mr C. Jones his letter from Mr Lydon

Return to report


AIB

9th Dec 1993

93-10-71

TERENURE RD EAST RATHGAR DUBLIN 6

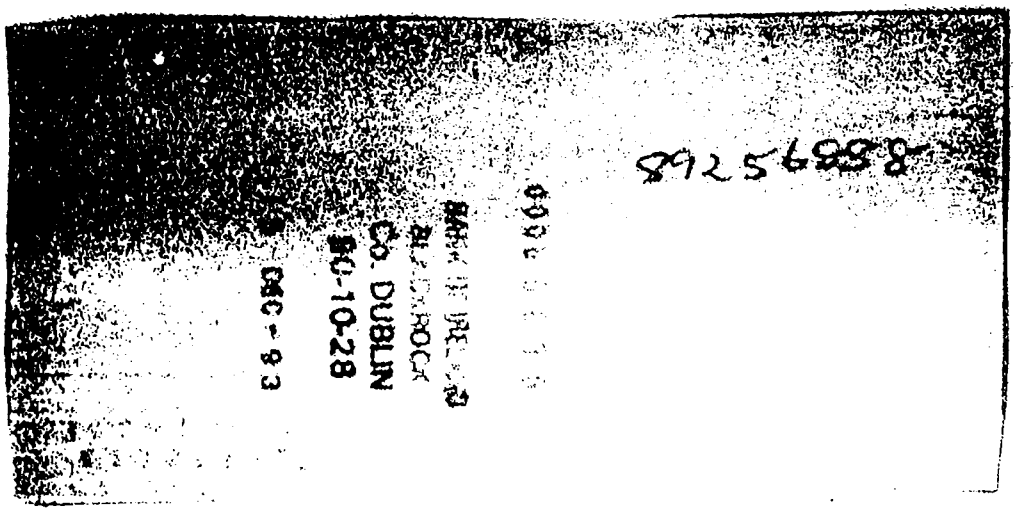
Pay Self.

Two Thousand Pnds. or order

IR£2000 —

C JONES

500988 93-10-71* 126[illegible]59* 02 *00000 200000*


8925688*

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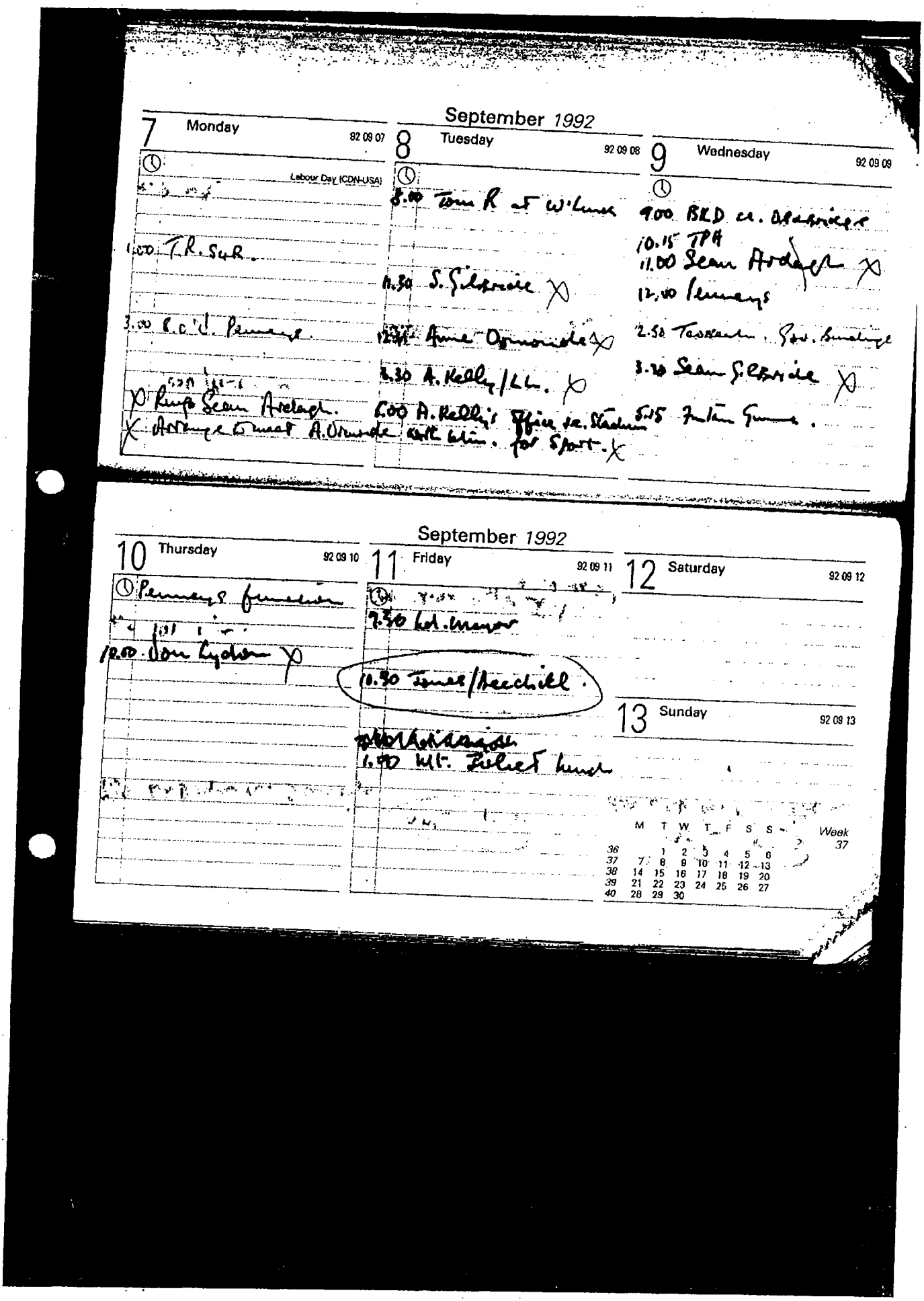
BANK OF IRELAND

BLACKROCK

CO. DUBLIN

93-10-28

93-93



September 1992

7 Monday 92 09 07

Labour Day (CDN-USA)

1.00 T.R. Sub.

3.00 R.C.J. Pennys.

Ring Sean Avelagh.

Arrange to meet A. Ormonde

8 Tuesday 92 09 08

8.00 Tom R at Wilsons

8.30 S. Gilsenan

12.30 Anne Ormonde

3.30 A. Kelly/LL.

5.00 A. Kelly's Office re. Statement

9 Wednesday 92 09 09

9.00 BLD re. Developers

10.15 TPH

11.00 Sean Avelagh

12.00 Pennys

2.30 Tasneem. Sov. Surplus

3.30 Sean Gilsenan

5.15 Julian Gunn.

for Sport.

September 1992

10 Thursday 92 09 10

Pennys funeral

12.00 Don Lydon

11 Friday 92 09 11

2.30 Kel. Manor

10.30 Tom R/Beechill.

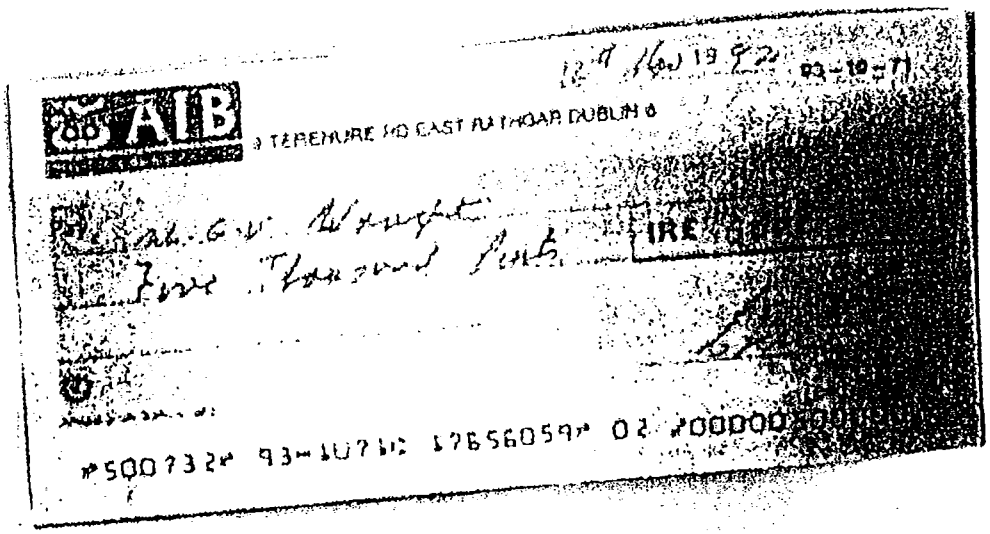
1.00 Mt. Juliet lunch

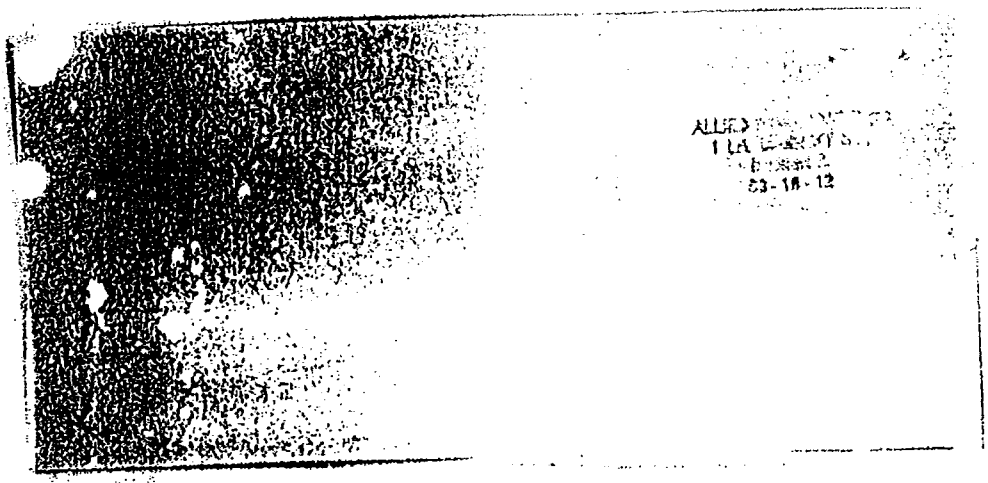
12 Saturday 92 09 12

13 Sunday 92 09 13

	M	T	W	T	F	S	S	Week 37
36		1	2	3	4	5	6	
37	7	8	9	10	11	12	13	
38	14	15	16	17	18	19	20	
39	21	22	23	24	25	26	27	
40	28	29	30					

Return to report





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Tribunal Ref : BALLYCULLEN/BEECHILL BRIEF
Page No: 1466

Tribunal Ref : CJ.BALLYCULLEN CHEQUES 1
Page No: 332

30.7.1991
Bonex Trading
B/C Development
£ 7500 —
01130
✓

Comex Trading Corp

Forestside
22 Castle Road
Camberley
Surrey GU15 2DS

Tel - Fax 0276-66810

29th July, 1991.

Jones Group,
Beech Hill,
Clonskee,
Dublin.

Ballycullen Des. Fund.

Project Reference B C D-1,000

Studies

Re. (A) Demographics.

(B) Stategic Planning.

Account as agreed £ 7,500

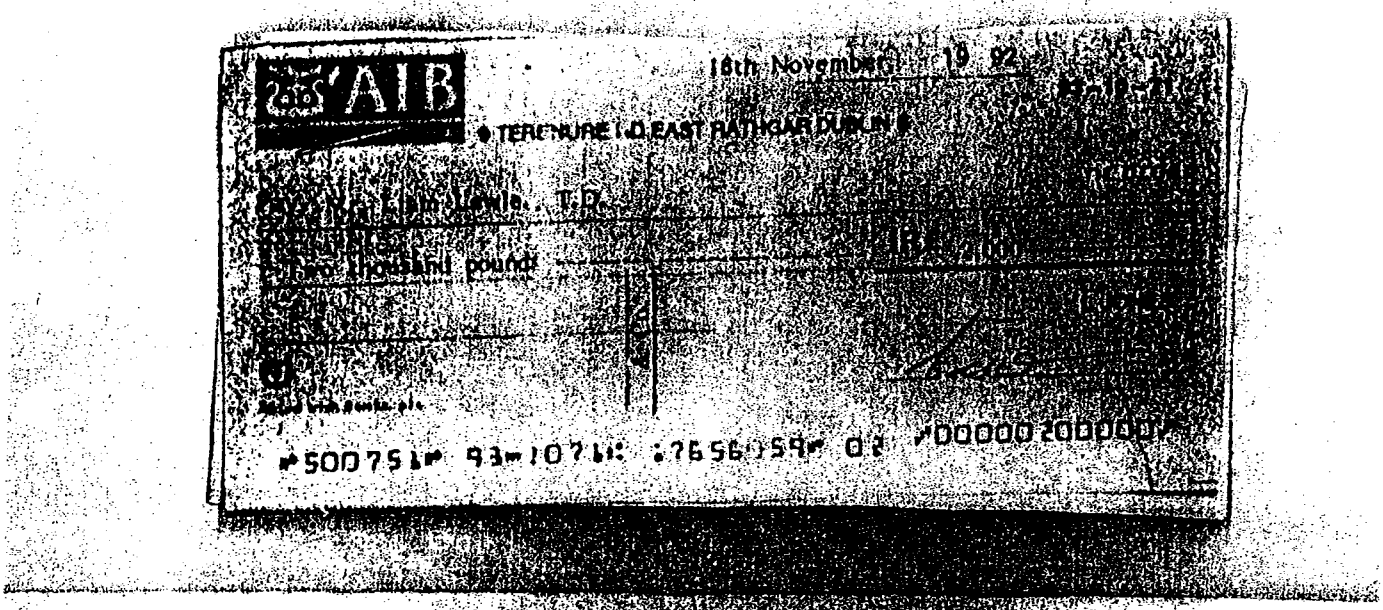
Vat zero rate

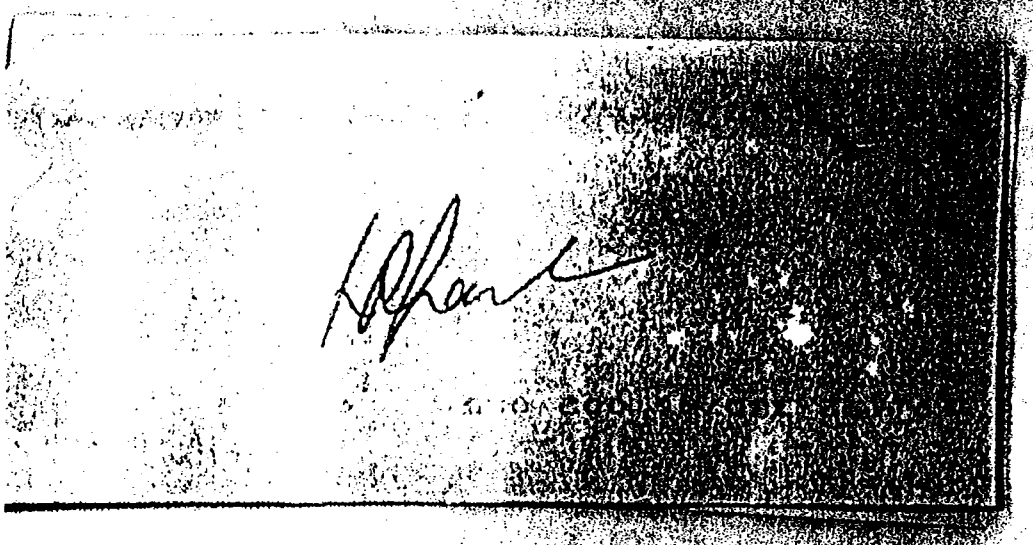
Amount Due £ 7,500

Paid
501130
30/7/91

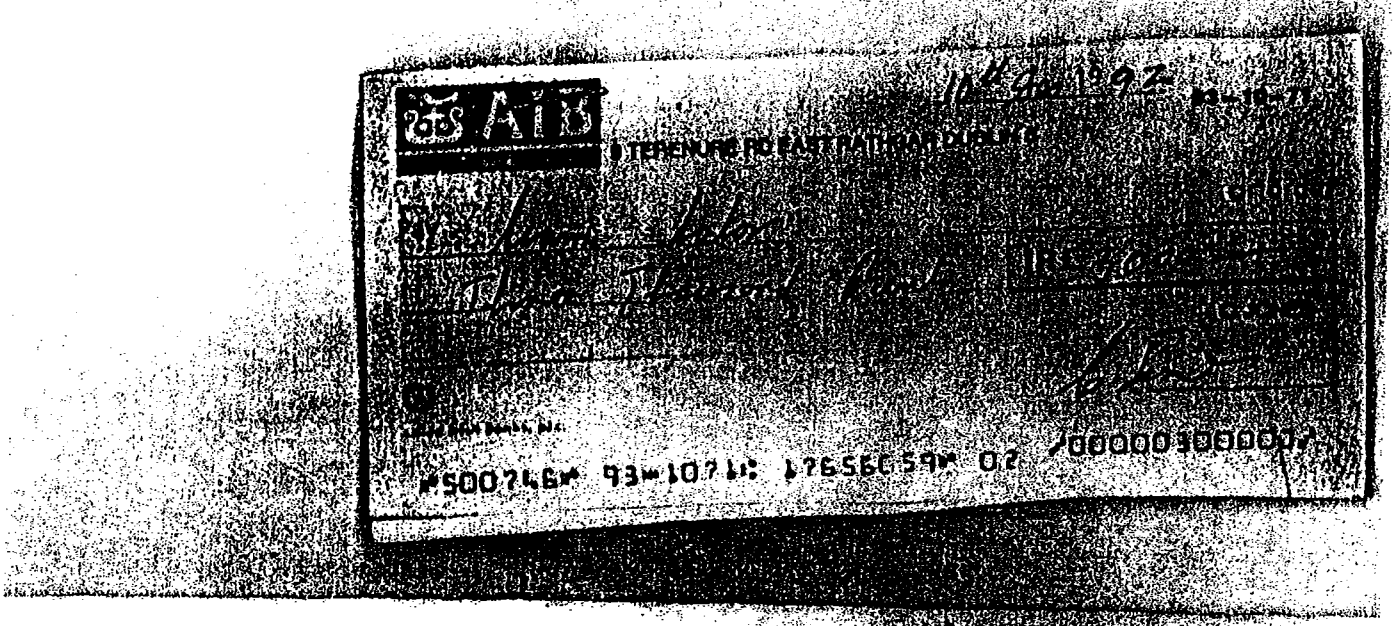
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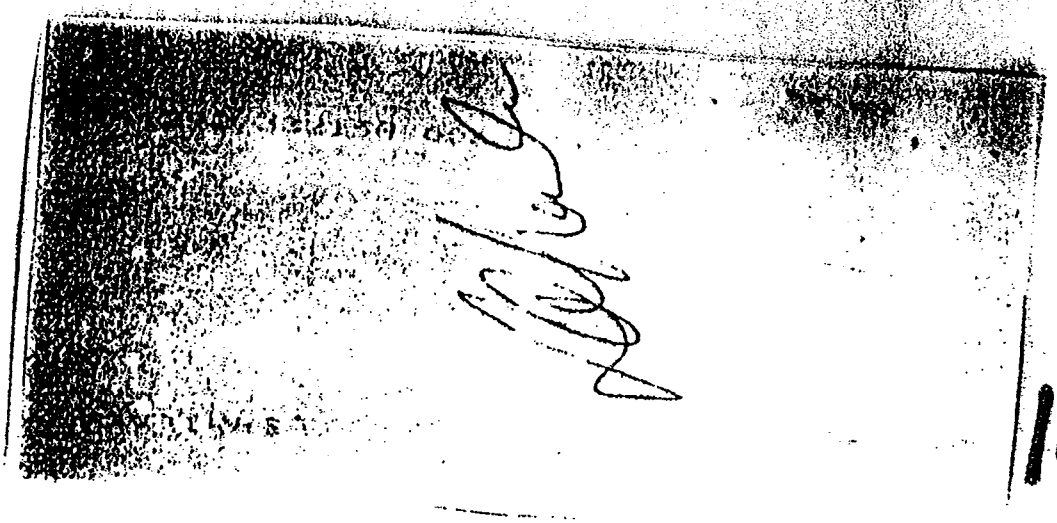
Return to report


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16th November 19 92
TERENURE I.D. EAST RATHGAR DUBLIN
T.P.
two thousand pound
500751 93-107 7656159 02 00000 200000



1478





1479

Return to report

CHAPTER FIVE – THE PYE LANDS MODULE

INTRODUCTION

1.01 In this module, the Tribunal examined the zoning and planning history of the Pye lands in the 1980s and 1990s. The Tribunal considered the involvement of Mr Dunlop in relation to the project to rezone the Pye lands, and the involvement of certain councillors in that process. In particular, it considered the allegations made by Mr Dunlop that he paid sums totalling IR£4,000 to three named councillors (Cllrs Tom Hand, Donal Lydon and Tony Fox) in return for their support of the rezoning of the lands.

1.02 The Pye lands were located in Dundrum in south Co. Dublin, close to Dundrum Village Centre. The lands extended southwards from Dundrum Cross to lands which were in the ownership of Powers Supermarkets Ltd in 1992 (the Crazy Prices lands). The lands constituted in effect what is today the Dundrum Town Centre.

1.03 In the 1960s and 1970s, the Pye lands were in the ownership of Pye Ireland Ltd, which operated a manufacturing plant on a portion of the lands. In the 1970s, the commercial viability of the company's manufacturing operations failed, so that by approximately 1980 Pye's major asset, apart from rental income, consisted of its lands.

1.04 Mr Aidan Kelly was the Managing Director of Pye Ireland Ltd from approximately 1982, and from about that time Mr Kelly concentrated on Pye's ambition to enhance the value of its land holding, which necessarily involved the rezoning of some of those lands.

1.05 By the early 1970s, a portion of the Pye lands had been transferred into the ownership of Albafare Ltd, a wholly owned subsidiary of Powers Supermarkets Ltd (Crazy Prices). In 1984, a further portion of lands was transferred to this company. The ownership of Albafare was unconnected to Mr Kelly/Pye, although there was some collaboration subsequently between Mr Kelly and Powers Supermarkets Ltd/Crazy Prices in relation to zoning and planning permission issues.

1.06 In 1988 Pye Ireland (Mr Kelly) reached agreement with Donlay Ltd (a company owned and controlled by Mr Joseph Layden and Professor Barry O'Donnell), as a result of which ownership of the then remaining Pye-owned lands was transferred to a number of legal entities, Cabriole Construction Ltd (Cabriole), Dundrum Property Investment Company Ltd (DPIC), Dalehall Ltd (Dalehall) and Prisdine Construction Ltd (Prisdine).

1.07 The landholdings owned by Cabriole and Prisdine were divided geographically by the then-proposed Dundrum bypass, with the Cabriole lands located to the east of the proposed bypass and the Prisdine lands located to its west. The Dundrum bypass was subsequently constructed.

1.08 The agreements entered into from about 1988 between Pye/Mr Kelly and Mr Layden and Professor O'Donnell created, in effect, a joint venture-type arrangement which had as its main aim the enhancement of the value of what remained of the Pye lands, by bringing about the zoning and planning changes necessary for this purpose. Mr Layden, in evidence, described the objectives as follows:

1) To obtain planning permission for the Prisdine lands (zoned A (residential) in the 1983 Plan),
2) To have the Cabriole lands rezoned for retail development,
3) To enter into a joint venture agreement with Powers Supermarket,
4) To enhance the quality of the units in the old Pye buildings.

1.09 As a result of the agreement negotiated in 1988, from that time until November 1991 (when the joint venture arrangement ended), Mr Kelly and Mr Layden spearheaded the plans to develop the Pye lands.

THE PLANNING AND ZONING HISTORY OF THE LANDS TO MAY 1991

1.10 In the period leading up to the formulation of the 1983 Dublin County Development Plan, various uses for the Pye lands were proposed, both by Mr Kelly and by the County Council. The 1983 Dublin County Development Plan zoned the Pye lands, partly A (residential), partly E (industrial) and partly C1[1] (limited commercial development). These zonings did not provide for any further retail development, and Mr Kelly considered retail development to be vital for the commercial viability of the lands.

1.11 In 1988 Mr Kelly's and Mr Layden's efforts were concentrated on developing the Prisdine lands (zoned A in the 1983 Plan). In a '*without prejudice'* letter from Dublin County Council to Mr Kelly on 30 September 1988, it was stated that it was unlikely that the Council would have any objection to the residential development being proposed for the these lands, but Mr Kelly was advised that the proposal for the commercial development of the lands constituted a material contravention of the 1983 Dublin County Development Plan, and as such would require the sanction of the councillors.

[1] The C1 zoning pertained to the lands which included the Crazy Prices supermarket.

1.12 In 1989 a planning application for residential development on the Prisdine lands was lodged with Dublin County Council, in the name of Donlay Ltd. Planning permission for 86 houses (with conditions) was duly granted on 28 July 1989 and upheld on appeal.[2] The matter of a material contravention to obtain the sanction of the councillors for the commercial development for the Prisdine lands was not pursued, largely, it appeared, because of advice given by Kiaran O'Malley & Co (a firm of planning consultants retained by Donlay Ltd) to Mr Kelly and Mr Layden to have the Pye lands '*rezoned in the imminent Review*', a procedure which would remove the '*issue of principle in relation to the retail development*', thus allowing for a planning permission application to be made for a substantial retail component on the lands.

1.13 While the discussions between Mr Kelly and County Council officials were ongoing in 1988/9, Dublin County Council had embarked upon its review of the 1983 Development Plan. In 1990, the Draft Plan for the Review of the 1983 Plan was produced by the County Council. This 1990 Draft Plan (Map 23) showed the Pye lands retaining their 1983 zoning, being partly A, partly E, and partly C1.[3] The C1 zoning reflected the Crazy Prices supermarket development which then existed on those lands. At a special meeting of the County Council on 10 May 1990, the plans for the Pye lands were '*noted*'.

1.14 Following upon the publication of the 1990 Draft Plan, Kiaran O'Malley & Co lodged a submission with the County Council on 13 November 1990 in respect of the Pye/Cabriole lands east of Dundrum bypass seeking C (town/district centre facilities) zoning for those lands. This submission was rejected by the County Council at that time. However, the opportunity to seek a change of zoning for the lands arose in early 1991 when members of the County Council were afforded the opportunity to submit motions in advance of the Draft Plan being placed on its first statutory public display.

1.15 On 17 January 1991, Cllrs Paddy Hickey and Olivia Mitchell lodged a motion proposing:

> *That Dublin County Council hereby resolves that lands at Pye lands, Sandyford Road, Dundrum, Dublin 16 outlined in red on the attached map, comprising about fifteen acres and which has been signed for identification purposes by the proposer and seconder of this motion, be zoned for 'C' ('to protect, provide for and/or improve town/district centre facilities') in the Draft Review of the County Dublin Development Plan.* [4]

[2] These lands were never the subject of any rezoning application.
[3] A portion of the lands north of Dundrum village was zoned C2.
[4] A C zoning would allow Mr Kelly and Mr Layden to build major retail outlets on the lands.

1.16 The lands identified in this motion were largely in the ownership of Cabriole and also included the Crazy Prices site to the south of the Pye lands, and a small portion of land owned by Albafare.

THE CIRCUMSTANCES WHICH LED TO THE LODGING OF THE HICKEY/MITCHELL MOTION

1.17 Mr Layden testified that at his and Mr Kelly's behest, Cllrs Hickey and Mitchell agreed to propose the motion. Mr Layden stated that the motion had cross-party (Fianna Fáil/Fine Gael) support. As of 1991 Mr Kelly understood that if a councillor signed a motion, more often than not he or she would have the support of his or her own party colleagues.

1.18 On 30 January 1991, Mr Layden wrote to the two councillors thanking them for their support and providing details of the proposed development of the lands that were the subject of the motion. As of 19 February 1991, Mr Kelly and Mr Layden, in a meeting with representatives of Quinnsworth (Crazy Prices) supermarket, were in a position to advise that '*an application for rezoning of the entire site (the Cabriole lands) is now being considered by Dublin Co. Co. Cabriole stated that the rezoning proposal had the backing of both Fianna Fáil and Fine Gael councillors.*' They also advised that '*a successful change of zoning will smooth the path of the application through the planning process.*'

1.19 The note of this meeting also documented (although crossed out) a reference that the Labour Party were '*likely to agree to abstain*' on the vote on the motion. Mr Layden acknowledged, however, that on the day of the vote (31 May 1991) the Labour Party councillors voted against the motion.

1.20 At a special meeting of Dublin County Council held on 31 May 1991, the Hickey/Mitchell motion was passed by a large majority (26 for and 3 against) of councillors, despite the objection of the County Manager, who advised the councillors that the proposed zoning would have an adverse effect on the old Dundrum village.

1.21 Following the successful passing of this motion, the Draft Development Plan was placed on its first statutory public display between September and December 1991, and the Pye lands were shown zoned C (including the Crazy Prices portion), and a further portion of the Pye lands in the ownership of Cabriole was zoned E (as it had been in the 1983 Plan). Mr Kelly, in evidence, described himself as being well satisfied by the outcome of the 31 May 1991 vote.

THE DISSOLUTION OF MR KELLY'S AND MR LAYDEN'S JOINT VENTURE/PARTNERSHIP

1.22 In late 1991, the joint venture-type arrangement between Mr Kelly and Mr Layden came to an end, and the two went their separate ways. Mr Layden/Professor O'Donnell, through their companies, became the owners of the (Prisdine) lands west of the Dundrum bypass, while Mr Kelly retained ownership of the remaining lands (including the Cabriole lands east of the proposed bypass). Mr Layden's and Professor O'Donnell's company Donlay Ltd also retained a right of way over the Kelly/Cabriole lands, and remained under an obligation[5] to construct a link road over these lands to the Dundrum bypass.

1.23 Donlay took a charge over the Pye lands owned by Mr Kelly's companies in respect of monies then owed to Donlay.

1.24 Notwithstanding the parting of the ways of Mr Kelly and Mr Layden, the latter continued to play a role in relation to the Cabriole/Pye lands in that he had agreed in mid-1991 to assist on a fee-paying basis in whatever planning application would be made by Cabriole and Crazy Prices in regard to the lands which had been zoned C on 31 May 1991. Furthermore, the evidence established that Mr Layden on occasions also continued to play a role in relation to the continued efforts to secure a change of zoning for the Pye lands, particularly in the years 1993 to 1995. Mr Layden testified that his continued involvement in the rezoning efforts was motivated by the fact that his company Donlay was owed money by Mr Kelly, secured by way of a charge over the Pye lands then in Mr Kelly's ownership. It was therefore in Donlay's interest to underpin the value of the lands.

THE EVENTS LEADING TO THE SPECIAL MEETING OF 16 OCTOBER 1992

1.25 In the course of the September to December 1991 display period, Kiaran O'Malley & Co lodged a submission supporting the C and E zonings in the Draft Plan, while a submission from the Labour Party opposed the C zoning and sought instead an A zoning, together with provision for a hotel and tourism facility for the lands.

1.26 During the months of April and May 1992, and notwithstanding her previous support for a C retail zoning for the Pye lands, what can best be described as a plethora of motions was lodged by Cllr Olivia Mitchell with the County Council, the majority of which had adverse implications, either directly or indirectly, for the zoning status of the Pye lands as then displayed on the Draft

[5] An obligation imposed by the planning permission granted in 1989.

Plan. Likewise, Cllr Eithne Fitzgerald submitted motions which equally had adverse implications for Mr Kelly's zoning ambitions for his lands. Throughout the summer months Cllrs Mitchell and Fitzgerald met and corresponded with Mr Kelly in relation to the lands. By 3 September 1992 it was evident that the proposals being put forward by the two councillors for the Pye lands, individually and jointly, were poles apart from Mr Kelly's plan for a town/district centre. Thus, by late September 1992 efforts on the part of Mr Kelly and the said councillors to reach a compromise position came to naught.

1.27 On 3 September 1992 a joint motion signed by Cllrs Mitchell and Fitzgerald proposed that the zoning of the Pye lands revert to the 1983 Development Plan position, namely a zoning of A, E, and C1. In addition, this motion proposed that a specific objective be written into the Draft Written Statement in relation to the Pye lands, namely that it be County Council policy to encourage and promote the development of the area for tourism-related, recreational and/or light industrial uses. Cllrs Mitchell and Fitzgerald envisaged that these zonings would be complementary to the commercial function of the existing village core at Dundrum. If passed, the result of this motion would be to remove the C zoning that had been achieved on 31 May 1991.

1.28 The Tribunal was satisfied that the Mitchell/Fitzgerald motion, together with the correspondence sent by Cllr Mitchell to Mr Kelly on 4 September 1992, in all probability led to the submission of a motion in the names of Cllrs Hand and Lydon, in advance of the special meeting of the Council of 16 October 1992.

1.29 Mr Layden in effect advised the Tribunal that he had no involvement in procuring the motion signed by Cllrs Lydon and Hand. Mr Layden stated that he was not asked by Mr Kelly in 1992 to become involved in lobbying councillors in relation to this motion.

1.30 There was evidence before the Tribunal, however, of Mr Layden being urged, in a letter from Mr O'Malley (the planning consultant) on 29 April 1992, to renew contacts with elected representatives. Mr O'Malley's letter stated:

> *We understand that the Council is considering representations countrywide so it might be very appropriate if you were to have a word with your own supporters to emphasise your support for the proposed zoning naturally, and to counter any objections that have been filed, and I'm sure there are several, by other competing interests, such as local residents, other retailers, etc., etc.*

In other words it'd be well worthwhile renewing contact with your local elected representatives at this stage and maintaining them perhaps for most of 1992.

1.31 The Tribunal was satisfied that in the months leading to the special meeting of 16 October 1992, Mr Kelly certainly canvassed councillors in support of his plans for the lands and in support of a compromise position he was suggesting, in light of the various motions which had been lodged individually and jointly by Cllrs Mitchell and Fitzgerald.

1.32 Mr Kelly retained the services of Mr Frank Dunlop in the period from 28 September to 16 October 1992 (the date of the special meeting at which the zoning of the Pye lands was considered).

1.33 The zoning of the Pye lands was considered at a meeting of Dublin County Council held on 16 October 1992. Among the issues for consideration, in addition to the motions which had been submitted by Cllrs Mitchell and Fitzgerald individually and jointly, was the motion signed by Cllrs Lydon and Hand proposing a C zoning for the majority of the Pye lands, and an E zoning for a portion of the lands, which would also allow for tourism and recreational developments. If passed, this motion would have effectively copper-fastened the zoning status achieved for the Pye lands at the meeting of 31 May 1991.

THE SPECIAL MEETING OF 16 OCTOBER 1992

1.34 Mr Kelly's objective in this regard was not realised. His plans were met with resistance, both from County Council officials and from Cllrs Mitchell and Fitzgerald by way of the motions which had been submitted by them in the period leading up to the special meeting of 16 October 1992. In the course of that special meeting, Cllr Mitchell's proposal to adopt a C2 zoning for Dundrum village, with the proviso that such zoning would include the potential for major retail development for the village, was put to a vote, and was passed unanimously. Following the withdrawal by Cllr Fitzgerald of a motion she had submitted, which related in part to the Pye lands, the next motion put to a vote was the Mitchell/Fitzgerald motion that had been lodged on 3 September 1992, and which proposed the retention of the 1983 Development Plan zoning for the lands. This motion was passed, with 30 councillors voting in favour, 23 against and 1 abstention. Included in the list of councillors voting against this motion were Cllrs Lydon, Hand and Fox. As a consequence of the success of the Mitchell/Fitzgerald motion, the Hand/Lydon motion (which proposed the retention of the C zoning on the lands with a portion to be zoned E) fell.

1.35 The passing of the Mitchell/Fitzgerald motion resulted in the Pye lands reverting to their 1983 zoning of A, E and C1, so that for all intents and purposes, the zoning which had been achieved by Mr Kelly in May of 1991, was undone.

1.36 In June 1993, in the wake of the success of the Mitchell/Fitzgerald motion, the County Council voted unanimously to insert into the Draft Written Statement a specific objective that as far as the Pye lands were concerned it would be County Council policy to encourage and promote the development of the area for tourism-related recreational and/or light industrial uses.[6] This was the objective that went on public display in July to August 1993.

THE RETENTION OF THE SERVICES OF MR FRANK DUNLOP IN RELATION TO THE PYE LANDS AND RELATED MATTERS

2.01 Over the course of giving his evidence on Days 145 to 148, Mr Dunlop provided a series of lists to the Tribunal in which he identified a number of individuals and companies who had retained him as a lobbyist and from whom he had received money. None of those lists made reference to the Pye lands or to Mr Kelly, nor did Mr Dunlop list any councillor as having been in receipt of monies from him in connection with the zoning of those lands. Mr Dunlop did, however, make passing reference to the Pye lands in the course of a private interview with Tribunal counsel on 11 and 12 May 2000. When asked about the lands, he made reference to Mr Kelly having approached him regarding same. However, Mr Dunlop did not then allude to his having paid any councillor in respect thereof. In his October 2000 statement Mr Dunlop said, with reference to the Pye lands:

> *To the best of my recollection and belief I received a sum of approximately IR£5,000 from Aidan Kelly in connection with this development in Dundrum. I paid Messrs. Lydon and Fox a sum of IR£1,000 each for their support for this development. I also paid Mr Hand a sum of IR£2,000 for his support for this development.*

2.02 There was no dispute but that Mr Dunlop was in fact retained by Mr Kelly as a lobbyist in 1992.

2.03 In the October 2000 statement Mr Dunlop told the Tribunal that the inclusion of an asterisk beside a particular development denoted that monies were given to him with regard to that development in the full knowledge that

[6] Paragraph 3.2.9 of the Written Statement. The objective was to protect the commercial viability of old Dundrum Village for which major retail shopping was provided for in the 1993 Plan.

payments to councillors were required to achieve support. Mr Dunlop placed an asterisk beside the words '*Pye lands'*. On 13 September 2001, in response to a letter from the Tribunal on 6 July 2001, Mr Dunlop stated that to the best of his recollection he paid the cash sums of IR£1,000 each to Cllrs Lydon and Fox. The payment to Cllr Lydon may have been made either at his workplace at St John of God, Stillorgan, or in the environs of Dublin County Council. The payment to Cllr Fox was made, Mr Dunlop stated, either in the environs of the County Council or in the environs of the Royal Dublin Hotel. Mr Dunlop's belief was that the payments were made to those councillors in or about April 1992, Mr Dunlop believing that the motion in question may have been voted on in April/May 1992.

2.04 In that same 2001 statement, Mr Dunlop also outlined that, to the best of his recollection, he received the IR£5,000 in cash from Mr Kelly in or about April 1992 in the environs of the Royal Dublin Hotel.

2.05 On 24 January 2007, subsequent to a brief of documentation having been circulated to him in advance of the Tribunal's public hearings into the Pye Lands Module, Mr Dunlop furnished another (unsigned) written statement wherein he repeated the details previously given with regard to Cllrs Lydon and Fox and stated that his payment to Cllr Hand was made in the environs of Dublin County Council's offices.

MR DUNLOP'S SWORN TESTIMONY

2.06 Mr Dunlop accounted for his failure to identify the Pye lands/Mr Kelly and the councillors whom he alleged he paid when giving evidence to the Tribunal on Day 148 on the basis that on that particular day his concentration was perhaps on '*heavier or more prominent items or items that had more impact on me.*'

2.07 Mr Dunlop told the Tribunal that in or about September 1992[7] he was retained as a lobbyist on behalf of Mr Kelly. Mr Dunlop stated that his retention came about following an approach made by Mr Kelly to him in the environs of Dublin County Council, namely at the Royal Dublin Hotel. Mr Dunlop made an oblique reference to his belief that he may have been recommended to Mr Kelly by a third party, although he maintained he had no knowledge of who that third party might have been. This initial approach was followed up by a meeting between the two men (recorded in Mr Dunlop's diary) on 28 September 1992. Between that date and mid-November 1992, Mr Dunlop's diary and office telephone records document contact between them.

[7] Mr Dunlop revised his earlier assertion that he had met Mr Kelly in April 1992.

2.08 Mr Kelly's main objective, as far as Mr Dunlop's retention was concerned, was in relation to named councillors, specifically Cllrs Lydon and Hand. Mr Dunlop contended that he was told by Mr Kelly that as of September 1992 the two councillors in question were facing criticism from their respective party colleagues for their continued support of Mr Kelly's zoning ambitions for the lands. Mr Dunlop maintained that it was Mr Kelly's fear that, in the face of such criticism, Cllr Hand's and Cllr Lydon's support was wavering and, accordingly, Mr Dunlop was required by Mr Kelly to deal with this situation.

2.09 Mr Dunlop said that Mr Kelly gave him the somewhat convoluted history of the Pye lands, and that it was clear that Mr Kelly had done a lot of work himself in support of his plans including the lobbying of councillors and organising motions. Mr Dunlop stated that Mr Kelly's

> '*main objective was that he realised at this stage, by the time he came to me, given the history of the site and his involvement with it and with officials … gave me the firm view that he had lost faith in the process and that he needed somebody other than himself to help him.'*

Mr Dunlop continued:

> *' … he had obviously either on his own initiative or somebody had told him or educated him how to go about this in the context of lobbying the local councillors, getting signatures, doing whatever it entailed in relation to correspondence and explaining to him what was envisaged and he had done that. And I now know that there was some, you know, terse correspondence between himself and one or two councillors in relation to what was being proposed. But his main objective was in relation to named councillors in relation to the site. People that he had approached and what* [sic] *he thought he had on side.'*

2.10 Mr Kelly named Cllrs Hand and Lydon in this context. Mr Kelly had concerns about their continued support and thus communicated to Mr Dunlop '*that he couldn't rely on them.'*

2.11 Mr Dunlop told the Tribunal that Mr Kelly paid him IR£5,000 in cash for his services, and that the payment was made in the environs of Dublin County Council offices in O'Connell Street in Dublin. No invoice or other documentary proof of any such payment was apparently generated. Mr Dunlop believed that the IR£5,000 sum was agreed following negotiation, although he had no recollection of requesting a greater sum. He stated that the payment of a success fee had been raised, but the issue had been left in abeyance, with Mr Kelly using words to the effect of; '*well let's see how far we get with this and we'll discuss that with you later.*'

2.12 A motion appeared on the County Council agenda seeking to rezone the Pye lands, signed by Cllrs Lydon and Hand; the vote on the motion was scheduled for 16 October 1992. Mr Dunlop stated that he had no hand, act or part in either preparing the Lydon/Hand motion or in obtaining the signatures of those councillors to it. Nor did Mr Dunlop have a recollection of being shown the motion at his first meeting with Mr Kelly. Mr Kelly testified that he did not know how this motion came into existence and did not recall who had procured the signatures of Cllrs Hand and Lydon.

2.13 While Mr Kelly testified that he visited Cllr Lydon's place of work at St John of God on one occasion, the Tribunal was satisfied to accept his testimony that he did not provide Cllr Lydon with the motion and that, as testified to by Cllr Lydon (see below) it was Cllr Hand who obtained Cllr Lydon's signature.

2.14 In response to the query as to why Mr Kelly thought that Mr Dunlop's involvement would ensure that Cllrs Hand and Lydon would remain supportive of Mr Kelly, Mr Dunlop stated that he; '*couldn't account for what* [Mr Kelly] *was told'* and '*But I suspect and it's purely a suspicion and therefore completely speculation, speculative. That he had been told that if he came to me that I would guarantee that certain councillors would continue to support'.* Mr Dunlop also stated:

> *'I think it would be absolutely flying in the face of credulity if, given my presence at Dublin County Council during the course of the Development Plan and the association that I had with certain clearly visible developers and certainly my association with clearly visible overt associations with councillors, that people would not have been able to come to a specific conclusion',* that Mr Dunlop could guarantee the support of certain Councillors.'

2.15 Mr Dunlop also said:

> '*Mr Kelly was very persistent. He was on his own. He was not accompanied by any assortment of advisors. He did all of the work himself. He approached the Councillors himself. He lobbied them. He wrote to them and obviously came to a conclusion that he wasn't having very much success and therefore brought me on board. I am now brought on board in the context that I am able to be able to assist him with stiffening the backs of these two Councillors whom he suspected may well have been losing faith or losing interest and these two Councillors are known to me. I approached them, they discussed the matter openly with me, they expressed their views openly as to Mr Kelly.'*

2.16 Mr Dunlop testified that in the course of their discussion Mr Kelly made reference to two other councillors, namely Cllrs Mitchell and Fitzgerald, and indicated that Mr Dunlop's function, with regard to those councillors, was to try and influence them to support Mr Kelly, in light of the difficulties that their proposals were causing for the proposal for a retail development on the lands. Mr Dunlop stated that he had no recollection of ever approaching Cllr Fitzgerald, but recalled that he had approached Cllr Mitchell who stated to Mr Dunlop words to the effect: '*Look it, Aidan Kelly is not going to get what he wants. He can bang his head off a wall as long as he wants to around here but he s not going to get it and he should take what he is being offered by the Council.'*

2.17 Following his encounter with Mr Kelly, Mr Dunlop duly met with Cllrs Hand and Lydon.

2.18 Mr Dunlop formed the view that Mr Kelly had gone about the entire process in a '*cack-handed way and was not for compromise, notwithstanding the fact that he and his company were willing and prepared to discuss infrastructure with the County Council.'*

2.19 Mr Dunlop also stated that he came to the view that probably Mr Kelly had been correct in relation to the concerns which he had expressed, in relation to Cllr Hand's and Cllr Lydon's ongoing support. Mr Dunlop told the Tribunal that when he approached those councillors '*they had indicated to me that they were getting criticisms from their own colleagues on the Council to the effect that this was going nowhere and why were they persisting the motion or were they persisting with their support.'*

2.20 Mr Dunlop was questioned by Tribunal Counsel in relation to the fact that at the time of his retention by Mr Kelly in late September 1992, Cllrs Hand and Lydon were indicating their support for Mr Kelly's plans by virtue of the fact that they had signed a motion which sought to retain the zoning achieved in 1991, and in the context that, as evidenced by the County Council minutes, they had participated in the debate on the Mitchell/Fitzgerald motion. It was put to Mr Dunlop that the two councillors were *'very much on line'* in supporting Mr Kelly. In response, Mr Dunlop stated:

> '*They were. There was absolutely no question that they were on line, they were on line notwithstanding their reservations about Mr Kelly and his proposal or notwithstanding the criticisms that they were getting in relation to their support for it from their party colleagues. They were on line on the basis that they signed a motion, which they couldn't easily resile from without causing further controversy . . . And in the context of seeking their colleagues support in their own parties unless people had a*

vehement objection to it, notwithstanding any reservation that they might have had about it, they would support him.'

2.21 The following was also put to Mr Dunlop:

'*But I have to suggest to you Mr Dunlop, that . . . they having supported the motion previously and now having drafted and signed the motion, that it would be unthinkable for them not to carry through their motion at an upcoming meeting. In other words, whatever about getting the support of unnamed councillors, the support of the two councillors who had signed the motion which was on the agenda, I would have thought, was a given.'*

In response, Mr Dunlop said:

'*Well I don't mean to pre-empt you. But, I mean, I think Mr Kelly's view as to his faith in the democratic process and in Mr Hand and in Mr Lydon was fairly well founded in the context of what did occur.'*

2.22 Asked why Mr Dunlop thought a person might sign a motion and subsequently fail to support it, Mr Dunlop replied: '*There are a number of factors. One is, I am now in the frame, I am known to these two gentlemen, I have an association with these gentlemen. These two gentlemen expressed their view to me which was sort of a very interesting counter poise to Mr Kelly's expression of the view of them to me.'*

MR DUNLOP'S CLAIM OF KNOWLEDGE ON THE PART OF MR KELLY THAT MONEY WOULD HAVE TO BE PAID TO COUNCILLORS IN RETURN FOR THEIR SUPPORT

2.23 Mr Dunlop alleged that, despite the lack of a specific discussion between himself and Mr Kelly on the topic, he, Mr Dunlop, had no doubt but that Mr Kelly knew money would have to be paid to Cllrs Hand and Lydon to ensure their ongoing support for his proposals. Mr Dunlop attributed his '*belief*' that Mr Kelly knew of the likelihood of Mr Dunlop being asked for and paying money to the councillors in question to the manner in which Mr Kelly outlined his difficulties, namely Mr Kelly's fear that the two councillors in question were losing interest in the project, and in his belief that the councillors suspected that the proposed motion was going nowhere.

2.24 Mr Dunlop stated thus:

'*From the context of my meeting with Mr Kelly and again, conditional on what I said earlier. That I had no knowledge of how I was recommended to him. It was my belief then and it is now that Mr Kelly knew that the only way that anybody could be kept on side was by way of payment . . . I've gone through this, you know, quite a number of times and I mean, there are two people sitting at a particular location discussing a particular issue*

in relation to named individuals vis-à-vis a problem and this gentleman has come to me in the context that he has been recommended that I act for him on the basis that I can solve his problem or alleviate it in some way and notwithstanding the fact that I don't know what he was told, I have absolutely no doubt in my mind, then or now, that Mr Kelly knew that parts of the money that he was giving me would have to be expended in the context of payments to councillors.'

2.25 Asked why he had not suggested to Mr Kelly that he himself might approach Cllrs Hand and Lydon directly and offer them money for their continued support, and if he had made enquiry of Mr Kelly as to whether he had been asked for by, or paid money to, Cllrs Hand and Lydon Mr Dunlop replied:

'*No, I don't think that type of conversation ever took place. He* [Mr Kelly] *outlined his view in the context that I've mentioned and that his belief or his fear, one or the other, or both, that Cllrs Hand and Lydon were going offside because they were coming under criticism from their own councillors because they were losing interest and because he felt that they suspected that this was going to go nowhere.'*

2.26 Mr Dunlop stated that at no time did Mr Kelly suggest to him that either Cllr Hand or Cllr Lydon had requested money, and equally Mr Kelly had never given Mr Dunlop reason to believe that he had offered or paid the money to them prior to Mr Dunlop's retention. Nor, in Mr Dunlop's encounters with them, had either Cllr Lydon or Cllr Hand told him that they had requested money from Mr Kelly or that they had been offered money by him. Mr Dunlop stated that insofar as those individuals spoke of Mr Kelly it was in the context of '*a strong element of frustration on their part that obviously Mr Kelly had been very persistent with them'* in his lobbying.

2.27 Mr Dunlop stated that the wavering in the support of Cllrs Hand and Lydon stemmed from

'*criticisms that was coming to them from some of their own colleagues. And probably too, and I can say this without any, I don't mean to be critical of Mr Kelly, that Mr Kelly obviously had a project and he was as persistent as anybody else would have been and he probably was fairly persistent with them.'*

2.28 In response to the suggestion put by Mr Aidan Kelly's counsel, Mr Noel Cosgrove BL, to Mr Dunlop that it was pure *'speculation'* on his part that Mr Kelly was aware that he was in the habit of receiving cash and bribing councillors, Mr Dunlop stated:

> *'Well, what I said in my statement and I believe Mr Kelly was aware from the outset that support elicited by me would entail financial payments to councillors though I do not recall any definitive remarks to which I can attribute that belief. And that was my belief then and this is my belief now in the circumstances in which Mr Kelly came to me in relation to his problem. I fully repeat what I said to you five minutes ago, that neither Mr Kelly nor I ever discussed payments to councillors. Mr Kelly did not ask that I should pay councillors, he did not ask me if I paid councillors and I never told him I would have to do so and I never told him that I had done so . . . it is my belief in the circumstances in which we discussed the matter with Mr Kelly, in the circumstances that he found himself, unstated, as I have freely admitted and repeat, unstated by him or me, but it is my belief that he knew.'*

Replying to the further suggestion put by Counsel for Mr Kelly that there was no logic in his conclusion that Cllrs Hand or Lydon would have to be paid money when they already supported Mr Kelly's proposal one hundred per cent, Mr Dunlop stated:

> *'Yes. I don't mean to be offensive to you Mr Cosgrove, I recognise fully the job you have to do but you obviously know nothing about political representations or political operations, what you say does not follow logically or rationally . . . I didn't feel, I knew that when I approached these individuals that the likelihood was that I would have to pay and the new ingredient in all of this, Mr Cosgrove, is me, is Frank Dunlop. I had a relationship with these two people. I have no evidence to suggest, to indicate to me what the relationship between Mr Kelly and these two people were. It was never indicated to me either by Mr Kelly or them that they had ever received or asked for money from Mr Kelly, but I am the new ingredient in this, I have a relationship with these two people, an ongoing relationship in relation to matters in Dublin County Council, which on approach invariably resulted in payment.'*

2.29 When it was put to Mr Dunlop that what in reality he was testifying to was a belief on his part, and that there was no evidence of any knowledge of the need to make payments to councillors on the part of Mr Kelly, Mr Dunlop disagreed and said:

> *'in the context of the circumstances in which Mr Kelly came to me, either on his own initiative or at the recommendation or suggestion of others, that I was the person who could assist him in the difficulties that he had, given, given the long history that was associated with the project and with the lands and with the context of my meeting with Mr Kelly, I then had the*

belief and I still have, that Mr Kelly was aware that some of the monies that he was going to give me were to be used for disbursement.'

2.30 Asked as to why he had not expressly stated to Mr Kelly that he required the IR£5,000 to pay people, Mr Dunlop stated:

'*Well I never met Mr Kelly before. I've had similar type of conversations not as you outline but I've had similar type encounters with other developers and I still did not have the type of conversation that you are suggesting with any of them, other than in specific circumstances that they would have raised the issue and, no, I didn't have that conversation and the reason I didn't have that conversation was because I didn't think it appropriate.'*

Asked again as to why he had not informed Mr Kelly as to what he was about, Mr Dunlop replied:

'*Well, the answer to that question is, I don't mean to be rhetorical, but the answer to that question is, what did Mr Kelly* [think] *he was giving me the £5,000 in cash for, to make a few phone calls or to have a few meetings with Don Lydon and Tom Hand.'*

2.31 Mr Dunlop testified that his retention by Mr Kelly effectively came to an end following the 16 October 1992 vote.[8] Mr Dunlop could not provide any detail as to the circumstances in which his retention ended.

MR KELLY'S RESPONSE TO MR DUNLOP'S EVIDENCE

2.32 While Mr Kelly admitted that he retained Mr Dunlop as a lobbyist, and agreed that the meetings and contact, as recorded in Mr Dunlop's diary and telephone records, probably did occur, his overall position was that he had little recollection of the circumstances under which he retained Mr Dunlop. In fact, Mr Kelly's evidence was that he had no memory of ever meeting Mr Dunlop, though he acknowledged that he had met him. He could not recollect engaging Mr Dunlop. He believed that his introduction to Mr Dunlop had come through Cllr Hickey who had told him that Mr Dunlop '*would canvas the representatives'.*

2.33 Mr Kelly stated that he had a '*partial'* memory of meeting Mr Dunlop in the latter's office on one occasion, but acknowledged that his first meeting may well have been in the environs of the County Council, as recollected by Mr Dunlop. Because of lack of recollection, he did not dispute Mr Dunlop's evidence that the purpose of Mr Dunlop's retention was to lobby councillors, specifically

[8] The last recorded contact between the two was on 10 November 1992.

Cllrs Hand and Lydon, although Mr Kelly claimed that he had never felt that he could not rely on those councillors.

2.34 Mr Kelly agreed that payment was made by him to Mr Dunlop, and that it may have been in cash, although his belief was that the sum was IR£4,000 and not IR£5,000 as suggested by Mr Dunlop. Mr Kelly had no recollection of having been provided with an invoice by Mr Dunlop. He had the '*vaguest recollection*' of two cheques[9] being written at the time in question, one to Mr Dunlop (or his company) which was cancelled, and the second to cash, which he cashed before paying the proceeds to Mr Dunlop.

2.35 While he could not recollect much about his involvement with Mr Dunlop, Mr Kelly denied absolutely Mr Dunlop's evidence that it was his (Mr Kelly's) understanding or belief that money would have to be paid to keep people '*on side'*. He said that he met a number of councillors over the years and that none had ever requested payment, or had implied or insinuated that they required payment. The Tribunal was told by Mr Kelly that he had encountered improper requests for payment on only two occasions: once by way of a direct request from a County Council official in the early 1980s, and later, in the late 1980s, he had reason to interpret a telephone conversation with Mr George Redmond (the Assistant Dublin County and City Manager), as an indirect request for money.

THE EVIDENCE OF CLLR DONAL MARREN (FG)

2.37 Cllr Marren was a Fine Gael councillor who was first elected to Dublin County Council in 1978 and was a member of Dublin County Council during the creation of the 1993 Development Plan. In January 1994, he transferred to Dún Laoghaire-Rathdown County Council. Cllr Marren's voting record during the making of the 1993 Plan records opposition on his part to Mr Kelly's proposals. While Cllr Marren was not recorded as voting on the Hickey/Mitchell motion (as a result of which the lands were zoned C) on 31 May 1991, the minutes of the special meeting of 16 October 1992 recorded that Cllr Marren supported the Mitchell/Fitzgerald motion (which removed the C zoning from Mr Kelly's lands) and on 2 November 1993, he continued his opposition to retail development on those lands by voting against the (ultimately successful) motion which effectively reinstated the C zoning on the lands.

2.38 In the course of the review of the 1993 Development Plan, Cllr Marren met Mr Kelly. The meeting was arranged by his colleague Cllr Hand. At that meeting, Mr Kelly had outlined his proposals for the lands. Cllr Marren described the meeting to the Tribunal as being '*totally above board'* and claimed that

[9] Mr Kelly's prior written statement made no reference to there having been two cheques.

nobody (including Mr Kelly) had ever made any improper suggestions to him in connection with the lands. Cllr Marren testified that: '*There was no impropriety. Nothing either sought, solicited, offered. My connection was totally professional.'*

2.39 In the course of his testimony, Cllr Marren was asked about notes which the Fine Gael Committee of Inquiry made in the course of an interview with him in May 2000. The rather cryptic notes included the following: '*other colleagues—concerns—yes—Mr Kelly'* and *'Dundrum Pye Centre—major change in Development Plan. Make it worth your while. Tossed his head and walked out the door'* and *'met Mr Kelly—voted against it'.* Cllr Marren, in evidence, explained the content of the '*very abbreviated'* notes as follows:

> '*A third party, as I have said, requested me to meet with Mr Kelly. And I consented to that request. And as he left, departed, said something to the effect and I can't be exactly correct but it sounded like worth your while, make it worth your while or it will be worth your while or something like that. To which I said rather sharply what do you mean by that and I got no answer. He proceeded to walk out the door.'*

Cllr Marren identified the third party as Cllr Hand.

2.40 Cllr Marren was questioned as follows:

> Q. '*So the person who said to you words to the effect of making it worth your while or it will be worth your while in connection with seeing Mr Kelly in connection with the Development Plan was the late Cllr Tom Hand?'*
>
> A. *'Yes.'*
>
> Q. '*You took him to task on that immediately as I understand you?'*
>
> A. '*Yes.'*
>
> Q. *'You said to him what do you mean by that?*'
>
> A. '*Uh huh.'*
>
> Q. *'And his response to that was to turn and leave the room, is that correct?'*
>
> A. *'That's correct.'*
>
> Q. *'What did you understand at the time by whatever was being suggested to you by Mr Tom Hand?'*
>
> A. *'Well, it left me with a little unease, like any enigmatic statement, any unfinished statement, any unanswered question. You wonder what was the full meaning. And I didn't pursue it at that time. I didn't pursue him either out the door or raise it in subsequent days. But my meeting with Mr Kelly which took place some days after that, the sort of deep anxieties I had were allayed insofar as the meeting was perfectly in order, brief, business-like and nothing untoward. So I never pursued it after that.'*

Q. *'Mr Kelly did not make any suggestion, such as had been made to you by Mr Hand.'*

A. *'Oh, no. No, no.'*

Q. *'And insofar as the suggestion had been made to you by a fellow party colleague, isn't that right, Mr Hand was a party colleague of yours?'*

A. *'Uh huh.'*

Q. *'Did you take any step to take the matter any further within the party at that stage?'*

A. *'Not at that stage, no. I did record there. I reported it there when I was asked about it. But I wasn't certain that that was just spoken in jest or whether there was something more worrying contained in the statement. But my subsequent meeting with Mr Kelly sort of allayed those immediate fears that I had.'*

Q. *'Well insofar as the suggestions being made to you by a party colleague of yours, a fellow councillor. And the suggestion appears to have been that it would be worth your while presumably financially, or it could be worth your while financially?'*

A. *'I don't know what was intended by the statement. That's why I asked the question. I didn't receive an answer. And then as I say, I didn't pursue it because Mr Kelly's meeting was totally above board.*

Q. *'In its ordinary language, Mr Marren, in a common understanding of I'll make it worth your while or it will be worth your while usually means some financial benefit, isn't that right?'*

A. *'Well, it could.'*

Q. *'Yes.'*

A. *'But it could also have been spoken in jest. And remember, that was a real possibility. I couldn't be certain whether that was intended seriously or spoken in jest.'*

Q. *'Yes. The reaction of what was said to you by Mr Hand was that the reaction of someone who thought they were being faced with a joke or something that they were taking seriously?*

A. *'Well if it were a joke, I didn't think it matter for joking and that's why I asked the question.'*

2.41 Asked what was his '*gut feeling at the time'* Cllr Marren responded:

'*There was a sense of unease or concern. But beyond that I really couldn't. I'd prefer to not to even talk in those terms. Certainly not seriously but not even in jest.'*

2.42 The conversation between Cllr Marren and Cllr Hand took place in the Fine Gael Party rooms in Dublin County Council, and while Cllr Marren could not put an exact date on it, he believed it to have taken place in the 1991–2 period.

2.43 Cllr Marren told the Tribunal that, notwithstanding the 1993 Garda Inquiry into alleged corruption in the rezoning/planning process, he did not consider raising the issue with the Gardaí at that time. He acknowledged that the matter was first articulated by him in the course of the Fine Gael Inquiry in May 2000.

2.44 The Tribunal was satisfied, having regard to the evidence given by Cllr Marren, that from his exchanges with Cllr Hand in the 1991 to 1992 period relating to the Pye lands, Cllr Marren understood Cllr Hand to have linked such support as Cllr Marren might give for the rezoning of the lands to the prospect of financial reward for Cllr Marren, as the price for such support.

2.45 Mr Kelly could not account as to how Cllr Donal Marren could have been left with the impression, following a discussion he had had with the late Cllr Hand, that he, Mr Kelly, might have made it worth Cllr Marren's while if Cllr Marren supported the Pye rezoning proposals. Cllr Hand, according to Mr Kelly, never sought money from him. Mr Kelly told the Tribunal that over a period of time he came to know Cllr Hand well, and that Cllr Hand was supportive of his proposals. Cllr Hand advised him how to go about seeking councillors' support. Mr Kelly stated: '*the way the system worked was you got one or two of the more senior councillors on board and then they did the necessary canvassing among their own party.*'

MR KELLY'S EVIDENCE OF A REQUEST FOR MONEY BY AN UNIDENTIFIED COUNTY COUNCIL OFFICIAL

2.46 Mr Kelly told the Tribunal that within the period 1980–3, at a time when Pye Ireland Ltd was seeking to obtain planning permission to permit development of a portion of its lands, an accountant acquaintance of his arranged for him to meet an official of Dublin County Council for the purpose of exploring possible ways to ease the planning difficulties which Pye Ireland Ltd was at that time experiencing with Dublin County Council. The meeting took place in a public house in Baggot Street in Dublin.

2.47 Mr Kelly stated that in the course of the meeting with this unidentified County Council official, he was asked for a substantial cash payment, in return for the resolution of the planning difficulties relating to the land in question. Mr Kelly said that he rejected this request. Mr Kelly was unable to identify the said official or the precise location of his place of work, although he believed it to have been Tara Street in Dublin. Mr Kelly believed that he subsequently saw this individual in a Local Authority office in the Dublin area.

2.48 Later in the 1980s, probably in the period 1988/9, on becoming aware of a pending Garda inquiry into corruption linked to the planning process in County Dublin, Mr Kelly stated that he informed Mr Al Smith, a senior Administrative Officer with Dublin County Council, of the detail of his encounter in the early 1980s with the unidentified County Council official, and of the request made to him by that official for a payment of money. Mr Kelly met Mr Smith on a number of occasions on official business, but he stated that the particular meeting in question was solely concerned with the allegation that a County Council official had requested a payment from him to assist with a planning application. Mr Kelly told the Tribunal that Mr Smith had advised him that without a witness to the alleged encounter there was no point in pursuing the matter.

2.49 Mr Smith told the Tribunal that he recalled meeting Mr Kelly in relation to his planning difficulties, but had no recollection of Mr Kelly informing him of a demand for money by a County Council official. It was Mr Smith's contention that if such an allegation had been made to him in 1989 (or otherwise), he would have brought it to the attention of the Gardaí and the County Manager. He stated that on occasions where evidence merited it, he had brought matters to the attention of the Gardaí, and that these instances were well documented. Insofar, therefore, as Mr Kelly maintained he brought the matter to his attention, he, Mr Smith, could only surmise that it was communicated to him in a vague and unspecific manner, and that he may have seen little point in pursuing the matter further.

2.50 Mr Kelly himself did not apprise the Gardaí of his encounter with the unidentified County Council official, or of any improper demand for money. The Tribunal accepted as essentially accurate the evidence of Mr Kelly in relation to his meeting with the unidentified County Council official, and of the request for money in 1988. Such a request was clearly corrupt. The Tribunal was also satisfied that Mr Kelly communicated the allegation to Mr Smith, albeit in a vague and unspecific manner.

MR KELLY'S ENCOUNTER WITH MR GEORGE REDMOND IN 1988

2.51 In his evidence, Mr Kelly described an incident which he says occurred in the late 1980s. A meeting had been arranged for Mr Kelly by Cllr Hickey in February 1988 with Mr George Redmond, with a view to obtaining the latter's support for Mr Kelly's then plans for his lands. Not being sufficiently competent in the area of planning, Mr Kelly had brought a third party to the meeting. He believed this was either Cllr Hickey or Mr Layden (although Mr Kelly had been unable to recollect this in his 2006 communications with the Tribunal). Mr Kelly described the meeting with Mr Redmond as brief and '*useless*'.

2.52 Mr Kelly told the Tribunal that shortly after he returned to his office following the meeting, Mr Redmond telephoned him, and in effect admonished him for not having attended the meeting on his own, and advised him that in the future, he should attend such meetings alone. Mr Kelly believed this request to attend any further meeting alone was made to facilitate a request by Mr Redmond for the payment of money. No further meetings took place between Mr Kelly and Mr Redmond. In his explanation of his said interpretation of his conversation with Mr Redmond, Mr Kelly stated: '*Well my conclusion was that his preference to see me alone was perhaps to discuss or negotiate or whatever you might call it, side issues which didn't relate to planning or development.*' Mr Kelly gave evidence that the interpretation he had placed on Mr Redmond's words related to the encounter he had with the unidentified County Council official in the early 1980s.

2.53 Mr Redmond told the Tribunal he had no memory of any meeting with Mr Kelly, but was prepared to accept that such may have taken place. He advised the Tribunal that it was normal practice for him (and other County Council officials) to meet with developers from time to time, and he stated that it was also the preferred practice of himself and other officials that County Council officials should not meet with developers in the company of councillors. Mr Redmond stated that if the telephone conversation did in fact take place, as suggested by Mr Kelly, it was in the context of this preferred practice, and that he may indeed have requested Mr Kelly to attend further meetings with him in the absence of councillors. Mr Redmond categorically denied that any such suggestion was made to facilitate an improper request for payment by him.

2.54 In the course of his testimony, Mr Redmond agreed that he had testified before the Tribunal in 2000 to having on specific occasions met developers alone, and that at such meetings, money had been paid to him. Mr Redmond's diary for 1988 indicated at least four meetings that were linked to the Pye Lands, namely:

- 18 February 1988: *'Kelly, Aidan 9.30',*
- 26 April 1988: *'Pye'* (this entry is crossed out in the diary),
- 22 August 1988: *'Pye Ireland, P Hickey',*
- 25 August 1988: *'11 am Pye in F. Vaughan's office, moved to 2.30pm'*.

The Tribunal rejected Mr Redmond's contention that he had no memory of any contact or meetings in 1988 relating to the Pye lands.

2.55 The Tribunal further believed it likely to be the case that Mr Redmond's admonishment to Mr Kelly was, as suggested by Mr Kelly, linked to the fact that Mr Kelly had not attended the meeting alone, and that it was reasonable for Mr Kelly to infer (having regard to his previous experiences) that the motivation for such a request was to facilitate a demand for payment by Mr Redmond.

MR KELLY'S CORRESPONDENCE WITH THE REVENUE

2.56 In correspondence with the Revenue Commissioners on 5 November 2003, Mr Kelly referred to having been requested to pay cash for planning, and in the same correspondence he referred to his planning having been '*bought off',* a reference, he explained on Day 723, to his belief that someone had '*bought*' County Council officials and thus prevented him from obtaining planning permissions.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO MR DUNLOP'S AGREEMENT WITH MR KELLY IN SEPTEMBER/OCTOBER 1992

2.57 The Tribunal was satisfied that on some date in September 1992, Mr Dunlop was approached by Mr Kelly to be retained as a lobbyist. It was probable that Mr Dunlop was recommended to Mr Kelly by a third party, who may have been Cllr Hickey (who was not a councillor at the time). The Tribunal was satisfied that Mr Dunlop received payment of IR£5,000 in cash in late September or early October 1992, and that payment in cash was probably requested by Mr Dunlop.

2.58 As a matter of probability, Mr Kelly's approach to Mr Dunlop was prompted by the criticism directed at Cllrs Hand and Lydon for their continued support for Mr Kelly's rezoning proposals, as testified to by Mr Dunlop, and Mr Kelly's concern that their support be copper-fastened. The Tribunal preferred the evidence given by Mr Dunlop on this matter to that of Mr Kelly or of Cllr Lydon. While he expressed to the Tribunal his belief that he had not lost faith in Cllrs Hand or Lydon in September or October 1992, Mr Kelly was unable to challenge Mr Dunlop's testimony on the matter, given his professed total lack of recollection of the events in question.

2.59 The Tribunal's conclusions in this regard were also assisted by the fact that objective factors, namely the plethora of motions which had been lodged by Cllrs Mitchell and Fitzgerald, suggested that as of September 1992, Mr Kelly had reason to be concerned that the zoning achieved in May 1991, might not be confirmed, and that it was probable that Cllrs Hand and Lydon (the signatories to the September/October 1992 motion to retain this zoning, and thus the

perceived promoters within the County Council of Mr Kelly's plans), would face an uphill task.

2.60 The Tribunal also accepted that the principal subjects of Mr Kelly's and Mr Dunlop's discussions were Cllrs Hand and Lydon, and that such discussion centred, in the main, on the requirement that the support of Cllrs Hand and Lydon had to be maintained.

2.61 With regard to Mr Dunlop's evidence of his belief that Mr Kelly was aware of his intention to pay councillors to support the rezoning of his lands, the Tribunal did not accept (on the evidence adduced) that there was a common intention or common design as between Mr Dunlop and Mr Kelly that Mr Dunlop's assignment to lobby Cllrs Hand and Lydon would involve the payment of money to those councillors. The Tribunal took account of the fact that Mr Dunlop was unable to point to any express or implied action or words on the part of Mr Kelly which suggested to Mr Dunlop that Mr Kelly himself was aware that as part of Mr Dunlop's lobbying endeavours money would have to be paid to councillors.

2.62 There was no evidence to suggest that Mr Kelly paid money or attempted to pay money to any elected councillor in relation to the Pye lands rezoning project. Indeed, there was evidence from Mr Kelly that he had himself rejected one explicit demand for money, and another implicit request, in the past. Both requests were planning related. Mr Kelly may, however, have suspected that having regard to his own past experiences (one with an unidentified local authority official in the early 1980s and another with Mr George Redmond in 1988), that Mr Dunlop might, in the course of his lobbying activities, be requested to pay money to ensure sufficient councillor support for the rezoning of the Pye lands.

MR DUNLOP'S ALLEGATION OF PAYMENTS TO COUNCILLORS

CLLR TOM HAND (FG)

3.01 Mr Dunlop alleged that he paid IR£2,000 in cash to Cllr Hand in circumstances where he was retained by Mr Kelly to ensure that Cllrs Hand and Lydon would remain on side in relation to their support for the rezoning of the Pye lands. Mr Dunlop stated that he paid the money to Cllr Hand in the environs of Dublin County Council, following the receipt (in late September/early October 1992) of the IR£5,000 in cash from Mr Kelly. Mr Dunlop claimed that the IR£2,000 figure had been agreed between himself and Cllr Hand following negotiation, as, according to Mr Dunlop, '*there was always negotiation from Mr Hand*'.

3.02 Cllr Hand's voting record in relation to the Pye lands was as follows: on 31 May 1991 he voted in favour of the successful Hickey/Mitchell motion to rezone the lands C; he was, together with Cllr Lydon, a signatory to the motion lodged before the Council in advance of the special meeting of 16 October 1992 seeking to retain the C zoning on the Pye lands, in the face of the motions then before the Council in the names of Cllrs Mitchell and Fitzgerald to have the lands revert to their 1983 Development Plan zoning status; he was one of two Fine Gael councillors present on 16 October 1992 who voted against the Mitchell/Fitzgerald motion.

3.03 Cllr Hand was a signatory (together with Cllrs Lydon, Lohan, Fox and Matthews) to a motion which was on the agenda of the County Council on 2 November 1993 and which successfully reinstated the 1991 Draft Plan zoning of C and E on the Pye lands, the zoning ultimately adopted in the 1993 Development Plan.

CLLR DONAL LYDON (FF)

3.04 Mr Dunlop alleged that he paid IR£1,000 to Cllr Lydon at the latter's request in connection with the Pye lands rezoning. As with Cllr Hand, Mr Dunlop maintained that his focus was to ensure that Cllr Lydon remained supportive. He met Cllr Lydon after he approached Cllr Hand. With regard to his approach to Cllr Lydon, Mr Dunlop stated:

> '*in the discussion that I had with him it was indicated to me, by him to me, that he had been supportive of this and that Mr Kelly had been very persistent and that I cannot say specifically the language that was used but it was indicated to me that Mr Lydon had, hadn't got anything and required something and I suggested a thousand pounds . . . and he accepted that.*'

Mr Dunlop stated that he had paid Cllr Lydon subsequent to their discussion, and that the payment was made either in the environs of the County Council offices or at Cllr Lydon's place of work at St John of God, Stillorgan.

3.05 Questioned whether Cllr Lydon had told him why he had signed the motion, Mr Dunlop stated:

> '*No, I don't recollect him telling me why he signed the motion. I think, and again, this, given the context of this suppositional nature of this, I think it was obvious to me at a certain stage that Mr Kelly had been advised by somebody, whom I don't know, that the two old reliables, in the context of getting a motion signed, were Tom Hand and Don Lydon. Now it so happened that in this particular context that the lands in question, the Pye lands in Dundrum, fell right bang in the middle of Mr Hand's . . . local*

area . . . I'm not so certain that it fell bang in the middle of Senator Lydon's immediate local area, but certainly it would be completely disingenuous for anybody to suggest that somebody had not gone to Mr Kelly at some stage and that, this is a matter for Mr Kelly himself, I can't, Mr Kelly never discussed this with me, neither did councillors Hand or Lydon that Mr Lydon and Mr Hand were reliable people to go to for signatures for a motion in the context where other people mightn't sign.'

3.06 Mr Dunlop told the Tribunal that, with regard to his approach to both Cllrs Hand and Lydon, the question of them arranging for the support of their fellow party colleagues did not arise in his discussions with them. Mr Dunlop stated:

'*I certainly I don't recollect any discussion with Mr Kelly to that effect. The response that I got from both Cllrs Hand and Cllr Lydon was to the effect that they had been—they had worked in the vineyard long and hard in the context of this particular individual and development, they were getting no thanks for it and I'm saying this specifically now in the context of your question. They were getting no thanks for it among some of their own colleagues and in the case of Cllr Hand, I took this to mean he was having difficulty with a member of his own Party, namely, Olivia Mitchell. And in the case of Senator Lydon, I didn't come to any conclusion as to who specifically it was, but that obviously Aidan Kelly had lobbied other councillors in Fianna Fáil and as a result, they had gone to Lydon because he was a named individual and a signatory and arising from that, they had either told him that it was going nowhere or they queried why he was supporting it.*'

3.07 Mr Dunlop told the Tribunal that, notwithstanding his evidence concerning his feedback from Cllr Lydon as to criticism the latter was receiving from his party colleagues, a substantial number of the Fianna Fáil councillors (20) had in fact opposed the Mitchell/Fitzgerald motion on 16 October 1992. However, he claimed that there was nothing inconsistent in his testimony on this issue as, according to Mr Dunlop, Cllr Lydon had recounted to him his Fianna Fáil colleagues' dissatisfaction and unhappiness, as communicated to Cllr Lydon, for persisting in his support for Mr Kelly. Mr Dunlop stated:

'*They* [the Fianna Fáil councillors] *are either going to do one of three things. Either vote against it, which is slightly going against the grain from the political ideological training. Secondly, they are going to vote with him, which is much more collaborative and you know party supportive or else they are going to abstain, they are going to disappear, they are not going to vote for it. But in the main, the very fact that he would have been criticised for persisting with it doesn't in any way logically or rationally follow they would not support him in a vote.*'

3.08 In his private interview with the Tribunal on 11 May 2000, Mr Dunlop referred to Cllr Lydon in terms of his having, on occasions, travelled to Cllr Lydon's place of work for the purposes of giving him money. When asked how much he would have given Cllr Lydon on any one occasion, Mr Dunlop stated: '*£2,000, £2,500. Never be anything else.'* In the course of his testimony in this module, Mr Dunlop revised that earlier statement and said that monies given to Cllr Lydon ranged between sums of IR£1,000 and IR£2,000/IR£2,500.

CLLR LYDON'S RESPONSE TO MR DUNLOP'S ALLEGATION

3.09 On 11 October 2006, Cllr Lydon provided a statement to the Tribunal in relation to this module in the course of which he stated as follows:

> *The locus of this planning matter is within the area which was then Cllr Lydon's electoral Ward and therefore it would be understandable that his support would be canvassed in relation thereto.*
>
> *His recollection is that this particular development had somewhat convoluted problems, full details of which Senator Lydon is not in a position to recollect.*
>
> *To the best of his memory, the site in whole or in part, was the subject of motions and votes before Dublin County Council—motions which had different outcomes at different times.*
>
> *As a local councillor interested in promoting development and providing employment, Senator Lydon was at all times in favour of the development of the site in question. This involved voting either for or against motions on or about a half a dozen occasions. His guiding principle, we are instructed, was to secure the development of the site in order for it to achieve the accruing economic benefits.*
>
> *On the two occasions abstracted in the correspondence copied to us, he recollects putting his name on motions, which appear at Pages 622* [the 16 October 1992 motion] *and 643* [the November 1993 motion] *of the Tribunal brief, at the request of Cllr Tom Hand. His reasons for so doing were as already stated above, to see the development of the site which was at the time occupied as a rather run-down Crazy Prices outlet and as a bowling alley. Our client was fully familiar with the site throughout the various changes of motions, which sometimes included the entire site and at other times a portion thereof and notes in passing that it is currently the site of the resplendent Dundrum Shopping Centre.*
>
> *In regard to your inquiry re the persons with whom he had contact on this matter, he would have had discussions on such with his fellow members of Dublin County Council.*
>
> *In relation to the motion on Page 643 of the Tribunal brief as set out in the headed paper of Kiaran O'Malley & Co Ltd, our client feels that it is*

quite possible that the owner of the site at the time Mr Aidan Kelly, whose name and address is on the letter dated 5th October 1993, had possibly canvassed his support.

However, as to the text of the motion on the letter dated 5th October 1993, our client has no idea as to who drafted same. Likewise, our client has no recollection in relation to the text of the motion on Page 622 [the October 1992 motion] *of the Tribunal brief as to who provided the draft thereof.*

Insofar as the letter may request us to respond to the documents supplied by the Tribunal in this module, we note the allegations made by Mr Frank Dunlop and advise that our client rejects same.

3.10 In his evidence, Cllr Lydon claimed that he had no recollection of actually signing the October 1992 motion, save that he was '*nearly certain*' that it was Cllr Hand who brought the motion to him for signature, and that he did so one day in the foyer of the County Council offices. Cllr Lydon told the Tribunal:

'*Tom often came to me with motions to sign. Sometimes I'd sign them and sometimes I wouldn't. If I thought they were good proposals as I said often I'd sign them and if I didn't I wouldn't.*'

3.11 In the course of his testimony Cllr Lydon acknowledged that Mr Kelly was known to him and that he may have met with Mr Layden. Cllr Lydon believed, however, that Mr Kelly did not discuss with him the Hickey/Mitchell motion in 1991.[10]

With reference to that motion, Cllr Lydon stated: '*You see, when there was no hassle about this. Fianna Fáil and Fine Gael proposed it and it went through all right. And it was only afterwards when the two ladies got into the sort of battle that things began to change.*'

3.12 Cllr Lydon believed that the October 1992 motion, which he had signed at the request of Cllr Hand, had been drafted by Mr Kelly. Cllr Lydon could not recall whether, at the time he was approached by Cllr Hand, he knew that Cllrs Fitzgerald and Mitchell were pursuing a different proposal for the Pye lands than that being promoted by Cllr Hand and himself. However, the Tribunal was satisfied that Cllr Lydon must have known, when he signed the motion at Cllr Hand's behest, that it was being done in the face of a countervailing motion which had been lodged by Cllrs Mitchell and Fitzgerald in early September 1992.

[10] The 2006 statement provided on behalf of Mr Kelly made no reference to this motion.

3.13 Cllr Lydon testified that sometime in October 1992, he learned of Mr Dunlop's involvement, but claimed that he was unable to recollect whether he knew of Mr Dunlop's involvement prior to the vote of 16 October 1992. With regard to the Pye lands, Cllr Lydon stated: '*Mr Dunlop had very little to do with me on this particular thing you see.*'

3.14 In the course of his testimony in the Pye module, Cllr Lydon was reminded that evidence adduced in the course of the Ballycullen/Beechhill Module established that he and Mr Dunlop had a series of meetings and communications, acknowledged by Cllr Lydon, and he acknowledged that the evidence suggested that he and Mr Dunlop were in contact on 15 October 1992, the eve of the special meeting dealing with the Pye lands.[11] In relation to his contact with Mr Dunlop, Cllr Lydon stated on Day 719:

> '*You have to understand how this worked. Mr Dunlop was present at every meeting of the Development Plan. And we'd meet him in the hall or something. And maybe saying to him. You see, they way you put it you'd think we'd have sat down and had a big discussion with him. No, never.*'

3.15 Asked if Mr Dunlop had lobbied him in relation to the Pye lands, Cllr Lydon said: '*That I'm not sure. He probably would have mentioned to me somewhere. He wouldn't need to lobby me because I was supportive.*'

3.16 The following exchange took place between Tribunal Counsel and Cllr Lydon on Day 719:

> Q. *'But you were supportive and you had co-signed the motion. Surely that makes it all the more probable that he would have discussed it with you?'*
>
> A. *'No, he'd know I was on board. I mean, why would he want to?'*
>
> Q. '*He might also be concerned to find out from you as a co-signatory of the motion who else was on board?'*
>
> A. '*The whole Fianna Fáil Party was supportive of it all the time.'*
>
> Q. *'You see Mr Dunlop has given evidence to the Tribunal, and you will have seen and your solicitors will have brought it to your attention, Senator Lydon, that he was brought on board to keep yourself and Cllr Hand?'*
>
> A. '*I know, I saw that. That's insane.'*
>
> Q. *'Yes.'*
>
> A. '*I mean, that's total—'*
>
> Q. *'And for that purpose he gave money for your support to you, either in the environs of your place of employment or in the environs of Dublin County Council.'*

[11] The meeting of 16 October 1992 also dealt with the Beechill lands (see Chapter 4).

A. '*I didn't ever get money from Frank Dunlop for anything like that. That's the first thing. Secondly, he didn't have to keep me sweet on that thing. I was supportive of it. If I could just explain to you for a second. I probably won't get in here again, I just want to say this. This is not about zoning, this is a political thing. There is four councillors in the area, there is myself and Paddy Hickey of Fianna Fáil, Eithne Fitzgerald and Olivia Mitchell for Fine Gael and Labour. Olivia and Paddy set down the first motion and it went through no bother. After than Eithne Fitzgerald got in on the act and Mulveys in Dundrum were getting a bit easy* [sic]*, big Fine Gael people and they were probably mentioning it to Olivia. And Olivia and Eithne were always good friends but they were always one, because they both wanted to be TD's and you must remember shortly after that Eithne Fitzgerald got a huge vote of 17,000 and she was gone the next time.*

This was so that they could go to political meetings or residents' meetings and say we are modifying the proposals of the Fianna Fáil people. Eventually it came back again and we won again. Unfortunately we forgot to modify the Written Statement and so the Manager, who I believe had no time for Aidan Kelly in the first place, wrote it. And that's the whole story.'

3.17 Cllr Lydon vehemently denied Mr Dunlop's allegation of having been paid IR£1,000 in relation to the Pye lands. Cllr Lydon declared that '*Mr Dunlop never gave me any cash. Never, ever, ever!'* Cllr Lydon also testified that neither Mr Kelly nor Mr Layden had ever supported him financially for elections, nor had he requested such support.

CLLR TONY FOX (FF)

3.18 Mr Dunlop testified that he paid Cllr Fox IR£1,000 in relation to the latter's support for the Pye lands rezoning. Unlike the position in relation to Cllrs Hand and Lydon, Cllr Fox's support (or otherwise) for the Pye lands had not been discussed between himself and Mr Kelly. The thrust of Mr Dunlop's evidence vis-à-vis Cllr Fox was that notwithstanding having understood his retention by Mr Kelly to be for the purposes of ensuring the continued support of Cllrs Hand and Lydon, Mr Dunlop had, of his own volition, approached Cllr Fox seeking his support as well. Questioned as to why he had, as he claimed, paid Cllr Fox IR£1,000 in circumstances where he had already expended or agreed to expend IR£3,000 on Cllrs Hand and Lydon (following his discussions with those councillors), Mr Dunlop stated: '*Because he* [Cllr Fox] *asked for it.*'

3.19 While Mr Dunlop acknowledged that he would have been IR£1,000 better off had he not made the alleged payment to Cllr Fox, he stated:

> *'Yes, but I had a relationship with Tony Fox. I know these modules are dealt with on an individual stand-alone basis, so therefore there is an element of the people who were here on a constant basis listening to repetition but nonetheless it stands on its own feet, that is I had a relationship with Tony Fox. He was as he himself used to say, sort of mantra like, that he was pro development, but he was pro development on the basis that he was recompensed for it. And in the many occasions that I had to seek Cllr Fox's support either by way of signature or by way of support I paid him money at his request.'*

3.20 Mr Dunlop acknowledged that the Council records showed that Cllr Fox had supported the proposal for retail development on the Pye lands at the Council vote of 31 May 1991. In explaining his decision, nevertheless, to pay IR£1,000 to Cllr Fox in circumstances where Mr Dunlop, as he testified, believed that the Hand/Lydon motion lodged with the Council in advance of 16 October 1992 would be unsuccessful, Mr Dunlop stated: '*Tony Fox consistently and repeatedly, though without giving a great deal of specifics, indicated that he would talk to others.*' Mr Dunlop stated, however, that he was not specifically stating that Cllr Fox had in fact approached other councillors to support the Hand/Lydon motion; but he maintained that in general Cllr Fox's recounting to Mr Dunlop that he would approach other councillors '*was the specific orientation*' of his relationship with Cllr Fox.

3.21 Questioned again as to why, on his account of events, he would have expended 50 per cent of the remainder of Mr Kelly's cash (net of the promised disbursement to Cllrs Hand and Lydon) on Cllr Fox, Mr Dunlop responded:

> '*My relationship with Mr Fox was when I went to him, invariably, it resulted in a payment for his support, either for himself or for others that he could garner and that was always the basis on which I knew as soon as I approached Mr Fox that that is what would happen.*'

CLLR FOX'S RESPONSE TO MR DUNLOP'S ALLEGATION

3.22 In a statement provided to the Tribunal on 14 December 2000 in connection with queries posed by it in respect of a number of issues, including the Pye lands and Mr Dunlop's allegation in respect thereof, Cllr Fox denied receiving any money from Mr Dunlop in relation to same, and denied that he was ever in receipt of money from Mr Dunlop for any purpose whatsoever.

3.23 In evidence on Day 718, Cllr Fox rejected as completely untrue Mr Dunlop's evidence that he was paid IR£1,000 in connection with his support for the Pye lands rezoning. Cllr Fox's position was that he had supported the

rezoning of the lands for retail development and that in that regard he had voted in favour of the Hickey/Mitchell motion of 31 May 1991. He recalled being lobbied by Mr Kelly in relation to this motion. Mr Kelly was known to him, given the latter's business interests in Dundrum, Cllr Fox's home area.

3.24 While acknowledging that he would have been aware, in 1992, of the Mitchell/Fitzgerald motions which opposed the C zoning for the lands, Cllr Fox did not recollect receiving representations on either the Mitchell/Fitzgerald motions or on the Lydon/Hand motion in support of the 1991 Draft Plan zoning, which was lodged with the Council in response to the Mitchell/Fitzgerald motion of 3 September 1992. On 16 October 1992, Cllr Fox was one of 20 Fianna Fáil councillors who voted against the successful Mitchell/Fitzgerald motion.

3.25 Cllr Fox told the Tribunal that he would not have seen any need to discuss the issue in 1992, given his support for the motion that was passed in 1991. He did not recall receiving correspondence from Mr Kelly in or about September or October 1992, notwithstanding the likelihood that all councillors were written to by Mr Kelly at that time. Cllr Fox did not recall any discussion with his Fianna Fáil colleagues on the likely success or otherwise of the Hand/Lydon motion, and he claimed that he could not recall whether Mr Kelly had made representations to him in 1992, notwithstanding his recollection that Mr Kelly had done so in advance of the 1991 vote.

3.26 Cllr Fox denied any knowledge of Mr Dunlop's involvement in 1992 in relation to the Pye lands. As acknowledged by him in the course of his testimony in the Ballycullen/Beechill module, he agreed that Mr Dunlop's office record of incoming telephone calls documented a call from him on 15 October 1992 (the eve of the special meeting dealing with the Pye lands[12]), although Cllr Fox nonetheless maintained that no actual contact was made with Mr Dunlop at that time. Cllr Fox acknowledged to the Tribunal that he recollected being lobbied by Mr Richard Lynn[13] in 1993 in relation to the Pye lands, yet he had no recollection of being approached by Mr Dunlop in 1992, notwithstanding his acknowledgement that in relation to other rezoning proposals he had been lobbied by Mr Dunlop in the course of the making of the 1993 Development Plan.

3.27 In relation to two lodgements of IR£300 and IR£700 made to his account on 21 and 30 October 1992 respectively, Cllr Fox believed those to relate to an accumulation of savings on his part from monies received by way of County

[12] The meeting of 16 October 1992 also dealt with the Beechill lands.
[13] See below.

Council expenses and for County Council conferences.[14] (In response to questions in cross-examination by his own Counsel, Cllr Fox also stated that at the period in question he received his wages in cash.)

3.28 Cllr Fox was one of five signatories to the motion proposed to the County Council on 2 November 1993[15], which reinstated to the Pye lands the retail zoning which had been achieved on 31 May 1991. Cllr Fox stated that he was almost sure that it was Cllr Hand who had asked him to sign this motion. As previously stated, he recollected being lobbied in relation to same by Mr Lynn. Cllr Fox also acknowledged that his was one of two signatures (the other was Cllr Matthews) to a motion brought in 1995, which proposed an amendment to the Written Statement in relation to the Pye lands.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO MR DUNLOP'S ALLEGATIONS REGARDING PAYMENTS MADE TO CLLRS HAND, LYDON AND FOX IN RELATION TO THE PYE LANDS

CLLR HAND

3.29 The Tribunal was satisfied that Mr Dunlop and Cllr Hand discussed the Pye lands at some point between the 28th September 1992 and the date of the vote, following upon Mr Dunlop's retention by Mr Kelly. The Tribunal was satisfied that following '*negotiation'* between himself and Cllr Hand, Mr Dunlop paid Cllr Hand IR£2,000 in cash in return for Cllr Hand's continued support for the rezoning of the Pye lands. The purpose of the payment was to compromise Cllr Hand in the disinterested performance of his duties as a councillor. The said payment was corrupt.

The Tribunal was satisfied that as of September / October 1992, Mr Dunlop had an established relationship with Cllr Hand and had dealings with him in relation to the rezoning of the Ballycullen/Beechill lands at this time. Moreover, on 6 October 1992, Cllr Hand had made a demand for IR£250,000 in the presence of Mr Dunlop and Mr O'Callaghan, in return for his support for the rezoning of Quarryvale, and had, prior to that date, provided Mr Dunlop with the number of a bank account in Australia into which the demanded money was to be deposited. While the Tribunal accepted that Cllr Hand's demand for payment of a sum of IR£250,000 was not acceded to, the fact of what had taken place prior to, and on 6 October 1992 in this regard, rendered entirely credible Mr Dunlop's evidence that Cllr Hand had indeed requested money in return for his continuing support for the rezoning of lands, including the Pye lands. The Tribunal in

[14] Cllr Fox was questioned about these lodgments in the Ballycullen/Beechhill Module.
[15] See below.

arriving at its conclusion on this matter also had the benefit of the evidence of Cllr Marren to the effect that Cllr Hand had linked support for the rezoning of the lands to the prospect of financial reward. In all of those circumstances, the Tribunal was satisfied to accept Mr Dunlop's testimony that in the course of his approach to Cllr Hand, pursuant to the basis on which he, Mr Dunlop, was retained, namely on the basis to ensure Cllr Hand's continuing support for the rezoning of the Pye lands, Mr Dunlop was requested by Cllr Hand for money, a request duly acceded to by him.

CLLR LYDON

3.30 The Tribunal was satisfied to accept Mr Dunlop's evidence that he duly made contact with Cllr Lydon, following upon his retention by Mr Kelly in the circumstances described. The Tribunal was satisfied that Cllr Lydon was paid IR£1,000 in cash by Mr Dunlop, and that Cllr Lydon solicited the payment in return for his continued support for the rezoning of the Pye lands. The purpose of the payment was to compromise Cllr Lydon in the disinterested performance of his duties as a councillor. The said payment was corrupt.

The Tribunal preferred the evidence of Mr Dunlop to that of Cllr Lydon, in circumstances where the Tribunal found as a fact that in or about September/October 1992, and prior to that time, Mr Dunlop and Cllr Lydon had been in contact in relation to other lands, namely the Ballycullen/Beechill lands then being promoted for rezoning by Mr Christopher Jones Snr. The evidence in the Ballycullen/Beechill Module established, to the Tribunal's satisfaction, that Cllr Lydon requested, and was paid money by Mr Jones prior to, and subsequent to, the rezoning of the Ballycullen lands in October 1992. The fact that money changed hands between Mr Jones and Cllr Lydon was one of the factors the Tribunal took into account in arriving at its conclusion in the Ballycullen module, that Mr Dunlop had been requested for, and had paid, money to Cllr Lydon in connection with the Ballycullen lands. With regard to the evidence of Mr Dunlop and Cllr Lydon in this module, all of the foregoing, *inter alia*, assisted the Tribunal in preferring Mr Dunlop's evidence over that of Cllr Lydon and thus the Tribunal was satisfied that when Mr Dunlop approached Cllr Lydon money was requested by him, a request acceded to by Mr Dunlop by the payment of £1,000.

CLLR FOX

3.31 The Tribunal rejected Cllr Fox's contention that he was unaware of Mr Dunlop's involvement with the Pye lands. The Tribunal was satisfied that Cllr Fox was in touch with Mr Dunlop in and around the occasion of the Pye lands vote in Dublin County Council on 16 October 1992, including telephone contact with Mr Dunlop's office on the eve of the vote. The Tribunal was satisfied that Cllr Fox

solicited from Mr Dunlop, and was paid the sum of IR£1,000 in cash in return for his continued support for the rezoning of the Pye lands, and the purpose of the payment was to compromise Cllr Fox in the disinterested performance of his duties as a councillor. The said payment was corrupt.

THE ZONING AND PLANNING HISTORY OF THE LANDS POST OCTOBER 1992 MR KELLY'S RETENTION OF MR RICHARD LYNN AND MR PAT LAFFERTY IN THE COURSE OF HIS EFFORTS TO REVERSE THE OUTCOME OF THE 16 OCTOBER 1992 SPECIAL MEETING AND RELATED ISSUES

4.01 Mr Kelly testified that Mr Lynn and Mr Lafferty were retained by him after the vote in the County Council on 16 October 1992. He believed that he was introduced to Mr Lynn by Cllr Hand. Mr Lynn had in turn introduced him to Mr Lafferty. At the time of their retention by Mr Kelly, both Mr Lynn and Mr Lafferty were full-time employees of Monarch Properties, which was then involved in seeking a change of zoning status for its lands at Cherrywood.[16] Mr Kelly stated that Mr Lynn was a '*replacement*' for Mr Dunlop and the purpose of his retention was that he would lobby councillors in an endeavour to reverse the County Council vote of 16 October 1992 which had resulted in the Pye lands losing the C zoning achieved in May 1991.

4.02 Mr Lynn's recollection of involvement with Mr Kelly and the Pye lands was that it commenced in October 1992, after the success of the Mitchell/Fitzgerald vote. He believed that he was approached by Mr Kelly on the day of the vote. Prior to this approach, he was aware of what had just occurred in relation to the lands on that date. Mr Kelly stated to him that he would be interested in discussing the Pye lands. Thereafter, a number of meetings took place between the two men. Mr Lynn believed that at the time of his retention by Mr Kelly it was generally understood that he was a full-time employee of Monarch Properties.

4.03 A call was documented by Mr Dunlop's office from Mr Lynn on 5 October 1992. The record read as follows: '*Richard Lynn—I've been in contact with Aidan Kelly*'. Mr Lynn told the Tribunal that he was unable to account for this record as he found it difficult to believe that he had contact with Mr Kelly prior to 16 October 1992. Mr Lynn was at a loss to explain the telephone message. Equally, Mr Dunlop, in the course of his testimony, could not account for why his office records documented a call from Mr Lynn in relation to Mr Kelly. Mr Dunlop stated that he had no recollection of speaking to Mr Lynn about Mr Kelly. Mr Dunlop

[16] See the Cherrywood Module (Chapter 3).

acknowledged that Mr Lynn was known to him, given his role in lobbying councillors in relation to the rezoning of the Cherrywood lands.

4.04 Mr Lynn told the Tribunal that he had nothing to do with drafting the Lydon/Hand motion which fell following the success of the Mitchell/Fitzgerald motion without being put to a vote when it came before the County Council on 16 October 1992. However, he agreed that it was drafted in a standard format which he himself used for motions. Questioned as to whether it was possible that Mr Kelly had approached him by early October 1992, and whether Mr Lynn, in that regard, had drafted the motion signed by Cllrs Hand and Lydon, Mr Lynn responded that while this was possible, he still did not accept or believe that he had done so, or that he was engaged by Mr Kelly prior to 16 October 1992. Nevertheless, given the format of the motion and the evidence of contact between Mr Lynn and Mr Kelly in early October, the Tribunal was satisfied that Mr Lynn had an involvement in the drafting or preparation of the motion which came before the County Council on 16 October 1992.

THE CABRIOLE CHEQUES

4.05 On 12 October 1992, two cheques were drawn on the Bank of Ireland account of Cabriole Construction Ltd and signed by Mr Kelly in the sums of IR£2,000 and IR£1,000 respectively. The payees of these cheques were a '*Mr Richard Linn*' (the IR£2,000 cheque) and '*Patrick Lafferty*' (the IR£1,000 cheque).

4.06 The Tribunal established that the '*Richard Linn*' cheque was negotiated on 13 October 1992 through a branch of TSB Bank in Grafton Street. The reverse of the IR£2,000 cheque payable to '*Mr Richard Linn*' bore the endorsement '*Richard Linne'.* The IR£1,000 cheque payable to 'Patrick Lafferty' was negotiated through Bank of Ireland, and the reverse of that cheque suggested that it had been endorsed by the payee.

4.07 In the course of his testimony, Mr Kelly accepted that on 12 October 1992, he wrote cheques in favour of Mr Lynn and Mr Lafferty, but he could not explain to the Tribunal, given his evidence that he had retained Mr Lynn and Mr Lafferty subsequent to 16 October 1992, why such payments had been made by Cabriole Construction Ltd.

4.08 In relation to the 12 October 1992 cheque for IR£2,000 payable to '*Mr Richard Linn*', Mr Lynn told the Tribunal that the name which appeared on that cheque was not his name and that he did not endorse it and that he had never been in the bank in which it was endorsed. He told the Tribunal that in 1992 he had one bank account, namely an account at Bank of Ireland in Dundalk, and

had no other operative account at that time. Mr Lynn stated that it was possible that his partner Ms Eileen Murphy had an account in TSB circa 1992. Mr Lynn told the Tribunal that the endorsement on the back of the cheque was in neither his nor Ms Murphy's handwriting.

4.09 With regard to the cheque drawn on Cabriole Construction Ltd and made payable to '*Patrick Lafferty*' dated 12 October 1992, Mr Lynn stated that he was not aware of any relationship between Mr Kelly and Mr Lafferty prior to Mr Kelly having retained Mr Lynn. It was Mr Lynn who brought Mr Lafferty to the Pye project.

4.10 In the course of his evidence, Mr Lafferty accepted that the cheque for IR£1,000 dated 12 October 1992, was a cheque to him. Mr Lafferty testified that the endorsement on the back of the cheque appeared to be in the writing of his partner Ms Patricia Fearon. While Mr Lafferty agreed that the existence of the cheque suggested that he had met Mr Kelly prior to 12 October 1992, he maintained that he could not recall that period at all. Mr Lafferty stated that he had been brought into the Pye project by Mr Lynn to help with architectural and design work for the purposes of a planning permission application. He stated that he could not recall his first meeting with Mr Kelly.

4.11 Mr Lynn was unable to account to the Tribunal for the Cabriole Construction Ltd cheque to Mr Lafferty dated 12 October 1992, having regard to his evidence that he only introduced Mr Lafferty to the Pye project after his own engagement by Mr Kelly.

4.12 Notwithstanding the testimonies of Mr Kelly, Mr Lynn and Mr Lafferty with regard to the two cheques drawn on the account of Cabriole Construction Ltd on 12 October 1992, the Tribunal believed that Mr Kelly, for a reason or reasons unknown to the Tribunal, paid cheques for IR£2,000 (to Mr Lynn) and IR£1,000 (to Mr Lafferty) .

THE EVENTS LEADING TO THE SPECIAL MEETING OF 2 NOVEMBER 1993

4.13 Mr Kelly and Mr Lynn acknowledged Mr Lynn's involvement in lobbying councillors in support of the reinstatement of a C zoning on the Pye lands, prior to this issue being debated and voted on at County Council level in November 1993. Mr Kelly told the Tribunal that generally, however, Mr Lynn did not report back to him in detail on his lobbying efforts in relation to the Pye lands.

4.14 In the course of his testimony, Mr Lynn described the reason for his retention by Mr Kelly in the following terms:

'*I was taken in not just to provide, if you like, a correction to the zoning. What had to be done and having spoken to people in relation to where it was. It appeared to me that what I had to do was to create a proposal that would be acceptable locally and would be acceptable by management. And that could go forward and then we might be able to reverse the decision of the zoning. But in the context of a known development and known acceptable development.*'

4.15 Mr Lynn believed that the first work undertaken by him for Mr Kelly was the drafting of a pamphlet entitled '*Gateway to the mountains*', a document which was probably created in late 1992 or early 1993. Mr Lynn described this document as having been well received. Mr Lynn acknowledged, however, as suggested by Tribunal Counsel, that he had '*a fairly uphill task*' given that the C zoning had been overturned in October 1992. He acknowledged that the only people who could reverse this were the councillors. He described his work in relation to the Pye lands as '*trying to convince the members of the Council that this proposal* [for a C and E zoning] *was a good proposal.*' Furthermore, Mr Lynn had to '*dilute the Manager's opposition to having the site developed as a full district centre.*'

4.16 In October 1993, a motion in the names of Cllrs Hand, Lohan, Lydon, Fox and Matthews was lodged with the County Council. This motion proposed that the changes made to the Draft Development Plan map, following the October 1992 vote, be disallowed, and that the Pye lands revert to the 1991 Draft Development zoning. Mr Layden acknowledged that he met Cllr Lohan and wrote to him on 6 October 1993, enclosing a map for his attention. Mr Layden told the Tribunal that he was not involved in obtaining the signatures of the five councillors who signed the motion in support of the Pye lands[17]. Insofar as such councillors gave evidence to the Tribunal, each testified that they signed the motion at the request of Cllr Hand. The evidence suggested that it was Mr Kieran O'Malley (planning consultant) who drafted this motion. On 4 October 1993, Mr O'Malley also wrote to Mr Kelly enclosing details of the composition of the County Council and offering to make contact with councillors whom he knew, in advance of the 1993 vote.

4.17 By November 1993, opposition to the proposal to rezone the Pye lands was continuing. Cllrs Buckley and Doohan were signatories to a motion which came before the County Council on 2 November 1993, and which sought to confirm the 1983 zonings of E, A and C1 for the Pye lands, the zonings which had been achieved in October 1992 by virtue of the Mitchell/Fitzgerald motion.

[17] Mr Layden however acknowledged lobbying councillors in the bid to undo what had occurred on 16 October 1992.

4.18 However on 2 November 1993, the Buckley/Doohan motion was defeated. The motion signed by Cllrs Hand, Lohan, Lydon, Fox and Matthews was then put to a vote, with 36 councillors voting in favour and 27 against. As a consequence of this vote, the Pye lands regained their 1991 Draft zoning of C and E. This zoning was in due course confirmed on the map when the 1993 County Dublin Development Plan by the County Council was adopted on 10 December 1993.

4.19 Mr Layden acknowledged that his intervention in 1993 in lobbying councillors in support of Mr Kelly's ambitions for the Pye lands was vital, as, for example, the Progressive Democrat councillors who had supported the Mitchell/Fitzgerald motion in October 1992 reversed their earlier positions on the Pye rezoning issue and supported Mr Kelly's position in November 1993.

4.20 Mr Lynn acknowledged to the Tribunal that following the 2 November 1993 vote, it was believed that the way was then clear for a planning permission application for retail development to be made in relation to the lands. He acknowledged, however, that the motion passed on 2 November 1993 resulted only in the changes which had been made in October 1992 to Map 23 being deleted, and a C and E zoning being adopted. The amendment which had been made in June 1993 to the Written Statement, namely that it would be County Council policy to have hotel and tourism-related and light industry development on the lands, was unaffected by the success of the motion. On 12 November 1993, the Written Statement, having been voted on in June 1993, was confirmed by the councillors without a vote.

4.21 In late 1994, Mr Kelly and Cabriole Ltd set about applying for planning permission for retail development on the Pye lands,[18] pursuant to the C and E zonings achieved in the 1993 Plan.

4.22 The inconsistency between the contents of the Written Statement and what was contained in the map was discovered when the application for planning permission was made for a retail development on the lands. Mr Kelly's ambitions were thus met with resistance by the Council Manager, whose views were communicated to his and Mr Layden's representative at a meeting on 19 December 1994.

4.23 As testified to by Mr Willie Murray (the Planning Officer in Dún Laoghaire-Rathdown County Council in 1994), in light of what was contained at paragraph 3.2.9 of the Written Statement pertaining to the 1993 Development Plan, the

[18] The application was lodged in October 1994. An earlier planning application was actually lodged on 1 November 1993, in advance of the confirmation vote of 2 November 1993.

extent of the retail development sought by Cabriole Construction Ltd in late 1994 for the Pye lands, in the opinion of the Manager and the County Council Planners, constituted a material contravention of the 1993 Plan.

4.24 In the course of his testimony, Mr Lynn agreed with the suggestion that when the strategy for the reversal of what had occurred on 16 October 1992 was being agreed prior to the 2 November 1993 vote, no one appeared to have been aware that, in addition to changing the map, a motion would be required to change the Written Statement *vis-à-vis* the Pye lands, as voted on in June 1993. Mr Lynn acknowledged that the councillors' vote on 12 November 1993 in relation to the Written Statement effectively operated to overturn what they had voted for in relation to the lands on 2 November 1993. Mr Lynn stated that nobody had alerted the councillors to this fact. As a consequence, because of the limitation in the Written Statement, the planning permission application made in late 1994 received a negative reaction from the Council Manager.[19]

THE PAYMENT OF IR£34,848 TO PROPERTY DEVELOPMENT SERVICES LTD IN OCTOBER 1994

4.25 Property Development Services Ltd was paid IR£34,848 on 14 October 1994 by ACC Bank on behalf of Cabriole Construction Ltd/Mr Kelly.

4.26 Property Development Services Ltd was a company which was incorporated on 9 July 1993. Its registered Directors and Shareholders were Ms Eileen Murphy and Ms Patricia Fearon, the spouses/partners of Mr Lynn and Mr Lafferty respectively. Neither Mr Lynn nor Mr Lafferty was ever a registered director or shareholder of this company. Mr Lynn, in the course of his testimony, stated that he provided consultancy services to Property Development Services Ltd, as had Mr Lafferty. Neither was an employee of the company. The Tribunal was satisfied that Mr Lynn and Mr Lafferty effectively controlled the company and were in effect the beneficiaries of the monies received by it, notwithstanding that on paper neither had any connection to it.

4.27 Mr Lynn described the company as having been established to carry out activity such as that for which he and Mr Lafferty were retained by Mr Kelly in relation to the Pye lands. It was Mr Lynn's testimony that while he was an employee of Monarch Properties Ltd in the period in question, he operated, together with Mr Lafferty, an independent business of providing services to third parties such as Mr Kelly, services which Mr Lynn stated included assessing the best development potential for a site and in that regard interfacing with elected members of the Council. Mr Lynn did not like the term '*lobbying.*'

[19] Mr Kelly and Mr Layden's efforts to surmount this are dealt with below.

4.28 Mr Lynn acknowledged that when initially providing information to the Tribunal in relation to this module in March 2006 he did not then refer to the fact that he had provided his services to Mr Kelly via Property Development Services Ltd (PDS Ltd).[20] Nor did Mr Lynn refer to a company, Cedarcastle Investments Ltd,[21] which, it transpired, had a connection to Mr Lynn's involvement in the years 1997/8 with the Pye lands. Mr Lynn stated that he had not done so as he did not consider these matters to be '*relevant*'.

4.29 On 11 January 2007 the Tribunal wrote to Mr Lynn, requesting him to set out in detail any payments he had received in relation to the Pye lands either from Mr Kelly (Cabriole) or from Mr Joe O'Reilly/Castlethorn Developments Ltd[22], and in response Mr Lynn furnished his statement on 19 January 2007 wherein he stated:

> *I was a consultant with PDS Ltd, a company which provided consultancy services. Aidan Kelly/Cabriole Construction Ltd retained PDS Ltd to assist with the Pye site and I believe a payment of IR£34,848 including VAT was received from Cabriole Construction Ltd by PDS Ltd on the 14th October 1994.*
>
> *I believe this fee would have partly covered work to date on the zoning and planning application made on the site. There were significant fees outstanding in relation to work on the completion of the first planning application, the whole reassessment of the project, and the subsequent preparation of the second planning application.*
>
> *I was in discussions with Aidan Kelly regarding a possible equity share in the project, but these negotiations came to nothing and were terminated on the appointment of the Receiver and after his appointment, neither I nor, to the best of my knowledge, PDS Ltd had any other involvement with Aidan Kelly or Cabriole Construction Ltd with regard to the Pye lands.*
>
> *Joe Reilly/Castlethorn Developments Ltd retained the services of Richard Lynn & Associates Ltd as consultants and payments were made by Alice Developments Ltd* [a company associated with Mr O'Reilly/Castlethorn] *through Cedarcastle Investments Ltd, acting as agents for Richard Lynn & Associates Ltd, as follows*
>
> - *8 October 1998 IR£41,140*
> - *24 November 1998 IR£41,140*
> - *6 January 1999 IR£42,350.*

4.30 Mr Lynn testified that the payment received in October 1994 from Cabriole Construction Ltd constituted the fee of approximately IR£25,000–

[20] Mr Lynn however did make reference to this company in an affidavit sworn on 8 May 2006.
[21] See below for Mr Lynn's explanation as to the use of this entity.
[22] This company duly acquired the Pye lands – see below.

IR£30,000 which he believed he had negotiated with Mr Kelly, following his retention. Mr Lynn stated that the October 1994 payment of IR£34,848 was the only payment received from Mr Kelly/Cabriole. The subsequent payments referred to in his 2007 statement were paid following the acquisition of the Pye lands by Mr Joe O'Reilly/Castlethorn Developments Ltd. These monies were paid to Cedarcastle Investments Ltd, which, Mr Lynn testified, invoiced Alice Developments Ltd on behalf of Richard Lynn & Associates Ltd.

4.31 Documentation furnished to the Tribunal showed that PDS Ltd opened an account in TSB, on the signatures of the directors Ms Murphy and Ms Fearon, on 5 November 1993. Mr Lynn explained that the first lodgment of IR£3,500 to that account was a sum contributed to equally by himself and Mr Lafferty in order to open the account. On 24 August 1994, a small lodgment of IR£359 was made and there followed in October 1994 the lodgment of the IR£34,848 fee received from Mr Kelly/Cabriole Ltd. A perusal of the accounts of PDS Ltd showed that for the twenty five months ending 31 July 1995 the company had a turnover of IR£28,000. Mr Lynn acknowledged that this sum in all probability represented the payment (less VAT) which had been made by Mr Kelly/Cabriole Ltd in October 1994. On 7 July 1995, a sum of IR£11,000 was debited to the TSB account of PDS Ltd and paid into an account of Lyncan & Associates (a company co-owned by Mr Lynn and his wife, in which, Mr Lynn stated, Mr Lafferty had no interest).

4.32 The evidence to the Tribunal suggested that the services provided by Mr Lynn and Mr Lafferty to third parties in the period 1993 to 1997 were billed for by PDS Ltd.

4.33 It was Mr Lynn's testimony that PDS Ltd and Lyncan & Associates were wound up by the time Richard Lynn & Associates Ltd[23] was incorporated on 26 November 1997. Mr Lynn testified that after Richard Lynn & Associates was set up he invoiced for services provided by him to third parties via this company, and via Cedarcastle Investments Ltd. It was through Cedarcastle Investments Ltd that Mr Lynn invoiced Alice Developments Ltd subsequent to his retention by Mr O'Reilly/Castlethorn Developments.

[23] Mr Lafferty had no involvement in this company. Post 1996 he operated as a sole trader in relation to services provided by him to third parties and in that capacity he also provided services to the new owners of the Pye lands.

THE INVOLVEMENT OF MR LYNN AND MR LAFFERTY IN THE ATTEMPTS MADE BY MR KELLY AND MR LAYDEN TO AMEND THE 1993 WRITTEN STATEMENT AND TO OBTAIN PLANNING PERMISSION FOR A RETAIL DEVELOPMENT ON THE LANDS

4.34 In the course of his testimony Mr Kelly acknowledged that the policy objective for the Pye lands as contained in the Written Statement continued to present a serious problem for him in 1995. By late January 1995 Mr Kelly and Cabriole Construction Ltd were under financial pressure from ACC Bank and Mr Layden/Donlay Ltd. Mr Kelly was under pressure to put lands up for sale in order to defray the liabilities of Cabriole Construction Ltd. A sale of the lands would only be effective if it had the benefit of planning permission.

4.35 The evidence to the Tribunal was that there were a number of options put forward concerning the impediment which paragraph 3.2.9 of the Written Statement presented. Discussions took place with County Council management, at which it was suggested by Mr Kelly that the policy objective in the Written Statement could be achieved if the retail development that Mr Kelly wanted could be undertaken on the Pye lands located closest to old Dundrum village.

4.36 However, Mr Kelly also testified that in early 1995 a decision was made to the effect that a motion would be put down in the County Council in an effort to delete paragraph 3.2.9. The Tribunal was satisfied that Mr Lynn was retained by Mr Kelly to liaise with councillors and to put in place the necessary motion. A perusal of correspondence passing between Mr Kelly and Mr Layden in mid-1995, and between Mr Kelly and ACC Bank, revealed that one of the major objectives in the period April to June 1995 was to have paragraph 3.2.9 of the Written Statement (referred to in the correspondence as the '*objective note*') deleted.

4.37 On 15 June 1995 Mr Kelly arranged to send Mr Layden a copy of a '*zoning motion*' which, the Tribunal was satisfied, probably referred to the motion which it was proposed to bring to the Council. In the course of further correspondence with Mr Layden on 19 June 1995, Mr Kelly advised that Mr Lynn was dealing with the matter on his behalf. Mr Kelly told the Tribunal that the 1995 motion which sought a variation of the 1993 Dublin County Development Plan by the deletion therefrom of paragraph 3.2.9 was signed by Cllrs Fox and Matthews.

4.38 As he had done in regard to the November 1993 motion, Mr Layden acknowledged to the Tribunal that he canvassed a number of councillors in support of the motion which proposed to delete the '*objective note*' from the 1993 Written Statement. In a letter written by Mr Layden on 21 June 1995 to Mr

Tom Linanne (an associate of Mr Kelly's), Mr Layden advised Mr Kelly of his intention to contact a number of named councillors (a mixture of Fianna Fáil, Fine Gael and Progressive Democrats) and to contact Mr Séamus Brennan, a local TD, in relation to the issue.

4.39 Mr Layden acknowledged, in the course of his evidence, that in mid-1995 an agreement had been reached whereby a sum of IR£75,000 (in two tranches of IR£25,000 and IR£50,000) would be paid to Mr Lynn and Mr Lafferty if the '*objective note*' was removed from the Written Statement. Mr Layden stated that this fee related both to their work with regard to the attempt to delete the '*objective note*' and work put in by them in relation to the preparation of a planning permission application in relation to the Pye lands.

4.40 While both Mr Lynn and Mr Lafferty, in the course of their respective testimonies, believed that any fees agreed in 1995 related to their work in connection with a planning permission application, the Tribunal was satisfied that such agreed fees also encompassed lobbying work which Mr Lynn, in particular, was undertaking at that time in the attempt to secure an amendment to the Written Statement.

4.41 Whatever the fees agreed between Mr Kelly and Messrs Lynn and Lafferty in 1995, it appears that same were never paid. The motion in the names of Cllrs Matthews and Fox was not pursued.

4.42 In January 1996, ACC Bank appointed a receiver over the Pye lands in the ownership of Cabriole, DPIC and Dalehall. Following the acquisition of the Pye lands by an intermediary, the lands were ultimately acquired by Mr Joe O'Reilly/Castlethorn Developments Ltd. As already stated, Mr Lynn, by then operating as Richard Lynn & Associates, was duly retained by Mr O'Reilly/Castlethorn Developments Ltd as a lobbyist.

4.43 The evidence before the Tribunal established that in due course the impediment which the Written Statement presented for the development of the Pye lands as a major retail centre was ultimately overcome by locating the proposed retail development on that portion of the Pye lands which adjoined the southern portion of Dundrum village centre.

MR LYNN AND CEDARCASTLE INVESTMENTS LTD

4.44 In the course of his evidence, Mr Lynn confirmed that he was neither a Director nor a Shareholder of Cedarcastle Investments Ltd, although he

acknowledged telling the Tribunal in 2000[24] that he was a Director of that company but had corrected this in a further interview in 2002.

4.45 Mr Lynn confirmed to the Tribunal that the principal dealing of Cedarcastle Investments Ltd was collecting professional fees from clients to whom Mr Lynn, via Richard Lynn & Associates, provided services. Cedarcastle Investments Ltd invoiced such clients and in due course Mr Lynn, via Richard Lynn & Associates, invoiced Cedarcastle Investments Ltd for funds. Mr Lynn acknowledged, however, that, notwithstanding his use of Cedarcastle Investments Ltd for this purpose, it was the case that Richard Lynn & Associates itself also invoiced clients directly for the work it carried out.

4.46 Questioned as to why Richard Lynn & Associates Ltd could not have done this in all instances, Mr Lynn stated that he was using Cedarcastle Investments Ltd to manage the cash flow of Richard Lynn & Associates Ltd.

4.47 The evidence established that the first invoice issued by Cedarcastle Investments Ltd to a third party was on 2 September 1998, and its invoicing functions on behalf of Richard Lynn & Associates Ltd appeared to have concluded as of 5 October 2000. The total sum invoiced by Cedarcastle Investments Ltd on behalf of Richard Lynn & Associates Ltd in that timeframe was IR£653,000, (together with VAT of £137,130).

MR LYNN'S USE OF CEDARCASTLE INVESTMENTS LTD TO INVOICE DUNLOE EWART/CHERRYWOOD PROPERTIES LTD FOR SERVICES PROVIDED BY RICHARD LYNN & ASSOCIATES TO THAT ENTITY IN THE YEARS 1997–8 IN RELATION TO THE ZONING OF THE CHERRYWOOD LANDS

4.48 In the course of his testimony in this module, Mr Lynn acknowledged that in relation to the work done by Richard Lynn & Associates in connection with the Cherrywood lands in the course of the variation by Dún Laoghaire-Rathdown Council, in 1997 to 1998, of the 1993 Development Plan, he had agreed a success fee for this work with Dunloe Ewart (the then promoters of that development). Mr Lynn's function as a lobbyist for Dunloe Ewart was to seek to adjust the science and technology park zoning on the Cherrywood lands achieved by Monarch Properties Ltd in 1993.

4.49 Mr Lynn had been questioned during the course of the Cherrywood module (Day 667) about the contents of a document dated 20 June 1994 entitled '*Cherrywood' 'zoning costs'.* The Tribunal was satisfied that the

[24] Mr Lynn made reference to Cedarcastle in the course of a private interview with the Tribunal in 2000 in the context of discussing his association with developments other than the Pye lands.

document referred to prospective costs which would be incurred by Monarch Properties with regard to the Cherrywood rezoning. The document in question under a further heading '*staff—success bonus'* included the following reference: '*R Lynn IR£100,000 (similar to JW).'*

4.50 With regard to the issue of a success fee the questions put to Mr Lynn in the Cherrywood module on Day 667, when the document of 20 June 1994 was being discussed, were as follows:

> Q. 666 *'And under the heading zoning costs at 5180, in the same document. Again I think prepared by you. Under the heading of zoning costs, there's a figure for success bonus and yourself for 100,000 pounds?'*
>
> A. *'Yeah.'*
>
> Q. 667 '*Did you prepare this document?'*
>
> A. *'No, I think Mr Sweeney prepared this one. I don't think I became aware.'*
>
> Q. 668 *'Were you in fact paid a success?'*
>
> A. '*I wasn't no, Chairman.'*
>
> Q. 669 '*You were never paid a success by—were you paid a success fee by Guardian Royal or by Monarch?*
>
> A. *'I was earlier*[25] *paid a success fee but this related to going forward into the variation and then to the—*'
>
> Q. 670 *'Thereafter.'*
>
> A. *'The next phase thereafter. No I didn't get a success fee of IR£100,000.'*

4.51 On Day 719, Mr Lynn agreed that the variation at Dún Laoghaire-Rathdown Council of the 1993 Development Plan had commenced while Monarch Properties/GRE were still owners of the Cherrywood lands. That variation concluded after Dunloe Ewart took over the lands in 1997. Mr Lynn confirmed having been engaged by Dunloe Ewart in relation to the variation, on a success fee basis.

4.52 On Day 719, Mr Lynn acknowledged that he had previously told the Tribunal that he had not received such a fee and said that save for IR£7,500 he had not been paid a success fee by Monarch/GRE. He further acknowledged that he had not told the Tribunal when giving evidence in the Cherrywood module that he had in fact received a success fee totallying IR£200,000 (plus VAT) from Dunloe Ewart (paid by Cherrywood Properties Ltd) in respect of work carried out

[25] A reference to having received a success fee of IR£7,500.

by Richard Lynn & Associates Ltd during the review by Dún Laoghaire-Rathdown County Council of the 1993 Dublin County Development Plan.

4.53 Mr Lynn sought to justify his failure to disclose this information concerning the payment of a success fee on the basis that he interpreted the question put to him in the context of his relationship with Monarch/GRE and that his emphasis when replying to the question was not on having been paid a success fee specifically by Monarch/GRE. He acknowledged however that he did not have to be asked that question in order to have volunteered that information but maintained that it had not crossed his mind to do so.

THE MANNER IN WHICH MR LYNN/RICHARD LYNN & ASSOCIATES INVOICED FOR AND RECEIVED THE IR£200,000 SUCCESS FEE FROM DUNLOE EWART IN RELATION TO THE CHERRYWOOD LANDS

4.54 Mr Lynn agreed that up to January 1998 he had invoiced Dunloe Ewart/Cherrywood Properties Ltd, with regard to work he was doing on Cherrywood, via Richard Lynn & Associates. However, by the autumn of 1998, the services being provided by Richard Lynn & Associates to Dunloe Ewart in relation to the Cherrywood lands (and to Mr Joe O'Reilly/Castlethorn in relation to the Pye lands) were being invoiced by Cedarcastle Investments Ltd.

4.55 Invoices totalling IR£653,000 together with VAT of IR£137,000 were issued by Cedarcastle Investments Ltd between September 1998 and October 2000. Alice Developments Ltd were invoiced IR£124,360 (inclusive of VAT) in relation to the works done in relation to the Pye lands while Cherrywood Properties Ltd were invoiced for IR£242,000 (inclusive of VAT) in relation to the Cherrywood lands. [26] Mr Lynn told the Tribunal that larger invoices were issued by Cedarcastle Investments Ltd rather than Richard Lynn & Associates Ltd.

4.56 Mr Lynn acknowledged that no portion of the IR£653,000 invoiced by Cedarcastle Investments Ltd and paid to it was drawn down by Richard Lynn & Associates until January 2001. Mr Lynn stated that when he required money, Richard Lynn & Associates duly invoiced Cedarcastle Investments Ltd. The invoices put in by Richard Lynn & Associates to Cedarcastle did not necessarily match the invoices which had been issued by Cedarcastle Investments Ltd to the clients of Richard Lynn & Associates, in relation to any specific project.

4.57 Mr Lynn was questioned by Tribunal Counsel as to how this system assisted the cash flow of Richard Lynn & Associates. Mr Lynn stated that he

[26] The balance of the fund related to invoices by Cedarcastle to other companies associated with Mr O'Reilly/Castlethorn in respect of projects unconnected to the Pye lands.

could not advise further in relation to this issue save that this was the system '*good bad or indifferent'* that he had utilised to manage his cash flow. Asked why Richard Lynn & Associates had not simply opened a deposit account to hold the funds, Mr Lynn stated that he had chosen to hold the funds in Cedarcastle Investments Ltd. He agreed that neither the books of the paying company (be that Cherrywood Properties Ltd (on behalf of Dunloe Ewart) or Alice Developments Ltd (on behalf of Castlethorn Construction)), nor the books of the ultimate recipient of the funds (Richard Lynn & Associates), showed that those payments were being made to Richard Lynn & Associates. Mr Lynn stated that he never sought interest from Cedarcastle Investments Ltd with regard to the money it held, although he suggested, on Day 719, that he was in negotiation with the Directors of Cedarcastle Investments Ltd in relation to this issue.

4.58 The last recorded invoice by Richard Lynn & Associates to Cedarcastle Investments Ltd to draw down funds was on 2 January 2002. As of that date, there remained a balance of funds in Cedarcastle Investments Ltd. Mr Lynn told the Tribunal that in 2000 Richard Lynn & Associates ceased using Cedarcastle Investments Ltd as a mechanism to invoice clients.

4.59 The Tribunal rejected Mr Lynn evidence concerning the receipt by him of a success fee IR£200,000 in relation to the Cherrywood lands.

CHAPTER SIX - LISSENHALL MODULE

INTRODUCTION

1.01 This module concerned successful attempts in the early 1990s to rezone two adjoining parcels of land at Lissenhall, north of Swords, Co. Dublin, and close to the M1, the main Dublin–Belfast road.

1.02 Nineteen witnesses gave evidence when the module was heard in public between 23 March and 5 April 2006. Information provided to the Tribunal by Cllr Cyril Gallagher was read into the record on Day 629 (30 March 2006).

1.03 The parcel of land to the north (comprising approximately 18.5 acres) belonged to Rayband Ltd. (the Rayband lands). These lands were acquired in 1989 from Walls Properties Ltd for IR£277,500. The shareholders of Rayband Ltd ("Rayband") at that time were Mr Michael Hughes, John J. O'Brien Churchtown Ltd (a company owned by Mr P.J. Moran, a developer, and his family) and IFG Securities Ltd (a company whose shareholders included members of the Moran family, Mr Richard Hayes and Mr Edward Hallanan).

1.04 Prior to their acquisition by Rayband, the lands (the Lissenhall lands) had been brought to the attention of Mr Hughes by Mr Tim Collins. Mr Collins was known to Mr Hughes through work Pilgrim Associates (Architects) had done for Rayband in relation to lands at Clonskeagh, Co. Dublin which were owned, and subsequently sold, by Rayband. Mr Collins was a partner in Pilgrim.

1.05 The Tribunal was told that after Mr Hughes and Mr P. J. Moran (also known as Joe Moran) had viewed the Lissenhall lands, a decision was made to acquire them. Subsequent to their purchase, Rayband's immediate plan for the lands was to obtain planning permission for a residential development. This plan, if it was to come to fruition, would require a material contravention vote of Dublin County Council, given the lands' then agricultural zoning[1] status in the 1983 Dublin County Development Plan. A planning application which sought permission to construct 120 houses on the lands was prepared by Mr Tim Rowe of Pilgrim Associates, and lodged with Dublin County Council on 8 September 1989.

1.06 The Tribunal was satisfied that both prior to and during the consideration of that planning application, Rayband was alert to the need to lobby councillors,

[1] A small portion of the lands described in evidence as the 'bulge' had an E (industrial) zoning. Another portion had a G (high amenity) zoning.

in order to ensure a positive outcome to the necessary material contravention motion. A memorandum of a meeting of 31 August 1989 attended by Mr P. J. Moran, Mr Hughes, Mr Collins, Mr Rowe and Mr Shane Redmond (a Swords-based auctioneer) recorded the intention of the Rayband interests to meet the County Council's chief planner, in advance of the submission of the planning application. It also recorded the intention to canvass the support of councillors in the Fingal area for the proposed development. Mr Redmond was retained by Rayband to assist in the lobbying of local councillors, an endeavour for which, if the planning permission was granted, Mr Redmond was to be paid a consultancy fee of IR£10,000. Moreover, it would appear that he, together with another firm of auctioneers, would in due course be awarded the franchise to sell the newly constructed houses on the site. Mr P. J. Moran said in evidence that he did not believe he ever met with Mr Shane Redmond, but the Tribunal was satisfied from the available documentary evidence that he did meet with Mr Redmond.

1.07 Mr Redmond began his lobbying work after the meeting of 31 August 1989, as was evident from a communication which passed between Mr Rowe and Mr Hughes on 14 September 1989 when Mr Rowe sent Mr Hughes a list of the Fingal councillors which he had received from Mr Redmond. The content of this letter also suggested that by that stage, Mr Redmond had approached local councillors about the planning permission application, as in the correspondence he conveyed the concerns of councillors regarding access onto the dual carriageway from the lands. The letter advised that Pilgrim Architects were addressing those concerns and attempting to alleviate any potential problems. Mr Rowe also advised Mr Hughes that '*it is important that Shane be left to do his work, and that he be the person to make the necessary representations to the councillors. He will report and advise if either ourselves or yourselves are needed for any particular purpose.*'

1.08 By late September 1989, Mr Redmond was in a position to provide local councillors with information concerning the personnel behind Rayband. The issue of access was the subject of a discussion on 17 October 1989 between Mr P. J. Moran, Mr Hughes, Mr Collins and Mr Redmond. However, it would appear that the concerns regarding access to the lands became moot in November 1989 following the lodging by Lissenhall Kennels (a canine quarantine facility serving Dublin Airport located close to the Rayband lands) of an objection to Rayband's planning application for a residential development, an objection supported by the Department of Food and Agriculture. Rayband's planning permission application was duly withdrawn on 29 November 1989. The Tribunal was satisfied that following the withdrawal of this application, Rayband's attention turned to the prospect of getting its lands rezoned in the course of the

review of the 1983 Dublin County Development Plan, which was by then underway.

1.09 The parcel of lands to the south of the Rayband lands belonged to Mr Declan Duffy. By a side agreement, Mr Duffy agreed with Rayband in March 1993 that Rayband would seek the rezoning of both parcels of land and would bear all associated costs, on condition that in the event of the Duffy lands being rezoned, he would cede two acres of his lands to Rayband.[2]

1.10 The Rayband lands were zoned B (agricultural) and the Duffy lands were zoned G (green belt) in the 1983 Dublin County Development Plan. The lands were contained in Map 5, apart from the northernmost portion, which was contained in Map 1.

1.11 The lands retained their 1983 rezoning in the 1991 Draft Development Plan when it went on public display between September and December 1991. Paragraph 5.8.12(i) of the 1991 Draft Written Statement stated: '*. . . there are 119 hectares of industrial zoned land in Swords of which 36 hectares are developed. A considerable amount of undeveloped lands have planning permission for development. There are therefore sufficient serviced lands available to accommodate normal demands for the foreseeable future.*'

1.12 A number of representations were received in relation to these lands during the display period. One was made by Manahan & Associates on behalf of Rayband and Mr Duffy, objecting to the B zoning on the Rayband lands and the G zoning on the Duffy lands. The covering letter from Manahan & Associates requested that the lands be zoned A (residential), although the body of the submission sought E (industrial) zoning on both parcels of land.

1.13 A motion proposed by Cllr Seán Ryan and seconded by Cllr Tom Kelleher resolving not to rezone further lands at Swords was defeated at a special meeting of the County Council held on 17 May 1993. This motion had also proposed that the County Manager set in train arrangements to be presented to Fingal County Council[3] to further review the Development Plan for Swords within 12 months. The County Manager had recommended that the existing development strategy for Swords be continued, with no further changes in zoning except where previous commitments dictated.

[2] In December 1991, prior to the agreement, the Duffy lands were included in a rezoning submission made to the County Council by Rayband.

[3] On 1 January 1994 Dublin County Council was separated into three new councils: Fingal County Council, South Dublin County Council and Dún Laoghaire-Rathdown County Council.

1.14 At a special meeting of the County Council held on 21 May 1993, Cllrs Cyril Gallagher and Anne Devitt proposed a motion they had both signed on 18 March 1993 calling for the lands to be zoned E (industrial). An amending motion was proposed by Cllr Don Tipping and seconded by Cllr Denis O'Callaghan which sought to add the following words: '*and in the light of its proximity to G zoned land that its use be restricted to light industry as defined in the Local Government (Planning and Development) Acts and the regulations made thereunder*'. The amendment to the motion was passed unanimously**.** The Gallagher/Devitt motion to rezone the Lissenhall lands as thereby amended was then passed by 49 votes to 15 with 2 abstentions**.**

1.15 The changes effected by this vote were identified as Changes 2A and 2B on Map 6, and 4A and 4B on Map 30, in the 1993 amendments to the 1991 Draft Development Plan. (Changes 2A and 4A referred to the Rayband lands and Changes 2B and 4B referred to the Duffy lands.) The 1993 amendments went on public display between July and August 1993, where the lands were shown with a proposed zoning of E. Although the changes to the Lissenhall lands appeared in both Map 6 and Map 30, they were dealt with only in the context of Map 6. By September 1993, objectors had lodged a number of motions which sought, in effect, a reversal of the E zoning which had been achieved in May 1993.

1.16 At a special meeting of the County Council held on 16 September 1993, the Manager's report recommending that there be no change in the zoning of any substantial areas of land north of Swords was considered. The Manager also recommended that a study be undertaken of the issues listed with a view to adopting a coherent plan for the area within a year of setting up the new Fingal County Council. These proposals were not voted on at this meeting.

1.17 On 21 September 1993, the Manager further recommended in a revised report that in the event of the members wishing to rezone lands pending the recommended study, such extra zoning should be kept to a minimum. Motions recommending that the Manager's report and revised report be adopted were both defeated at this special meeting.

1.18 On the following day, a motion in the names of Cllrs Ryan and Kelleher adjourned from the previous day's special meeting recommending that Change 2A on Map 6 be zoned B (agriculture) was withdrawn. The result of the withdrawal of that motion was that the zoning on the Rayband lands was confirmed E.

1.19 A further motion (relating to the Duffy lands), proposed by Cllr Seán Ryan and seconded by Cllr Tom Kelleher, that Change 2B on Map 6 be zoned G ('*to*

protect and improve high amenity areas') was defeated when 29 councillors voted in favour with 33 against.

1.20 Cllrs Tipping and O'Callaghan respectively proposed and seconded a motion that Change 2B on Map 6 revert to its former proposed zoning of B and G in the 1991 Draft Development Plan. This proposal was also defeated when 29 councillors voted in favour with 33 against.

1.21 A proposal by Cllr Joe Higgins and seconded by Cllr Gus O'Connell, that the lands at Lissehhall identified as Change 2B on Map 6 be zoned G was defeated, with 24 votes in favour and 33 against. Change 2B Map 6 was then likewise confirmed.

1.22 Accordingly, when the 1993 Development Plan was adopted at the special meeting on 10 December 1993, the Rayband lands and the Duffy lands were zoned E.

MR FRANK DUNLOP'S RETENTION

2.01 At a meeting in late 1992, probably on 2 November, Mr Tim Collins introduced Mr Dunlop to Rayband representatives Mr Michael Hughes and Mr Colm Moran (representing Mr P. J. Moran of IFG).

2.02 Mr Dunlop was engaged to lobby councillors to support the rezoning of the Lissenhall lands. He conducted such lobbying from early 1993 to September 1993.

2.03 In the course of his October 2000 statement, Mr Dunlop informed the Tribunal that he had received fees of not less than IR£5,000 in respect of the Lissenhall lands. In a subsequent statement on 21 March 2006, following the Tribunal's provision to him of documentation relating to the Lissenhall Module, Mr Dunlop acknowledged that he had been paid a total of IR£27,625 (IR£25,000 excluding VAT) in relation to the Lissenhall project. This figure was confirmed by Mr Dunlop in the course of his evidence. It comprised payments of IR£12,500 on 5 January 1993, IR£10,000 plus IR£2,100 VAT (IR£12,100) on 2 July 1993, and IR£2,500 plus IR£625 VAT on 1 November 1993 which was paid in the form of two cheques for IR£3,000 and IR£25 respectively.[4]

2.04 The payment of IR£12,500 on 5 January 1993 was by cheque drawn on the account of IFG Securities, payable to Frank Dunlop. The cheque was lodged

[4] The payment of IR£3,000 and IR£25 (IR£3,025) related to an invoice dated 28 September 1993 for an amount of IR£2,500 plus IR£525 VAT (IR£3,025).

to the Irish Nationwide Building Society account of Mr Dunlop and his wife, one of his so-called 'war-chest' accounts. No invoice was raised in respect of this payment, and it did not include VAT. However, IFG Securities Ltd recorded the payment in their books as inclusive of VAT, thereby indicating an amount of IR£10,330.88 plus IR£2,169.42 VAT. Subsequently, IFG's books were adjusted, and the IR£2,169.42 was added back, correctly representing the fact that the IR£12,500 had been paid to Mr Dunlop without VAT. IFG's accountant, Mr Donal Lynch told the Tribunal that the decision was made to add back the incorrectly deducted VAT because no invoice had been received from Mr Dunlop. Mr Lynch confirmed that no effort had been made to obtain an invoice from Mr Dunlop. He was unable to explain why an invoice was neither sought nor expected from Mr Dunlop.

2.05 Rayband's books and records revealed an explanatory note dated 31 December 1993 entitled '*Rayband Ltd Swords Site*'. It followed the entry relating to the IR£12,500 payment to Frank Dunlop and stated: '*Payment 5.1.1994 on IFG Securities Ltd. to F. Dunlop fees in respect of professional fees paid to ensure planning permission on Swords Site.*' Mr Lynch confirmed that the date '*5.1.1994*' should have read '*5.1.1993*'.

2.06 In the course of his evidence to the Tribunal, Mr Dunlop admitted that he regarded this payment as improper and that he treated it entirely differently in his books and records to the later payment of IR£12,100 referred to below.

2.07 The second payment to Mr Dunlop was for IR£12,100 on 2 July 1993. It was made on foot of an invoice for IR£10,000 plus IR£2,100 VAT dated 24 May 1993 raised by Frank Dunlop & Associates Ltd and directed to Mr Michael Hughes of Rayband. This invoice was paid by cheque drawn on the account of IFG Securities Ltd payable to Frank Dunlop & Associates Ltd and lodged to the account of Frank Dunlop & Associates Ltd, as part of a composite lodgement of IR£22,141. Mr Dunlop referred to this payment as a '*success fee*'.

2.08 The third payment of IR£3,025 (IR£2,500 plus VAT) was made in November 1993 by cheques on foot of an invoice raised by Frank Dunlop & Associates Ltd and addressed to Mr Joe Moran of Rayband Ltd. The cheques were drawn on the account of IFG Securities Ltd. They were lodged to the account of Frank Dunlop & Associates Ltd and recorded in its books accordingly.

RAYBAND'S AWARENESS OF MR DUNLOP'S INTENTION TO MAKE CORRUPT PAYMENTS TO COUNCILLORS

3.01 Mr Dunlop claimed that in the course of his initial meeting with Mr Collins, Mr Hughes and Mr Colm Moran in November 1992, there was a discussion and an open acknowledgment by those present that politicians would be paid in return for their signature and/or support in the Lissenhall rezoning process.

3.02 In his evidence, Mr Dunlop stated: '*These people said to me that they knew that matters would have to be dealt with in this manner.*'

3.03 Mr Dunlop also stated:

> '*. . . a discussion took place as to their requirements. And I acknowledged and confirmed that there would be a requirement for payment to politicians and signature and support. This matter arose not from my side of the table. This matter arose in casual conversation, indicating to me that the people on the other side of the table were aware that payments would have to be made to politicians and I confirmed that.*'

3.04 Mr Dunlop was asked to identify which of the three individuals (Mr Collins, Mr Hughes and Mr Moran) had raised the topic about payments to councillors. He responded as follows:

> '*No I can't. But there was a discussion. The discussion took place in the context of what was required and it's in the context of that discussion that it was indicated to me that these people knew that payments would have to be made. And I confirm it. I would not have raised the issue. Or I would not have said other than in oblique terms and watching their reaction as to what my usage of the oblique words would be. These people said to me that they knew that matters would have to be dealt with in this manner.*'

3.05 When asked to clarify the language that had been used in the course of the discussion with the three men, Mr Dunlop stated:

> *'Well, in a conversation that took place. I cannot absolutely say to you what the exact language used was. But it certainly would have been along the lines is that we know what you have to do. And I have a recollection, almost in the context of a jocose way, that one or other of the people present said that the councillors, some councillors were asking for quite a lot of money. That it was known.*'

3.06 Mr Dunlop said in evidence that, other than confirming that payments would have to be made, he did not name any councillor, nor had he specified how many would require payment. He did explain to the group that it was likely

that some councillors would request payment for their signatures and/or support for any motion and that the support could only be guaranteed by the payment of money. He had confirmed this to the meeting because, given what had been raised by the others present, the '*cat was out of the bag at this stage.*'

3.07 Mr Dunlop was certain that Mr Collins, Mr Hughes and Mr Moran were aware, and made their awareness clear to him, that they knew what 'had' to be done, namely that councillors would 'have to be' paid in order to secure their support for the rezoning of the lands. The allegation that they were possessed of knowledge that any such payments would have to be made by Mr Dunlop in the course of his lobbying activities was rejected by Mr Collins, Mr Hughes and Mr Colm Moran.

3.08 In the course of his evidence to the Tribunal, Mr Colm Moran acknowledged that Mr Dunlop had stated that '*it's going to cost money*' referring to the rezoning process.

3.09 However, Mr Moran told the Tribunal that he could not recollect if there was a discussion as to payments to councillors.

3.10 Mr Moran testified to the Tribunal that Mr Dunlop was unknown to him until Mr Collins recommended that his services be retained because he was good at dealing with rezoning issues. Mr Moran met Mr Dunlop in Mr Dunlop's offices together with Mr Collins and Mr Hughes, and according to Mr Moran, at this meeting, Mr Dunlop was *'running the show'*, along with Mr Collins, who *'knew the score'*. The discussion between them had centred on Mr Dunlop's agreement to lobby the 78 county councillors.

3.11 Responding to Mr Dunlop's evidence that the issue of making payments to councillors emanated from Mr Moran's 'side of the table', Mr Moran said:

> '*All I say is that—I think what he said one or other of the people present said that some councillors. I assure you I did not—that's not me. And I don't remember any of the other two saying it either. Then on the other hand it could have been said, but I do not recollect it.*'

The following exchange took place between Counsel for the Tribunal and Mr Moran:

> Q. 768 *'Is it possible that it was said by Mr Collins or by Mr Hughes?'*
>
> A. *'I don't know. I have my doubts.'*
>
> Q. 769 *'You have your doubts?'*
>
> A. *'Uh-huh.'*
>
> Q. 770 *'Why is that? Why do you have your doubts Mr Moran?'*

A. '*The whole thing was kind of, if you like, unusual for me. I didn't know about it at the time. I know an awful lot more now than I did at that time. At any rate, I didn't know that thing was going to come up. It obviously did come up and Mr Dunlop said it.'*

Q. 771 '*Yes, I'm sorry, I understood you correctly. You say it came up, Mr Dunlop said it'*

A. '*I don't remember that. Mr Dunlop said it came up. I didn't say it came up '*

Q. 772 '*That's correct. Mr Dunlop said it came up.'*

A. '*Yeah '*

Q. 773 '*Yes, you don't recall either Mr Collins or Mr Hughes saying anything to the effect that'*

A. '*No I don't recall it.'*

Q. 774 '*But they may have. It's possible that they did say it. Is that what you're saying?'*

A. '*No I'm not saying that either, no no.'*

3.12 Mr Moran was then asked: '*Well are you saying then, Mr Moran, that there was no discussion at that meeting with Mr Dunlop about the pay of some sort of money to councillors?*' To this Mr Moran responded: '*What I am saying is I cannot recollect. Certainly—sorry. I don't remember that going on.*'

3.13 When again questioned about his recollection as to whether there had been a mention at the meeting about payments to councillors, Mr Moran stated:

'I *certainly don't recollect any such thing. On the other hand, my old memory's not as good as it used to be. I don't remember him saying that the councillors had to be paid*.'

3.14 Mr Moran was also asked if it was possible that the first payment of IR£12,500 paid to Mr Dunlop, without an invoice, was money intended for councillors. He replied '*No possibility whatsoever*'.

3.15 In the course of his evidence, Mr Hughes accounted for Mr Dunlop's retention in the following terms:

'Well, Mr Collins . . . Mr Collins contacted me one day to say that, you know, councillors are going to have to be met. This is—like, me pursuing councillors was useless that you'd want to get someone on board who is able to do the job. And he recommended this meeting with Mr Dunlop.'

Mr Hughes told the Tribunal that Mr Collins had told him that Mr Dunlop was '*a man who had the wherewithal to get councillors' support for your lands to have it rezoned*'.

3.16 Mr Hughes told the Tribunal that Mr Dunlop had presented himself as a person who was familiar with the draft Development Plan process and the manner in which the County Council was going about completing the review, and he left Mr Hughes in no doubt but that *'he was very competent in doing this'.* According to Mr Hughes, there had been no discussion about other Development Plan projects with which Mr Dunlop was associated. He maintained that the discussions centred on the nature of the lobbying exercise that would have to be carried out, and especially the need for ongoing meetings with councillors in order to refresh their memory in relation to the Lissenhall lands, in view of the number of land rezonings that were on the County Council's agenda.

3.17 It was Mr Hughes' evidence to the Tribunal that there had been no discussion about payments to councillors, nor had any such discussion been initiated from his '*side of the table*'. He maintained that '*if it was from our side of the table it would come from me. I did most of the talking at the meeting. And I certainly did not say that.'* He also stated that he would have been '*astounded if anyone had suggested making payments to councillors.'* He told the Tribunal that Mr Dunlop came across as *'a very polished man'* who had stated that he would *'get the site rezoned.'*

3.18 Mr Dunlop's fees were discussed at the end of the meeting. Mr Hughes said that he asked for IR£25,000. He, Mr Hughes, reported back to Mr P. J. Moran, recommending the retention of Mr Dunlop. An arrangement was then entered into whereby Mr Dunlop would receive IR£12,500 up front, and a further payment of IR£12,500 in the event that the rezoning was successful.

3.19 Mr Hughes agreed that documentation provided to the Tribunal revealed that by 6 January 1993, Mr Dunlop had received IR£12,500. He claimed not to have knowledge of how this cheque came to be transmitted to Mr Dunlop notwithstanding evidence of a telephone message from Mr Collins to Mr Dunlop's office on 4 January 1993 which stated as follows *'Tim Collins—meeting tomorrow here at 10 o'clock with Mr Michael Hughes'.*

3.20 The IFG Securities Ltd cheque in the sum of IR£12,500 received by Mr Dunlop, bore the date 5 January 1993. Mr Hughes claimed that he did not recall any meeting on that date. The Tribunal was satisfied, however, that such a meeting took place and that Mr Dunlop received the cheque from Mr Hughes on that occasion.

3.21 Mr Hughes agreed with the suggestion that he was the person within Rayband who dealt with the rezoning issue. The Tribunal noted that Mr Dunlop's

telephone attendance records were replete with efforts by Mr Hughes to contact Mr Dunlop in the course of the rezoning process.

3.22 Mr Hughes denied knowing of Mr Dunlop's practice of making or his intention to make payments to councillors in return for signing motions or supporting the Lissenhall rezoning process, and denied that any such discussion had taken place at the meeting with Mr Dunlop.

3.23 Mr Collins recalled his meeting with Mr Moran, Mr Hughes and Mr Dunlop. He said that Mr Dunlop was given a map and asked to lobby councillors in relation to the Lissenhall lands. He recalled a discussion in relation to Mr Dunlop's fees but could not recollect any discussion as to how Mr Dunlop was to carry out his lobbying or about paying money to councillors. Mr Collins did not believe that anything had been said by himself or his two colleagues, Mr Moran and Mr Hughes, about payments to councillors.

3.24 The Tribunal was satisfied that by late 1992 or early 1993, Mr Collins already had an established business relationship with Mr Dunlop, part of which centred on the development potential of a number of land parcels in north Co. Dublin. In 1990, Mr Collins was instrumental in effecting the introduction of Mr Dunlop to Mr Robert White[5] which led to Mr White retaining Mr Dunlop to lobby councillors in relation to a material contravention project in Swords.[6] In January 1993, Mr Collins introduced Mr Dunlop to the promoters of lands at Cloghran (the Cloghran Module) and Kinsealy (the Walls Kinsealy Module).

3.25 In the course of his testimony on Day 631, Mr Collins conceded that he had a more extensive relationship with Mr Dunlop during the course of the making of the 1993 Development Plan than he had previously admitted to. Prior to his testimony in this module, Mr Collins had presented the Tribunal with a completely different picture of his relationship with Mr Dunlop, both generally and in relation to the Lissenhall lands. In a statement dated 28 February 2006 and received by the Tribunal on 1 March 2006, Mr Collins advised as follows:

1. *As previously advised to the Tribunal, in 1989 I was a Director (Marketing) of Pilgrim Architects. Pilgrim were commissioned by Rayband to prepare and submit a planning application for the lands at Lissenhall, Swords, Co. Dublin. Pilgrim submitted the application but it was refused by the Planning Authorities.*

[5] See Chapter 14 (the Duff Module).

[6] On Day 624, when giving evidence in the Duff Module, Mr Collins conceded that it was he who had recommended Mr Dunlop to Mr Robert White, and while claiming not to recollect, he acknowledged that he must have had direct dealings with Mr Dunlop in the course of the latter's retention by Mr White. Prior to making this concession on Day 624, Mr Collins' prior statement to the Tribunal in relation to the matter had not adverted to the role he had played in introducing Mr Dunlop to Mr White.

2. *During 1988/89 I became aware of the lands at Lissenhall, Swords, Co. Dublin and considered that they may have potential. I brought them to the notice of Michael Hughes of Rayband and—Rayband subsequently purchased the lands.*
3. *I had no involvement whatsoever with the rezoning of the Lissenhall lands.*
4. *I have no knowledge of any submissions made in relation to the rezoning of these lands.*
5. *As previously explained to the Tribunal, I had no direct relationship business or personal with Frank Dunlop.*
6. *I introduced Michael Hughes of Rayband to Frank Dunlop as a PR Consultant who may assist him in some way. I have no further dealings with Frank Dunlop in relation to the Lissenhall lands.*
7. *I personally never received any payments direct or indirect in connection with these lands. As advised at No. 1 above Pilgrim Architects prepared and submitted a planning application for Rayband in relation to these lands and was paid a fee for same.*
8. *& 9. I am dealing with these two points jointly because they are inextricably linked. Sometime in the mid 90s, I cannot recall the exact date, I was approached by Glen O'Neill to see if the lands at Lissenhall could be bought. I approached Joe Moran, owner of Rayband, to see if he would consider selling. He advised me he was not interested. I have never heard of Province Properties or Universal Management Consultants Limited.*
10. *As previously advised my only connection with the lands was in 1988/89 where I appointed Michael Hughes of Rayband in the direction of the lands. They (then) in the mid 90s I was asked to approach Joe Moran to see if he would consider selling them.*
11. *I have no interest legal or beneficial in any of the Lissenhall lands.*

3.26 In a subsequent statement to the Tribunal on 30 March 2006, Mr Collins sought to clarify his past relationship with Mr Dunlop in the following terms:

The following is the extent of my dealings with Frank Dunlop:

a) I introduced Robert White as a client in relation to the Duff lands.

b) I introduced Rayband Ltd as a client in relation to the Lissenhall lands.

c) I may have introduced John Butler as a client in relation to the lands at Cloghran.

d) I introduced [named individual] *as a client.*

e) In the late 1990s I became aware of a builder that was trying to raise finance for a project. I introduced the builder to Frank Dunlop. Frank Dunlop effected an introduction to Irish Nationwide Building Society. They refused funding.

3.27 It was clear to the Tribunal that Mr Collins' clarification arose following circulation to him of a brief of documentation by the Tribunal in advance of his public testimony in this module. It contained details of Mr Dunlop's telephone attendance records maintained by his secretary, including details of contact between Mr Collins and Mr Dunlop's office in relation to Lissenhall as well as other land and business projects. In the period from 1 January to 1 June 1993, 62 telephone contacts by Mr Collins to Frank Dunlop & Associates Ltd were recorded by Mr Dunlop's secretary. These contacts only related to telephone calls from Mr Collins on occasions when Mr Dunlop was unable to speak with him. The Tribunal was satisfied that information contained in the record of telephone contacts maintained by Mr Dunlop's office for 1 July 1993 indicated that by that date Mr Collins had involved himself on Mr Dunlop's behalf in an effort to precipitate payment of the Frank Dunlop & Associates Ltd invoice which had issued on the 24 May 1993. The office note recorded the following:

> *12:45 Tim Collins—he phoned Joe Moran in IFG who is a brother of Colm Moran. Joe is trying to track down Colm and is a bit annoyed that this thing has not been put to bed. Tim suggested that Frank called Joe Moran at IFG in the afternoon at* [number given].

3.28 Another telephone attendance for that same afternoon recorded *'4.30 Tim Collins—cheque ready for you at Joe Moran's office Tim Collins (home)'.* By 2.30 pm on 2 July 1993, Mr Dunlop's office recorded in a telephone attendance *'2.30 Joe Moran—cheque ready 19 Fitzwilliam Square, ask for Donal Lynch',* in essence confirming that the cheque was ready for collection that afternoon.

3.29 The Tribunal was satisfied that in his earlier dealings with the Tribunal relating to the Lissenhall lands, Mr Collins did not disclose to the Tribunal the extent of his relationship with Mr Dunlop. The Tribunal was satisfied that the contents of Mr Collins' statement to the Tribunal of 28 February 2006 were inaccurate..

3.30 Mr Dunlop told the Tribunal that he paid Mr Collins IR£2,000 in cash at the end of 1993, and described the payment as a '*finder's fee*' relating to the Lissenhall lands. Mr Dunlop maintained that this payment was made at Mr Collins' request and was in respect of Mr Dunlop's introduction to the Lissenhall rezoning project by Mr Collins.

3.31 Mr Collins said he had no recollection of any such payment being made to him by Mr Dunlop in relation to the Lissenhall lands.

3.32 The Tribunal was satisfied that Mr Dunlop did, as he claimed, pay IR£2,000 in cash to Mr Collins at the end of 1993 in relation to his introduction to the Lissenhall project. The payment was probably made at Mr Collins' request in respect of Mr Dunlop's introduction to the Lissenhall rezoning project by Mr Collins. The Tribunal rejected Mr Collins' denial of any recollection of this payment.

THE TRIBUNAL'S CONCLUSIONS ON MR DUNLOP'S CLAIM THAT MR HUGHES, MR COLLINS AND MR COLM MORAN KNEW THAT PAYMENTS WOULD HAVE TO BE MADE TO COUNCILLORS IN THE COURSE OF MR DUNLOP'S LOBBYING

3.33 The Tribunal was satisfied that Mr Dunlop's practice of making payments to councillors to support rezoning projects was known to those who met with him in November 1992 (at the time of his retention as a lobbyist in relation to the Lissenhall lands), namely Mr Collins, Mr Hughes and Mr Colm Moran**.** The Tribunal accepted Mr Dunlop's evidence of what occurred at the November meeting. In all the circumstances, the Tribunal concluded that Messrs Hughes, Collins and Mr Colm Moran acquiesced in the contemplated corrupt activity on the part of Mr Dunlop in relation to the lobbying he was to undertake to secure the rezoning of the Lissenhall lands.

3.34 The Tribunal was satisfied that the primary purpose and motivation for the initial payment of IR£12,500 to Mr Dunlop personally, rather than to his company, without an invoice and without provision for VAT, was to facilitate his easy access to funds for the purpose of making payments to councillors in order to secure their support in the planning process.

3.35 The Tribunal was satisfied that both Mr Hughes and Mr Colm Moran**,** contrary to their evidence, knew at all relevant times that the manner by which Mr Dunlop was paid IR£12,500 in January 1993 followed upon the understanding which had been articulated at the meeting in November 1992 that he would require funds for payments to councillors.

3.36 The Tribunal was satisfied that a record of a telephone message from Mr Collins to Mr Dunlop's office on 4 January 1993 was accurate. That record stated: '*Tim Collins—meeting tomorrow here at 10 o'clock with Michael Hughes*'.

3.37 The Tribunal was satisfied that such a meeting took place and that its purpose was to facilitate the payment of the IR£12,500 cheque to Mr Dunlop.

MR P. J. MORAN

3.38 Mr P. J. Moran acknowledged that he had agreed to Mr Collins' recommendation to retain Mr Dunlop as a lobbyist although he, Mr Moran, had never met Mr Dunlop. He was not at the meetings which had taken place on 2 November 1992 or 5 January 1993. Mr Moran testified that, beyond having inquired about Mr Dunlop and being told that he had a proven record in relation to other rezoning projects, he could not recall having made specific inquiries about what it was Mr Dunlop could contribute as a lobbyist. The following exchange took place between Counsel for the Tribunal and Mr Moran on Day 628:

> Q. 349 '*What was Mr Dunlop bringing to this enterprise that made it necessary to retain him?'*
>
> A. '*He was a professional. I mean, I asked a question what did he do and he was described as a professional who could get—assist and knowing his way around the planning situation, would get planning. He was a professional lobbyist I would call him now.'*
>
> Q. 350 '*Well insofar as you needed professional planners you had those on board already.'*
>
> A. '*No, planners would draw up the plans etc. etc. He was a professional lobbyist.'*
>
> Q. 351 '*Yes, and who was he going to lobby?'*
>
> A. '*I presume the councillors. People who were going to take the decision.'*
>
> Q. 352 '*And were you aware that Mr Dunlop had an expertise in this area, Mr Moran?'*
>
> A. '*I was told he had. I didn't know Mr Dunlop in that capacity at that time other than being a highly regarded member of the, shall I say, of the hierarchy in Ireland.'*

3.39 Mr Moran acknowledged that at some time between November 1992 and 5 January 1993 he had agreed to payment of Mr Dunlop's fees of IR£25,000 in the form of an upfront fee of IR£12,500 and a success fee of the same amount if the rezoning motion succeeded. On Day 628, Mr Moran was asked *'When were you first told about the fee that Mr Dunlop was going to charge?'* to which he responded:

> *'Some days. Sometime, I have no idea. I mean, it would be some time after the three people meeting him. They came back and said he was looking for 25 grand. And they said, you know, that there was no way we should have agreed that kind of sum to him or anything else. And eventually they—somebody told me you have to pay this, is the going rate. If you want it done you have to pay it, he's a professional and you go along and you get it done. At this stage we had spent on this land*

hundreds of thousands of pounds literally on fees to architects, advisors, and everybody else. And somebody said look, at the end of the day it succeeds. And eventually I think I suggested I'd only give him half of it upfront and half of it when he delivers.'

3.40 Mr Moran accepted that he had authorised the 5 January 1993 payment to Mr Dunlop, although he professed not to have involved himself in the mechanics of any of the payments made to Mr Dunlop.

3.41 Mr Moran claimed to have '*no idea*' as to why Mr Dunlop's first payment of IR£12,500 was made without an invoice, and without provision for VAT. Neither had he any recollection of Mr Collins having intervened with him in July 1993 in relation to the payment of Mr Dunlop's success fee. The Tribunal accepted that Mr Moran did not meet Mr Dunlop and was not involved in the day-to-day activity of IFG and Rayband in the Lissenhall rezoning process. However, it was uncertain as to how much he knew of Mr Dunlop's intention to make corrupt payments to councillors in order to secure their support for the Lissenhall rezoning.

MR COLLINS' EXPECTATION OF A 'FINDERS FEE' FROM MR P. J. MORAN

3.42 The Tribunal was satisfied that from the time the lands were acquired by Rayband, there was an arrangement between Mr Collins and Mr P. J. Moran whereby Mr Collins would be paid a finder's fee. It was clear from Mr Collins' testimony that he appreciated the benefits that rezoning would bring to the lands in terms of the increased value which invariably followed a successful rezoning vote, and that he appreciated that when the lands came to be sold he, Mr Collins, would be in a stronger negotiating position vis à vis his finder's fee because of their rezoned status. The Tribunal was satisfied that the acknowledged existence of the understanding as between Mr P. J. Moran and Mr Collins, for payment of a finder's fee prompted Mr Collins, in late 1992, to recommend the introduction of Mr Dunlop as a lobbyist for the Lissenhall lands for the purposes of assisting in the project to have these lands rezoned for development.

3.43 According to Mr Moran and Mr Collins, as of the date of their respective testimonies Mr Collins had not been paid a finder's fee despite the lands having been rezoned and despite planning permission having been obtained, because the lands, according to Mr Moran, remained unviable due to an ongoing problem with access.

3.44 As to the issue of the question of Mr Collins' finder's fees generally, the Tribunal, in the course of its enquiries, learned of instances when Mr Collins, in respect of work he had done in relation to a number of landholdings (unrelated to the Rayband lands), had received, or expected to receive, finder's fees equivalent to a percentage of the profits realized by their re-sale or based on the enhanced development potential of such lands.

3.45 Mr Collins acknowledged seven instances where his finder's fee (either already received or expected) was 12.5 per cent, with one instance yielding a fee of 8 per cent.

3.46 In the course of his testimony on Day 631, Mr Collins acknowledged that in some instances his finder's fee had been ring-fenced by means of a shareholding in a corporate structure in respect of which he was the beneficial owner.

3.47 The Tribunal did not establish whether any specific percentage had been agreed with Mr Collins in relation to his expected finder's fee in the context of the Rayband lands, or whether such percentage was to be recognised by an interest in a corporate structure or otherwise. Mr Collins denied he had any beneficial interest in the Rayband lands. Asked on Day 628 about the nature of the finder's fee Mr Collins might expect, Mr P. J. Moran responded: *'I have no idea. He'll come into my office and he'll argue and he'll look for something and he'll get less than he's looking for.'*

THE DUFFY LANDS

3.48 There was no evidence to suggest to the Tribunal that the owners of the Duffy lands were ever made aware of what had been discussed between Mr Dunlop and Messrs Hughes, Collins and Colm Moran in November 1992. The Tribunal accepted Mr Declan Duffy's testimony that he never met with Mr Dunlop. There was no evidence to suggest a significant involvement by Mr Duffy in the rezoning process.

THE INVOLVEMENT OF MR SHANE REDMOND IN THE REZONING PROCESS

3.49 In his statement provided to the Tribunal on 22 March 2006 under a heading entitled *'Details of all and any meetings had by me with public representatives and Council Officials, including details of my knowledge of any financial arrangements, payments and meetings in respect of the Lands',* Mr Redmond confirmed his involvement in the Lissenhall rezoning process to have been as follows:

> *In the subsequent joint-submission for industrial re-zoning in respect of the Rayband Duffy lands at Lissenhall at the behest of Rayband, I canvassed support at local level for the proposal and this included representations to local Councillors, Swords Business Association and Swords Community Council together with other local interests.*

3.50 Mr Redmond confirmed this involvement in the course of his evidence to the Tribunal. Mr Hughes, in the course of his evidence, acknowledged Mr Redmond's work in this regard, stating '*my recollection is that Shane Redmond would have spoken to local councillors about the rezoning, as he was doing so for the initial Section 4 for the residential. That hadn't changed.'*

3.51 On 21 December 1993, Mr Redmond wrote to Mr Colm Moran enclosing an invoice for IR£20,000 plus VAT with regard to: '*Property: Lissenhall Swords, Co. Dublin Ref Michael Hughes and Colm Moran'*. In the course of his covering letter, he stated:

> *I attach herewith my invoice for professional fees in respect of the lands at Lissenhall, Swords, Co. Dublin. I don't have to say how pleased I am that the development plan has now been dealt with in its totality, as it has been a long road for all concerned.*

3.52 The evidence established that the invoice was disputed by Rayband, which resulted in further correspondence from Mr Redmond on 1 February 1994 wherein he stated:

> *. . . in my discussion with Michael Hughes and yourself it was fully agreed that my professional fees would be forthcoming on confirmation of the land being rezoned.*
>
> *This objective was achieved and my contribution to this end is irrefutable. In the circumstances I would be thankful if you would let me have a cheque in settlement of my fees.*

3.53 In the course of his evidence on Day 632, Mr Redmond claimed that the invoice furnished by him in December 1993 represented the fee (which, he claimed, had been agreed) for work which he had done as an intermediary between Rayband and Mr Declan Duffy and which had led ultimately to the concluded purchase agreement in March 1993. Mr Redmond claimed that his invoice had nothing to do with the rezoning of the lands or the lobbying which he himself had engaged in. Furthermore, he maintained that the invoice did not relate to the work he had carried out in 1989. Mr Redmond maintained that when the planning permission application was withdrawn in November 1989, his agreement for a consultancy fee for lobbying work ended.

3.54 Having regard to Mr Redmond's testimony concerning his involvement as a lobbyist in the course of the rezoning process, and also having regard to the evidence of Mr Colm Moran and Mr P. J. Moran, the Tribunal was satisfied that Mr Redmond's invoice and the monies he subsequently received related at least in part to his lobbying of locally-based councillors in relation to the rezoning issue. The evidence established that Mr Redmond's invoice was discharged (albeit on a revised basis) in 1994 when he received two payments of IR£7,500 each. Mr Redmond acknowledged that he had agreed a fee in 1989 for lobbying work he was to carry out (and did) in relation to the planning permission application. In those circumstances, the Tribunal found it inconceivable, given that he had agreed to lobby councillors in the course of the rezoning campaign in 1993, that when he issued his invoice in December 1993 to the Rayband interests (some two months after the rezoning confirmation), he did not have in mind the work he had undertaken in lobbying councillors, as well as his involvement in the negotiations which took place in the period 1991 to March 1993 between Rayband and the owners of the Duffy lands.

3.55 There was no allegation of any impropriety on the part of Mr Redmond vis à vis his lobbying of councillors during the rezoning process.

THE INVOLVEMENT OF CLLR CYRIL GALLAGHER (FF)

4.01 Mr Dunlop told the Tribunal that he paid a sum of IR£1,000 cash to Cllr Gallagher in return for his signature on the Lissenhall lands motion lodged with Dublin County Council on 18 March 1993, and his subsequent support for that motion.

4.02 Mr Dunlop believed that he obtained the signature of Cllr Gallagher on 18 March 1993 and that at that time he paid him the sum of IR£1,000 in return for the signature. Mr Dunlop's diary indicated a meeting between himself and Cllr Gallagher on that date.

4.03 Mr Dunlop believed that he paid Cllr Gallagher at the Royal Dublin Hotel.

4.04 Mr Dunlop said he decided to approach Cllr Gallagher to request him to sign the motion because he was anxious to get the support of councillors on the north side of the city as this would provide a strong incentive for other councillors to support it in due course. Cllr Gallagher was a senior councillor and a member of the Fianna Fáil party.

4.05 It was for the same reason that Mr Dunlop had approached Cllr Devitt, a senior north side councillor and a member of the Fine Gael Party.

4.06 In obtaining the signatures of Cllr Gallagher and Cllr Devitt, Mr Dunlop was maximising cross-party support at a senior level.

4.07 Cllr Gallagher's support for the rezoning of the Lissenhall lands remained consistent following the successful vote on 21 May 1993 (at which he voted in favour of the proposal). On 22 September 1993 he was among a majority of councillors who voted against attempts then being made to reverse the industrial zoning which had been achieved in May 1993.

4.08 Cllr Gallagher died on 20 March 2000, before he had the opportunity to provide sworn testimony to the Tribunal. In correspondence with the Tribunal, and specifically in response to a questionnaire issued by the Tribunal, Cllr Gallagher stated on 26 March 1998 that he was unaware of any improper conduct in the course of his work as a councillor.

4.09 In the course of a private interview with the Tribunal on 15 March 1999, Cllr Gallagher denied that he had any post office account deposits. Following his death some 12 months after the private interview, it transpired that Cllr Gallagher had a sum in excess of IR£60,000 on deposit with An Post (inclusive of interest), being the maturity value of lodgments and lump sum investments in An Post of approximately IR£43,500 made in the period 2 January 1991 to 12 January 1998.

4.10 In the period 25 March to 28 May 1993, Cllr Gallagher lodged round-figure sums to his bank and An Post accounts totalling IR£7,860. The following is a list of these lodgements:

1) 25 March 1993: An Post IR£2,000 (Savings Certificate)
2) 26 April 1993: An Post IR£1,000 (Savings Certificate)
3) 7 May 1993: Ulster Bank IR£360
4) 25 May 1993: AIB Bank IR£2,000
5) 25 May 1993: An Post IR£2,000 (Savings Certificate)
6) 28 May 1993: Ulster Bank IR£500

4.11 Cllr Gallagher lodged a total of IR£2,000 on 25 March 1993, in the purchase of Savings Certificates from An Post. This was within seven days of the alleged payment of IR£1,000 cash to him by Mr Dunlop.

4.12 The three aforementioned lodgements into the An Post account were in cash. The documentation available relating to the sums lodged to the AIB and Ulster Bank accounts do not disclose whether the lodgements were cheques or cash.

4.13 Cllr Gallagher was a retired Telecom Éireann senior technician. He retired in 1992, and was subsequently in receipt of an Eircom pension, council expenses and a state contributory old age pension. Cllr Gallagher's relatives were unable to definitively identify the source of the lodgements referred to above, other than to suggest that they included salary payments, pension and retirement payments, repayment of a loan from a family member and expenses from the County Council and Health Board.[7]

4.14 The Tribunal was satisfied that Cllr Gallagher received a sum of IR£1,000 from Mr Dunlop in or about 18 March 1993 in return for his signature on and support for the motion lodged with Dublin County Council on 18 March 1993 which was the subject of a successful vote at Dublin County Council on 21 March 1993. This payment was a corrupt payment.

4.15 While the lodgements referred to above did not individually or collectively establish with certainty that the said sum of IR£1,000 was in fact paid by Mr Dunlop to Cllr Gallagher, the Tribunal believed it likely that the total lodgement of IR£2,000 on 25 March 1993 included some or all of the said payment of IR£1,000.

THE INVOLVEMENT OF CLLR TOM HAND (FG)

5.01 Mr Dunlop told the Tribunal that he paid a sum of IR£1,000 in cash to the late Cllr Hand, at his request, in return for his agreement to support the rezoning of the Lissenhall lands. Mr Dunlop told the Tribunal that Cllr Hand frequently requested money to support rezoning motions, and that it was his normal practice to approach him for such support.

5.02 Mr Dunlop made no reference to the Lissenhall lands in the course of his private interview with the Tribunal in April 2000, nor did he identify Cllr Hand (or any councillor) as a recipient of money in relation to those lands. In the course of subsequent written statements, beginning in October 2000, and in advance of his sworn evidence on Day 625 (23 March 2006), Mr Dunlop stated that he paid IR£1,000 to Cllr Hand in return for his support for the rezoning of the Lissenhall lands.

5.03 The telephone records maintained by Mr Dunlop's secretary during the period from January to May 1993 indicated a significant number of calls from Cllr Hand to Mr Dunlop's office. Mr Dunlop believed that all such calls related to matters relevant to the review of the Dublin County Development Plan, and at

[7] This issue is dealt with in Chapter 8 (the Fox and Mahony Module).

least some of them were calls made in connection with the forthcoming Lissenhall rezoning motion, which was put to a vote on 21 May 1993. Cllr Hand voted in favour of this motion.

5.04 It appeared that telephone contact took place between Cllr Hand and Mr Dunlop's office in the period leading up to the vote relating to the Lissenhall lands on 23 September 1993. This contact probably related, at least in part, to the Lissenhall lands. On 22 September 1993 Cllr Hand voted against a series of motions which sought to remove the E zoning achieved for the lands in May 1993.

5.05 While the Tribunal was satisfied that Mr Dunlop did on occasion pay money to Cllr Hand, and did so corruptly, it was not satisfied on the balance of probability that Cllr Hand received a sum of IR£1,000 (or any sum) from Mr Dunlop in return for his agreement to support the rezoning of the Lissenhall lands.

THE INVOLVEMENT OF CLLR TONY FOX (FF)

6.01 Mr Dunlop told the Tribunal that he paid a sum of IR£1,000 in cash to Cllr Fox, at his request, immediately before or shortly after the Lissenhall lands rezoning vote on 21 May 1993, and that he believed the payment was made in the environs of Dublin County Council. Cllr Fox voted in favour of the rezoning of the Lissenhall lands, and maintained his support in September 1993 by voting against requests to reverse the industrial zoning achieved in May 1993.

6.02 Mr Dunlop told the Tribunal that he regularly sought voting support from Cllr Fox in relation to various rezoning motions in the course of the Dublin County Development Plan review. Mr Dunlop maintained that when lobbied, Cllr Fox sought payment '*virtually every single time*'. He said that Cllr Fox '*consistently*' requested money, and that he was one of his '*regulars*'.

6.03 In his private interview with the Tribunal in April 2000, Mr Dunlop did not mention Cllr Fox in the context of the Lissenhall lands, although he did make reference to other payments allegedly made to Cllr Fox in the course of that private interview. In statements he made to the Tribunal from October 2000, and prior to his sworn evidence to the Tribunal, Mr Dunlop stated that he had paid IR£1,000 to Cllr Fox in relation to the Lissenhall rezoning motion in 1993.

6.04 In his sworn evidence to the Tribunal, Cllr Fox insisted on a number of occasions that Mr Dunlop had never paid him any money, by way of political contribution or otherwise.

6.05 On 14 December 2000, Cllr Fox made a statement to the Tribunal in which he denied receiving any payments of any nature from Mr Dunlop. Cllr Fox told the Fianna Fáil Inquiry in 2000 that he never received any payments of any kind from Mr Dunlop.

6.06 On 20 March 2006, Cllr Fox made a statement to the Tribunal in which he stated that he could not recall any matter relating to the Lissenhall lands, or of ever being lobbied by anyone representing the owners of the Lissenhall lands.

6.07 In the course of his sworn evidence to the Tribunal, Cllr Fox stated that he had no relationship with Mr Dunlop in or around May 1993, and that his only contact with him had been in relation to the Texas Homecare material contravention issue which arose in the late 1980s or early 1990s. Cllr Fox claimed that he did not meet Mr Dunlop in 1993 and had no contact with him throughout 1993, other than seeing him occasionally at meetings of Dublin County Council.

6.08 Cllr Fox was questioned extensively in relation to a number of telephone calls which he apparently made to Mr Dunlop's office in the period January to September 1993. Cllr Fox insisted that these were merely instances of him returning calls previously made by Mr Dunlop. He accepted that there was telephone contact at least to the extent indicated in the telephone records, and that such contact as there was between himself and Mr Dunlop related to the review of the Dublin County Development Plan.

6.09 Cllr. Fox vehemently denied ever requesting or receiving money from Mr Dunlop. He could not think of a reason why Mr Dunlop would make such an allegation, other than to suggest that Mr Dunlop might be trying to *'offload a lot of money he wants to offload in relation to tax*'. Cllr Fox claimed that he was unaware that Mr Dunlop had paid political donations to councillors over the years. Asked, in a general way, as to his view of councillors requesting, or third parties offering, money in return for votes or support, Cllr. Fox replied that such would be '*terrible*'. On the issue of a councillor being offered money by a developer at the time of a vote, by way of a political contribution or election contribution, Cllr Fox responded with the observation *'I wouldn't think it would be great'.* He said he did not know if it was wrong to accept money in these circumstances. Cllr. Fox himself claimed never to have received a political contribution or an election expense around the time of a County Council rezoning vote. He stated that he had only received such contributions at election time.[8] Cllr Fox also told the Tribunal that if he had been offered a political contribution,

[8] See Chapter 3 (the Cherrywood Module).

or an election contribution in May 1993, he would not have taken it as he '*wouldn't be needing it because there wasn't an election'.*

6.10 The Tribunal was satisfied that the evidence from Cllr Fox to the effect that he had little or no contact with Mr Dunlop in 1993 was inaccurate. There was considerable contact between the two men in 1993, and this contact was associated with the review of the Dublin County Development Plan. The Tribunal was satisfied that the contact between Mr Dunlop and Cllr Fox went significantly beyond occasional contact at Dublin County Council meetings.

6.11 The Tribunal believed it inconceivable that, as Cllr Fox sought to maintain, Mr Dunlop, having had a successful association with Cllr Fox over the Texas Homecare issue, would not have reverted to Cllr Fox in relation to other matters which were the subject of a Council vote and in relation to which he had an interest. The Tribunal therefore rejected Cllr Fox's evidence that he had not been lobbied by Mr Dunlop in relation to the Lissenhall lands.

6.12 The Tribunal was satisfied that the alleged payment of IR£1,000 by Mr Dunlop to Cllr Fox in return for his support for the rezoning of the Lissenhall lands was in fact paid, and was paid in the circumstances indicated by Mr Dunlop in the course of his evidence. This payment was a corrupt payment.

THE INVOLVEMENT OF CLLR ANNE DEVITT (FG)

7.01 Prior to the rezoning process being initiated in relation to the Lissenhall lands, Cllr Devitt had an involvement in the attempt made in 1989 to achieve planning permission for 120 houses on the Rayband lands. During this short-lived planning permission application, Cllr Devitt had been lobbied on behalf of Rayband by Mr Shane Redmond. Documents furnished to the Tribunal revealed that Cllr Devitt had sought unsuccessfully to initiate the material contravention process at Council level. Cllr Devitt stated that she had no recollection of being lobbied on behalf of Rayband in relation to that planning application, nor did she recall proposing that a material contravention process be initiated. The evidence established that Mr Dunlop drafted a letter about Lissenhall Kennels, the canine quarantine facility for Dublin Airport, which was addressed and sent to Cllr Devitt. The letter was dated March 1993 and was signed by Mr Hughes and Mr P. J. Moran and on behalf of Mr Richard Hayes. It gave certain undertakings (which had been required by Cllr Devitt) on behalf of the developers of the Lissenhall lands relating to the protection of the operation of the Lissenhall Kennels. The purpose of the letter was to allay the concern of Cllr Devitt and others that the rezoning and development of the Lissenhall lands would adversely affect that enterprise.

7.02 Mr Dunlop duly obtained Cllr Devitt's signature on the motion relating to the Lissenhall lands which was lodged with the County Council on 18 March 1993, and passed in amended form on 21 May 1993. Mr Dunlop's diary recorded a meeting with Cllr Devitt on 18 March 1993.

7.03 Mr Dunlop recognised that Cllr Devitt's signature on the motion was of particular value because of her status as a local councillor, and the likelihood that her involvement with the project would influence other councillors to support it. Neither Cllr Devitt nor Mr Dunlop had any specific recollection of the circumstances in which Cllr Devitt came to sign the motion to rezone the lands in March 1993.

7.04 Cllr Devitt told the Tribunal that she signed the 18 March 1993 motion because she believed that the rezoning and development of the Lissenhall lands would contribute to the proper planning and development of the Swords area.

7.05 The Tribunal was satisfied from the evidence of both Cllr Devitt and Mr Dunlop that Cllr Devitt's signature was an important element in the effort to have the Lissenhall lands rezoned, given that she was a local councillor and the *de facto* leader of the Fine Gael group within the County Council at that time.

7.06 On 20 April 1998, Rayband lodged a planning permission application with Fingal County Council for the development of industrial units on the Lissenhall lands. In order to facilitate the granting of permission for the Lissenhall lands, it was deemed necessary to relocate a planned roundabout to an existing entrance to an Eastern Health Board (EHB) facility. This required the relocation of ambulance facilities. Contact was initiated between Mr Tim Rowe the architect representing the owners of the Lissenhall lands, and Mr Philip Doyle, a senior official in the EHB.

7.07 The owners of the lands and the EHB entered into discussions and negotiations in relation to the roundabout. In the course of this process, Cllr Devitt, who was also a local authority member of the EHB, was retained by Mr P. J. Moran on behalf of the landowners. The final grant of planning permission was dated 25 March 2002.

7.08 Documents furnished to the Tribunal established that Cllr Devitt had been approached on behalf of Rayband to assist them with their dealings with the EHB by late 1998. At the time, Cllr Devitt was both an elected councillor and a local authority member of the EHB. In a letter dated 25 November 1998 to Mr Rowe, from Kevin Flanagan & Associates (other professionals engaged by Rayband), there is reference to the importance of having had a meeting with Cllr Devitt,

having regard to her role as a member of the health board and an elected councillor for Fingal County Council.

7.09 In the course of his evidence, Mr Moran described Cllr Devitt's involvement with him in relation to the EHB issue thus: *'She provided professional advice. She quite openly, there was an invoice from her, which we have on the front of it. And she provided professional advice and legal services.*'

7.10 The relevant invoice headed 'Anne E. M. Devitt, Legal Services' which was provided by Cllr Devitt to Mr Moran, and stamped received on 30 April 2002 (some five weeks after the grant of planning permission), made reference to an *'agreed fee re advices/investigations of rights of way, mediation'*. The invoice of IR£20,000 was duly paid on Mr Moran's authorisation by cheque which was debited to Rayband's AIB account on 4 July 2002.

7.11 At the time he retained the services of Cllr Devitt, Mr Moran was aware that she was a member of the EHB. In his evidence, Mr Moran accepted that Cllr Devitt's membership of the EHB was one of the reasons he engaged her, and that another reason was her portrayal of herself as a person who could provide professional services directed towards resolving the *'problem'*. The '*problem'* was a reference to the need to persuade the EHB to permit the construction of a roundabout at a particular location.

7.12 Mr Moran told the Tribunal that the payment of a fee to Cllr Devitt was conditional upon planning permission being obtained for the Lissenhall lands, and an agreement being reached facilitating access. The awarding of a planning permission was ultimately dependent on agreement being reached with the EHB in relation to the roundabout.

7.13 Cllr Devitt's recollection as to the circumstances and reasons for her engagement by Mr Moran was vague. However, she accepted that she was retained and that she was instrumental in bringing about a satisfactory conclusion of the access issue, and she acknowledged the invoicing for, and the receipt of, a sum of IR£20,000 from Rayband in 2002.

7.14 Cllr Devitt stated: '*Mr Moran was aware that I was a solicitor and he was aware that I had knowledge of the workings, intricate workings of the Health Board*.'

7.15 Cllr Devitt also stated (referring to Mr Moran's reason for engaging her):

'*He was looking for help in dealing with his access into these lands. He knew that I had legal knowledge. He knew I knew property. He knew I*

knew the land in Swords and he knew I knew the workings of the Health Board. So he knew that I had skills in this area.'

7.16 Cllr Devitt went on to state: '*What I was being—I was being consulted and engaged in order to assist them in getting access to the lands for which they had planning permission.*'

7.17 Cllr Devitt told the Tribunal that she engaged in discussion with Mr Doyle[9] of the EHB. Cllr Devitt claimed that she informed Mr Doyle that she was representing the interests of a client in her discussions with him so as to ensure that he did not believe that she was approaching him in her capacity as Chair of the northern area board of the EHB.

7.18 In a description of her role in this matter, Cllr Devitt stated:

'*My job was to ensure that the Health Board provided sufficient information to the agent in order to allow the agent make his planning application. And that information required I think was to do with the details in relation to the ambulance centre and the details in relation to the workshop.*'

7.19 She went on to state:

'*There was so much work going on in the Health Board and that there was different—what I think helped to do was prioritise this as something that was worthwhile . . . Within the property section of the Health Board. It was nothing to do with any of the services you know the Health Board services. This was the property section of the Health Board.*'

7.20 Cllr Devitt did not provide any written advices to Mr Moran or to his architect, Mr Rowe, nor did she receive written instructions from Mr Moran. She did not appear to have created or maintained any documentation relating to the issue.

7.21 Cllr Devitt was adamant that no conflict of interest arose in her being retained by the landowner for the purposes of discussing or negotiating with or mediating with the EHB, of which she was a member, and during a period when she was the Chair of its northern area. In particular, Cllr Devitt believed that since the access/roundabout issue required a degree of consensus or agreement between Rayband and the EHB, it was in the interests of both parties that it be resolved to both sides' satisfaction. Cllr Devitt believed that she had a role and a duty to ensure that the EHB would avail of an opportunity to acquire better

[9] Mr Doyle was deceased when Cllr Devitt gave her evidence to the Tribunal.

facilities. She did not believe it was improper on her part to engage in this liaison between the owners of the Lissenhall lands and the EHB, and to be paid a substantial fee by the landowners. She believed that she had disclosed her position fully to the EHB and that they were aware that she was acting in a consultancy role on behalf of the landowners and would therefore be paid for her efforts.

7.22 In the course of her evidence, Cllr Devitt described her role as being to mediate between Rayband and the EHB, and to facilitate the flow of information between the EHB and Mr Rowe, who, as architect to Rayband, was dealing with the planning application to Fingal County Council. Cllr Devitt claimed not to have herself been directly involved in the planning application made by Rayband, and she stated that she did not play any role or take any interest in the relevant planning file within the County Council. The Tribunal was satisfied that Rayband was primarily motivated to approach Cllr Devitt for her assistance by her position both as a locally elected councillor and a member of the EHB.

7.23 The Tribunal took the view that the actions of Cllr Devitt in acting as a consultant to Rayband, with the promise of payment and having been duly paid IR£20,000, were entirely inappropriate, having regard to the positions she held both as an elected councillor in Fingal County Council and as Chair of the northern area of the EHB.

7.24 In her evidence, Cllr Devitt was at pains to place a distance between her consultative role and the Rayband planning permission application which was active between 1997 and 2002. She did not see any conflict of interest arising because she maintained that she '*had not used her influence in the planning application'*. The Tribunal was satisfied, however, that, irrespective of the role, if any, Ms Devitt had played in the planning application process, there should not be any circumstances in which a councillor could properly claim financial reward for the advancement of a matter, the outcome of which rested with the decision making powers of the County Council of which that councillor was an elected member.

7.25 Having regard to her involvement on behalf of Rayband at a time when she was the Chair of the northern area of the EHB, the Tribunal was told by Cllr Devitt that that when 'mediating' with that body she had advised Mr Doyle of her business relationship with Rayband, and that, effectively, she was dealing with the matter qua '*consultant*' to Rayband. However, the Tribunal noted Mr Rowe's evidence to the effect that his dealings with Cllr Devitt at this time were conducted entirely in her capacity as a public representative, (both as a councillor and a health board member).

7.26 The Tribunal found it inconceivable that Cllr Devitt failed to appreciate the conflict of interest which arose by her aforesaid actions. The Tribunal was satisfied that Cllr Devitt's consultative role for Rayband together with the expectation of financial reward rendered it impossible for Cllr Devitt to perform her public duty as an elected councillor and health board member in a disinterested fashion.

THE ASSISTANCE GIVEN BY CLLR DEVITT TO MR SHANE REDMOND

7.27 Cllr Devitt also provided assistance to Mr Shane Redmond. In 2000, Mr Redmond was helping Mr Duffy[10] resolve an issue which arose regarding access to the Duffy lands. Mr Redmond was at the time retained by Mr Duffy in relation to the proposed sale of his lands to a third party. On 17 August 2000, an attendance taken by Mr Duffy's solicitor of a meeting with Mr Duffy, Mr Redmond and others recorded the following:

> *During the meeting Shane took a telephone call from an Anne Devitt in the Eastern Health Board. She rang to say that Mr Rowe spoke with Rayband and has also spoken with her. They will give us whatever access we require which is direct access onto the site.*

Mr Redmond told the Tribunal that he requested assistance from Cllr Devitt in her capacity as an elected councillor, and as far as he knew, Cllr Devitt made contact on his behalf with Mr P. J. Moran. Ultimately the difficulty was resolved. This position was subsequently confirmed to Mr Duffy's solicitors on 8 December 2000 when they were informed by Rayband's solicitors that '*through a third party's intervention on your Client's behalf our Client has agreed to furnish a Right of Way over the roadways*'.

7.28 In the course of her evidence, Cllr Devitt agreed that she was the third party referred to in the 8 December 2000 letter, and that she had intervened with Rayband on behalf of Mr Duffy at Mr Redmond's request. Mr Redmond himself stated that he had consulted Cllr Devitt in her capacity as a local councillor and was unaware that she had been retained on a fee basis as a consultant to Mr P. J. Moran.

7.29 In the course of her evidence, Cllr Devitt was asked if she had charged fees for her intervention on behalf of Mr Redmond and his client, Mr Duffy. The following exchange took place between Counsel for the Tribunal and Cllr Devitt:

> Q. *And was any fee paid for this?'*
>
> A. *'No, no, because I was contacted on that occasion as a councillor.'*
>
> Q. *'As a councillor?'*

[10] Mr Duffy was the landowner who joined with Rayband in the 1993 rezoning proposal.

A. *'So no fee arises. Is allowed to arise if you are being consulted as a councillor in relation to any matters dealing with the County Council*.'

7.30 This explanation provided by Cllr Devitt as to the reasons why she did not charge fees for her intervention on behalf of Mr Redmond and Mr Duffy in relation to the right-of-way issue, and which the Tribunal believed to have been an appropriate position, was in stark contrast to Cllr Devitt having billed Mr P. J. Moran for and having received IR£20,000 for *'advices/investigation of right of way, mediation'* relating to Rayband's interests.

THE INVOLVEMENT OF CLLR SEÁN GILBRIDE (FF)

8.01 Mr Dunlop told the Tribunal that he lobbied Cllr Gilbride for his support for the rezoning of the Lissenhall lands. This evidence was accepted by Cllr Gilbride. No allegation was made that Cllr Gilbride sought or received payment in relation to the rezoning of the Lissenhall lands.

8.02 The telephone records maintained by Mr Dunlop's secretary indicated regular telephone contact between Cllr Gilbride and Mr Dunlop's office throughout 1993. One entry for 22 September 1993 recorded '*Lissenhall ok'* as the message given by Cllr Gilbride in a telephone call on that date. This appeared to be a reference to the motions before Dublin County Council on that date which culminated in the confirmation of the industrial rezoning of the Lissenhall lands.

8.03 Cllr Gilbride accepted that this phone record was probably accurate, and that he was merely responding to a request from Mr Dunlop for confirmation that the rezoning of the lands had been confirmed.

8.04 Cllr Gilbride told the Tribunal that he supported the rezoning of the Lissenhall lands at all stages in the review of the Development Plan. He believed that additional rezoned land was needed in the Swords area. He cited an earlier difficulty which had arisen in the context of a potential Motorola industrial project and the lack of suitably zoned land in the Swords area for such a development.

CHAPTER SIX – LISSENHALL MODULE

EXHIBITS

1. Motion and map lodged 18 March 1993 to rezone the lands at Lissenhall..... 1877

2. IFG Securities Ltd cheque dated 5 January 1993 payable to Mr Frank Dunlop in the amount of IR£12,500.00..... 1879

3. Copy Frank Dunlop & Assoicates Ltd invoice dated 28 September 1993 to Mr Joe Moran of Rayband Ltd in the amount of IR£3,025.00..... 1880

4. Frank Dunlop & Associates Ltd invoice dated 24 May 1993 to Mr Michael Hughes of Rayband Ltd in the amount of IR£12,100.00..... 1881

5. Telephone messages from Mr Dunlop's office dated Monday 4 January 1993..... 1882

6. Legal services invoice from Cllr Devitt to Rayband Ltd in the amount of IR£20,000.00..... 1883

13 Q [redacted]

MOTION

"Dublin County Council hereby resolves that the lands at Lissenhall, Swords bounded in red on the attached map and identified by the signatures of the proposers be zoned E".

Christopher Gallagher
Anne Devlin

18.3.93

DUBLIN COUNTY COUNCIL
18 MAR 1993
SECRETARIAT DEPARTMENT

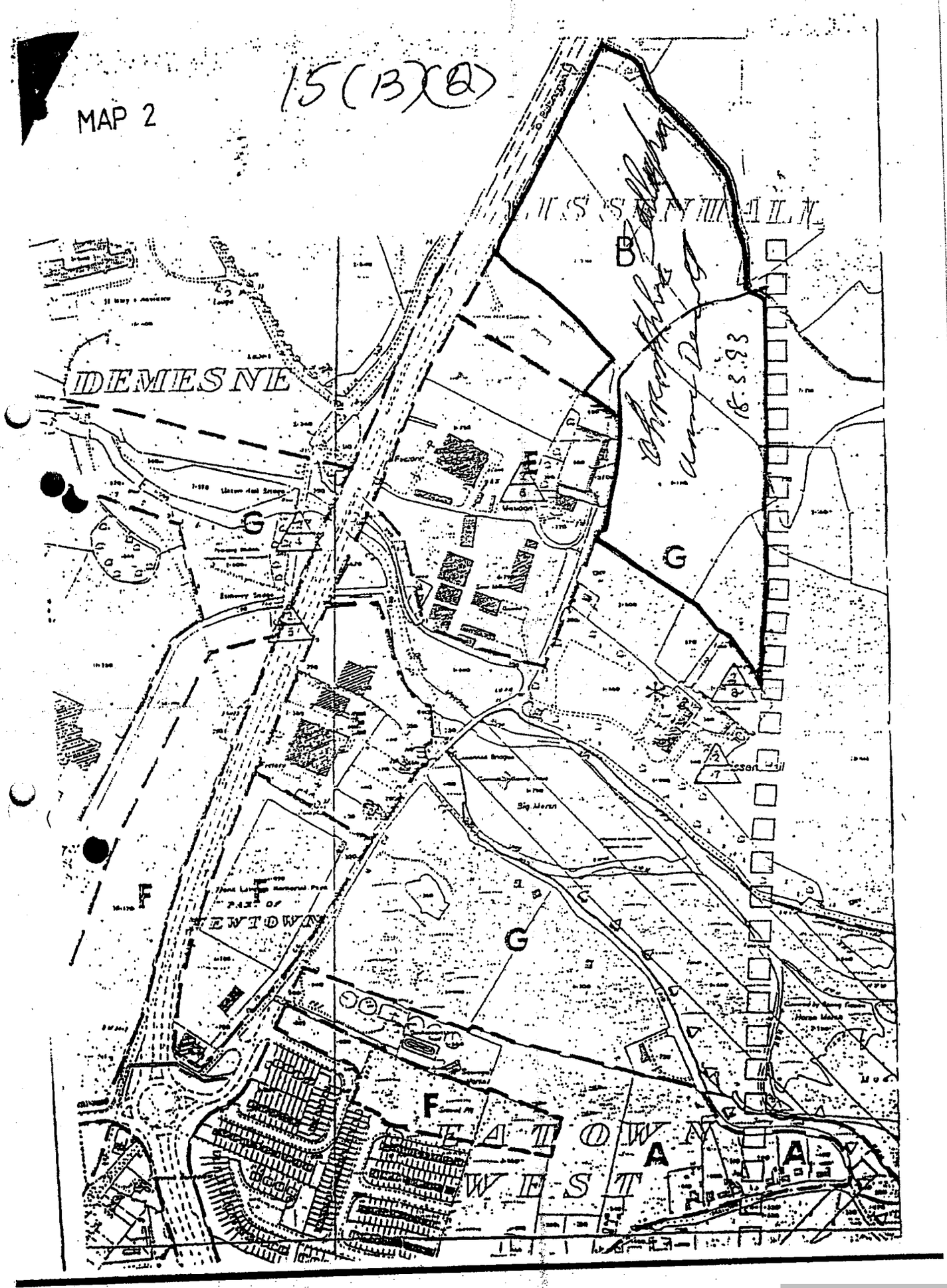
Tribunal Ref : LISSENHALL LANDS BRIEF

Page No: 84

Tribunal Ref : FD.ST 1

Page No: 210

FDIRST1 1-2110



AIB Bank

1 LOWER BAGGOT STREET DUBLIN 2

5th October 1993

93-10-12

Pay Frank Dunlop.

or order

Dublin Thousand, Five hundred Punts

IR£12,500 - 00

I F G SECURITIES LIMITED

Allied Irish Banks, p.l.c.

"501346" 93"10 12" 33603053" 02

L002

Att: Joe Moran,
Rayband Ltd.,
19 Fitswilliam Square,
Dublin 2.

28th. September, 1993

INVOICE NO.: 912

To agreed fee in relation to public affairs strategy	£2,500.00
VAT @ 21%	525.00
	£3,025.00

Paid 234
235

VAT NO.: 6547261 I

Return to report

4007

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577

Mr. Michael Hughes,
Rayband Ltd.,
19 Fitzwilliam Square,
Dublin 2.

24th. May, 1993

INVOICE NO.: 844

To agreed success fee vis-a-vis public affairs consultancy services re. Lissenhall.	£10,000.00
VAT @ 21%	2,100.00
	£12,100.00

P.A.I
502051 VFJ
2/7/93.

VAT NO.: 6547261 I

Return to report

TELEPHONE MESSAGES - MONDAY 4TH JANUARY 1993

A.M.

9.37 Tim Collins - 607511

9.40 Don Lydon - at home 2888741 X

10.00 Therese Ridge - at home till 11 o'clock 573438 X

10.10 Tom Collins

10.23 Anthony Murphy - Q.vale, in Curragh Camp 045 41915 Ex. 5220 re. sponsoring the army going to Somalia

10.39 John Dockrell - 615866 Dockrell Farrell Sol. X

10.42 Ambrose Kelly - in car 088 551604

10.44 Tony Fox - please call him 905270 X

11.20 Brian Gartlan - 769455

11.21 Tim Collins - meeting tomorrow here at 10 o'clock with Michael Hughes

11.23 Kieran Blair - National Toll Roads, 2811411 re. Diswells Town Site.

X

P.M.

12.20 Sean Gilbride - at home

2.41 Don Lydon - FD to phone him tomorrow at 9 o'clock 088 550366 X

2.55 Paul Smithwick - 770278, please call

2.59 Tom Hand - please call X

3.24 Caitriona Murphy - call her tomorrow

4.55 Elena Cogavin - re. letter faxed over

5.07 John Caldwell - call him tomorrow

Return to report

ANNE E. M. DEVITT
LEGAL SERVICES

Anne E. M. Devitt, B.Sc., M.Econ.Sc.

Lispopple
Swords, Co. Dublin
Telephone: 840 9728 • Facsimile 840 9728
E-mail: adevitt@indigo.ie

Our ref:

Your ref:

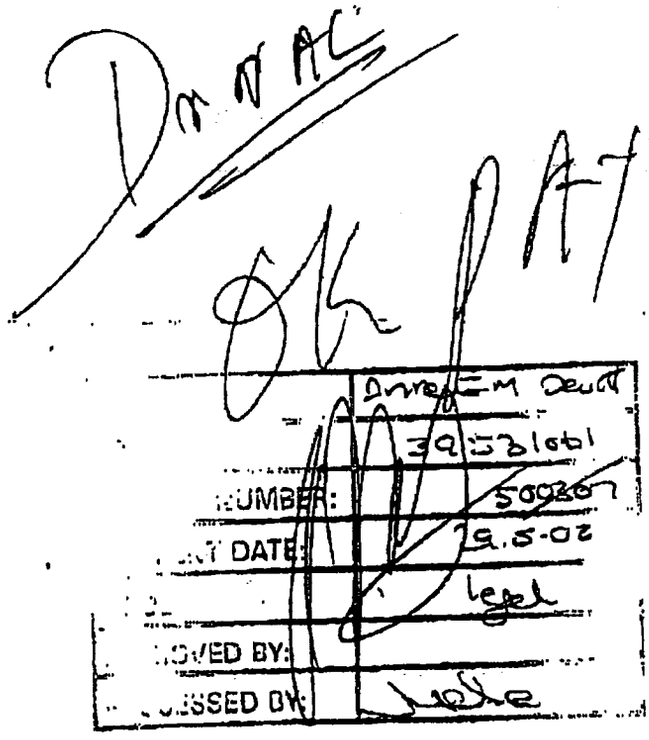
Date:

To Rayband Ltd.
19, Fitzwilliam St,
Dublin 2

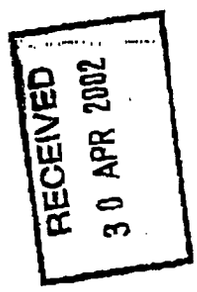
Invoice

Agreed fee re;
advices ,
Investigation of rights of way;
Mediation;
Inclusive of all outgoings — 20,000 euro

total — 20,000 euro



500209
25.6.2002



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CHAPTER SEVEN - CARGOBRIDGE MODULE

INTRODUCTION

1.01 This module concerned an investigation into the circumstances in which a number of individuals (referred to hereafter as the Cargobridge consortium) sought to rezone lands (the Cargobridge lands) adjoining Dublin Airport in north Co. Dublin.

1.02 Thirty witnesses gave evidence when the module was heard in public between September 2006 and February 2007. In addition, information provided by Mr Michael McGuinness was read into the record in his absence, as was information provided to the Tribunal by Cllr Cyril Gallagher, who died prior to the commencement of the public hearings in this module.

1.03 The consortium's members included Abervanta Ltd ("Abervanta"), which was beneficially owned by Messrs Ciarán Haughey and John Barnicle, owners of Celtic Helicopters, whose land was south of the Cargobridge lands. The remaining surrounding lands were owned by the Minister for Transport.

1.04 The development potential of the Cargobridge lands at the time they were acquired by the consortium was severely restricted due to their agricultural zoning, limited access and lack of piped public sewerage. Development of the lands was further curtailed by their designation in the Dublin County Development Plan as within the 'Airport Noise Zone', because of their close proximity to Dublin Airport.

1.05 On 4 November 1991, Cargobridge Ltd lodged a planning application with Dublin County Council seeking permission for the construction of a warehousing development on the site. The Minister for Transport lodged an objection to this application on 13 November 1991. In March 1992 the application was withdrawn.

1.06 A written representation lodged during the display of the 1991 Draft Development Plan by Ms Gráinne Mallon, consultant planner, on behalf of Cargobridge Ltd, was the subject of correspondence between the County Council and Aer Rianta in February 1993.

1.07 On 24 February 1993 a motion proposing that the lands be rezoned from B (agricultural) to E (industrial) was lodged with Dublin County Council. It was passed at a special meeting of the Council on 30 March 1993 and the rezoning was confirmed on 30 September 1993. The lands were zoned for

industrial and related uses in the 1993 Dublin County Development Plan when it was confirmed on 10 December 1993.

1.08 Abervanta's interest in the Cargobridge lands was sold to High Degree Construction Ltd in April 1994 for IR£415,000.

1.09 The Cargobridge lands were sold by the then members of the Cargobridge consortium in July 1997[1] for in excess of IR£8m, representing a significant profit as against the 1991 purchase price of approximately IR£1m. In the interim, the zoning of the lands was altered from agricultural use to industrial use and the use of the right of way serving the lands was changed from use for aviation purposes to use for commercial purposes.

THE CARGOBRIDGE LANDS

2.01 The consortium acquired the Cargobridge lands from Mr Robert Morgan by tender for IR£1m on 21 June 1991. Aer Rianta was the under-bidder, having offered IR£200,000 (or possibly as much as IR£250,000) against the consortium's initial tender of IR£750,000 which Mr Morgan refused.

2.02 The lands were zoned B (agricultural) in the 1983 Dublin County Development Plan and retained this zoning in the 1991 Dublin County Draft Development Plan.

2.03 In 1991, access to the Cargobridge lands was by agricultural right of way across lands owned by the Minister for Transport. This was also Celtic Helicopters' right of way to its lands at the time they were acquired in 1988.

2.04 In 1989, Celtic Helicopters applied for and obtained planning permission for a helicopter business on its lands. Celtic Helicopters appear to have subsequently obtained a licence or grant from Aer Rianta (in its capacity as the Minister for Transport's agent) to use the agricultural right of way for aviation purposes. By December 1990 this licence had been converted to a deed of right of way.[2] The upgrading of the right of way from use for agricultural purposes to use for aviation business purposes was purchased from the Minister for Transport for IR£45,000.

[1] Abervanta's 3.58 acres had already been sold in April 1994.

[2] A Department of Transport memo stated that a draft licence was prepared, but, because of financing difficulties, it was converted into a deed of right of way, which was executed on 21 December 1990.

THE CARGOBRIDGE CONSORTIUM

3.01 The Cargobridge consortium comprised four separate parties, namely Neptune Freight Ltd (Mr Michael McGuinness and Mr Anthony Delaney), Mr Stephen Fitzgerald, Mr P. J. Cousins, and Abervanta Ltd (Mr Ciarán Haughey and Mr John Barnicle). The ownership division of the lands was as follows:

- Neptune Freight Ltd: 8 acres or 33.92 per cent,
- Stephen Fitzgerald: 6 acres or 25.44 per cent,
- P. J. Cousins: 6 acres or 25.44 per cent,
- Abervanta Ltd: 3.58 acres or 15.182 per cent.

3.02 In 1991, Neptune Freight Ltd operated a freight business at Baldoyle Industrial Estate. Mr Delaney told the Tribunal that he owned 32 per cent of its shares while Mr McGuinness owned the remaining 68 per cent. [3]

3.03 Mr Fitzgerald was the managing director of Williams Air Freight Ltd, a freight business operating in north Co. Dublin. He was involved in the Cargobridge consortium in a personal capacity.

3.04 Mr Cousins was chief executive of Aer Turas. In 1991 he owned 20 per cent of the company while Aer Lingus owned 80 per cent. Mr Cousins and others bought out Aer Lingus's share in 1993 or 1994. Mr Cousins was involved in the Cargobridge consortium in a personal capacity.

3.05 Abervanta's first directors and shareholders were Ms Anne Marie Smyth and Ms Catherine Daniel, employees of Noel Smyth & Partners, Solicitors. On 25 November 1991, they were replaced by Mr McGuinness and Mr Delaney.

THE BACKGROUND TO THE ACQUISITION OF THE CARGOBRIDGE LANDS

4.01 Both Mr Fitzgerald and Mr Delaney told the Tribunal that their primary purpose in becoming involved in the acquisition of the lands was to extend their respective freight businesses in north Co. Dublin. Mr Fitzgerald gave evidence that in early 1991 he became aware that approximately 24 acres of land in Cloghran owned by Mr Robert Morgan were for sale by tender.

[3] In a written statement to the Tribunal, Mr McGuinness claimed he owned 62 per cent of the shares.

4.02 Mr Fitzgerald's evidence was that the lands for sale were too extensive for him to acquire on his own. He therefore approached Mr Delaney as a party who might be similarly interested in acquiring part of the lands for expansion and relocation purposes. He stated that Mr Delaney involved Mr McGuinness. Mr Delaney, however, stated that it was Mr Fitzgerald who initially contacted Mr McGuinness.

4.03 Mr Fitzgerald also approached Mr Cousins. Mr Cousins told the Tribunal that his involvement in the Cargobridge consortium was on his own behalf and not on behalf of Aer Turas. He stated that his decision to become involved was a speculative one and that his intention was to lease the lands acquired by him in due course to Aer Turas.

4.04 In discussions involving Mr Fitzgerald, Mr Cousins, Mr Delaney and Mr McGuinness, a decision was taken to form a consortium to purchase the Morgan lands. Although the idea came from Mr Fitzgerald, according to him, Mr Cousins and Mr Delaney, it was Mr McGuinness of Neptune Freight Ltd who very quickly became the 'lead person' in the proposed consortium.

4.05 In the course of the initial discussions about the purchase a decision was made to approach Celtic Helicopters to become involved as it was believed that Celtic Helicopters' established commercial right of way (for aviation purposes only) across the Minister for Transport's lands would strengthen their case to have their right of way altered to permit commercial use.

4.06 With the exception of Mr Barnicle, with whom the issue was not raised in evidence, the relevant parties involved with the lands from June 1991 onwards agreed in their evidence that their principal objectives were to change the lands' development status by way of planning permission and/or rezoning and to upgrade the quality of the access to the lands.

ABERVANTA LTD

5.01 Members of the Cargobridge consortium sought to conceal any association between Celtic Helicopters, and Mr Haughey, on the one hand and the ownership of the Cargobridge lands, on the other. They believed that if such an association were known, it would fuel opposition by Fine Gael councillors to any proposal to rezone the lands for industrial development or any proposal which required a material contravention vote of Dublin County Council.

5.02 Dedicated and strenuous efforts were made by the Cargobridge consortium to ensure that the interest of Celtic Helicopters and/or Mr Haughey in the ownership of the Cargobridge lands remained secret.

5.03 In his evidence to the Tribunal, Mr Fitzgerald described Mr Haughey's '*political connectivity*' as being of '*no real value to us*'. Mr Cousins told the Tribunal that Mr Haughey had expressed the view in discussions that '*Fine Gael or Nora Owen in particular would block any rezoning*' of the lands if his name was '*up front*'.

5.04 The result of the approach made to Celtic Helicopters was that Mr Haughey and Mr Barnicle were to become the purchasers of 3.58 acres (15.18 per cent)[4] of the total lands being acquired by the consortium. It was agreed that Mr Haughey's and Mr Barnicle's interest in the lands being acquired would be effected in such a manner so as to conceal their or Celtic Helicopter's involvement with the project. By 17 June 1991, when Mr Mc Guinness wrote to Mr Michael Kennedy, the consortium's solicitor, advising him of the composition of the consortium, Mr McGuinness had knowledge of the corporate entity through which Messrs Haughey and Barnicle were to take their landholding, as he advised Mr Kennedy that 'Abervanta Ltd' was purchasing 3.58 acres of the Cargobridge lands. Abervanta was a shelf company which was incorporated on 22 July 1986. It was put at the disposal of Mr Haughey and Mr Barnicle by Mr Noel Smyth. Two of Mr Smyth's employees, Ms Anne Marie Smyth and Ms Catherine Daniel were nominated as its directors and shareholders and remained so until 25 November 1991 when they were replaced in these capacities by Mr McGuinness and Mr Delaney. There was therefore no apparent or documented connection between Abervanta and Mr Haughey or Mr Banicle throughout Abervanta's ownership (1991 to 1994)[5] of the lands. At all times, however, Mr Haughey and Mr Barnicle were the beneficial shareholders of Abervanta.

5.05 Throughout the campaign to rezone the lands and achieve a better access thereto, members of the consortium were determined to preserve the secrecy surrounding the involvement of Celtic Helicopters and/or Messrs Haughey and Barnicle with the Cargobridge lands. In pursuit of this aim, entirely misleading information was provided on occasions to third parties who enquired as to the ownership of the lands following rumours that Messrs Haughey, Barnicle and Celtic Helicopters had an involvement with the lands.

[4] Mr Barnicle told the Tribunal that he did not know how the calculation of the acreage both he and Mr Haughey were to receive was arrived at.
[5] Mr Delaney and Mr McGuinness resigned as directors on 8 April 1994.

5.06 On 22 October 1991, during a meeting attended by Aer Rianta's property manager, Mr Paul Pugh, Aer Rianta's general manager, Mr Brian Byrne, and consortium members Mr Michael McGuinness and Mr Stephen Fitzgerald, the Aer Rianta executives were informed that the Cargobridge lands had been purchased by Mr McGuinness and Mr Fitzgerald, with Mr Cousins as a financial contributor to Mr Fitzgerald. No mention was made by Mr McGuinness or Mr Fitzgerald of the involvement of Abervanta.

5.07 Mr Byrne told the Tribunal that in the course of a meeting with Mr Haughey and Mr Barnicle, he asked Mr Haughey if there was any connection between Celtic Helicopters and Abervanta, and received a blanket denial of any such connection. Mr Byrne recalled Mr Haughey's response to have been: '*No, sure I'm too busy with other things, what would I be involved with that for'.* Mr Barnicle did not demur. In evidence, Mr Haughey claimed to have no recollection of being asked such a question by Mr Byrne, but accepted that it could have been put to him.

5.08 The Tribunal was satisfied that Mr Byrne asked Mr Haughey whether he had an interest in the Cargobridge lands, most probably in late 1991 or early 1992, that Mr Haughey denied such involvement and that this position was consistent with the secrecy adopted by the consortium members vis-à-vis his and Mr Barnicle's ownership of Abervanta's share of the land.

5.09 Both Mr Pugh and Mr Byrne told the Tribunal of efforts made by Aer Rianta to identify the persons behind Abervanta. Mr Byrne said that because the lands which had been transferred to Abervanta were located immediately adjacent to the Celtic Helicopter lands, Aer Rianta suspected that Celtic Helicopters had a connection to them. He stated that the possible involvement of Celtic had set off '*alarm bells*' because the previous granting of a right of way for aviation purposes had been done in good faith, given that Celtic Helicopters' business was aviation related. There was concern within Aer Rianta that advantage would be taken of this good faith in relation to the larger Cargobridge lands.

5.10 It also appeared that as early as July 1991 the Department of Transport was aware of questions being asked about the ownership of Abervanta. Aer Rianta discovered to the Tribunal a draft letter dated 19 June 1991 sent to the Department in which the issue of Abervanta's ownership was raised .

5.11 On 25 November 1991, Abervanta's nominal shareholders, Ms Smyth and Ms Daniel, transferred their shares to Mr McGuinness and Mr Delaney who also replaced them as directors of the company.

5.12 The Tribunal was satisfied that by late 1991 there were rumours circulating in public about the likely owners of Abervanta and that such rumours identified Mr Haughey and Mr Barnicle as persons likely to have an interest in Abervanta. The Tribunal was satisfied that the prevalence of such rumours was the factor which led to the change of ownership structure of Abervanta in late 1991.

5.13 Documentation furnished to the Tribunal revealed that on 25 November 1991 Abervanta resolved that a Declaration of Trust would be executed by the Abervanta shareholders. It is not disputed that, as from November 1991, Mr McGuinness and Mr Delaney held their respective shareholdings in Abervanta in trust for Mr Haughey and Mr Barnicle, as, in all probability, Ms Smyth and Ms Daniel had done from June to November 1991.

5.14 Mr Delaney told the Tribunal in evidence that the decision to vest the shareholding in himself and Mr McGuinness was taken to forestall any suggestion or intimation that Mr Haughey was involved with the consortium.

5.15 The Tribunal was satisfied that Abervanta's shareholding was changed so that if a suggestion was made that Mr Haughey and Mr Barnicle had an involvement in the lands, the consortium could point to Mr McGuinness and Mr Delaney as the owners of Abervanta. That this was the thinking behind the change in the Abervanta ownership structure that took place in November 1991 was graphically evidenced by letters which emanated both from Mr McGuinness and the consortium's solicitor, Mr Michael Kennedy, in March 1992.

5.16 On 12 March 1992, Mr Kennedy wrote to the Minister for Transport clearly stating that '*the entire beneficial and legal ownership of Abervanta Ltd*' was held by Mr McGuinness and Mr Delaney, directors of Neptune Freight Ltd.

5.17 This letter included the following statement: '*As to 15.18% thereof in Abervanta Limited. The entire beneficial and legal ownership of Abervanta Ltd is held by Michael McGuinness and Anthony Delaney, directors of Neptune Freight Limited.*' This was an entirely untrue assertion. Neither Mr McGuinness nor Mr Delaney was a beneficial owner or shareholder of Abervanta. This fact was acknowledged by Mr Fitzgerald and Mr Cousins in the course of their evidence to the Tribunal.

5.18 The Tribunal considered that Mr Kennedy knew when writing to the Minister on 12 March 1992 that what was being expressed in his letter vis-à-vis Abervanta was not factually correct. Mr Kennedy advised the Tribunal that what was contained in the letter complied with his instructions from Mr McGuinness.

5.19 In a letter of 13 March 1992 to Mr Al Smith, Principal Officer in Dublin County Council, Mr McGuinness wrote as follows:

> *It has come to our attention that certain malicious rumours and lies are being circulated regarding the ownership of our lands at Cloghran, County Dublin.*
>
> *We completely and utterly reject these allegations. We attach herewith a letter from our solicitors certifying the ownership of the land. We invite any public representative or Public Official to contact our Solicitor to ascertain the truth for themselves or to visit Neptune's office and warehouse at Baldoyle or Williames Airfreight offices and warehouse at Blake's Cross to assure themselves that we are what we say we are.*
>
> *We regret having to write this letter, we find it despicable that those behind this campaign of rumours and innuendo will not reveal themselves and make their accusations in public so that we could challenge them in a court of law.*
>
> *We rely on the honesty, integrity and fair-mindedness of our Public Representatives and Officials to ensure that the purveyors of those lies are not successful in their aims. We hope that our planning application will be judged on its merits and when the technical difficulties have been resolved that it will be granted.*

This letter was copied to Mr D. Byrne, Manager, Dublin County Council and to the Secretary, the Department of Transport and Tourism and to all public representatives in the Fingal area.[6] The Tribunal believed that the reference to '*certain malicious rumours and lies being circulated regarding the ownership of our lands at Cloghran, County Dublin'* referred to a widely circulated rumour to the effect that Celtic Helicopters and/or Mr Haughey had some involvement in the ownership of the Cargobridge lands.

5.20 Mr Delaney told the Tribunal that as of November 1991 it was his understanding that he and Mr McGuinness were '*fronting*' for Celtic Helicopters. He acknowledged that at no time did he ever hold a beneficial interest in Abervanta. He had adopted this false position because Mr McGuinness had advised him that the consortium '*would be needing cross party support for the rezoning and words to the effect that it wouldn't be helpful if the Haughey name was known to be part of the consortium*'.

5.21 The Tribunal was satisfied that the letters to the Minister for Transport and to Dublin County Council of 12 and 13 March 1992 were written in an attempt to stop the rumours circulating at the time concerning the involvement

[6] In correspondence Mr McGuinness claimed that the letter was not sent to the Fingal councillors.

of Celtic Helicopters and/or Mr Haughey and/or Mr Barnicle in the Cargobridge consortium. The rumours had the potential to damage the consortium's efforts to obtain planning permission and/or rezoning and an upgraded right of way for its lands.

5.22 The Tribunal was satisfied that the letters were deliberately intended by the Cargobridge consortium to mislead officials at County Council and Departmental level and elected representatives at local and governmental level, including the Minister for Transport, as to the beneficial ownership of the Abervanta lands.

THE DISCLOSURE TO THE TRIBUNAL OF THE HAUGHEY/BARNICLE INVOLVEMENT IN ABERVANTA LTD

5.23 The Tribunal first learned that Mr Haughey and Mr Barnicle had a share in the ownership of the Cargobridge lands through Abervanta approximately four days before public hearings in this module began on 19 September 2006.

5.24 None of the consortium members had disclosed this information to the Tribunal. According to Mr Delaney prior to receiving documentation from the Tribunal, he was unaware that Mr Haughey and Mr Barnicle were personally involved in Abervanta.

5.25 In his statement of 3 April 2006 to the Tribunal, Mr Cousins described ownership of the lands as follows:

> *In 1990, I was Chief Executive of Aer Turas and owned 20% of this company with Aer Lingus owning the balance. In late 1990, a former colleague of mine in Aer Turas, Stephen Fitzgerald of Williams Air Freight, approached me regarding the purchase of 23 acres of land close to Dublin Airport. He was trying to put together a group to purchase the land and introduced me to Mike McGuinness, managing director of Neptune Freight. The fourth member of the group was Abervanta Ltd. There had been no commercial relationship between the parties before this particular venture. Together, we agreed to buy the land for approximately IR£1M. The financing for my portion of the land, comprising 6 acres, was from Ulster Bank by way of personal overdraft.*

5.26 Mr Fitzgerald, in his statement dated 31 March 2006, gave the following information regarding Abervanta:

> *In or around 1990, I saw an advertisement in a newspaper offering for sale a piece of land adjacent to the 'Eastlands' area owned by Aer Rianta. I was interested in purchasing this as it would allow the company have*

direct access to the airport. The property consisted of approximately 23 acres which was a larger area than what was required by the Company. I approached other people who I thought might be interested in purchasing a portion of the lands. I entered into discussions with Mike McGuinness of Neptune Freight Limited and he expressed an interest. I then approached Pat Cousins [otherwise known as P. J. Cousins] *of Aer Turas who was also interested. The fourth partner in the land purchase venture was Abervanta Ltd, whose share was subsequently purchased by High Degree Construction in or around February 1994.*

5.27 On 4 August 2006, in the course of his reply to the Tribunal's letter of 23 February 2006, and a subsequent reminder of 18 May 2006, Mr McGuinness advised as follows: '*Abervanta was an Irish company set up to hold its share of the lands. I was a director for about two years.*'

5.28 The Tribunal was satisfied that in correspondence with the Tribunal between March and July 2006, Mr Fitzgerald, Mr Cousins and Mr McGuinness separately referred to the ownership of Abervanta in terms which deliberately concealed the involvement of Celtic Helicopters (and of Mr Haughey and Mr Barnicle) in the ownership of the Cargobridge consortium.

5.29 Mr McGuinness's letter to the Tribunal dated 14 October 2006 (sent while the public hearings were underway, and after a reference had been made in the course of those hearings to the letter of 12 March 1992 to the Minister for Transport), sought to explain his earlier failure to reveal the association of Celtic Helicopters and Mr Haughey and Mr Barnicle with the Cargobridge lands. He maintained in the letter that, he '*genuinely did not realise the implication of 'beneficial' ownership. I believed that if I owned the shares I owned the company*'. The Tribunal rejected this explanation and was satisfied, particularly having regard to Mr McGuinness's experience in business, that Mr McGuinness understood at all times the concept of '*beneficial ownership'* in the context of the ownership of Abervanta.

THE FUNDING OF ABERVANTA'S PURCHASE OF, AND ITS INVOLVEMENT IN, THE CARGOBRIDGE LANDS

6.01 Mr Haughey and Mr Barnicle settled on a figure of IR£185,000 as their necessary financing requirement to become involved with the Cargobridge consortium. To secure this funding it appeared that their first port of call was the businessman Mr Ben Dunne. Both Mr Dunne and Mr Barnicle told the Tribunal of a meeting between the two, following which Mr Dunne agreed to assist Mr Haughey and Mr Barnicle financially, and referred them to his solicitor, Mr Noel

Smyth. Mr Smyth described his instructions from Mr Dunne as being to assist Mr Haughey and Mr Barnicle in relation to the securing of the lands, and to ensure that the financial assistance which he was providing was secured.

6.02 By 17 June 1991 Mr Smyth had adapted the memorandum and articles of the shelf company, Abervanta, to suit the needs of Mr Haughey and Mr Barnicle. Mr Smyth[7] then set about putting in train the process by which Abervanta secured a loan facility of IR£185,000.

6.03 On 19 June 1991 Mr Smyth wrote on behalf of *'Abervanta Ltd'* to Bank of Ireland Private Banking advising the bank of this company's acquisition of 3.58 acres of a larger site for a consideration of IR£151,823.62, and that the total cost to it for so doing (to take account of its proportion of '*stamp duty, planning and other costs*') was IR£185,000. A loan in this amount was then sought, and in the course of his letter Mr Smyth *'proposed that £110,000 would be lodged leaned* [sic] *and hypothecated as far as the bank are concerned.*'

6.04 This correspondence between Mr Smyth and the bank was followed by a further 'EXTREMELY URGENT' letter from Mr Smyth to the bank on 21 June 1991 enclosing '*cheques to the value of £136,653.57 payable to Bank of Ireland for the account of the above named Company* [Abervanta]' and requesting that the bank put this money on deposit in the name of Abervanta, on Mr Smyth's undertaking *'to sign such necessary lien and hypothecation documents as the Bank may require in this matter'.*

6.05 Under cover of the same letter he requested that '*in consideration of this deposit, etc.*' the bank would arrange a loan to Abervanta in the sum of IR£136,653.57 and forward him a bankers draft in favour of Mr Michael J. Kennedy (the consortium's solicitor). This was intended to be a temporary cash advance (pending negotiation of a term loan facility of IR£185,000), to assist Abervanta in completing the purchase of the 3.58 acres.[8]

6.06 Mr Smyth told the Tribunal that the cheques totalling IR£136,653.57 (referred to in Mr Smyth's letter to the bank of 21 June 1991) included the funds which, according to Mr Dunne and Mr Smyth, Mr Dunne had agreed to advance to Mr Haughey and Mr Barnicle. It appeared that the cheques referred to in Mr Smyth's letter were lodged to the '*credit current account*' of Abervanta on 21 June 1991.

[7] Mr Smyth in evidence said that he never had any discussions with Mr Haughey. He was asked by Mr Dunne to speak with Mr Barnicle.

[8] The sale was completed on 21 June 1991 and the required contribution from Abervanta Ltd to complete the sale was IR£136,653.57.

6.07 Mr Smyth was unable to account for the source of the balance of the funds (IR£26,653.57) lodged to Abervanta's credit current account. He agreed that this sum had not been provided by either Mr Haughey or Mr Barnicle. He doubted that he himself had provided these funds and surmised that they may have been borrowed from Bank of Ireland. The Tribunal however saw no evidence that these funds had been lent by the bank. There was every suggestion (as indeed accepted in evidence by Mr Smyth himself) that he had organized the provision of these funds, as was evidenced from the contents of a letter written by Abervanta to Bank of Ireland on 22 July 1991 (see below).

6.08 This sum of IR£136,653.57 was duly debited to Abervanta's debit current account No. 97817745 with Bank of Ireland Private Banking on 21 June 1991 with the purchase of a draft made payable to Mr Michael J. Kennedy, the consortium's solicitor, for transmission to the vendor's solicitor.

6.09 The loan facilities applied for by Abervanta on 19 June 1991 duly became available through Bank of Ireland Private Banking on that same day. The advance of this facility was secured by a charge on Abervanta's share of the Cargobridge lands in favour of Bank of Ireland. In addition, the bank took a lien over the IR£110,000 sum which Mr Dunne had provided, and which had been lodged in the credit current account of Abervanta. In addition, Mr Dunne, in consideration of the advance to Abervanta, irrevocably agreed and undertook, if compelled by the bank at any time after two years from 19 July 1991, to redeem all principle and interest payable by Abervanta to the Bank on foot of the loan facility.

6.10 On 22 July 1991 Ms Catherine Daniel (a director of Abervanta) for and on behalf of Abervanta, wrote to the bank authorising the draw down of the facility of IR£185,000, and directing that the funds be distributed as follows:

- IR£136,653 to repay a existing temporary facility in the company's name at the bank
- IR£1,500 to pay the bank's arrangement fee
- The balance to be paid by way of bank draft in favour of Noel Smyth & Partners, solicitors.

6.11 In the course of her letter Ms Daniel directed the bank as follows: '*Also, please pay £26,653.00 on the company's Deposit Account by way of a bank draft in favour of Noel Smyth & Partners*'. Mr Smyth accepted in evidence that irrespective of whether this sum was provided by his firm from their office account or by way of a loan from the Bank of Ireland he almost certainly would have organized this sum at the time. The Abervanta *'credit current account'* No. 97817737 credited with the IR£136,653.57 on 21 June 1991 was likewise

debited with this sum of IR£26,653.00 on 22 July 1991 and the bank statement carried the reference *'DFT F/O N SMYTH & PA'* which Mr Smyth accepted in evidence indicated that his firm received back by bank draft this sum.

6.12 Mr Smyth acknowledged (although he could not state how it was done) that the final paragraph of that letter was evidence that Noel Smyth and Partners had organized the provision of IR£26,653 which, together with Mr Dunne's cheque for IR£110,000, had been lodged to the credit current account of Abervanta on 21 June 1991. Following the deduction of expenses totalling IR£16,953.49 (comprising stamp duty and other costs), from the IR£185,000 advanced to Abervanta there remained approximately IR£30,000 left on deposit in the client account of Noel Smyth and Partners. It was probable that these funds were utilised in the period 1991 to 1994 to discharge bills owed by Abervanta, on foot of its participation in the consortium's bid to have the Cargobridge lands rezoned and its right of way upgraded. The Tribunal had sight of documentary evidence of such requests being made of Abervanta and on one occasion through their solicitors Noel Smyth and Partners. Mr Barnicle told the Tribunal that no money was paid out in the absence of an invoice and that every invoice was approved prior to payment, either by phone or passed directly to Mr Smyth. He said that he and Mr Haughey would have accepted an invoice from Neptune Freight or Cargobridge as being genuine, irrespective of what it was for, and would have authorised Mr Smyth to pay it from their remaining funds.

6.13 Both Mr Haughey and Mr Barnicle agreed that neither they nor Celtic Helicopters Ltd had injected any personal or company resources into the acquisition of the lands, and that the entire funding for their acquisition of 3.5 acres was put in place through the involvement and assistance of Mr Dunne and Mr Smyth.

6.14 Mr Dunne and Mr Smyth's involvement commenced in June 1991. By this time the required IR£100,000 deposit for the purchase of the land had been paid by Neptune Freight Ltd as the contract for the purchase of the lands was dated 17 May 1991. There was no evidence before the Tribunal that either Mr Haughey or Mr Barnicle contributed to or reimbursed Neptune Freight in the sum of IR£15,182, the amount which would have been required from them as their contribution to the deposit, based on their 15.18 percentage participation in the Cargobridge consortium. Mr Barnicle said that he was bemused as to where the deposit amount came from and had no idea where it was sourced. Mr Barnicle accepted the proposition that someone had come to him with an idea in relation to these lands, and that he (and Mr Haughey) purchased them at no cost to themselves.

6.15 The Tribunal rejected the claim of both Mr Haughey and Mr Barnicle that they were completely unaware that a bank loan had been arranged by Mr Smyth for Abervanta. The Tribunal was satisfied that the letter of 4 February 1994 from Mr Smyth to Mr Barnicle indicated that they both knew of the Bank of Ireland's involvement in the financing process throughout the life of the loan, between 1991 and 1994.

THE DISPOSAL BY ABERVANTA LTD OF ITS SHARE IN THE CARGOBRIDGE LANDS AND THE UTILISATION OF THE SALE PROCEEDS

7.01 Bank of Ireland Private Finance had allowed a two-year rollover of interest on the loan. By June of 1993, it was seeking repayment from Abervanta of the loan. Documents produced to the Tribunal indicated that Abervanta was given a further period of some months in which to repay the bank.

7.02 Abervanta's 15.182 per cent interest in the Cargobridge lands was sold to High Degree Construction Ltd in April 1994 for IR£415,000, representing a gross profit to Abervanta of IR£230,000. The beneficial owner of High Degree Construction Ltd was Mr Patrick Mooney.

7.03 By the time the lands were acquired by High Degree they had the benefit of a commercial right of way, albeit at a price not yet formalised.[9]

7.04 Documentation produced to the Tribunal by Noel Smyth & Partners showed that on 25 April 1994 a sum of IR£218,726.21 (the initial loan of IR£185,000 plus interest) was paid to Bank of Ireland. On the same day, Bank of Ireland released the IR£110,000 deposited by Mr Dunne, which it had held since June 1991 and over which it exercised a lien.

7.05 On 6 May 1994 Mr Dunne was repaid from Mr Smyth's client account a sum of IR£141,538.87—in effect a return to him of the IR£110,000 he had placed on deposit plus an additional sum of IR£31,538.87.

7.06 Neither Mr Dunne, Mr Smyth, Mr Haughey nor Mr Barnicle were in a position to explain the basis on which Mr Dunne had been paid IR£31,538.87 in excess of the initial sum deposited by him. Having regard, however, to the evidence given by Mr Smyth and Mr Dunne, the Tribunal believed it probable that the IR£31,538.87 included a measure of profit to Mr Dunne, as well as fees to Noel Smyth & Partners for the work carried out by that firm for Abervanta.

[9] The commercial right of way licence was formally granted on 23 October 1995 at a cost of IR£155,000.

7.07 The repayment of Abervanta's bank loan plus interest (IR£218,726.21), and the payment of IR£31,538.87 to Mr Dunne, left a sum of approximately IR£164,000 (out of the sale price of IR£415,000) available to Abervanta's owners. This was the subject of particular inquiry by the Tribunal.

7.08 On 3 October 2006, both Mr Haughey and Mr Barnicle gave sworn evidence to the Tribunal that they had received just IR£10,000 each from the Abervanta sale proceeds. Mr Haughey, who acknowledged on 3 October 2006 that Bank of Ireland Private had been repaid from the proceeds of sale, told the Tribunal that the balance had been used to repay Mr Dunne. Mr Barnicle claimed not to know what had happened to the balance and suggested that Mr Smyth, solicitor, would have this knowledge. He did not recall receiving any details from Mr Smyth in 1994 giving a breakdown of the proceeds of sale and the apportionment of those proceeds.

7.09 Following their testimony on 3 October 2006, on 4 October Messrs Haughey and Barnicle provided further statements to the Tribunal. In his statement, Mr Haughey said as follows:

> *I wish to clearly state that Mr Ben Dunne did not profit and was not in any way involved in my purchase or sale of the Cargobridge Lands save as a loan facilitator/ guarantor of the loan referred to in my evidence.*[10]

7.10 Mr Smyth first gave sworn evidence to the Tribunal in relation to the matter on 4 October 2006. Responding to the evidence which had been tendered by Mr Haughey and Barnicle the previous day to the effect that they had each received IR£10,000 from the proceeds of sale of the lands, Mr Smyth declared:

> *'Well the beneficial own* [sic] *of the monies was Abervanta and the beneficial owner of Abervanta was John Barnicle and Ciaran Haughey. So the monies were theirs and whatever directions or instructions that we got from them is where we would have sent the money. But I don't know where the £10,000 comes from. Because the proceeds would certainly have been closer to £200,000.'*[11]

7.11 The records of Noel Smyth and Partners which dealt with the distribution of the net proceeds of the sale of the Abervanta lands were duly discovered to the Tribunal by Mr Smyth.

[10] Mr Barnicle furnished a statement in similar terms.

[11] While Mr Smyth was giving his evidence the Tribunal received Messrs Haughey's and Barnicle's statements of 4 October 2006 stating that Mr Dunne had not profited from the proceeds of sale.

7.12 In the course of their evidence to the Tribunal on 19 December 2006, both Mr Haughey and Mr Barnicle accepted that the evidence which had been tendered by them on 3 October 2006 (to the effect that each had received only IR£10,000 from the proceeds of sale) was incorrect, and both acknowledged that the surplus of approximately IR£164,000 had been in fact distributed, at their direction, to themselves and their company, Celtic Helicopters, directly or indirectly.

7.13 The Tribunal's examination of the disbursement of the surplus sum of approximately IR£164,000 identified the following movements of funds:

- IR£5,000 to Mr Haughey
- IR£5,000 to Mr Barnicle
- IR£19,000 to Celtic Helicopters Ltd
- IR£24,875 to an account operated by Mr Barnicle at Bank of Ireland, Dublin Airport, entitled 'Soltina 2 Account'
- IR£24,875 to an account operated by Mr Haughey at Bank of Ireland
- IR£85,194.02 for all intents and purposes the balance of the net proceeds of the sale transferred on 24 May 1994 to the account of Carlisle Services Ltd in Bank of Ireland, Isle of Man, an offshore account. Carlisle Services was a shelf company incorporated in Delaware, USA which Mr Smyth procured for Mr Haughey and Mr Barnicle in May 1994. Mr Haughey and Mr Barnicle acknowledged that they had travelled to the Isle of Man to deposit this money.

7.14 Of the money[12] in the Carlisle Services Ltd, Bank of Ireland, Isle of Man offshore account:

- IR£50,000 was transferred on 26 January 1995 from the Isle of Man to the account of Medeva Properties Ltd at National Irish Bank, Malahide in Co. Dublin. Medeva was a company owned by Mr Haughey and Mr Barnicle which had been incorporated on 24 May 1994.
- IR£18,469.27 was withdrawn from the Isle of Man company account and used by Mr Haughey and Mr Barnicle, via Carlisle Services, to purchase shares in a mining company.
- IR£6,000 was transferred on 18 May 1995 from the Isle of Man bank account to Mr Barnicle's Soltina 2 Account at Bank of Ireland at Dublin Airport.
- The equivalent of IR£14,500 was withdrawn in sterling cash from the Isle of Man account in April 1998.

[12] IR£85,194.02 which together with earned interest less 'cash handling' fees and 'hold correspondence' charges eventually totalled IR£88,969.27.

7.15 The Tribunal rejected the evidence of Mr Haughey and Mr Barnicle that they believed, when initially giving sworn evidence to the Tribunal on 3 October 2006, that they each had received just IR£10,000 from the proceeds of the Abervanta sale, and that they had forgotten or were otherwise unaware of the disbursement details of the great bulk of the funds. The Tribunal was satisfied that both Mr Haughey and Mr Barnicle had received between them, directly or indirectly, approximately IR£164,000 in total of those proceeds.

EVENTS LEADING UP TO MR FRANK DUNLOP'S RETENTION

8.01 On 4 November 1991, a planning application seeking permission for the development of approximately 36,000 square metres of warehousing and associated offices on the Cargobridge lands was lodged with Dublin County Council in the name of Cargobridge Ltd (with an address at Neptune Freight Complex, Baldoyle Industrial Estate). Given the lands' agricultural zoning, the grant of such a permission would inevitably lead to a material contravention vote within the Council.[13]

8.02 On 13 November 1991, the Department of Transport, at the direction of the Minister, and, it appeared, at the behest of Aer Rianta, lodged an objection to the Cargobridge planning permission application of 4 November 1991.

8.03 Documentation discovered to the Tribunal suggested that Council officials were strongly opposed to the planning application on the grounds that there was no commercial access to the site, and there was no possibility that a connection to the main sewerage and drainage system serving Dublin Airport would be forthcoming.

8.04 However, elected representatives on Fingal planning committee were supportive. Notwithstanding the evident support for the application within this committee in November/December 1991, and the initial procedure put in place by the councillors to proceed with a Section 4 motion, it appeared that the Cargobridge consortium chose not to pursue this option. The option was withdrawn on 18 March 1992.

8.05 Independently of the 4 November 1991 planning permission application, on 29 November 1991, in the course of the first statutory public display of the 1991 Draft Development Plan, Ms Gráinne Mallon, town planner, lodged a submission with Dublin County Council on behalf of Cargobridge Ltd seeking E (industrial) zoning for the lands.

[13] According to Mr Smith, the Council's chief planning official. This position was doubted by Cllr Anne Devitt and Mr Brian Byrne of Aer Rianta.

8.06 On 2 December 1991, also in the course of the first public display of the Draft Development Plan, the Department of Transport[14] made a representation to the Council objecting to any rezoning of lands within the natural road boundaries of the airport. This area included the Cargobridge lands. The representation stated: '*it is proposed progressively to acquire all lands within these boundaries for future airport expansion purposes*.'

8.07 Contemporaneous documentation furnished to the Tribunal revealed that the Cargobridge consortium's attempts to upgrade the right of way from agricultural use to commercial use, and to obtain planning permission and/or rezoning for their lands, were implacably opposed by Aer Rianta, who regarded the Cargobridge lands as strategically important for its development plans for Dublin Airport.

8.08 By the late 1980s and early 1990s, Aer Rianta's objective was to secure, for its own purposes, as much of the land in the environs of Dublin Airport as possible. Prior to the consortium's acquisition of the Cargobridge lands, Aer Rianta had made a number of efforts to purchase the lands from Mr Morgan.

8.09 As of October 1991, Aer Rianta's belief was that the Cargobridge consortium's purchase of the lands was a purely speculative venture. This was notwithstanding the fact that, on 22 October 1991, Mr McGuinness and Mr Fitzgerald had told Aer Rianta of the consortium's plan to develop a freight complex for Neptune Freight and Williams Air Freight on the lands.

MR DUNLOP'S RETENTION

9.01 In February 1993, Mr McGuinness retained Mr Dunlop's services on behalf of the Cargobridge consortium. Entries in Mr Dunlop's diary for 22 and 23 February 1993 confirmed that the two men met on 23 February 1993. Mr Dunlop's involvement with the Cargobridge lands began at a time when the County Council was about to embark on the process of considering the Draft Development Plan insofar as it related to lands in north Co. Dublin.

9.02 Mr Dunlop said that in February 1993 he knew of Mr McGuinness but had not previously met him.

9.03 Mr Dunlop told the Tribunal that at their meeting, Mr McGuinness outlined the consortium's proposals to rezone its lands from B (agricultural) to E (industrial) and its belief that the proposal enjoyed widespread support among

[14] The representation was signed by Mr Brendan Toomey, Principal Officer in the Department's Civil Aviation Division.

councillors. While he alluded to a number of persons being involved in the consortium, he identified only Mr Fitzgerald.

9.04 Mr Dunlop said that Mr McGuinness told him that a significant level of canvassing of councillors had been undertaken by February 1993, and showed him a motion to rezone the lands signed by Cllrs Anne Devitt, Cyril Gallagher, Michael Kennedy, G. V. Wright, Michael J. Cosgrave, Liam Creaven and Sheila Terry. The variety of signatures had indicated to Mr Dunlop that there was cross-party support for the motion. The motion was lodged on 24 February 1993.

9.05 Mr McGuinness outlined to Mr Dunlop Aer Rianta's opposition to the consortium's proposal. Mr Dunlop understood that his role was to counter Aer Rianta's lobbying efforts against the proposal. It was his belief that this would include lobbying councillors who might be under pressure from Aer Rianta to withdraw their already committed support for the proposal.

9.06 In his written statements to the Tribunal, Mr McGuinness maintained that he retained Mr Dunlop only in relation to the Cargobridge lands right of way issue, and more specifically to lobby the Department of Transport in that regard. While Mr Dunlop admitted to being involved in lobbying the Minister regarding the right of way, he claimed that this occurred in late 1993 subsequent to the confirmation vote on the rezoning of the lands.

9.07 Mr Delaney told the Tribunal that Mr McGuinness had informed him that Mr Dunlop was retained for the right of way issue only. Mr Delaney told the Tribunal that he was unaware of Mr Dunlop having any role in the lobbying of councillors.

9.08 Mr Cousins met Mr Dunlop on one occasion in Mr Dunlop's offices in late February 1993. Mr Cousins said that he was certain that Mr Dunlop had been engaged only in relation to the right of way issue.

9.09 Mr Fitzgerald first met Mr Dunlop in late February or early March 1993, shortly after the initial meeting between Mr Dunlop and Mr McGuinness. It was his understanding that Mr Dunlop had been engaged solely in relation to the right of way issue because he was a political lobbyist with assumed access to the Department of Transport.

9.10 Both Mr Cousins and Mr Fitzgerald maintained to the Tribunal (as did Mr McGuinness in correspondence) that by February 1993 the consortium had substantial councillor support for the rezoning proposal. The Tribunal was told this had been achieved by Mr McGuinness and Mr Fitzgerald lobbying for a

substantial period prior to February 1993. Both Mr McGuinness and Mr Fitzgerald had continued to lobby councillors up to the rezoning vote of 30 March 1993 and they maintained that Mr Dunlop had played no role in such lobbying.

9.11 Mr Kennedy, solicitor to the consortium, gave evidence of a discussion he had had with his client Mr McGuinness on 11 May 2000 concerning Mr Dunlop's involvement with the consortium.

9.12 A written attendance prepared at that time by Mr Kennedy, solicitor, on that discussion with his client Mr McGuinness and which he confirmed to the Tribunal accurately represented what Mr McGuinness had told him, stated:

> *Attending on Michael McGuinness today when he gave me the following information:*
>
> *1) He told me that in relation to Cargo Bridge and the development at Dublin Airport Business Park, he had been involved extensively in lobbying politicians at the time in seeking rezoning and planning permission.*
>
> *2) He made it quite clear at no time was he ever asked for monies by a politician or did he ever pay money to any politician or county councillors.*
>
> *3) In or about 1993, he became aware that Aer Rianta were providing considerable hospitality to County Councillors with a view to influencing them against granting the applications being made by Cargo Bridge/Neptune for the development of Dublin Airport Business Park. As a result, he contacted and hired Mr Dunlop to monitor how councillors were being influenced by Aer Rianta and whether or not they were likely to vote for or against his proposals for rezoning and planning. Mr Dunlop requested a fee of either IR£3,000 or IR£5,000 from Michael McGuinness and his fellow developers and he specifically requested this in cash and was paid the sum. Michael cannot remember whether it was IR£3,000 or IR£5,000 and it was split equally between himself and the other developers, Hi* [High] *Degree Construction, Mr Fitzgerald and P. J. Cousins. Michael McGuinness made it quite clear to me that this fee was paid directly to Mr Dunlop for his work and it was never the intention that the money would be passed on to anybody else and it was simply his professional fee for the work he was doing.*

PAYMENTS MADE TO MR DUNLOP

10.01 According to Mr Dunlop, the issue of fees arose in his initial February 1993 meeting with Mr McGuinness. At this meeting Mr McGuinness had acknowledged his awareness of and his support for participation in the practice of, if necessary, making disbursements to councillors to ensure that they would stay 'on side'. Mr Dunlop stated: '*Mr McGuinness said straightforwardly to me*

during the discussion in relation to fees, that he recognised that disbursements might be required to keep people on side'.

10.02 Mr Dunlop stated that at this meeting neither he nor Mr McGuinness had mentioned which councillors would require payment, or if any had been paid to date. From Mr McGuinness's mention of the likely need for disbursements, Mr Dunlop believed that he understood the nature of the *'system'* that pertained within Dublin County Council.

10.03 Mr Dunlop testified that he and Mr McGuinness duly agreed a fee of IR£10,000. He had requested that this fee be paid off-shore, to his Xerses Jersey account. Mr McGuinness said he would seek his accountant's advice on this proposed arrangement.

10.04 Mr McGuinness subsequently telephoned Mr Dunlop to say that such a method of payment would not be possible as his accountant's advice had been that *'it would stick out like a sore thumb in the accounts'*. Consequently the two men decided on cash as the method of payment. Mr McGuinness had duly arrived in Mr Dunlop's office with IR£10,000 in cash.

10.05 Mr Dunlop conceded in evidence that since their initial meeting was on 27 February 1993, it was likely that the entry in Mr Dunlop's diary for a scheduled meeting for 10 March 1993 meant that he received this IR£10,000 on that date at a meeting between himself and Mr McGuinness.

10.06 Records showed that on 15 March 1993 a cash lodgement of IR£12,000 was made to Mr Dunlop's Irish Nationwide Building Society deposit account (one of Mr Dunlop's 'war chest' accounts). Mr Dunlop told the Tribunal that such a lodgement suggested that he had a large amount of cash at that time. He was unable to exclude the possibility that the lodgement included some or all of the IR£10,000 paid to him by Mr McGuinness.

10.07 Mr Dunlop testified that when they were negotiating fees, Mr McGuinness had told him that Mr Fitzgerald would also pay him some fees and suggested that Mr Dunlop contact him.

10.08 Mr Dunlop stated that shortly after his initial meeting with Mr McGuinness, he contacted Mr Fitzgerald about fees. On 4 March 1993, Frank Dunlop and Associates Ltd raised an invoice for IR£3,025 (IR£2,500 plus VAT) on Mr Fitzgerald's company, Williams Air Freight Ltd. A cheque payment of IR£3,025 was made against this invoice by Mr Fitzgerald on 5 March 1993 and

was lodged to the bank account of Frank Dunlop and Associates Ltd on 5 March 1993 as part of a composite lodgement of IR£12,784.

10.09 Mr Dunlop's recollection as to how this second payment had arisen was poor, save that he claimed to have a *'residual'* recollection of an agreement having been reached with Mr Fitzgerald for a payment of IR£5,000, though he acknowledged that the documentary evidence suggested only that a payment of IR£2,500 plus VAT had been made.

10.10 Mr Fitzgerald told the Tribunal that he had no recollection as to why his company, Williams Air Freight Ltd, had paid IR£3,025 to Frank Dunlop and Associates Ltd on 5 March 1993, although paid on foot of an invoice. It was his belief that this payment did not relate to the Cargobridge lands but to a separate project. Mr Fitzgerald said in a written statement to the Tribunal that he was unaware of the detail of any discussion about fees between Mr Dunlop and Mr McGuinness, other than that he was subsequently asked to contribute IR£1,000 towards Mr Dunlop's fees, which he paid to Mr McGuinness in the autumn of 1993. It was his understanding that IR£3,000 in cash had been paid to Mr Dunlop in relation to lobbying work associated with the right of way issue.

10.11 Mr Cousins' recollection of Mr Dunlop's fee arrangement was similar to that of Mr Fitzgerald. It was his understanding that Mr Dunlop had been paid IR£3,000 in cash in relation to the right of way issue, to which he had contributed IR£1,000. He recalled that Mr McGuinness had indicated to him that Abervanta would not be making a contribution, because of lack of funds. Mr Cousins regarded Mr Dunlop's request for his fees to be paid in cash as '*a little unusual*'.

10.12 Mr Delaney told the Tribunal that he had no knowledge of any matter relating to Mr Dunlop's fees. As far as he had been concerned, Mr McGuinness had himself dealt with this matter.

10.13 Both Mr Haughey and Mr Barnicle stated that they had no knowledge of Mr Dunlop's involvement with the Cargobridge lands. Had any request been made for a contribution to Mr Dunlop's fees, it was their belief that it would have been conveyed to Mr Smyth, who was the person who controlled the monies which had been advanced to Abervanta through Mr Dunne's involvement.

10.14 Mr Dunlop acknowledged that he had had little or no contact with consortium members other than Mr McGuinness. He was certain that payments to councillors had not been mentioned to any member of the consortium other than Mr McGuinness. Mr Dunlop stated that he was unaware of Abervanta in

1993, and of the involvement of Mr Haughey and/or Mr Barnicle and/or Celtic Helicopters Ltd with the project.

10.15 In May 1993 a Cargobridge Ltd statement of account, furnished to Abervanta and headed '*Abervanta Ltd–31.12.1992. amount due to Cargobridge Ltd*' which included a sum of IR£379 owed by Abervanta to *'F. Dunlop'*. Having regard to the fact that Abervanta's landtake/involvement in the Consortium was 15.18 per cent of the overall, the inclusion of such a sum, on its face, suggested that the consortium as a whole had incurred a liability to Mr Dunlop of approximately IR£2,000 for year end 1992. No witness with whom this issue was raised could account to the Tribunal as to why the accounts of Cargobridge Ltd included a reference to a sum owed by Abervanta to *'F. Dunlop'*. The Tribunal was thus left with the conundrum that contemporaneous documentary evidence suggested an involvement by Mr Dunlop with the Cargobridge consortium in 1992, yet the sworn testimony of Mr Dunlop, Mr Fitzgerald and Mr Cousins was that Mr Dunlop was retained by the consortium in February 1993, a position also maintained by Mr McGuinness in correspondence. Moreover, the beneficial owners of Abervanta, the recipient of the aforesaid bill, claimed that they wre at all times unaware of any involvement by Mr Dunlop with the lands.

10.16 Mr McGuinness chose not to give sworn evidence to the Tribunal. However, in the course of written correspondence with the Tribunal between 2000 and 2006, his stated position was as follows:

- Mr Dunlop had been retained by the Cargobridge consortium only in relation to the right of way issue.
- Mr Dunlop had not been paid IR£10,000.
- Mr Dunlop received only IR£3,000 in cash.
- He (Mr McGuinness) was unaware that payments were to be made to councillors.
- He (Mr McGuinness), Mr Fitzgerald and Mr Cousins were present when the fee of IR£3,000 was agreed with Mr Dunlop.

10.17 In evidence, both Mr Fitzgerald and Mr Cousins rejected Mr McGuinness's assertion that they were present when the fee of IR£3,000 was agreed. Mr Dunlop denied that a fee of IR£3,000 had been agreed at any stage and he denied receipt of such a sum.

WAS MR DUNLOP RETAINED TO LOBBY COUNCILLORS?

11.01 Notwithstanding the evidence given by Mr Fitzgerald, Mr Cousins and Mr Delaney, and the position adopted by Mr McGuinness in correspondence, the Tribunal was satisfied that one of the reasons Mr Dunlop was retained by the

Cargobridge consortium in February 1993 was to lobby councillors in connection with the rezoning proposal then before Dublin County Council. It was likely that Mr Dunlop's particular role was to counter the lobbying campaign against the rezoning that was then being conducted by Aer Rianta.

11.02 The Tribunal did not regard it as mere coincidence that Mr Dunlop was retained by the Cargobridge consortium only weeks prior to the rezoning vote. Indeed, Mr Fitzgerald, in the course of his evidence, acknowledged that the immediate focus of the consortium's attention in February/March 1993 was the upcoming rezoning vote. The Tribunal therefore accepted Mr Dunlop's evidence that he was retained by Mr McGuinness on behalf of the consortium to lobby councillors, and rejected the denials given in evidence by Mr Fitzgerald, Mr Cousins and Mr Delaney, and in correspondence by Mr McGuinness.

11.03 In reaching this finding, the Tribunal took into account other evidence which supported that of Mr Dunlop.

11.04 The Tribunal accepted that Mr Kennedy, in all probability, noted correctly what Mr McGuinness told him on 11 May 2000. While Mr Kennedy could not recollect the context in which Mr McGuinness had given him the information, the Tribunal was satisfied that it was at a time when Mr Dunlop was being questioned by the Tribunal both publicly[15] and in private session[16] about his activities as a lobbyist.

11.05 There was contemporaneous evidence of Mr Dunlop's retention as a lobbyist for the Cargobridge rezoning project. Mr Dunlop's secretary's record of telephone calls included the following message as left by Mr McGuinness for Mr Dunlop on 24 March 1993: *'Patricia—Neptune Freight, Mike McGennis waiting for letter to be faxed over. Telephone 393064, fax 393810*'.

11.06 The Tribunal was satisfied that this message referred to a draft letter, either prepared or settled by Mr Dunlop, which was to be sent to all county councillors seeking their support for the Cargobridge rezoning proposal, in advance of the vote on the proposal. The Tribunal was satisfied that such a letter, bearing the signatures of Mr McGuinness and Mr Fitzgerald, was probably sent to all councillors, on or about 25 March 1993. The Tribunal had sight of two such letters, one sent to Cllr David Healy, signed by Mr McGuinness and Mr Fitzgerald, and one addressed to Cllr Joe Higgins unsigned.

[15] Mr Dunlop was questioned in public by the Tribunal on 11, 18, and 19 April 2000 and 9 May 2000.
[16] Mr Dunlop was questioned in private by lawyers for the Tribunal on a number of occasions between 19 April 2000 and 1 June 2000.

11.07 There was considerable contact between Mr McGuinness and Mr Dunlop in the period March to September 1993, and, while the Tribunal accepted that this contact was not solely concerned with the Development Plan Review, and the rezoning motion passed on 30 March 1993 and confirmed on 30 September 1993, the Tribunal was satisfied that the level of contact and meetings between Mr Dunlop and Mr McGuinness within that timeframe strongly indicated Mr Dunlop's involvement in the rezoning process.

11.08 The Tribunal noted in particular the message, as recorded by Mr Dunlop's office, left by Mr McGuinness for Mr Dunlop on 29 September 1993 which read as follows: '*Mike McGennis—spoke to GV no meetings arranged for next week as yet. Chairman has full power to call a meeting for every day next week if he wishes. Our friend Brian has employed a PR company, handing out leaflets and info all day yesterday outside the PR company*'.

11.09 The Tribunal was satisfied that in this message Mr McGuinness was updating Mr Dunlop on his (Mr McGuinness's) liaisons with Cllr G. V. Wright regarding the likely dates of Council meetings and on Aer Rianta's activities in the lead-up to the confirmation vote. The reference to '*Our friend Brian*' was in all probability a reference to Mr Brian Byrne, General Manager of Aer Rianta, who was spearheading Aer Rianta's opposition to the Cargobridge rezoning proposal.

11.10 Further, Mr McGuinness's letter of 1 October 1993 to the Minister for Transport concerning the right of way issue, in which he gave his opinion of Aer Rianta's conduct in the lead-up to the rezoning vote of 30 September 1993, strongly indicated his involvement in the lobbying process.

11.11 In all the circumstances, the Tribunal was satisfied that Mr Dunlop was retained in connection with the Cargobridge rezoning proposal which was before Dublin County Council in 1993.

11.12 The Tribunal was also satisfied that Mr Dunlop's retention as a lobbyist evolved to encompass the right of way issue on which the consortium had been making representations to the Department of Transport since 19 June 1991.

11.13 The Tribunal was satisfied that at the time of Mr Dunlop's retention, Mr Fitzgerald and Mr Cousins had some knowledge of his proposed role in the lobbying of councillors and in the countering of Aer Rianta's lobbying. However, the Tribunal accepted that, as evidenced by the substantial level of contact between them , Mr McGuinness conducted all relevant negotiations in relation to Mr Dunlop's retention as lobbyist with him, and that Mr McGuinness was the person who instructed Mr Dunlop and to whom he reported.

11.14 In his evidence, Mr Dunlop did not suggest that Mr Fitzgerald or Mr Cousins (or indeed Mr Delaney, Mr Ciarán Haughey or Mr Barnicle) was privy to the discussion between himself and Mr McGuinness on 23 February 1993 in the course of which, Mr Dunlop claimed, Mr McGuinness acknowledged that Mr Dunlop's lobbying efforts might require him to make payments to councillors.

DID MR DUNLOP AND MR MCGUINNESS DISCUSS PAYMENTS TO COUNCILLORS AND DID MR DUNLOP RECEIVE IR£10,000 IN CASH FROM MR MCGUINNESS?

12.01 The Tribunal was satisfied that in the course of their initial discussion Mr McGuinness acknowledged to Mr Dunlop his awareness that disbursements to councillors might be made. Mr Dunlop's evidence on this issue was unchallenged by any sworn evidence of Mr McGuinness. The Tribunal believed that Mr Dunlop was paid IR£10,000 cash on or about 10 March 1993, a date for which Mr Dunlop's diary showed a meeting between the two. The Tribunal accepted Mr Dunlop's evidence that he had sought payment offshore and that Mr McGuinness declined to facilitate this request.

12.02 The Tribunal rejected the position adopted by Mr McGuinness in correspondence with the Tribunal, that only IR£3,000 in cash was paid to Mr Dunlop.

12.03 The Tribunal was satisfied that in paying the IR£10,000 cash to Mr Dunlop, Mr McGuinness anticipated that Mr Dunlop might pay councillors in the course of his lobbying and/or counter lobbying. Given that Mr Dunlop stated in evidence that the possible payment of councillors was raised by Mr McGuinness, the Tribunal believed that Mr McGuinness was aware, from whatever source, that Mr Dunlop engaged in the practice of making corrupt payments to councillors. The Tribunal was therefore satisfied that Mr McGuinness's payment of IR£10,000 to Mr Dunlop was made, in part at least, for corrupt purposes.

12.04 There was no evidence before the Tribunal that Mr Fitzgerald, Mr Cousins, Mr Delaney, Mr Haughey or Mr Barnicle were privy to or aware of the arrangement entered into by Mr Dunlop and Mr McGuinness in February 1993, or that any of them knew or suspected that Mr Dunlop was likely to pay councillors for their support for the Cargobridge rezoning.

12.05 While likewise there was no evidence to suggest that they were specifically aware that Mr McGuinness paid Mr Dunlop IR£10,000 in cash, two members of the consortium, namely Mr Fitzgerald and Mr Cousins, acknowledged making cash payments of IR£1,000 each in their belief that they

were contributing to the IR£3,000 which they understood Mr McGuinness had paid to Mr Dunlop. The Tribunal was satisfied that the payments were made at Mr McGuinesses' suggestion.

12.06 The Tribunal did not accept Mr Fitzgerald's evidence that a cash payment of IR£1,000 was the extent of his contribution to Mr Dunlop's fees. The Tribunal was satisfied, based on Mr Dunlop's testimony and on documentary evidence, that Frank Dunlop and Associates invoiced Mr Fitzgerald through Williams Air Freight for the sum of IR£2,500 plus VAT on 4 March 1993, most probably following a discussion between the two men. The Tribunal was further satisfied that in paying this invoice on 5 March 1993 Mr Fitzgerald understood it to be fees for Mr Dunlop's lobbying work in the lead up to the rezoning vote.

12.07 It is likely that Mr Dunlop was given to understand by Mr McGuinness, and that Mr Fitzgerald himself understood, that Mr Dunlop's '*brief*' would include lobbying relating to the right of way and rezoning.

12.08 The Tribunal found it noteworthy that while Mr Fitzgerald acknowledged that the payment of 5 March 1993 was made to Frank Dunlop and Associates on foot of an invoice, he maintained that it was for work Mr Dunlop did in 1993**,** most likely for Williams Air Freight in relation to a US project. The Tribunal rejected Mr Fitzgerald's contention.

12.09 Insofar as Mr Dunlop was involved in work for Mr Fitzgerald and/or Williams Air Freight on a project other than Cargobridge, the available evidence suggested that such work was carried out in the early months of 1994 and not in March 1993 when the IR£3,025 invoice was paid.

12.10 The Tribunal accepted Mr Dunlop's claim that Mr McGuinness informed him that Mr Fitzgerald would be contributing to his fees. The Tribunal was satisfied that the IR£3,025 fee paid to Mr Dunlop was the fee (whether fully discharged or otherwise) that was negotiated by Mr Dunlop and Mr Fitzgerald at some point following Mr Dunlop's discussion with Mr McGuinness regarding fees.

12.11 The Tribunal accepted Mr Dunlop's evidence that the discussions he had with Mr Fitzgerald encompassed only his payment of a fee to Mr Dunlop and that they did not discuss or acknowledge payments to councillors or anything else of that nature.

12.12 The Tribunal was satisfied that IR£3,000 in cash was not paid to Mr Dunlop in September/October 1993. However, it was satisfied that, at Mr

McGuinness's suggestion, Mr Fitzgerald and Mr Cousins each contributed IR£1,000 to Mr McGuinness towards Mr Dunlop's fee.

12.13 The Tribunal was satisfied that the timing of the invoice to Mr Fitzgerald/Williams Air Freight and the proof of its discharge corroborated Mr Dunlop's account of having been paid fees by the consortium in March 1993, and of being paid by Mr McGuinness in March 1993, and not September/October 1993, as claimed by Mr McGuinness.

THE REZONING OF THE CARGOBRIDGE LANDS

13.01 The motion seeking to rezone the Cargobridge lands lodged on 24 February 1993 was passed at a special meeting of the County Council on 30 March 1993 by 51 votes to nil, with 2 abstentions. The Draft Development Plan, including the newly rezoned Cargobridge lands, went on public display between 1 July and 4 August 1993.

13.02 The Minister for Transport, through his agent Aer Rianta, lodged a submission with Dublin County Council on 3 August 1993 objecting to the rezoning of the Cargobridge lands, given their proximity to Dublin Airport. Cllrs Joe Higgins and Gus O'Connell signed a motion that was also lodged with the County Council. This motion sought, in effect, to revert the lands to their original B (agricultural) zoning.

13.03 A special meeting of Dublin County Council took place on 30 September 1993. The Manager's report for that meeting referred to representations from Aer Rianta, on behalf of the Minister for Transport, and its objection to the rezoning of the Cargobridge lands for industrial use because it would interfere with the safe and efficient navigation of aircraft. The Manager indicated his view that the aircraft safety issue was unfounded, but he did not recommend confirmation of the rezoning of the Cargobridge lands because of drainage difficulties.

13.04 At the 30 September 1993 meeting the Higgins/O'Connell motion was defeated by an overwhelming majority. The E (industrial) zoning was duly confirmed. The 1993 Development Plan was adopted by Dublin County Council on 10 December 1993.

THE CARGOBRIDGE CAMPAIGN TO OBTAIN A COMMERCIAL RIGHT OF WAY

14.01 Crucial to the Cargobridge consortium's ambition to rezone their lands for industrial use was the alteration of the right of way serving those lands from agricultural to commercial use.

14.02 Following the acquisition of the lands by the consortium in mid-1991, Mr Kennedy, the consortium's solicitor, wrote to the Department of Transport on 19 June 1991 seeking to have the right of way upgraded to permit commercial use. This request was refused in a letter from the Department of Transport dated 9 October 1991.

14.03 The consortium appealed this decision on 15 October 1991.

14.04 Mr McGuinness began to correspond directly with the Minister for Transport on behalf of the consortium on 22 October 1991, and followed this by making a commercial offer to the Minister for such right of way.

14.05 On 22 October 1991, Mr McGuinness and Mr Fitzgerald met with Mr Byrne and Mr Pugh of Aer Rianta, hoping to persuade Aer Rianta to facilitate commercial use of their right of way. They were reminded at this meeting that they knew of the right of way issue, that the land was not serviced for sewerage and lacked the necessary zoning at the time of their purchase of the lands.

14.06 Aer Rianta was vehemently opposed to the Cargobridge lands being used for any industrial purpose, and to the right of way serving those lands being upgraded from agricultural use to commercial use.

14.07 The Department of Transport, at the direction of the Minister for Transport, lodged objections to the planning permission application and the rezoning proposals of Cargobridge on 13 November 1991 and 2 December 1991 respectively. This ministerial opposition was informed by the case being made by Aer Rianta to the Department at that time, namely that the Cargobridge lands were of strategic importance for the future development of the civil aviation business of Dublin Airport.

14.08 In similar fashion, Aer Rianta urged the Department on 13 November and 4 December 1991 to refuse the application made by Cargobridge for a commercial right of way.

14.09 While the Ministerial objection to the Cargobridge planning application had been lodged with the Council on 13 November 1991, correspondence passing between the Department and Aer Rianta on 20 November 1991 indicated some degree of unease on the part of the then Minister for Transport to the concept of a blanket objection being made to the use of the Cargobridge lands for private commercial purposes. This was evident from a letter from the Department to the Chief Executive of Aer Rianta on 20 November 1991 stating:

> *The Minister finds it difficult to defend publicly the lodging of objections to developments by private enterprises on lands in the vicinity of Dublin Airport in the absence of a well defined and clearly articulated Aer Rianta policy on the future use of such lands, including access problems arising. He has asked that such a policy be formulated and the company make a submission on this to the Department as a matter of urgency.*

14.10 It was common case that the Cargobridge planning application, which was before the Fingal planning committee of Dublin County Council between November 1991 and March 1992 (when it was withdrawn), enjoyed considerable support among local councillors. Moreover, it appeared that these councillors took issue with the opposition of Aer Rianta to this planning application. In a letter to the Minister for Transport dated 21 November 1991, Mr McGuinness advised the Minister of the strong support at Council level for the planning application and sought to counter the objections of Aer Rianta by stating that:

> *We are aware that Aer Rianta objected to all developments in the environs of Dublin Airport which are not directly related to airport activities. Cargobridge Limited is seeking the development on this particular site because the business of the two freight companies involved <u>is</u> aviation related i.e. the warehousing of freight and access to European and nationwide distribution of this freight. These two companies are at the present time providing freight distribution to multi-nationals such as Digital and Northern Telecom who are enormous contributors to the Irish economy and who expect and demand a superior service.*

Mr McGuinness reminded the Minister that:

> *Access to the same right of way has already been granted to Celtic Helicopters and the fact that the Government has stated its wish to develop air transport services and airport related industries, we urge you to reconsider your decision at this time*.

14.11 This letter was silent on the fact that Celtic Helicopters, through its directors Mr Haughey and Mr Barnicle, were associated with the Cargobridge consortium through Abervanta.

14.12 The first breakthrough on the right of way issue, from the perspective of the consortium, occurred on 3 December 1991 when the private secretary to the Minister for Transport wrote to Mr McGuinness in the following terms:

> *The Minister notes that the company's application for planning permission for a warehousing development on lands at Dublin Airport, at present zoned for agricultural use, is being considered by Dublin County Council. In the event of planning permission being granted, the Minister will be prepared to consider further the question of granting of a right-of-way over his lands to the lands on which the warehousing development will be located.*

14.13 Mr Byrne, general manager of Aer Rianta, in his evidence expressed the opinion that this letter from the Minister was in reality indirectly advising the consortium that a right of way would not be granted.

14.14 Aer Rianta continued to object to the commercial use of the Cargobridge lands because of their proximity to Dublin Airport. On 4 December 1991, in response to a request from the Department of Tourism, Transport and Communications that it outline its policy on land acquisition, Aer Rianta advised the Department that the Cargobridge lands were of '*strategic value*' and stated that:

> *The East lands* [which included the Cargobridge lands] *have long been identified as essential for future development needs. Because of aeronautical restrictions the area which can be used for future airport development is very limited and the former Morgan lands are located within the unrestricted zone. Options for the development of this area have been under consideration for the past few years.*

Aer Rianta went on to outline the possible development it envisaged for the Cargobridge lands which included airport hotels, offices and car parking facilities. On the issue of access, Aer Rianta advised the Department as follows:

> *In a general sense access to the airport infrastructure is of major commercial and strategic value and should not be given away. There is substantial advantage for any developer or other operator in being able to locate at the airport a link into the existing infrastructure which has been funded by the Exchequer.*

and

> *Cargobridge Ltd. has applied to change an agricultural right-of-way to a commercial right-of-way. In this context the question of road access cannot be separated from land acquisition. Without road access, land has significantly reduced value. It would be imprudent from the Exchequer's point of view to take any action to enhance the value of land scheduled for acquisition by granting access beyond what is legally required. For the*

same reason, it would be inappropriate to assist in having these lands re-zoned for industrial purposes. A further complication is that the access in question is of a temporary nature and not suitable for high volume traffic because of its proximity to a major roundabout.

The restricted access granted to Celtic Helicopters did not conflict with future acquisition plans or airport development nor did it involve any change in the existing agricultural zoning.

14.15 On 1 October 1992, Mr John McGuinness,[17] then a member of Kilkenny County Council, made a direct representation by letter on behalf of his brother Mr Michael McGuinness to the then Taoiseach, Mr Albert Reynolds, in respect of the right of way issue. In the course of that letter he stated that there was a '*need for direct political intervention in this case in order to remove some of the 'red tape' which is preventing the project from getting to the 'start position'. I believe that some of the correspondence from the officials indicates the problem.*'

14.16 This approach to the Taoiseach prompted further consideration of the issue by the Department of Transport. In November 1992, the Civil Aviation Division of the Department recommended:

That the Taoiseach be informed that a right of way cannot be granted for access for commercial purposes to lands which are zoned for agricultural use in the County Development Plan. Should Cargobridge reapply for, and be granted, planning permission for the project and, for a change of use, the question of a grant of a commercial right-of-way across the Minister's lands could be considered. However primary consideration would have to be the future development needs of Dublin Airport.

14.17 This position was advised to Mr John McGuinness on 15 March 1993 by the private secretary to the then Minister for Transport, Mr Brian Cowen TD.

14.18 The campaign to secure the necessary commercial right of way continued following the rezoning vote of 30 March 1993. On 6 April 1993, Mr Michael McGuinness wrote to the Minister advising him of the political support which his plans for the Cargobridge lands had received at Council level. He repeated his request for a commercial right of way, a request he elaborated on in a letter of 4 May 1993 when he sought '*a free commercial right of way over your lands*'. The Minister's private secretary, while noting that the lands had been rezoned, responded that '*when planning permission has been received by the company the Minister will give consideration to the granting of a right of way across the Minister's land*'.

[17] Subsequently a Fianna Fáil Junior Minister, and currently (2011) a Fianna Fáil TD for Kilkenny.

14.19 On 6 May 1993 Mr McGuinness replied to this correspondence. He expressed his disappointment with the Minister's decision and emphasised the imperative nature of obtaining the necessary commercial access, before making an application for planning permission.

14.20 In his letter, Mr McGuinness stated that the Cargobridge consortium understood that they were not being given a commercial right of way because '*Aer Rianta have input to this file*'. In the course of this letter Mr McGuinness sought a meeting with the Minister.

14.21 In early 1993, representations supporting the Cargobridge consortium's request for the grant of a commercial right of way over the Minister's lands were made by Mr Michael Smith TD,[18] Mr Ruairi Quinn TD, Minister for Enterprise and Employment, and Ms Nora Owen TD, Deputy Leader of Fine Gael. Deputy Owen reminded the Minister that a precedent was already in place in the upgrading of the right of way facilitating Celtic Helicopters' use of land adjacent to the Cargobridge lands.

14.22 The contemporaneous records produced to the Tribunal suggest that the reason why the Department did not change its approach to the Cargobridge request for a commercial right of way, notwithstanding the various political representations which had been made to the Minister, was most likely Aer Rianta's request in June 1993 that the Minister issue a policy statement to Dublin County Council under Section 7 of the Local Government Act 1991 in support of Aer Rianta's objectives in relation to a number of land parcels (including Cargobridge) in the vicinity of Dublin Airport. The Department of Transport records indicated that, in response to this request, the Minister in turn had sought that Aer Rianta produce its own policy statement detailing its plans for the development of the lands over a 10–12 year period.

14.23 On 3 August 1993, in the course of the second public display of the Draft Development Plan, and in advance of the confirmation vote on the Cargobridge lands, Aer Rianta lodged a submission objecting to the rezoning.

14.24 Notwithstanding Aer Rianta's objection, the Cargobridge rezoning was confirmed on 30 September 1993. As in March 1993, the confirmation was by another almost unanimous vote of the Council.

14.25 Although contemporaneous documentation from the Department of Transport showed that a draft policy statement on the future development of

[18] Mr Smith made representations on behalf of Ms Terri Brennan, Mr Anthony Delaney's wife.

Dublin Airport (including the safe operation and development of air traffic at the airport) had been drawn up within the Department in August 1993, pursuant to the Local Government Act 1991, no such policy statement had been submitted to the County Council by the Minister prior to the vote of 30 September, 1993. In the course of giving evidence to the Tribunal, Mr John Loughrey, Secretary General at the Department of Transport, Energy and Communication stated that the Section 7 (of the Local Government Act 1991) policy statement was not issued to the County Council by the Minister as Aer Rianta had been requested to put together a coherent strategic plan for lands adjacent to the Airport, including the Cargobridge lands, but had failed to do so. Mr Loughrey did not recall ever seeing the draft prepared within the Department, stating that such a document would not necessarily be brought to his or the Minister's attention in its draft form.

14.26 However, on 6 October 1993, following the receipt of a letter from Aer Rianta on 5 October 1993 the Department, under cover of a letter from Mr Loughrey, furnished a written submission entitled *'Statement On The Need For Safe Operation and Development of Air Traffic at Dublin Airport'* to Dublin County Council on air safety. This document drew the attention of county councillors to the implications that certain proposed rezonings (then before the Council for consideration) had for '*the safe operation and development of aircraft and air navigation at Dublin airport*'. Included in the Department's listed rezonings in this context was change 10-2 on the Draft Development Plan the Cargobridge lands and in respect of which the submission observed '*This area lies close to the Approach Cone of the main Runway 10-28. Noise levels at this location could be intrusive'*.[19] Insofar as the aforesaid observations on the rezoning of the Cargobridge lands were before the County Council on 6 October 1993, the issue was, for all intents and purposes, moot, since industrial zoning for the Cargobridge lands had been confirmed by the Council on 30 September 1993. The issuing of such a statement, however, suggested to the Tribunal that the concerns which Aer Rianta had expressed, regarding the rezonings listed in the submission, had resonated to some degree within the Department of Transport.

14.27 On 1 October 1993, the day following the confirmation of the new industrial zoning of the Cargobridge lands, Mr McGuinness again wrote to the Minister for Transport seeking a commercial right of way to facilitate the Cargobridge lands. On that date also, Mr Dunlop wrote to the Minister in relation to the right of way issue. On 29 October 1993 Mr Dunlop wrote to Mr McGuinness advising him that he had had sight of a letter prepared by the Minister. That letter, Mr Dunlop advised, *'states categorically that following the*

[19] Unlike other areas listed in the document it was common case that the Cargobridge lands did not lie within a current 'red zone'.

recent rezoning decision by Dublin County Council he (the Minister) has no objection in principal [sic] *to the granting of full commercial access to the Cargobridge lands'* and that the Minister's position in this matter *'is subject only to the attendant costs of such access being decided by arbitration'.* The Minister wrote to Mr McGuinness on 19 November 1993 advising him that, in view of the fact that Dublin County Council had recently confirmed the rezoning of the lands from agricultural to industrial use, he wished to state that *'in principle'* he had no objection *'to full commercial access being made available to the land in question.'*[20]

14.28 In the course of evidence given to the Tribunal, Mr Brian Cowen TD (who had been Minister for Transport between 12 January 1993 and 15 December 1994) stated that his letter of 19 November 1993 was his agreement in principle to the grant of a commercial right of way to Cargobridge subject to agreement on price. In evidence, Mr Cowen agreed that the requirement for planning permission to be in place before such a grant of right of way would be given was no longer a pre-condition.

14.29 The Tribunal was satisfied that Mr Cowen's letter to Mr McGuinness on 19 November 1993 was written having regard to the fact that the lands had been rezoned in September 1993. The Tribunal was satisfied that it was within Mr Cowen's discretion as Minister for Transport to take into account the probability that the Cargobridge consortium was unlikely to be granted planning permission without being in a position to show the Council that they had adequate access to the lands which they proposed to develop. This case had been made to Mr Cowen by both Mr McGuinness and Mr Dunlop, and indeed was the central difficulty, as noted by Mr Ruairí Quinn TD (then Minister for Enterprise and Employment), when he wrote to Mr Cowen in May 1993.

14.30 The decision to grant a commercial right of way to Cargobridge was made in the teeth of strong opposition from Aer Rianta. Mr Byrne, in his sworn evidence to the Tribunal, stated that up to this point the Department of Transport had been strongly supportive of Aer Rianta in its aims and objectives for the development of Dublin Airport. However, as outlined by Mr Cowen and by Mr Loughrey, in their evidence, the Tribunal was satisfied that within that Department both at Ministerial and Secretary General level there was evolving, from 1992 onwards, somewhat of a sea-change in their thinking on the role of Aer Rianta vis-à-vis lands in the vicinity of Dublin Airport. Mr Cowen's view on this matter was evident from the contents of a letter written by him to Senator G. V. Wright on 8 December 1993. While the subject matter of that correspondence

[20] This letter was written by the Minister's private secretary.

was unrelated to the Cargobridge lands, the sentiments expressed by Mr Cowen in the final paragraph of that letter (which was that he did not share Aer Rianta's view that it should undertake all development at Dublin Airport) reflected what Mr Cowen in evidence had stated was his approach to the general issue of Aer Rianta and airport development in 1993.

14.31 In a letter to Senator G. V. Wright on 8 December 1993 Mr Cowen stated: '*I do not share the view that Aer Rianta itself must undertake all development on Dublin Airport. I welcome private sector development provided it conforms absolutely with my Department's safety and technical requirements and does not impede the future operation and development of the airport.'*

14.32 Thus the Tribunal was satisfied that Mr Cowen exercised his discretion having regard to the circumstances at the time, namely that the lands were zoned for industrial use and no case had been made out by Aer Rianta to his satisfaction or that of his Department that the lands were strategic to its plans for Dublin Airport. Notwithstanding the approach taken at Ministerial level within the Department, the Tribunal noted that as late as January 1994 officials were still recommending planning permission as a precondition for the upgrade of the right of way being sought by the Cargobridge consortium. In a document entitled *'Application by Cargobridge Ltd for commercial right of way across Minister's lands at Cloghran near Dublin Airport'* prepared in January 1994, the Department officials recommended as follows:

> *A precedent has been set for the granting of a right-of-way across the Minster's lands to private companies through the granting of a right of way to Celtic Helicopters Ltd in 1990. In view of the absence of specific aviation–related plans by Aer Rianta which would allow compulsory acquisition process to be entered into and the unlikelihood that Cargobridge Ltd would be prepared to sell their lands to Aer Rianta at an affordable price, it is recommended the Minister agrees to the granting of a right -of -way to Cargobridge Ltd provided that a satisfactory <u>commercial</u> payment is agreed and provided that the company succeeds in obtaining planning permission*.

14.33 The Tribunal was satisfied that intense lobbying was conducted by the Cargobridge consortium in the course of its attempts to upgrade their right of way, and which intensified over the course of 1993 and which involved active participation by Mr McGuinness and Mr Dunlop. Their participation continued throughout 1994 in relation to the issue of putting in place a mechanism for assessing the cost to the Cargobridge consortium of their newly acquired commercial right of way. Save for a cursory reference thereto, Mr Dunlop's active

role on behalf of the consortium in the lobbying for the upgraded right of way was not addressed by him in the statements he furnished to the Tribunal.

ALLEGED PAYMENTS BY MR DUNLOP TO COUNCILLORS

15.01 Mr Dunlop alleged that he paid Cllrs Tony Fox and Cyril Gallagher IR£1,000 each to secure their support for the rezoning of the Cargobridge lands, and that he paid Cllr Seán Gilbride a *'composite'* payment of IR£2,000 in connection with these and other lands.

CLLR TONY FOX (FF)

15.02 In the course of a private interview on 18 May 2000, Mr Dunlop told the Tribunal that he had paid Cllr Fox money in relation to the Cargobridge lands. He repeated this allegation in his written statements to the Tribunal dated 9 October 2000 and 26 February 2004.

15.03 Mr Dunlop's sworn testimony to the Tribunal on 20 September 2006 was that when he canvassed Cllr Fox for his support for the Cargobridge rezoning proposal, Cllr Fox had informed him that he had already been lobbied by Mr Michael McGuinness, and that he supported the rezoning proposal. Mr Dunlop said that Cllr Fox told him that he had assured Mr McGuinness of his support, but complained to Mr Dunlop that '*he* [Mr McGuinness] *gave me nothing*'. Mr Dunlop stated that he had interpreted this comment as a hint or request for payment, and he promised Cllr Fox IR£1,000, which he said he duly paid to him *'somewhere in the environs of the Council'* prior to the vote for the rezoning of the Cargobridge lands on 30 March 1993.

15.04 Cllr Fox's specific comments to Mr Dunlop about Mr McGuinness, as alleged by Mr Dunlop in evidence, which he stated led him to proffer IR£1,000 to Cllr Fox, were not included in Mr Dunlop's prior statements to the Tribunal of 9 October 2000 and 26 February 2004. Nor did Mr Dunlop allude to Cllr Fox making these comments in his private interview with the Tribunal.

15.05 Mr Dunlop was questioned by the Tribunal as to why he felt he had to pay Cllr Fox money given his assurance of support for the Cargobridge proposal. He replied: '*Because of my relationship with him and because of his ongoing relationship with me in a variety of developments, in some of which he was crucially important.*'

15.06 Before giving evidence in this module, Cllr Fox furnished a statement to the Tribunal in which he stated:

I have no particular recollection of the zoning of the above lands. In particular in relation to the questions raised in the tribunal the letter from the tribunal on 23 February 2006, I reply as follows:-

(a) To the best of my recollection I cannot recall any meeting or discussion with Mr Frank Dunlop, Mr Michael McGuinness, Mr Michael Fitzgerald or any agent of those persons including Neptune Freight Limited and/or Williams Air Freight Limited in relation to the zoning of these lands.

(b) I have received no payment or benefit whatsoever from anyone in connection with the rezoning of these lands.

15.07 In the course of his evidence Cllr Fox stood over the contents of his statement. He vehemently denied Mr Dunlop's allegations, and he denied that he had received IR£1,000 from him. He described Mr Dunlop's evidence as '*total fabrication, absolute rubbish*'. He denied ever having the conversation described by Mr Dunlop and claimed that Mr Dunlop was coming to the Tribunal about him '*to justify his* [Mr Dunlop's] *own greed*'.

15.08 Cllr Fox's evidence was that Mr Dunlop had made representations to him in relation to only two developments, neither of which included the Cargobridge lands.

15.09 Telephone records maintained by Mr Dunlop's secretary suggested telephone contact between Cllr Fox and Mr Dunlop's office on eight separate occasions in 1993, including 9 and 31 March 1993. In 1994, telephone contact was recorded on 15 occasions. While Cllr Fox did not concede the accuracy of these records, he did accept that there was a certain level of contact between himself and Mr Dunlop during these years. It was his belief that this contact related only to Texas Homecare in Dundrum and Quarryvale.

15.10 The Tribunal was satisfied that Mr Dunlop lobbied Cllr Fox for his support for the rezoning of the Cargobridge lands in 1993 in the course of regular contact between them. The Tribunal accepted evidence of regular telephone contact between Cllr Fox and Mr Dunlop in and around March 1993 (and on other occasions).

15.11 The Tribunal was satisfied that Mr Dunlop paid IR£1,000 in cash to Cllr Fox in return for his support for the Cargobridge lands rezoning, and that Cllr Fox had solicited that payment. The said payment was intended to ensure that Cllr Fox would act otherwise than in the disinterested performance of his public duties as a councillor. The said payment was therefore corrupt.

CLLR CYRIL GALLAGHER (FF)[21]

16.01 Cllr Gallagher was one of seven signatories to the motion to rezone the Cargobridge lands which was lodged with the Council on 24 February 1993. The lands in question were in Cllr Gallagher's electoral ward.

16.02 Mr Dunlop told the Tribunal that he paid IR£1,000 to Cllr Gallagher in the Royal Dublin Hotel some days prior to the 30 September 1993 Cargobridge lands confirmation vote, to ensure Cllr Gallagher's support for same and that the money had been solicited by Cllr Gallagher.

16.03 Council records produced to the Tribunal suggested that Cllr Gallagher had also been supportive of the attempts made by the Cargobridge consortium in November/December 1991 to obtain planning permission for the lands, and that on 16 December 1991, he had seconded a motion proposing a material contravention.[22] The records suggested that Cllr Gallagher had been approached by the consortium in this regard. The planning permission application was ultimately withdrawn in March of 1992.

16.04 In the course of his evidence, Mr Cousins told the Tribunal that from the outset he had been aware of Cllr Gallagher's support for the rezoning.

16.05 Council records showed that Cllr Gallagher did not attend the special meeting of 30 March 1993, having sent his apologies to the Council for his absence. Mr McGuinness, in correspondence, stated that Cllr Gallagher had telephoned him before the meeting and had advised him that for personal reasons he was unable to attend.

16.06 In the course of his private interview on 18 May 2000, Mr Dunlop made reference to Cllr Gallagher in the following terms:

> '*Now, in relation to Gallagher who is recently deceased, but in relation to Gallagher, Gallagher was enthusiastically supportive of it at the outset. A doubt entered into people's minds as to whether Aer Rianta had got to him and if you bear in mind the military campaign that was conducted by Aer Rianta which it was, I mean they put five or six people on this and they used every subterfuge in the book including over-flights, you know, heights of buildings, flight paths, notwithstanding the fact that the Team Aer Lingus building was on the roundabout and they were still talking about the heights that would be necessary in case planes would crash*

[21] Cllr Gallagher died in March 2000.

[22] Media records indicated that the motion had been seconded by a 'Phil Gallagher'. The Tribunal believed this to be, in fact, a reference to 'Cyril Gallagher'.

into the buildings, but Gallagher at one stage was suspected of having changed sides and that Aer Rianta got him and remember that, sorry, I shouldn't say words like 'remember', Swords was very much centred on activity at the airport and Cyril would have been conscious of the fact that, you know, if he did something that was in some way could be represented by Aer Rianta as seriously affecting employment or future employment, that would seriously affect him in his own electoral area and not only there, there would be people from Fine Gael that would use it, there would be people from Fianna Fáil that would use it against him. So he was suspected from getting at from outside. So he was directly in receipt of something of the order of two grand from me in relation to that to ensure that he stayed onside.'

16.07 On Day 674 (20 September 2006) Mr Dunlop was asked to explain how it was that between May and October 2000, the payment he alleged he had made to Cllr Gallagher had moved from a figure of *'something of the order of two grand'* to a specific figure of IR£1,000. Mr Dunlop explained the shift in his position in the following terms:

'*I am trying to be as helpful as possible and we have traversed this territory before in relation to other matters. Outside of the frenetic atmosphere of what occurred in April and May 2000 here and in the private sessions, when I was asked for an extensive narrative statement by the Tribunal in relation to my association with councillors on the one hand, politicians on the one hand and builders, developers on the other, I had to sit down and reflect over my relationship with all of these people over a period of, periods of time, the developments that I was involved in with them, and what relationship I had with them, and what monies changed hands, it is in that context that I said what I said.*'

16.08 On the same occasion, Mr Dunlop reasserted his revised position, namely that he had given Cllr Gallagher a sum of IR£1,000.

16.09 In his statement of 26 February 2004, Mr Dunlop had advised the Tribunal as follows:

Some of the councillors on the North Side of the city came under intense pressure from representatives of Aer Rianta to vote against the proposal on 30 March 1993. One such councillor was Cyril Gallagher. Enthusiastically supportive of the proposal initially his enthusiasm waned and he did not vote on 30 March 1993. He did not attend the meeting. He voted for the confirmation of the zoning on 30 September, 1993. I paid him IR£1,000 for his support on that occasion. The payment was

made in the Royal Dublin Hotel some days prior to the meeting. He asked for IR£1,000.

16.10 In the course of his sworn testimony to the Tribunal, Mr Dunlop stated that within a short time of having been retained as a lobbyist he canvassed a substantial number of councillors in relation to the rezoning, including Cllr Gallagher. Mr Dunlop's diary entries for March 1993 revealed that during that month he had contact with Cllr Gallagher, in addition to Cllrs Devitt, Creaven, M. J. Cosgrave, Kennedy and Wright—all signatories to the motion to rezone. Mr Dunlop stated that he would have spoken to these individuals in relation to the Cargobridge and other rezoning proposals then ongoing.

16.11 All concerned, including Cllr Gallagher, had been conscious of the intense lobbying Aer Rianta was conducting against the Cargobridge rezoning proposal. Northside councillors were particularly targeted for lobbying. Mr Dunlop had regarded Cllr Gallagher, being a local councillor, as having taken a *'brave stance'* in signing and supporting the motion, notwithstanding that his support for the Cargobridge rezoning motion, according to Mr Dunlop, had been *'palpable, overt and evident'*.

16.12 Cllr Gallagher's failure to attend the special meeting of 30 March 1993 was the subject of political discussion, particularly among Fianna Fáil councillors. Mr Dunlop, in evidence, cited Cllrs Wright and Gilbride as having queried the reasons for Cllr Gallagher's non-attendance. It had, according to Mr Dunlop, *'raised signals'*. While, as Mr Dunlop conceded, there may have been some perfectly genuine reason for Cllr Gallagher's absence from the special meeting which voted on a proposal he himself had signed, nonetheless there had been speculation that he had come under pressure and had been lobbied successfully by Aer Rianta, and that he had dealt with this pressure by absenting himself from the meeting.

16.13 Mr Dunlop said that he had contemplated this matter in the run up to the confirmation vote on 30 September 1993 and that it was his belief that if Cllr Gallagher again failed to support the motion in September 1993 '*it would have been particularly odd and even though the vote might have been passed, it mightn't have looked well if Cyril Gallagher from the north side, particularly from Swords, with the airport in his constituency, voted against, or abstained again*'.

16.14 Mr Dunlop told the Tribunal that Cllr Gallagher had confirmed his suspicion that he had been canvassed and put under pressure by Aer Rianta when Mr Dunlop had lobbied him in the run-up to the confirmation vote.

16.15 On Day 674 (20 September 2006), the following exchange took place between Counsel for the Tribunal and Mr Dunlop:

Q. 527 *'Why did you pay him IR£1,000?'*

A. *'Because he asked. I had a discussion with him about it, he told me he would come after the discussion, after he had said you know, are you going to give me something, I cannot give you the exact words but we agreed that I would give him IR£1,000 and I did, and he voted for the confirmation.'*

Q. 528 *'Just to be absolutely specific, Mr Dunlop, are you telling the Tribunal that you felt that unless you paid Cyril Gallagher deceased IR£1,000 in September 1993 he would not have voted for this project?'*

A. *'I certainly had a doubt.'*

Q. 529 *'And that he had not voted for the project the project might, the confirmation might not have gone through?'*

A. *'Let me replicate again or reprise for you what I said in another module. Mr Cyril Gallagher's name begins with a G, his name is called out very early on. If people, if a whiff that Cyril is going to vote against or not appear again other people might have said well if Cyril is not voting for it or if Cyril is not on side there must be a reason for it and he could have affected other people, I'm not saying that it would, it could have. I have given evidence to that effect at another occasion.*

Q. 530 *'1099, this is the Motion, Mr Dunlop, lodged and voted on in March 93, the very second signature on that motion of many signatures is Councillor Gallagher's?'*

A. *'Correct.'*

Q. 531 *'Are you saying to the Tribunal that when the confirmation came for that almost identical proposal, that it was your worry or fear that Cyril Gallagher would have voted against something that he was so enthusiastically supportive of the previous March?'*

A. *'No, I didn't say worry or fear, I said I had a doubt that Aer Rianta got to him or that he would either not vote or vote against it.'*

Q. 532 *'Even if we are talking about a negotiating situation from Mr Gallagher's point of view, what negotiating position had Mr Gallagher or what had he to offer you when he, as you allege, sought IR£1,000 from you in September 1993 when he was the second signatory to a Motion which had been successful by 52 votes to nil the previous March?'*

A. *'Exactly that, his name and the fact that he was a signatory that's what he had to offer.'*

Q. 553 *'He had none?'*

A. 'That's what he had to offer.'

Q. 534 *'He was never going to vote against a proposal that he had signed a Motion in respect of and had been supportive of?'*

A. *'What happened on the 30th March.'*

Q. 535 *'Enthusiastically supportive of it?'*

A. *'Well, what happened on the 30th March.'*

Q. 536 *'So you are saying to ensure his attendance?'*

A. *'There was a doubt in people's minds about what position Cyril would take in the confirmation vote. I made contact with Cyril, I had lots of contact with him, I made contact with him, we met and we were seriously concerned that Aer Rianta had in fact managed to nobble him and that that might have an effect on other people, it's as simple as that.'*

Q. 537 *'Did he tell you that Aer Rianta had nobbled him?'*

A. *'Had what?'*

Q. 538 *'That Aer Rianta had nobbled him?'*

A. *'No, told me that Aer Rianta lobbied him.'*

Q. 539 *'Certainly lobbied him. They lobbied every councillor?'*

A. *'Absolutely very heavy. Very badly as well, I mean they were very heavy handed about it, which is another factor that comes into play for the level of support which existed for it.'*

16.16 The Tribunal accepted that from the outset Cllr Gallagher was supportive of the proposal to rezone the lands and was, in all probability, an enthusiastic supporter prior to Mr Dunlop's retention as a lobbyist. It is certainly the case that he had supported the 1991 planning application and had signed the motion which was lodged before the Council on 24 February 1993, and that in September 1993 he voted against the Higgins/O'Connell motion which sought to have the Cargobridge lands revert to their agricultural status.

16.17 Given the strength of the vote in favour of the motion to rezone in March 1993, and of the vote which defeated the attempts by Cllrs Higgins and O'Connell to have the lands dezoned back to agricultural in September 1993, Cllr Gallagher's vote or failure to vote would not, in all probability, have altered the outcome of either vote. However, as already indicated (Q. 529), Mr Dunlop claimed in evidence that Cllr Gallagher's status as a local councillor, together with the fact that his vote would be a relatively early one (by virtue of his surname) and thus an indicator for other councillors who followed him in voting, were factors he considered important in September 1993 relative to the Cargobridge lands.

16.18 Cllr Gallagher died in March 2000 without having had the opportunity to address Mr Dunlop's allegations that he had sought and received money from him. Cllr Gallagher did, however, tell the Tribunal in the course of a private interview in March 1999 that he had not received corrupt payments.

16.19 The Tribunal accepted Mr Dunlop's evidence that he had the discussion he claimed to have had with Cllr Gallagher in the lead-up to the confirmation vote and that Cllr Gallagher's attendance and support at the special meeting of 30 September 1993 was assisted by an agreement with Mr Dunlop that he would pay him IR£1,000. The Tribunal accepted Mr Dunlop's evidence that this money was paid to Cllr Gallagher in the Royal Dublin Hotel prior to the September vote. In respectively proffering and accepting the sum of IR£1,000, Mr Dunlop and Cllr Gallagher acted corruptly.

CLLR SEÁN GILBRIDE (FF)[23]

17.01 Mr Dunlop told the Tribunal that he made a '*composite*' payment of IR£2,000 in cash to Cllr Gilbride in relation to his support for three rezoning motions, namely those relating to the Cloghran (Cloghran Module), Drumnigh (Fox and Mahony Module) and Cargobridge (Cargobridge Module) lands. Mr Dunlop's evidence was that this payment was made on a day after 28 April 1993.

17.02 Mr Dunlop was questioned in the course of his evidence as to why he might have paid a sum of IR£2,000 to Cllr Gilbride after he had already supported the three rezoning motions in respect of which the payment was being made. Mr Dunlop told the Tribunal that while he and Cllr Gilbride were discussing another pending rezoning issue, on a date probably prior to 28 April 1993, Cllr Gilbride complained that he had not been paid anything in respect of those three matters. Mr Dunlop said that it was on this basis, and for this reason, that he proceeded to pay him the sum of IR£2,000. In doing so he was conscious of the support already provided by Cllr Gilbride in relation to the three rezoning issues, and his ongoing support in relation to future projects.

17.03 Mr Dunlop told the Tribunal that he had agreed to pay Cllr Gilbride IR£2,000 for his support for the rezoning of the Drumnigh, Cloghran and Cargobridge lands. The discussion took place at the time Cllr Gilbride signed the Drumnigh[24] rezoning motion, between 10 and 12 March 1993, or shortly thereafter but before the vote on the Drumnigh motion on 28 April 1993.

17.04 In the course of his evidence in the Cloghran Module, Mr Dunlop told the Tribunal that this discussion took place after votes had been cast in the Cloghran and Cargobridge motions, without mention of the Drumnigh lands rezoning motion.

[23] Cllr Gilbride died in January 2011.
[24] The Drumnigh lands were the focus of the inquiry in the Fox and Mahony module.

17.05 Cllr Gilbride signed the Cloghran rezoning motion on 12 March 1993. The vote took place on 1 April 1993.

17.06 Cllr Gilbride told the Tribunal that he supported the rezoning of the Cargobridge lands on 30 March 1993 and the confirmation vote on 30 September 1993. His recollection was that he had supported the rezoning without having been canvassed. He took a similar position in a written statement he provided to the Tribunal on 14 July 2006. In contrast, in information provided to the Tribunal in 2001, Cllr Gilbride acknowledged that in fact he had been lobbied in relation to the Cargobridge lands. His explanation for this apparent inconsistency was that his 2001 statement referred to lobbying literature he had received in relation to the Cargobridge lands.

17.07 In any event, Cllr Gilbride strongly rejected the allegation that he had been paid IR£2,000 or any sum by Mr Dunlop in the circumstances outlined by him. He claimed that he had received a sum of IR£2,000 in cash from Mr Dunlop as a legitimate political donation in the course of the 1991 Local Elections in which he was a successful candidate for re-election to Dublin County Council.

17.08 Cllr Gilbride also acknowledged that there was a significant degree of contact between himself and Mr Dunlop in 1993. He acknowledged that Mr Dunlop's office telephone records, which indicated 11 telephone calls made from Cllr Gilbride to Mr Dunlop's office between 4 January and 2 February 1993, and 17 calls between 2 February and 25 March 1993, were accurate. Cllr Gilbride accepted that this contact was in connection with the Development Plan review that was ongoing at the time. Between 31 March 1993 and 28 September 1993, there were in excess of 30 such calls between Cllr Gilbride and Mr Dunlop's office. Specifically, there was one telephone contact between Cllr Gilbride and Mr Dunlop's office on 29 March 1993, the eve of the Cargobridge rezoning motion. Cllr Gilbride was unable to account for this call or its subject matter, but he believed no such call related to Cargobridge, as he was satisfied that neither Mr Dunlop nor Mr McGuinness had lobbied him in relation to that project.

17.09 The Tribunal was satisfied that Cllr Gilbride was lobbied by Mr Dunlop to support the rezoning of the Cargobridge lands in advance of both relevant County Council votes on 30 March and 30 September 1993.

17.10 The Tribunal's determination in relation to the issue of Mr Dunlop's alleged 'composite' payment of IR£2,000 to Cllr Gilbride is to be found in Chapter 10 (the Fox and Mahony module).

CLLRS COLM MCGRATH (FF) AND DONAL LYDON (FF)

18.01 In the course of a private interview with the Tribunal on 18 May 2000, Mr Dunlop named Cllrs Tony Fox, Cyril Gallagher, Seán Gilbride, Colm McGrath and Don Lydon as recipients of payments made in connection with the Cargobridge lands rezoning.

18.02 Although in his written statements of 9 October 2000 and 26 February 2004, Mr Dunlop again identified Cllrs Fox, Gallagher and Gilbride as recipients of money in relation to the Cargobridge lands, he did not repeat his earlier contention relating to payments to Cllrs McGrath and Lydon.

18.03 In evidence on 20 September 2006, Mr Dunlop said that neither Cllr McGrath nor Cllr Lydon had received money from him in relation to the Cargobridge lands. He acknowledged that, in the course of the private interview with the Tribunal on 18 May 2000, he had '*wrongly identified*' both individuals as recipients of money in relation to those lands.

18.04 When pressed as to how he might have made an error in identifying two councillors as having received money in relation to the Cargobridge lands, Mr Dunlop stated:

> '*Well again, notwithstanding the reference to them as usual recipients because they were recipients of monies in other instances, but in the context of assisting the Tribunal and the generality of what took place in Dublin County Council and my relationship with these Councillors, I wrongly identified McGrath and Lydon*' and '*. . . the fact of the matter is in the private sessions, I was assisting Mr Hanratty and Mr Gallagher and some of his solicitor attendances, some of whom are present here today and will recall what occurred, we were - I was trying to indicate to the Tribunal the level of payments that were made, the recipients of those payments, the widespread nature of the system that existed and it didn't apply to only one development, that was the, that was my main concern at that time.*'

18.05 The Tribunal was satisfied that Mr Dunlop erroneously identified Cllrs McGrath and Lydon as recipients of money in relation to the Cargobridge lands, in the course of his private interview with members of the Tribunal's legal team on 18 May 2000.

CLLR ANNE DEVITT (FG)

19.01 Cllr Devitt was a councillor in Dublin County Council between 1991 and 1993, and from 1 January 1994 a councillor with Fingal County Council. She was a trainee solicitor between 1991 and 1994, and qualified in 1994.

19.02 In December 1991, Cllr Devitt had proposed a material contravention (Section 4 motion) to a meeting of Dublin County Council in relation to the Cargobridge lands. At that time, this application was controversial and was strenuously opposed by the County Manager. The effect of the motion, had it been passed, would have been to permit industrial use of the Cargobridge lands.

19.03 In her evidence to the Tribunal, Cllr Devitt acknowledged that she had moved this material contravention motion at the request of the owners of the Cargobridge lands, and specifically Mr McGuinness.

19.04 Cllr Devitt played an active role in the process to rezone the Cargobridge lands in 1993 and in the consortium's subsequent application for planning permission. She was a signatory to the Cargobridge rezoning motion passed at the special meeting of Dublin County Council on 30 March 1993. Records indicated that Cllr Devitt contributed to the discussion at this meeting prior to the vote, and voted in favour of the motion. Cllr Devitt was also recorded as having voted against the Higgins/O'Connell motion on 30 September 1993. This led directly to the confirmation of the rezoning of the Cargobridge lands.

19.05 Mr Dunlop told the Tribunal that he lobbied Cllr Devitt to support the rezoning of the Cargobridge lands, and that she was an enthusiastic supporter of the proposal.

19.06 Cllr Devitt acknowledged that she had been canvassed to support the rezoning of the Cargobridge lands but only by Mr Michael McGuinness and not by Mr Dunlop.

19.07 Cllr Devitt opposed the stated position of Aer Rianta on the rezoning of the Cargobridge lands. It was her belief that the Cargobridge motion was not in conflict with Aer Rianta's plans for the development of lands close to the airport. Cllr Devitt told the Tribunal that she perceived Aer Rianta as wishing to control ancillary business activity in the vicinity of Dublin Airport, and that she believed this to be unreasonable and unnecessary. She also appeared to believe that the sewage/draining system serving Dublin Airport should be accessible to the lands through which the system travelled, including the Cargobridge lands. This was

contrary to Aer Rianta's view, which was that the system should serve Dublin Airport only.

19.08 On 8 December 1997, Cllr Devitt submitted an invoice to Mr Michael McGuinness/Neptune Freight Ltd entitled '*Planning and Development of Neptune Freight premises at above*', in which she sought an '*all inclusive fee as agreed*' of IR£10,000.

19.09 The description in the invoice stated:

> *To Professional Fee for Legal Work done in the following matters:*
>
> *1. Taking instructions, reviewing draft, planning application, attending at the offices of Fingal County Council to examine Development Plan advising on amendments to draft application, attending at the offices of Dublin Corporation to review way leave agreements in relation to change, advising and amending terms of way leave agreements between Neptune Freight and the Minister for Trade Transport and Communications.*
>
> *2. Advising on draft planning applications for extensions to existing premises at Airport Business Park, reviewing regulations to densities heights, contributions. Attendance at meetings with Bio cycle Engineers and client architect to advise on Buildings Regulations in relation to County Council drainage requirements. Further miscellaneous advice in relation to legal requirement of Council's Planning Authority*.

This invoice was paid by Neptune Freight Ltd by cheque dated 17 December 1997.

19.10 At all material times during and before the year 1997, Cllr Devitt was an elected member of Dublin County Council (until 31 December 1993) and of Fingal County Council (from 1 January 1994), representing the Swords ward. Cllr Devitt told the Tribunal that the work in respect of which she invoiced Neptune Freight Ltd and received payment was professional legal work she had carried out in her capacity as a lawyer. In evidence, Cllr Devitt maintained that at the time she entered her commercial relationship with Mr McGuinness (i.e. in 1994, the year she qualified as a solicitor), they had reached an agreement that she would be paid a fee for her advices.

19.11 In the course of her dealings with the Tribunal, Cllr Devitt furnished a copy of a letter from Mr McGuinness dated 24 May 2002, written in response to her efforts to ascertain details from Neptune Freight Ltd of the work she had carried out for him. Mr McGuinness wrote as follows:

Dear Anne,

Further to your recent phone call to Tony Delaney I can confirm that all files relating to the problem you advised on, Right of Way, Access to Sewers, Biocycle and Bord Pleanála etc were all at the offices of Neptune Freight when it was sold to Tibbet and Britton in 1997.

I can confirm you gave me advice on all of the above including advice on EU competition law relating to Aer Rianta refusal to allow us access to sewers and their refusal to grant a right of way over our existing right of way. You introduced me to Frank Cavanagh of Biocycle and also advised on the Aer Rianta Bord Pleanála appeal.

You first undertook this work when you were working at the offices of Neptune's Solicitor—Michael Kennedy as an apprentice. After you left Michael Kennedy as a qualified solicitor I asked you to continue to advise us on all of the above.

I can confirm you continued to act as consultant solicitor to Neptune Freight until I sold the company in 1997. I hope this is sufficient.

Yours faithfully

Michael McGuinness.

19.12 In her capacity as a consultant solicitor with Noel Smyth & Partners from 1994 to 1996, Cllr Devitt on occasion worked on files connected with Abervanta. On 12 April 1994, Mr Kennedy, Cargobridge's solicitor, wrote to Noel Smyth & Partners (for the attention of Cllr Devitt) regarding the right of way issue. In the same month, Bank of Ireland Private Banking wrote to Noel Smyth & Partners (again for the attention of Cllr Devitt) regarding Abervanta and the discharge of its debt to the bank.

19.13 Documentary evidence produced to the Tribunal revealed that in the course of a meeting between Mr McGuinness and others with persons representing High Degree Construction Ltd concerning the disposal to it of Abervanta's lands, Mr McGuinness was being advised by Cllr Devitt by telephone of Dublin County Council planners' likely approach to the installation of a biocycle tank on the consortium's lands to take foul sewerage.

19.14 On 23 May 1995, on Fingal County Council headed notepaper, and headed *'Re Cargobridge'* Cllr Devitt wrote to Mr John Lumsden of the Department of Transport in relation to the biocycle sewage proposals then being put forward by the Cargobridge consortium as being suitable for the Cargobridge lands.

19.15 In the course of her evidence to the Tribunal, Cllr Devitt maintained that, notwithstanding the use of Fingal County Council letterhead in the

correspondence with the Department of Transport and Mr McGuinness, she was not acting in her role as councillor with Fingal County Council, but rather in her capacity as an advisor to Mr McGuinness.

19.16 On 2 April 1996, Cllr Devitt used the headed notepaper of Noel Smyth & Partners when contacting an official of the Department of Transport about the right of way to the Cargobridge lands. In her evidence to the Tribunal, Cllr Devitt suggested that this contact, although on Noel Smyth's headed notepaper, was not written in her capacity as a lawyer acting for Mr McGuinness, but was instead for her information '*as a councillor point of view*'.

19.17 Having regard to the nature and content of the letter of 2 April 1996 which included direct communication from Aer Rianta to Mr McGuinness regarding the right of way issue, the Tribunal was satisfied that Cllr Devitt, in liaising with the Department of Transport, was representing the interests of Mr McGuinness and the Cargobridge consortium.

19.18 Mr Fitzgerald and Mr Cousins both told the Tribunal that they had no knowledge of the payment of IR£10,000 by Mr McGuinness/Neptune Freight to Cllr Devitt in December 1997. According to them, Mr McGuinness had never sought any contribution from them towards this payment.

19.19 It was apparent to the Tribunal that Cllr Devitt played a significant role in Cargobridge's attempts to have the lands rezoned in the period 1991–3, and in its planning permission application subsequent to the rezoning of the lands in September 1993. Cllr Devitt was handsomely remunerated by Mr McGuinness for the assistance she provided in December 1997. Cllr Devitt sought to maintain that, as her commercial relationship with Mr McGuinness began in April 1994 and related essentially to issues of drainage and the right of way, any assistance provided by her was not in conflict with her role and duties as a councillor.

19.20 The Tribunal was satisfied that Cllr Devitt could not reasonably or credibly seek to divorce the role she played after the rezoning from the matters she concerned herself with in her capacity as an elected councillor prior to 1994 and which involved her casting her vote in favour of the rezoning of the Cargobridge lands.

19.21 The Tribunal was of the view that Cllr Devitt's actions in taking on a role in the Cargobridge planning application process from 1994 to 1997, together with the agreement she reached with Mr McGuinness that she would be paid for this role, compromised the requirement on her as an elected representative to perform her duties in a disinterested manner. In effect, Cllr Devitt, a local councillor, in anticipation or expectation of reward, assisted the Cargobridge

consortium in its ultimately successful planning application. The Tribunal was of the view that Cllr Devitt's actions, in agreeing to act for financial reward, for the advancement of matters the outcome of which rested in the decision-making powers of the Council of which she was a member, were entirely inappropriate.

19.22 The Tribunal was of the view that Cllr Devitt permitted herself to become engaged in the Cargobridge project in circumstances where there was a potential conflict of interest with her role and her duty as a councillor. This conflict arose by her intermingling two clearly separate and distinct aspects of her work: that of a councillor on the one hand, and that of a lawyer/advisor on the other hand.

19.23 The Tribunal was satisfied that Mr McGuinness's motivation in engaging Cllr Devitt's services related to her role as county councillor and the positive influence which she would bring to bear in that capacity on his interests in relation to the Cargobridge lands.

CLLR G. V. WRIGHT (FF)

20.01 Cllr Wright was a strong supporter of the rezoning of the Cargobridge lands, and was unhappy with the attitude of Aer Rianta to land development adjacent to Dublin Airport. He was a signatory to the motion to rezone the Cargobridge lands which succeeded on 30 March 1993, and again supported the confirmation process for the rezoning of the lands on 30 September 1993 (by voting against the Higgins/O'Connell motion).

20.02 From 1991, Cllr Wright actively supported Mr McGuinness in his efforts to obtain zoning/planning permission for the Cargobridge lands. He actively lobbied the planning department of Dublin County Council in this cause, and met with Mr Fitzgerald, Mr Delaney, Mr Cousins and Mr McGuinness on a number of occasions.

20.03 Mr Dunlop recalled lobbying Cllr Wright to support the rezoning of the Cargobridge lands and noting that Cllr Wright's attitude to the proposed rezoning was enthusiastic.

20.04 Cllr Wright acknowledged that in 1993 he may have sought support for himself for fundraising events such as golf classics from Mr Cousins, whom he knew.

20.05 Mr Fitzgerald recalled supporting a golf classic fundraising event for Cllr Wright in September 1993 in advance of the rezoning confirmation vote on 30 September 1993. He believed he contributed IR£100 to this event, having been solicited for a contribution by Cllr Wright. Mr Fitzgerald told the Tribunal that he

was not interested in politics and did not therefore see himself as a political supporter of Cllr Wright.

MR MICHAEL MCGUINNESS'S INVOLVEMENT WITH THE TRIBUNAL

21.01 The Tribunal originally contacted Mr McGuinness by letter on 2 June 2000 seeking details of any direct or indirect payments he had made to any elected representative or public official, including any such payments made through Mr Dunlop or any other intermediary. Mr McGuinness replied to that letter from a Spanish address on 17 June 2000. His reply was in the negative, and he indicated that he had now retired and was travelling through Europe, and no longer resided in Ireland. Mr McGuinness provided the Tribunal with a London address for future correspondence.

21.02 The Tribunal resumed correspondence with Mr McGuinness in 2003 to his London address. A second letter was sent to him at his Isle of Man address, and a third letter was sent to him at both addresses. The Tribunal received a three page response from Mr McGuinness dated 13 November 2003, sent from his Isle of Man address.

21.03 Mr McGuinness provided a further written statement on 11 April 2004 from a Bangkok address.

21.04 The Tribunal made an order for discovery and production of documentation against Mr McGuinness on 14 June 2006. While Mr McGuinness maintained that he was not subject to this or to any order from the Tribunal, because he lived outside the jurisdiction, he nevertheless swore a short affidavit of discovery on 18 August 2008 in which he maintained that he no longer had relevant documentation available to him.

21.05 By letter dated 5 July 2006, the Tribunal advised Mr McGuinness that public hearings in the Cargobridge Module were scheduled to commence on 19 September 2006. Mr McGuinness was provided with relevant documentation, which he was entitled to receive as a scheduled witness in that module.

21.06 Further written statements were received from Mr McGuinness on 4 August and 11 August 2006.

21.07 On 18 August 2006 Mr Dónall King, solicitor to the Tribunal, engaged in a lengthy telephone conversation with Mr McGuinness in the course of which Mr McGuinness indicated the following:

- It was not his intention to attend the Tribunal as it was '*only*' an inquiry and not a court case. Mr McGuinness stated that he did not understand the '*importance of attending the Tribunal*'.

- It was not his intention to instruct a legal team to represent him at the Tribunal.
- He was resident outside the jurisdiction and was therefore not obliged to comply with any order of the Tribunal, although it was his intention to do so.

21.08 In a later telephone discussion with the Tribunal, initiated by him, Mr McGuinness emphasised that he intended no disrespect to the Tribunal in describing it as *'only'* an inquiry and not a court, and that his earlier telephone reference to his decision not to instruct a legal team was intended to convey that he did not have time to instruct a legal team.

21.09 By letter dated 27 August 2006, Mr McGuinness declined the Tribunal's offer to fix a date for his sworn evidence to be given at public hearing, stating that he was unable to break a planned year-long worldwide trip for such purpose. Mr McGuinness indicated that he would contact the Tribunal on his return from his travels and, subject to legal advice, agree a date for his attendance at a public sitting of the Tribunal for the purpose of giving sworn evidence. He did not do so.

21.10 On 1 July 2008, the Tribunal wrote to Mr McGuinness notifying him that it expected public hearings to conclude '*in the near future*'. Mr McGuinness was invited to make written submissions to the Tribunal, but did not do so.

21.11 With its letter dated 1 August 2008, the Tribunal sent Mr McGuinness copies of previous correspondence at a UK address and advised him that the Tribunal's public hearings were expected to conclude in the autumn, and invited him to nominate a date between 16 and 26 September 2008 for the taking of his sworn evidence. The Tribunal received no response to this letter or invitation.

21.12 This letter, delivered by DHL couriers was signed for as having been received by Mr McGuinness (or a person purporting to be him), on 12 August 2008 at 10.30 am.

21.13 While Mr McGuinness provided some written information to the Tribunal, he elected not to attend the Tribunal to give sworn evidence, although the Tribunal made all reasonable efforts to facilitate him in that regard. Mr McGuinness, although having stated that he would do so, failed to contact the Tribunal for the purposes of arranging an agreed date for him to give sworn evidence to the Tribunal.

CHAPTER SEVEN – CARGOBRIDGE MODULE

EXHIBITS

1. Letter from Mr Michael McGuinness to Mr Michael Kennedy solicitor dated 17 June 1991..... 1938

2. Minutes of a meeting of the directors of Abervanta Ltd dated 25 November 1991..... 1939

3. Letter from Michael J Kennedy & Co to the Minister for Tourism & Transport dated 12 March 1992..... 1940

4. Michael Kennedy solicitor attendance on his client Mr McGuinness on 11 May 2000..... 1941

5. Mr Dunlop's telephone messages for 29 September 1993..... 1943

6. Letter from Mr McGuinness to Mr Brian Cowen TD Minister for Transport Energy & Communications dated 1 October 1993..... 1944

7. Letter from Mr John McGuinness to An Taoiseach Mr Reynolds dated 1 October 1992..... 1945

8. Letter from Mr Dunlop to Mr Brian Cowen TD Minister for Transport Energy and Communications dated 1 October 1993..... 1946

9. Letter from Mr Dunlop to Mr McGuinness dated 29 October 1993..... 1948

10. Invoice from Anne Devitt dated 8 December 1997 to Mike McGuinness Neptune Freight for IR£10,000..... 1950

11. Letter from Cllr Devitt to Mr John Lumsden, Department of Transport Energy and Communications..... 1951

NEPTUNE FREIGHT LIMITED
International Freight Forwarders
BALDOYLE INDUSTRIAL ESTATE,
BALDOYLE, DUBLIN 13.
Tel: 01-39306
Fax: 01-39381
Telex: 31348

Michael Kennedy & Co.,
Solicitors,
Main Street,
Baldoyle,
Dublin 13.

Our Ref: MJMcG/PB

Date: 17/06/91

Attn: Michael Kennedy.

RE: Purchase of Lands at Cloghran, Co. Dublin.

Dear Michael,

As you are aware the above lands will be divided at purchase. I show below the division and names where known.

Neptune Freight Limited	8 Acres	33.928%
P. J. Cousins (In Trust)	6 Acres	25.445%
S. Fitzgerald (In Trust)	6 Acres	25.445%
Abervanta Limited	3.58 Acres	15.182%

Can you please ensure that "in trust" is used after both P.J. Cousins and S. Fitzgerald. Should you require any further information please do not hesitate in contacting me.

Many thanks for your help.

Yours faithfully
for NEPTUNE FREIGHT LIMITED,

M.J. McGUINNESS
Managing Director

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MINUTES OF A MEETING OF DIRECTORS OF: ABERVANTA LIMITED

HELD AT: 22 FITZWILLIAM SQUARE, DUBLIN 2

ON THE: 25TH NOVEMBER, 1991

PRESENT: ANNE MARIE SMYTH
CATHERINE DANIEL
MICHAEL McGUINNESS (In Attendance)
ANTHONY DELANEY (In Attendance).

DIRECTORS

It was resolved that the following persons be and are hereby appointed Directors of the Company:-

MICHAEL McGUINNESS
ANTHONY DELANEY

The Directors so appointed took their seats on the Board and thereupon Anne Marie Smyth and Catherine Daniel tendered their resignations as Directors of the Company.

CHAIRMAN

It was resolved that Michael McGuinness be and is hereby appointed Chairman to hold that office until otherwise resolved.

SECRETARY

It was resolved that Michael McGuinness be and is hereby appointed Secretary of the Company in substitution of Ms. Anne Marie Smyth to hold office until otherwise resolved.

TRANSFER SHARES

It was further resolved that one Ordinary Share be transferred from Ms. Anne Marie Smyth to Mr. Michael McGuinness and that another share be transferred from Ms. Catherine Daniel to Mr. Anthony Delaney.

DECLARATION OF TRUST

It was resolved that the shareholders do hereby execute Declarations of Trust.

There being no further business the meeting came to a close.

SIGNED a true and correct account of the business transacted.

Anne Marie Smyth
CHAIRMAN.

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MICHAEL J. KENNEDY & CO.
SOLICITORS

The Parochial House
Parochial Avenue, Baldoyle. Dublin 13
Telephone 320230. Fax:321057.
Vat. Reg. No. 3259217W.

Michael J. Kennedy, M.A.
Commissioner for Oaths.

The Minister for Tourism & Transport,
Kildare Street,
Dublin 2.

OUR REF. MK/BOR
YOUR REF.
DATE. 12.3.92

Re: Our clients Cargo Bridge Limited,
Lands at Cloghran, County Dublin.

Dear Sirs,

We hereby confirm and certify that the ownership of 23.58 acres at Cloghran, County Dublin is vested in the following parties:-

1. As to 33.92% thereof in Neptune Freight Limited whose interest is registered in the Land Registry.

2. As to 25.44% thereof in Pat Cousins whose registration of ownership is pending in the Land Registry.

3. As to 25.44% thereof is vested in Stephen Fitzgerald of Williams Airfreight Limited, Blakes Cross, Rush, County Dublin whose interest is registered in the Land Registry.

4. As to 15.18% thereof in Abervanta Limited. The entire beneficial and legal ownership of Abervanta Limited is held by Michael McGuinness and Anthony Delaney, directors of Neptune Freight Limited.

We confirm that the ownership of Cargo Bridge Limited is vested in Michael McGuinness and Anthony Delaney, both directors of Neptune Freight Limited.

We would be happy to provide appropriate certificates from the Land Registry of proof of ownership if necessary.

Yours faithfully,

M.J.KENNEDY & COMPANY.

(3)

Return to report

ATTENDANCE.

MK/BOR

11.5.00

Re: Michael McGuinness.

Attending on Michael McGuinness today when he gave me the following information:-

1. He told me that in relation to Cargo Bridge and the development at Dublin Airport Business Park, he had been involved extensively in lobbying politicians at the time in seeking rezoning and planning permission.

2. He made it quite clear at no time was he ever asked for monies by a politician or did he ever pay money to any politician or county councillors.

3. In or about 1993, he became aware that [redacted] were providing considerable hospitality to County Councillors with a view to influencing them against granting the application [redacted] by Cargo Bridge/Neptune for the development of Dublin Airport Business Park. As a result he retained/instructed Frank Dunlop to monitor how councillors were being influenced by Aer Rianta and whether or not they were likely to vote for or against his proposals for rezoning and planning. Frank Dunlop requested a fee of either £3,000 or £5,000 from Michael McGuinness and his fellow developers and he specifically requested [redacted] and was paid the sum. Michael cannot remember whether it was £3,000 or £5,000 and it was split equally between himself and the other developers, Hi Decree Construction, Mr. Fitzgerald and P.J. Cousins. Michael McGuinness made it quite clear to me that this fee was paid directly to Mr. Dunlop for his work and it was never the intention that the money would be passed onto anybody else and it was simply his professional fee for the work he was doing.

4. He told me that subsequently he received requests for money from Councillors as follows:-

   a) A request for a contribution towards a hospice development. He paid £100.00

b) A request for payment to an incapacitated persons in respect of which he paid £100.

c) A further request, details of which he cannot remember and in respect of which he paid £50.00. He will let me have further details.

5. He also told me that having met Anne Devitt through this office and being aware that she was doing a degree in Community and Environmental Law in U.C.D. and also that she offered services as a planning consultant he retained her in an independent capacity as a planning consultant to sort out various problems he was having in relation to the development at Dublin Airport Business Park and particularly obstructive tactics being employed by Aer Rianta. She worked on his behalf over a number of years, and even though he got planning permission in 1993, she subsequently submitted a bill to and was paid by Tibbett & Brittan who took over his business of a sum of £8,000.00 in or about 1997.

6. He had spoken to Anne Devitt about this payment and she informed him that it had been properly recorded in her books and she furnished a proper invoice.

END.

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TELEPHONE MESSAGES - WED. 29TH. SEPTEMBER 1993

A.M.

9.10 Mr. O'Callaghan - will call again on the move at the moment

9.54 Gavin - AIB College Street

10.01 Mr. O'Callaghan - going into meeting turned off mobile will call later

10.11 Hazel Lawlor - call her in Lucan

10.20 Mike McGennis - spoke to GV no meetings arranged for next week as yet. Chairman has full power to call a meeting for every day next week if he wishes.

Our friend Brian has employed a PR company, handing out leaflets and info. all day yesterday outside the PR company.

10.27 Tony Fox - 905270 said FD would know what it was about

10.35 John McCann - re. info for meeting on Thursday 6233889

10.50 Brendan Connor - meeting arranged for Monday @ 11.30 here

10.50 G.V. Wright

10.55 Joseph Martin - 2 suits ready for you

10.58 John Butler

11.13 Colm McGrath

11.13 Hugh Peacocke - sending down release

11.31 Tim Collins - call him

11.31 Liam Creaven

11.37 Don Grace - SBP

11.40 Sheila

Return to report

CARGOBRIDGE LTD

Baldoyle Freight Centre
Baldoyle Industrial Estate
Dublin 10

Mr Brian Cowan TD
Minister for Transport
Energy & Communications
Leinster House
Kildare St
Dublin 2

Our Ref MMcG/PB

Date 1st October 1993

Dear Minister,

On Monday 27 September Aer Rianta held a reception in the Royal Dublin Hotel for Dublin County Councillors. The purpose of the reception was to inform the councillors of Aer Rianta plans of Dublin Airport and to explain their objections to various zoning proposals. Mr Byrne (?) and other senior Aer Rianta personnel were in the council Chambers on Tuesday, Wednesday and Thursday for the same purpose.

The councillors were therefore fully informed despite some misinformation when they voted on the motion on Thursday afternoon. The result of that vote a rescinding motion proposed by Mr Joe Higgins Independent Militant Labour was 4 for, 54 against and 2 abstentions. A majority of 50 comprised of members of all political parties voting in our favour. We were very pleased to have received such massive support from the councillors and now wish to proceed with all speed to develop the lands.

Unencumbered commercial access is vital. We would be very grateful if you would grant this without delay so we may proceed with our expansion plans.

Thank you for your time and the courtesy extended to me at our last meeting

Yours sincerely
For CARGOBRIDGE LIMITED

M J McGuinness
Director

Attached form the Irish Times 1st October for your information

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John J. McGuinness, T.C. M.C.C. P.C.
Michael J. McGuinness, T.C. M.C.C. P.C.

O'Loughlin Road,
Kilkenny.
Tel. (056) 21799
Fax. (056) 61876

1st October 1992.

An Taoiseach,
Mr. Albert Reynolds, T.D.

Dear Taoiseach,

Please find enclosed a file which was passed to me by my brother Michael. The content is self explanatory:

The matter has been discussed with Deputy Marie Geoghegan Quinn, Minister, Deputy Liam Aylward, Minister and John Ellis, T.D. The project would cost £12 - £15m and secure at least 400 jobs in Neptune Freight Ltd. A number of smaller companies would also benefit as they rely heavily on Neptune Freight for work. My own Company, which employs 30 people in Kilkenny, is a sub-contractor to Neptune Freight.

It would seem that there is a need for direct political intervention in this case in order to remove some of the "red tape" which is preventing the project from getting to the "start position". I believe some of the correspondence from the Officials indicates the problem.

I would appreciate your help.

Kind Regards,

John J. McGuinness.

Return to report

04-L -1993 09:40 FROM TO 393676 P.03

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577

Mr. Brian Cowen, TD,
Minister for Transport, Energy & Communications,
Clare Street,
Dublin 2.

1st. October, 1993

BY HAND

STRICTLY PRIVATE AND CONFIDENTIAL

Brian

Dear Minister,

You will have seen from this morning's newspapers that Cargobridge, the company jointly owned by Mike McGennis, had the industrial zoning on its lands at Cloghran, County Dublin finally and irrevocably confirmed at a meeting of Dublin County Council yesterday, 30th. September, 1993, by a massive 54 votes in favour to 4 against. You will recall that they won their initial zoning by 50 votes to zero.

This vote underlines the huge support that Mike's company has and equally emphasises the low esteem in which Aer Rianta is held by elected members of Dublin County Council, more especially those in the North County (Fingal Electoral Area). Aer Rianta's tactics during the past week both on this issue and on another piece of land nearby have been nothing short of despicable. These tactics have included arbitrary, and heretofore unannounced, decisions regarding new runway, new terminal buildings and the emotive arousal of fears regarding public safety.

You will recall that when we spoke last with regard to the question of access to Cargobridge's land (Mike McGennis's) we agreed that we would achieve the confirmation of the zoning on the land first before doing anything about Aer Rianta and access. Cargobridge will now apply for planning permission and the question of access will become crucial. It is reported that a senior

Aer Rianta manager stated that "hell would freeze over" before Cargobridge would get access and that Aer Rianta would "stitch them up" in the planning process.

Perhaps we could meet soon to discuss further.

Meanwhile I would appreciate an opportunity to bring in Des Burke (ex. Roscrea) to meet you at your convenience.

Kind regards.

Frank Dunlop

Return to report

29-OCT-1993 12:48 FROM TO 393676 P.01

FRANK DUNLOP

& ASSOCIATES

• Frank Dunlop & Associates Ltd • Consultants in Public Relations •
• 25 Upper Mount St. Dublin 2 • Phone 661343 • Fax 66[illegible] 4577 •

FROM: F. Dunlop	TO: Mike McGuinness	
SUBJECT: HS Followers	DATE: [illegible]	
TO FAX NO.: 393676	TOTAL NUMBER OF PAGES INCLUDING THIS ONE:	2

MESSAGE

Strictly Private + Confidential

IF PAGES DO NOT COME THROUGH CLEARLY PLEASE CONTACT THE NUMBER ABOVE

29-OCT-1993 12:48 FROM TO 93579 P.02

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 35 Upper Mount St. Dublin 2 • Phone 6613543 • Fax 6614577

Mr. Michael McGuinness,
Managing Director,
Neptune Freight,
Baldoyle Industrial Estate.
Dublin 13.

29th. October, 1993

Dear Michael.

I telephoned you yesterday following my meeting with the Minister for Transport, Energy and Communications Mr. Brian Cowen. TD. I should now like to put in writing what I told you verbally in the conversation. The Minister has prepared a letter, which I have seen, which states categorically that following the recent zoning decision by Dublin County Council he (the Minister) has no objection in principal to the granting of full commercial access to the Cargobridge lands. His position in this matter is subject only to the attendant costs of such access being decided by arbitration.

I understand that the letter was being posted for arrival today (Friday 29th.). In the event that it does not arrive today I will ensure that you are in receipt of it on Monday next (1st. November).

Kind regards,

Yours sincerely.

Frank Dunlop

IF FAILED TO GET ALL PAGES ABOVE

Solicitor
Lispopple, Swords, Co. Dublin.
Telephone: 01-840 9728

Mike McGuinness,
Neptune Freight,
Airport Business Park,
Cloghran,
Co Dublin.

AD/AG

08.12.1997

Re: Planning and Development of Neptune Freight Premises at above.

To Professional Fee for Legal Work done in the following matters:-

1. Taking instructions, reviewing draft, planning application, attending at the offices of Fingal County Council to examine Development Plan advising on amendments to draft application, attending at the offices at Dublin Corporation to review way leave agreements in relation to drainage, advising and amending terms of way leave agreements between Neptune Freight and the Minister for Trade Transport and Communications.

2. Advising on draft planning applications for extensions to existing premises at Airport Business Park, reviewing regulations in relation to densities, heights, contributions. Attendence at meetings with Bio cycle Engineers and client architect to advise on Building Regulations in relation to County Council drainage requirements. Further miscellaneous advise in relation to legal requirement of the Councils Planning Authority.

Total all inclusive fee as agreed: £10,000

Return to report

Comhairle Chontae Fine Gall
Tel: (01) 872
Bosca 174,
46/49 Sráid Uí Chonaill Uacht,
Baile Átha Cliath 1.
Fingal County Council
Fax: (01) 8725782
P.O. Box 174,
46/49 Upper O'Connell Street,
Dublin 1.
SEOMRA AN CHOMHAIRLE

Re Cargo Bridge

Dear Sirs,

I enclose herewith copy of letter from Aer Rianta (A) which deals with the objection from Aer Rianta relating to Bicycle. You will note on page 2 that Aer Rianta themselves have installed 3 such systems. The Board as recently as this month.

I also enclose a letter from Fingal County Council Planning dept which deals with condition 3.

I trust this fully complies with your requirements.

Yours faithfully,

Anne Dowling

CHAPTER EIGHT - CLOGHRAN MODULE

INTRODUCTION

1.01 This module related to attempts in the 1990s to rezone approximately 18 acres of land located immediately north of the M1 motorway close to Dublin Airport. They were separated from the Cargobridge lands by the airport slip road from the M1 motorway.

1.02 The module was heard in public over 17 days, between 24 October 2006 and 29 October 2008. Twenty-three witnesses gave evidence and information provided to the Tribunal by Cllr Cyril Gallagher in his lifetime was read into the record.

1.03 The lands were acquired by a consortium comprised of Messrs John Butler, Niall Kenny and Tom Williams who were partners at that time in a restaurant in Donnybrook, Dublin 4, known as the Courtyard Restaurant.

1.04 The first parcel of approximately 9 acres was acquired from its owner, Mr Paddy Molloy, for IR£165,000. An adjoining parcel of 9.1 acres was bought in December 1989 from its owner, Mr Robert Morgan, for IR£50,000.

1.05 Prior to the lands being transferred into the names of the consortium members, the members' interests in both parcels of land were held in trust by solicitors—Mr Gerald Kean for the Molloy lands and Mr Denis Murnaghan for the Morgan lands.

1.06 At the date of purchase the lands were zoned B (agricultural). Appendix D of the 1983 Development Plan set out development restrictions on lands close to the airport, including the Cloghran and Cargobridge lands, in the following terms:

> Zoning:
> *Zoning in the Development Plan for the airport and the contiguous lands is agriculture and the Council's normal criteria for development in agricultural areas will apply, where lands are not otherwise affected by considerations of safety, noise or any factor affecting the safe operation of the airport.*
> Drainage:
> *There are no public piped drainage services in the airport area.*

Noise:

That following previous policy and practice, the Council will continue to restrict development about the line of and within the area encompassed by the three 35NNI contour as shown on map 1 of the Development Plan.

1.07 The 1991 Draft Development Plan retained the 1983 zoning for these lands. Its draft written statement, under the heading '*Airport Related Development'*, outlined four factors affecting development on land adjoining the airport, namely safety, zoning, drainage and noise.

1.08 A motion proposing that these lands be rezoned from B (agricultural), to E (industrial and related uses) was lodged with the County Council on 12 March 1993. It was signed by Cllrs Anne Devitt, Cyril Gallagher, Seán Gilbride, G. V. Wright, Liam Creaven and M. J. Cosgrave. The motion was passed at a special meeting of the Council held on 1 April 1993, when 41 councillors voted in favour and 2 against.

1.09 In August 1993, during the display period of the plan, Aer Rianta lodged objections to the rezoning. As agent for the Minister for Transport, it cautioned that, if passed, these amendments to the 1983 zoning would interfere with aircraft safety and efficiency.

1.10 Three motions seeking to reverse the rezoning motion that was passed on 1 April 1993 were scheduled to be debated at a special meeting of the Council on 29 September 1993. The Manager advised the members of Aer Rianta's objections and the debate was deferred to a meeting held the next day.

1.11 At the meeting on 30 September 1993, the Manager advised that on that morning the Planning Department and officials from Aer Rianta had discussed queries raised by members at the meeting held on the previous day. Consideration of the three motions was further adjourned to the next meeting, which was held on 6 October 1993.

1.12 At the special meeting on 6 October 1993, the Manager brought to the attention of the members a letter received that morning from the Secretary of the Department of Transport, Energy and Communications. The letter outlined the implications for air safety of a number of proposed rezonings of land in the environs of Dublin Airport, including the Cloghran lands. The Manager also brought the members' attention to correspondence received from Aer Rianta, the Chamber of Commerce and the Irish Airline Pilots' Association. All of these organizations supported the Aer Rianta position, and recommended with Aer

Rianta that the 1983 zoning be retained, and that the matter be referred for examination to the County Planning Officer for Fingal and reported on to the incoming Fingal County Council. A motion in favour of this recommendation was defeated, with 40 votes against and 27 in favour. A further motion in support of the Manager's recommendation that the proposed rezoning amendment be deleted was lost when 40 members voted against the motion, with 19 in favour and 9 abstentions.

1.13 The proposed amendments of the 1993 Draft Plan were deemed confirmed. The lands were shown rezoned to E (industrial) in the 1993 Dublin County Development Plan, which was adopted on 10 December 1993.

1.14 It was agreed in December 1994, that the lands would be sold for IR£2.4m. This sale fell through and the consortium subsequently sold the lands in March 1996 for IR£1.6m.

MR FRANK DUNLOP'S RETENTION

2.01 Mr Dunlop told the Tribunal that he was retained as a lobbyist for the rezoning of the Cloghran lands at a meeting with Mr John Butler on 13 January 1993. The meeting was arranged by Mr Tim Collins, who also attended.[1] At a later date, Mr Dunlop was introduced to Mr Butler's two colleagues in the consortium, Mr Tom Williams and Mr Niall Kenny.

2.02 Mr Dunlop told the Tribunal that in the course of this meeting he advised Mr Butler of the need to prepare and lodge a motion (and accompanying map) with Dublin County Council as a first step to rezoning the Cloghran lands for industrial use. Mr Dunlop maintained that at this meeting Mr Collins stated that there was already widespread support for the rezoning. Mr Dunlop also claimed that Mr Butler told him that a number of councillors had already been lobbied to support the proposed rezoning, including Cllr G. V. Wright. According to Mr Dunlop, Mr Butler described Cllr Wright as being '*completely on side*'. Both Mr Collins and Mr Butler denied making any such statements.

2.03 Mr Dunlop advised the Tribunal that both Mr Collins and Mr Butler had indicated to him at that meeting that they were aware that some councillors would require payment in return for their support for the Cloghran rezoning. Mr Dunlop said that this part of the conversation arose when he was outlining the

[1] The record of telephone calls maintained by Mr Dunlop's office for 11 January 1993 noted as follows: '*Tim Collins—wants to set up a meeting on Wed @ 10 o'clock himself and John Buckley'.* The Tribunal was satisfied that Mr Butler's name was incorrectly recorded by Mr Dunlop's office. Mr Dunlop's diary for Wednesday 13 January 1993 recorded as follows: *'John Butler and Tim Collins re land at Airport'.*

difficulties that he felt might arise because of the late entry of the Cloghran motion in the Development Plan review.

2.04 Mr Dunlop told the Tribunal that Mr Collins said that he '*knew that I would have to do certain things with councillors otherwise they wouldn't support it*'. It was his understanding that Mr Collins had in this way introduced the topic of payment to councillors for their support for the rezoning. Mr Dunlop said that Mr Butler had participated in the discussion, and had acknowledged his awareness of what had been stated by Mr Collins with words to the effect '*I know what's going on. I know what goes on*'. Mr Dunlop said he had no doubt that Mr Butler was aware of the practice and need to pay councillors in order to secure their support for the rezoning of lands, and that he, Mr Butler, and Mr Collins '*were singing off the same hymn sheet*'. He was satisfied that Mr Collins knew of his practice of paying councillors because of their already established relationship in the context of the Development Plan review.

2.05 Mr Dunlop first identified the rezoning of the Cloghran lands (described as *'Other lands near airport'*) as one of the projects for which he had been retained as a lobbyist, and paid money, in the course of giving evidence on Day 148 (9 May 2000). He was then seeking to explain to the Tribunal the sources of a number of lodgments made to his AIB Rathfarnham 042 account, one of his *'war chest'* bank accounts.

2.06 Included at No. 6 on a list Mr Dunlop had prepared, entitled *'1991/1993 inclusive'* (the developers list) was the description *'other lands near airport . . . £10,000'*.

2.07 Also on Day 148 (9 May 2000), Mr Dunlop named '*John Butler MD Scafform Ltd*' as one of the individuals associated with the Cloghran lands.

2.08 In a private interview with the Tribunal on 18 May 2000, Mr Dunlop identified Mr Williams and Mr Kenny as Mr Butler's partners in the Cloghran venture. Mr Butler was described by Mr Dunlop as the '*lead man*' in the consortium, and he identified Mr Collins as the person who had introduced him to Mr Butler.

2.09 Mr Dunlop confirmed to the Tribunal his statement to the Tribunal of 9 October 2000, that subsequent to his meeting with Mr Butler on 13 January 1993, he told him that payments '*had been made to individuals such as Messrs. Gilbride* [and] *Gallagher*'.

2.10 Mr Dunlop's recollection was that the question of his fees arose in the course of his meeting with Mr Butler on 13 January 1993, but in the absence of Mr Collins. Mr Dunlop said that he requested IR£20,000, and that he agreed a payment of IR£10,000 with Mr Butler. Mr Dunlop's evidence to the Tribunal was that he received the sum of IR£10,000 agreed with Mr Butler on 13 January 1993, shortly after the first meeting, and it was his belief that he received this payment by way of a cheque which he cashed. None of the documentation discovered to the Tribunal concerning payments made to Mr Dunlop in connection with the Cloghran rezoning revealed either payment to or recipt by him of a sum of IR£10,000 in the weeks subsequent to his retention as a lobbyist. He was adamant, however, that such a sum had been received by him within the timeframe he described, and said that '*it was highly unlikely that I would have been entering into an agreement with Mr John Butler or his partners through Mr John Butler on 13 January 1993 and not being paid money until April, May 1993'.*

2.11 Although Mr Butler and Mr Collins acknowledged meeting Mr Dunlop in relation to the Cloghran rezoning, and Mr Butler acknowledged that Mr Dunlop's services were retained in connection with it, both disputed aspects of Mr Dunlop's evidence about the meeting.

2.12 Both Mr Butler and Mr Collins denied that they were aware of a need or practice to pay councillors to support the rezoning of lands, and that such a practice would have to be followed in relation to the rezoning of the Cloghran lands. They both stated that the initial meeting between Mr Dunlop and Mr Butler was, in effect, a chance encounter in the offices of Mr Ambrose Kelly. Mr Butler was in that office for a meeting with Mr Tim Rowe, one of the company's architects, and Mr Collins in relation to the proposed rezoning of the Cloghran lands, and it was during this meeting that Mr Collins introduced Mr Dunlop to Mr Butler. Mr Butler described Mr Dunlop's assertion that both he and Mr Collins knew that councillors would have to be paid as '*off the wall*'.

2.13 Mr Collins told the Tribunal that in the course of a meeting with Mr Butler in the offices of Ambrose Kelly & Co, when the rezoning of the Cloghran lands was being discussed, Mr Dunlop had walked into the offices by chance. Mr Collins introduced Mr Dunlop to Mr Butler as a public relations man who might be of assistance to him in the context of the Cloghran rezoning. Mr Collins maintained that he had had no other involvement or further discussion with Mr Butler and Mr Dunlop, then or subsequently. Mr Collins said he had played no role in relation to the Clogran rezoning process.

2.14 Mr Collins disputed Mr Dunlop's evidence that he had discussed councillors with him and Mr Butler. He denied that he indicated to Mr Dunlop that there was widespread support for the rezoning of the Cloghran lands amongst councillors. He described as a lie Mr Dunlop's assertion that he, Mr Collins, was aware of a need to pay councillors to support rezoning. He said that he was unaware of Mr Dunlop's activities, stating '*I knew two councillors—that's all I ever have—how the hell would I be au fait with it?*'

2.15 Mr Butler told the Tribunal that following this chance encounter, he next met Mr Dunlop in the Royal Dublin Hotel when Mr Dunlop produced a list of councillors and urged Mr Butler and his partners to meet them. Mr Butler told the Tribunal that Mr Dunlop's role was to introduce the consortium members to councillors.

2.16 Mr Dunlop's assertion that he had advised Mr Butler at a meeting in January 1993, of the need to prepare and lodge a motion and accompanying map in relation to the proposed rezoning of the Cloghran lands was denied by Mr Butler.

2.17 Mr Butler also denied Mr Dunlop's assertion that he had advised Mr Dunlop that Cllr Wright was '*fully on side*' in relation to the issue. Mr Butler told the Tribunal that he had never spoken to Cllr Wright about the rezoning of the Cloghran lands, although Cllr Wright told the Tribunal that when they met at his Malahide constituency office Mr Butler had spoken to him about his plans to construct a hotel on the lands.

2.18 Mr Butler also rejected Mr Dunlop's evidence that they had discussed fees, or that Mr Dunlop had sought IR£20,000 but had agreed to fees of IR£10,000, or that any such sum was subsequently paid to Mr Dunlop. According to Mr Butler, at no stage had he discussed fees with Mr Dunlop, maintaining that it was Mr Kenny and Mr Williams who had such a discussion.

2.19 Mr Butler maintained that he had no knowledge of when or how Mr Dunlop was to be paid. In the course of his evidence, Mr Butler accepted that documentation discovered to the Tribunal revealed that the consortium had made a number of payments in 1993 to Mr Dunlop, in some cases on foot of invoices addressed to him. However, Mr Butler nonetheless maintained that he had had no contact with Mr Dunlop regarding payment, that he had never personally received invoices from him, nor had he ever delivered payments to him. He disputed Mr Williams' evidence that Mr Butler had passed on to him a January 1993 invoice he had received from Mr Dunlop.

2.20 In his statement to the Tribunal on 14 February 2006, Mr Butler maintained that he was unaware of any money having been paid to Mr Dunlop for the purposes of securing councillors' support for the rezoning of the Cloghran lands. Mr Butler advised the Tribunal that he and his partners in the consortium had retained Mr Dunlop to handle public relations work in relation to the lands. With regard to Mr Dunlop, Mr Butler stated as follows: '*I had very little contact with him, save when I met him casually. No payments were made by me directly or indirectly to Frank Dunlop. The payment for his professional services was made by our accountants, Coopers & Lybrand.*'

2.21 Most of the evidence in this module was heard by the Tribunal between 24 October and 9 November 2006. Mr Butler was unavailable during this period, and did not give his sworn evidence to the Tribunal until 23 September 2008. Prior to this, on 26 March 2007, Mr Butler wrote to the Tribunal through his solicitor, altering the position he had previously adopted that Mr Dunlop's fees had been paid when the Cloghran lands were sold in 1996. In this letter, Mr Butler conceded that certain payments had in fact been made to Mr Dunlop in 1993 during the period of his retention as a lobbyist.

2.22 In the course of his sworn evidence to the Tribunal, Mr Butler maintained, as he had done in prior statements to the Tribunal, that he had had only limited contact with Mr Dunlop while he was retained in relation to the rezoning of the Cloghran lands. Mr Butler suggested that it was his partners, Mr Kenny and Mr Williams, who had handled most of the consortium's dealings with Mr Dunlop.

2.23 Documentary evidence suggested that there was frequent telephone contact between Mr Butler and Mr Dunlop's office in January, February and March 1993, prior to the Cloghran rezoning vote on 1 April 1993. There was also frequent telephone contact in the months of April, June, August, September and October 1993 in the period leading up to the Cloghran rezoning vote on 6 October 1993. There was further contact by Mr Butler on 7 and 12 October 1993. Mr Butler suggested that Mr Dunlop's telephone records had been fabricated.

2.24 Mr Dunlop's diary recorded a meeting with Mr Butler scheduled for 22 February 1993. Mr Dunlop's diary also indicated scheduled meetings with Mr Butler (together with Mr Kenny) on 16 and 25 March 1993, and again on 14 September 1993 (together with Mr Collins), and on 18 October 1993. Mr Collins denied attending any meeting with Mr Dunlop in relation to the Cloghran lands subsequent to January 1993.

2.25 Mr Butler's colleagues, Mr Williams and Mr Kenny, told the Tribunal that in 1993, Mr Butler advised them that Mr Dunlop had been engaged to assist with the process of rezoning the Cloghran lands.

2.26 Both Mr Williams and Mr Kenny maintained that they had had limited contact with Mr Dunlop. Both understood that Mr Butler was the consortium member who dealt with most issues relating to the rezoning process, and was the person who took care of most of the consortium's dealings with Mr Dunlop.

2.27 In the course of his evidence, Mr Williams accepted that he must have dealt in some shape or form with payments to Mr Dunlop in 1993, though he had no recollection of doing so, because many of the payments made to Mr Dunlop had come from an account of Blackfearn Ltd, trading as the Courtyard Restaurant. Mr Williams ran Blackfearn Ltd on behalf of the consortium and was one of the signatories to the company's cheques. Mr Williams stated that he would not necessarily have been aware of any payments, other than the Blackfearn Ltd payments in 1993, that might have been made by Mr Butler to Mr Dunlop. He stated that he was not aware of payments made to Mr Dunlop other than those the Tribunal's discovery process had yielded.

2.28 While accepting that Blackfearn Ltd had made payments to Mr Dunlop on behalf of the consortium, Mr Williams could not recall Mr Dunlop ever having approached him about the payments. He did not recall any payment of IR£10,000 having been made to Mr Dunlop in January 1993. He believed that every payment Mr Dunlop received in 1993 had been accounted for in the Coopers & Lybrand figures compiled in 1996, though he could not assist the Tribunal as to what documentation had been provided in 1996 to the accountants for them to have come up with a figure of IR£23,025.

2.29 Although Mr Williams and Mr Kenny subsequently met Mr Dunlop following his retention by Mr Butler, there had been no discussion, or reference at any such meeting, of either a practice or a need to make payments to councillors in order to secure the rezoning of lands, and in particular the Cloghran lands.

2.30 Mr Dunlop himself did not suggest that he believed or understood Mr Williams and/or Mr Kenny to have any such knowledge. Mr Kenny recalled that Mr Dunlop had advised him and Mr Williams that funds would be required to support councillors' favourite charities.

MR DENIS MURNAGHAN'S ADVICE

2.31 Mr Denis Murnaghan, the solicitor representing the consortium, told the Tribunal of a meeting he had with Mr Butler and Mr Kenny in his office after he had learned that the consortium had retained Mr Dunlop as a lobbyist. Mr Murnaghan told the Tribunal that he advised Mr Butler and Mr Kenny to have nothing to do with Mr Dunlop because of his suspicions that '*the way in which Mr Dunlop was doing business was not quite proper.*'

2.32 Mr Murnaghan**'s** evidence was that he suspected at the time that Mr Dunlop was paying councillors in return for their votes, and that while he had not articulated this suspicion in those explicit terms to Mr Butler and Mr Kenny, he did advise them to have nothing to do with Mr Dunlop. Mr Murnaghan told the Tribunal that subsequently Mr Kenny informed him that the consortium had decided to continue their relationship with Mr Dunlop because '*they were in too deep and had gone too far or other like expressions.*'

2.33 Mr Murnaghan told the Tribunal, referring to Mr Kenny's words quoted above, '*I felt when Mr Kenny said this to me that money was talking and that influenced his decision as to whether he would go along with Mr Dunlop or not . . . it was a financial consideration.*'

2.34 In his evidence to the Tribunal, Mr Kenny agreed that at a meeting with him, Mr Murnaghan had raised the issue of Mr Dunlop's involvement in the rezoning and had warned him against retaining Mr Dunlop. Mr Kenny said that when he queried him about this warning, Mr Murnaghan had replied that he had no foundation for his warning save that he had heard a rumour. He said that Mr Murnaghan had not expanded on the detail of the rumour. Mr Kenny said that by the time Mr Murnaghan raised the issue of Mr Dunlop's retention, the consortium had already engaged Mr Dunlop and was acting on his advice. He denied that he would have used the words *'in too far'* in his discussion with Mr Murnaghan.

2.35 Mr Murnaghan told the Tribunal that following the rejection of his advice to Mr Butler and Mr Kenny in relation to Mr Dunlop's engagement, his professional relationship with the consortium cooled.

2.36 Mr Butler denied receiving any warning or advice in relation to Mr Dunlop from Mr Murnaghan.

2.37 Mr Murnaghan did not appear to have spoken to Mr Williams in relation to the issue of Mr Dunlop's engagement with the consortium. Mr

Williams told the Tribunal that he was unaware of Mr Murnaghan's warning about retaining Mr Dunlop's services.

2.38 The Tribunal was satisfied that Mr Murnaghan did advise, or warn both Mr Butler and Mr Kenny against the retention of Mr Dunlop, but that in doing so, he did not explicitly refer to Mr Dunlop's propensity to bribe councillors.

MR COLLINS' RELATIONSHIP WITH THE CLOGHRAN CONSORTIUM

3.01 Mr Collins told the Tribunal that in his capacity as a land agent he sourced the Cloghran lands for the consortium, on the basis that he would receive a finder's fee. He advised the Tribunal that he located development land for potential purchasers in the area of north Co. Dublin, and cited, by way of example, the Cloghran land and lands at Lissenhall which he had found for Mr P. J. Moran.[2] In the years 1989 to 1992, he was involved in a marketing role with Pilgrim Architects[3] who provided architectural services relating to zoning and planning proposals. Mr Collins advised the Tribunal that there was an understanding between himself and Mr Butler that he would be paid a finder's fee in relation to the Cloghran lands at some point in time. Mr Collins said that he normally expected payment when the value of the lands in question was enhanced following rezoning or the granting of planning permission. Mr Collins said that his dealings in relation to the Cloghran lands were with Mr Butler, and he had no recollection of discussing a fee with either Mr Kenny or Mr Williams. Mr Collins was unable to assist the Tribunal as to how the fee of IR£29,613 was arrived at.

3.02 Mr Collins' association with the consortium arose through his friendship with Mr Butler, a friendship which went back a substantial number of years and which was apparently revived sometime in the late 1980s when Mr Butler once again encountered Mr Collins in Fianna Fáil circles. It appears that Mr Collins had introduced Mr Butler to Mr Des Richardson, and was instrumental in persuading Mr Butler to sell a property he owned at City Quay to him.

3.03 The Tribunal was satisfied that at some point Mr Butler was made aware of Mr Collins' adeptness at finding lands for potential purchases and in this regard the Tribunal was satisfied that Mr Butler, on his own behalf and on behalf of Messrs Kenny and Williams, instructed Mr Collins to source lands in north Co. Dublin. Mr Butler claimed to have no recollection of who had given instructions to Mr Collins and believed the latter's endeavours to have been

[2] See Chapter 6 (the Lissenhall Module).
[3] By the end of 1992 Pilgrim, then known as Project Architects, had effectively merged with the Ambrose Kelly Group.

promoted by a casual comment made to Mr Collins that Mr Butler and his partners in the Courtyard Restaurant were looking for lands in the north of the county upon which to expand their business. Mr Collins told the Tribunal that it was during a discussion over lunch one day in the Courtyard Restaurant that one of the three (he could not remember which one), said '*look we would like to replicate this on the northside, if you see something let us know.*'

3.04 However, the Tribunal believed it more likely that Mr Collins was specifically instructed to find lands, and the Tribunal believed that this instruction came from Mr Butler, albeit with the knowledge of Mr Kenny and Mr Williams.

3.05 Mr Collins' position, as set out in evidence, was that he had an involvement in sourcing the Molloy lands, subsequently purchased by the Cloghran consortium in 1989. He believed he had a lesser role in the purchase by the consortium of the Morgan lands. Yet Mr Tim Rowe[4] believed that he was in attendance with Mr Collins during the negotiations between Mr Morgan and Mr Williams which led to the purchase of those lands.

3.06 Mr Collins described the fee arrangement he had with the Cloghran consortium as a relatively loose arrangement, and he stated that he did not know whether Mr Williams and Mr Kenny knew of his arrangement with Mr Butler in this regard, but assumed that they knew that he would get something for finding the site. He had no recollection of ever discussing a finder's fee with either Mr Kenny or Mr Williams. His only discussions had been with Mr Butler.

3.07 In 1996, subsequent to the rezoning of the Cloghran lands, Mr Collins was paid a finder's fee of IR£29,613 through his company Collins Consultancy Services. Mr Collins maintained that '*out of the blue'* in 1996, he had received a telephone call from either Mr Kenny or Mr Williams, following which he met with one of the two. Mr Butler had not been present. At this meeting, he was apprised of the finder's fee he was to receive in relation to the lands, and he was requested to submit an invoice, which he duly did. He could not assist the Tribunal as to how the sum of IR£29,613 had been arrived at.

3.08 In evidence, Mr Butler claimed to have been entirely unaware of any arrangement made with Mr Collins for the payment of a finder's fee, and he maintained that he, Mr Butler, had made no such arrangement with Mr Collins. Moreover, he maintained that his agreement to the payment of the IR£29,613 fee paid to Collins Consultancy Services (for Mr Collins) in 1996, had only come

[4] Mr Tim Rowe was a partner together with Mr Collins and others in Pilgrim and Project.

about when Mr Kenny had telephoned him and has asked him whether he considered that sum a *'fair payment'* for Mr Collins. He had agreed to such a payment.

3.09 On Day 902 the following exchange took place between Counsel for the Tribunal and Mr Butler:

Q. *'Why did you agree to the payment Mr Butler?'*

A. *'Because I would have thought it was fair.'*

Q. *'But fair for what?'*

A. '*Fair for the work he did on the, on getting the land, the architects—well his involvement in the architectural work.'*

Q. *'That has been paid?'*

A. *'Or the work he did in introducing the councillors.'*

Q. *'So can we take it that the payment of the £29,000 to Collins Consultancy Services is a payment in relation to introducing councillors to the project?'*

A. *'I can't—I mean I can't say for definite it's either introducing councillors or getting the lands, when you say Tom says it was for getting the land, I can't—I'd have to leave that to Tom Williams and Niall Kenny to answer you that question.'*

3.10 Mr Williams testified that it was his belief that it was Mr Butler who had agreed the figure of IR£29,613 with Mr Collins. It had normally been Mr Butler who had had dealings with Mr Collins. Mr Williams did not recollect any discussion having taken place between himself, Mr Kenny and Mr Collins on the issue of a finder's fee for Mr Collins although he accepted that it was possible that such a discussion could have taken place.

3.11 Mr Kenny told the Tribunal that he was outraged when confronted with a claim for IR£29,613 by Mr Collins. He totally disputed Mr Butler's evidence that he had telephoned Mr Butler to advise him of the payment to Mr Collins. Mr Kenny recollected having telephoned Mr Butler, who was in Atlanta constructing stages for the Olympic Games at the time, to complain about what was being presented by way of a bill from Mr Collins. Mr Kenny was outraged because he felt Mr Collins had already been adequately recompensed by the Cloghran consortium by payments that were made to Pilgrim Architects and Project Architects. Mr Butler's response to his complaint had been that a fee had been agreed with Mr Collins and that it had to be paid. Mr Kenny said that he did not see or know of any work that was done for the fee. He disputed the payment with Mr Butler.

3.12 The Tribunal believed that the sum paid to Mr Collins was in fact agreed by Mr Butler and Mr Collins, and in this regard the Tribunal accepted the evidence of Mr Kenny and Mr Williams that they played no significant part in deciding the level of fee paid. The Tribunal rejected in its entirety Mr Butler's evidence that he had no involvement in agreeing a finder's fee with Mr Collins or arranging in due course for such a fee to be paid.

3.13 The Tribunal was satisfied that from the outset there was an agreement or arrangement in place between Mr Collins and Messrs Butler, Kenny and Williams that at some point Mr Collins would be remunerated by way of a finder's fee for his role in sourcing the lands. It was probable that this arrangement was made by Mr Collins and Mr Butler in the first instance. Despite Mr Kenny's and Mr Williams' protestations that they were unaware of such an arrangement, the Tribunal believed it was probable that some mention was made of this arrangement to them at the time Mr Collins was engaged in his task, although the Tribunal believed it unlikely that any figure was agreed at that stage.

3.14 The Tribunal noted that there was a substantial difference between the 'finder's fee' paid to Mr Collins compared to that (IR£5,625) paid to Mr Seán Dillon (an auctioneer retained by the consortium in connection with the Molloy lands). The Tribunal thus concluded that Mr Collins' fee encompassed more than the mere sourcing of two parcels of lands, one of which, by all accounts, was already for sale in 1989, independently of any intervention by Mr Collins. The Tribunal believed that the consortium's recompense of Mr Collins in 1996, largely organized by Mr Butler, took into account the role played by Mr Collins in introducing the consortium members to Mr Dunlop.

PAYMENTS MADE TO MR DUNLOP

4.01 As previously set out, Mr Dunlop claimed to have sought IR£20,000, and agreed a fee of IR£10,000, at his first meeting with Mr Butler in January 1993, which he claimed was paid to him shortly thereafter.

4.02 In the course of his private interview with the Tribunal in May 2000, Mr Dunlop reaffirmed his statement on Day 148 that Mr Butler had given him IR£10,000. Mr Dunlop also advised the Tribunal at that interview that there had been an understanding between himself and Mr Butler that the money was to be used '*for the purpose of making sure that people were kept happy*'.

4.03 Mr Dunlop essentially confirmed this position in his written statement to the Tribunal in October 2000, and he attached to that statement a *pro forma* invoice dated 5 April 1993 addressed to Mr John Butler, Managing Director of Scafform Ltd, for IR£10,000 plus VAT, a total of IR£12,100.

4.04 In an affidavit of discovery sworn on 20 October 2006, Mr Dunlop referred to two further payments, of IR£5,100 and IR£6,050, that he believed he had received in relation to the Cloghran lands.

4.05 In evidence on Day 686 (24 October 2006), Mr Dunlop admitted that his October 2006 disclosures in relation to fees had come about following circulation to him by the Tribunal of a brief of documentation which had contained material relating to these newly disclosed payments. Mr Dunlop maintained that much, if not all, of the material which had prompted the admissions in a statement furnished by him to the Tribunal in October 2006 had come from his own discovery to the Tribunal.

4.06 The documentation discovered by Mr Dunlop to the Tribunal indicated that significant sums of money had been paid to him in connection with the rezoning of the Cloghran lands, in addition to the sums initially claimed by him.

4.07 In their initial dealings with the Tribunal, Mr Butler, Mr Williams and Mr Kenny claimed that, following the sale of the Cloghran lands in 1996, Mr Dunlop had been paid a total of IR£23,025 by their agent Coopers & Lybrand. The Tribunal was satisfied, however, that this total figure in the Coopers & Lybrand prepared documentation, which apportioned costs against the proceeds of sale, did not refer to a payment to Mr Dunlop but was Coopers & Lybrand's calculation, based on information forwarded by the consortium, with regard to payments made to Mr Dunlop up to that point in time.

4.08 From evidence provided, the Tribunal believed it probable that Mr Dunlop was paid a sum not less than IR£34,175 between January and July 1993.

4.09 The documentary evidence suggested that the following payments were made:

- IR£3,025 in January 1993, on foot of an invoice of 29 January 1993, for IR£2,500 plus VAT from Frank Dunlop & Associates Ltd, which was issued to *'John Butler—Blackfearn Ltd'*, and was recorded in the cash receipts book of Frank Dunlop & Associates Ltd on 29 January 1993.

- IR£7,000 on 6 April 1993, by cheque from Blackfearn Ltd to 'Frank Dunlop & Ass', which was cashed and was not recorded in the books of Frank Dunlop & Associates Ltd.
- IR£5,100 by cheque dated 11 June 1993, which was marked paid 17 June 1993, on an invoice dated 28 June 1993, and was recorded in the cash receipts book of Frank Dunlop & Associates Ltd to Scafform Ltd on 28 June 1993.
- IR£6,050 in June 1993, attributed to Scafform Ltd in the books of Frank Dunlop & Associates Ltd as received from Scafform Ltd.
- IR£3,000 in late July 1993, by cheque from Blackfearn Ltd, IR£2,000 of which was lodged to the joint AIB account of Frank and Sheila Dunlop on 26 July 1993.

4.10 The Tribunal was satisfied that, in addition to these payments, Mr Butler paid Mr Dunlop IR£10,000 shortly after their initial meeting in January 1993. The Tribunal considered it likely that this payment was made by cheque, and that Mr Dunlop immediately cashed the cheque.

4.11 The Tribunal rejected Mr Butler's evidence that he was unaware of the amount of money paid to Mr Dunlop in relation to the Cloghran lands. The Tribunal was satisfied that while many of the payments made to Mr Dunlop in relation to the Cloghran lands came from Blackfearn Ltd's bank account and were signed by Mr Williams, it was likely that Mr Butler organized the payments.

4.12 The Tribunal was satisfied as to the following:

- The 29 January 1993 invoice for IR£3,025 (IR£2,500 plus VAT) from Frank Dunlop & Associates Ltd issued to '*John Butler/Blackfearn Ltd*' was given to Mr Williams by Mr Butler.
- A *pro forma* invoice of 5 April 1993, for IR£10,000 plus VAT (IR£12,100) generated by Frank Dunlop & Associates Ltd probably issued following contact between Mr Butler and Mr Dunlop. Mr Dunlop's secretary's telephone records indicate telephone contact between Mr Butler and Mr Dunlop's office on the same date.
- The payment on 6 April 1993 to Frank Dunlop & Associates Ltd of IR£7,000 by way of cheque drawn on the account of Blackfearn Ltd was arranged following contact between Mr Dunlop and Mr Butler on 5 April 1993.
- The payment of IR£5,100 by cheque dated 11 June 1993 from Blackfearn Ltd, and noted by Mr Dunlop as received on 17 June 1993, was physically given to Mr Dunlop by Mr Butler. This followed telephone contact between Mr Butler and Mr Dunlop's office on that date which

indicated Mr Butler's intention to call to Mr Dunlop's office later that morning.

- The payments of IR£7,000 and IR£5,100 on 6 April and 17 June 1993 respectively, were probably in discharge of the *pro forma* invoice for IR£12,100 dated 5 April 1993. The Tribunal so found, notwithstanding the existence of invoice no. 864 dated 28 June 1993 for IR£5,100 (IR£4,209.88 plus VAT at IR£885.12). This invoice is marked *'paid 17/6/93.'*
- The IR£6,050 recorded as received by Frank Dunlop & Associates Ltd on 28 June 1993, was probably payment received on foot of invoice No. 865 for IR£5,000 plus VAT dated 28 June 1993.

4.13 The Tribunal was satisfied that Mr Dunlop, Mr Butler and Mr Collins met on 13 January 1993 in the offices of Ambrose Kelly & Partners and that the meeting was prearranged by Mr Collins.

4.14 The Tribunal was satisfied that at that meeting the focus of the discussion was the rezoning of the Cloghran lands, and the assistance in that endeavour to be provided by Mr Dunlop.

4.15 Contrary to Mr Butler's denials, the Tribunal was satisfied that he was the *'lead person'* in the Cloghran consortium. The Tribunal rejected as untrue Mr Butler's contention that he had had little or no contact or dealings with Mr Dunlop. The Tribunal rejected his claim that Mr Dunlop's telephone records were fabricated. Having regard to the findings of the Tribunal as set out above, it was satisfied that he was aware of, and involved in, the payments made to Mr Dunlop. The Tribunal was further satisfied that, throughout his evidence, Mr Butler deliberately sought to distance himself from his dealings with Mr Dunlop.

4.16 The Tribunal was satisfied from the evidence adduced in the course of the public hearing that Mr Butler actively engaged with Mr Dunlop in relation both to the rezoning that was in progress from January to October 1993 and Mr Dunlop's remuneration from the consortium over that period.

4.17 The Tribunal was also satisfied that in the course of their initial meeting, Mr Butler and Mr Collins indicated to Mr Dunlop their awareness that payments by him might be required to obtain the support of certain unnamed councillors. The Tribunal was satisfied to accept that the words attributed by Mr Dunlop to Mr Collins and Mr Butler were stated on 13 January 1993, and that those words led Mr Dunlop to conclude that they were *au fait* with Mr Dunlop's '*system*'. The Tribunal was also satisfied that all three left the meeting on 13 January 1993 in the knowledge that Mr Dunlop might well engage in corrupt

activity in the course of his retention as a lobbyist for the rezoning of the Cloghran lands.

4.18 The Tribunal was satisfied that neither Mr Kenny nor Mr Williams was privy to what was contemplated by Mr Dunlop, Mr Butler and Mr Collins on 13 January 1993, and there was no evidence before the Tribunal to suggest that either Mr Kenny or Mr Williams was subsequently advised of what was in the contemplation of Messrs Butler, Dunlop and Collins. The Tribunal was satisfied, however, that, following Mr Murnaghan's advice to Mr Butler and Mr Kenny to have nothing to do with Mr Dunlop (albeit that this advice was expressed in less than explicit terms), and having regard to Mr Kenny's later statement to Mr Murnaghan, Mr Kenny had to have had some suspicion of Mr Dunlop's *modus operandi*.

THE SAATCHI & SAATCHI 'PICK-ME-UP' PAYMENTS[5]

5.01 On 28 February 2001, the Tribunal wrote to Mr Butler requesting him to inform the Tribunal as whether he, directly or indirectly, on his own behalf or on behalf of any other person or company, had made payments of money or provided any benefits of any kind to any elected representatives or public officials at any time. The request made to Mr Butler extended to '*any payments which may have been made or benefits provided to or through Mr Frank Dunlop or any other intermediary*'. Mr Butler responded by letter of 12 March 2001 wherein he stated as follows:

> *I wish to state that no money was paid by me directly or indirectly on behalf of any company to any elected representative or any public official. However Frank Dunlop did request that we pay an amount due to him by invoices raised from Saatchi & Saatchi. We believe that this was a bill owed by the Fianna Fáil party. Another amount of £750 was paid for a table at the Fianna Fáil dinner.*

5.02 Following the provision of this information, the Tribunal identified payments totaling IR£9,929 made to the public relations company Saatchi & Saatchi in December 1993. Of this, IR£4,000 was paid on 23 December 1993 by Construct Sales Ltd, a company owned by Mr Butler, and IR£5,929 was paid on 30 December 1993 by Blackfearn Ltd, the company co-owned by Mr Butler, Mr Kenny and Mr Williams. Both payments were in discharge of Fianna Fáil party debts to Saatchi & Saatchi.

[5] The Tribunal heard evidence of a practice known as 'pick-me-up' payments whereby third parties settled from their own resources invoices issued to Fianna Fáil in respect of work done on behalf of Fianna Fáil.

5.03 Construct Sales Ltd had been invoiced by Saatchi & Saatchi for a total of IR£7,381 (IR£6,100 and VAT of IR£1,281) and the Courtyard Restaurant had been invoiced for a total of IR£5,929 (IR£4,900 and VAT of IR£1,029).

5.04 In a statement made on 21 March 2007, Mr Butler, through his solicitors, retracted the assertion he had made on 12 March 2001, stating:

> *…as regards the Saatchi payments from Construct Sales and Blackfern Mr Butler would like to clarify his original communication with the Tribunal wherein it was suggested that those payments were made at the request of Mr Dunlop. Having now had the benefit of all of the documentation it is clear that that was not correct and that those payments made were entirely unrelated to the lands at Cloghran and equally unrelated to Mr Dunlop*.

5.05 Mr Butler maintained this position in his sworn testimony to the Tribunal and described the information he had given in March 2001, as *'a complete mistake'.* He could not recall what had prompted him to connect the Saatchi & Saatchi payment to Mr Dunlop in March 2001.

5.06 Mr Butler claimed that the two payments that had been made by Blackfearn Ltd and Construct Sales Ltd respectively had been made at the request of the '*fundraising committee of Fianna Fáil'*, although he claimed not to recollect who within Fianna Fáil had approached him in this regard. While Mr Richardson could have been the person who made the request, Mr Butler stated that he did not recollect him so doing. He acknowledged that he was acquainted with Mr Richardson from the 1980s and acknowledged having sold property to him in 1989. Mr Butler also acknowledged being a regular attendee at the annual O'Donovan Rossa fundraising dinner, often travelling home from abroad to attend the event.[6]

5.07 Mr Dunlop told the Tribunal that he never had a discussion with Mr Butler about payments to Saatchi & Saatchi on foot of monies owed to them by Fianna Fáil. He also stated that he had no discussion with Mr Butler about his fees being used to defray a Saatchi & Saatchi bill due by Fianna Fáil. He professed himself '*amazed'* at such a suggestion.

5.08 Mr Dunlop conceded, however, that he was well acquainted with the concept of a pick-me-up payment, and he stated that on two occasions his firm had discharged debts owed by Fianna Fáil to third parties. Mr Dunlop

[6] Documentary evidence produced to the Tribunal indicated his attendance in 1988 and in 1996.

acknowledged liaising with Mr Richardson[7] (in December 1993) in relation to the O'Donovan Rossa Cumann fundraising dinner, and said that it was likely that communications passing between Mr Richardson and his office immediately around the time of that fundraising event were in connection with that fundraiser and other issues.[8] However, Mr Dunlop claimed never to have requested any of his, Mr Dunlop's, clients to defray Fianna Fáil expenses on the basis of a pick-me-up. It was '*possible*', Mr Dunlop said, that he had asked clients of his on occasions to make donations to Fianna Fáil and perhaps to other parties.

5.09 Mr Williams testified that Blackfearn Ltd had made the payment to Saatchi & Saatchi at the request of Mr Butler. Mr Dunlop's name had not been mentioned by Mr Butler, and Mr Williams stated that he had not associated the request to make the payment with the Cloghran lands. He had understood it to be by way of a donation to the Fianna Fáil Party. He believed Mr Butler to be a supporter of Fianna Fáil, although he did not know which way he voted. Mr Williams said that he was told by Mr Butler that a company (Construct Sales Ltd) connected to him was going to make a similar payment. He thought that '*it was going to be half and half.*' He could not explain why a payment of only IR£4,000 was ultimately made by Construct Sales Ltd.[9]

5.10 Mr Williams stated that he did not think he ever made another donation to Fianna Fáil either before or after this one.[10] Mr Williams explained his reason for making the payment in the following terms:

> *'Well, I suppose at the time I would have looked at it from the point of view that we were establishing ourselves on the business market within Dublin and we aligned ourselves to policies that Fianna Fáil would have had. And so we would have supported them on that basis. But my own personal attitude would have been, you know, that I would have aligned myself to any party who had policies that I would have agreed with. So I wasn't just so it wasn't just Fianna Fáil. I haven't made political donations to any party since or before.'*

[7] Mr Richardson told the Tribunal that in 1993, at a time when Fianna Fáil was approximately IR£3m in debt, he had been appointed to *'go in, have a look at the structure of fundraising within Fianna Fáil and see could I do anything to help it along in terms of nationwide to bring the whole thing together.'* His office, known as *'The Fianna Fáil fundraising office'* operated from a room in the Berkeley Court Hotel.

[8] Mr Dunlop and Mr Richardson had joint business interests in 1993. See Chapter 15 (Mr Frank Dunlop).

[9] It was the evidence of Mr Seán Fleming (the financial controller of Fianna Fáil in 1993) that insofar as the Construct Sales invoice was concerned, his initial information was that the amount of the pick-me-up would be IR£7,381.00, but the amount actually paid and credited was IR£4,000.00. See below.

[10] However, Mr Williams acknowledged having attended an O'Donovan Rossa Cumann dinner at the Royal Hospital Kilmainham, which probably took place in the 1990s. His attendance at the dinner was organized by Mr Butler, he said.

5.11 Mr Collins told the Tribunal that he knew nothing about a payment made on behalf of Mr Butler in December 1993 to Saatchi & Saatchi and he stated that he had not asked Mr Butler to make such payment either to Fianna Fáil or on its behalf. Mr Collins professed not to know what a pick-me-up payment was.

5.12 Giving evidence on Day 714 and 722, Mr Richardson acknowledged that Mr Butler was known to him from the 1980s as a supporter of the O'Donovan Rossa Kilmainham annual fundraiser, but stated that he was not particularly friendly with Mr Butler. Mr Richardson said he never approached Mr Butler to pay a pick-me-up for Fianna Fáil. He had not approached Mr Butler in 1993 to request that he discharge the Saatchi & Saatchi bill, and his evidence was he had never approached Mr Butler in relation to any fundraising matters connected with Fianna Fáil.

5.13 Mr Richardson agreed that he had on occasions approached people, including Mr Dunlop,[11] seeking that they discharge pick-me-ups, but claimed that Mr Butler was never on the list of people he, Mr Richardson, had approached. Mr Richardson also stated that it was his belief that no one from the Kilmainham Committee (which organized the O'Donovan Rossa fundraising event) would have approached Mr Butler in relation to a pick-me-up, and he was of the belief that the request to Mr Butler would have come from the general Fianna Fáil fundraising committee.

5.14 The Tribunal was satisfied that there was evidence of Mr Richardson having directly approached Mr Butler in the context of fundraising on at least one occasion. An undated typed list entitled '*Des'* and with the manuscript note '*list of people to contact for 6 December'* included the name '*Johnny Butler Scafform'.* The list also included (in manuscript) Mr Dunlop's name. It is probable that this list could refer to the O'Donovan Rossa fundraising event for 1996.[12]

5.15 Mr Seán Fleming, the financial controller of Fianna Fáil in 1993, told the Tribunal that he was unable to say who within the fundraising committee of Fianna Fáil had made the approach to Mr Butler in relation to the pick-me-up. He acknowledged, however, that he himself must have been apprised, by whoever it was had made the request of Mr Butler, that Mr Butler was willing to donate to the party by way of a pick-me-up. He also acknowledged that he must have been apprised of the mechanism by which Mr Butler intended to defray Fianna Fáil's

[11] When asked if he ever approached Mr Dunlop to make a donation to Fianna Fáil by way of a pick-me-up or to pay a pick-me-up, Mr Richardson replied, '*Yeah. I think I did yeah, probably at the Galway Races'.*

[12] Mr Dunlop's diary for that date had the following entry: '*Bertie's dinner Kil Hosp'.*

indebtedness to Saatchi & Saatchi, given the detailed directions he provided to that company. Mr Fleming advised the Tribunal that Fianna Fáil did not keep records as to who on the fundraising committee would have made such an approach to Mr Butler, and thereafter provided the relevant information to him. Mr Fleming stated '*I keep—kept good records of all the donations. But I didn't keep ancillary notes of who rang me about what or who said we might be getting a donation. I never kept those detailed records.'* Mr Fleming did say, however, that he would have informed Mr Richardson about the donation. However, he did not believe the initial approach to him had been made by Mr Richardson, and equally Mr Dunlop's name (having been initially put forward by Mr Butler in this context) was a '*mystery*' to Mr Fleming since he believed that Mr Dunlop was never centrally involved with Fianna Fáil fundraising.

5.16 According to Mr Fleming, Mr Butler was known to him in 1993 because of the Butlers' connection to Scafform, a company whose services were used by Fianna Fáil over the years. Mr Butler's connection to the Courtyard Restaurant was also known to Mr Fleming in 1993. Mr Fleming claimed that Mr Butler was not known as a contributor to Fianna Fáil save on this one occasion when the Saatchi bill had been discharged. Neither Mr Kenny nor Mr Williams was known to Mr Fleming. He explained the lack of follow-up with regard to the underpayment of the Saatchi invoice by Construct Sales Ltd on the basis of the '*voluntary*' nature of the payment and his belief that it would have been '*impolite'* to have done so.

5.17 In relation to the two Saatchi invoices, as discharged by Blackfearn Ltd and Construct Sales Ltd respectively, it was noteworthy that there was a coincidence in time with the said discharge and the Cloghran rezoning confirmation, which took place some two months prior on 6 October 1993. Notwithstanding the position adopted by Mr Butler in correspondence in 2007, and in evidence on Days 901 and 902, the Tribunal was satisfied that a temporal connection existed between the making of these payments and the Cloghran rezoning success. There was also the coincidence that a person associated with certain aspects of Fianna Fáil fundraising activity, namely Mr Collins, worked in close association with Mr Butler during the entirety of the Cloghran rezoning process.

5.18 However, over and above the foregoing, the issue for the Tribunal was whether monies due to be paid by the Cloghran consortium to Mr Dunlop were paid, at Mr Dunlop's request, to Saatchi & Saatchi for the benefit of Fianna Fáil. This is what Mr Butler maintained in his initial dealings with the Tribunal, but later resiled from in 2007 when he gave evidence. Mr Dunlop denied any involvement in the matter.

5.19 The Tribunal was struck by the very clear and precise nature of Mr Butler's initial letter to the Tribunal of 12 March 2001 which stated as follows:

> *. . . however Frank Dunlop did request that we pay an amount due to him by invoices raised from Saatchi and Saatchi. We believe that this was a bill owed by the Fianna Fáil party. Another amount of £750 was paid for a table at the Fianna Fáil dinner.*
>
> *Enclosed please find copies of the correspondence on the matter, which is self-explanatory. If there are any other queries please do not hesitate to contact me.*

ALLEGED PAYMENTS BY MR DUNLOP TO CLLR G. V. WRIGHT (FF)

6.01 Cllr Wright was one of six signatories of the Cloghran rezoning motion passed on 1 April 1993. He told the Tribunal that he supported and voted for the motion on its merits. He remained supportive when the rezoning was ultimately confirmed on 6 October 1993, and had not been in favour of deferring consideration of the matter to the soon-to-be-established Fingal County Council.

6.02 Mr Dunlop told the Tribunal that he sought Cllr Wright's signature and support for the Cloghran rezoning in March 1993. Cllr Wright had indicated to him his support for the project (thus confirming what Mr Dunlop had been told by Mr Butler) and had said that '*he would need something for his support*.' A payment of IR£1,000 was agreed. Mr Dunlop's belief was that he may have obtained Cllr Wright's signature to the motion at a meeting on 12 March 1993, at the Gresham Hotel. This was the date on which Cllr Wright had signed a motion in relation to the Fox and Mahony lands at Drumnigh. Mr Dunlop was unable to state the exact date or location of the payment of IR£1,000 to Cllr Wright, save that he believed the money was handed over somewhere in the environs of the Council some time between the time Cllr Wright signed the motion and the vote of 1 April 1993. Mr Dunlop maintained that notwithstanding his knowledge that Cllr Wright had previously indicated his support for the rezoning to Mr Butler, he, Mr Dunlop, had not demurred when Cllr Wright had requested a payment, given the importance, as far as Mr Dunlop was concerned, of Cllr Wright's support in the context of '*totality*'. Mr Dunlop said that he could not definitively say whether Cllr Wright was leader of the Fianna Fáil group on the Council at that stage, but certainly he was either the leader or the whip.

6.03 In a private interview with the Tribunal's legal team on 18 May 2000, Mr Dunlop identified Cllr Wright as having been paid money by him in relation to Cloghran. Mr Dunlop said he was '*virtually certain*' that he had paid Cllr Wright from the IR£10,000 paid to him by Mr Butler, without specifying the amount of such payment. Previously, on Day 148, when giving evidence in public, Mr

Dunlop had listed the Cloghran lands as a project in respect of which he had received monies from the developers, i.e. Mr Butler. On that occasion he did not make any reference to having paid Cllr Wright for support for the Cloghran rezoning. Cllr Wright's solicitor, Mr Kennedy, in the course of his cross-examination of Mr Dunlop, made much of Mr Dunlop's failure to give specifics regarding Cllr Wright on either Day 148 or in the course of private interview in May 2000. However, the Tribunal took the view that Mr Dunlop's evidence regarding Cllr Wright could not be disregarded because specific reference to a payment of IR£1,000 to Cllr Wright was not made until he furnished his October 2000 statement. The Tribunal was satisfied that from the time Mr Dunlop began to explain the nature of his involvement in the Cloghran rezoning (on Day 148), he had alluded to Cllr Wright as having been the recipient of money from him in connection with that rezoning.

6.04 There was frequent contact between Mr Dunlop and Cllr Wright in 1993, and particularly in the period from March to October 1993. Mr Dunlop's secretary's telephone records indicated at least ten telephone calls from Cllr Wright to Mr Dunlop's office during this period, and Mr Dunlop's diary indicated meetings with Cllr Wright. Both Mr Dunlop and Cllr Wright acknowledged that there was regular contact between them, and Cllr Wright acknowledged that he signed the Cloghran motion (and probably several others as well) at Mr Dunlop's request at a meeting with him on 12 March 1993, and there was ongoing contact between them in relation to the Cloghran lands and other rezoning projects during the course of the Development Plan Review.

6.05 Cllr Wright denied that he received IR£1,000 or any sum from Mr Dunlop in relation to the Cloghran lands. He told the Tribunal that he did not sign the relevant motion or support the project in return for payment.

6.06 Cllr Wright admitted to receiving IR£10,000 in three separate cash payments from Mr Dunlop in the 1991–3 period. Mr Dunlop maintained the total paid was IR£12,500. Cllr Wright categorized all such payments as political donations, and listed them as follows:

- IR£2,000 in cash given to him by Mr Dunlop in the Dáil bar[13] in or around the time of the 1991 Local Elections. Mr Dunlop disagreed that this payment was made in the Dáil bar, and maintained that the making of the payment at the time of the Local Election in 1991 '*was a convenient circumstance in which monies could be given to politicians in the context of support for other issues that might be coming up in Dublin County Council*'.

[13] See Chapter 10 (the Fox and Mahony Module) and Chapter 2 (the Quarryvale Module).

- IR£5,000 in cash in or about the time of the General Election in November 1992. On that occasion the money was paid when Mr Dunlop paid a visit to his constituency office in Malahide. Cllr Wright explained that this payment was a donation towards the expenses of the General Election as well as assistance towards the running of his constituency office. Mr Dunlop acknowledged making this cash payment to Cllr Wright, and said he did so at a time when he accompanied Mr Owen O'Callaghan[14] to Cllr Wright's constituency office where Mr O'Callaghan paid Cllr Wright IR£5,000 by cheque.
- IR£3,000 in cash in or about October/November 1993, in or close to the Dublin County Council offices on O'Connell Street. Cllr Wright said this donation was towards the expenses incurred by him in the course of the Senate Election in early 1993, approximately ten months previously, and also in relation to constituency funding. Mr Dunlop disputed making a payment to Cllr Wright at this time.

6.07 Findings by the Tribunal in relation to the three payments totaling IR£10,000 explained by Cllr Wright as political donations from Mr Dunlop in 1991, 1992 and 1993 are dealt with elsewhere in this Report.

6.08 The Tribunal was satisfied that Cllr Wright solicited a payment of IR£1,000 from Mr Dunlop in return for his support of the rezoning of the Cloghran lands, including his signature on the rezoning motion which was passed by Dublin County Council on 1 April 1993. It was intended that the payment should also provide for Cllr Wright's support for future relevant motions up to, and including, the confirmation motion in October 1993. The Tribunal was satisfied that Cllr Wright did not perform his duties as a councillor in a disinterested fashion as he was required to do. The said payment of IR£1,000 was corrupt.

CONTACT BETWEEN CONSORTIUM MEMBERS AND CLLR WRIGHT

6.09 Mr Kenny told the Tribunal that, save for one occasion on which he may have had a drink with him, he never spoke to Cllr Wright, although he knew that there was contact between Cllr Wright and Mr Butler in relation to the Cloghran project.

6.10 Although Mr Butler knew Cllr Wright prior to 1993, he said he did not believe he spoke to him in relation to the Cloghran project, and he denied stating

[14] See Chapter 2 (the Quarryvale Module).

to Mr Dunlop in the course of a meeting with him that Cllr Wright was '*on side*'. It was Mr Butler's belief that Mr Collins may have spoken to Cllr Wright.

6.11 Cllr Wright stated that Mr Butler did speak to him at his Malahide constituency office, saying that he was keen to build a hotel, and emphasising the employment opportunities in the construction of the hotel and in its subsequent operation. Cllr Wright stated that Mr Butler did not give him any financial support.

6.12 The Tribunal was satisfied that Mr Butler spoke with and lobbied Cllr Wright to support the rezoning of the Cloghran lands. The Tribunal rejected Mr Butler's denial that there was contact between himself and Cllr Wright in relation to the Cloghran lands, and was satisfied that Mr Butler knew that his evidence on this issue was untrue at the time he gave it. The Tribunal was satisfied that Mr Butler spoke to Cllr Wright concerning his plans prior to engaging Mr Dunlop, and that at their meeting on 13 January, Mr Butler did apprise Mr Dunlop of Cllr Wright's support for the project, when he said that he believed Cllr Wright to be *'on side'* in relation to their proposal**.**

6.13 Cllr Wright denied any knowledge of an involvement by Mr Collins as a land agent in the Cloghran lands acquisition, and had no recollection of Mr Butler ever mentioning either Mr Collins or Mr Dunlop to him in the context of the Cloghran rezoning project.

6.14 Mr Collins claimed in evidence that he was not friendly with Cllr Wright in 1993, saying he knew him only as a local county councillor in Malahide.

6.15 The Tribunal was satisfied that during the Development Plan review, Mr Collins' role as a land agent was known to Cllr Wright, and Cllr Wright's position as a prominent Fianna Fáil councillor in the north Dublin area was well known to Mr Collins.

ALLEGED PAYMENTS BY MR DUNLOP TO CLLR CYRIL GALLAGHER (FF)

7.01 Cllr Gallagher was interviewed in private by the Tribunal's legal team on 15 March 1999. In a questionnaire he completed for the Tribunal he denied receiving payments of money in relation to any rezoning or planning matter. He died on 20 March 2000, before he had the opportunity to provide sworn testimony to the Tribunal.

7.02 Mr Dunlop stated in the course of his evidence to the Tribunal that he paid Cllr Gallagher IR£1,000 in cash when he obtained his signature on the Cloghran rezoning motion. He believed that he made this payment on 11 March 1993, in return for Cllr Gallagher's signature and support for the rezoning for the Cloghran lands.[15]

7.03 Mr Dunlop told the Tribunal that Cllr Gallagher solicited this payment.

7.04 On Day 148, Mr Dunlop had listed Cllr Gallagher as someone who received a payment from him in relation to the Cloghran lands. Some weeks later, in a private interview with the Tribunal's legal team on 18 May 2000, Mr Dunlop stated that he paid Cllr Gallagher '*something of the order of two grand from me in relation to the* [Cloghran lands] *to ensure that he stayed on side*'.

7.05 In a written statement to the Tribunal in October 2000, Mr Dunlop altered the amount of the payment from being in the '*order of two grand*' to IR£1,000. In the course of his evidence on Days 686 and 687, Mr Dunlop accounted for the discrepancy by stating that while on occasion he had given IR£2,000 to Cllr Gallagher, on a number of occasions he had given IR£1,000, and Cloghran was one such occasion. In the course of his evidence in the Fox and Mahony Module,[16] Mr Dunlop stated that at Cllr Gallagher's request he paid him IR£1,000 on 11 March 1993, in return for his signature on the motion seeking to rezone the Drumnigh lands. On Day 686 (24 October 2006), Mr Dunlop told the Tribunal that he obtained Cllr Gallagher's signature on the rezoning motions for both the Drumnigh lands and the Cloghran lands on 11 March 1993.

7.06 Cllr Gallagher voted in favour of the rezoning motion on 1 April 1993, and supported the confirmation process which concluded on 6 October 1993.

7.07 An examination of Cllr Gallagher's financial records identified a cash lodgment of IR£2,000 to a post office savings certificate account in his name, on 25 March 1993, approximately two weeks after Mr Dunlop's alleged payment of IR£1,000. This lodgment was one of a series of unaccounted for lodgments to accounts held by Cllr Gallagher in An Post.[17] Ulster Bank and AIB totaling IR£7,860 between 25 March and 28 May 1993.[18]

[15] Cllr Gallagher's name appeared in Mr Dunlop's diary for that date.
[16] Day 420.
[17] In the course of Cllr Gallagher's private interview with the Tribunal on 15 March 1999, he denied having an account with An Post at any time.
[18] See Chapter 6 (the Lissenhall Module).

7.08 The Tribunal was satisfied that Mr Dunlop paid Cllr Gallagher a sum of IR£1,000 between 10 and 12 March 1993, in return for his signature on the Cloghran rezoning motion, and his support for the rezoning thereafter. This payment constituted an inducement to Cllr Gallagher to perform his duty as a councillor otherwise than in a disinterested fashion, and was corrupt.

7.09 The aforementioned lodgments, including the IR£2,000 lodgment into Cllr Gallagher's An Post saving certificate account on 25 March 1993, approximately two weeks following Mr Dunlop's payment to him of IR£1,000, may have included all or a portion of that payment.

ALLEGED PAYMENTS BY MR DUNLOP TO CLLR SEÁN GILBRIDE (FF)

8.01 Cllr Gilbride was a co-signatory on the motion and map seeking the rezoning of the Cloghran lands which were lodged with the County Council on 12 March 1993. He subsequently supported the motion which was passed on 1 April 1993, and also supported the confirmation process which concluded on 6 October 1993.

8.02 Cllr Gilbride told the Tribunal that, as a north Co. Dublin councillor, he had a general idea of the location of the lands. He was generally pro-development and voted accordingly and he supported the Cloghran rezoning because the proposed development would provide badly needed employment.

8.03 Cllr Gilbride maintained that he was approached by Mr Kenny (in the company of Mr Kenny's brother whom he had previously known), who sought his support for the rezoning of the Cloghran lands. Cllr Gilbride said he agreed to support the project. He also agreed to Mr Kenny's request that he co-sign the necessary motion and map in due course. Cllr Gilbride said he did not seek any payment from Mr Kenny, nor did Mr Kenny offer him any payment for any purpose.

8.04 At a later stage, probably on 12 March 1993, Cllr Gilbride co-signed the map and motion which was lodged with the County Council later that day. He was presented with the map and motion for his signature by Mr Dunlop, whom he knew to be retained by the consortium because Mr Kenny had told him so. Indeed, between the discussion with Mr Kenny and the signing of the map and motion on 12 March 1993, Cllr Gilbride himself had informed Mr Dunlop of the fact that he had agreed with Mr Kenny to sign the documents.

8.05 Mr Dunlop alleged that Cllr Gilbride's request for payment in relation to the Cloghran lands came about when he approached Cllr Gilbride some time subsequent to the Cloghran rezoning vote, seeking his support for another matter. In their discussion, Cllr Gilbride had referred to three developments promoted by Mr Dunlop, including Cloghran, that he had supported.

8.06 According to Mr Dunlop, Cllr Gilbride complained to him that he had been given nothing for this support. Notwithstanding the fact that voting had already taken place in respect of the three rezonings alluded to, and notwithstanding the level of support that had been apparent for the Cargobridge and Cloghran rezonings, Mr Dunlop agreed to pay Cllr Gilbride a '*composite payment*' of IR£2,000 because Cllr Gilbride had raised the issue when asked for his support in respect of other impending matters.[19]

8.07 Cllr Gilbride denied that he had ever requested or received any money in relation to the three rezoning projects, including Cloghran.

8.08 Cllr Gilbride maintained in his evidence in this module (and in other modules) that the only money he ever received from Mr Dunlop was a sum of IR£2,000 which he said was paid as a contribution at the time of the 1991 Local Elections.

8.09 Mr Dunlop's evidence in this and other modules clearly established that there was an active relationship between the two men during this period and that they were in regular contact.

8.10 The records of telephone calls to Mr Dunlop's office maintained by Mr Dunlop's secretary indicated frequent telephone contact between the two throughout 1993. For example, in the period from 31 March to 28 September 1993 there were in excess of 30 recorded telephone calls to Mr Dunlop's office from Cllr Gilbride. While Cllr Gilbride made the point that some of these calls were simply return calls, the extent of the contact was nevertheless considerable.

8.11 Furthermore, a number of entries in Mr Dunlop's diary in 1993 indicated six prearranged meetings between Mr Dunlop and Cllr Gilbride between 31 March and 28 September, which is entirely inconsistent with the suggestion made by Cllr Gilbride in his letter to the Tribunal of 30 September 2003 to the

[19]This alleged payment of IR£2,000 to Cllr Gilbride is also reviewed in Chapter 7 (the Cargobridge Module) and Chapter 10 (the Fox and Mahony Module). The Tribunal's determination in relation to the alleged payment is made in Chapter 10 (the Fox and Mahony Module).

effect that he rarely met Mr Dunlop, indicating only very casual contact with him at the County Council offices in O'Connell Street.[20]

8.12 The Tribunal was satisfied that throughout 1993 Mr Dunlop had virtually unfettered access to Cllr Gilbride. Mr Dunlop accurately considered Cllr Gilbride as a strong supporter of all development, and somebody to whom he could turn for support in relation to his various rezoning projects.

8.13 The Tribunal's determination in relation to the issue of Mr Dunlop's alleged '*composite*' payment of IR£2,000 to Cllr Gilbride is to be found in Chapter 10 (the Fox & Mahony Module).

CLLR TONY FOX (FF)

9.01 Mr Dunlop told the Tribunal that he paid Cllr Fox a sum of IR£1,000 in return for his support for the Cloghran rezoning confirmation vote of September 1993.

9.02 Mr Dunlop stated that he paid Cllr Fox on a number of occasions for his support for particular proposals that were coming before Dublin County Council, and that such payments were made at Cllr Fox's request. Cllr Fox denied receiving any money from Mr Dunlop for any purpose, at any time.

9.03 Mr Dunlop initially implicated Cllr Fox as having received payment from him in respect of the lands at Cloghran in his written statement of October 2000. He did not implicate Cllr Fox in the course of his private interview with the Tribunal on 18 May 2000, nor did he list Cllr Fox on Day 148 as having been in receipt of monies in relation to the Cloghan rezoning.

9.04 Asked on Day 686 why he had not identified Cllr Fox on Day 148 or in May 2000, Mr Dunlop's response was that having reflected in the months between appearing in private session and furnishing his October 2000 statement to the Tribunal, he had recollected Cllr Fox as having been the recipient of monies from him. According to Mr Dunlop, during this period he had reviewed all of the contacts he had had with politicians, councillors and developers, and his disbursements during the Development Plan review.

9.05 Mr Dunlop told the Tribunal that while he had no recollection of lobbying Cllr Fox in advance of the Cloghran rezoning vote in April 1993, he did recall speaking to him about the Cloghran lands at the time of the September

[20]See Chapter 10 (the Fox and Mahony Module) for further consideration of the content of Cllr Gilbride's letter.

1993 vote, and believed that he had lobbied him in relation to the issue between April and September 1993. He was unsure whether at that time he was aware of whether or not Cllr Fox had voted on the April 1993 motion.

9.06 He stated that Cllr Fox solicited the payment having indicated his intention to support the rezoning. Mr Dunlop suggested that Cllr Fox said these or similar words to him: '*I will need something for this, what are you going to give me?*'

9.07 According to Mr Dunlop, they duly agreed on IR£1,000. He was uncertain as to whether the IR£1,000 had been paid at the time of the discussion or subsequently, but he maintained that he paid Cllr Fox prior to the scheduled special meeting of 29 September 1993, when the confirmation vote in relation to the Cloghran lands was imminent.

9.08 Under cross-examination, Mr Dunlop agreed that he was unable to state specifically as to where or when the agreement for payment of the IR£1,000 had been made with Cllr Fox, and when the payment was actually made. According to Mr Dunlop, it was likely that the money had been handed over in the environs of the Council. Nothing '*stuck out in his mind*' in relation to the actual making of the payment. Pressed by Mr Breffni Gordon BL (Counsel for Cllr Fox), Mr Dunlop's evidence was that he had given Cllr Fox money in relation to a substantial number of rezonings including Cloghran. Having recollected that he had lobbied Cllr Fox specifically in relation to Cloghran prior to the confirmation vote, Mr Dunlop was certain that he had made a payment to him. His recollection was aided by the *'global circumstances'* that pertained in the lead-up to the confirmation vote, and in particular the opposition to the rezoning (from Aer Rianta) that was apparent at the time.

9.09 Mr Dunlop described his relationship with Cllr Fox in the context of the Development Plan review as being *'very very close'*, a relationship which, Mr Dunlop asserted, continued after Dublin County Council was divided into three county councils, and Cllr Fox became a member of Dún Laoghaire-Rathdown County Council. That relationship had continued until the establishment of the Tribunal, and according to Mr Dunlop, it would have so continued but for the Tribunal.

9.10 Cllr Fox voted against the motion to rescind the Cloghran lands rezoning on 6 October 1993.

9.11 Cllr Fox had no recollection of being lobbied by Mr Dunlop in relation to Cloghran. He asserted that he was '*100% sure, nearly*' that Mr Dunlop did not approach him in relation to Cloghran. Nor did Cllr Fox have any recollection of being lobbied by any member of the consortium who owned the Cloghran lands or by any person on behalf of Aer Rianta at any time in 1993. He accepted, however, that he may well have received representations or submissions in advance of the relevant votes in the County Council.

9.12 Although he was noted in the records of Dublin County Council as having been in attendance at the County Council meeting on 1 April 1993, Cllr Fox is not recorded as having voted in the rezoning motion for the Cloghran lands on that date. However, Mr Dunlop's telephone records indicated Cllr Fox contacted his office on the eve of the 1 April 1993 vote.

9.13 Mr Dunlop's telephone records indicated a telephone call from Cllr Fox at 10.27 am on 29 September, with a note stating that *'FD would know what it was about.'*

9.14 Cllr Fox told the Tribunal that he could not recollect the purpose of the telephone call to Mr Dunlop's office on that date. While it may have related to the Cloghran rezoning vote, Cllr Fox maintained that it *'could have been anything.'*

9.15 Mr Dunlop had no doubt but that the 29 September 1993 telephone call related to the agenda for the County Council meeting later that day which included the confirmation issue relating to the Cloghran lands. Mr Dunlop also received telephone calls on that date from Cllr Wright, Mr Butler, Mr Collins and Cllr Liam Creaven. Mr Dunlop and Cllr Fox agreed[21] that the only common subject of interest likely to have prompted any contact during 1993 was the review of the Dublin Development Plan. However, Cllr Fox's only specific recollection of contact with Mr Dunlop related to the Texas Homecare[22] material contravention issue from 1989 to 1992, although Cllr Fox accepted that he had had contact with Mr Dunlop in relation to Quarryvale when Mr Dunlop brought Mr O'Callaghan to his home.

9.16 The Tribunal was satisfied that Mr Dunlop lobbied Cllr Fox in relation to the Cloghran lands, particularly in the period leading up to the confirmation process in late September/early October 1993, and that in the course of that process, Cllr Fox solicited a payment of money from Mr Dunlop in return for his support, and that Mr Dunlop duly paid IR£1,000 to Cllr Fox in or about this time.

[21] See Cllr Fox's evidence in Chapter 10 (the Fox and Mahony Module) and Chapter 2 (the Quarryvale Module).
[22] Texas Homecare was a retail development proposed for Dundrum, within Cllr Fox's electoral ward.

The Tribunal was satisfied that the payment represented an inducement to Cllr Fox to ensure that he would act other than in the disinterested performance of his duties as a councillor. The said payment was a corrupt payment.

THE INVOLVEMENT OF CLLR LIAM CREAVEN (FF)

10.01 Cllr Creaven was a close acquaintance of Mr Dunlop. They were in frequent contact with each other throughout 1993. For example, between 1 April and 6 October 1993, Mr Dunlop's secretary's phone records identified 41 occasions on which Cllr Creaven telephoned Mr Dunlop's office. In addition, Mr Dunlop's 1993 diary had records of six meetings between himself and Cllr Creaven during this period.

10.02 Cllr Creaven did not dispute the extent of contact between himself and Mr Dunlop. More particularly, he did not dispute the level of telephone contact between them, although a number of the telephone calls may simply have been return calls, or telephone calls concerning a variety of issues, or arising because of their friendship.

10.03 Mr Dunlop obtained Cllr Creaven's signature on the motion and map seeking the rezoning of the Cloghran lands. The signature was probably obtained between 10 and 12 March 1993.

10.04 Mr Dunlop's diary for this period indicated a meeting with Cllr Creaven on 11 March 1993 at 1 pm. The Tribunal was satisfied that this was the meeting at which Cllr Creaven signed the motion and map, as well as signing other rezoning motions at Mr Dunlop's request.

10.05 Mr Dunlop stated that Cllr Creaven did not seek payment from him, nor was he paid, in respect of the rezoning of the Cloghran lands.

10.06 Cllr Creaven supported the motion to rezone the lands on 1 April 1993, and supported the confirmation process relating to the rezoning of the Cloghran lands in September/October 1993. Cllr Creaven was consistently pro-development in relation to the review of the Development Plan.

10.07 Mr Dunlop's secretary's telephone records indicated that on 18 March 1993, Mr Kenny telephoned Mr Dunlop's office and left a message for him asking '*Who is looking after Liam Creaven*'. The record further indicated that Mr Dunlop's secretary returned the call to Mr Kenny and advised him that Mr Dunlop would contact him the following day.

10.08 Mr Dunlop was asked to explain his understanding of Mr Kenny's message. He told the Tribunal that he presumed that Mr Kenny was asking who was lobbying Cllr Creaven. He rejected any suggestion that the message was a reference to the payment of money to Cllr Creaven, and again emphasised that he and Mr Kenny had never discussed payments to councillors.

10.09 Mr Dunlop also took the opportunity, when being questioned on the meaning of Mr Kenny's telephone message, to restate to the Tribunal that neither Cllr Creaven nor his close friend Cllr M. J. Cosgrave received payment from him in return for support for rezoning motions. Mr Dunlop intimated that both councillors signed motions merely at his request, implying that attempting to bribe either of them was unnecessary.

THE INVOLVEMENT OF CLLR MICHAEL J. COSGRAVE (FG)

11.01 As was the case with Cllr Creaven, Cllr Cosgrave had been a close acquaintance of Mr Dunlop from the 1980s. Mr Dunlop generally succeeded in lobbying Cllr Cosgrave in relation to rezoning projects in which he was involved.

11.02 Mr Dunlop's 1993 diary and the telephone records maintained by his secretary indicated frequent contact between him and Cllr Cosgrave in 1993. For example, between 1 April and 6 October 1993, 22 occasions were recorded when Cllr Cosgrave contacted Mr Dunlop's office, and during this period 8 meetings were recorded in Mr Dunlop's diary.

11.03 There was also telephone contact between Cllr Cosgrave and Mr Dunlop's office on 3, 5, 8, 10 and 11 March 1993.

11.04 While all these calls and this contact related to matters relevant to the review of the Development Plan, the number of these calls and meetings which related to the rezoning of the Cloghran lands is unknown.

11.05 Mr Dunlop probably obtained Cllr Cosgrave's signature on the 11 March 1993 motion and map. It was likely that an entry in Mr Dunlop's diary indicating a meeting with Cllr Cosgrave on 11 March 1993, was a reference to the meeting at which Cllr Cosgrave signed the motion. Cllr Cosgrave also supported the rezoning confirmation process for the Cloghran lands in September/October 1993.

11.06 Mr Dunlop stated that Cllr Cosgrave neither sought nor was paid money in relation to the Cloghran lands.

11.07 Cllr Cosgrave was generally supportive of development. In relation to the Cloghran lands specifically, he stated that he supported the rezoning of these lands because they were close to the airport. He also believed that the rezoning of the Cloghran lands was *'an excellent idea'* on planning grounds.

THE INVOLVEMENT OF CLLR ANNE DEVITT (FG)

12.01 Cllr Devitt was one of the co-signatories on the motion to rezone the Cloghran lands.

12.02 Cllr Devitt was uncertain as to whether her signature was obtained by Mr Kenny, whom she met and who lobbied her in relation to his proposed development of the lands at Cloghran, or by Mr Dunlop. Mr Dunlop told the Tribunal that he did not recall obtaining Cllr Devitt's signature, although he is virtually certain he did. Cllr Devitt's signature was obtained between 10 and 12 March 1993, the latter being the date on which the motion and map to rezone the Cloghran lands was lodged with Dublin County Council.

12.03 Cllr Devitt was lobbied for her support for the Cloghran rezoning motion by both Mr Kenny and Mr Dunlop.

12.04 Cllr Devitt recalled Mr Kenny discussing the details of the project with her, including mention of a hotel with internet connections suited to business people using Dublin Airport. Cllr Devitt saw merit in these proposals and supported the rezoning of the Cloghran lands.

12.05 Cllr Devitt was also lobbied by Mr Butler at the Dublin County Council offices.

12.06 Cllr Devitt told the Tribunal that she had questioned Aer Rianta's motivation in lodging objections to the rezoning of the Cloghran lands in August 1993. She and other councillors questioned whether the objection was related to safety, as Aer Rianta maintained, or whether it had more to do with protecting its commercial interests. Cllr Devitt did not accept Aer Rianta's argument that the rezoning of the Cloghran lands would puncture the airport 'red zone', given that an existing large commercial building operated by Team Aer Lingus had been built and operated without difficulty for the airport.

12.07 Cllr Devitt also told the Tribunal that she had not supported a proposal to defer the decision on the Cloghran rezoning for consideration by Fingal County Council, because she believed there was a desire to complete the Development Plan review as quickly as possible. Cllr Devitt expressed her belief that there was

no evidence before the Council in the autumn of 1993 to the effect that the rezoning of the Cloghran lands would interfere with the safe operation of the airport. Accordingly, she voted against the motion that sought to have the Cloghran lands revert to agricultural zoning.

THE AER RIANTA ISSUE

13.01 Having regard to the evidence of the councillors who gave evidence in this module, the Tribunal was satisfied to accept that on a certain level there was some resistance among councillors generally to the manner in which Aer Rianta sought to impose its views in relation to the rezoning. Following the Aer Rianta submissions, and following the intervention of the Department of Transport, Energy and Communications on 6 October 1993, Cllrs Wright, Gilbride, Gallagher, Fox, Creaven, M. J. Cosgrave and Devitt were among a large majority of councillors who continued to support the proposal to rezone the Cloghran lands E (industrial and related uses) by opposing and voting against motions which would either have adopted the Manager's proposals to refer the matter to the County Planning Office at Fingal to examine and report to Fingal County Council, or his recommendation to delete the proposed amendment No. 1, Map 10.

13.02 However, in their evidence to the Tribunal, Cllrs O'Callaghan and Rabbitte stated that the submission made by Aer Rianta, and the intervention of the Minister for Transport, Energy and Communication, Mr Brian Cowen TD, had persuaded them to vote in support of the motion to have the Cloghran lands revert to their agricultural zoning. Cllr O'Callaghan told the Tribunal that he had voted in favour of industrial zoning for Cloghran in April 1993 in the belief that these lands (being adjacent to the airport) were suitable for industrial zoning, and that they had potential for job creation. However, he had taken seriously the concerns relating to airport safety that had come to prominence in the period leading to the confirmation vote, and accordingly, in October 1993 he had supported the motion to have the lands revert to agricultural zoning having first unsuccessfully supported a motion by Cllrs Buckley and Tipping that the Manager's recommendation to refer the matter to the County Planning Office at Fingal to examine and report to Fingal County Council be adopted. He had also supported the unsuccessful Cllrs Higgins'/Tipping's motion that the Manager's recommendation to delete proposed amendment No. 1, Map 10 be adopted. While Cllr Rabbitte appeared not to have voted in April 1993, he too had taken seriously the issues raised by Aer Rianta and the Minister, and had voted accordingly on 6 October 1993.

CHAPTER EIGHT – CLOGHRAN MODULE

EXHIBITS

1. Motion lodged 12 March 1993 to rezone lands at Cloghran..... 1988

2. Undated Coopers & Lybrand 'sale of lands' analysis.....1990

3. Copy of 'Pro Forma' invoice dated 5 April 1993
from Frank Dunlop & Associates Ltd to Mr John Butler
managing director of Scaform Ltd for IR£12,000.00..... 1991

4. Copy of invoice dated 29 January 1993 from
Frank Dunlop & Associates Ltd to Mr John Butler
c/o Blackfearn Ltd for IR£3,025.00..... 1992

5. Cheque and reverse or cheque dated 6 April 1993
payable to Frank Dunlop & Associates Ltd for IR£7,000.00..... 1993

6. Cheque and reverse of cheque dated 11 June 1993
payable to Frank Dunlop & Associates Ltd for IR£5,100.00..... 1995

7. Copy of invoice dated 28 June 1993 from
Frank Dunlop & Associates Ltd to Mr John Butler
managing director of Scafform Ltd for IR£5,100.00..... 1997

8. Cheque and reverse of cheque dated July 1993
payable to Frank Dunlop & Associates Ltd for IR£3,000.00..... 1998

9. Copy of invoice dated 28 June 1993 from
Frank Dunlop & Associates Ltd to Mr John Butler for IR£6,050.00..... 2000

10. Cheque dated 23 December 1993 payable to
Saatchi & Saatchi from Construct Sales Ltd for IR£4,000.00..... 2001

11. Copy invoice for IR£7,381.00 from Saatchi & Saatchi Advertising Ltd..... 2002

12. Cheque dated 30 December 1993 payable to
Saatchi & Saatchi Advertising Ltd from
Blackfearn Ltd t/a The Courtyard Restaurant for IR£5,929.00.....2003

FD.ST 1 - 180

12 (11)

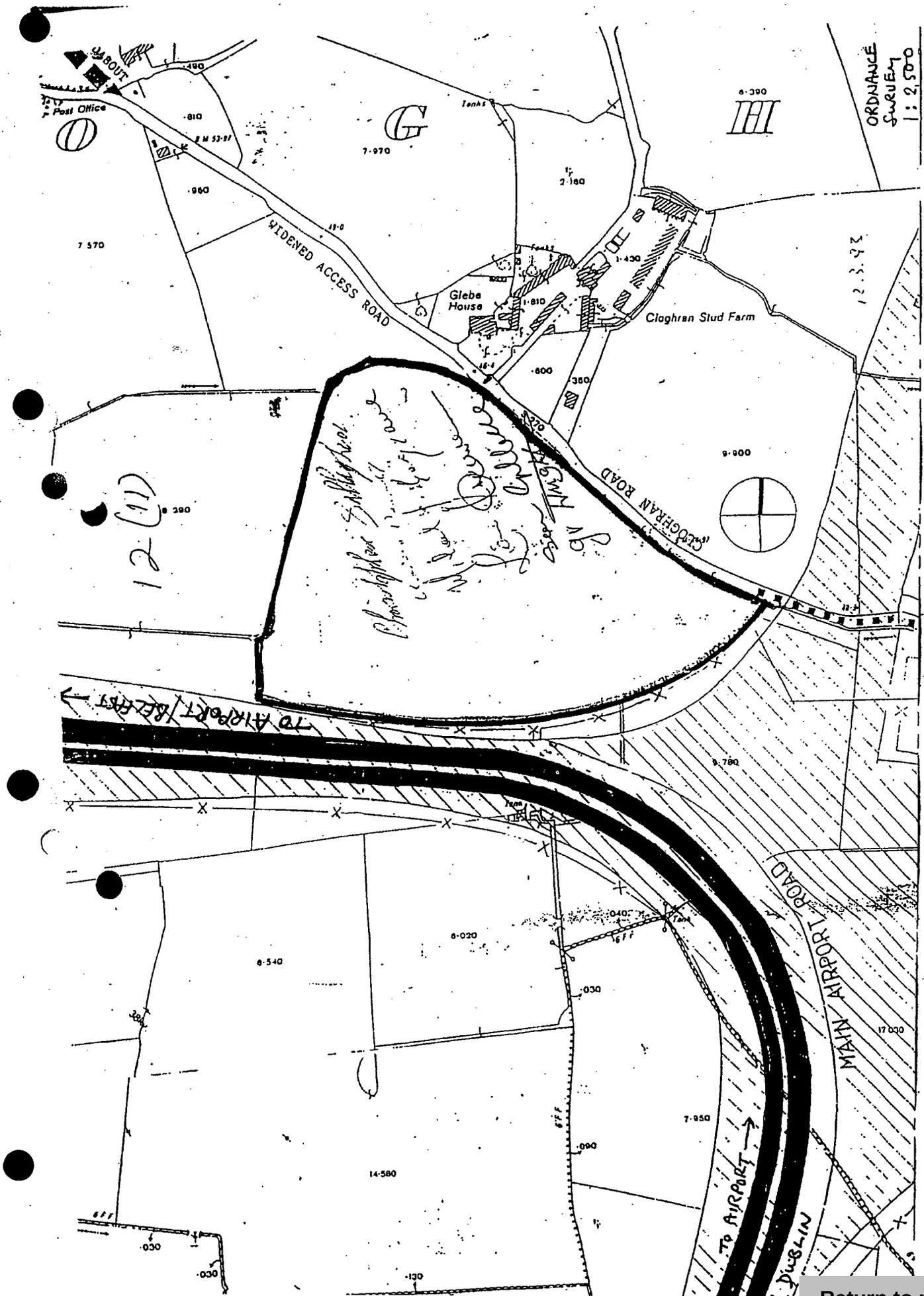
MOTION:

Dublin County Council hereby resolves that the lands at Cloghran, Co. Dublin, outlined in red on the attached map and signed for identification purposes, be zoned "E" to provide for industrial and related uses.

Signed: Christopher Fallon
Anne Devoy
Michael P. Fogarty
Liam Lawless
Sean Gilbride
Gr Wright

DUBLIN COUNTY COUNCIL
12 MAR 1993
SECRETARIAT DEPARTMENT

FD.ST 1 - 181



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Coopers &Lybrand
chartered accountants
P.O Box 1283
George's Quay
Dublin 2
Ireland
telephone (01) 704 8500
608 8700
fax (01) 704 8600
DDE 101

Butler, Kenny & Williams

Sale of Land at Cloghran

Proceeds				1,600,000
Cost of land			215,000	
AIB	Interest	39,630		
	Charges	49		
	Legal fees	302	39,981	
A.C.C.	Interest	18,197		
	Charges	7	18,204	
Stamp Duty			13,400	
Hamilton Osborne King - Auctioneers			25,842	
Dillon Associates Ltd - Auctioneers			19,360	
Dillon Associates Ltd - Consultancy			1,455	
Pilgrim Associates - Architects			19,700	
Frank Dunlop - Public Relations			23,025	
Lawton & Associates - Engineers			3,933	
Airport Promotion Brochure			770	
Rates			1,168	
Solicitors Fees	Denis Murnaghan		2,000	
	Kean Solicitors		27,500	
	Other		234	
Irish Times - Advertising			689	
Collins Consulting Services			29,613	
Signs - Cassidy Covers		1,736		
Scafform		4,372	6,108	
Projects - Architects			33,880	
Moloney & Millar - Engineers			6,050	487,912
Capital Gains				1,112,088

Return to report

Mr. John Butler.
Managing Director.
Scafform Ltd..
Kileen Road.
Dublin 10.

5th. April. 1993

PRO FORMA INVOICE NO.: 044

To agreed fees with regard to public affairs programme re. industrial project at Cloghran. Co. Dublin.	IR£10.000.00
VAT @ 21%	2.100.00
	£12.100.00

This is not a vat invoice.
A vat invoice will be issued on receipt of payment.

Return to report

Paid
29/1/93

Mr. John Butler,
c/o Blackfern Ltd.,
Courtyard Restaurant,
1 Belmont Avenue,
Donnybrook,
Dublin 4.

29th. January, 1993

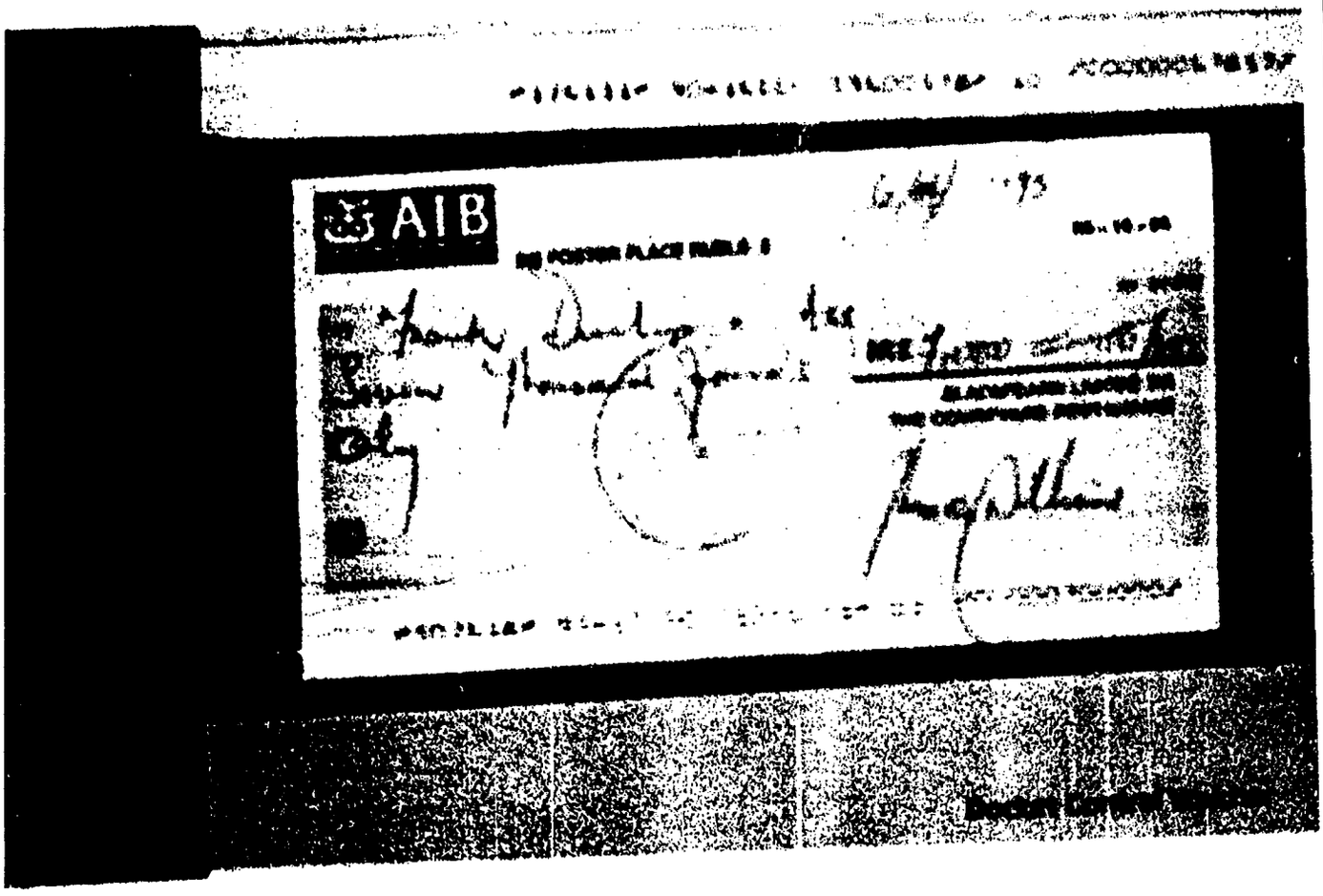
INVOICE NO.: 793

To the provision of public relations consultancy services	£2,500.00
VAT @ 21%	£525.00
	£3,025.00

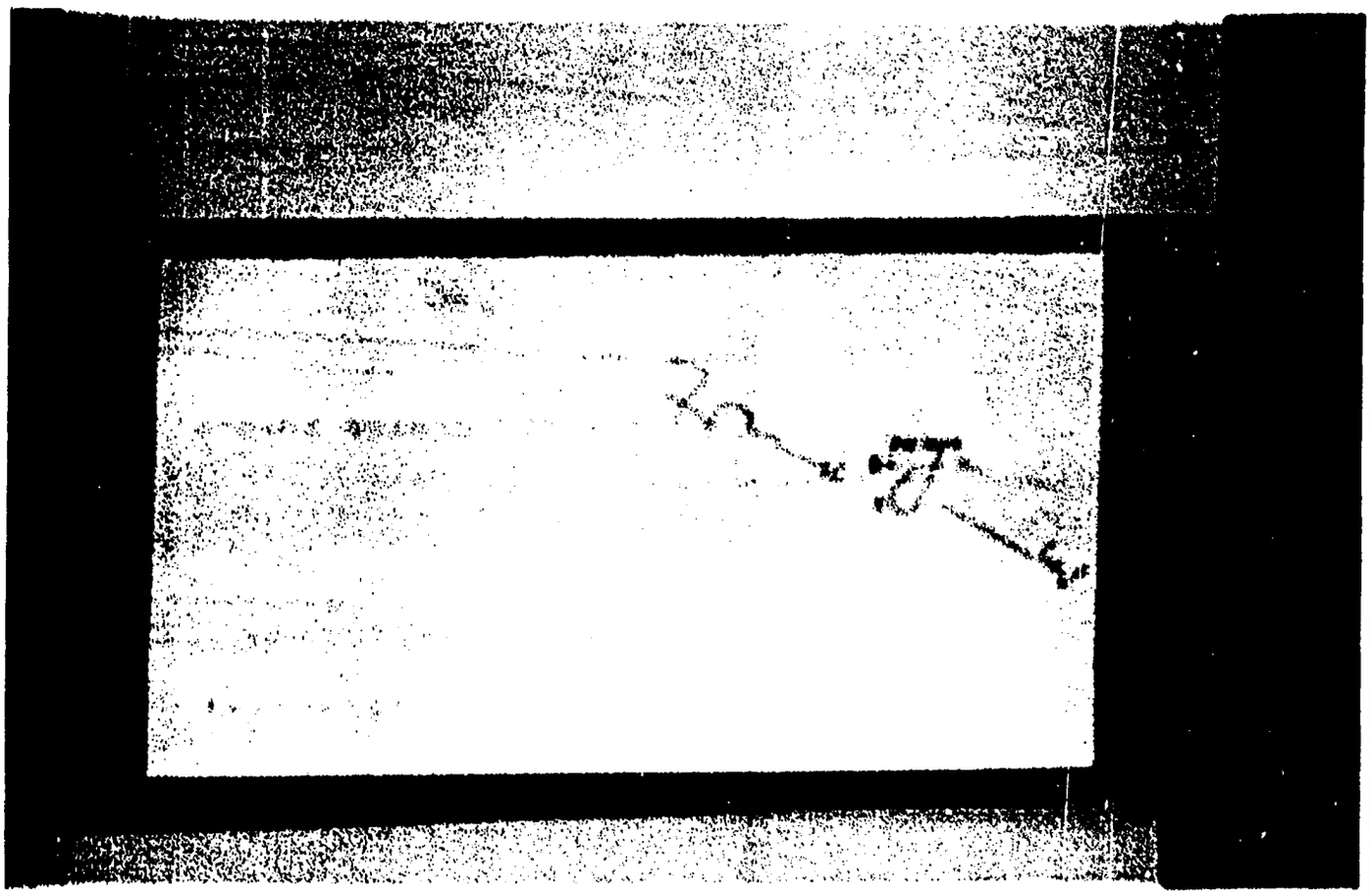
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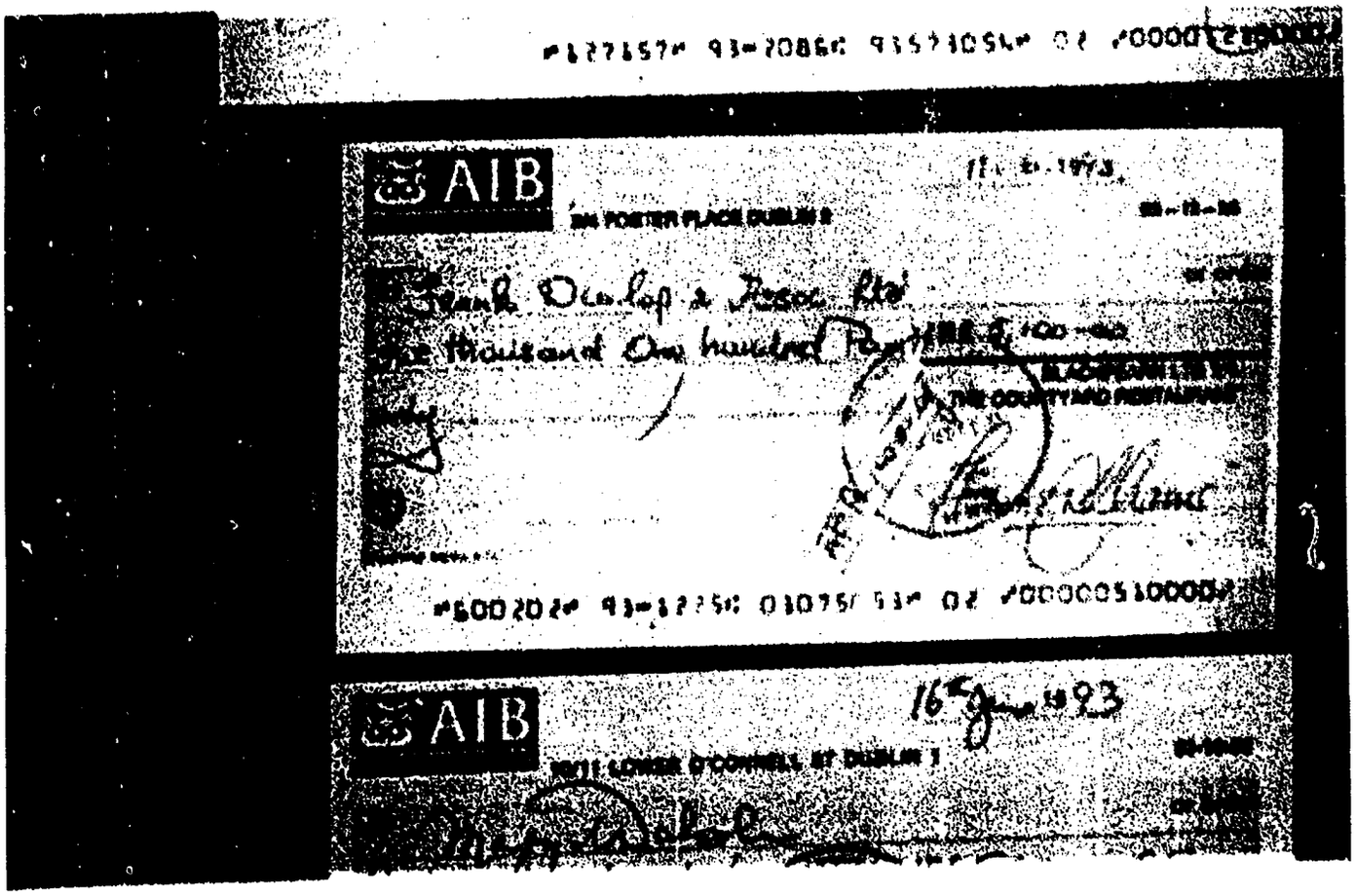
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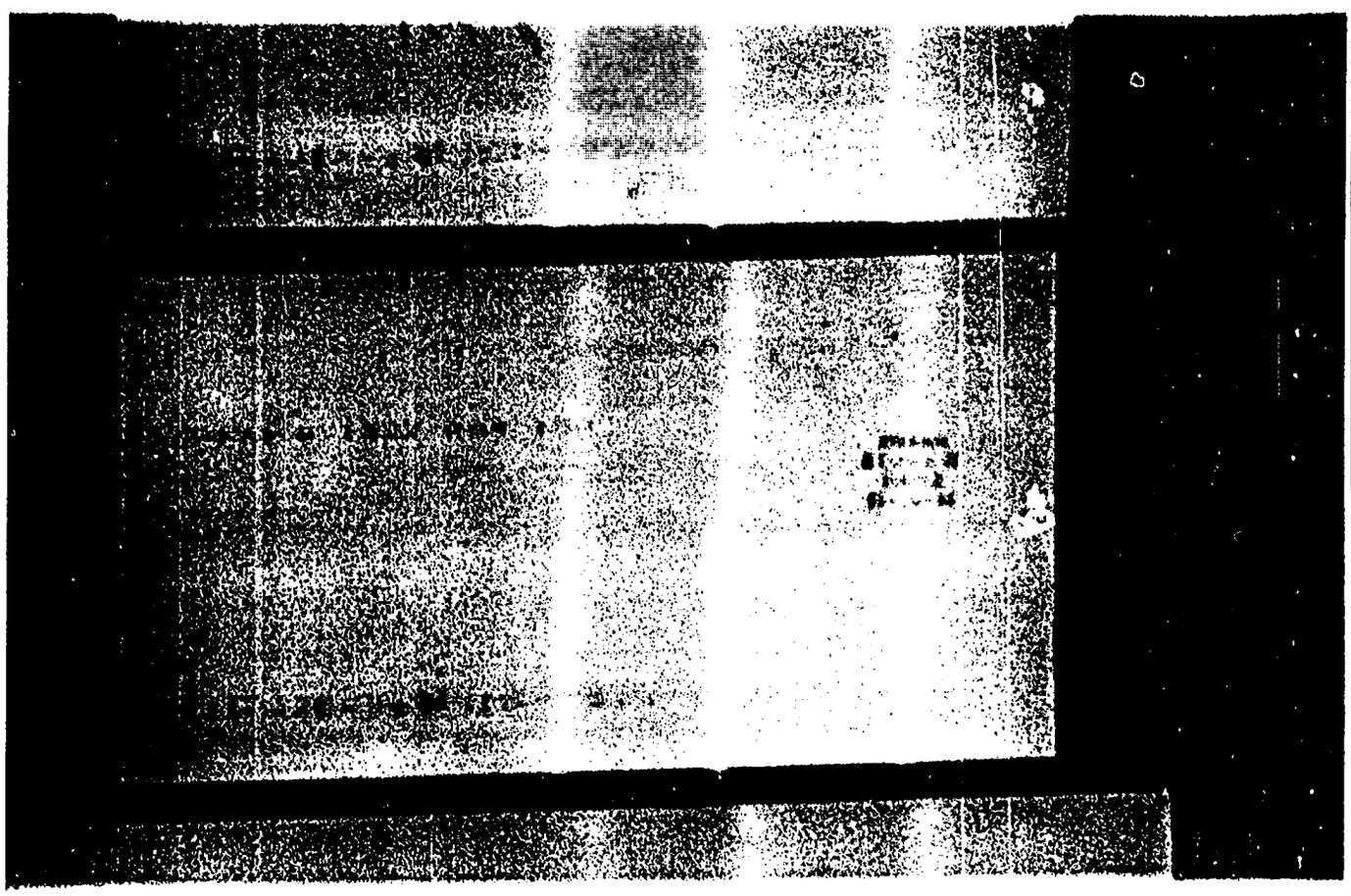


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Paid
17/6/93.

Mr. John Butler,
Managing Director,
Scafform Ltd.,
Kileen Road,
Dublin 10.

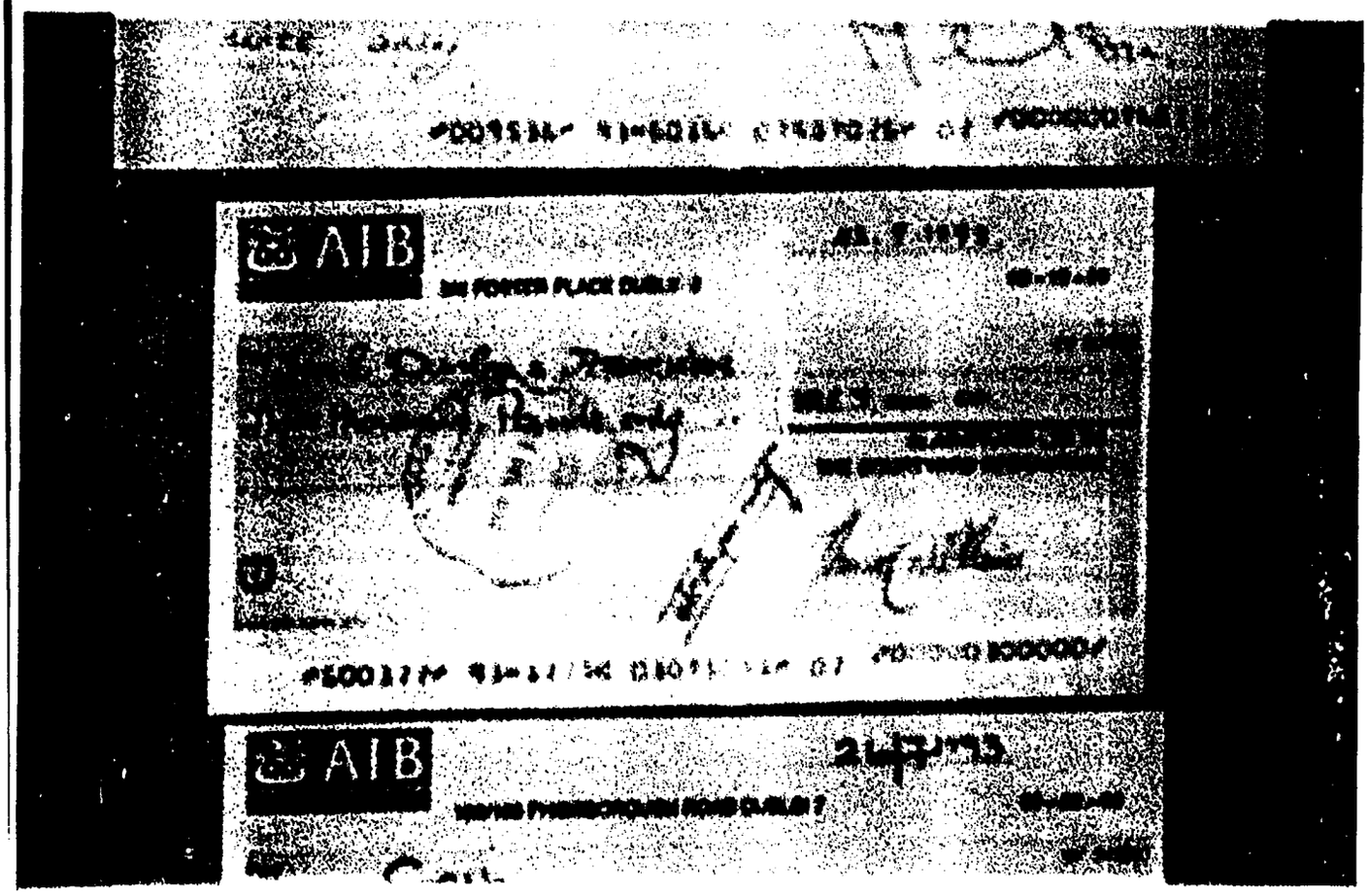
28th. June, 1993

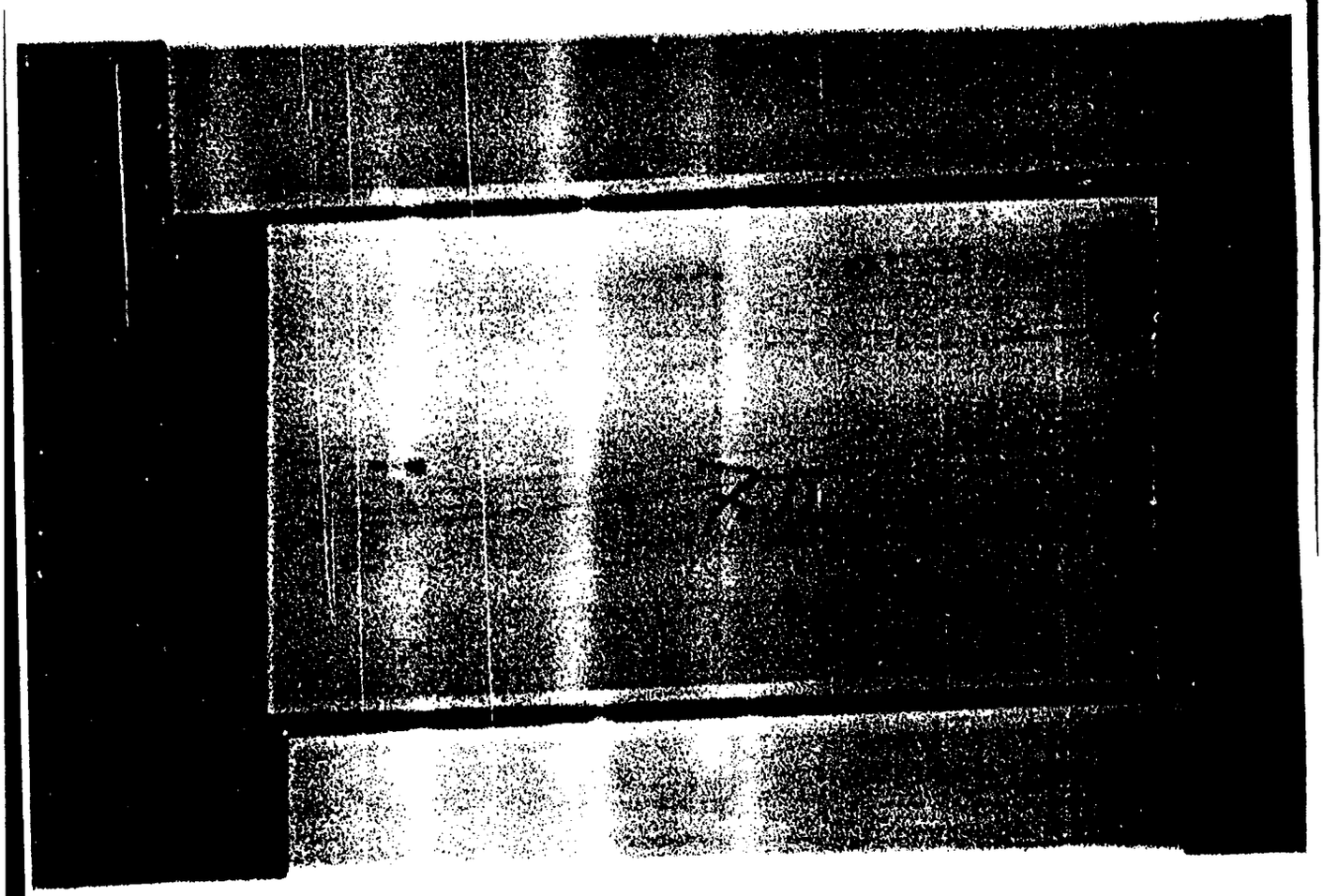
INVOICE NO.: 864

To agreed fees with regard to public affairs programme re. industrial project at Cloghran, Co. Dublin.	IR£4,214.88
VAT @ 21%	885.12
	£5,100.00

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Mr. John Butler,
Managing Director,
Scafform Ltd.,
Kileen Road,
Dublin 10.

28th. June, 1993

INVOICE NO.: 865

To agreed fees with regard to public affairs programme re. industrial project at Cloghran, Co. Dublin.	IR£5,000.00
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	£6,050.00

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PRODUCT 01 GENERAL
JOB 64227 COLOUR BROCHURES

INVOICE NUMBER 126232 PAGE 1

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NARRATIVE	AMOUNT
BROCHURES 1993	
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Tribunal Ref: CLOUGHRAN Page No: 1136
FF 20 - 74
CHAPTER EIGHT : CLOGHRAN
Report Ref : Cloghran - Exhibit 12 Page No: 2003
Page No: 1

FF 20 - 75

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CHAPTER NINE – THE BALDOYLE/PENNINE MODULE

INTRODUCTION

1.01 In this module the Tribunal inquired into the activities of a number of individuals in relation to efforts to rezone lands at Baldoyle near Sutton in north County Dublin. Mr Frank Dunlop made allegations that he bribed named councillors in return for their support for the rezoning of these lands in the course of the review of the 1983 Dublin County Development Plan, in the early 1990s.

1.02 Seventeen witnesses gave evidence in the course of the Tribunal public hearings between 28 November 2006 and 14 December 2006. In addition, evidence was read into the record in respect of deceased councillors Tom Hand, Cyril Gallagher, Jack Larkin and the late Mr Liam Lawlor.

THE PENNINE OPTION ON LANDS AT BALDOYLE

2.02 By an agreement dated 4 November 1991 and made between Endcamp Ltd ('Endcamp'), Melvin Securities Ltd ('Melvin') and Pennine Holdings Ltd ('Pennine') ('the Pennine option agreement'), Pennine, in consideration of a IR£5,000 payment it had already made, and of its future performance of certain specified tasks related to rezoning ('the tasks'), was granted an option ('the Pennine option') to purchase up to 250 acres ('the Pennine option lands') of approximately 400 acres of land at Baldoyle in north County Dublin ('the Baldoyle lands') during the period from 4 November 1991 to 25 January 1996.

2.03 The remaining 150 acres, approximately, of the Baldoyle lands ('the retained lands') were proposed to be retained for the purpose of constructing a hotel and golf course development.

2.04 The Pennine option was exercisable in stages, but initially in respect of a minimum tranche of 50 acres of the Pennine option lands. However, there could be no exercise of the Pennine option until Pennine had discharged both elements of the consideration, and in this regard the Tasks would be performed only when Pennine had used all reasonable endeavours to obtain planning permission for a hotel and golf course in respect of the Retained lands.

2.05 The Pennine option entitled Pennine to purchase the option lands at a price of IR£30,000 an acre if the option was exercised by 25 January 1995, or at a price of IR£37,500 an acre if the option was exercised after that date, but by 25 January 2006.

2.06 As one of the tasks imposed by the Pennine option agreement, Pennine had total responsibility for the application for rezoning in respect of the Baldoyle lands (including the Pennine option lands).

2.07 At the date of the Pennine option agreement the Baldoyle lands (including the Pennine option lands) were held for Mr John Byrne through a number of companies. In Recital A of the Pennine option agreement Endcamp was described as the beneficial owner and Melvin was described as the registered owner of the Baldoyle lands (including the Pennine option lands). For ease of reference and where appropriate Mr Byrne will be referred to in this Chapter as the owner of the Baldoyle lands (including the Pennine option lands).

2.08 The witnesses who gave evidence in relation to the Pennine option agreement all agreed that effectively it was to be exercised only if the Pennine option lands were rezoned for development in the course of the review of the 1983 Development Plan, which was ongoing from 1987 to December 1993.

2.09 The Tribunal sought to establish from the evidence of various witnesses, including Mr Dunlop, Mr Brendan Hickey (a property developer), Mr David Shubotham (a stockbroker in Davy Stockbrokers), Mr Anthony Collins, solicitor and Mr John Gore-Grimes, solicitor, and from relevant contemporaneous documentation, the identity of the individuals and/or entities who stood to benefit from the exercise of the Pennine option, and also the respective roles played by Mr Dunlop, Mr Hickey, Mr Shubotham, Mr Liam Lawlor and Mr Byrne in the attempted rezoning of the Baldoyle lands during the period from January 1991 to December 1993. Davy Hickey Properties Ltd ('Davy Hickey Properties') was the corporate vehicle used by Mr Hickey and Mr Shubotham (and others) to invest in and develop property.

THE GENESIS OF THE PLAN TO ACQUIRE THE PENNINE OPTION

2.10 While there was some agreement among Mr Dunlop, Mr Hickey and Mr Shubotham that the genesis of the idea to acquire an option over part of the Baldoyle lands could be traced to January 1991, these witnesses provided substantially conflicting accounts of their respective roles in the acquisition of the Pennine option.

2.11 In his statement to the Tribunal dated October 2000, Mr Dunlop stated as follows:

> *Davy Hickey Properties agreed to become involved in the Baldoyle racecourse lands. However, they were only prepared to do so if the land was rezoned. Accordingly I formed Pennine Holdings Limited. Pennine Holdings Limited bought an option on the Baldoyle racecourse lands from*

John Byrne in late 1990, early 1991. Davy Hickey Properties paid for the option and underwrote the expenses involved in preparing the professional submission to Dublin County Council.

2.12 In his statement to the Tribunal dated November 2006, Mr Dunlop stated as follows:

On an unspecified date either in late 1990 or early 1991, probably the former, the late Mr Liam Lawlor proposed that Davy Hickey properties and I become involved with lands at Baldoyle, formally the Baldoyle Racecourse, then in the ownership of Endcamp Ltd (Endcamp) with a view to their being rezoned for either residential or commercial use or both during the course of the Dublin County Development Plan. I believe that Mr Lawlor made this proposal following the successful material contravention of the then County Plan regarding lands at Newlands/Saggart by Davy Hickey Properties Limited, ('DHPL') for which I was an adviser. I believe that Brendan Hickey about this time also proposed that I become involved in the proposed rezoning.

At a meeting held in Davy Stockbrokers' office at Dawson Street, Dublin, Mr Lawlor outlined the potential for these lands which were given the working title: 'Eastview.' This was done to avoid the negative perception in existence regarding these lands arising from previous unsuccessful planning applications by Endcamp. To my recollection, Mr David Shubotham, Mr Brendan Hickey and I were present with Mr Lawlor at this meeting. A combination of this personnel attended a number of meetings subsequently with regard to the proposals for these lands.

I do not believe that, other than a general expression of interest by DHPL, that any commitments were given at this first meeting. At a later date DHPL agreed to become involved but on the condition that they would do so after the lands had been successfully rezoned. They were not prepared to become involved in the process of lobbying – either of officials or elected representatives on the Council – necessary to effect a successful outcome. They were prepared to carry out feasibility studies regarding the potential for the lands, to pay for an option on the lands from Endcamp, were it willing to grant such an option, and to defray costs relating to professional fees, publicity material and any other miscellaneous costs arising.

It was agreed that a company be formed which would enter into any option agreement and which would be the vehicle for all necessary transactions relating to the lands following the purchase of the said option.

I cannot accurately recall the sourcing of the company Pennine Holdings Limited. I believe it was a shelf company provided either by Eugene F. Collins, Solicitors, or another unnamed party. I recall only one meeting in relation to the provision of signatures on the required Companies Office documentation and I believe that this meeting took place at the offices of Eugene F. Collins, Solicitors, Fitzwilliam Square, Dublin. A work colleague – at my request – and I became directors of the company and Pennine Holdings Limited became the identified vehicle for all actions, and publicity regarding the Baldoyle/Eastview lands. I do not know precisely of the beneficial ownership of Pennine Holdings in the period from its incorporation in early 1991 to December 1993.

I do not recall whether Mr Lawlor approached Mr John Byrne of Endcamp regarding an option or whether he introduced Mr Brendan Hickey to Mr Byrne. In either event, Mr Brendan Hickey solely conducted and concluded negotiations with Mr John Byrne and paid the requisite consideration. I was not aware at the time of any of the financial arrangements associated with the option and only became aware of these arrangements subsequent to DHPL's withdrawal of interest after the proposed rezoning failed at Dublin County Council. Notwithstanding this, Pennine Holdings Limited held the option. I do not recall attending any meetings regarding the option, signing any documentation in its regard and/or paying any monies for the said option.

I do not believe that any formal arrangement was entered into by any of the parties, namely DHPL, Mr Lawlor or myself as to how the individual parties were to benefit in the event of the lands being rezoned. There was no arrangement agreed between Mr Lawlor and me. Nor was there any such arrangement concluded between DHPL and me. The only arrangement between DHPL and me was verbal and related to the discharge of expenses incurred by me in my endeavours to effect the rezoning. I am not aware now, and I was not aware at the time of the rezoning proposal of any arrangement as to the interests held or to be held by the parties if the lands were successfully rezoned. Ultimately, when the rezoning bid was unsuccessful, the option was sold on to Ballymore Homes in 1994 at which time I received payment in respect thereof.

2.13 Statements provided to the Tribunal by Mr Liam Lawlor and by Mr Byrne did not materially contradict the account of the initial meeting contained in Mr Dunlop's November 2006 statement, save that Mr Byrne claimed to have been in attendance together with Mr Dunlop, Mr Lawlor, Mr Hickey and Mr Shubotham and Mr Anthony Gore-Grimes (of the firm Gore & Grimes, Mr Byrne's solicitors) at

a meeting in Davy's offices. Mr Byrne believed that the initial approach to him had come from Mr Hickey. In his statement to the Tribunal dated 29 September 2006 Mr Byrne stated:

> *I recall that in 1991 or possibly in 1990 an approach was made to me by Brendan Hickey of Davy Hickey Properties who were interested in acquiring an option over part of the Baldoyle lands. This company was a joint venture between Brendan Hickey and Davy Stockbrokers.*
>
> *I believe that I attended at a meeting sometime in 1991 at the offices of Davy Stockbrokers in Dawson Street which was attended by Liam Lawlor and Brendan Hickey, David Shubotham of Davy Stockbrokers, Frank Dunlop and Anthony Gore Grimes at which discussions took place in relation to my Company granting an option to Davy Hickey Properties in respect of approximately 250 acres of the Baldoyle lands. It was intended that the purchasers would attempt to have the zoning of the lands changed to residential/leisure/business park use and that approximately 158 acres being part of the lands would be used for the construction of a hotel and golf course.*

2.14 Mr Byrne's position was that having someone of the financial standing and reputation of Davy Stockbrokers as backer of the project made it attractive to him to effectively tie up his lands in a five year purchase option.

2.15 In a statement provided to the Tribunal in April 2002, Mr Lawlor stated that he *'recommended Mr Dunlop to Davy Hickey Properties'* in relation to Citywest, and also that he *'arranged a lunch/meeting at Davy Stockbrokers'* which he attended with Mr Shubotham, Mr Hickey, Mr Dunlop and Mr Byrne. Mr Lawlor further stated: *'Arising from that lunch the parties entered into some form of business relationship of which I was not a party to.'*

2.16 Mr Dunlop told the Tribunal that he did not recall Mr Byrne's presence at a meeting in Davy Stockbrokers, but acknowledged that he did meet Mr Byrne on a number of occasions, including in Mr Dunlop's office and at Mr Byrne's home, and once, in the office of Gore & Grimes, Mr Byrne's solicitors.

2.17 Mr Hickey, in evidence, disputed that it was Mr Lawlor who introduced either himself or Davy Hickey Properties to the Pennine project. He also disputed that Mr Lawlor asked him to meet Mr Byrne. He maintained that it was Mr Dunlop who approached him about the matter and who set up a meeting for him with Mr Byrne. Mr Hickey acknowledged that it was he who led the negotiations with Mr Byrne for the acquisition of the Pennine option, but claimed that he took over the negotiations from Mr Dunlop because of Mr Dunlop's lack of technical expertise. Mr Hickey could not recall a meeting in Davy Stockbrokers that was attended by both Mr Byrne and Mr Lawlor.

2.18 Mr Shubotham told the Tribunal that he could not recollect the circumstances of his initial contact '*in relation to the Pennine options.*' He strongly doubted that it was Mr Lawlor who initiated his and Mr Hickey's contact with Mr Byrne, and he agreed with Mr Hickey that the initial approach came through Mr Dunlop. Mr Shubotham recalled a meeting which he believed Mr Dunlop had set up in order to introduce Mr Byrne. He said that this meeting was attended by a number of other individuals, whose identities he claimed he could not recall.

2.19 Mr Shubotham also acknowledged having made the IR£5,000 Pennine option consideration payment on 28 January 1991 from his own personal resources. He told the Tribunal that he envisaged that his role would have been to secure the investors required in the event that the project came to fruition.

2.20 The Tribunal was satisfied, having regard, in particular, to the sequence of events that commenced in January 1991 and continued until May/June 1993, that on a date or dates in January/February 1991 Mr Dunlop, Mr Hickey, Mr Shubotham, Mr Lawlor and Mr Byrne made contact and met with a view to entering an arrangement whereby Mr Byrne, through his companies, would grant an option in relation to 250 acres of his lands at Baldoyle. The Tribunal was further satisfied that Mr Lawlor was the individual who brought Mr Byrne, Mr Dunlop Mr Hickey and Mr Shubotham together and that Mr Lawlor was the originator of the Pennine option/rezoning concept.

SECURING THE PENNINE OPTION

2.21 According to a memorandum dated 11 February 1991 from Mr Anthony Gore-Grimes, solicitor, addressed to his colleague, Mr John Gore-Grimes, solicitor (also of Gore & Grimes), Heads of agreement in relation to the Pennine option (which were not seen by the Tribunal) had by then been prepared, and Gore & Grimes were then preparing to forward details of the title to the Baldoyle lands to Eugene F. Collins, Solicitors.

2.22 By early February 1991 Eugene F. Collins had begun the process of registering a company - Pennine Holdings Ltd - in the Companies Office. Mr Anthony Collins (senior partner in Eugene F. Collins), accepted in evidence that by this time the IR£5,000 payment, forming part of the consideration for the Pennine option, had been paid to Mr Byrne/Endcamp/Melvin. This had been paid on 28 January 1991 from the personal account of Mr Shubotham, but as of 18August 1993 was attributed in the accounts of Davy Hickey Properties as a payment made by that firm.

2.23 There appeared to have been some coincidence in time between the funding by Mr Shubotham of the IR£5,000 Pennine option consideration payment, the retention of Eugene F. Collins by Mr Hickey and Mr Shubotham, the intended provision of title documents in relation to the Baldoyle lands by Gore & Grimes to Eugene F. Collins and the process begun by Eugene F. Collins to have Pennine incorporated. Mr Collins told the Tribunal that he was instructed by both Mr Shubotham and Mr Hickey. Mr Collins explained that while virtually all of his old files were gone, he thought that his instructions involved the formation of a company, as well as a partnership agreement and subsequently an option agreement. While Mr Collins told the Tribunal that he did not know whether he had full instructions in relation to the Pennine option agreement as of February 1991, the Tribunal was satisfied that by early February 1991, Mr Collins was in receipt of sufficient information from Mr Hickey and Mr Shubotham to begin the work of incorporating Pennine, the entity which was to and duly became the party to the formal Pennine option agreement executed on 4 November 1991.

2.24 Pennine was incorporated on 15 April 1991. Two employees of Eugene F. Collins, Ms Leonora Malone and Mr Sean McCormick, were named as Directors and each was registered as the holder of one share.

2.25 In the course of his evidence Mr Collins stated:

> *'...the company was getting the option and we effectively held the company to the order of David Shubotham, Brendan Hickey. There was a partnership agreement which sometime in the future some people might be partners of. But I'm not sure how much I knew at the beginning really...'*

2.26 Mr Collins described Mr Hickey and Mr Shubotham as the individuals who gave him instructions in the matter and on whose instructions he acted. Mr Collins stated that he did not consider Davy Hickey Properties to be his client in this matter, and that he considered his clients to be Mr Hickey and Mr Shubotham personally.

2.27 Mr Hickey denied that he had any interest in Pennine or in the Pennine option. The thrust of his evidence was that his (and Davy Hickey Properties) and Mr Shubotham's interaction with Mr Dunlop in relation to the Baldoyle lands was conducted only on the basis of a prospective involvement on the part of Mr Hickey and Mr Shubotham, in the event that the Baldoyle lands were rezoned. Mr Hickey maintained that Mr Dunlop '*came to us with the prospect of getting an option on the lands',* and that he was merely rendering assistance to Mr Dunlop

in the early stages of the project arising from Mr Dunlop's association with and his involvement in Citywest.[1]

2.28 In relation to the role envisaged for Mr Dunlop, Mr Hickey stated the following:

> *'Well we had found Mr Dunlop to be a very competent, a very professional, a very diligent, very powerful, well connected individual. Somebody who we intimately trusted in City West and had been extremely important in that team. And if we had got involved and if we had have wanted to get involved and then got involved in Baldoyle, we would have seen him as an integral part of that team also. On what terms, they weren't discussed, as far as I'm aware.'*

2.29 Mr Hickey considered that his connection with Baldoyle in the period January 1991 to July 1993 did not amount to an involvement. He said:

> *'I think to try and summarise what our position was in relation to Baldoyle was. I suppose I was initially sceptical. And I was never convinced. And we never committed. We, at a number of stages, got very close to by looking very hard at it over a long period of time. Principally because if Frank Dunlop wanted to persist with [it] and he was a very valued member of our team with City West and we stayed with it. But I was never convinced. And because of that I never committed to the project. I never committed at the option stage. And we never went through when, at a later stage, at a partnership stage.'*

2.30 As to who Mr Collins was representing, Mr Hickey stated:

> '*I would have always, again, I would not have focused on who the company was going to take the vehicle. Depending if the vehicle was something we wanted to get involved in. So the corporate structure, whether it was a company shelf company or otherwise, so I doubt if I had any discussions with him what the company was or whether it was Exco or Pennine. But at all times it was Frank Dunlop's option and I always took it that I was acting on his behalf. And I can understand Anthony Collins had previously dealings with him and so did David Shubotham. And because of the, I suppose, the extent of the dealings with him that he* [Mr Collins] *presumed that we were the clients.'*

[1] Citywest is a successful retail/business park on the N7, near Rathcoole in County Dublin in which Mr Hickey and Mr Shubotham (with others) were investors, and in which Mr Dunlop became an equity shareholder following a successful material contravention motion in Dublin County Council in March 1991 which was preceded by extensive lobbying of councillors by Mr Dunlop.

2.31 Mr Shubotham told the Tribunal that Mr Byrne was wrong in his belief as expressed in his statement to the Tribunal dated 29 September 2006, that the entity seeking an option over part of the Baldoyle lands was a joint venture between Mr Hickey and Davy Stockbrokers. To the suggestion that the logic of Mr Byrne's willingness to tie up his lands on such a five year option could be explained by what Mr John Gore-Grimes had described as the attraction of having an entity with the financial standing and reputation of Davy Stockbrokers as the backers, he said:

> '*I might be able to explain the logic a bit further. I don't know again this to be true but I'll suggest to you that that I think it might have happened. That when Frank Dunlop came to me first. This was over the 5,000 whatever. I think that Frank might have said could I get a cheque for 5,000 from Davy Stockbrokers. I've a feeling he said. It's just my recollection was that it was important to him to show John Byrne something of importance or standing and I said you couldn't do that. You know, in other words, I think he was looking to have somebody who was credible as opposed to Frank if you like. I'm not saying Frank wasn't credible but something of some substance so that would support what he thought. Of course that isn't a joint venture.*'

2.32 The first recorded communication between Mr Hickey and Mr Collins, available to the Tribunal in connection with this matter, was a letter sent by Eugene F. Collins to Mr Hickey on 22 August 1991 with the heading '*Pennine Holdings Limited*' which read, *inter alia*, as follows:

> *Dear Brendan,*
>
> *I refer to the above company which is presently under the control of two solicitors in this office. The Directors and Secretary are acting as such on your instructions, and the shares are being held in trust for you and your nominee.*
>
> *I am enclosing herewith a first draft of Minutes of the First Meeting of Directors of the Company, at which meeting the control of the Company can be transferred to yourself and your nominees. […]*
>
> *I note that yourself and David Shubotham are both willing to act as Directors of the Company. In that regard, I am enclosing herewith Form B10 which must be signed and completed by both yourself and Mr Shubotham, where indicated. […]*
>
> *As previously mentioned, the authorised share capital of the Company is IR£10,000.00. However, only two shares of IR£1 each had been issued. Please indicate whether you would like us to allot more shares in this Company. […]*

I have had brief discussions with both you and David Shubotham about a Shareholders agreement. I feel this should now be dealt with in the reasonably near future.

2.33 This letter was copied to Mr Dunlop, apparently by Mr Hickey.

2.34 Mr Collins told the Tribunal that as of 22 August 1991 he considered Mr Hickey and Mr Shubotham to be the beneficial owners of Pennine. He stated that he could not recall whether he knew in 1991 (but he did not believe that he did), who the proposed shareholders were, but stated that in the light of his letter dated 22 August 1991 he believed that it had been indicated to him that there was going to be a number of shareholders in Pennine. Furthermore, there was no doubt in his mind at that point in time but that Pennine was being directed by Mr Hickey and Mr Shubotham.

2.35 Mr Collins said that he had no recollection of Mr Hickey reverting to him, following receipt of the letter dated 22 August 1991, to advise him that at all relevant times Pennine was Mr Dunlop's company (as Mr Hickey himself maintained). Mr Hickey stated that in August 1991 he discovered that Mr Collins had got it wrong, as regards his belief that Mr Hickey was his client. Mr Hickey believed that he remedied that situation so that it became clear to Mr Collins that his client was Mr Dunlop and Pennine. The Tribunal was satisfied that if Mr Hickey had done so then such an important detail would have been clearly noted by Mr Collins and that the involvement of his firm in relation to Pennine would have reflected Mr Hickey's avowed disinterest in Pennine. That did not happen.

2.36 Four days later, on 26 August 1991, Eugene F. Collins again wrote to Mr Hickey under the heading '*Endcamp Limited/Pennine Holdings Limited'* enclosing for his attention, *inter alia*, *'two further engrossments of the option agreement and the Company Seal for Pennine Holdings Limited'* and calling on Mr Hickey to arrange '*to have all three engrossments of the option agreement sealed by the Company in accordance with his Articles of Association and return. The Company's sealing should be witnessed by an independent witness who should state his address and occupation.'*

2.37 In the final paragraph of that letter Mr Hickey was advised that: '*there are still some conveyancing points relating to the lands to be sorted out and these will not be dealt with until John Gore-Grimes returns to his office at the end of September next. I would propose returning the executed documentation to Gore & Grimes subject to our right to raise whatever additional queries we deem necessary to resolve the outstanding requisitions relating to the title on John Gore-Grimes' return.'*

2.38 Pennine held its first Directors Meeting on 2 September 1991. The minutes recorded those present as Ms Leonora Malone, Mr Simon McCormick, Mr Dunlop and Mr Kieran O'Byrne (an employee of Frank Dunlop & Associates). The minutes also recorded that Ms Malone and Mr McCormick resigned as Directors and were replaced by Mr Dunlop and Mr O' Byrne, with Mr O'Byrne also assuming the office of Secretary to the company. Eugene F. Collins were appointed solicitors. It was decided that the one share each held by Ms Malone and Mr McCormick be transferred to Mr Dunlop and Mr O'Byrne respectively. Mr O'Byrne's registration as a Director and shareholder was at Mr Dunlop's behest, and it was never at any stage envisaged or intended that he was acting other than in an nominee capacity[2].

When asked if Mr Dunlop and Mr O'Byrne, in becoming the directors and shareholders of Pennine on 2 September 1991, did so as nominees of himself and Mr Shubotham's interest, Mr Hickey responded: '*Absolutely not*.'

2.39 On 13 September 1991 at a meeting of the Directors of Pennine, chaired by Mr Dunlop, Pennine approved the Pennine option agreement.

2.40 On 2 October 1991 Eugene F. Collins wrote to Mr Dunlop as follows:

> *I confirm that the relevant Minutes, Resolutions and associated documentation have been finalised and that the above company has now been transferred to the control of yourself and Mr O'Byrne.*
>
> *As requested by Brendan Hickey I am enclosing the following documentation in relation to the company which I understand will be kept by Mr O'Byrne as Secretary of the company […]*

2.41 Mr Dunlop's contact with Eugene F. Collins over a two and half year period was fleeting, and amounted to one or two meetings at the most. Mr Dunlop however seemed to have been aware of the ongoing professional relationship between Eugene F. Collins and Mr Hickey, concerning the Baldoyle lands.

2.42 While Mr Collins denied in evidence that in October 1991 he considered Mr Dunlop and Mr O'Byrne to be Mr Hickey's nominees, he acknowledged that he continued to regard Mr Hickey as his client in early October 1991, as evidenced by the contents of the letter dated 2 October 1991 from Mr Collins'

[2] This is evidenced by Mr O'Byrne's actions on 28 April 1993, in the wake of the Baldoyle rezoning controversy (see below), when he resigned as a Director and Secretary of the company. He was succeeded in those roles by Malachy McKenna, another employee of Frank Dunlop and Associates, whose status, like that of Mr O'Byrne, was as a nominee Director and Shareholder.On the 28 April 1993 Eugene F. Collins wrote to Mr Dunlop, following Mr O'Byrne's resignation and made reference to having sent a copy of the letter and its enclosures to Mr Hickey.

office to Mr Dunlop (and as evidenced by later correspondence with Mr Hickey concerning Pennine in 1993, following the resignation of Mr O'Byrne).

2.43 While the letter dated 22 August 1991 from Mr Collins to Mr Hickey, under the heading *'Pennine Holdings Limited'*, had referred to his having had brief discussions with Mr Hickey and Mr Shubotham about a shareholders agreement, there was no evidence before the Tribunal of such an agreement having been concluded, or of having been considered in draft form.

2.44 However, the Tribunal was satisfied from what is set out below that in the period December 1991 to March 1993 Eugene F. Collins were engaged, on the instructions of Mr Hickey and Mr Shubotham, in drafting a partnership agreement relating to the Pennine option lands and the possible benefits therefrom, in the event that the lands were rezoned and the Pennine option exercised. It appeared to the Tribunal to be entirely logical that Mr Collins would have been instructed to do this given that all concerned were probably aware at the time that a shareholder's agreement would not, in all probability, be an effective instrument to hold the beneficial interest in the company, because of Mr O'Byrne's (at least) pure nominee status. The Tribunal was satisfied that the execution of the Pennine option agreement on 4 November 1991 was a trigger point for the discussions which commenced in or about December 1991 concerning a partnership agreement, and that the subject of such an agreement exercised the minds of Mr Hickey and Mr Shubotham and their legal advisors over a period of sixteen months.

2.45 Documentation provided to the Tribunal disclosed that on 25 November 1992 under the title '*Client: Davy Hickey Re: Partnership agreement*', Eugene F. Collins invoiced J & E Davy in the sum of IR£1,875 together with VAT and outlay of IR£430.05 (total IR£2,305.05) for services as follows:

> *To professional fees to cover all work done in relation to the Partnership agreement between 17 December 1991 and 24 November 1992, including considering draft of similar Partnership agreement, discussing same with you and redrafting the agreement, subsequently discussing same and providing further draft together with commentary.*
>
> *Professional fees to cover all the above work and to include attendances, correspondence and other matters not specifically detailed [...]*

2.46 Having first issued a reminder to J & E Davy on 3 February 1993 in respect of this invoice dated 25 November 1992, Eugene F. Collins, on 26 March 1993, saw fit to issue a replacement invoice for it, this time addressed to Pennine and citing Pennine as its client. Mr Collins was unable to explain why this was done.

2.47 On 14 June 1993 Eugene F. Collins invoiced Davy Hickey Properties under the title *'Client: PENNINE HOLDINGS LTD'* in the sum of IR£825.00 together with VAT and outlay of IR£188.37 (total IR£1,013.37) for services as follows:

> *To professional fees to cover all work done in relation to the Partnership agreement and other ancillary matters between 25 November 1992 and 31 March 1993 including considering a memo of some time before, discussing same with Brendan Hickey, redrafting the document and advising generally in relation to it.*
>
> *Professional fees to cover the above and to cover other miscellaneous information and advices during the above period [...]*

2.48 Mr Collins accepted that the proposed partnership agreement discussed with Mr Hickey and Mr Shubotham over the period referred to in this invoice was in all probability a document providing for the beneficial ownerships of the parties intended to have an interest in the Pennine option lands in the event of the Pennine option being exercised under the Pennine option agreement. However, Mr Collins said that he could not assist the Tribunal as to the identities of the intended parties to the proposed partnership agreement, and in particular as to whether, in the period from December 1991 to March 1993, Mr Hickey, Mr Shubotham, Mr Dunlop, Mr Lawlor and/or Mr Byrne were among the intended parties to such an agreement.

2.49 Mr Hickey acknowledged that Mr Collins had initially been under the impression that he was acting for Mr Hickey, but Mr Hickey's understanding was that it had then been clarified to Mr Collins that his client was Mr Dunlop/Pennine.

2.50 Mr Hickey told the Tribunal that in August 1991, having, as he believed, corrected Mr Collins as to the identity of his client, they were still considering becoming involved if satisfied that the Baldoyle lands (including the Pennine option lands) could be rezoned, and if he thought that the land could be serviced and therefore granted planning permission. To that extent, there were some discussions about the vehicle to use for such an involvement. He considered that some sort of a partnership agreement would be appropriate if they became involved. There was some further discussion with Mr Collins whom he said was engaged to look at a partnership agreement *'if they would get involved.'*

2.51 It was proposed that their Citywest partnership agreement would be used as a template for Pennine. The Tribunal was advised that the composition of the partnership would be definitely decided only if and when the project became *'viable*.'

2.52 Mr Hickey further testified that by September/October 1992 he and Mr Shubotham had definitely decided not to get involved with Pennine. He explained that by that time it was his belief that even if rezoning of the land took place, planning permission was unlikely because of lack of services and attempts to secure bank funding had proved unsuccessful.

2.53 Notwithstanding this position, the Eugene F. Collins invoice dated 14 June 1993 for services provided to Pennine in the period 25 November 1992 to 31 March 1993 and addressed to 'PENNINE HOLDINGS LTD', was paid by Davy Hickey Properties. Mr Collins was unable to explain why this had transpired, although he believed that he had an involvement with Mr Hickey until certainly 31 March 1993.

MR DUNLOP'S EVIDENCE IN RELATION TO THE PENNINE OPTION

2.54 Mr Dunlop said in evidence that no formal arrangement was entered into between himself and Mr Hickey and Mr Shubotham and/or Davy Hickey Properties in relation to the extent of the benefit he would ultimately receive from the Pennine option lands, in the event of the Baldoyle lands being rezoned and the Pennine option exercised. He claimed that a percentage figure for him had not been discussed. In this regard, he said:

> *'No such document to my knowledge exists. Yes, there are various – there have been various allusions to shareholding and all the rest of it and what was owned and what was not owned. The fact of the matter is that there was no such arrangement to my knowledge with Davy Hickey Properties.'*

Specifically in relation to the involvement of Davy Hickey Properties, Mr Dunlop said that he understood that (a), they would only become involved if the lands were rezoned (b), they would pay the IR£5,000 Pennine option consideration payment and (c), they would meet miscellaneous expenses, and would pay him IR£10,000 in this regard (which they did).

2.55 Mr Dunlop said he neither negotiated nor received a fee for the work carried out by him in relation to attempts to rezone the Baldoyle lands. Mr Dunlop maintained that Pennine was established to promote the rezoning of the Baldoyle lands, and that he saw himself effectively as the person doing the promoting, in a public relations sense.

Mr Dunlop also claimed to have no knowledge of any arrangement which might have been entered into by others, including Mr Hickey, Mr Shubotham and Mr Lawlor. Mr Dunlop professed no knowledge of the draft partnership agreement which was the subject of ongoing discussion between Mr Collins and Mr Hickey

over a period of two and a half years. Mr Dunlop's stated that his awareness of the possibility of the execution of some sort of partnership agreement between various parties associated with Davy Hickey Properties only arose after reading an Irish Independent article of 27 April 1993 on the issue.

2.56 Mr Dunlop was questioned by the Tribunal as to the reality of the ownership structure of Pennine in circumstances where his evidence suggested uncertainty as to his and Mr Hickey's and Mr Shubotham's beneficial interest in Pennine.

2.57 Mr Dunlop was asked:

'But is that not extraordinary commercial terms that the parties should proceed forward in an a venture such as this, over two and a half years or so, having the benefit of accountancy advice and certainly the benefit of a solicitor setting up a corporate entity to be the nominal advancer of this project and yet not go the other step, the basic step, one would have thought of agreeing matters in advance?'

Mr Dunlop replied:

'Well I'm saying no. And without being naughty, I have no evidence or knowledge of any other arrangement between any of the other parties to the exclusion of me.'

2.58 Mr Dunlop also maintained in evidence that:

'*there was no arrangement between either Mr Shubotham, Mr Hickey, I am discounting any other parties because I cannot speak for any other party, [including] Mr Byrne and Mr Lawlor. There was no arrangement between Mr Lawlor and Mr Hickey and Mr Shubotham and myself in relation to the beneficial ownership of these lands. I certainly had a piece of paper or was the nominee director in Pennine Holdings. But I had put up no – I bought nothing. I put up nothing. I didn't pay for any option. I didn't pay for any miscellaneous expenses. I paid for nothing. This was Brendan Hickey and David Shubotham. Davy Hickey properties, I hesitate to use the word but, since you yourself, Judge, have used it. If you put it in blunt terms, was taking a punt on the possibility that these lands in Baldoyle would be rezoned as a result of an option agreement that they entered into, that certainly it was negotiated by Mr Hickey in relation to these lands.'*

2.59 When asked *'But who was the beneficial owner? Who was going to benefit?'* Mr Dunlop replied: '*the beneficial owner, as far as I was concerned, on an ongoing basis was Davy Hickey Properties.'*

2.60 The thrust of Mr Dunlop's evidence was that as of September 1991 both he and Mr O'Byrne were in effect nominee Directors of Pennine, albeit with Mr Dunlop himself having an expectation of some future reward. When it was put to him that he himself was suggesting that Mr Hickey and Mr Shubotham were the beneficial owners of Pennine, Mr Dunlop replied:

> *'Well I certainly wasn't a beneficial owner. I take…*[the] *point in relation to had the zoning taken place on the 20th of April 1993 and it had been – and it was in the name of Pennine Holdings. That Pennine Holdings qua Pennine Holdings would then be the proud possessor of rezoned land in Baldoyle to the tune of 230 - 280 acres…'*

2.61 In response to the further suggestion that, if the Tribunal was to believe everything it was being told, it must follow that everyone who could possibly be associated with Pennine was denying beneficial ownership of it, Mr Dunlop said:

> *'Well, then the only conclusion that I can come to…, without being facile about it was that then nobody owned it. Everybody is at odds. The history of the matter, as far as I'm concerned, is relatively simple. That Pennine Holdings was established as the front company to claim ownership of lands in Baldoyle which were purported to be rezoned – the purpose of which was to have them rezoned. Following such a rezoning, certainly as far as I'm concerned, and I can't speak for anybody else, that an arrangement would eventuate between Davy Hickey Properties and myself.'*

2.62 Asked what would have happened if someone had approached him with an offer of IR£500,000 for the Pennine option, Mr Dunlop replied that he would have:

> '*… felt obliged to go to Mr Hickey and to Mr Shubotham in these circumstances at that time. Because of the nature of the relationship in relation to Baldoyle. Brendan had drawn up the - - had negotiated the option. I had signed it, at the request of Anthony Collins, on the instructions of Brendan. And I would have felt obliged. Other than saying to you, on the basis of the hypothesis that you outlined, I can't say absolutely but I would have felt because of my relationship at that time in the context of the option I would have gone to them and said I have been offered. Sean Mulryan has come to me or Mr X has come to me. He knows that I had this option on John Byrne's land in Baldoyle. And he's offered me 500,000. What should I do? Will I accept it, will I reject it? And if I had accepted it I would obviously have accepted it in circumstances where there would have been a division.'*

2.63 Mr Dunlop said he would have believed that he had an obligation to Davy Hickey Properties given '*the circumstances in which the project had come into being.*' He added:

> *'Notwithstanding differences between Mr Hickey and Mr Shubotham and myself about who brought the project to them or not. But that doesn't go to the substance of the issue. The substance of the issue is that on receipt of the information Mr Hickey negotiated the option with Mr Byrne. At his request, via his solicitor Mr Collins. I signed the option. Legally, I think Judge Faherty raised this issue on the last day. Legally that was my option and had I or had the option been sold or had it gone to the vote and the vote, which the likelihood was actually that it would have been passed, that I would have been in receipt of a profit of ten million. Divisible by myself and the other director who was an employee of mine and only signed at my request. Had no knowledge or involvement in the company whatsoever.*
>
> *I would, at that stage, whether it was then, prior to the vote, or at the vote, have discussed the matter with Mr Hickey or Mr Shubotham. On the basis that they had paid for the option and they had paid for all of the outstanding professional fees, including giving me 10,000 pounds.'*

2.64 Asked how it was that in 1994 he had felt free to sell the Pennine option to Mr Sean Mulryan of Ballymore Homes Ltd for IR£1.2m without discussing the matter with Mr Hickey or Mr Shubotham, Mr Dunlop said that after the failed attempt to rezone the lands in April/May 1993 (see below), he had been handed the Pennine option by Mr Hickey and Mr Shubotham to do with as he wished. They had declared to him that they had no further interest in it. He said:

> *'Neither gentlemen Mr Hickey nor Mr – ever raised the issue with me. Either directly, indirectly, seriously or jocosely. And I'm not aware of how they became aware that the option had been sold. The option was mine. And as per their, I suppose I shouldn't use the word resiling but as per their statement, they didn't want to have anything to do with it. I'm interested in Mr Hickey's comment that I reprised with Mr Gordon that is that he never believed that this was a project of any substance. Now, Brendan Hickey never said that to me, to my face. But both Mr Hickey and Mr Shubotham made it palpably obvious to me in the circumstances of 1993 that they just didn't want to have anything whatsoever to do with Baldoyle.'*

2.65 Asked why it was that he felt free to retain the sale proceeds, Mr Dunlop said:

> *'Well, we've had an intervening event. And the intervening event is that the matter has gone down the swanny. In dramatic circumstances, including bringing various names, which have never appeared before and of which I knew nothing, into the public domain. Demanding, leading to a demand for an apology. An apology being given. And either Brendan Hickey or David Shubotham or both of them together saying look it, that's it, we don't have anything further to do with this. That's yours, do what you like with it.'*

2.66 Returning to the hypothetical sale of the Pennine option for IR£500,000 in the early stages, Mr Dunlop said that he would have been very surprised if in such circumstances, Mr Lawlor would not have approached him for money. Mr Dunlop did not know if Mr Lawlor ever received money from anybody in connection with the Pennine option. When the Pennine option was eventually sold in 1994 Mr Dunlop did not pay anything to Mr Lawlor and Mr Lawlor did not approach Mr Dunlop looking for payment. Mr Dunlop said:

> '*I wouldn't say he didn't raise the subject with me. He may. I shouldn't say he may. I think the best way of describing it is that he made a number of remarks which indicated to me that he knew that I'd sold the option to Sean Mulryan but he did not know how much I'd got.*'

THE BALDOYLE REZONING PROJECT FROM 1991 TO MAY 1993

THE REZONING SUBMISSION OF NOVEMBER 1991

3.01 During the course of the first statutory public display of the 1991 Draft Development Plan between 2 September 1991 and 3 December 1991, a submission entitled '*Representation for proposed use of Land at Maynetown, Stapolin (Baldoyle/Portmarnock) Co. Dublin*'[3] and dated November 1991 was lodged with the County Council . This proposed a change from the existing B&G (green belt) zoning to allow for the development of residential areas, two business parks, a district centre and a golf course.

3.02 Ms Grainne Mallon, town planner, stated in evidence that the first ten pages of that submission document represented work she prepared on the instructions of Mr Dunlop, who she believed at the time was representing Mr John Byrne. She told the Tribunal that the only meetings she ever had with Mr

[3] A hundred copies of this submission were duly printed and bound (funded by the Eastview Partnership account) for Mr Dunlop to distribute to councillors. Mr Dunlop referred to the submission as the '*blue book.*'

Dunlop were in relation to the Baldoyle lands. Mr Dunlop's diary contained entries for meetings with Ms Mallon on 11 November 1991 and on 27 November 1991.

3.03 Mr Kevin O'Donnell who in 1991 was employed by McCarthy & Partners, consulting engineers, told the Tribunal that he wrote the submission document in its entirety. While he didn't believe that he received the report of Ms Grainne Mallon to incorporate it in the submission, he acknowledged that he was probably aware of Ms Mallon's engagement as a planning consultant in connection with the matter.

3.04 Mr Dunlop believed that this submission was a composite production put together in Mr Lawlor's office resulting from various involvements. His recollection at the time was that the first twelve pages contained material prepared by Ms Mallon and that the remainder, dealing with the planning and zoning aspects, was prepared by McCarthy & Partners. Mr Dunlop maintained that Mr Lawlor attended meetings in the offices of McCarthy & Partners who were retained at the behest of Mr Lawlor to deal with technical matters (such as the measures being proposed to deal with the issue of flooding).

PAYMENTS MADE IN CONNECTION WITH THE PENNINE OPTION AND THE REZONING ATTEMPT

3.05 The evidence established that McCarthy & Partners were paid a sum of IR£5,164.27 on 6 May 1992 from the '*Eastview*[4] *Partnership Account.'*

3.06 The Eastview Partnership bank account was created in December 1991. Mr Shubotham explained that it was his account, and that it was held in his name with a permitted Eastview Partnership account designation even though there was no such partnership. He also appeared to suggest that he was the sole signatory to this account.

3.07 The evidence established that a total of IR£28,126.42 was paid out of the Eastview Partnership account between 6 January 1992 and 20 August 1992, including the payment of IR£5,164.27 made to McCarthy & Partners and a payment of IR£943.80 to Grainne Mallon & Associates. The first recorded payment out of the Eastview Partnership account was an IR£10,000 payment to Mr Dunlop's company Shefran Ltd ('Shefran') on 6 January 1992. On 6 February 1992 a payment of IR£10,488.35 was made to Eugene F. Collins in respect of work carried out in 1991 in connection with the incorporation of Pennine and the

[4] '*Eastview*' was another name for the Pennine optionlands. Mr Dunlop credited Mr Lawlor as the person who suggested this name.

completion of the Pennine option agreement. Finally, a payment of IR£1,530 to Frank Dunlop and Associates was also paid out of the Eastview Partnership account.

3.08 An accounting record entitled *'Baldoyle payments'* dated 18 August 1993 indicated that another source of funding for the project was Davy Hickey Properties, which incurred expenditure totalling IR£16,820.51 between January 1991 and June 1993, including the IR£5,000 Pennine option consideration payment paid by Mr Shubotham from his personal account in 1991.

3.09 In addition to the IR£10,000 payment Mr Dunlop received through Shefran from the Eastview Partnership account in January 1992, four further round figure payments were made to Mr Dunlop/Shefran between 6 June 1991 and 16 March 1993. These four payments were not funded by the Eastview Partnership account or by the accounts of Davy Hickey Properties. These four payments (as well as the January 1992 payment) and their source are considered later in this chapter.

THE CPO ISSUE

3.10 Between January and June 1993, a proposal by Dublin County Council to compulsorily acquire a portion of the Pennine option lands was the subject of contact between Mr Hickey/Davy Hickey Properties and Mr John Gore-Grimes (Mr Byrne's solicitor).

3.11 On 6 January 1993 Mr John Gore-Grimes wrote to Mr Byrne enclosing a Compulsory Purchase Order ('CPO'), seeking his immediate instructions and advising him that an objection to the CPO was required to be lodged by 12 February 1993.

3.12 Mr Hickey said he was notified of the service of the CPO by Mr Dunlop. Mr Hickey then retained Fenton-Simons, town planners and development consultants, with whom he said he had a long-standing business relationship, and who had had an involvement in Citywest, to assist in the objection to the CPO.

3.13 On 28 January 1993, Fenton-Simons wrote to Mr Hickey setting out their proposals for opposing the CPO. On 29 January 1993 Mr Hickey wrote directly to Mr Byrne on Davy Hickey Properties notepaper with an enclosed copy of the letter from Fenton-Simons and a suggestion for progressing the CPO objection.

3.14 The thrust of Mr John Gore-Grimes' evidence confirmed that the dealings of Mr Byrne with Mr Hickey/Davy Hickey Properties (who Mr Byrne and Mr John Gore-Grimes believed to be the beneficial owners of the Pennine option)[5] were a logical follow on to the course of dealings which had begun in January/February 1991 in relation to the granting of the Pennine option. Mr Gore-Grimes confirmed, in particular, that from December 1992 until mid April 1993 Mr Hickey and himself were jointly engaged in endeavouring to challenge the CPO that affected the land at that time.

3.15 Mr Hickey explained what he described as his *'very little involvement'* in the CPO project as simply *'help'*, which he was continuing to give to Mr Dunlop, as Mr Dunlop was continuing unstintingly to help them. Having agreed to assist Mr Dunlop in this way, he would have been reasonably diligent, but he maintained that in no way was he *'mentally engaged.'* He denied that he had any specific interest in the matter.

3.16 Notwithstanding that the lands concerned by the CPO were in the legal/beneficial ownership of Mr Byrne, and that it was he who was objecting to the CPO, the Tribunal was satisfied that Mr Hickey/Davy Hickey Properties had a considerable input into the effort then being undertaken to prevent the CPO coming into effect. The Tribunal's conclusion in this regard was assisted by the following contents of an attendance of Mr John Gore-Grimes dated 5 February 1993:

> *Attending to speak to Mr Fenton when he said that he was sending out a letter and he would send it across to me for approval. I then received the letter by fax and immediately phoned his office to say that his client was not Melvin Securities Limited, but was Davy Hickey and he should be very careful not to write on behalf of our clients as most of the grounds of objection were not grounds which we would use or indeed would want to use. Speaking to his secretary, Mr Fenton was not available and she said that she would make sure that the letter was not sent out and that she would ring me before it went out.*

3.17 By letter dated 17 February 1993, Mr John Gore-Grimes, at Mr Byrne's request, provided Mr Hickey with a copy of the letter of objection which his firm had presented to the relevant Minister in relation to the CPO, together with a copy of the response received.[6]

[5] Mr Gore-Grimes believed Mr Dunlop's role to be a public relations one.
[6] The CPO hearing took place on 15April 1993.

THE EVENTS LEADING TO THE SPECIAL MEETING OF 20 APRIL 1993

3.18 The CPO issue coincided largely with the consideration by Dublin County Council of a series of motions seeking the rezoning of the Baldoyle lands (including the Pennine option lands) over the course of a number of Special Meetings held between 20 April 1993 and 6 May 1993.

3.19 The lands in north County Dublin were not scheduled for consideration as part of the review of the published 1991 Draft Development Plan until the Spring of 1993. In early 1993, councillors were advised that the latest date for the lodgement of motions in relation to lands at Baldoyle and other lands in north County Dublin was 12 March 1993.

3.20 By 12 March 1993 a motion drafted and prepared by Mr Dunlop had been signed by Cllrs Michael J. Cosgrave, Liam Creaven, Cyril Gallagher and Sean Gilbride, and it was lodged on that date with Dublin County Council. This motion proposed zoning objectives A1 (residential), E (industrial), C (district centre) and B&G (a public pay-as-you-play golf course) for the Baldoyle lands.

3.21 Mr Dunlop's diary and telephone records disclosed that he had substantial contact with Mr Hickey, Mr Shubotham, Mr Lawlor and Mr Byrne in the months of March, April and May 1993. Mr Dunlop met with Mr Hickey on 3 March 1993.

3.22 During the same period Mr Dunlop was also in contact with a substantial number of councillors, including the councillors who signed the motion submitted on 12 March 1993, and councillors who signed other motions, and/or who signed and/or received correspondence associated with the Baldoyle rezoning attempt.

3.23 Mr Dunlop's diary for 9 March 1993 – three days before the motion was lodged – contained an entry for a meeting at '*Davys*.' On the following day Mr Dunlop met with Mr Byrne and Mr Lawlor. Mr Dunlop's telephone records indicated that Mr Shubotham made two attempts to contact Mr Dunlop on 11 March 1993, and a further attempt on the following day. The Tribunal had no doubt that during the period between 9 and 12 March 1993, Mr Dunlop made contact with the persons involved in the Baldoyle rezoning project, namely Mr Hickey, Mr Shubotham, Mr Byrne, Mr Lawlor and the four councillors who signed the motion.

3.24 The first rezoning motion having been lodged by 12 March 1993, Mr Dunlop met with Mr Hickey and Mr Shubotham at the offices of Davy Stockbrokers on 24 March 1993. Between 24 March 1993 and mid May 1993, Mr Dunlop had ongoing contact with Mr Hickey and Mr Shubotham and also with Mr Byrne and Mr Lawlor.

3.25 Mr Dunlop's evidence was that there would not have been a meeting with Mr Hickey and Mr Shubotham in circumstances other than in order to brief them as to what was going on. The frequency of his contact with Mr Byrne, Mr Shubotham and, to a lesser extent at this stage, Mr Hickey, either individually or collectively, all related to Baldoyle, and he confirmed that he reported to both Mr Shubotham and Mr Hickey on occasion in relation to the status of the Baldoyle proposal.

3.26 According to Mr Hickey, his contact with Mr Dunlop in 1993 was Citywest related, with any discussion of Baldoyle as incidental. The possibility of a discussion about Baldoyle existed because they were discussing matters in relation to Citywest. He had no specific memory of discussing Baldoyle with Mr Dunlop during the period when the rezoning motions were being considered by the Council.

3.27 The Tribunal was satisfied, however, that most, if not all, of the contact that Mr Dunlop had with Mr Hickey, Mr Shubotham and Mr Byrne in the months of March, April and May 1993 was in relation to the Baldoyle lands and in particular the rezoning motions to be considered at forthcoming meetings of Dublin County Council.

3.28 The Tribunal was further satisfied that the contact between Mr Dunlop, Mr Shubotham and Mr Hickey during the period from 12 March 1993 to 14 April 1993 (when Mr Dunlop also had contact with Mr John Byrne, Mr John Gore-Grimes and Mr Lawlor) probably concerned a decision to lodge a new rezoning motion before the Council's first scheduled meeting dealing with the Baldoyle lands on 20 April 1993. Such a motion,[7] signed by Cllrs M.J. Cosgrave and Creaven, at Mr Dunlop's behest, was then lodged by 14 April 1993. It proposed that the Baldoyle lands be rezoned B&G (public golf course), A (new high quality housing), C (district centre) and G (high amenity).

3.29 Mr Dunlop agreed that insofar as Mr Hickey, Mr Shubotham, Mr Lawlor, others and himself had been discussing the matter up to then, this new motion (which on 20 April 1993 replaced the earlier motion lodged on 12 March 1993)

[7] This motion, according to Mr Dunlop was lodged at the behest of Mr Lawlor and it was typed and prepared in Mr Dunlop's office.

represented the optimum rezoning they thought could be achieved as of that date.

3.30 On 19 April 1993, the day before the first special meeting of Dublin County Council at which the proposed Baldoyle rezoning was to be considered, Mr Shubotham attempted to contact Mr Dunlop from London. Mr Dunlop's telephone records also indicated that on 20 April 1993 both Mr Shubotham and Mr Lawlor attempted to contact him (Mr Shubotham on two occasions, first at 9.45 am and later at 1.45 pm). Mr Shubotham told the Tribunal that he had no idea what these telephone calls were about and appeared to suggest that they must have related to Citywest, and not Baldoyle or Pennine. The Tribunal was satisfied that these attempts to contact Mr Dunlop were made immediately before and immediately after the special meeting of the Council that was taking place on 20 April 1993 and therefore that it was likely that they concerned the Baldoyle rezoning attempt.

THE SPECIAL MEETING OF 20 APRIL 1993

3.31 On 20 April 1993 three rezoning motions affecting lands at Baldoyle were before Dublin County Council. The first motion, motion 14(5)(i), was lodged by Cllr David Healy and proposed the retention of the entire of the lands between Baldoyle and Portmarnock as '*green belt*', as set out on the Draft Development Plan.[8] The second motion, motion 14(5)(G)(i), was the rezoning motion signed by Cllrs M J Cosgrave, Creaven, Gallagher and Gilbride and lodged by 12 March 1993. The third motion, motion 14(5)(G)(ii), was the rezoning motion signed by Cllrs M J Cosgrave and Creaven and lodged by 14 April 1993.

3.32 On 20 April 1993 the County Manager reiterated his objections (which had previously been circulated to councillors) to the proposal to rezone the Baldoyle lands.

3.33 As the first in time, Cllr Healy's '*green belt*' motion, motion 14(5)(i), was then proposed by him and seconded by Cllr Gordon. Cllr Creaven then indicated his intention to withdraw motion 14(5)(G)(i), and this was agreed. Cllr M J Cosgrave proposed and Cllr Creaven seconded motion 14(5)(G)(ii). They then proposed and seconded an amendment to motion 14(5)(G)(ii) which in relation to its proposed A (residential) zoning sought to provide for (i) not more than 450 new houses on approximately 75 acres at Baldoyle and (ii) not more than 450 new houses on approximately 75 acres at Portmarnock.

[8] This motion if successful would have defeated the rezoning ambitions for the Baldoyle lands.

3.34 Neither the Healy '*green belt*' motion 14(5)(i) nor the M J Cosgrave/Creaven rezoning motion 14(5)(G)(ii) were considered on 20 April 1993 as the Special Meeting was adjourned owing to what the Council minutes recorded as '*disorder*' in the chamber.

3.35 Under the heading '*Council vote on north Dublin zoning postponed amid chaos*' an article appearing in the edition of the Irish Times published on 21 April 1993 reported the events in the Council chamber on 20 April 1993 as follows:

> *Amid chaotic scenes of procedural wrangling, disorder and confusion, Dublin County Council has postponed for a week a decision on a proposal to rezone major tracts of green belt between Baldoyle and Portmarnock for large housing developments.*
>
> *The proposal is strongly opposed by council officials, but there appeared to be a majority of councillors at yesterday's meeting ready to push the scheme through against their wishes. In the end, however, a vote could not be taken.*
>
> *Throughout the meeting, Mr Frank Dunlop, a director of the property company which had put forward the plan, Pennine Holdings Ltd, held regular consultations outside the chamber with councillors who supported him, discussing what they should do next.*
>
> *Yesterday's meeting was due to end at 1 p.m. Supporters of the proposal – put forward by a Fine Gael councillor Mr Michael Joe Cosgrave, and a Fianna Fail councillor, Mr Liam Creaven – successfully extended the meeting by half-an-hour in a vain attempt to have the motion passed.* [...]
>
> *For most of the morning Mr Dunlop stood between the public and press gallery. He nodded vigorously when councillors made points with which he agreed and commented on points with which he disagreed. Throughout the meeting he was going to and out of the room, consulting with the proposers of the motion and others. A councillor would go out one door, Mr Dunlop would go out the other, and after a few minutes both would re-enter.*
>
> *The previous evening, couriers had arrived at the homes of most Dublin county councillors delivering a new version of his development proposals. This version contained a slight reduction in the acreage of land intended for housing.*
>
> *As the debate on the matter began, the chairwoman announced that she had just received this new proposal in the form of a motion from Councillors Cosgrave and Creaven. Objectors led by Councillor Sean Ryan TD (Labour) demanded that this motion be circulated for all councillors to*

see. 'It is unacceptable that stuff comes out by courier to councillors from third parties,' said Councillor Bernie Malone (Labour).

Mr Don Tipping (Democratic Left) proposed that the matter be postponed until a meeting next week. 'I want full and accurate information before we come to a meeting to decide these matters,' he said. Ms Joan Maher (Fine Gael) said that she had yet to receive a copy of the new map of the scheme. Councillors from the Green Party and individuals from Fianna Fail and Fine Gael also supported the postponement.

Those who wanted the discussion to go ahead stayed very quiet. They won the vote.

Supporting the proposal, Mr Cosgrave said that Baldoyle had become a desirable area in which to live and houses there were selling well. There was a need for football pitches and places to eat in the area. 'You can't get any of the above without building houses. The plan is good, it's what we need in Baldoyle and when it's put properly to the residents of Baldoyle, they'll support it,' he maintained.

But Mr Joe Higgins (Independent) described the application as 'a ferocious assault on the green belt between Portmarnock and Baldoyle' and said that the way the application had been altered at the last minute was 'a gross insult to the members and staff of the county council.'

If the plan was approved 'north Co. Dublin will be approaching the Los Angeles type of sprawl with ugly developments all over the place.'

Mr Tipping said that the application amounted to 'gross speculation as being against the will of the people who live in the area. If we start breaking the green belt here on this occasion, I've no doubt that in future years we'll see more encroachment in this area.'

It was approaching 1 p.m. and it seemed highly unlikely that the matter would be voted on before the end. By now tension was very high. Mr Ryan was on his feet demanding to know by how long the chairwoman was proposing to extend the meeting. Ms Ridge refused to answer. Councillors raised their voices at each other. She finally said that she was proposing a half-hour extension to 1.30 p.m. The proposal was carried.

But before discussing the Pennine proposal, the council first had to discuss a motion from Councillor David Healy of the Green Party. This motion proposes that no building development take place on the whole Baldoyle/Malahide green belt area. It must be defeated before the motion supporting the Pennine proposal can be passed.

Just when the meeting was again about to run out of time, the chairwoman announced that the extension of the meeting had not been simply until 1.30 p.m, but until at least 1.30 p.m. (This ran contrary to the recollection of all five reporters in the press gallery.) The only councillors who shared Ms Ridge's recollection appeared to be some of those in favour of the rezoning.

Amid uproar and angry shouts of 'disgrace', Ms Devitt then proposed an immediate vote on the Green Party proposal. It appeared that there would have been enough pro-Pennine councillors in the room to support her proposal and defeat the Green Party motion, but order in the chamber broke down completely and a five-minute adjournment was called.

Finally, the chairwoman agreed to postpone the issue until next week 'in view of the disorderly conduct.'

THE SPECIAL MEETING OF 27 APRIL 1993

3.36 The M J Cosgrave/Creaven rezoning motion 14(5)(G)(ii), and its proposed amendment, were scheduled for consideration by Dublin County Council on 27 April 1993. Mr Dunlop's telephone records for 26 April 1993 indicated an attempt by Mr Shubotham to contact him from Bermuda[9] that afternoon, and Mr Dunlop's telephone records for 27 April 1993 indicated a call from Mr Hickey at 9:45 am, when he left a telephone number, and another call from Mr Shubotham at 2:55 pm (Irish time), again from Bermuda.

3.37 The Tribunal was satisfied that both of these attempted contacts on 27 April 1993 probably concerned an article published that morning in the Irish Independent referring to a link between the Baldoyle rezoning proposal that was scheduled for consideration by Dublin County Council that day and a consortium of named individuals and entities, including Mr Shubotham and other members of Davy Stockbrokers. The article also linked Mr Dunlop to both the Baldoyle project, and the Citywest project.

3.38 Mr Shubotham accepted in evidence that it would be very unlikely that he did not receive telephone calls about the Irish Independent article, and that he was very definitely upset by it. He said that it was possible that he telephoned Mr Dunlop about the article.

[9] This call may have related to another development, according to Mr Shubotham.

3.39 Mr Dunlop said in evidence that he would have discussed the outcome of that day's Council Special Meeting with Mr Shubotham and Mr Hickey when they each telephoned him in the afternoon. He was also likely to have addressed with them the possibilities of undoing the harm caused by the media article.

3.40 Under the heading '*Group to net £10m if green belt goes*' the article began as follows:

> *A PROPERTY consortium stands to make £10m profit if a move to allow house building on agricultural land incorporating the old Baldoyle Racecourse in North Dublin is successful today.*
>
> *The consortium has an option to buy green belt land for £20,000 an acre and if Dublin Co Council agrees to rezone it for housing, its value would instantly shoot up to £100,000 an acre.*
>
> *This would reap the consortium a profit of more than £10m before a single brick is laid for any of the planned 900 houses.[...]*
>
> *The consortium is represented by PR consultant Frank Dunlop, who was successful in winning a lucrative rezoning battle for Davy's £45m City West Business Park in Tallaght about two years ago.*
>
> *Mr Dunlop, a former Government press officer, has been involved in several property rezoning proposals. It is understood many of the City West investors also are behind the 438-acre Baldoyle rezoning proposal. [...]*
>
> *If the rezoning proposal is successful it will allow up to 450 houses on each of the two 75-acre portions, a business park on 18 acres and the remainder reserved for a golf course and amenity use.*
>
> *However, the consortium is unlikely to purchase the entire tract of land, as the open space is non-profitable and will require costly maintenance, with a poor return.*
>
> *The company could exercise its option to buy only the 150-acre residential section of the land at £20,000 an acre, or £3m for the entire tract.*
>
> *The same land's true market value, with planning for houses, is worth about £100,000 per acre, or £15m for the 150 acres, creating a profit of more than £10m before any development takes place there.*
>
> *Many local residents also are opposing the rezoning and will picket the council chamber today in advance of the 10am meeting.*

The motion to rezone the land is being put forward by Liam Creaven (FF) and Michael Joe Cosgrave (FG).

3.41 Mr Dunlop referred in evidence to the adverse effect that the publication of this newspaper article had on the rezoning prospects for the Baldoyle lands. He agreed that the release of this story could not have been with any intention other than that of damaging the prospects of the M J Cosgrave/Creaven rezoning motion. It had the effect that somebody clearly desired, namely, it just torpedoed the whole exercise. Mr Dunlop said that he learned of the story when he received a telephone call from Mr Lawlor while driving past the Gresham Hotel on 27 April 1993. As a damage limitation exercise, Mr Dunlop and Mr Lawlor thereupon decided to have the M J Cosgrave/Creaven rezoning motion deferred.

3.42 Mr Dunlop advised Cllrs M J Cosgrave and Creaven of the decision to defer their rezoning motion to another date.

3.43 The minutes of the Special Meeting of Dublin County Council held on 27 April 1993 recorded, *inter alia*, as follows:

Councillors M.J. Cosgrave and Creaven indicated a wish to postpone discussion. They were asked to clarify the matter which they wished to have deferred. Councillor M.J. Cosgrave indicated that he asked to have Motion 14(5)(G)(ii) only deferred.

It was indicated to the meeting that if such a motion were moved and passed Motion 14(5)(G)(i) in the name of Councillor Healy would remain on the agenda.

It was proposed by Councillor M.J. Cosgrave, seconded by Councillor Creaven:

'That Motion No. 14(5)(G)(ii) and the proposed amendment thereto be deferred for further consideration to a date not later than 15th May, 1993.'

A discussion followed to which Councillors Maher, Malone, M.J. Cosgrave, Healy, O'Halloran, Coffey, Barrett, Sargent, Gilmore, S. Ryan, Quinn, Tipping, Boland, Doohan, Higgins and Cass contributed. The Manager advised the members that in the interests of completing the review of the Development Plan that the motion to defer consideration of Motion 14(5)(G)(ii) should not be passed. Councillor Healy advised the meeting that he did not wish to have Motion 14(5)(G)(i) deferred. The Manager advised the members that the tradition of the Council was that if a councillor moved a motion, it should not be deferred if he dissented. Before the vote was taken it was indicated to the members that in the

event of the motion being passed, the motion being proposed by Councillor Healy, seconded by Councillor Gordon 14(5)(G)(i), would remain to be considered.

The motion proposed by Councillor M.J. Cosgrave, seconded by Councillor Creaven to defer Motion 14(5)(G)(ii) was put and on a division the voting resulted as follows:

FOR: Thirty-seven (37)
AGAINST: Thirty-three (33)
ABSTENTIONS: Nil (0)

3.44 Once the M J Cosgrave/Creaven rezoning motion 14(5)(G)(i) had been deferred, the only motion affecting lands at Baldoyle that remained on the Council agenda on 27 April 1993 was the Healy '*green belt*' motion 14(5)(i).

3.45 Before the Healy '*green belt*' motion was put to a vote, a further motion was proposed by Cllr John O'Halloran and seconded by Cllr Liam T Cosgrave seeking:

'*That decisions relating to the Baldoyle/Portmarnock area be deferred until a site meeting is held in that area to allow all councillors view lands proposed for re-zoning.*'

3.46 The objective of bringing this motion was apparently to have the Healy '*green belt*' motion deferred, just as the M J Cosgrave/Creaven rezoning motion had been deferred some minutes earlier.

3.47 Cllr O'Halloran could not explain to the Tribunal exactly why he brought this motion. It may have been because of the debate that was taking place at the time. He suggested as a possible reason that he may have thought it a good idea for people to hear the lands being discussed. He had no recollection of discussing the matter with Mr Dunlop. He may have met Mr Dunlop, but certainly not about Baldoyle. He denied having an appreciation at the time of the adverse consequences for the M J Cosgrave/Creaven rezoning motion of the Healy 'green belt' motion being passed, and communicating or attempting to communicate that appreciation to Mr Dunlop.

3.48 Cllr Liam T Cosgrave did not remember Mr Dunlop being present at the Council's special Meeting on 27 April 1993. He did not recall Mr Dunlop making any contact with him either before or at this meeting with a view to influencing his vote in any particular way, and he had no recollection of discussing any of the affairs of the day with Mr Dunlop at that time.

3.49 In his Statement to the Tribunal dated November 2006, Mr Dunlop stated that Cllr O'Halloran, on his own initiative, proposed the deferral of decisions relating to the Baldoyle/Portmarnock area until after a site visit had taken place. He also stated that he had a brief discussion with Cllr O'Halloran on the margins of the Council meeting on 27 April 1993 when Cllr O'Halloran pointed out the folly of allowing matters to proceed without his motion, the likelihood being that the Healy green belt motion might succeed.

3.50 In his evidence to the Tribunal, Mr Dunlop explained that he did not have a recollection of directing Cllr O'Halloran or Cllr Liam T Cosgrave to put in their deferral motion on 27 April 1993. He thought that Cllr O'Halloran, on his own initiative, seeing what was occurring on the floor, very sharply and intuitively saw what was going to happen and tried to obviate it.

3.51 Less definite in later evidence, Mr Dunlop told the Tribunal that he could not say definitively that he actually generated that motion with both Cllr O'Halloran and Cllr Liam T Cosgrave. He certainly had conversations with them but he believed it was Cllr O'Halloran's own initiative to propose the motion.

3.52 The Tribunal was satisfied, however, that the O'Halloran/Liam T Cosgrave motion was proposed by the two councillors at the instigation of Mr Dunlop.

3.53 This deferral motion was, however, ruled out of order by the acting chairperson of Dublin County Council, Cllr Therese Ridge,[10] on the advice of the County Manager, Mr Smyth.

3.54 In these circumstances, the Healy '*green belt*' motion 14(5)(i) proposing that '*Dublin County Council hereby resolves that all land zoned B & G on the Draft Plan between Baldoyle and Portmarnock retain this zoning'* was put to a vote and passed with 43 councillors voting in favour, 3 voting against and 23 abstentions.

3.55 As recorded in the minutes of this Special Meeting on 27 April 1993, the deferred M J Cosgrave/Creaven rezoning motion fell as a result of the passing of the Healy 'green belt' motion, and the County Manager advised the councillors accordingly.

[10] Cllr Ridge was acting chairperson of Dublin County Council for approximately the first half of 1993, following the appointment of the previouschairperson, Cllr Eithne Fitzgerald, as Minister of State in the '*Rainbow Coalition*' Government.

3.56 This outcome took the promoters of the Baldoyle rezoning motion by surprise. Mr Dunlop said in evidence on Day 704:

> '*And obviously none of us and I could easily blame somebody but I won't, I'm including myself. That none of us spotted the procedural aspect of if you, if you withdrew the motion that another motion that existed on the order paper would have to be taken. And once that became clear in the chamber as a result of the Manager highlighting it, chaos ensued because people, I did not have an opportunity, even though I was there, to say to people we have to restrategise. Let's get out of here or let's call an adjournment of the meeting or whatever. But once that motion of David Healy's was on the order paper, to actually deconstruct the whole aspect of a rezoning in Baldoyle, that had to be taken into account. Now, in fairness, the Manager pointed that out.*'

3.57 Mr Dunlop also said:

> '*I could blame people who were on the floor, on the floor that they weren't nifty enough on their feet as to how the procedural issue should be dealt with. That's retrospective judgement.*'

3.58 Mr Dunlop told the Tribunal that if there had been no newspaper article on 27 April 1993, it was his expectation that the Healy '*green belt*' motion would have been defeated and that the M.J. Cosgrave/Creaven rezoning motion (as amended with a limitation of the housing to 450 in Baldoyle and 450 in Portmarnock), would have attracted sufficient councillor support that day to have ensured its passing.[11]

3.59 Mr Dunlop's telephone records on 27 April 1993 indicated attempts to contact him after the Council meeting by Mr Lawlor, Mr Hickey, Cllr Ridge, Cllr Hand and Mr John Gore-Grimes.

THE ACTIONS OF MR DUNLOP, MR LAWLOR AND OTHERS FOLLOWING THE SPECIAL MEETING OF 27 APRIL 1993 AND RELATED EVENTS

3.60 The unsatisfactory outcome of the Council Special Meeting on 27 April 1993 (from the perspective of Mr Dunlop's and the other promoters of the Baldoyle rezoning project), and the unwelcome newspaper article were matters which needed urgent attention. A two pronged approach was embarked upon on the part of Mr Dunlop, Mr Lawlor, Mr Byrne and his legal advisors which involved liaising with one another and contact organised by Mr Dunlop and Mr Lawlor with

[11] Mr Dunlop testified that up to that point in time the project had widespread support from councillors, not least because of his own association with the project.

a number of councillors, the County Council chairperson and Council officials, all with a view to undoing the successful Healy '*green belt*' motion.

3.61 Mr John Gore-Grimes said in evidence that some of these actions were undertaken with a view, if it were to prove necessary, to challenging in the courts the decisions made in the Council on 27 April 1993.

3.62 On 30 April 1993, the Irish Independent published what was, in effect, an apology to Davy Stockbrokers and certain of the individuals identified in its article of 27 April 1993 as the holders of an option in relation to lands at Baldoyle, as follows:

> *Land re-zoning: an apology*
>
> *IN AN article on the Baldoyle land re-zoning by Cliodhna O'Donoghue, our Property Editor, published last Tuesday, we stated that Davy Stockbrokers and other high profile businessmen had, subject to re-zoning, an option to purchase part or all of the land for around £20,000 an acre.*
>
> *Martin Naughton and Lochlann Quinn of Glen Dimplex, as well as Yeoman International's Paul Coulson, were named, as members of a consortium. They have informed us that they were not potential investors in the scheme and we unreservedly apologise for any upset caused to them in a personal or business capacity.*
>
> *We would also like to make it clear that it was Davy-Hickey, the property arm of the stockbroking company Davys that had expressed an interest in the development but only if it was re-zoned. Neither Davy Stockbrokers nor Davy-Hickey were prepared to get involved in the re-zoning process.*

3.63 The contents of that published apology notwithstanding, and in particular the reference it made to Davy Hickey Properties becoming involved only if the lands were rezoned, Mr Dunlop stated in evidence that between March 1993 and 27 April 1993, Mr Hickey and (probably) Mr Shubotham were kept apprised by him of all aspects of the rezoning process. Mr Dunlop told the Tribunal that at all relevant times he kept Mr Hickey and (probably), Mr Shubotham '*in the loop*' regarding the rezoning process.[12]

[12] On 29 and 30 April 1993 Mr Hickey made contact with Mr Dunlop's office.

THE O'HALLORAN/GILBRIDE MOTION AND THE EVENTS IN THE COUNTY COUNCIL ON 4 MAY 1993 AND 6 MAY 1993

3.64 Between 27 April 1993 and the 4 May 1993 Mr Dunlop reprised the proposal put forward in the motion brought by Cllrs O'Halloran and Liam T. Cosgrave, but ruled out of order on 27 April 1993, for a site meeting to be held in the Baldoyle/Portmarnock area before any decisions relating to lands proposed for rezoning in that area were made by the Council.

3.65 To this end a motion and a letter were drafted in Mr Dunlop's office, the results of a combined effort on the part of Mr Dunlop, Mr Lawlor and Cllr. O'Halloran. The letter, signed by Cllr O'Halloran and the motion, signed by Cllrs O'Halloran and Gilbride, were furnished to the chairperson of the Council (Cllr Ridge), on 4 May 1993. The letter from Cllr O'Halloran read as follows:

Dear Chairperson,

I formally request you to bring this letter and the motion which accompanies it, to the attention of today's meeting of the Council called to continue the review of the County Development Plan.

On Tuesday, 27th April last I proposed a motion which was duly seconded that a site meeting be held on the lands between Baldoyle and Portmarnock (the subject of Motions Nos. '5(i)' and '5(G)(ii)' as amended) PRIOR to any decision being taken on the future uses of these lands. This motion is similar to the motions taken with regard to the lands at Carrickmines and in the Liffey Valley.

On the advice of the Manager you refused to put my motion to the Council for a vote thereby denying my right, under this Council's Standing Orders, to have my motion debated and decided upon.

I believe that this refusal was a serious breach of the Council Standing Orders and as such calls into question the validity of the meeting and the decisions taken.

In support of my claim that your decision was in breach of Standing Orders I would refer you to a similar motion to defer consideration of a duly proposed item on the agenda of last Thursday's meeting 29th April, 1993 of the Draft Development Plan Review which, having first been ruled out of order, was subsequently taken and voted upon when the ruling was challenged and the relevant Standing Order quoted and upheld.

I therefore request you, as chairperson, to put the attached motion to this mornings meeting…'

3.66 The motion, signed by Cllrs O'Halloran and Gilbride, proposed the following:

> *That Dublin County Council hereby resolves that a site meeting be held on the lands between Baldoyle and Portmarnock, the subject of Motions Nos. 5 (i) & 5 (G) (ii) (as amended) on the Draft Development Plan Review agenda, PRIOR to any decision regarding the future uses of these lands and that a full report be made to the appropriate Development Plan meeting.*

3.67 At the Special Meeting of Dublin County Council held on 4 May 1993, the O'Halloran/Gilbride motion was adjourned for further consideration to 6 May 1993.

3.68 Aside from the efforts being made by Mr Dunlop and Mr Lawlor to have Cllrs O'Halloran and Gilbride challenge the procedural rulings made by the chairperson of the Council on 27 April 1993, Mr Byrne obtained an opinion from Counsel (which Mr Dunlop had in his possession by 6 May 1993) to the effect that the Council had been in error in allowing Cllr Healy's '*green belt'* motion to proceed on 27April 1993 once the M J Cosgrave/Creaven rezoning motion had been deferred. Counsel expressed the opinion that the O'Halloran/L T Cosgrave motion proposed on 27 April 1993, seeking the deferral of all decisions relating to the Baldoyle/Portmarnock area pending a site visit by councillors should have been allowed to have been put to a vote.

3.69 Mr Dunlop's evidence was that he advised Cllr Ridge of the substance of the Counsel's opinion obtained by Mr Byrne before the Special Meeting of the Council on 6 May 1993 had taken place.

3.70 In a letter to Cllr Ridge dated 5 May 1993, the County Manager repeated the advice he had provided on 27 April 1993 that the motion proposed by Cllr O'Halloran on that date was out of order. In a further letter to Cllr Ridge dated 6 May 1993 (following her receipt of Cllr O'Halloran's letter dated 4 May 1993 with the attached motion), the Manager again reaffirmed this advice.

3.71 At the Special Meeting of the Council held on 6 May 1993, Cllrs O'Halloran and Gilbride sought to amend the wording of their motion adjourned from 4 May 1993 by adding the words '*the site visit to take place on Tuesday 18th May 1993.*'

3.72 Once again the Manager repeated his earlier advice (provided originally at the Special Meeting of the Council on 27April 1993 and repeated in his letters to Cllr Ridge dated 5 May 1993 and 6 May 1993) that the deferral / site visit motion was out of order.

3.73 Following a short adjournment due to disorder in the Council chamber, the Manager again advised that the motions before the meeting were out of order and Cllr Ridge informed the councillors that:

> '*...because there was a doubt as to the correctness of her decision when ruling the motion proposed by Councillor O'Halloran, seconded by Councillor L. Cosgrave, out of order at the meeting on 27/4/1993 she was ruling the motions now before the Council in order but that that all decisions taken in relation to this matter would be referred to the Law Agent for advice.*'

3.74 On a vote taken by direction of Cllr Ridge, the following amendment to their motion adjourned from the Special Meeting on 4 May 1993, proposed by Cllr O'Halloran and seconded by Cllr Gilbride, was passed by 33 votes in favour and 4 against with 1 abstention: '*That the motion be amended by the addition of the words 'the site visit to take place on Tuesday May 18th 1993.*'

3.75 The substantive O'Halloran/Gilbride deferral motion, as amended, was then put to a vote and carried by 34 votes in favour and 4 against, with 1 abstention.

3.76 As a result of this vote and subject to the ruling of the Council's Law Agent, a fresh opportunity presented itself for the Baldoyle rezoning motion to be considered on its merits by the councillors. The decision to allow this motion was controversial.

3.77 The Council Special Meeting held on 6 May 1993 was reported in the Evening Herald newspaper on 7 May 1993 as follows:

> *A controversial bid to build on the Baldoyle Green Belt has been resurrected – because of a row over procedures at a Co. Council meeting.*
>
> *Last week, councillors voted to preserve the entire green stretch between Baldoyle and Portmarnock, effectively vetoing a plan to develop part of the 450 acre site for five years.*
>
> *But now the Council's law agent is to decide if a vote – taken yesterday – to hold a Council meeting on the site overturns the Green Belt decision.*

The vote could give a second chance to the plan by Pennine Holdings Ltd, a consortium of business people headed by former Government press secretary Frank Dunlop, to build on the land, which includes the former Baldoyle racecourse.

Yesterday's shock vote could put the plan back on the agenda because it specifically declared that the site meeting should take place prior to any decision on the plan being taken. The on-site meeting is scheduled for May 18 [...]

The surprise turnaround came at an unruly meeting which saw a number of brief adjournments before Labour, Democratic Left, the Greens and the Progressive Democrats walked out in protest at what they said was an 'illegal vote' [...]

THE CORRESPONDENCE BETWEEN COUNCILLORS M J COSGRAVE, CREAVEN AND RIDGE

3.78 The Tribunal was satisfied that arising from the outcome of the Council Special Meeting on 6 May 1993, Mr Dunlop and Mr Lawlor, together with Mr John Gore-Grimes, were instrumental in devising a further strategy in the attempt to secure the reinstatement of the Baldoyle rezoning proposal before the Council, as had been achieved, albeit provisionally, on 6 May 1993.

3.79 Mr Dunlop's telephone records indicated that at 3.25 pm on 6 May 1993 he received a telephone call to his office from Mr Shubotham. Mr Shubotham's evidence was that he did not have a memory of making this call or of what its subject matter was, but nevertheless he was certain that '*the substantive nature of it was not to do with Baldoyle*.' Mr Dunlop did not give evidence about this telephone call in particular, but his earlier evidence was that there was no circumstance in which he would not have discussed the outcome of the Council Special Meeting on 27 April 1993 with Mr Shubotham and Mr Hickey when both of them were recorded as having telephoned him that afternoon. The Tribunal concluded that whatever the purposes of this telephone call from Mr Shubotham on 6 May 1993 might have been, they at least included his wish to ascertain what had transpired at the Council Special Meeting on that date.

3.80 The strategy being devised by Mr Dunlop and Mr Lawlor as of 7 May 1993 was based on the Counsel's opinion obtained by Mr Byrne, which declared erroneous the Council chairperson's decisions on 27 April 1993 to rule out of order the O'Halloran/Liam T. Cosgrave deferral/site meeting motion, and to allow the Healy '*green belt'* motion to proceed.

3.81 Mr Dunlop said in evidence that arising from a meeting between himself, Mr Lawlor and Mr John Gore-Grimes on either 7 or 8 May 1993, it was agreed that Mr Lawlor and himself would draft a series of letters with the primary objective of ensuring that the Baldoyle rezoning motion would be reinstated for consideration by the councillors.

3.82 There was to be a letter from Cllrs M.J. Cosgrave and Creaven (the signatories to the Baldoyle rezoning motion), to Cllr Ridge, chairperson of the Council, together with her reply. In addition, there was to be a letter, also from Cllrs M.J. Cosgrave and Creaven, to the County Manager, dealing with more technical matters. This was to issue at the same time as their letter to Cllr Ridge.

3.83 With the exception of Mr Smith (the County Manager), the putative authors and recipients of these letters all featured in Mr Dunlop's diary on 10 May 1993. There was an entry for the return of Cllr Ridge from Paris, and there were entries for a meeting with Mr Lawlor at 10.00 am, and a meeting with Cllrs M.J. Cosgrave and Creaven at 12.45 pm. The Tribunal was satisfied that by the time Mr Dunlop met with Cllrs M.J. Cosgrave and Creaven on 10 May 1993, Mr Lawlor and himself had (over the course of the weekend), drafted letters in their names addressed to Cllr Ridge and to the County Manager and that they had also drafted the reply from Cllr Ridge.

3.84 An attendance of Mr John Gore-Grimes dated 11 May 1993 headed *'Re: Endcamp and Pennine'* referred to a consultation with Counsel on that date at which Counsel approved the three draft letters, and to a subsequent meeting with Mr Lawlor and Mr Dunlop at which the letters were approved.

3.85 The Tribunal had sight of two drafts of the letter to Cllr Ridge in the name of Cllrs M.J. Cosgrave/Creaven, including an unsigned copy, typed on the notepaper of the Fingal Committee of Dublin County Council.[13]

3.86 The Tribunal was satisfied that the unsigned draft was a replica of the letter which was actually sent to Cllr Ridge in the names of Cllrs M J Cosgrave and Creaven. That letter dated 12 May 1993 read as follows:

> *Dear Chairperson,*
>
> *You will recall that at the meeting of the Draft Development Plan Review, held on 27th April, 1993 I proposed that the motion, No. 5 (G) (ii), in our joint names – Councillor Michael Joe Cosgrave and Councillor Liam Creaven – be deferred for consideration and decision to a date not later than 15th May 1993. This deferral motion was put to the members, voted*

[13] Mr Dunlop explained that he kept a supply of such notepaper in his office.

upon and carried by 37 votes to 34.[14] Implicit in this deferral motion was that no further discussion, consideration or decision could take place or be taken regarding the specific lands contained in motion 5(G)(ii). Notwithstanding this you proceeded to take motion 5(i) in the name of Councillor David Healy. Given that Councillor Healy's motion referred to 'all land zoned B & G on the Draft Plan between Baldoyle and Portmarnock' should you not have advised the members that following on the decision to defer consideration of our motion, 5 (G) (ii), and the specific lands referred to therein, that an amendment be moved to Councillor Healy's motion excluding the specific lands referred to in our motion? If, however, the lands referred to in Councillor Healy's motion, and presumably outlined in red on an attached map, coincided exactly with the lands referred to our motion should you in accordance with Standing Orders, not have taken Councillor Healy's motion before ours?

Could you confirm that our interpretation of Standing Orders is correct? Specifically, therefore could you confirm to us that:

(a) Councillor Healy's motion, No. 5(i) should have been taken prior to our deferral motion.
(b) Had Standing Orders been adhered to and Councillor Healy's motion put to the members prior to ours the resulting vote would have had the following effect:

- *if passed, Councillor Cosgrave's deferral motion could not have been taken;*
- *if defeated, Councillor Cosgrave's deferral motion would have been put to the members and when passed – given that we have concrete evidence of the voting intentions of the members, 37 to 34 – no decision could be taken regarding the lands referred to in motion No. 5 (G)(ii), until a date not later than 15th May, 1993.*

We have written to the Manager requesting clarification on a number of important issues pertaining to the lands covered by our motion, No. 5 (G) (ii). We attach a copy of this letter for your information. Given the serious nature of the proposed land uses by the Corporation / Council of the Baldoyle lands, as outlined in our letter to the Manager, we are confident that you will agree, that the elected members and the residents of the area are entitled to be fully appraised of the local authorities intentions, and the implications thereof. In our view it is incumbent on the Manager to provide the elected members with a comprehensive report and slide presentation regarding the works on these lands scheduled for

[14] In fact the correct figure for the number of votes 'against' was 33.

completion during the period 1994 - 1997 given that the current review, when adopted, will extend beyond this period.

We look forward to hearing from you in these matters.[15]

3.87 On Day 705 Mr Dunlop confirmed that the purpose of this letter was to ensure that the chairperson would confirm the accuracy of the Counsel's opinion obtained by Mr Byrne (which Mr Dunlop had in his possession and had discussed with Cllr Ridge), to the effect that under the Council's Standing Orders the chairperson's ruling of 27 April 1993 was erroneous.

3.88 Mr Dunlop confirmed that the purpose of the series of letters was '*an old civil service thing […] to keep the file right'*, but also to prompt the chairperson to respond to the effect that the interpretation advised by Counsel was correct.

3.89 The Tribunal also had sight (from Mr Dunlop's Discovery) of a somewhat muddled draft of a letter which may have been the purported draft reply of Cllr Ridge to the letter from Cllrs M J Cosgrave and Creaven.

The Tribunal was satisfied that Mr Dunlop's and Mr Lawlor's purpose in drafting Cllr Ridge's reply to the letter from Cllrs M J Cosgrave and Creaven was to place on record her acknowledgment that she had made an error.

This draft letter (which Mr Dunlop maintained was not typed in his office, or with his typewriter) read as follows:

Draft letter

Michael Joe Cosgrave

cc. Councillor Liam Creaven

Dear Councillor

Following your query regarding the Council's decision on the 27th April regarding motions 5(G) I have already sought clarification from the Secretariat regarding the interpretation of Standing Orders and have been informed that motion 5(G) should have been taken first and as 5(1) was taken and carried by majority in the Council Chamber the lands associated with the submission, the subject of the deferral, [effectively] *excluded from the taking of motion 5(G). I am consulting with the Manager as to how motion 5(i) deferred could be re-entered on the Order*

[15] There was no question but that the chairperson of the Council received this letter as reference is made to it in a further letter which was sent by Cllrs M.J. Cosgrave and Liam Creaven to the chairperson on 2 June 1993.

Paper for decision after the information it was sought on a separate letter to the Manager has been established.

As you are no doubt aware the Council's meeting on x date decided to carry out a site visit to the Baldoyle/Portmarnock area. After this site visit has been undertaken any information you have sought [clarification] *the matter can be put before the Council for a full discussion and decision.*

I trust the above clarifies your queries. [...]

3.90 Mr Dunlop did not believe that this was the letter which he and Mr Lawlor ultimately drafted for use by Cllr Ridge, although this draft, he conceded, appeared to contain, in principle, an indication of what was expected to happen within the Council after the proposed site visit had taken place, namely that the M J Cosgrave/ Creaven rezoning motion would be placed back onto the Council agenda. Mr Dunlop stated that this was the '*key*' objective of the exercise.

3.91 Mr Dunlop believed that he personally delivered to Cllr Ridge the draft of her reply to the letter from Cllrs M.J. Cosgrave and Creaven.

3.92 Cllr Ridge maintained in evidence that at all times throughout the course of the procedural controversy which developed in April /May 1993 in relation to the Baldoyle lands she had acted appropriately in her capacity as chairperson of the Council. While she acknowledged that Mr Dunlop had lobbied her to support the rezoning, she denied knowledge of Mr Dunlop's involvement in the drafting of letters to her, or of his drafting a letter for her to issue in reply. She acknowledged her long-standing friendly relationship with Mr Dunlop (as far back as the early 1980s), and confirmed that she used Mr Dunlop's office facilities when required. Mr Dunlop's office telephone records indicated frequent telephone contact between them in the period 8 March to 18 May 1993 amounting to 21 telephone calls. Mr Dunlop's diary also referred to a pre-arranged meeting with Cllr Ridge on 18 May 1993.

3.93 Irrespective of whether Cllr Ridge replied to the letter from Cllrs M J Cosgrave and Creaven in the terms proposed by Mr Dunlop and Mr Lawlor's draft, the Tribunal was satisfied to accept Mr Dunlop's evidence that a draft response was provided to Cllr Ridge.

3.94 It was apparent from a letter sent by Cllrs M J Cosgrave and Creaven to Cllr Ridge on 2 June 1993 (again a letter drafted by Mr Dunlop and possibly Mr Lawlor), that Cllr Ridge did in fact respond to their letter dated 12 May 1993. However, it appeared unlikely to the Tribunal that the response she provided on

25 May 1993[16] was in the precise terms of the draft, as that draft had envisaged her responding prior to the proposed site visit by councillors to the Baldoyle lands on 18 May 1993.

3.95 The Tribunal did not have sight of Cllrs M J Cosgrave and Creaven's original letter dated 12 May 1993, or of Cllr Ridge's reply thereto, as it was informed that the Council's secretarial file was missing.

THE EXIT OF MESSRS HICKEY AND SHUBOTHAM/DAVY HICKEY PROPERTIES FROM THE PENNINE OPTION AND THE REZONING PROCESS

3.96 In April / May 1993, Davy Stockbrokers were the stockbrokers appointed by the Government for the sale of some twenty five million shares in Greencore Plc on behalf of the State.The Minister for Finance was informed by Davy's that these shares had been successfully placed with Irish and overseas investors but he was not informed that the directors of Davy's and companies connected to Davy's themselves controlled some IR£19m of these shares after the sale. This revelation caused dealing in the shares to be suspended and resulted in inquires conducted by both the Irish Stock Exchange and the Attorney General. Media coverage in the first week of May 1993 in relation to the Greencore shares issue was highly critical of Davy's directors. On 7 May 1993 the Irish Times carried a series of articles outlining the origins of the controversy. In the course of one such article reference was made,*inter alia*, to Mr Shubotham and to Davy Hickey Properties, again described in that article as '*the property investment arm of Davy.'* The article also stated:

> *Davy Hickey is developing the £60 million Newlands Business and Industrial Park. The 300 acres in the development are reported to have been bought for £4.5 million. The property development company had expressed an interest in the Pennine Holdings plan to build a major housing scheme on the old Baldoyle racecourse if it was rezoned. The rezoning, sought by the public relations consultant Mr Frank Dunlop was rejected by Dublin County Council.*

3.97 Mr John Gore-Grimes' attendance on Counsel dated 11 May 1993 (at which the draft letters to be written by Cllrs M.J. Cosgrave and Creaven and Cllr Ridge were approved) noted the following: '*Frank Dunlop is to remove Brendan Hickey and David Shoebottom* [sic] *from the Pennine Board. There is to be absolutely no conversation with the Press.'*[17]

[16] Reference was made to this reply in a letter from Cllrs M.J. Cosgrave and Creaven on 2 June 1993

[17] The attendance documented the exit of Mr Shubotham and Mr Hickey in terms of removing them from the Pennine board, but neither were then directors of Pennine.

3.98 Mr Dunlop's diary for 10 May 1993 recorded a meeting with Mr Hickey and Mr Shubotham. Mr Dunlop could not say what the purpose of this meeting was but he acknowledged that on the following day there was a discussion between himself, Mr John Gore-Grimes and Mr Lawlor (and possibly with Mr Byrne by telephone), about Mr Hickey and Mr Shubotham's exit from the project to rezone and acquire the Pennine option lands. Mr Dunlop understood that '*in whatever capacity they were acting, Mr Hickey and Mr Shubotham were no longer to be involved*.'

3.99 Mr Dunlop stated in evidence that as of May 1993, Mr Hickey and Mr Shubotham began to express serious doubts about their continued involvement in the proposal to rezone the lands. Their unease, Mr Dunlop stated, had commenced following the publication of the above mentioned article in the Irish Independent on 27 April 1993. Mr Dunlop suggested that both men had displayed '*unease'* and '*angst*', following this publication. The Tribunal was however satisfied that there was no evidence, as of that date, that Mr Hickey and Mr Shubotham had resolved to cease their involvement with the Baldoyle project, other than to take action (which they did), to distance certain clients of Davy Stockbrokers, who had been named in the Irish Independent article, from the project.

3.100 It was Mr Dunlop's belief that two controversial issues, namely the Pennine rezoning fiasco and the 'Greencore' controversy were the factors which ultimately prompted the exit of Mr Hickey and Mr Shubotham on 11 May 1993 from the Baldoyle project, although, according to Mr Dunlop, the 'Greencore' issue had not been mentioned in his presence by either Mr Hickey or Mr Shubotham.

3.101 Mr Dunlop told the Tribunal that he could not rule out the possibility that, notwithstanding their imminent exit from the project, he discussed the strategies that he and Mr Lawlor were then putting in place in an attempt to resurrect the Baldoyle rezoning motion with Mr Hickey and Mr Shubotham at that time.

3.102 In the course of their evidence, Mr Hickey and Mr Shubotham denied that the controversy surrounding the Baldoyle rezoning attempt featured in their decision to cease involvement with that project. Essentially, the thrust of their evidence was that such involvement as they had had in the project had effectively ceased as early as October 1992. Mr Hickey maintained that as a result of a feasibility study it had become clear to himself and to Mr Shubotham that the project was not viable, and that it would not receive planning permission. Thus, his and Mr Shubotham's involvement (which, it was suggested, was in any event only going to take effect if rezoning/planning permission were

likely), effectively ceased as of October 1992. Mr Shubotham, likewise told the Tribunal that he and Mr Hickey had pulled out of the Pennine option/Baldoyle rezoning project as of October / November 1992. Mr Shubotham described the Baldoyle project as '*dead in the water'* by the end of 1992. No documentary evidence of the feasibility study referred to by Mr Hickey was provided to the Tribunal.

THE BALDOYLE REZONING PROJECT BETWEEN 6 MAY 1993 AND SEPTEMBER 1993

3.103 The lifeline given to the M J Cosgrave/Creaven rezoning motion, by virtue of the decision of Cllr Ridge on 6 May 1993 to allow the O'Halloran/Gilbride site visit motion to be put to a vote (which it was and which was passed, subject to consideration by the Council's Law Agent), ultimately came to no avail. On 28 May 1993 councillors were circulated with a copy of a legal opinion procured by the Council's law agent, which confirmed (albeit for somewhat different reasons), the correctness of the original decision of 27 April 1993 to the effect that the O'Halloran/Liam T. Cosgrave site visit motion was out of order and which confirmed (again albeit for somewhat different reasons), that the approach which had been taken by the Manager was correct.

3.104 The consequences of that opinion were that the Healy 'green belt' motion, as passed on 27 April 1993, stood, as did the ruling on the same date that as a result of the success of the Healy motion, the M.J. Cosgrave/Creaven Baldoyle rezoning motion fell. This legal opinion effectively proved to be the death knell for the Baldoyle rezoning project.

3.105 Nothing came of a further and final effort to revive the M J Cosgrave/Creaven rezoning motion in the form of a letter dated 2 June 1993 (drafted by Mr Dunlop), and sent by Cllrs M.J. Cosgrave and Creaven to Cllr Ridge, in the following terms:

> *Dear Chairperson,*
>
> *We wrote to you on 12th May last (copy attached) asking you to confirm our interpretation of Standing Orders in respect of the sequence of motions at the meeting of the Draft Development Plan Review held on 27th April 1993. You replied on 25th May saying that you had forwarded our letter to the manager for a response from the law agent. To date we have not received this response. In the interim however, a copy of the Opinion of Mr John Gallagher, S.C., with regard to questions he had been asked by the manager to advise upon has been made available to us. We note that although the date of this Opinion is 22nd May, 1993, it was not made available to the elected members until 28th May, 1993. It would*

appear also that this Opinion was available at the time of your acknowledgement and reply to us on 25th May, 1993.

In his Opinion Mr Gallagher states that he had been asked to advise on four questions, all of which ignored the substantive issue contained in our letter of the 12th May, namely whether our deferral motion, when passed by the elected members by 37 votes to 34, restricted any further consideration of the lands in question until a date not later than 15th May, 1993.

We would respectfully query why the law agent was not asked to adjudicate on this crucial matter and we therefore request you to have his response to the matter raised in our letter of 12th May last made available to the Council before 5.30pm tomorrow, 3rd June, 1993.

We have been denied the opportunity to have the Council consider in full the merits of our deferred motion addressing the neglect of the so-called green belt between Baldoyle and Portmarnock and we would request an early meeting with you to have this matter resolved amicably.

3.106 Notwithstanding the failed rezoning attempt and the exit of Mr Hickey and Mr Shubotham/ Davy Hickey Properties from the project, it appeared that both Mr Dunlop and Mr Lawlor retained a belief that there remained some hope for the Baldoyle rezoning project during the currency of the Development Plan Review. This was evidenced by an attendance of Mr John Gore-Grimes on his colleague, Mr Anthony Gore-Grimes, dated 29 June 1993 as follows:

On this file we have all the matters to do with Dublin County Council and Pennine Holdings. Pennine Holdings (Frank Dunlop) now want to re-negotiate the option agreement by getting a longer term and by reducing money. I am fairly certain that John Byrne will not be interested in reducing the money but whether or not he would be prepared to extend the option date from the 21st January 1995 onwards is a matter for him. Frank Dunlop is to submit proposals and I doubt if I will get these before I go away but if I do I will deal with them. I feel that John will not be anxious to extend the proposals but the problem here is that Frank Dunlop feels that he is the key to the whole development of the site. We should know by October when the final plan comes out as to whether or not he is right. Basically, if the zoning is confirmed as amenity we are scuppered for a further five years. [Frank] *remains reasonably confident however that he can turn this around but the problem is that much of the land that was available for the golf course will now be required by Dublin County Council for:*

a) Sewage Treatment Plant

b) Sludge Treatment Plant

c) Flood pools.

This has become a new political issue as a result of the flooding and the tragic death in Baldoyle recently. This is going to take up about 125 acres which would leave about 85 acres only for golf course. As you will know this is not sufficient. I am not exactly sure what Frank Dunlop is playing at but it seems to me that he is trying to increase the housing at the Portmarnock end significantly from 100 to say 200 houses and to wipe out any further development at the Baldoyle end other than the shopping centre and the housing that Kennedy is carrying out so that there would be sufficient land for a golf course at that end and for the County Council's requirements. I am not sure if this will work or what John Byrne thinks about it and Frank Dunlop and Liam Lawlor were in with me on the 28th of June but they both seemed to me to be speaking in riddles and were telling me half the story only. I think in reality the reason why half the story only was being told to me was that Frank Dunlop does not particularly trust Liam Lawlor and is very careful about what he says. You will have to deal with this in my absence.

3.107 Mr Dunlop said in evidence that his discussions with Mr Gore-Grimes in June 1993 were in the context of a possible opportunity for the lands to be rezoned during the review of the 1993 Development Plan by the soon to be established Fingal Council. On Day 705 Mr Dunlop stated:

'*Well, I think basically that we are now in June of 1993. By the end of 1993 the plan is going to be finalised so there is no way that this matter is going to be dealt with in that context. By the 1st of January 1994 we are going to have a new Council. And that's going to be Fingal, in whose area this particular land lay. And the two councillors that had been the proposers and seconders of the motion, notwithstanding that any of the motions or documents generated in relation to it were generated by me, were councillors in that particular area. And if you reprise the vote pattern that took place, albeit some of them were abstentions, that you will see that there was a level of support for the project on an ongoing basis, even though it was expressed in some peculiar ways towards the end. By that I mean that people abstained rather than voted.*'

MR DUNLOP'S PROPOSAL HOWEVER WAS NOT ACCEPTED
BY MR BYRNE.

3.108 The *'wrap up'* Special Meeting of Dublin County Council on 29 September 1993 did not feature the Baldoyle lands (including the Pennine option lands). In the 1993 Development Plan adopted on 10 December 1993, the Baldoyle lands retained their B& G (green belt) zoning.The attempts to rezone the Baldoyle lands for development had failed.

3.109 Mr Sean Mulryanof Ballymore Homes in due course exercised the Pennine option acquired from Mr Dunlop/Pennine in April 1994, The lands were subsequently developed for residential use.

THE TRIBUNAL'S CONCLUSIONS ON THE RESPECTIVE INTERESTS OF MR HICKEY, MR SHUBOTHAM AND MR DUNLOP IN THE PENNINE OPTION IN THE PERIOD FROM JANUARY 1991 TO MAY 1993

4.01 The Tribunal rejected the evidence of Mr Hickey and Mr Shubotham that in the period 1991 to 1993, they or Davy Hickey Properties had no ultimate beneficial interest in the Pennine option.

4.02 The Tribunal was satisfied that a beneficial interest was held by Mr Hickey and Mr Shubotham in the Pennine option for the following reasons:

(i) The payment by Mr Shubotham of IR£5,000 for the Pennine option;
(ii) The injection of funds into the project by the Eastview Partnership account and from accounts of Davy Hickey Properties (see below); and
(iii) The involvement of Mr Hickey and Mr Shubotham in discussions about a partnership agreement over a sixteen month period.

4.03 Equally, the Tribunal rejected Mr Dunlop's claim that he had no beneficial interest in the Pennine option between January 1991 and May 1993. Notwithstanding the absence of evidence of any concluded partnership arrangement or agreement, the Tribunal was satisfied that he had, in that period, an arrangement, whether formalised or otherwise, whereby it was understood that he had a beneficial ownership in the Pennine option. In October/November 1991 Mr Dunlop, through his company Shefran, became a registered shareholder in Citywest. It was inconceivable to the Tribunal that in the period December 1991 to March 1993 when discussions about a partnership agreement in relation to the Pennine option lands were ongoing, that Mr Dunlop, given his own admission of his expectation of a beneficial involvement in the Pennine option lands, did not have an agreement with Mr Hickey and Mr

Shubotham which acknowledged and ensured his beneficial interest in the project.

4.04 The Tribunal was also assisted in reaching the foregoing conclusion by the content of a memorandum prepared by Mr Kay of AIB on 20 May 1992 which recorded Mr Dunlop advising AIB that he had an 8% shareholding in the Pennine option[18] (and which appeared to tally with Mr Lawlor's understanding, as advised to the Tribunal, that Mr Dunlop's interest was to be '*in the region of 10%').*[19]While the Tribunal could not determine with any degree of certainty the extent of Mr Dunlop's agreed, intended or anticipated beneficial interest, it was satisfied, as it was in the case of Mr Hickey and Mr Shubotham, that all three individuals, were in the period 1991 / 1993 the beneficial owners (possibly with others) of Pennine's shares.

THE TRIBUNAL'S CONCLUSIONS ON THE INVOLVEMENT OF MR HICKEY AND MR SHUBOTHAM IN THE ATTEMPT TO REZONE THE PENNINE OPTION LANDS

4.05 On the evidence before it, the Tribunal was satisfied that in the period January 1991 to May 1993 there was ongoing and significant involvement on the part of Messrs Hickey and Shubotham in the attempt to rezone the Pennine option lands. Evidence to the Tribunal indicated that a number of professional third parties associated with the rezoning attempt were funded from the Eastview Partnership account (an account under the control of Mr Shubotham), and from accounts of Davy Hickey Properties. That expenditure (including a payment of IR£10,000 to Mr Dunlop's company, Shefran, on 6 January 1992), totalled almost IR£50,000, and included the IR£5,000 Pennine option consideration payment for which Davy Hickey Properties assumed responsibility.[20] The evidence also established substantial contact between Mr Dunlop, Mr Hickey and Mr Shubotham in the period March to May 1993, the most crucial period in the rezoning attempt.

4.06 The Tribunal therefore rejected the explanations tendered by Mr Hickey and Mr Shubotham for their contact with Mr Dunlop at this time, namely that it largely related to Citywest issues. As persons who were to beneficially share in the Pennine option lands, once acquired, it was entirely logical and probable that Mr Hickey and Mr Shubotham, during the crucial rezoning period, would have ongoing contact with Mr Dunlop – the individual who from late 1991 to May 1993 was both the public face of Pennine and the person who was largely charged with the task of securing the rezoning of the lands.

[18] Mr Dunlop said that he did not believe that he said this to Mr Kay

[19] Mr Dunlop said that he never discussed shareholding percentages with Mr Lawlor.

[20] This payment was made from a personal account of Mr Shubotham in January 1991 but was attributed as an expense of Davy Hickey Properties Ltd in a ledger compiled on 18 August 1993.

4.07 The Tribunal was satisfied that Mr Hickey and Mr Shubotham, in the course of their evidence, went to considerable lengths in their attempts to distance themselves from the Baldoyle rezoning project as it evolved from late 1992 to May 1993. Their respective testimonies did not reflect their true involvement throughout this period. The Tribunal believed that this was indeed an attempt on their part to distance themselves from actions in respect of which Mr Dunlop has apprised the Tribunal and testified to, namely Mr Dunlop's contention that he made payments to a number of councillors in connection with the Baldoyle rezoning project. Moreover, the Tribunal concluded that their claimed date of the cessation of their interest or involvement in the Pennine option lands was in no small way connected to their resolve to distance themselves from any connection between them and the payments made to Shefran in the period June 1991 to March 1993, totalling IR£62,500 as part of the rezoning effort.

4.08 The Tribunal was satisfied that Mr Hickey and Mr Shubotham, together with Mr Dunlop, were co-adventurers in the endeavour to overturn the B & G (green belt) zoning which attached to the Pennine option lands, and that all three did so in their capacity as beneficial owners of Pennine, the entity beneficially entitled to the Pennine option.

THE ROLE PLAYED BY MR JOHN BYRNE IN THE REZONING ATTEMPT

5.01 In a statement furnished to the Tribunal dated 29 September 2006, Mr Byrne stated as follows:
I had no involvement whatsoever in the efforts by Pennine Holdings Limited to achieve their aims but I am aware that they ran into difficulties with the local authority as the local authority wanted to acquire a substantial part of the option lands for the purpose of erecting a sewage treatment plant, sludge treatment plant and creating a flood plain.

5.02 The Tribunal rejected this assertion on the part of Mr Byrne. Throughout the rezoning process Mr Byrne involved himself in its progress and to this end liaised with Mr Hickey, Mr Dunlop, Mr Lawlor and with his own solicitor on an ongoing basis. Mr Byrne's interest in the rezoning process was significant, particularly given that the Pennine option would not be exercised unless the Pennine option lands were rezoned, and planning permission obtained. Mr Byrne's actions, like those of Mr Dunlop, Mr Hickey and Mr Shubotham, were undertaken with a view to ensuring that the 250 acres of the Pennine option lands (in addition to the remaining 150 acres of the Baldoyle lands) would be rezoned. Mr Byrne did not give sworn evidence to the Tribunal because of ill health.

THE PAYMENTS MADE TO FRANK DUNLOP AND ASSOCIATES AND / OR SHEFRAN

6.01 In his statement of November 2006, Mr Dunlop listed as relevant to the Tribunal a number of '*invoices raised and payments actually received by Frank Dunlop, Frank Dunlop & Associates and/or Shefran Limited with and from DHPL or any associated company, Mr Brendan Hickey, or Mr David Shubotham personally in the period 1990 to December 1993.'*

6.02 In chronological order, these were as follows:

1) A payment of IR£20,000 in June 1991 invoiced by and paid to Shefran , attributed by Mr Dunlop as relating to the Citywest lands.
2) A payment in September 1991 of IR£862, attributed to Citywest, on foot of a Frank Dunlop and Associates invoice in the sum of £861.65 furnished to Davy Hickey Properties.
3) A payment of IR£178 in January 1992, although Mr Dunlop stated he had no recollection of same and had no copy invoice.
4) A payment of IR£10,000 relating to the Baldoyle Eastview lands invoiced by and paid to Shefran in January 1992.
5) A payment of IR£177.75 on 10 March 1992, on foot of a Frank Dunlop and Associates invoice.
6) A payment of IR£598 on 27 March 1992, although Mr Dunlop stated that he had no recollection of same and had no copy invoice.
7) A payment of IR£1,530 in May 1992 invoiced by and paid to Shefran and attributed to Baldoyle/Eastview.
8) A payment of IR£2,500 in August 1992 invoiced by and paid to Shefran by Newlands Industrial Park Ltd, and attributed to Citywest.
9) A payment of IR£333.55 on 27 August 1992 by Mr Shubotham personally, attributed by Mr Dunlop as a Citywest payment.
10) A payment of IR£10,000 in November 1992 invoiced by and paid to Shefran attributed by Mr Dunlop to the Citywest lands.
11) A payment of IR£20,000 '*sometime in 1993*' by Mr Shubotham personally, attributed by Mr Dunlop to the Citywest lands.
12) A payment of IR£150 to Mr Dunlop on 10 March 1994, attributed by Mr Dunlop to a Fianna Fail fundraiser.
13) An invoice of Frank Dunlop and Associates in the sum of IR£5,787.51 dated 28 April 1993 and furnished to Davy Hickey Properties.
14) A payment of IR£3,160.74 on foot of a Frank Dunlop and Associates invoice dated 24 August 1993.
15) A payment of IR£625 on 20 August 1993, in part discharge of a Frank Dunlop and Associates invoice for IR£1,917.10.

16) An invoice of Frank Dunlop and Associates for IR£1,200 dated January 1994 in respect of Citywest.
17) A payment of IR£386 on 24 May 1995, on foot of a Frank Dunlop and Associates invoice for IR£438.49, attributed to Citywest.

6.03 In his statement to the Tribunal of November 2006, Mr Dunlop also referred to his belief that he received an initial '*token fee*' from Citywest for his work on that project. In evidence Mr Dunlop suggested that his overall fee for the work he carried out in relation to the Citywest material contravention vote in or about March 1991 was IR£75,000, which he maintained was converted in October/November 1991 into an equity shareholding in Citywest, by way of his participation in a partnership agreement. Mr Dunlop's equity shareholding in that venture was taken in the name of Shefran.

THE PURPOSE OF THE FIVE PAYMENTS MADE TO MR DUNLOP/SHEFRAN BETWEEN JUNE 1991 AND MARCH 1993

6.04 In relation to the payments Mr Dunlop, via Frank Dunlop and Associates and/or Shefran, received from Davy Hickey Properties and/or entities or individuals associated with that company, including the Eastview partnership account, and from companies associated with Citywest, the Tribunal focussed on a series of five round figure payments, totalling IR£62,500, made to Shefran in the period 1991 to 1993. These included IR£20,000 paid on 6 June 1991, IR£10,000 paid on 6 January 1992, IR£2,500 paid on approximately 6 August 1992, IR£10,000 paid on 11 November 1992 and IR£20,000 paid on 16 March 1993.

6.05 In his statement of November 2006, and in the course of his evidence, Mr Dunlop attributed only one of these Shefran payments, namely the payment of IR£10,000 made on 6 January 1992, as relating to the Baldoyle lands, and he maintained that the other four Shefran payments had been made in connection with Citywest.

6.06 In the course of his evidence in this module, Mr Dunlop, as he had in other modules, acknowledged that the primary purpose of his use of Shefran was to generate funds for his confluence of funds or *'stash of cash',* in effect the funds he had available to him in the years 1991 to 1993 and from which he made payments to politicians, including councillors.Mr Dunlop acknowledged that Shefran was not a trading company and was not registered for VAT. (However, see also "*The Shefran Payments"* in Chapter 2 – Part 5*)*

6.07 With regard to the above recorded five Shefran payments, Mr Dunlop acknowledged that while Shefran was identified as the payee in the records of the donors of the five cheques, invoices were not generated for each of these payments. On their receipt by him, the cheques were invariably cashed, pursuant to the arrangement he had with Mr John Ahern of AIB. The thrust of Mr Dunlop's evidence, over a series of modules, was that insofar as any of the encashed proceeds of Shefran cheques were lodged, such lodgements were almost exclusively made to his '*war chest*' accounts.

6.08 Against this backdrop, the Tribunal examined the five Shefran payments totalling IR£62,500 made to Mr Dunlop during the currency of his, Mr Hickey and Mr Shubotham's interest in the Pennine option and the rezoning project.

THE PAYMENT OF IR£20,000 TO SHEFRAN BY NEWLANDS INDUSTRIAL PARK ON 6 JUNE 1991

6.09 In his statement of November 2006, Mr Dunlop described the background to this payment as follows:

> *This was invoiced and paid to Shefran Limited. The monies related to the Citywest lands. This cheque was either cashed or lodged and withdrawn and formed part of the confluence of funds available for distribution to Councillors.*

6.10 Mr Dunlop did not refer to this payment in the section of his statement to the Tribunal dated October 2000 headed '*Baldoyle/Eastview*.'

6.11 The cheque payments book/ledger of Newlands Industrial Park (a company associated with Citywest) recorded payment on 6 June 1991 of IR£20,000 to '*F. Dunlop & Ass. PR(fees).'* A cheque in the sum of IR£20,000 was debited to the company's Bank of Ireland Private Banking account on the same date. While thus recorded as a payment to Frank Dunlop and Associates in the cheques payment book, the Tribunal was satisfied (and indeed this was not disputed), that the cheque was in fact made payable to Shefran. Evidence of this fact was found in a Citywest document dated 30 June 1992 entitled *'Reconciliation of Public Relations'* which listed a total of IR£21,638 as paid to Mr Dunlop/Frank Dunlop and Associates/Shefran in the period 27March 1991 to 31 March 1992 and which described the IR£20,000 payment on 6 June 1991 as having been made to '*F Dunlop and Associates(Shefran).'*

6.12 In a further undated document recording expenditure on the part of the Citywest Partnership, under the heading *'OTHER OPERATING EXPENSES'*, the IR£21,638 figure listed under 1992 was again described as *'Public Relations.'*

6.13 In a ledger of their expenditure associated with Mr Dunlop (prepared in 2000 for submission to the Tribunal), Davy Hickey Properties listed the IR£20,000 payment to Shefran on 6 June 1991 (together with the IR£10,000 Shefran payment on 11 November 1992) under the heading '*City West Payments to Frank Dunlop/Shefran Limited identified as Political Contributions.'*

6.14 The document stated that the said funds were paid to Mr Dunlop to facilitate political contributions to '*various elected representatives'* at the time of the Local Election and that this was done at Mr Dunlop's suggestion.

6.15 In the course of his private interview with the Tribunal on 18 May 2000, Mr Dunlop referred to the IR£20,000 Shefran payment in June 1991 (and the IR£10,000 Shefran payment on 11 November 1992) in the following terms:

> *'They were – I think and if you look at the cheque payments you will find that they are, you know, at that time, you know, and they were a specific request by me to Brendan Hickey that there was going to be calls, people were going to be ringing me looking for money and all the rest of it and I needed a few bob in the kitty and what I... did with it, who I allocated it to in relation to the 1991, it obviously went right across the board, and in relation to '92' similarly. [...]*
>
> *There were two payments* [June 1991 and November 1992] *because there were two elections... They were for election contributions, but in total transparency here, in relation to – you see City West, as I have explained to you earlier on, was done by way of material contravention and was done by the power and the strength and the reputation of Davy Stockbrokers and Davy Hickey Properties and all the rest of it. To my knowledge, and I say that now advisedly, to my knowledge I am not aware that any monies were disbursed or dispensed with or in any way given as inducement in relation to the actual material contravention in relation to City West which was in 1990.*[21] *There was subsequent motions obviously based on that material contravention and the land being zoned by the material contravention route. There was obviously motions in relation to specific elements of the City West development. There was a planning application which was granted, all of that, all done perfectly legitimately, but my request to Brendan Hickey in relation to money was, I knew in my heart and soul, you know, that somebody was going to say to me look it, he looked after you in City West or we looked after you in whatever it happened to be, Ballycullen, we looked after you and I certainly was looking for monies so that I would put monies into the war chest. I wasn't*

[21] While the material contravention process commenced in 1990, it did not materialise until 1991.

looking for the monies from Davy Hickey or Brendan Hickey specifically in relation to anything that was coming up.'

6.16 Asked in the course of that same private interview if the money disbursed by him to politicians in June 1991 and November 1992 was intended in any way as a '*thank you*' for their support for the Citywest material contravention vote, Mr Dunlop replied as follows:

'*Well they were making them – first of all at my specific suggestion because I knew that* [Brendan Hickey] *was going to be asked for monies because the election time was used as the subterfuge, let's be honest about that, and, you know, I needed funding, I needed to have money available and they took the view, without putting words in Brendan Hickey's mouth, I am quite certain he will say, you know, he will say 'look it there is an election on, yeah, I agree, people have been helpful to us and I don't see anything wrong with it and yeah, okay' and we agree 20 on the 1991 one and similarly, if my memory serves me right in relation to the November 1992 one, he was a little less accommodating. He was sort of saying 'well look it, we have done our bit and elections and how many more bloody elections are we going to have? Is this going to go on forever and a day? But nonetheless I got 10 grand out of him.'*

6.17 Giving evidence on Day 706 in relation to the IR£20,000 Shefran payment in June 1991, Mr Dunlop stated that he initiated contact with Mr Hickey '*in the circumstances that there was an election'* and Mr Dunlop described that contact in the following terms:

'*.... while I did not say to Brendan Hickey that I need money to give to people because people will be demanding money from me on the basis that they supported City West, I said to him that there was an election and I would be – monies would be demanded of me as election contributions, whether they were given specifically in relation to any specific element. That never arose in relation to my conversation with Brendan Hickey. It was on the basis, there's an election. I'm going to be asked for funds. I need something for the Kitty.'*

6.18 Mr Dunlop later stated:

'*Mr Hickey was not giving me the money so that I could go on a trip to the Bahamas or go down to Brown Thomas and buy a fur coat. Mr Hickey and I had a conversation on the basis generated by me that there was an event called an election. That there would be demands for money to me and that I needed some funds and I was asking him in effect to make a contribution to me on both occasions to facilitate that.'*

6.19 Mr Dunlop said that the IR£20,000 Shefran payment in June 1991 (and the IR£10,000 Shefran payment on 11 November 1992) was intended to be utilised by him at his '*discretion.*'

> *'But* [in Mr Hickey's estimation] *... I would give monies to politicians in the context of a local and in November 1992, a General Election. The word* '*inducement' 'bribe' or whatever other euphemism you like to think of was never, never used, either by him or by me. And I never intimated to him that this money would be used retrospectively or prospectively in relation to votes at Dublin County Council*.'

6.20 In response to Tribunal Counsel's question:

> *'Well, do you think for a moment that it wasn't understood, it was certainly understood by you what you were intending to use it. Do you think for a moment that Mr Hickey did not believe exactly as you did that the way of the world, as you described at that time, involved the payment of monies to politicians and this was part of that exercise that he and you were engaged in, in the payment of the 20,000 in June?'*

Mr Dunlop replied:

> *'Well, the only answer that I can give to that, Mr O'Neill. He may well have done and he may well not have done. And I can't account for what Brendan Hickey will say as to what his understanding was. But that was my understanding.'*

6.21 Mr Dunlop reiterated evidence previously (and subsequently), given by him that the subterfuge of the local elections allowed him to make payments to politicians and afforded him '*the opportunity to look after those politicians that I would need in the context of the forthcoming*' Development Plan review.

6.22 He stated he had not identified the disbursements that he made to councillors in the course of the 1991 Local Election campaign as being related to Davy Hickey Properties. He had not been requested to do so, and no particular politician or political party had been identified by Mr Hickey as a likely recipient of funds. Following the receipt of the IR£20,000 Shefran cheque, Mr Dunlop did not account to Mr Hickey for its expenditure.

6.23 Mr Dunlop could not explain to the Tribunal why, in the light of his specific evidence as to the purpose for which he was put in funds of IR£20,000 in June 1991 by Mr Hickey, the contemporaneous record of Newlands Industrial Park had linked the IR£20,000 Shefran payment as PR expenses paid to Frank Dunlop and Associates.

6.24 He acknowledged that at the time of his discussion with Mr Hickey about funds for the Local Election he had embarked on a course of dealings involving himself, Mr Hickey, Mr Shubotham and others relating to the acquisition of an option on lands at Baldoyle with the specific objective of making an application to have such lands rezoned in the course of the then current review of the 1983 County Development Plan.

6.25 Mr Hickey described the payment of IR£20,000 to Shefran on 6 June 1991 as '*a legitimate political donation.'* He stated in evidence that the payment arose in the following circumstances:

> *'Frank Dunlop came to us and said that it is a Local Election. There are 75 or 77 local councillors and that I think it would be appropriate that you would make a political donation to all of the various members. Now, every single – it was a practically unanimous vote that voted for City West. Every single party, workers party, Labour Party, PDs, Fianna Fail, Fine Gael voted for the proposal. And I would have presumed that he was going to spread out the money, equally to all of those. If Frank Dunlop had equally come to me and said how do we* [do] *this. This is how it's done. Because I didn't know how it was done. If he came to me and said I would like you to write out 75 cheques for 250 pounds I'd have done that. Or if he'd have broken it into different. He asked me to do it this way and that's why I did it that way. It's as simple as that.'*

6.26 Mr Dunlop said that following receipt of the cheque, he had not been asked by Mr Hickey to account for its expenditure. Mr Hickey's explanation for not having done so was that he trusted Mr Dunlop to make the donations in an appropriate manner. He told the Tribunal that he received no acknowledgment of any donation from any politician at that time.

6.27 While Mr Hickey accepted that the company cheque payments book described the IR£20,000 payment as '*fees*' to Mr Dunlop (and not political donations), he stated that Mr Dunlop had approached him in June 1991 requesting the money and suggested that political donations would be made '*in a certain format'*, a suggestion with which he saw nothing wrong. He could not recall how it was '*notated*' in the company's ledger but agreed with Tribunal Counsel that the payment had been *'mis-described in the ledger as fees.'*

6.28 It was clearly open to Mr Hickey/Newlands Industrial Business Park to record the IR£20,000 Shefran payment as a political donation in its books, as that company, at the time the IR£20,000 Shefran payment was '*mis-described'* in its books as '*fees*', had deemed it in order to identify a donation of IR£500 to

Cllr Paddy Madigan under the term *'Local Election.'* Mr Hickey maintained that he would not have told his accountant that the payment to Shefran was fees. Unlike the 6 June 1991 IR£20,000 Shefran payment, Cllr Madigan's political donation was not carried in the accounts of Newlands Industrial Park as an expense of the company.

6.29 The manner in which the June 1991 IR£20,000 Shefran payment was treated in the contemporaneous records of Newlands Industrial Park ensured that it was not capable of being identified as a payment to a politician or politicians.

6.30 Mr Hickey expressed surprise and astonishment when informed that Shefran, the company to whom his company paid IR£20,000, was a non-trading company, then without a bank account and not registered for VAT, and suggested that this information was unknown to him. In the course of his evidence, Tribunal Counsel posed the following to Mr Hickey:

> *'The audit trail that would be followed by the Tribunal would trace a payment made by you of 20,000 pounds to Mr Frank Dunlop. It would find that it did not go to any account of Shefran, which was the person to whom you'd written the cheque. It would find that because Shefran did not have a bank account. It would find that Shefran was not a company which was trading. It would find that Shefran was not a company which was VAT registered. All of those matters would cause the Tribunal, and did cause the Tribunal, to conduct the type of investigation that it is conducting at present as to why this payment was made and for what service. And it would then be indicated that it was a payment made to politicians. And then the next question is why.'*

6.31 Mr Hickey's response to this was:

> *'Well, I hear what you're saying that Shefran is a non-trading company. That Shefran is a company that doesn't pay VAT. That Shefran doesn't hold a bank account. Which comes as a great surprise to me. Considering Shefran was the name of the company that took (sic) the partnership share in City West. I'm astonished when you say those things. [...] So I, I would not have been dealing with a company-- a person who was carrying on his affairs like that if I had known that was the case. And I had absolutely no reason to believe that he was carrying on his affairs like that.'*

6.32 Mr Hickey acknowledged that he had made a connection between the IR£20,000 provided to Mr Dunlop for the purposes of disbursement to councillors in the course of the local election and the voting support of those

councillors for the Citywest material contravention motion in March 1991. He told the Tribunal:

> *'I would have met nearly all of the local politicians, not just the local ones but nearly all of the County Councillors. I don't know whether I met 40 of them or whether I met all 77. But I would have met nearly every one of them. I would have met some of them quite a number of times. I would have briefed them on what we were doing. I would have said to them look it, we are looking to rezone a large tract of land. We know it's a big ask but I know what I'm talking about. I believe this is the type of development you need to do. I said that if you support us we will honour what we're saying we're doing and we will deliver what we say, which we did do. It was in the context of all of those meetings with those people who did trust us and voted through by every single party. And every person in the chamber bar one voted for it. And in that context Frank Dunlop said these people have been very supportive of you, they're coming up to a Local Election. It's a very expensive time. It is normally expected that businesses would support politicians by making legitimate donations. And it was in that context that I thought that was a very fair and reasonable argument and I acquiesced to what he was saying.'*

6.33 When asked if he had considered that the IR£20,000 in political contributions in June 1991 might be of assistance to him/Davy Hickey Properties in any ongoing planning projects, he said:

> *'Well, I don't think I was as Machiavellian as that. I mean, they had supported us. And I was aware that politicians look for donations at times of elections and we were supporting them back. I mean, I don't think I was any more Machiavellian than that.'*

6.34 Mr Shubotham said in evidence that he '*definitely*' knew that in June 1991 Newlands Industrial Park made a IR£20,000 payment as a political donation. He said that he was made aware of this information by Mr Hickey, but he claimed that Mr Hickey would not have necessarily told him that Mr Dunlop (or Shefran) was being used as the conduit for the political contributions in question.

6.35 Evidence given in the Quarryvale module established that in the period April to June 1991 Mr Dunlop was in possession of cash funds of at least IR£165,000 including the encashed proceeds of the IR£20,000 Shefran cheque he received on 6 June 1991. Mr Dunlop used this '*confluence of funds*' for disbursements to councillors during the course of the 1991 local election campaign.[22]

[22] See Chapter 2 Part 7.

THE PAYMENT OF IR£10,000 TO SHEFRAN ON 6JANUARY 1992

6.36 Documentation discovered to the Tribunal by Davy Hickey Properties included a reconciliation ledger dated 18 August 1993 entitled '*Baldoyle Payments'* which detailed expenditure on the Baldoyle rezoning project between January 1991 and June 1993 from the bank accounts of Davy Hickey Properties, and from the bank account associated with the project known as the '*Eastview Partnership'* account. The total expenditure, as detailed in that document, was IR£44,946.93, of which IR£28,126.42 was attributed to the '*Eastview Partnership'* account, with the balance of IR£16,820.51 attributed to Davy Hickey Properties. Included in the figure of IR£28,126.42 (which comprised five payments made between January and August 1992) was a payment of IR£10,000 recorded as having been made to Shefran on 6 January 1992.

6.37 Mr Dunlop claimed to have no backup documentation in relation to this payment but he confirmed that Shefran was the recipient of the IR£10,000 payment. Mr Shubotham acknowledged that he signed the cheque to Shefran in January 1992. The Tribunal established that the Eastview Partnership Account was debited in the sum of IR£10,000 on 24 February 1992.

6.38 Mr Dunlop told the Tribunal that the payment was one of two payments to him associated with Baldoyle from the Eastview Partnership account (the other being a payment of IR£1,530 to Frank Dunlop & Associates on 6 May 1992). He stated:

> '*I believe that payment was made on foot of an invoice issued by Shefran Limited. The payment was made in circumstances where I had informed Mr Hickey that I required the sum of £10,000 to defray certain expenses such as print work etc. This sum was however given by me to councillors in relation to Baldoyle. Mr Hickey would, in the circumstances, be justified in contending that I owe him or his company £10,000 as he never received any receipts or vouchers in relation to the expenses I told him that I would have to incur but did not incur.'*

6.39 In his statement of November 2006 Mr Dunlop described the payment as relating to '*the Baldoyle/Eastview lands'* and went on to state that:

> *It was invoiced by and paid to Shefran Limited. This cheque was either lodged to the Shefran account, lodged and withdrawn or cashed and formed part of the confluence of funds referred to heretofore. This payment was sought to defray unspecified expenses incurred in the rezoning project. Whilst some of these funds may have been paid to Councillors, DH PL were not so advised.*

6.40 In the course of his private interview by the Tribunal on 18 May 2000, in the context of references made by him to being in receipt of IR£10,000 for '*Newlands/City West*', Mr Dunlop stated:

> '*Eastview. I put that in there specifically to link it to, not City West, but to Brendan Hickey because, and I regard that £10,000 as 'Expenses' in relation to – there was no monies, there was no fund per se in relation to Baldoyle or given to me by Davy Hickey Properties…'*

6.41 Later in the course of that same interview, when asked what the IR£10,000 payment was for, he replied:

> '*The £10,000 was monies that I said to Brendan Hickey that I would need for expenses, not expenses in the context of disbursements but it went into the total fund. I may have used it for print work or whatever, but as far as I am concerned, while I cannot be absolutely categoric, there was no monies out of, we'll say East View / Baldoyle / Pennine in relation to, from that source in relation to it. Yes, there was monies given to councillors in relation to Baldoyle out of the total fund and would be far in excess of £10,000, when we come to that, but that – I put it down because it was monies that I received in or around that time and which, in my view, went into the total fund. I may have ended up paying for print work or whatever out of Frank Dunlop and Associates, I may have discharged bills, for example, when the formation of Pennine Holdings with, which was done by Eugene F. Collins, I am virtually certain that the monies to discharge all of that and to discharge other bills in relation to print work were paid out of Frank Dunlop and Associates. That's why I put that £10,000 there. While I did get the £10,000 from Brendan Hickey, I did not directly use it for the purpose – it's that I would have said to him listen I need to pay for bills. Now, if you were to talk to Brendan Hickey, he might well turn around with some justification and say 'well Frank Dunlop still owes us money. We paid him £10,000 in expenses and we never got any receipts or vouchers for it.'*

6.42 In his evidence to the Tribunal, Mr Dunlop reaffirmed his claim that he did not discharge any specific bill from the IR£10,000 Shefran payment, and that the payment went into his confluence of funds, from which he paid politicians. He acknowledged that expenses which he had incurred in the course of his work on the Baldoyle rezoning project (for example, printing etc) were discharged by Davy Hickey Properties and /or the Eastview Partnership account on foot of invoices furnished by Frank Dunlop & Associates.

6.43 Mr Dunlop agreed with Mr Hickey that he had not been asked to account for the January 1992 IR£10,000 Shefran payment. He advised that, in accordance with the prior agreement that the expenses would be met by Davy Hickey Properties, all of the Frank Dunlop & Associates invoices submitted by him post January 1992 were discharged by Davy Hickey Properties.

6.44 Asked why, in those circumstances, he had sought the IR£10,000 payment, Mr Dunlop stated:

> '*Oh well I may well have sought the 10,000 pounds under the sobriquet or euphemism of ongoing expenses knowing that had I got 10,000 pounds it would, as it eventually did, end up in the confluence of funds.'*

6.45 He also acknowledged that '*the real reason, the overriding reason in the context was that I was probably going to be asked for money by politicians.'*

6.46 Asked if there was any reason why in this instance he did not indicate to Mr Hickey what that '*real reason*' or '*overriding reason'* was, given that in the case of both the IR£20,000 paid in the previous June, and the IR£10,000 paid in the following November, he had felt comfortable to indicate to Mr Hickey that he needed the money because politicians would be requesting money from him, Mr Dunlop sought to distinguish those other occasions by pointing out that those payments were made at election times. He said:

> '*In the circumstances that in June 1991 and in November 1992 I went to Brendan Hickey looking for money for political donations. I did not say to Brendan Hickey I need money to give to x, y and z, because I need him to do x, y and z for me in the future or for something that he has done for me in the past. I went to Brendan Hickey as a source of funding, in the full knowledge that I would be importuned by politicians for funds, in the context of elections.'*

6.47 The following exchange took place between Tribunal Counsel and Mr Dunlop on Day 706:

> '*Q. Yes. And certainly from what you've told us at (sic) interview before and which has been outlined earlier this morning, that is something which you weren't keeping back from him. You were telling him look, Brendan, the position is these people will be coming to me looking for money. They'll say that you helped or we helped you in City West, we helped you in Ballycullen, whatever it might be. They'll be looking for money?*
>
> *A. Yes*
>
> *Q. It was on that basis that he gave you the money?*
>
> *A. Yes*

Q. There was a full and frank exchange between both of you at that time as to what the realities of life were?

A. Yes.

Q. That you should have money in a Kitty available to you?

A. That I should, yes.

Q. Available to you to meet the requests which inevitably were going to flow from the fact that an election was called and therefore, the politicians would be on your door looking for money?

A. Well, I think I've given evidence in a number of modules.

Q. Yes?

A. And let the record show that I am here now giving it too.

Q. Sure?

A. Once an election is called. You either took the phone off the hook or else you just kept it in your ear on a continuous basis. And most of the calls were politicians.

Q. But what is of importance at this particular time, is that this is information which you imparted to Mr Hickey?

A. That I would be getting calls for funding, yes.

Q. Exactly?

A. Yes yes.'

6.48 In the course of his evidence Mr Dunlop sought to emphasise that the IR£10,000 Shefran payment in January 1992 was the only one of the five Shefran payments made to him in the period 1991 to March 1993 that related to the Baldoyle lands. He further maintained that he cashed the Shefran cheque in or about mid February 1992 before adding the proceeds to his confluence of funds/accumulated cash. Although Mr Dunlop acknowledged that the actual funds were expended by him in 1992, he nevertheless claimed that this IR£10,000 was the *'source'* of the six IR£1,000 payments he claimed to have made to six named councillors in the period March 1993 to June 1993, in connection with the attempt to rezone the Baldoyle lands.

6.49 Mr Dunlop acknowledged that the IR£10,000 he requested, and received in January 1992 was intended to be used in a similar fashion as the IR£20,000 sum paid to Shefran in June 1991, namely for payments to politicians, albeit in the absence of the background of an election in January 1992.

6.50 Mr Hickey professed in evidence to have no recollection of the IR£10,000 payment made to Mr Dunlop, through Shefran, in January 1992 other than to acknowledge that he and Mr Shubotham must have spoken about it prior to drawing a cheque for that amount on the Eastview Partnership account. He said that he could not assist the Tribunal as to whether this payment had been made on foot of an invoice from Shefran, but he presumed that there was an invoice. On Day 707 Mr Hickey told the Tribunal:

> '*In '92 we were still considering getting involved. There, to me, there are two aspects to whether we would get involved. Is it possible to service these lands, which is essentially an engineering thing. And two, even if it's possible, would it be acceptable. Would it be acceptable to the residents, would it be acceptable to the planners, the local representatives. Frank Dunlop, I believe, asked for the money on the basis that he needed [it]. He was going to incur certain costs or expenses in ascertaining the side that he was doing, which was the acceptability side.'*

6.51 In his statement to the Tribunal dated 19 October 2006, Mr Shubotham described the payment of IR£10,000 as a payment to Mr Dunlop '*to sound out reaction to the* [rezoning and development] *plan prepared for* [Baldoyle] *from all interested parties.'*

This was rejected by Mr Dunlop as follows:

> *'... the idea of me sounding out the reaction to the plan proposed for the area. I mean, that is capable of quite a large number of interpretations, I might suggest. But certainly if you were to formalise it, it wasn't Frank Dunlop & Associates or Frank Dunlop or Shefran conducting a market survey or an opinion poll as to the likelihood of the success or otherwise of this project.'*

6.52 Mr Shubotham told the Tribunal that while the remainder of the expenditure on the Baldoyle project, as documented on the '*Baldoyle payments'* ledger of 18 August 1993, related to expenses incurred in the course of the project, the January 1992 Shefran payment was provided by way of a '*float'* to Mr Dunlop to enable him meet unspecified expenses. Mr Shubotham accepted that neither the payment nor the purpose to which it was put was accounted for by Mr Dunlop.

THE PAYMENT OF IR£2,500 TO SHEFRAN IN AUGUST 1992

6.53 Documentation provided to the Tribunal indicated that on 6 August 1992 Shefran issued an invoice to Newlands Industrial Park requesting payment of IR£2,500 for '*refresher facilities vis-a-vis professional strategic communications and education.'* The invoice was discharged on 7 August 1992 with a cheque for IR£2,500 drawn on the account of Newlands Industrial Park.

6.54 Mr Dunlop did not mention this payment in the section of his statement to the Tribunal dated October 2000 headed *'Baldoyle/Eastview.'*

6.55 However, in his statement to the Tribunal dated November 2006 Mr Dunlop referred to it in the following terms:

> *This was invoiced by Shefran Limited and paid by Newlands Industrial Park Limited subsequent to the reissue of the invoice at the request of Mr Brendan Hickey and related to the Citywest lands.*

6.56 Giving evidence on Day 706, Mr Dunlop professed to have no idea of the purpose of this payment. Mr Dunlop was questioned by Tribunal Counsel with a view to ascertaining whether the record (maintained by his secretarial staff) of telephone calls made to his office on 7August 1992 might assist in jogging his memory of the payment, in particular the following: *'2.45 David Shubotham – meeting you are attending on his behalf – single payment only'* and *'4.00 Liam Lawlor – ringing you at home.'*

6.57 Mr Dunlop acknowledged the temporal link between his receipt of the IR£2,500 Shefran cheque on the one hand and a meeting which his telephone records indicated he was attending on behalf of Mr Shubotham, apparently concerning a payment of money on Mr Shubotham's behalf, on the other. Mr Dunlop had no recollection of ever having been asked by Mr Shubotham to make any payment to Mr Lawlor.

6.58 Mr Hickey stated in evidence that he had assumed that the Shefran invoice dated 6 August 1992 was a legitimate invoice, notwithstanding Mr Dunlop's evidence that the invoice was in fact a bogus invoice and its written content '*verbiage*.' Mr Hickey believed that the invoice related to PR assistance Mr Dunlop had provided in or about May/June 1992 in relation to Citywest's efforts to attract a major US company to its campus, and in relation to other services provided by Mr Dunlop at that time, including the organisation of meetings with Dublin County Council on the issue of a sewer facility through the Citywest lands.

THE PAYMENT OF IR£10,000 TO SHEFRAN ON 11 NOVEMBER 1992

6.59 Documentation provided to the Tribunal established that on 11 November 1992 Shefran invoiced Newlands Industrial Park in the sum of IR£10,000 in the following terms: '*To refresher facilities vis-à-vis professional strategic communications and education.'* This invoice was discharged on the same date with a cheque for IR£10,000 payable to Shefran, drawn on the account of Newlands Industrial Park and signed by Mr Hickey. The cheque was furnished to

'*Mr Frank Dunlop, Shefran Limited*' under cover of a letter from Mr Hickey. This was written up in the company's cheque payments book under '*public relations*.'

6.60 Mr Dunlop did not mention this payment in the section of his statement to the Tribunal dated October 2000 headed '*Baldoyle/Eastview.*' In his statement of November 2006 he referred to it in the following terms:

> *This payment related to the Citywest lands. It was invoiced by and paid to Shefran Limited by cheque. This money was either lodged, lodged and withdrawn or cashed and formed part of the confluence of funds referred to heretofore. Some of this money may have been used personally.*

6.61 In the course of his private interview with Tribunal Counsel on 18 May 2000, Mr Dunlop referred to this payment as having been made to him by Mr Hickey, at his suggestion, for disbursement to politicians in the course of the November 1992 General Election campaign.

6.62 Giving evidence on Day 706, Mr Dunlop said that, as he had done for the June 1991 Local Election, he approached Mr Hickey after the November 1992 Election was called with a request for money for political donations. He agreed that elections were '*points on the road*' at which '*you could stop and pay politicians bribes on the basis that this is a political contribution towards the election[…] whereas everyone involved knew it was a bribe.*'

6.63 In the Davy Hickey Properties document provided to the Tribunal in 2000 which detailed, *inter alia*, payments made to Mr Dunlop/Frank Dunlop & Associates/Shefran, the November 1992 IR£10,000 payment was described as one of two payments made by Citywest to '*Frank Dunlop/Shefran Limited'* identified as *'political contributions.'*[23]

6.64 In his statement to the Tribunal dated 17 January 2001, Mr Hickey addressed the November 1992 IR£10,000 Shefran payment under the heading '*Payments to Frank Dunlop'*, as follows:

> *In respect of the payments made to Mr Frank Dunlop identified as political contributions, the first of IR£20,000 made in June 1991 followed upon a suggestion by Mr Dunlop that, given it was a time of local elections, it would be appropriate to make political contributions to the various elected representatives. This seemed both reasonable and unremarkable.*
>
> *The second payment of IR£10,000 was again made following a suggestion by Mr Dunlop at the time of the general election at the end of 1992.*

[23] The other identified political contribution on the document was the June 1991 payment of IR£20,000, also made to Shefran.

6.65 Mr Dunlop agreed that this was yet another payment evidenced by a bogus invoice which he would not have generated unless requested to do so. He said: '*Well Brendan Hickey obviously needs some sort of paperwork in relation to it.*' Mr Dunlop conceded that Mr Hickey did not take issue with the contents of the invoice and said:

> '*How Brendan Hickey regarded it on receipt or whether he acknowledged – he never acknowledged it to me that it was a bogus invoice. Whether he acknowledged it personally to himself, that's a matter for him. But certainly the agreement to pay the 10,000 was on foot of the production of an invoice, whatever the terms of the invoice were.*'

6.66 Mr Dunlop told the Tribunal that, as in the case of the June 1991 IR£20,000 Shefran payment, he did not account to Mr Hickey for how, or to whom, he had disbursed the November 1992 IR£10,000 payment. By mid November 1992, Mr Dunlop had the encashed proceeds of this cheque available to him (together with other funds, namely a cash withdrawal of IR£55,000 from his 042 account on 10 November 1992 and IR£8,500 of the encashed proceeds of an IR£11,000 cheque provided to him by Mr Christopher Jones Snr) for disbursement to politicians, including councillors.[24]

6.67 On Day 708 Mr Hickey gave the following explanation for this IR£10,000 payment:

> '*There was a General Election going on. And again Mr Dunlop came and said that we should, it would be appropriate that with the General Election that we would make a political donation to the various parties. I saw it as a legitimate political donation.* [This IR£10,000] *was paid to Frank Dunlop for him to pay out in the appropriate manner. And I wasn't aware whether he would give equally to the parties or proportionately according to the strength or how exactly he was going to do it.*'

6.68 With regard to the bogus nature of the Shefran invoice, Mr Hickey told the Tribunal that he '*didn't take any particular cognisance of either the company or the verbiage. It was the fact that would I pay it or not was the question.*' He did not suggest to the Tribunal any particular reason why the payment was not documented in the books of Newlands Industrial Park as a political donation, other than to maintain that payments to Mr Dunlop were '*all put under the same classification for Mr Dunlop [...] for ease of reference*.'

[24] For a consideration of Mr Dunlop's activities in November 1992, see Chapter Two.

THE PAYMENT OF IR£20,000 TO SHEFRAN IN MARCH 1993

6.69 In his statement to the Tribunal dated 17 January 2001 dealing with his private interests, Mr Shubotham, in response to queries raised by the Tribunal, stated as follows:

> *With regard to payments to Mr Frank Dunlop, Mr Shubotham has made two payments to Mr Dunlop.*
>
> *1. A cheque dated 27 August 1992 was drawn on Mr Shubotham's personal account in the sum of IR£333.55. Mr Shubotham is not able to say at this remove what the [...] payment was for. [...]*
>
> *2. On or about 16 March 1993, Mr Shubotham made a payment from his personal account to Mr Dunlop in the sum of IR£20,000. The payment arose in circumstances where Mr Dunlop had raised the issue of a payment for work carried out in respect of City West. At that point in time he had agreed to a return through a shareholding he had received in City West. It is Mr Shubotham's recollection that in early 1993 the question of whether or not City West might be a success was far from assured and the value of Mr Dunlop's shareholding was questionable. Mr Shubotham, on his own account, formed the view that Mr Dunlop had done good work in respect of the project but, given the pressures on financing, he did not believe any request made to City West for additional payments would be well received. In the circumstances, he made a decision to make a personal payment to Mr Dunlop as a gesture of goodwill.*

6.70 To the extent that it could be identified by the Tribunal, the documentary trail established that on 16 March 1993 a cheque to Shefran for IR£20,000 was debited to a personal account of Mr Shubotham at Bank of Ireland Private Banking.

6.71 While Mr Dunlop, in the course of his private interview with the Tribunal legal team on 18 May 2000, advised the Tribunal of the two Shefran payments of IR£20,000 in June 1991, and IR£10,000 in November 1992 (which he claimed were linked to Citywest) and of the January 1992 '*Baldoyle*' payment of IR£10,000, he did not refer to the receipt of a IR£20,000 payment from Mr Shubotham in March 1993. Equally, Mr Dunlop's October 2000 statement did not disclose this payment.

6.72 In his statement of November 2006, Mr Dunlop made a brief reference to Mr Shubotham's payment to him of IR£20,000 in the following terms: '*At some*

time in 1993 I was paid IR£20,000 by David Shubotham personally. This payment related to the City West lands.'

6.73 In his evidence to the Tribunal, Mr Dunlop maintained that the payment was in response to a request he made for additional recompense for work he had undertaken in the course of his lobbying of councillors to secure the Citywest material contravention vote in March 1991.

6.74 In March 1993 Mr Dunlop (through Shefran) was an equity shareholder in Citywest. In late 1991 he had been rewarded with a shareholding in recognition of his lobbying activity for that project, in lieu of fees due to him in the amount of IR£75,000, and because he had invested IR£55,000 in the project. On Day 706, Mr Dunlop stated:

> '*We had already made an arrangement vis-à-vis the fee schedule and that was transmuted into a shareholding. But there was, I think I replied to you yesterday in the context of when you asked me, you thought that Davy Hickey Properties sold me a pup in the context of shareholding in City West. I had no knowledge at the time of whether the City West project would be successful or not. And I just made a plea to Mr Shubotham in relation to fees. He said, if I recollect correctly, that he wasn't prepared to go back to the partnership in relation to fees given what had occurred and he gave me 20,000 pounds personally.*'

6.75 Mr Dunlop acknowledged that his substantial PR work for Citywest had to all intents and purposes ceased prior to March 1993 other than assistance he had provided in relation to the opening of a bridge to service the Citywest development for which Frank Dunlop & Associates invoiced Citywest for IR£3,160.74. This was paid on 26 August 1993.

6.76 In the period leading up to March 1993 there was no ongoing communication between Mr Dunlop and Mr Shubotham (or indeed other Citywest interests) which recorded any dissatisfaction or issue on Mr Dunlop's part with the fees which he had effectively received in October/November 1991 through his equity shareholding in Citywest.

6.77 Questioned as to the circumstances in which his additional fees for past work for Citywest were paid by Mr Shubotham personally, Mr Dunlop said:

> '*But, I mean, the genesis of the payment was a complaint or an approach by me to Mr Shubotham in relation to the fact that this project had gone ahead. Yes, I had been given a shareholding. But in effect up to that point I had received very little money in fees.*'

6.78 Asked why should Mr Shubotham, who, like himself, was a relatively minor shareholder in Citywest, have taken it upon himself to make a payment of IR£20,000 to him, Mr Dunlop replied:

> '*Well, I don't mean to be evasive. But I will leave it to Mr Shubotham. And I think he has already done so in a statement, to say what he did or did not understand the position to be or what he told other people about it. But up to the time, that as you quite rightly point out, in 2000, I had not adverted to this payment at all because I had simply completely forgotten about it. But it is true that I did approach Mr Shubotham. It is true that we had a discussion. It is true that it eventuated in a payment of 20,000. The circumstances were, as I have outlined to you. In fact, I do recall Mr Shubotham saying to me that he was not prepared to go back to the partners in relation to fees. Given what the discussion that had taken place with the partners in relation to the shareholding.In other words, the transformation of the original fee into the shareholding.But that it is undeniable that a payment was made.*'

6.79 Mr Dunlop accepted that Mr Shubotham had no personal liability to him, and he acknowledged that, having regard to the high net worth of the various individuals and entities associated with the Citywest project, he should have had no difficulty in making his case for a further fee to those individuals or entities. He also acknowledged that if the other shareholders had made a *pro rata* payment to him similar to the payment he received from Mr Shubotham, then he, Mr Dunlop, would have received a very substantial sum of money.

6.80 An analysis of Mr Dunlop's bank accounts revealed that on 15 March 1993 a lodgement of IR£12,000 was made to his Irish Nationwide Building Society ('*war chest'*) account. Mr Dunlop accepted that this lodgement was likely to have represented a portion of the encashed proceeds of the IR£20,000 Shefran cheque received from Mr Shubotham. He believed that he may have cashed the cheque at AIB College Street, pursuant to his arrangement with Mr John Ahern.

6.81 The Tribunal was satisfied that Mr Dunlop was in possession of the IR£20,000 Shefran cheque from Mr Shubotham by 12 March 1993.

6.82 Mr Dunlop also acknowledged that he lodged IR£2,000 in cash to an AIB account in the name of Frank J Dunlop and Sheila Dunlop (IR£1,000 on 12 March 1993 and IR£1,000 on 15 March 1993).

6.83 Mr Dunlop agreed that on the assumption that he had cashed Mr Shubotham's cheque by 12 March 1993 and had utilised IR£14,000 for his own

purposes, then he retained IR£6,000 in cash from it, and that he had that sum in cash within the time frame in which he alleged having made payments totalling IR£6,000 to six named councillors in relation to the Baldoyle rezoning project. The Baldoyle rezoning motion was lodged with Dublin County Council on 12 March 1993.

6.84 When asked if it was it purely a coincidence that he was discussing with Mr Shubotham the question of a further payment to him for Citywest at a time when he and Mr Shubotham both knew that 12 March 1993 was the deadline for the signature of motions before the Council, and was therefore one of Mr Dunlop's trigger dates for payments to councillors, Mr Dunlop replied: '*Yeah, well in my belief, yes, it is. Because I never had a discussion with Mr Shubotham in relation to monies in the context of payments to councillors, either for their signature or for their vote.*'

6.85 Mr Shubotham told the Tribunal that it was his vague recollection that Mr Dunlop had approached him saying that he had done a lot of additional work for Citywest, for which he received no fees since 1991. He said that Mr Dunlop's approach had come '*out of the blue*.' Mr Shubotham maintained that Citywest was then in a difficult financial position and that there was no way it could pay money to Mr Dunlop. Mr Shubotham had therefore made the decision to personally pay him. He acknowledged that he himself had no personal liability to Mr Dunlop and that it was unusual in itself that Mr Dunlop should have approached him seeking money.

6.86 Mr Shubotham acknowledged that he could have taken Mr Dunlop's request to Citywest which in 1993 had no bank borrowings and which was fully equity funded. However, he maintained that he resisted making such an approach because Citywest's bank at that time was only advancing funds for capital expenditure. While Mr Shubotham's 2006 statement on this issue was silent on any such constraint on Citywest's finances, his earlier 2001 statement referred to *'pressures on financing'* within Citywest, in the context of his IR£20,000 payment to Mr Dunlop/Shefran, and to the fact that he did not believe that *'any request to Citywest for additional payments would be well received.'*

6.87 However, somewhat inconsistently with this explanation, the Tribunal established that on 26 August 1993, only about five months following Mr Shubotham's personal payment of IR£20,000 to Mr Dunlop/Shefran, a Citywest linked company discharged a Frank Dunlop & Associates invoice for IR£3,160.74 (a non-capital expenditure). Furthermore, only four month before Mr Shubotham's personal payment of IR£20,000 to Mr Dunlop/Shefran, Newlands

Industrial Park / Citywest paid out IR£10,000 (also a non-capital expenditure) on foot of Mr Dunlop's bogus Shefran invoice, in order to put him in funds for the purpose, as acknowledged by Mr Hickey and Mr Dunlop, to make payments to politicians during the course of the November 1992 General Election.

6.88 Mr Shubotham denied any connection between his payment of IR£20,000 to Mr Dunlop/Shefran and the events which were occurring on 12 March 1993 and thereafter vis-à-vis the attempt to have the Pennine option lands rezoned.

6.89 Mr Dunlop's telephone records indicated that Mr Shubotham telephoned his office at 9:15 am on 11 March 1993 (in response, it would appear, to an attempt being made by Mr Dunlop to contact him). On the same day, Mr Shubotham again attempted to make contact with Mr Dunlop at 11:10 am. On 12 March 1993, the telephone records indicated a call from Mr Shubotham requesting Mr Dunlop to call him. Mr Shubotham told the Tribunal that he had no recollection of the purpose for which he attempted to make contact with Mr Dunlop on 11 March 1993 and claimed not to have been aware of the significance of the date. Given the activity evident from his bank account however, he acknowledged that he must have met Mr Dunlop during this timeframe to provide him with the IR£20,000 Shefran cheque, although he claimed not to know whether he and Mr Dunlop would have had any discussion about the events which were then taking place with regard to the Baldoyle rezoning motion.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE PAYMENTS TOTALLING IR£62,500 MADE TO SHEFRAN BETWEEN 6 JUNE 1991 AND 16 MARCH 1993

6.90 There was no dispute between Mr Dunlop and Mr Hickey that IR£20,000 was provided to Mr Dunlop in June 1991 for transmission to councillors. Mr Dunlop and Mr Hickey both attributed this payment to *'Citywest'* and both claimed it was made in circumstances where Mr Dunlop went to Mr Hickey at the time of the June 1991 Local Election and suggested to him that a political donation should be made to councillors. The thrust of Mr Hickey's evidence was that in June 1991 there was a connection between the IR£20,000 cheque to Shefran which was used to support councillors financially, and the voting support that councillors had provided in respect of the Citywest material contravention motion in March 1991.

6.91 The evidence established that at the time Mr Dunlop requested the funds from Mr Hickey, Mr Hickey, Mr Dunlop and Mr Shubotham had already embarked

on the Pennine option lands project, and as of January 1991, had resolved to attempt to have the lands rezoned in the course of the Development Plan review then underway.

6.92 Mr Hickey, when asked whether he believed that paying politicians IR£20,000 through Mr Dunlop at the time of the Local Elections in June 1991 would assist him in future planning/zoning projects, replied that his thinking had not been '*Machiavellian*' to that degree. However, the Tribunal believed it to have been so. While the purpose of Mr Hickey's decision to provide IR£20,000 to Mr Dunlop to be disbursed to councillors may have been partly to thank councillors for their support for Citywest, the Tribunal was satisfied the provision of this money was also motivated to a significant degree by a desire to curry favour from councillors in relation to the Baldoyle rezoning project.

6.93 The Tribunal was satisfied that this IR£20,000 Shefran payment was in due course added to Mr Dunlop's confluence of funds from which he made corrupt payments to councillors during the June 1991 Local Elections.

6.94 The Tribunal was equally satisfied that the payment of IR£10,000 to Shefran in January 1992 was made to provide Mr Dunlop with funds in order for him to respond to requests for money from councillors in the course of the ongoing review of the Development Plan. The Tribunal did not identify any other probable or logical reason for the payment to Shefran of this amount of money.

6.95 Attempts to label this IR£10,000 payment in January 1992 as a payment to Mr Dunlop for the purpose of sounding out opinion on the Baldoyle rezoning project echoed particularly hollow, as did Mr Dunlop's efforts to distance Mr Hickey and Mr Shubotham from the purpose of the payment while at the same time acknowledging that its probable purpose was to make funds available to meet requests for money expected to be made of Mr Dunlop by councillors. The Tribunal viewed as particularly cynical, on the part of Mr Dunlop, his suggestion in his October 2000 statement that he had received this money '*to defray certain expenses such as print work etc*', a purpose for which he had not expended this money, and his contention that Mr Hickey would *'be justified in contending that I owe him or his company £10,000 as he never received any receipts of vouchers in relation to the expenses I told him that I would have to incur but did not incur.'*

6.96 The Tribunal believed it to have been most unlikely that Mr Dunlop advised Mr Hickey that the IR£10,000 was required to discharge such third party expenses, as from the outset Mr Dunlop was aware that such expenses were to be independently discharged by Davy Hickey Properties. Equally, the Tribunal did

not accept the explanations tendered by Mr Hickey and Mr Shubotham for this payment.

6.97 The Tribunal was satisfied that the payment of IR£2,500 in August 1992 was not a payment to Mr Dunlop for public relation services relevant to the Citywest venture. Had that been the case, Mr Dunlop would have probably invoiced for same on foot of a Frank Dunlop and Associates invoice as opposed to a Shefran invoice, as he had done on a number of other occasions both prior to and subsequent to August 1992. Having regard in particular to the manner in which the IR£2,500 payment was made, the Tribunal was satisfied that this payment was made to Mr Dunlop to be expended by him in connection with the Baldoyle rezoning project.

6.98 Both Mr Dunlop and Mr Hickey confirmed that the payment of IR£10,000 to Shefran in November 1992 was intended for disbursement to politicians (including councillors) by Mr Dunlop, and that the money was to be dispensed, according to Mr Hickey, '*to the various parties'* in the course of the November 1992 General Election. The Tribunal was satisfied that these funds were indeed used during the 1992 General Election campaign to make cash payments to election candidates.

6.99 The Tribunal believed that Mr Dunlop, under the happenstance of a General Election campaign, requested money from Mr Hickey and that Mr Hickey, as he had done in June 1991, acceded to that request. Given the imminence of the Baldoyle rezoning coming before the Council,[25] the Tribunal was satisfied that it was that particular issue which was uppermost in the minds of Mr Dunlop and Mr Hickey when this IR£10,000 payment was made on foot of a bogus Shefran invoice.

6.100 The Tribunal rejected both Mr Dunlop's and Mr Shubotham's accounts of how the March 1993 payment of IR£20,000 came about. In particular, the Tribunal rejected the suggestion that Mr Dunlop, in March 1993, some two years after the Citywest material contravention vote, would have '*out of the blue'* gone to Mr Shubotham and sought additional fees. Had there been some truth in this suggestion, there would, the Tribunal believed, have been some documentary evidence to that effect, or at the very least, some evidence that Mr Shubotham had brought this matter to the attention of the entities/interests who were part of the Citywest project. Furthermore, the Tribunal rejected Mr Shubotham's evidence as to his reason for not alerting his fellow Citywest investors to Mr Dunlop's request. The fact that Citywest funds were paid out to MrDunlop in

[25] The rezoning of the Baldoyle lands was due for consideration by the Council in the Spring of 1993.

November 1992 (the IR£10,000 Shefran payment) and in August 1993 (the discharge of a Frank Dunlop & Associates invoice), belied the claim that there was some constraint on non capital expenditure by Citywest thus necessitating Mr Shubotham personally making a payment to Mr Dunlop.

6.101 The timing and manner of the IR£20,000 payment, coupled with Mr Dunlop's admission that he used Shefran to receive monies destined for councillors, led the Tribunal to conclude that in March 1993 Mr Dunlop's confluence of funds required to be replenished in order to assist his lobbying endeavours in relation to the rezoning of the Baldoyle lands. The Tribunal was satisfied that it was on this basis and for this reason that Mr Dunlop and Mr Shubotham agreed a payment of IR£20,000 to Shefran.

6.102 As a matter of probability, the contact which the Tribunal was satisfied took place between Mr Dunlop and Mr Shubotham on 11 and 12 March 1993, was, *inter alia*, for the purposes of Mr Dunlop being put in funds by Mr Shubotham in the context of the Baldoyle rezoning motion, which was lodged with Dublin County Council on 12 March 1993. Indeed, Mr Shubotham accepted in evidence that the cheque for IR£20,000 must have been given to Mr Dunlop at or about this time, as he would not have sent it by post. The Tribunal was satisfied that the transmission of these monies by Mr Shubotham to Mr Dunlop was likely to have occurred in the context of Mr Dunlop having apprised Mr Shubotham that his lobbying endeavours on foot of the motion would precipitate requests for payments from councillors.

6.103 Mr Dunlop himself acknowledged (while maintaining that the IR£10,000 Shefran payment of January 1992 was the real source of the monies he claimed to have paid to councillors), that the likely source of his alleged payments to councillors regarding Baldoyle was the encashed proceeds of the IR£20,000 Shefran cheque of March 1993.

6.104 Mr Hickey and Mr Shubotham maintained that they were at all times unaware of Mr Dunlop's payments to councillors in connection with the Baldoyle rezoning project. Likewise, Mr Dunlop told the Tribunal that he never had any discussion or agreement with Messrs Hickey and Shubotham which would have left them with the knowledge or understanding that he intended to make (or did make) corrupt payments to councillors in return for their support for the rezoning of the Baldoyle lands.

6.105 Yet, both Mr Dunlop and Mr Hickey freely acknowledged that they had discussions about making payments to councillors albeit at times of election campaigns (June 1991 and November 1992). Mr Shubotham acknowledged

being aware that '*political donation payments*' were made at election times. He maintained that he could not say if these were to be made on an individual (councillor) basis or not.

6.106 The Tribunal believed that the reluctance on the part of Mr Dunlop and Mr Shubotham to connect, in any way, the March 1993 payment to the Baldoyle project (in particular by maintaining that it was a *'City West fees'* payment to Mr Dunlop), was an attempt on their part to deny the reality of the payment, namely that it was a payment made to Mr Dunlop in the throes of the Baldoyle rezoning campaign for disbursement to councillors in that context.

6.107 The Tribunal was satisfied that the four Shefran payments (IR£20,000 in June 1991, IR£10,000 in January 1992, IR£10,000 in November 1992 and IR£20,000 in March 1993) were paid to Mr Dunlop in order to put him in funds to distribute cash to councillors for the purpose of influencing them to support the Baldoyle rezoning project (and to satisfy demands for money by councillors). The said payments were corrupt.

MR DUNLOP'S ALLEGATIONS THAT HE PAID NAMED COUNCILLORS IN RELATION TO THE BALDOYLE LANDS REZONING PROJECT

7.01 In his 2006 statement to the Tribunal, Mr Dunlop alleged that he paid Councillors Jack Larkin, Cyril Gallagher, Tom Hand, Tony Fox, Liam Cosgrave and Don Lydon IR£1,000 each, in cash. He stated that the payments '*were either immediately before any vote took place relating to the Baldoyle / Eastview lands or during the course of their consideration by the Council. The payments were by and large made in the environs of Dublin County Council*.'

7.02 In his evidence to the Tribunal Mr Dunlop confirmed this statement as accurate '*to the best of* [his] *knowledge.'*

7.03 Mr Dunlop was unable to specifically date the payments to the individual councillors. He stated that they were made '*during the period when* [the Baldoyle rezoning] *was being considered*.' The Council meetings which considered these lands were held on 20 April, 27 April, 4 May and 6 May 1993. Mr Dunlop confirmed that none of the payments pre-dated 1 March 1993.

7.04 An analysis of Mr Dunlop's diary and telephone records for the period 1 March 1993 to 20 April 1993 indicated contact (or attempted contact) between Mr Dunlop and Councillors Hand, Fox, Gallagher, O'Halloran and L.T. Cosgrave. There was no recorded contact between Mr Dunlop and Councillors Lydon or Larkin within that period. According to these records, Mr Dunlop had extensive

contacts with Councillors Hand and O'Halloran. Mr Dunlop's diary for 11 March 1993 documented a meeting with Cllr Gallagher. Mr Dunlop's telephone records indicated that Cllr Fox rang Mr Dunlop's office on 9 and 31 March 1993. These telephone records also showed that Cllr L.T. Cosgrave rang Mr Dunlop's office on 20 April 1993, after the Council meeting at which the rezoning of the Baldoyle lands was first proposed had been adjourned *'amid chaos.'*

7.05 Mr Dunlop's belief was that up to the date of the lodging of the motion he had not paid any politician in connection with the matter. He acknowledged as *'logical'* the suggestion that insofar as he claimed to have an arrangement to pay councillors, such would have been in place prior to the date of the first scheduled meeting (20 April 1993) dealing with the rezoning motion. However his evidence also suggested that his arrangements with councillors for the purposes of paying them may have been made at a later stage, as evidenced from the following exchange which took place between Tribunal Counsel and Mr Dunlop on Day 704:

> *Q You would remember the detail of how this took place and when. And I think you fairly say that in these instances you cannot distinguish one occasion as opposed to the other as regards these six councillors involved. You're not saying that you paid them all on the same day?*
>
> *A. No.*
>
> *Q. You're not saying that you paid them all in exactly the same way?*
>
> *A. No.*
>
> *Q. Or in the same location as much as we know from you is that they are identical payments. They are for the same service insofar as it was intended to ensure that they supported your proposition or your proposal for Pennine Holdings and that they were to do whatever it was I take it that would have advanced that from your point of view?*
>
> *A. Correct.*
>
> *Q. Isn't that right? And in relation to all these councillors, only one of them actually did anything in the sense of signing of documents. The others were men behind the meetings who would cast their vote, you believe, in favour of your proposals?*
>
> *A. That is correct.Except the one proviso that I would add to that.In relation to the other Councillor to a composite payment?*
>
> *Q. Yes*
>
> *A. To Councillor O'Halloran, which included monies in relation to Baldoyle.*

7.06 Mr Dunlop was further questioned as follows:

Q. It's in that context that I want to ask you whether the events of the 20th were such that you felt that you had to make a payment in circumstances were (sic) *to that time you hadn't intended to make those payments, you understand?*

A Yes, it is possible. It is possible. I cannot absolutely say that to you but it is possible.

Q So are we to take it that you don't know whether it's the position that you had paid all of the money?
A. No.

Q. Or intended to pay all of the money in anticipation of a successful outcome on the 20th or whether you had paid some money for the signature in the first instance, some money at the conclusion of the affairs – sorry. Of the motion on the 20th and pending that adjournment and some further money when the substance of the motion was debated or was intended to be debated more fully in the chamber?

A. Yes. And there is another that went into that matrix, if I might be so bold as to suggest. That it might well be that I had arranged to pay. Had had discussions already with these people but hadn't actually paid them. And so but I cannot precisely give you the date as to when the payments occurred.

Q. Yes. And again, why is that? I mean, we see the events, we see the opportunities for payment. We see how in certain circumstances in hindsight you can see this might have been an opportunity where a payment would be necessary to achieve a certain result. You seemed to accept that yes, they are the possibilities. But you don't have any recollection of actually paying in those instances. And I'm wondering why that is?

A. Well I can't – I can't say anything other than.

Q. Yes?

A. What I have said to you in relation to the discussions in relation to this particular development that trigger in my mind a recollection of the discussion with the individuals concerned.

7.07 Mr Dunlop acknowledged that on his account of events, by the date of the first scheduled meeting, he appeared to be achieving his objectives without having to pay any councillor (with the exception of Cllr Gallagher), in that by 20

April 1993 he had secured the signatures of Cllrs M.J. Cosgrave, Creaven and Gilbride to two motions without having been asked for money.

7.08 Mr Dunlop told the Tribunal that while Cllr Gilbride was a councillor to whom he had paid money in other instances, he had not sought money in regard to the Baldoyle rezoning motion. Asked on Day 705 why he had paid Cllr Gilbride in some instances but not in relation to the Baldoyle motions, Mr Dunlop replied as follows:

> '*Firstly, the first instance the matter didn't arise. I mean, it wasn't raised by him. I have given evidence to the effect in relation to other modules that the issues were raised by – money issues were raised by him… But in this particular module I think he considered his role as a personal – a personal supporter. He was already in receipt of significant monies from me at that stage and that he regarded this as something of doing something for me.'*

7.09 According to Mr Dunlop, the fact that he had presented himself as being the promoter of the Baldoyle rezoning project '*would have given a lot of councillors the idea that they should help.'*

7.10 He said that no requests for payments were ever made to him by Cllrs M J Cosgrave or Creaven[26] and in relation to the support given to him by those individuals, Mr Dunlop stated '*without being offensive to either gentlemen […] they were very willing. We went to lunch quite often together […] but I've never given them any money in relation either to this development or any other development.'*

7.11 Mr Dunlop acknowledged that on 12 March 1993 his diary indicated the words 'Dev Plan' which Mr Dunlop explained related to his presence in or around Dublin County Council. Mr Dunlop stated that the environs of Dublin County Council was one of the locations in which he made payments to councillors. He agreed that his relationship with councillors in March 1993 was such that councillors did not necessarily request payment in advance of signing or supporting motions. He acknowledged that he had built up '*credibility'* with them and stated there was '*an added dimension in this particular context, and that is that* [he was] *promoting this qua Frank Dunlop.'*

7.12 In March 1993 Mr Dunlop received IR£20,000 from Mr Shubotham, a payment which was the last of a series of four large round figure payments made to Shefran by individuals/entities associated with the Baldoyle rezoning process.

[26] In January 1993, Cllr M J Cosgrave was the recipient of a IR£1,000 cheque from Mr Dunlop for the Seanad election campaign.

7.13 In the course of a private interview conducted in May 2000, Mr Dunlop advised members of the Tribunal's legal team that he had paid '*far*' in excess of IR£10,000 to councillors in relation to the Baldoyle lands. However subsequently, in the course of his sworn evidence to the Tribunal, he stated that this information was erroneous and that in fact the payments made by him to councillors in connection with the Baldoyle lands amounted to less than IR£10,000.

COUNCILLOR LIAM T COSGRAVE

7.14 Mr Dunlop alleged that he paid IR£1,000 in cash to Cllr L T Cosgrave. Cllr L T Cosgrave denied soliciting or receiving this payment.

7.15 Mr Dunlop told the Tribunal that Cllr L T Cosgrave was very much in favour of the rezoning of the Baldoyle lands because of Mr Dunlop's personal involvement in that project.

7.16 When asked '*when you were talking to Cllr Cosgrave, that's Cllr Liam Cosgrave, about that motion, either before it was put forward or subsequent to it, did that play any part in your decision to pay him the sum of £1,000 or had you already paid him?*' Mr Dunlop responded '*No*' and added:

> '*Well, I cannot say definitely that I had already paid him, but on the basis that I outlined to you on Friday in relation to support, Cllr Cosgrave was a supporter of the motion. He was very much in favour of it in the context of my being personally involved. And I hereto promised or maybe had paid him at that stage. I cannot definitely say but certainly the question of money would have been discussed.*'

7.17 Cllr L T Cosgrave was the seconder to the site visit motion proposed by Cllr John O'Halloran on 27 April 1993 after the M J Cosgrave/Creaven rezoning motion was deferred and Cllr Healy insisted that his *'green belt'* motion scheduled for hearing on that date should proceed. Cllr L T Cosgrave told the Tribunal that he could not recall why the M J Cosgrave /Creaven Baldoyle rezoning motion had been deferred on 27 April 1993, and he said that he had no recollection of the article in the Irish Independent newspaper linking Mr Dunlop and others to the rezoning proposal, and which mentioned a possible £10m profit from the venture. The Council minutes recorded that Cllr L T Cosgrave was one of those who voted to defer the M.J. Cosgrave/Creaven motion.

7.18 Cllr L T Cosgrave acknowledged that he seconded Cllr O'Halloran's motion that '*decisions relating to the Baldoyle/Portmarnock area would be deferred until a site meeting'* was held. Questioned as to what had motivated him to second this motion, and what he sought to achieve by this action, Cllr L T

Cosgrave's evidence was that while he was familiar with the lands there were many councillors who were not. He stated: '*I would imagine that 80 or 90 percent of the people had never been within a stone's throw of Baldoyle and that would have been the intention that well it wasn't going to hurt anyone to go and look at the area.'*

7.19 Cllr Cosgrave acknowledged that he, like other councillors, would have received the initial rezoning motion which had been lodged on 12 March 1993 and that a map would have accompanied that motion.

7.20 With regard to his decision to second the O'Halloran site visit motion, he was asked whether in doing so he had had considered the fact that if Cllr Healy's *'green belt'* motion was passed, the M J Cosgrave/Creaven motion might fall, or whether he believed that the M J Cosgrave/Creaven motion would in any event arise in the normal course of further debate. He could not recall whether he had considered this, nor could he say whether or not he was surprised by the fact that the M J Cosgrave/Creaven motion fell, following the success of the Healy *'green belt'* motion.

7.21 Cllr L T Cosgrave said that he had no recollection of seeing Mr Dunlop in the Council chamber on either 20 or 27 April 1993. Nor could he recall the purpose for which he sought to make contact with Mr Dunlop on 20 April 1993. On that date Cllr L T Cosgrave was recorded by Mr Dunlop's secretary as having left the following message for Mr Dunlop at 3.20 pm: *'Liam Cosgrave, not urgent, call him this evening at home.'* Notwithstanding that he made this call only two hoursafter the Council meeting had been adjourned *'due to disorder in the Chamber'* during the consideration of the Baldoyle rezoning motion, Cllr L.T Cosgrave stated that the call *'could have been about anything.'*

7.22 Other than Cllr L T Cosgrave seconding the O'Halloran site visit motion on 27 April 1993, there was no record of him having taken a proactive role in relation to any other motion concerning the Pennine option lands, save that his voting pattern over the period from 27 April to 6 May 1993 was generally supportive of the proposal to rezone the Baldoyle lands.

7.23 When asked how frequently he met Mr Dunlop at the time in question, Cllr. L T Cosgrave stated:

> '*Well, I suppose if he was down there at meetings or in the local hostelry or hotel, you could run into him but I wouldn't call them meetings as distinct from just you might pass, there used to be a number of people in the foyer of the Council, if you were going through, people you knew, you would probably acknowledge them.'*

7.24 Cllr L T Cosgrave told the Tribunal that he had no memory of any meeting or discussion with Mr Dunlop in relation to the rezoning motion relating to the Baldoyle lands.

7.25 Mr Dunlop's evidence in support of his allegation that he paid IR£1,000 in cash to Cllr L T Cosgrave in relation to the rezoning of the Baldoyle lands was vague and imprecise, with regard to any discussion between himself and Cllr L T Cosgrave which accompanied either the request for payment by Cllr L T Cosgrave, or the actual payment to him. In those circumstances, the Tribunal was not satisfied to find that Mr Dunlop had indeed paid money to Cllr L T Cosgrave in relation to the Baldoyle lands.

COUNCILLOR JACK LARKIN

7.26 Mr Dunlop alleged that he paid IR£1,000 to Cllr Larkin in return for his support for the rezoning of the Baldoyle lands.

7.27 Prior to his death on 6 May 1998, Cllr Larkin completed a questionnaire (dated 23 March 1998), at the invitation of the Tribunal in which he denied receiving improper payments or benefits as an elected councillor from identified individuals and/or entities in relation to certain lands.

7.28 Cllr Larkin's voting pattern in April/May 1993 was supportive of the project to rezone the Baldoyle lands. There was no record of any contact between Mr Dunlop and Cllr Larkin, either by way of diary entry or recorded telephone contact, in the period from 1 March to 20 April 1993 (or indeed for the remaining duration of the Baldoyle rezoning attempt).

7.29 Mr Dunlop's evidence in support of his contention that he paid Cllr Larkin money in relation to the Baldoyle lands was sparse. In those circumstances, the Tribunal was not satisfied to find as a matter of probability that a payment was made to Cllr Larkin by Mr Dunlop in relation to the Baldoyle lands.

COUNCILLOR CYRIL GALLAGHER

7.30 Mr Dunlop alleged that he paid IR£1,000 to Cllr Gallagher in return for his support for the rezoning of the Baldoyle lands. He told the Tribunal that Cllr Gallagher requested the payment in return for his signature on the Baldoyle lands rezoning motion which was lodged with Dublin County Council on 12 March 1993.

7.31 Cllr Gallagher was the only one of the four signatories of this motion who Mr Dunlop alleged was paid any money in relation thereto.

7.32 Mr Dunlop's diary referred to a meeting with Cllr Gallagher on the 11 March 1993. It was probable that Cllr Gallagher signed the Baldoyle rezoning motion on that occasion. (This motion was withdrawn on 20 April 1993 and replaced by another rezoning motion in the names of Cllrs M J Cosgrave and Creaven which had been lodged with Dublin County Council by 14 April 1993.)

7.33 Mr Dunlop acknowledged that aside from signing this motion, Cllr Gallagher did not otherwise play a proactive role in the rezoning process as it progressed.

7.34 Asked when he might have paid Cllr Gallagher for his support, Mr Dunlop stated:

> '*Well, I think it is likely that at the time that he signed the first motion that we had a discussion about a payment and that subsequent to that, I cannot say to you before or after the withdrawing of that motion. But certainly I had a discussion with him, I have given evidence already in relation to many modules. And I had a discussion with him in which the subject of money was raised and the normal fee that I – not fee, it's not the word. The normal amount of money concerned was £1,000. But I cannot say to you exactly when I paid him. He continued to support the project, to the best of my recollection, voted in all of the motions and all of the motions changed and altered, even in the heat of the battle on the council floor. But I cannot precisely say to you when I gave him the money.*'

7.35 On the issue of his claim that he paid Cllr Gallagher, Mr Dunlop was questioned as follows:

> *Q. Right. And do I understand from that response where you say that you usually gave him 1,000, that you are making to some extent an assumption that the sum that you paid him in respect of this particular project was 1,000 or are you saying that you have a recollection?*
>
> *A. No.*
>
> *Q. Of paying him 1,000?*
>
> *A. No, it is I have a recollection because as with others, which I presume we will deal with, as with others, we had a discussion in relation to my involvement. I was not saying, notwithstanding the comments that you've made this morning. I was not saying to any councillor I am the front man for this consortium or development. Quite the contrary. The image was*

created that I, this was actually my project. And the attitude on various people's parts was we must do this for Frank.

Q. Yes?

A. And in that context, I had a discussion with Cyril Gallagher. I said to Cyril Gallagher, this is something that I am doing myself. In an attempt, in an attempt to reduce as much as possible any outgoings that I might have.

Q. Right.

A. Now, it did not occur in the context of the two other councillors with whom I had a slightly fractious debate about it. But not in the context of Cyril Gallagher.

Q. So, to the extent that in this particular instance, you are more identified with having a personal interest in the project rather than being the representative of a named developer and/or builder, as the case may be, isn't that right?

A. Cyril – I don't mean to be disrespectful, but Cyril really couldn't give a damn. He was doing something for me. In a way, he did something for me all of the time when I approached him in relation to motions or signatures or support.

Q. Yes?

A. There were occasions when I did specifically tell him who the promoter or developer was, for whom I was acting. I did not do so in this instance.

Q. Yes and is that-when you say that that translated into there being no difference in the fee, if I could call it that? He charged you what he was going to charge you, even if you were acting for somebody else?

A. I think so, yes.

7.36 Mr Dunlop again said that he was unable to confirm that the payment to Cllr Gallagher was made on a particular date, but that '*certainly it was within the period on which this was coming before the council.*' Cllr Gallagher's voting pattern in the period from 27 April to 6 May 1993 was generally supportive of the Baldoyle rezoning project.

7.37 The Tribunal was satisfied that the payment to Cllr Gallagher was made as alleged by Mr Dunlop, and that it had been requested by him. In those circumstances, the payment was corrupt.

COUNCILLOR TOM HAND

7.38 Mr Dunlop alleged that Cllr Hand requested money for his support for the rezoning motion as a result of which he paid him IR£1,000.

7.39 Cllr Hand, according to Mr Dunlop, was aware of Mr Dunlop's personal involvement in the project. He told the Tribunal that he had a specific recollection of discussions between himself and Cllr Hand concerning the payment of IR£1,000, discussions which Mr Dunlop described as '*fractious*' because Cllr Hand *'was looking for a greater sum than 1,000 pounds.'* Mr Dunlop had no particular recollection of the actual payment of the money.

7.40 He described his discussion with Councillor Hand in the following terms:

> '*In the case of Tom Hand. I had an argument with Tom Hand about it. Notwithstanding the fact that I made the – I posited it in the way that it was me. This was something that I was going to … benefit from. And I was doing it. Tom was, notwithstanding anybody else's view of it, Tom was quite a realist and he said 'look if this is going through you're going to make a hell of a lot of money'… and we had a discussion with him. But I sort of held my ground, as it were, and we – I agreed to give him 1,000 pounds.'*

7.41 The Tribunal was satisfied that there was frequent contact between Cllr Hand and Mr Dunlop in the period from March to April 1993. A number of telephone calls were made to Mr Dunlop's office by Cllr Hand between 1 March 1993 and 16 April 1993, and there was a reference to Cllr Hand in Mr Dunlop's diary for 8 March 1993. In a telephone message left with Mr Dunlop's secretary on 10 March 1993, Cllr Hand was said to have stated that he was '*anxious to do that bit of business'* with Mr Dunlop. Asked what inference was to be drawn from that recorded statement Mr Dunlop responded:

> *'In relation to Mr Hand in particular, who's no longer with us, and can't answer for himself. But I did have a very close relationship with him and I met him very, very frequently and he did a number of things for me and was extremely cooperative and I did give him money. He signed the motions for me. He actively supported various developments. And for me to say specifically that it related to a payment, which is I presume what you mean when you use the word euphemism… or whether it was to look after signing a motion or whatever. I hesitate to be specific. But because of my relationship with Mr Hand, there is no doubt that it relates only to matters in Dublin County Council.'*

7.42 Mr Dunlop agreed that other than matters pertaining to Cllr Hand's role as a councillor he had no business or commercial relationship with him. Cllr Hand's voting pattern in April and May 1993 was generally supportive of the rezoning of the Baldoyle lands.

7.43 The Tribunal was satisfied that Mr Dunlop had a sufficiently clear recollection of the circumstances in which Cllr Hand sought payment (although not of the actual payment itself) in return for his support, and was therefore satisfied that such a payment was made to Cllr Hand. The Tribunal accepted Mr Dunlop's evidence that he and Cllr Hand had an argument in relation to the payment and its amount and was satisfied that that occurrence aided Mr Dunlop's recollection of agreeing to the payment. The Tribunal was satisfied to accept Mr Dunlop's evidence in circumstances where it was established from evidence in other modules that by the Spring of 1993 Mr Dunlop and Cllr Hand had engaged in a number of dealings where money was sought by, and paid to, Cllr Hand. The said payment was corrupt.

COUNCILLOR TONY FOX

7.44 Mr Dunlop alleged that he paid IR£1,000 to Cllr Fox in return for his support of the rezoning of the Baldoyle lands.

7.45 Mr Dunlop told the Tribunal that he had a particular memory of a discussion he had with Cllr Fox when the subject of the IR£1,000 arose. He told the Tribunal that Cllr Fox enquired of him as to how much Mr Dunlop was prepared to pay him for his support in relation to the Baldoyle lands project, and Mr Dunlop said he suggested IR£1,000. Mr Dunlop recalled Cllr Fox indicating to him that this sum was insufficient. Mr Dunlop went on to say that in spite of this disagreement, Cllr Fox eventually agreed to accept IR£1,000, and that the sum was paid to him. Mr Dunlop said:

> '*In the case of Tony Fox, when the discussion took place with him in relation to what I was going to give him. And I said £1,000. That wasn't enough. I agreed – we finally agreed that was it. Again, in the context that this was money, this was my proposal, I was doing it. There was no backing as it were, I wasn't getting the money from anywhere else.'*

7.46 Mr Dunlop agreed that the discussion between himself and Cllr Fox in relation to the payment was *'a bit contentious*', but said it was '*less contentious'* than the similar debate he had had with Cllr Hand. Mr Dunlop said that Cllr Fox '*was very realistically appreciable of what this* [rezoning motion] *would entail if it went through.'*

7.47 There were two recorded contacts between Cllr Fox and Mr Dunlop's office in the period from 1 March to 20 April 1993, namely on 9 and 31 March 1993. On 31 March 1993, Cllr Fox requested Mr Dunlop to call him. Asked why Cllr Fox might have wanted Mr Dunlop to contact him at that time, Mr Dunlop stated:

> '*Well it can only – without being blasé about it, can only relate to matters dealing with Dublin County Council. Tony Fox rarely, rarely called the office. There are very few indications of his contact with me by telephone in my telephone lists… we either met at the Council or arranged to meet at the Council the following day of the following week or whatever. That is the way he operated. But, no, I don't have a specific recollection. […] He either wants to tell me something that has either happened at the Council or is going to happen at the Council or he wants to arrange to meet me.'*

7.48 Mr Dunlop agreed that he did not have a personal or business relationship with Cllr Fox, other than in the context of motions coming before the Council.

7.49 Cllr Fox's voting pattern in April and May 1993 was generally supportive of the rezoning of the Baldoyle lands.

7.50 In relation to his contact with Mr Dunlop, Cllr Fox reiterated evidence previously given by him that his recollection of having been lobbied by Mr Dunlop was in connection with particular developments, other than the Baldoyle rezoning proposal. With regard to Mr Dunlop's telephone records which documented contact by Cllr Fox in March 1993, Cllr Fox reiterated evidence previously given by him in relation to the reason for them, namely that he was merely returning calls to him from Mr Dunlop. In response to Mr Dunlop's allegations regarding the alleged payment of IR£1,000 to him in relation to Baldoyle, Cllr Fox stated: '*I emphatically deny wholeheartedly, its complete untruth.*'

7.51 The Tribunal was satisfied that Mr Dunlop had a strong recollection of the circumstances in which money was sought by Cllr Fox in return for his support for the Baldoyle lands rezoning project. The Tribunal was satisfied that the payment was made as alleged by Mr Dunlop. The Tribunal also rejected Cllr Fox's contention that he had never been lobbied in relation to the Baldoyle lands. The payment was corrupt.

COUNCILLOR DONAL LYDON

7.52 Mr Dunlop alleged that he paid IR£1,000 to Cllr Lydon in return for his support for the rezoning of the Baldoyle lands, but he could not specify the date on which this payment was made.

7.53 Cllr Lydon's voting pattern was generally supportive of the project. There was no record of any contact between Mr Dunlop and Cllr Lydon, either by way of diary entry or recorded telephone contact, in the period from 1 March to 20 April 1993 (or indeed for the remaining duration of the Baldoyle rezoning attempt).

7.54 Cllr Lydon denied that Mr Dunlop had ever approached him in order to pay him money for his support in Baldoyle. He acknowledged that he was very familiar with the presence of Mr Dunlop in the environs of the Council throughout the course of the review of the 1983 Development Plan, and commented that Mr Dunlop was '*nearly always present.'* Although Cllr Lydon did not recall Mr Dunlop's presence in relation to the Baldoyle rezoning proposal, he acknowledged that Mr Dunlop had written to him '*probably looking for support or something'* and went on to state that '*he probably talked to me about this as well because it would be absolutely, beyond belief if he didn't because he was going to make £10m out of it, I think he canvassed everybody.'*

7.55 Cllr Lydon did not initially recall publicity with regard to the Baldoyle rezoning proposal which had appeared in newspapers in 1991 and believed that even if he had seen it he would not have paid attention to it as '*it was away in the far end of the county, it didn't matter to me to be honest with you.'* Cllr Lydon recalled the Baldoyle rezoning proposal as being '*a controversial thing'* but did not recall its actual detail. Cllr Lydon could not recollect if the reason for the deferral of the M J Cosgrave/Creaven rezoning motion had been connected to media coverage of the proposal on 27 April 1993, but agreed it was likely to have been the case. In response to the question *'and I suppose in real politics, there's no way it would have gone through with that sort of publicity attaching to it isn't that right?'* Cllr Lydon responded: '*I think so, yes. It wasn't anything to do with Mr Dunlop making money, I don't think anybody minded him getting rich but it was the controversy that surrounded the whole zoning thing.'*

7.56 When questioned about Mr Dunlop's evidence that he and Mr Lawlor had made a strategic decision on 27 April 1993 to seek the deferral of the rezoning motion, and whether it indicated to him anything as to the manner in which the Council was being controlled at that time, Cllr Lydon stated:

'*Well, it seemed like he had control over a couple of people anyway. I don't think he had control over many more. I think – I always thought that Frank Dunlop assumed he had control when he hadn't. Mr Dunlop. I mean, as I said before one time before all those motions, he would be outside there, 'go on in there and vote for that I'll look after you' that's what he kept saying and but I don't think people ever voted for him or indeed for anybody else if they didn't want to.'*

7.57 Cllr Lydon told the Tribunal that he found '*extraordinary*' Mr Dunlop's evidence regarding the manner in which he had drafted correspondence in the names of councillors and the chairperson of the Council.

7.58 Cllr Lydon rejected Mr Dunlop's evidence that he paid him money in relation to the Baldoyle lands. He stated that (as he had done in other modules) he received two contributions from Mr Dunlop, one of IR£1,000 for the Senate election in January 1993 which he said was unsolicited, and one solicited contribution in 1999 for the Local Elections. Cllr Lydon denied there was any connection between the IR£1,000 Seanad contribution given to him in January 1993 and any support he would have given to rezoning proposals associated with Mr Dunlop. Cllr Lydon stated:

'*He* (Mr Dunlop) *did this with a number of people, he sent them donations for the Senate and I suppose he did it, like I said before, because he was a lobbyist and he wanted to keep well in with us, there was no conditions attached, he didn't attach any, definitely, I can say that for him.*'

7.59 Asked if he believed that Mr Dunlop had any grounds for a personal grudge or antagonism towards him which would have motivated him to give false testimony in relation to him, Cllr Lydon responded:

'*I don't think he has any personal grudge against me, I never thought he had. I think he got stuck the night he was sent home by Justice Flood and he picked out the people who had done favours for him, proposed or seconded something and the rest were dead that's all there is to it. That's what I believe.'*

7.60 The Tribunal was not satisfied that Mr Dunlop paid IR£1,000, or any sum, to Cllr Lydon specifically in return for his support for the rezoning of the Baldoyle lands. Mr Dunlop's evidence in relation to the allegation was imprecise, vague and therefore unreliable.

COUNCILLOR JOHN O'HALLORAN

7.61 Over the course of his evidence in a number of modules, Mr Dunlop alleged that he made payments totalling IR£5,000 to Cllr O'Halloran in return for his support in a number of rezoning issues coming before Dublin County Council in the period 1991 to 1993, with which he was associated.[27] One of the alleged payments was in respect of the rezoning of the Baldoyle lands. Cllr O'Halloran denied receiving any payment of any nature from Mr Dunlop in relation to the Baldoyle lands or indeed relating to any other matter arising in the course of the review of the County Dublin Development Plan.

7.62 As set out previously in this chapter, Cllr O'Halloran had a considerable involvement with the Baldoyle lands rezoning project. Indeed, on 27 April 1993, 4 May 1993 and 6 May 1993, he was the proposer of motions to defer the decision on the rezoning of the area until a site visit was held to allow all councillors to view the lands.

7.63 This significant involvement with the Baldoyle lands rezoning project appeared to be in conflict with Cllr O'Halloran's evidence that neither Mr Dunlop nor anyone else had made representations to him in relation to it. Specifically, he denied Mr Dunlop's evidence that the motion proposed by him on 4 May 1993 had been drafted by Mr Dunlop or that it was prepared on his advice. Cllr O'Halloran denied discussing the issue with, or taking advice from, Mr Dunlop in relation to that matter. He, however, did not dispute Mr Dunlop's evidence that the letter dated 4 May 1993 which was sent by him to Cllr Ridge had been typed in Mr Dunlop's office. Cllr O'Halloran however insisted that it had not been drafted by Mr Dunlop.

7.64 There was evidence of significant and regular contact between Cllr O'Halloran and Mr Dunlop. Indeed, there were over fifteen occasions between 1 March and 6 May 1993 when Cllr O'Halloran contacted Mr Dunlop's office, including on 19 April, 3 May, 4 May and 5 May. Cllr O'Halloran did not directly challenge the telephone records maintained by Mr Dunlop's secretary. Mr Dunlop's diary also indicated a meeting with Cllr O'Halloran on 19 April 1993, the day before the Baldoyle rezoning motion was due to be voted on.

7.65 While the Tribunal was satisfied (from evidence in this, and in other modules), that Cllr O'Halloran did on occasion receive small payments in the region of IR£500 each from Mr Dunlop in the course of the making of the Development Plan 1991-1993, it could not determine which of Mr Dunlop's

[27] The issue of Mr Dunlop's allegation that he made a composite payment of IR£5,000 to Cllr O'Halloran is considered in detail in Part 7 of Chapter Two.

development projects these payments related to. The Tribunal was however satisfied that insofar as Cllr O'Halloran solicited and/or accepted such payments, he did so improperly in the knowledge that Mr Dunlop was a lobbyist in relation to rezoning issues current in Dublin County, including Baldoyle.

THE INVOLVEMENT OF COUNCILLORS M J COSGRAVE AND LIAM CREAVEN IN THE ATTEMPTS TO REZONE THE BALDOYLE LANDS[28]

8.01 Cllrs M J Cosgrave and Creaven were closely involved in the project to rezone the Baldoyle lands. Although members of opposing political parties, both councillors were close friends and tended to work in harmony on issues arising in the course of the review of the County Development Plan. This fact was indeed acknowledged by Cllr Creaven in his evidence, and was certainly the view expressed by Mr Dunlop in this and in other modules.

8.02 The role played by Cllrs M J Cosgrave and Creaven in the project to rezone the Baldoyle lands was significant. Both were signatories to two crucial rezoning motions lodged respectively with Dublin County Council on 12 March 1993, and prior to 14 April 1993, and which came before the Council at its Special Meeting of 20 April 1993. These motions were drafted by Mr Dunlop with assistance from Mr Lawlor, although both Cllrs M J Cosgrave and Creaven said that they were unaware of Mr Lawlor's involvement with those motions.

8.03 On Day 705, Mr Dunlop agreed with the suggestion put to him by Counsel for the Tribunal, referring to Cllrs M J Cosgrave and Creaven, '*that their actual input in that strategy was zero. They were not the creators of the motion, it wasn't their concept, they did not – it did not come from their combined or individual thinking of the issue.*'

8.04 In their evidence to the Tribunal, both councillors and especially Cllr M J Cosgrave, took issue with the manner in which Mr Dunlop described their involvement. Cllr M J Cosgrave, in particular, maintained that he had an input in the wording of the various motions and more importantly in the proposals put forward in these motions. By way of example, he claimed credit for the proposal to cap the number of houses to be built on the lands at 450, and that there should be a golf course and a pitch and putt course included in the development. These, he said, were his ideas although they were written in Mr Dunlop's handwriting and typed by Mr Dunlop. He said that this was because '*Mr Dunlop was very good at putting together motions.*'

[28]This Section of the Report should be read in conjunction with the earlier section of this chapter headed '*The correspondence between Councillors M J Cosgrave, Creaven and Ridge*.'

8.05 Cllr M J Cosgrave acknowledged that he was lobbied by Mr Dunlop to sign the motions on behalf of Pennine. He said that he supported the limited development of the Baldoyle lands for the benefit of the community and for the provision of 450 houses. He was of the view that the lands constituted a derelict site and were of no value to the community in their undeveloped state. He also acknowledged that he was aware that Mr Dunlop had an option on the lands, but beyond that, he was not sure of the ownership details.

8.06 Cllr Creaven's evidence was largely similar to that of Cllr M J Cosgrave. He did not take issue with the fact that Mr Dunlop lobbied him on the basis that he, Mr Dunlop, had an interest in the lands. He maintained however that he supported the development of the Baldoyle lands for a mix of leisure space and housing development. It was his belief that the development of the lands would benefit people in his constituency.

8.07 Both councillors claimed lack of memory in relation to the circumstances in which correspondence in their names, addressed to the acting chairperson of Dublin County Council, Cllr Ridge and designed to ensure that the rezoning of the Baldoyle lands would remain a live issue in the Council, came about.

8.08 Although it was unlikely that Cllrs M J Cosgrave and Creaven were directly involved in the formulation of the strategy or the preparation of the correspondence in question, the Tribunal was satisfied that they nevertheless fully consented to such correspondence being prepared and sent in their names, and that, almost certainly, and contrary to what was stated by them, they had a clear recollection of those events. The Tribunal believed that both councillors acted to promote the rezoning of the Baldoyle lands in the absence of any individual or independent assessment on their part of the merits of that proposal.

8.09 It appeared to the Tribunal that both Cllrs M J Cosgrave and Creaven, as elected councillors, permitted themselves to be controlled and used for the purposes of promoting the private interests of Mr Dunlop (and others), and that this amounted to an abuse of their role, duty and obligation as councillors. The Tribunal rejected their claimed ignorance of the extent to which they permitted themselves to be used and manipulated (and were, in fact, so used and manipulated) by Mr Dunlop.

8.10 Mr Dunlop made no allegation of any improper or corrupt payments to either Cllrs M J Cosgrave or Creaven in relation to the Baldoyle lands rezoning project or indeed any other rezoning projects. Cllr M J Cosgrave acknowledged

that he received a payment of IR£1,000 from Mr Dunlop in January 1993[29], two months or so before his involvement with the Baldoyle lands issue. Both Mr Dunlop and Cllr M J Cosgrave claimed that this was a *bona fide* political donation made and received at the time of the Seanad Election in January 1993, in which Cllr M J Cosgrave was a candidate.

MR LAWLOR'S RELATIONSHIP WITH MR SHUBOTHAM AND MR HICKEY PRIOR TO JANUARY 1991

MR LAWLOR AND CITYWEST

9.01 Mr Dunlop identified Mr Lawlor as the person who introduced him to Citywest, and the individual whom he believed was the originator of the Citywest concept.

9.02 Mr Dunlop was initially involved as a lobbyist in the Citywest venture having been retained to assist in securing planning permission for the proposed development. The necessary planning permission could only be secured with a successful material contravention motion in Dublin County Council, as the Citywest lands were not zoned under the 1983 Development Plan for the proposed development, namely an Industrial and Business Park.

9.03 Mr Dunlop testified that towards the end of 1989 and into the beginning of 1990 he, together with Mr Lawlor, attended a meeting with Mr Shubotham in the offices of Davy Stockbrokers after Mr Dunlop had been contacted by Mr Shubotham on the recommendation of Mr Lawlor. This meeting took place prior to Mr Hickey's involvement in the venture. Following Mr Hickey's appointment as Managing Director of Davy Hickey Properties in July 1990, Mr Dunlop met with Mr Hickey and Mr Shubotham to discuss the process by which the planning permission for Citywest could be best achieved. He believed that it was Mr Lawlor who had initially identified the Citywest lands to Mr Shubotham.

9.04 By mid 1991 Mr Dunlop's lobbying on behalf of Citywest had concluded, the material contravention motion to approve the planning permission application having been successfully passed by Dublin County Council on 11 March 1991. As acknowledged by Mr Dunlop himself, his lobbying activity for Citywest thereafter was sporadic and largely involved public relations work.

9.05 In a statement furnished to the Tribunal on 8 April 2002, Mr Lawlor advised as follows:

[29] See Part 7 of Chapter Two.

Through a mutual contact a meeting was arranged with the above personnel. Due to the lack of an international type Business Park to provide jobs on the west side of Dublin and as Council management were suggesting a substantial area of Corcagh Demesne, a regional park should be promoted as a job creation location. I suggested the above executives should explore the possibility of setting up an international business park on lands owned by the late Dick Killeen [...] The parties went forward and provided what is today City West Business park.

It is my recollection that I recommended Mr Frank Dunlop to Davy Hickey Properties.

9.06 In a later statement dated 15 December 2004, Mr Lawlor appeared to eschew the reasons which he had previously given for his having suggested the Citywest lands for development, when he stated, *inter alia*, as follows:

This proposal was vehemently opposed by the Planning Manager and his senior staff to the extent that a bus tour was arranged for the elected members and senior planning staff which outlined management's intentions as recommended on the tour. This intention was to locate a Business Park on the Council's lands on the northern side of the Naas Dual Carriageway, opposite Citywest Business Park in Corcagh Demesne, Council records will establish the full details of management's policy on this matter.[30]

9.07 In the course of correspondence with the Tribunal on 1 February 2005, with reference to Mr Dunlop's involvement in the Pennine option lands and in Citywest, Mr Lawlor stated as follows:

I am also aware that Mr Frank Dunlop derived a substantial financial gain from his dealings in the lands at Baldoyle and similarly so in relation to the Citywest Business Park project, the largest material contravention of a County Development Plan in the history of the State.

THE EVIDENCE OF MR SHUBOTHAM IN RELATION TO MR LAWLOR'S INVOLVEMENT IN CITYWEST

9.08 Mr Shubotham believed that the originator of the idea of a Business Park for Citywest was Mr Jim Bolger, a racehorse trainer, and he disputed Mr Dunlop's evidence, and Mr Lawlor's assertion, that the idea was Mr Lawlor's.

[30] In the course of the said statement Mr Lawlor referred to Mr Dunlop's claim that he made donations to politicians (including Mr Lawlor himself) on behalf of the promoters of Citywest and, in view of Mr Dunlop's having categorised certain payments to councillors as made to influence their actions while exercising their functions at public meetings of the Council and, on the other hand, Mr Dunlop having claimed to have made payments he categorised as political donations to local and national politicians, Mr Lawlor called upon the Tribunal to investigate Mr Dunlop's actions in representing Davy Hickey Properties.

9.09 However when asked on Day 708: *'Discussions had taken place between yourself and Mr Lawlor I take it in the context of City West or do you have any memory of him being involved or do you say it's purely with Mr Bolger that you had this arrangement?'* Mr Shubotham replied:

> '*Again, very hard to put a time line on it. But certainly somewhere along the way you would say that if Liam Lawlor was around you were discussing the idea of what you are about. Liam Lawlor would be there, wonderful idea, great idea, supportive, whatever else. So I can't tell you whether that was before we bought the lands, while we were buying the lands, but it's most unlikely to have been before we bought the lands.'*

9.10 Mr Shubotham acknowledged that prior to the acquisition of the Citywest lands, he had a business relationship with Mr Lawlor through Davy Stockbrokers. Indeed, Mr Lawlor was a shareholder in Gandon Holdings, a company which in 1988 owned a 45% shareholding in Davy Stockbrokers. Mr Shubotham described Mr Lawlor's shareholding as '*tiny.'* He acknowledged however that he had corresponded with Mr Lawlor in the context of an invitation to Gandon shareholders to subscribe for additional shares. Mr Shubotham insisted that Mr Lawlor was not a regular client of Davy's.

9.11 Aside from this commercial relationship, Mr Lawlor was also known to Mr Shubotham before the Citywest venture through their mutual interest in horseracing, both having retained Mr Bolger as their trainer for a period.

9.12 In documentation provided by Mr Lawlor to the Tribunal in which he outlined the monies he received from individuals and various entities, Mr Lawlor attributed a IR£5,000 cheque received on 6 June 1989 to '*David Shubotham Davy.'*

9.13 In a letter dated 13 July 2000, Davy Stockbrokers confirmed having a written record of a payment of IR£5,000 to Mr Lawlor in June 1989, stated by the writer (Davy's compliance officer) to be '*a contribution to his General Election campaign.'* The Tribunal was advised that there was '*no supporting documentation for the donation, merely a written record of a cheque dated 1st June 1989 for Mr Lawlor.'*

9.14 Although he did not recollect him doing so, Mr Shubotham suggested that it may have been the case that Mr Lawlor approached him for a political donation in 1989.

THE EVIDENCE OF MR HICKEY IN RELATION TO MR LAWLOR'S INVOLVEMENT IN CITYWEST

9.15 Mr Hickey told the Tribunal that at the time of his recruitment by Davy Stockbrokers in connection with the Citywest project, the Citywest lands had already been identified for acquisition and a price had been agreed between Mr Shubotham and the landowner. Mr Hickey did not know who had originally introduced the Citywest concept to Mr Shubotham. He professed to have no knowledge of the suggestion that Mr Lawlor was the person who brought the concept of Citywest to Mr Shubotham.

9.16 However, he acknowledged an involvement in the Citywest project on the part of Mr Lawlor as the latter had, Mr Hickey stated, turned up to quite a lot of Citywest meetings in the company of Mr Dunlop. He acknowledged that Mr Lawlor *'was very helpful'* in relation to Citywest. In particular, Mr Hickey described Mr Lawlor as having advised himself and Mr Shubotham on how to liaise with a number of State agencies, including the Air Corps, Aer Rianta and the Department of Defence, with a view to resolving difficulties they were encountering at the time in relation to Citywest's proximity to Baldonnell airport. Mr Hickey said that Mr Lawlor *'had a very good grasp of the machinery of State'* and *'knew exactly how the various entities interlinked. […] I have to say that he was helpful in indicating how we would go about it, who we should contact etc.'*

9.17 Nevertheless, Mr Lawlor's tendency to arrive unannounced at Citywest meetings had caused Mr Hickey concern. In relation to this, he said:

> '*I got concerned that whilst he was very helpful in the beginning that, I don't want to be disparaging, but I felt he was perhaps maybe a little bit of a magpie. Information he was getting from our meetings were going on to other people and it was inappropriate. And I would have raised this issue with David Shubotham. And I think David actually in turn raised that with Frank Dunlop and after that I think his meetings, or him arriving very much ceased. I can't say that they ceased completely but I think they fairly much came to an end. […] the whole City West concept. It was a very difficult one. Nobody had done it before. I mean, essentially what I was trying to do was create a world class high technology park with a very Irish landscaping and but built around the concept of the 19th Century Victorian Garden cities. Borne Ville working village. It was a highly sophisticated complex that I had to worry my way through every aspect of. I didn't think it was appropriate that he should be at meetings. He would literally turn up. As I say at quite a number of them, he was very helpful but I didn't think it was appropriate. I felt uncomfortable.'*

9.18 In his statement to the Tribunal dated 17 January 2001, Mr Hickey described Mr Lawlor's role in Citywest as only that of a political representative and he made no reference to Mr Lawlor's '*magpie*' tendencies or to him turning up at meetings at which he was not invited.

MR BYRNE AND MR JIM KENNEDY'S BUSINESS RELATIONSHIP FROM 1986 TO 1993 AND THE INVOLVEMENT OF MR LAWLOR

9.19 Mr Byrne's total landholding in Baldoyle was close to 500 acres. The lands which became the Baldoyle lands (including the Pennine option lands) comprised the bulk of this landholding. All of these lands had been acquired by Mr Byrne in the 1960s and 1970s. These lands were for the most part zoned *green belt* (including the entire of the Pennine option lands), with a relatively small portion (approximately 11 -12 acres), zoned for residential development.

9.20 Mr Byrne made several unsuccessful attempts to obtain zoning/planning permission for his lands. On 17 December 1984, An Bord Pleanala refused planning permission to Mr Byrne for residential and ancillary development on some 467 acres of his lands at Baldoyle. This refusal was the culmination of the last effort which was made by Mr Byrne personally and by his companies to secure zoning/planning permission for the lands save Mr Byrne's involvement via/in conjunction with Edington Ltd in seeking planning permission, in early 1986, for 110 houses on the portion of his lands (some 11 to 12 acres) zoned residential under the 1983 Development Plan. Planning permission was refused by Dublin County Council on 5 May 1986, but was granted by An Bord Pleanala on 29 July 1988.[31]

9.21 Some of Mr Byrne's lands at Baldoyle which were not part of the Pennine option lands were themselves the subject of an option agreement between Mr Byrne's company Endcamp Ltd and Bauval Ltd.[32]

9.22 In the course of the public hearings in this module, the Tribunal conducted a limited inquiry into the Bauval option for the purposes of establishing the nature of Mr Lawlor's relationship with Mr Byrne and the extent to which Mr Lawlor was, by January 1991, in a position to facilitate the bringing together of Mr Byrne and Messrs Shubotham, Hickey and Dunlop for the purposes of the those individuals acquiring an option on part of the lands.

[31] This issue is considered further below.
[32] An Isle of Man registered company.

9.23 The Tribunal established substantial involvement on the part of Mr Lawlor in the negotiations which commenced in mid 1986 between Mr Byrne (Endcamp) and Mr Jim Kennedy (Bauval) and which ultimately led to the signing of the Bauval option agreement between their respective companies. Moreover, the Tribunal further established continued substantial involvement on the part of Mr Lawlor when Bauval exercised its option on the 100 acres in question by respectively serving a notice to acquire approximately 12 acres in December 1989 for IR£239,000 and in January 1991, serving two notices to acquire approximately 24 acres of the remaining option lands.[33]

THE LICENCE AGREEMENT BETWEEN ENDCAMP AND EDINGTON

9.24 On the 27 January 1986, Mr Byrne's company Endcamp Ltd signed a licence agreement with Eddington whereby Eddington was entitled to build a residential development on lands zoned residential in the ownership of Endcamp, with a site fine of IR£5,000 per house to accrue to Endcamp. Pursuant to a statement furnished to the Tribunal by Mr Byrne on 31 May 2004, the Tribunal was satisfied to accept that the Endcamp/Eddington agreement was in all probability the first manifestation of Mr Byrne's relationship with the developer Mr Jim Kennedy in relation to what would evolve as the Bauval option. Their relationship probably commenced sometime in late 1985.

THE NEGOTIATION OF THE BAUVAL OPTION AND THE EDINGTON PLANNING APPLICATION FROM 1986 TO 1988

9.25 In August 1986 a meeting took place between Mr Byrne, Mr Kennedy and Mr Lawlor at Mr Byrne's County Kerry residence. In a statement provided to the Tribunal, Mr Byrne said that Mr Lawlor appeared to him to have attended as an advisor to Mr Kennedy. In the immediate aftermath of that meeting, on 28 August 1986 Mr Kennedy's Solicitors, Binchy and Partners, wrote to Mr Byrne confirming '*…on behalf of our clients that they are agreeable to entering into an option agreement with the owners of the land (which we understand involves 80 acres).The option shall be for a period of 4 years and the price per acre will be £20,000.00. The payment for the option shall be in the sum of £50.00…'*

9.26 By 18 November 1986, as evidenced by an attendance of Gore Grimes Solicitors, Mr Byrne was instructing his solicitors that he required: '*…an option Contract sent out covering 100 acres of land at Baldoyle on which he is prepared to give an option at £20,000 an acre or a total of £2m to a Mr James Kennedy acted for by Binchy and Partners.'*

[33]The balance of the 100 acres Bauval option was never exercised by Bauval and the option duly lapsed.

9.27 The lands which were the subject matter of Mr Byrne and Mr Kennedy's *'arrangement'* in 1986 (and which became the subject matter of the Bauval option agreement signed in November 1988) included the portion of Mr Byrne's lands zoned residential in respect of which application was being made by Edington Ltd for the construction of 110 houses.

9.28 The pursuit of planning permission on the part of Edington Ltd between 1986 and 1988 coincided with the timeframe in which the negotiations took place between Mr Byrne (Endcamp) and Mr Jim Kennedy (Bauval) for the acquisition by the latter of the Bauval option.

9.29 The Tribunal was satisfied that, at all relevant times, it was understood, as between Mr Byrne and Mr Kennedy, that the latter would only exercise the option agreement if the planning permission then being sought by Edington was successful.

9.30 An attendance on Mr Byrne by his solicitors on 11 December 1986 reflected Mr Byrne's belief that if such planning permission was granted the value of the lands could achieve IR£60,000 an acre.[34]

9.31 The Tribunal established that in the period from 1986 to 1988, Mr Lawlor played an active part in efforts being made via Edington to secure planning permission for 110 houses. Mr Lawlor's involvement in this process was on two fronts, both as an elected public representative and as a party interested in the lands. On one occasion he wrote to the County Council in his capacity as a TD and councillor, following a meeting he had with Council officials, to discuss '*progress being made on the various engineering aspects of the surface and foul drainage network in the Baldoyle area.'* The Tribunal was satisfied that this meeting related to the Edington planning permission application, by then on appeal to An Bord Pleanala.

9.32 Mr Lawlor's activity in the timeframe in question included drafting a series of letters to County Council officials and others in the names of Mr Byrne, of Edington Ltd and of a named engineer all of which were aimed at convincing County Council officials that a solution had been found or could be found, for the problems concerning the lands the subject matter of the Edington planning permission application, namely the inadequacy of the sewage and drainage facilities.

[34] Notwithstanding that these lands duly got planning permission in July 1988, the option price to be paid to Mr Byrne on foot of the exercise of the optionby Bauval in December 1989 remained at IR£20,000.

9.33 In the course of its inquiries, the Tribunal heard evidence from Ms Joan Clarke who was employed by Mr Lawlor as his secretary in the mid to late 1980s. Ms Clarke identified the following correspondence as having being typed by her on Mr Lawlor's instructions:

- A letter dated 10 October 1986 purporting to be from Mr Byrne on notepaper giving Mr Byrne's address at Simonscourt Lodge, Ballsbridge, addressed to Mr Tom Leahy of Dublin County Council wherein reference was made to proposed solutions for the problems relating to foul drainage and surface water on the lands the subject matter of Edington's appeal to An Bord Pleanala.

- A letter dated 20 May 1987 to a senior engineer in Dublin Corporation, written by Mr Lawlor in his capacity as a T.D. and member of Dublin County Council and which related to the issue of the surface and foul water drainage network in Baldoyle. This letter was written on Dail Eireann notepaper. It was copied, *inter alia*, to Mr Byrne.

- A letter dated 31 July 1987 purporting to be from Edington, again on headed notepaper giving Mr Byrne's address in Ballsbridge, addressed to An Bord Pleanala reporting progress on the issue of the surface water problems attaching to the lands and making reference to having had discussions with the Council.

- A letter dated 31 July 1987 purporting to be from Edington Ltd again on headed notepaper with Mr Byrne's address in Ballsbridge and addressed to Mr MacDaid, Council Official making reference to a recent meeting which took place in relation to surface water/foul drainage in the Baldoyle area and giving the writers interpretation of that meeting.

- An unsigned draft letter dated 6 November 1987 purporting to be from the engineer to Mr Al Smith, Planning Department, Dublin City Council, with reference to Eddington Ltd, and enclosing detailed technical and planning information regarding Eddington's planning application then under appeal to An Bord Pleanala.

- An unsigned draft letter dated 6 November 1987 again purporting to be from this engineer to An Bord Pleanala, making reference to foul sewer and surface water issues in Baldoyle in the context of Eddington's appeal then before the Board.

- An unsigned draft letter dated 6 November 1987 to Mr MacDaid, Council Official with reference to the Eddington planning permission, purportedly from the engineer expressing gratitude to the Council for its coordination of *'the foul and surface water improvement schemes*' in Baldoyle.

9.34 Notwithstanding Mr Byrne's assertion (in the course of statements made by him to the Tribunal) that he was unaware of this correspondence, the Tribunal was satisfied that insofar as Mr Lawlor wrote to Council Officials in the name of Mr Byrne and in the name of others he did so with the imprimatur of Mr Byrne. The Tribunal was further satisfied that Mr Lawlor's endeavours (by virtue of the aforesaid correspondence) were also being done at the behest of and/or with the knowledge of Mr Kennedy. The Tribunal was led to this conclusion by the fact that Mr Lawlor had brought Mr Kennedy and Mr Byrne together. The Tribunal found further evidence for its conclusion in an attendance of Gore & Grimes Solicitors of 23 December 1987. This attendance noted the then ongoing dispute between Mr Byrne and Mr Kennedy as to whether there was a contract for the acquisition of the option in existence (something being denied by Mr Byrne but being asserted by Mr Kennedy) and in that context the attendance noted, *inter alia*, as follows: '*Kennedy is trying to make the point that there is already a contract in being because he has done all the planning work.*'

9.35 The above correspondence indicated the level to which Mr Lawlor orchestrated and managed the process to assist in securing permission for Mr Byrne's lands. The Tribunal was satisfied that Mr Lawlor's work in this regard was being undertaken with a view to facilitating the conclusion of the agreement between Mr Byrne and Mr Kennedy for the latter to take an option on 100 acres of Mr Byrne's lands at Baldoyle.

MR LAWLOR'S INVOLVEMENT IN THE NEGOTIATIONS WHICH LED TO THE CONCLUSION OF THE OPTION AGREEMENT BETWEEN ENDCAMP AND BAUVAL ON 4 NOVEMBER 1988

9.36 An attendance taken by Gore & Grimes dated 5 January 1988 recorded the presence of Mr Lawlor on 23 December 1987 at a meeting between Mr Byrne and Mr Kennedy. Notwithstanding the issue regarding the existence or otherwise of a contract, as of February 1988 negotiations between the two continued and on one particular aspect of the negotiations, namely the boundary line of the 100 acres to be the subject matter of the proposed option agreement, resulted in a successful outcome. The role played by Mr Lawlor in securing the agreement on the boundary line was evidenced in a document entitled '*agreement between Jim Kennedy and John Byrne[…]reached at Simmonscourt, on Wednesday 3rd February 1988, regarding the boundary line of 100 acre holding*.' This document, as testified to by Ms Clarke, was typed in Mr Lawlor's office on his instructions and it appeared, was to have formed the basis of correspondence to be sent to Mr Kennedy's solicitors by Mr Byrne's solicitors, Gore & Grimes.

9.37 On 29 July 1988 An Bord Pleanala granted planning permission for the erection of 110 houses on Mr Byrne's lands as sought by Edington.

9.38 On 4 November 1988 Endcamp and Bauval formally concluded the agreement for the latter to acquire an option on the 100 acres. Pursuant to this agreement, Bauval had the option to acquire the 100 acres at £20,000 per acre.[35] (Annexed to this option agreement was a '*PLANNING SEQUENCE PROPOSAL*' – a step by step guide to the work to be undertaken to secure planning permission for the portion of the option lands which had residential zoning but which had not been the subject of a planning application theretofore. Ms Clarke testified that this document was typed by her on Mr Lawlor's instructions and in a format directed by Mr Lawlor.

THE EXERCISE OF THE BAUVAL OPTION AND THE INVOLVEMENT THEREIN OF MR LAWLOR

9.39 Bauval exercised its option on three occasions. On 6 December 1989, Bauval served Notice to acquire 11.96 acres of the lands.[36] On 8 December 1989, the 11.96 acres were to be taken by Bauval in the name of Sabre Developments Ltd at a contract price of IR£239,200. On the same date as Bauval exercised the option, Sabre Developments sold the lands to Mr Finbar Cahill, Solicitor, (in trust) for IR£622,917, netting a profit to Bauval/Sabre Developments/Mr Kennedy of IR£383,000. To that point in time Mr Kennedy's outlay for the option amounted to just IR£50 for the option fee, together with whatever professional expenses he had incurred.

9.40 Two further exercises of the Bauval option took place on 24 January 1991 in respect of a total 36 acres including the 11.96 acres above. Bauval served notice on Endcamp for Cara Sports Ltd to acquire 13.74 acres and for Sabre Developments to acquire 10.24 acres.

9.41 These 1991 option exercises were the subject of ongoing litigation between Mr Byrne/Endcamp and Bauval/Sabre/Cara Sports for a number of years. Eventually, the Sabre option lands were sold to Alcove Developments Ltd on 12 August 1994, and the lands not subject to an option were sold to Ballymore Homes in July 1999.

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[35] Notwithstanding planning permission having been granted the option price remained at IR£20,000 in the contract. Subsequently the purchase price increased to IR£30,000 per acre for part of the option lands.

[36] These lands had a residential zoning in the 1983 Development Plan and an industrial zoning in the 1991 Draft Development Plan. There were two planning applications by Edington with regard to these lands: application 90A/1036 for 92 houses (lodged on 24/04/1990); application 90A/301 for industrial development (lodged on 24/05/1990). Permission was granted on 24 August 1990 for the industrial development and on 30 August 1991 on appeal for the residential development.

9.42 In the course of its limited inquiry into the Bauval option, the Tribunal established recorded involvement on the part of Mr Lawlor with regard to the option lands which were being acquired by Bauval via Cara Sports and Sabre Developments.

9.43 In instructions provided by Gore & Grimes Solicitors on 28 January 1992 to Senior Counsel retained by Endcamp (in relation to anticipated and/or ongoing litigation with Bauval etc. regarding the option) reference was made by Mr Byrne/Endcamp's solicitor Mr Gore-Grimes to Mr Lawlor in the following terms: '*He (Mr Kennedy) is represented by Liam Lawlor and Liam Lawlor is very closely involved in this whole deal.*'

9.44 Mr Gore-Grimes believed Mr Lawlor to have been Mr Kennedy's agent, a sort of middleman *'who would approach rezoning Councillors.'* He acknowledged however Mr Lawlor's substantial involvement in particular in relation to the lands the subject of the option Notices of 24 January 1991.

9.45 In a further attendance of Gore & Grimes Solicitors dated 5 March 1992 reference was made, *inter alia*, to Mr Byrne's intention '*to go and see Mr Lawlor*' in relation to specific aspects of the 1991 option exercises by Bauval/Sabre Developments/Cara Sports which remained unresolved. This approach was made by Mr Byrne in light of High Court proceedings having been commenced against Endcamp by Bauval/Sabre/Cara Sports seeking specific performance of the sale of the lands the subject matter of the Bauval Notices of 24 January 1991. On 6 April 1992, Mr John Gore-Grimes noted Mr Byrne's instruction *'that Liam Lawlor had been in touch with him but really he had made his case perfectly clear.*'

9.46 Mr Lawlor's ongoing involvement in the dispute between Endcamp/Bauval/Sabre/Cara Sports was equally evident in 1993, as evidenced again by an attendance of Mr John Gore-Grimes of 18 March 1993 wherein, *inter alia*, he noted Mr Byrne advising him that Mr Caldwell (of Binchy & Partners) was awaiting instructions from Mr Lawlor.[37]

9.47 On 5 April 1993, Mr Gore-Grimes wrote to Mr Byrne under the heading '*Re: Endcamp Limited to Sabre Developments Limited*' enclosing a draft contract and, *inter alia*, made reference as follows with regard to a proposed closing date for the contract: '*The closing date is six months after ratification and again I have provided that ratification must not be later than the 1st January 1994. This is as per Liam Lawlor's own programme.*' The letter also referred to the price per

[37] Mr Dunlop's record of telephone messages for 22 March 1993 has the following note: *'Ann – LL office sending over finished doc. For John Gore-Grimes this afternoon.'*

acre for the lands having increased from IR£20,000 (as provided for in the option agreement) to IR£30,000. Mr John Gore-Grimes, in evidence, acknowledged that this increase was probably negotiated by Mr Byrne and Mr Lawlor.

9.48 A letter of 29 June 1993 from Mr Gore-Grimes to Mr Byrne with the title '*Endcamp Limited and Sabre Developments*' contained, *inter alia*, the following: '*Liam Lawlor was in the office the other day and I asked him what was happening*', a reference, the Tribunal was satisfied, to Mr Gore-Grimes having made enquiries of Mr Lawlor with regard to the Bauval option lands which were to be acquired by Sabre Developments.

9.49 The Tribunal's limited inquiry into matters relating to the Bauval option established conclusively that Mr Lawlor was intrinsically involved both with Mr Byrne and Mr Kennedy in (i) the coming into being of that option, (ii) the planning permission application/appeal by Edington, which facilitated the option being concluded, and (iii) the exercise of that option by Bauval in December 1989 and January 1991.

9.50 In the course of its inquiries the Tribunal established that in 1998 Mr Lawlor was the beneficiary of the sum of approximately IR£335,000, money which was part of the proceeds of sale of portion of the lands in respect of which Bauval exercised its option in January 1991.

THE SIMILARITIES BETWEEN MR LAWLOR'S INVOLVEMENT WITH REGARD TO THE BAUVAL OPTION AND HIS INVOLVEMENT WITH REGARD TO THE PENNINE OPTION

9.51 Much of the involvement on the part of Mr Lawlor in the years 1986 to 1993 vis-à-vis the Bauval option was mirrored by his actions in relation to the Pennine option in the years 1991 to 1993.

9.52 In both instances, Mr Lawlor was the individual who brought together the option grantor (Mr Byrne) and the option grantees Mr Kennedy (Bauval) and Messrs Dunlop, Hickey and Shubotham (Baldoyle/Pennine).

9.53 To progress the Bauval option, Mr Lawlor involved himself directly in the Edington planning permission appeal by meeting with and drafting letters to be sent to a number of officials, in an attempt to secure a favourable outcome from An Bord Pleanala. To realise the potential of the Pennine option lands, Mr Lawlor, together with Mr Dunlop, embarked on a strategy to attempt to obtain the rezoning of these lands, which included Mr Lawlor compiling, on foot of information provided by professionals, the rezoning submission made to the

County Council in November 1991 and as well as him assisting Mr Dunlop with the preparation and drafting of a number of motions and maps.

9.54 Moreover, in the wake of the series of unfortunate events which befell the Baldoyle rezoning proposal on 27 April 1993, both within and outside the County Council, Mr Lawlor, together with Mr Dunlop, embarked in May 1993 on the task of drafting correspondence in the names of Cllrs M.J. Cosgrave and Creaven to Cllr Ridge (the acting chairperson of Dublin County Council), in order to keep the Baldoyle rezoning proposal alive.

9.55 For Mr Byrne's part, Mr Lawlor's presence and assistance with regard to the Bauval option was well documented in the attendances of Gore & Grimes Solicitors. Mr Dunlop, in evidence, acknowledged the role played by Mr Lawlor in bringing the option parties together and in the attempt to secure the rezoning of the lands, although he claimed to have no knowledge of any possible beneficial interest on the part of Mr Lawlor in the Pennine option.

MR LAWLOR'S INVOLVEMENT IN RELATION TO THE PENNINE OPTION

9.56 In the course of a statement provided to the Tribunal on 8 April 2002, Mr Lawlor, *inter alia*, stated as follows:

> *I have known John Byrne for over 20 years.*
>
> *I had discussions with him in the 80's regarding the findings of the ERDO (Eastern Regional Development Organisation) Study relating to the options for population placement in the Eastern region of the country and other general information.*
>
> *Mr John Byrne, for many years, was the owner of the Baldoyle Racecourse lands. He sought my views as the lands were lying vacant and in the interest of safety he had to demolish the old stand and other derelict buildings on the site.*
>
> *I would have met John Byrne socially and would have had general discussions with him over the years.*
>
> *I arranged a lunch/meeting at Davy Stockbrokers and in attendance were Mr David Shubotham, Mr Brendan Hickey, Mr Frank Dunlop, Mr John Byrne and myself. Arising from that lunch the parties entered into some form of business relationship of which I was not a party to. To the best of my knowledge the business relationship never advanced to finality by the parties.*
>
> *Mr John Byrne would have supported some of the annual fundraising events.*

9.57 The Tribunal was nevertheless satisfied to accept Mr Dunlop's evidence that Mr Lawlor was an active participant in the negotiations which led to the acquisition of Pennine option from Mr Byrne, as well as in the subsequent attempt to rezone the Baldoyle lands. It also appeared to the Tribunal that the initial idea of bringing together Mr Byrne, Mr Hickey, Mr Shubotham and Mr Dunlop was that of Mr Lawlor.

MESSRS HICKEY AND SHUBOTHAM'S KNOWLEDGE OF MR LAWLOR'S INVOLVEMENT IN THE PENINE OPTION

9.58 As already set out, Mr Hickey and Mr Shubotham disputed any input on the part of Mr Lawlor in effecting their introduction to Mr Byrne and/or to the Pennine option lands and they denied any knowledge of Mr Lawlor's input into the rezoning process. Mr Shubotham did not accept that Mr Dunlop and Mr Lawlor were jointly involved in the Pennine rezoning from its inception until its conclusion in 1993. In his statement of 19 October 2006, Mr Shubotham stated '*as far as I am aware Liam Lawlor has no involvement at all'* [with Pennine]. Mr Hickey testified that he was '*not sure*' that he had ever seen the November 1991 submission to the Council titled '*Representation for proposed use of Land at Maynetown, Stapolin (Baldoyle/Portmarnock) Co. Dublin*.' He later testified that he may have read it. In a statement to the Tribunal on 24 October 2006 Mr Hickey said the following concerning Mr Lawlor's involvement in the Pennine rezoning process: *'My belief is that Frank Dunlop was the only person who was involved in seeking the rezoning of the lands… I have no knowledge of any involvement of Liam Lawlor*.'

9.59 However, the Tribunal was satisfied, as a matter of probability, that both Mr Hickey and Mr Shubotham were aware of Mr Lawlor's role in the rezoning process, albeit, as testified to by Mr Dunlop, that this role on the part of Mr Lawlor was not immediately apparent to anyone (including councillors - save with the possible exception of Cllr Gilbride) other than those directly involved in the negotiation of the Pennine option, namely Mr Byrne, Mr Hickey, Mr Shubotham and Mr Dunlop.

9.60 The Tribunal was also satisfied that in the course of their respective testimonies Mr Hickey and Mr Shubotham chose to distance themselves from Mr Lawlor's involvement, both in relation to the Pennine option and the rezoning project.

MR LAWLOR'S POSSIBLE BENEFICIAL INTEREST IN THE PENNINE OPTION

9.61 While there was no documentary evidence before the Tribunal, and although no witness testified that Mr Lawlor would have been entitled to any benefit which might have accrued had the Pennine option lands been rezoned and the Pennine option exercised, the Tribunal could not rule out the possibility that had this occurred under the stewardship of Mr Hickey, Mr Shubotham and Mr Dunlop, Mr Lawlor would, in some shape or form, have received recompense for the assistance he rendered.

9.62 In the course of his evidence Mr Dunlop acknowledged as remote the likelihood of Mr Lawlor not being rewarded for his efforts invested into the Pennine option and the rezoning attempt. Mr Dunlop said: '*I believe that it is inconceivable that Liam, as I knew him, would in effect be doing the type of work that he was doing for the good of society generally solely.*'

9.63 The following exchange also took place between Tribunal Counsel and Mr Dunlop on Day 706:

> *Q. And in relation to the Baldoyle lands specifically and I'm talking now about the lands which were not the subject of this particular option, that is the Pennine Holdings option but rather which were the subject of the Bauval option. You may be aware of the fact that Mr Lawlor has already given evidence on that issue when he confirmed that he received some £300 – translated as 825,000 deutche marks. I think at the time it was 335,000 pounds for his share in relation to ten acres or thereabouts of this particular Baldoyle holding, isn't that correct?*
>
> *A. Yes, that's correct.*
>
> *Q. So a measure of his expectation of what he was likely to get per acre on this certainly up to 30,000 pounds an acre of it was intended for him. That was his aspiration. I'm not saying that he may have attained it in this. You can't answer that. But you certainly, I take it, are you aware having followed the events in the Tribunal itself. That that was Mr Lawlor's reward for a ten acre involvement?*
>
> *A. Yes, and this may not be ad rem Mr O'Neill, but it goes to the core of the evidence that I have given in relation to the genesis of my involvement in relation to Baldoyle. It came from Liam. Liam was the primary motivator in my becoming involved and subsequently discussing the matter with the individuals concerned. And I think I indicated again in another module, but at the time that the genesis of my involvement occurred I was not aware that Liam had already or was about to enter into an option agreement with other parties, including the main party,*

namely, Mr John Byrne in relation to a body of lands in the same totality. (sic)

THE CONNECTION MADE BY THE TRIBUNAL BETWEEN THE FRANK DUNLOP & ASSOCIATES INVOICE OF 4 JANUARY 1994 TO MR HICKEY/CITYWEST FOR IR£1,200 AND A LODGEMENT OF THE SAME AMOUNT MADE TO AN ACCOUNT OF HAZEL LAWLOR

9.64 On 4 January 1994, Frank Dunlop & Associates issued an invoice to '*Mr Brendan Hickey, Managing Director City West Limited*' in the sum of IR£1,200 for '*media training costs re City West developments.*' This invoice had no VAT element and the Tribunal noted that, unlike the vast majority of other Frank Dunlop & Associates invoices, it was not numbered. Mr Dunlop agreed that the payment from Citywest/Mr Hickey, on foot of this invoice, was not put through the books of Frank Dunlop & Associates.

9.65 Asked how the invoice came to be generated, Mr Dunlop stated:

'*Well, how it came to be generated. I obviously generated it. What the actual reason for the generation is, other than the nonsense wording as we agreed it was on the last day. I have absolutely no idea why it was generated. In the circumstances of the particular date. And unless somebody can other wise indicate to me there was a specific undertaking by me for City West in relation to a fee generating exercise, I have no idea. And I am just looking for the document. My own statement in relation to this matter. Yes, I have it. All I've said in relation to it is that it is an invoice raised in relation to lands at City West. That is all I have any recollection of. I don't have any recollection of raising it for a specific purpose.*'

9.66 Mr Dunlop stated that he never provided training services to Citywest and had no recollection of billing for any service to Citywest after the 1993 bridge invoice. In response to the suggestion that the January 1994 invoice, on Mr Dunlop's own evidence, was '*bogus*', Mr Dunlop stated that he would '*slightly resile*' from the word '*bogus*' but agreed that it was '*bogus in the sense that other than the agreement between the addressee and myself I would provide an invoice on agreement that an amount would be paid. Obviously, the invoice would not have been submitted to Mr Hickey unless there had been an agreement between him and me.*'

9.67 Mr Dunlop acknowledged that whatever the purpose of this exchange of funds between himself and Mr Hickey was, it was not reflected in the document generated by Mr Dunlop to receive the funds and he acknowledged that there

must have been some reason to conceal the true purpose of the payment, as *'otherwise that wording would not have been used.'*

9.68 Mr Hickey's recollection was that Mr Dunlop had invoiced for the IR£1,200 for work done by him in connection with a major presentation being made at that time by Citywest to Xilinx Corporation (who later became an anchor tenant of Citywest), namely Mr Dunlop's assistance in the preparation of brochures and in marketing. Mr Hickey stated that the payment was treated as a payment to Mr Dunlop in the company's books. Mr Dunlop, however told the Tribunal he had no recollection of his involvement in such a presentation.

9.69 In the course of information provided by Mr Lawlor to the Tribunal in response to the Tribunal's request for information on lodgements made to accounts held by him or on his behalf in excess of IR£1,000, Mr Lawlor attributed a lodgement of IR£1,200 made on 12 January 1994 to an account in AIB in the name of Hazel Lawlor to '*Brendan Hickey via FD*.'

9.70 Mr Hickey testified that he had '*no idea whatsoever*' how a payment made by him/Citywest to Mr Dunlop could have ended up in an account of Mrs. Hazel Lawlor.

9.71 Mr Dunlop testified that he had no recollection of making a payment of IR£1,200 to Mr Lawlor and stated:

> '*I don't recollect giving an endorsed or otherwise cheque to Mr Lawlor. I have had engagements with Mr Lawlor in a variety of formats, I think we have visited some of them and I'm sure we'll visit more of them again. But the likelihood is that given the circumstances in which the documents highlight, not only the dates in relation to the drawing down of the invoice and the payment on (sic) the lodgement. It is quite likely that I gave the cheque to Mr Lawlor.*
>
> *Now, as I've said to you, I have no recollection of the circumstances in which the invoice from me to Mr Hickey was drawn down. And I certainly do not recall ever asking either Mr Hickey or any of his partners, for any sum of money, either by cheque or otherwise, for payment to Mr Lawlor.*
>
> *So the payment was made to me by cheque. Whether I endorsed it or not, I cannot tell you. I'm sure that it can be discovered if necessary by the Tribunal. But the likelihood is that the circumstances that you have outlined are correct. That that cheque founds its way into Mrs. Hazel Lawlor's account via Mr Lawlor.'*

9.72 While Mr Dunlop denied any suggestion that he had gone to Mr Hickey in January 1994 seeking money for Mr Lawlor, he stated that it is possible that he might have approached Mr Hickey in the knowledge that Mr Lawlor '*might ask me for money*.' In response to Tribunal Counsel's suggestion that his approach to Mr Hickey was made in the knowledge that the money would go to Mr Lawlor, Mr Dunlop replied:

> '*In the broad perspective of my relationship with Mr Lawlor. I would not say that that was a probability, Mr O'Neill. I think I did indicate on a number of occasions and I do so again now. That Mr Lawlor was a frequent visitor to my office, particularly on Thursday and Friday's. With a specific remit in mind. And that was the collection of money. Where I got the money, where I sourced that money, from what accounts I withdrew it or whether or not I had money or other forms in my possession, including a cheque from Brendan Hickey. That is a likely explanation. But I have to say to you quite definitively that I never asked Mr Hickey. I never prepared an invoice for Mr Hickey for money, for transmission to Mr Lawlor. I never spoke of such a matter to Mr Hickey. It is unlikely that I would have made an invoice for that odd amount, it's a slightly odd amount. It's 1200 pounds. It's not 1,000 or 2,000 it's 1,200. And the likely explanation I would suggest, without being absolute about it. The likely explanation is that Mr Lawlor called looking for money and I had this cheque available and I endorsed it and gave it to him.*'

9.73 The Tribunal was satisfied:

i) that the payment of IR£1,200 was made by Mr Hickey to Mr Dunlop or at the behest of Mr Dunlop on foot of an invoice dated 4 January 1994 from Frank Dunlop & Associates in respect of a service that was never provided to the invoice recipient (Mr Hickey/ Citywest);

ii) that the said cheque was provided to Mr Lawlor and, on 12 January 1994, lodged into the bank account of Mrs. Hazel Lawlor.

CHAPTER NINE – THE BALDOYLE/PENINE MODULE

EXHIBITS

1. Extract from the cheque payments book/ledger of Newlands Industrial Park Ltd..... 2115

2. Bank statement of Newlands Industrial Park Ltd recording debit of a cheque for IR£20,000.00.....2116

3. Citywest 'Reconciliation of Public Relations' document.....2117

4. Citywest 'OTHER OPERATING EXPENSES' document..... 2118

5. Extract from David Hickey Properties Ltd ledger of expenditure..... 2119

6. Extract from Davy Hickey Properties Ltd reconciliation ledger dated 18 August 1993 entitled 'Baldoyle Payments'.....2120

7. Copy Mr Shubotham signed cheque to Shefran dated January 1992 in the amount of IR£10,000.00 together with the reverse of same..... 2121

8. Shefran Ltd invoice dated 6 August 1992 to Newlands Industrial Park Ltd in the amount of IR£2.500.00.....2123

9. Newlands Industrial Park Ltd cheque payable to Shefran Ltd in the sum of IR£2,500.00 dated 07 August 1992 with letter.....2124

10. Shefran Ltd invoice dated 11 November 1992 to Newlands Industrial Park Ltd in the amount of IR£10,000.00.....2125

11. Newlands Industrial Park Ltd cheque payable to Shefran Ltd in the sum of IR£10,000.00 dated 11 November 1992 with letter..... 2126

12. Bank statement showing that on 16 March 1993 a cheque to Shefran for IR£20,000 was debited to a personal account of Mr Shubotham at Bank of Ireland Private Banking.....2127

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(1)

NEILANDS CURRENT A/C

	DEBIT	CREDIT	BALANCE
22nd MAY			
DC NEILANDS TI			
NATAS 1		88,122.00	
INTEREST CHARGED	2,799.26		
TRF TO TERM LOAN	85,115.55		
31st MAY			
DESIGN FEE	9,913.55		
PRESS COLOUR	468.40		
PAYMENT D. SILLBOTHAM	50,000.00		
6th JUNE			
D C PAYMENT		807.00	
[illegible] (2)	20,000.00		
[illegible] (Jean)	[illegible]		
[illegible]	[illegible]		
[illegible] (Jean)	[illegible]		
[illegible]	[illegible]		
[illegible]	[illegible]		
[illegible]

Tribunal Ref : BALDOYLE

Page No: 2981

(2)

Account Holder CURRENT ACCOUNT

NEWLANDS INDUSTRIAL PARK LTD
CURRENT ACCOUNT

Bank of Ireland

PRIVATE BANKING BRANCH

Telephone: (01) 765566

Post to

90-25-65
Branch Code

NEWLANDS INDUSTRIAL PARK LTD
C/O BANK OF IRELAND
35 FITZWILLIAM SQUARE
DUBLIN 2

F 3
Statement Number

22 JUL 1991
Date of Statement

97817323
Account Number

Date	Details		Debit	Credit	Balance
1991					
22 MAY	BALANCE FORWARD				200.00
[illegible] MAY	CHEQUE	115	9,213.55		
[illegible]	CHEQUE	116	468.40		
[illegible]	CHEQUE	120	50,000.00		59,481.95 OD
6 JUN	CQ J & E DAVY			807.00	
	CHEQUE	121	20,000.00		78,674.95 OD
7 JUN	CHEQUE	117	11,754.00		
	CHEQUE	118	23,943.27		114,372.22 OD
	CHEQUE	119	51,200.00		165,572.22 OD
12 JUN	INTEREST		722.83		166,295.05 OD
17 JUN	CHEQUE	110	311.33		166,606.38 OD
24 JUN	CHEQUE	122	907.50		167,513.88 OD
9 JUL	CHEQUE	123	1,452.00		168,965.88 OD
16 JUL	CQ MORE O FARRELL ADS			1,250.00	167,715.88 OD
18 JUL					

ACCOUNTS WHICH EXCEED AGREED LIMITS ATTRACT AN INTEREST SURCHARGE OF 0.5% PER MONTH ON THE AMOUNT OF THE EXCESS WITH A MINIMUM CHARGE OF IR £2 IN ANY MONTH IN WHICH AN EXCESS ARISES.
CURRENT LENDING RATE 13.500%

Thank you for banking with us

Return to report

Tribunal Ref : BALDOYLE

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(3)

Citywest
Reconciliation of Public Relations
30-Jun-92

Date	Chq No	Details	Amount
27-Mar-91	103	Frank Dunlop	598.43
06-Jun-91	121	F Dunlop & Associates (Shefran)	20,000.00
07-Oct-91	37	Frank Dunlop	861.65
31-Mar-92	74	Frank Dunlop & Associates	177.75
			(4) **21,638**

Return to report

(4)

CITYWEST PARTNERSHIP

OTHER OPERATING EXPENSES	1993	1992
Legal Fees	9,846	11,147
Audit and Accountancy	16,230	4,337
Public Relations	8,970	21,638
Cleaning	12,800	
Travel	4,340	17,416
Insurance	1,182	
Agents	16,051	
Photos, Maps	33,450	
Sundries	442	15,272
Bank Charges	362	
ESB	560	
Depreciation	2,579	2,574
	106,812	
Architects Fees		9,214
Property Research		14,826
Property Maintenance		10,685
	106,812	(5) 107,109

Return to report

BH.BTMT 1 - 7

Citywest Payments to Frank Dunlop / Shefran Limited identified as Political Contributions

Ref	Date	Details	Amount	
121	06 Jun 1991	Shefran Limited	20,000	
1	11 Nov 1992	Shefran Limited	10,000	
				30,000

Citywest
Other payments to Frank Dunlop/Shefran Limited

103	27 Mar 1991	Frank Dunlop	598	
37	07 Oct 1991	Frank Dunlop	862	
74	Jan 1992	Frank Dunlop & Associates	178	
11	06 Aug 1992	Shefran Limited	2,500	
78	26 Aug 1993	Frank Dunlop & Associates	2,964	
284	11 Jan 1994	Frank Dunlop & Associates	1,200	
347	31 May 1995	Frank Dunlop	386	
				8,688

Davy Hickey Properties Limited
Payments to Frank Dunlop/Shefran Limited identified as Political Contributions

Ref	Date	Details	Amount	
341	10 Mar 1994	Frank Dunlop (Fianna Fail Dinner)	150	
				150

Return to report

P.D 18/8/93

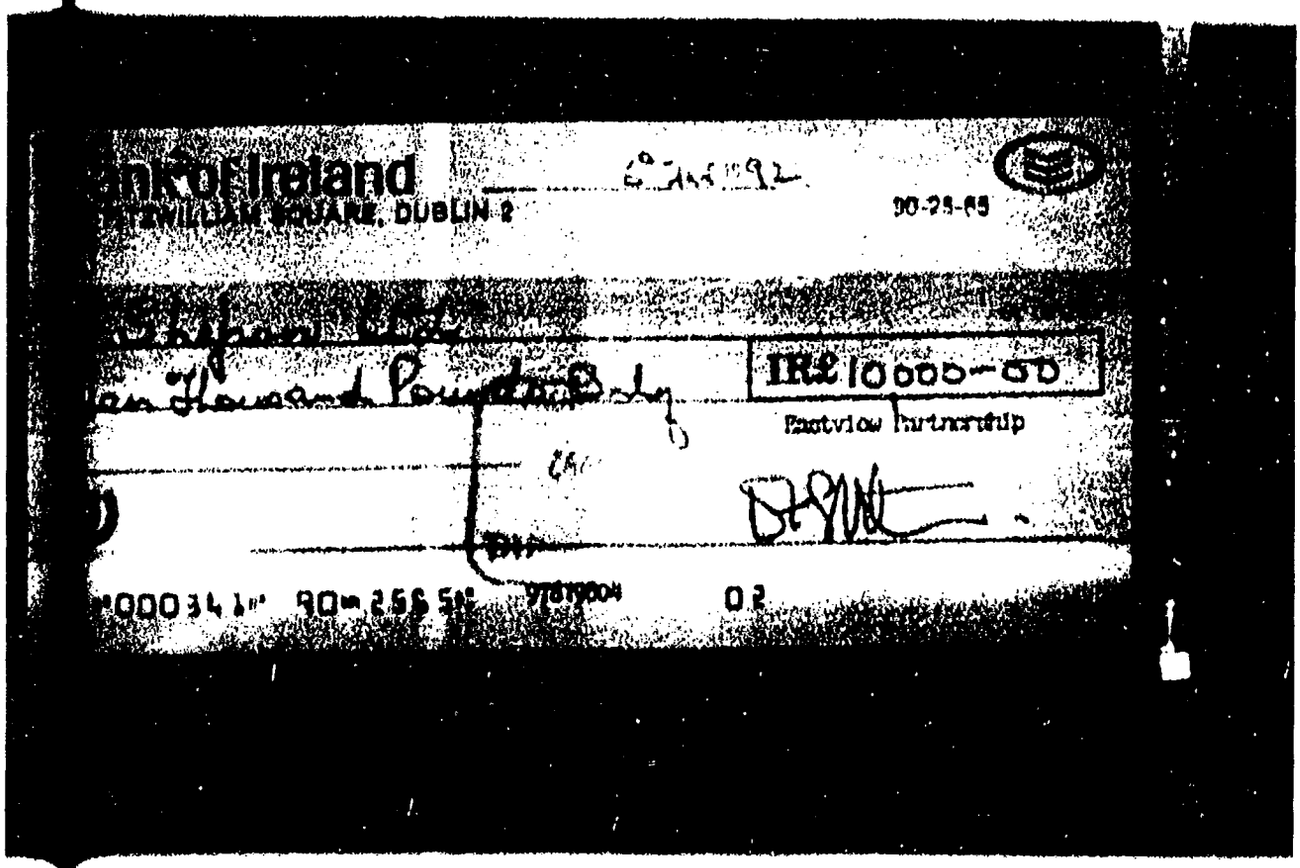
Baldoyle

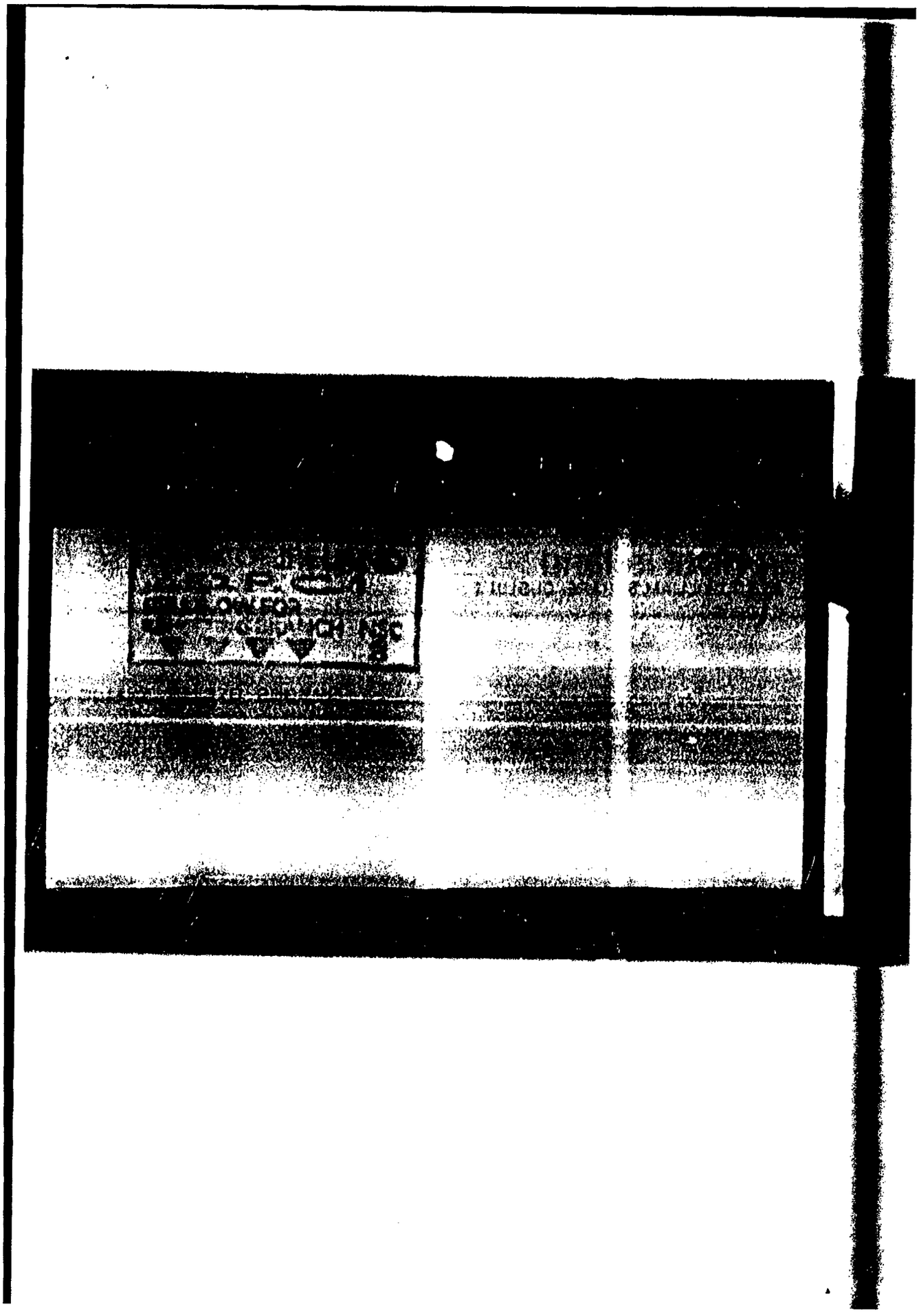
Paymears

Date Paid	Details	Amounts £	Amounts £	Paid by
6.1.92	Shefran Ltd	10,000.00		
6.2.92	E.F. Collins	1048835		
6.5.92	Mc Carthy + Partners	516427		
6.5.92	Frank Dunlop + Assoc	153000		
20.8.92	Grainne Mallon + Assoc	9380		
		2812642	2812642	East new Partnership a/c
28.1.91	Anthony Gore Grimes	50000		
4.93	David Crawley	258000		
5.93	Clair Comer	487209		
5.93	Eugene F. Collin	331842		
		1682051	1682051	DIHPL
1.8.91	Jarlath Crawley	4840		
			4496693	

Deloitte & Touche

Return to report


Bank of Ireland
WILLIAM SQUARE, DUBLIN 2
90-25-65
IR£10000-00
Eastview Partnership
02



Return to report

FD 6 - 12

93

SHEFRAN Ltd
Public Affairs Consultants
35 Upper Mount Street, Dublin 2. Phone: 01-61-[illegible]

PLANNING AND PAYMENTS TRIBUNAL OFFICE
09 MAY 2000
RECEIVED

Newlands Industrial Park Ltd.,
c/o 27 Dawson Street,
Dublin 2.

6th August 1992

INVOICE

To refresher facilities vis-a-vis professional strategic communications and education.	IE£2,500.00

Paid by chq No. 11

Return to report

Bank of Ireland 7-8-1992 11
5 FITZWILLIAM SQUARE, DUBLIN 2 90-25-65

Pay Shefran Limited or order
Two Thousand Five Hundred IR£2,500-00 77
Pounds only
NEWLANDS INDUSTRIAL PARK LTD
Brenda Hickey

⑈000011⑈ 90⑈2565⑆ 97817323⑈ 02

7th August 1992

Mr Frank Dunlop
Shéfran Limited
Public Affairs Consultants
25 Upper Mount Street
Dublin 2

PLANNING AND PAYMENTS TRIBUNAL OFFICE
09 MAY 2000
RECEIVED

Re: Invoice Dated 6th August 1992

Dear Frank,

Please find attached a cheque in the sum of £2,500 in payment of the above invoice. I would be obliged if you would re-issue this invoice addressing it to Newlands Industrial Park Limited.

Yours sincerely,

P.P. Suzanne Canny
Brendan Hickey
Managing Director

Encl.

Return to report

FD 6 - 14

1 1 NOV

122

SHEFRAN Ltd.
Public Affairs Consultants
[illegible] Upper Mount Street Dublin 2. Phone [illegible]

Newlands Industrial Park Ltd.,
c/o 27 Dawson Street,
Dublin 2.

11th. November, 1992

INVOICE

To refresher facilities
vis-a-vis professional
strategic communications,
and education. IR£10,000.00

PLANNING AND PAYMENTS TRIBUNAL OFFICE
09 MAY 2000
RECEIVED

Paid by Chq no. 1

Return to report

FD 6 - 13
90-01-80

BRANCH DUBLIN 4

11-11-1992

Bank of Ireland

Pay Shéfran Limited or order

Ten Thousand Pounds only

IR£ 10,000·00

NEWLANDS INDUSTRIAL PARK LTD

Brendan Hickey

⑈000001⑈ 90⑈0180⑆ 23988744⑈ 02

Mr Frank Dunlop
Shéfran Limited
Public Affairs Consultants
25 Upper Mount Street
Dublin 2

PLANNING AND PAYMENTS TRIBUNAL OFFICE
09 MAY 2000
RECEIVED

Re: Invoice Dated 11th November 1992

Dear Frank,

Please find attached a cheque in the sum of £10,000 in payment of the above invoice.

Yours sincerely,

Brendan Hickey
Managing Director

Encl.

Directors B Hickey, (Managing), K Mc Laughlin, B Dowling, C Hickey
Registered in Ireland No. 149068. Davy Hickey Properties Limited
Registered Office, 1st Floor Fitzwilton House, Wilton Place, Dublin 2

BANK OF IRELAND
Fitzwilliam Square

Private Banking

Telephone 01 676 5566

Statement Date: **Wednesday, 24th March, 1993** Page No: 2 of: 3

Name of Account: **Mr David F Shubotham**
Account Number: **97810260**

Date	Description	Narrative	Debit	Credit	Balance
9/3/1993		**Balance Forward**			
[redacted]					
16/3/1993	Cheques deposited Cheque No 000723	J & E Davy Shefran Limited	20000.00	51458.33	70327.89 OD
[redacted]					
		Total Debits/Total Credits	[redacted]	[redacted]	[redacted]
		Balance Forward			

35 Fitzwilliam Square Dublin 2 Ireland
Fax 01 676 5462 / 676 5659

CHAPTER TEN – FOX AND MAHONY MODULE

INTRODUCTION

1.01 This module inquired into attempts in the early 1990s to rezone approximately 36 hectares of land at Drumnigh and Snugborough, north Co. Dublin. These lands adjoined the old Baldoyle Racecourse. Mr Noel Fox, an accountant, owned the larger and more southerly portion of these lands, while Mr Denis Mahony, a motor dealer**,** owned the northern portion.

1.02 Twenty-nine witnesses gave evidence in public between 21 October and 18 November 2003, and on 6 and 25 May 2005. Information provided to the Tribunal on behalf of Cllrs Cyril Gallagher and Jack Larkin was read into the record.

1.03 The lands were zoned B (agricultural) and 'B & G' (green belt) in the 1983 Dublin County Development Plan and they retained this zoning in the 1991 Draft Development Plan which went on public display from 2 September to 3 December 1991.

1.04 During the course of the statutory first public display of the 1991 Draft Development Plan, proposals were put forward on behalf of Mr Fox and Mr Mahony by Messrs E. M. Hogan & Associates, Architects and Planning Consultants, seeking the rezoning of approximately 36 hectares at Drumnigh and Snugsborough from B (agricultural) and 'B & G' (green belt) to A1 (to provide for new residential communities in accordance with approved action area plans) (hereinafter 'residential'). Ultimately, at a special meeting of the Council held on 28 April 1993, the Mahony lands were zoned A1, a zoning which was confirmed on 29 September 1993, with the defeat of a motion proposed by Cllr Sargent and seconded by Cllr Gordon that that change be deleted. This zoning was thus adopted in the 1993 Development Plan. The process whereby this was achieved and whereby proposals to rezone the Fox lands were withdrawn during the review, is set out below.

THE REZONING STRATEGY BEFORE MR FRANK DUNLOP'S RETENTION

2.01 By 1991, Mr Mahony and Mr Fox had decided to seek to alter the zoning on their respective lands at Drumnigh from B (agricultural) (Mr Mahony's lands), and 'B & G' (green belt) (Mr Fox's lands), to A1 (residential).

2.02 Cllr G. V. Wright, a friend of Mr Mahony's over a long period of time, acknowledged in his evidence to the Tribunal that between 1990 and 1993 he

was actively engaged in advising Mr Mahony about the rezoning of his lands at Drumnigh. He told the Tribunal that his motivation in doing so was his long-term friendship with Mr Mahony, his disagreement with the County Council planners' approach to the lands and his opinion that the proposed rezoning for residential use was based on good planning for the area.

2.03 The Tribunal learned that Cllr Wright and Mr Mahony met in June, August and November 1990, and in April 1991. It was likely that the subject of those meetings was the Dublin County Development Plan review. In particular, Cllr Wright acknowledged that it was likely that, on 26 June 1990, they discussed Dublin County Council's decision on 22 June 1990 on the agricultural zoning of Mr Mahony's lands, and the agricultural and green belt zoning of Mr Fox's lands.

2.04 Mr Edward Hogan, of Hogan & Associates Architects, told the Tribunal that on the instructions of Cllr Wright he prepared and lodged a submission with Dublin County Council on 2 December 1991 in support of zoning for low density housing for the lands at Drumnigh. At the time he was working on a commercial development in Malahide for the Wright family. Mr Hogan told the Tribunal that it was Cllr Wright who instructed him to prepare the submission and that he had no contact other than by telephone with either Mr Mahony or Mr Fox in relation to the issue. Equally, Cllr Wright acknowledged that neither Mr Mahony nor Mr Fox was involved in any way in the organising of the submission prepared by Mr Hogan.

2.05 Although Mr Mahony professed not to have known that a submission for the Drumnigh lands had been lodged with Dublin County Council in December 1991, Mr Fox acknowledged that he knew of the submission, but not its detail. However, Cllr Wright stated that he would only have requested Mr Hogan to prepare the submission after discussing doing so with Mr Mahony.

2.06 Meetings were known to have taken place between Mr Mahony and Cllr Wright on 11 September 1991 and between Mr Fox and Mr Mahony on 3 October and 25 November 1991. The plan to have submissions prepared and lodged with Dublin County Council was almost certainly discussed at these meetings.

2.07 Mr Mahony and Mr Fox told the Tribunal that in the period 1991 to February 1993 their zoning ambitions for their lands were left in Cllr Wright's hands. Mr Mahony said that he understood at all times that Cllr Wright was looking after the zoning 'file' on behalf of himself and Mr Fox, and he believed and understood that Cllr Wright would in due course prepare the necessary motion and accompanying map. Evidence to the Tribunal suggested that, as late

as 9 March 1993, Mr Mahony and Mr Fox believed that Cllr Wright was looking after the rezoning issue on their behalf.

2.08 Cllr Wright told the Tribunal that prior to 10 March 1993 he advised Mr Mahony that he could not continue with the rezoning project because of his busy work schedule both as a councillor and Leader of the Seanad, and because of Cheltenham Races week. He advised Mr Mahony to retain a third party to assist with the project and suggested Mr Dunlop, among others.

2.09 The Tribunal was satisfied that by 9 March 1993 Cllr Wright had informed Mr Mahony that he was not going to complete the task necessary to bring the rezoning issue before the County Council. The deadline for lodging the motion was 12 March. This triggered the decision to retain Mr Dunlop's services on Cllr Wright's recommendation.

MR DUNLOP'S RETENTION IN MARCH 1993

3.01 Mr Dunlop informed the Tribunal that Mr Mahony had asked him to meet with himself and Mr Fox on either 10 March 1993 or the previous day. Accordingly, probably on 10 March 1993, the three men met at the Shelbourne Hotel. At that meeting, Mr Dunlop was engaged by both men to lobby councillors in Dublin County Council to support the rezoning of their adjacent lots of lands at Drumnigh. Both Mr Mahony and Mr Fox acknowledged that they attended a meeting with Mr Dunlop at the Shelbourne Hotel, during which Mr Dunlop agreed to act as a lobbyist. The deadline for lodging the necessary rezoning motion was 12 March 1993.

3.02 Mr Dunlop immediately undertook to prepare a motion for the rezoning of the lands and to obtain signatures for it. On the next day, 11 March 1993, he collected a map of the lands from Mr Mahony's office in Kilbarrack and obtained a reference number from either Mr Mahony or Cllr Wright. By 5 pm on 12 March 1993 Mr Dunlop had lodged a motion and map seeking the rezoning of the Fox and Mahony lands. The signatories to the motion were Cllrs M. J. Cosgrave, Creaven, Gallagher, Wright and Gilbride.

3.03 Mr Dunlop claimed that a fee of IR£10,000 in cash was agreed at the meeting on 10 March 1993. While he could not state whether he had requested cash, or if cash had been offered to him, he was certain that on the day it was agreed that he would receive the IR£10,000 from Mr Mahony in cash. He stated that he discussed and agreed the fee with Mr Mahony and that Mr Fox, although present and within earshot of his discussion with Mr Mahony, did not participate in any way in the discussion.

3.04 Mr Dunlop told the Tribunal that he believed that both Mr Mahony and Mr Fox were aware that he would 'have to' pay councillors to support the rezoning of the Drumnigh lands, and that both men were aware of this in the course of the Shelbourne Hotel meeting on 10 March 1993.

3.05 This belief on Mr Dunlop's part stemmed from Mr Mahony's statement to him in the course of the meeting on 10 March 1993 that they '*knew how the world worked'* (or words to that effect). Mr Dunlop understood that when Mr Mahony said 'we', he was referring to himself and Mr Fox. He claimed that Mr Mahony expressed this (or a similar) sentiment in Mr Fox's presence, and that Mr Fox took no issue with it, indicating to him, Mr Dunlop, that he agreed with it.

3.06 Mr Mahony told the Tribunal that at the meeting on 10 March 1993 Mr Dunlop requested IR£10,000 in cash, and he agreed to this request. He said it was the only occasion in his business life when he had been requested to pay cash, or had agreed to pay cash. Referring to Mr Dunlop's request, Mr Mahony stated: '*He asked me for cash and I was so bent on getting him to take over this job to rezone my land which I had had for 12 years idle, that is the only explanation I can give you.*'

3.07 Mr Mahony told the Tribunal that Mr Fox had not participated in the discussions with Mr Dunlop, about fees or any other issue.

3.08 Mr Mahony agreed that the payment of IR£10,000 in cash was '*unusual*', but said that it had never '*crossed* [his] *mind*' that it might be used by Mr Dunlop to make payments to councillors.

3.09 Both Mr Dunlop and Mr Mahony agreed that the IR£10,000 in cash was paid to Mr Dunlop on 23 March 1993. Mr Fox was not present at the handover.

3.10 Mr Fox told the Tribunal that he had no specific recollection of his meeting with Mr Mahony and Mr Dunlop, although he believed that the three had met on only one occasion, in the Shelbourne Hotel, at a time when it was urgent that a motion and accompanying map be prepared for the County Council.

3.11 Mr Fox said that, although he recollected Mr Dunlop seeking a professional fee, and nominating an amount, he could not recollect the amount nominated. He had no recollection of cash being discussed or agreed and he was unaware that Mr Mahony later paid Mr Dunlop's fees.

3.12 Some time between 12 March and 28 April 1993, Mr Fox decided to withdraw his lands from the project, and he believed he had expressed this intention before Mr Mahony paid Mr Dunlop any fees. He believed it likely that Mr Mahony would have sought a contribution from him to the fees had he still been involved in the project, particularly as his lands were more extensive than those of Mr Mahony. Mr Fox's lands had not been formally withdrawn when Mr Mahony paid Mr Dunlop on 23 March 1993. They were withdrawn by unanimous vote of the Council at the Development Plan meeting on 28 April 1993.

3.13 Both Mr Mahony and Mr Fox denied that Mr Mahony spoke the words Mr Dunlop attributed to him at the meeting of 10 March 1993, or that he expressed similar sentiments. They both emphatically denied that they had any knowledge, understanding or suspicion at any time that in the course of his retention by them Mr Dunlop would make corrupt payments to councillors for the purposes of securing their support for the rezoning of the Drumnigh lands. Mr Fox told the Tribunal that Mr Dunlop gave '*no implication that monies would have to be paid to councillors.*'

3.14 Mr Dunlop acknowledged that his claim that Mr Mahony and Mr Fox were aware of the intended corruption was based on his interpretation of the words '*knew the way the world worked*' (or similar) as referring to the need for or practice of making such payments. He accepted that the words were also capable of a different or innocent interpretation but continued to maintain that that was the interpretation he had taken from them. Mr Dunlop acknowledged that he had not specifically discussed paying councillors with either Mr Mahony or Mr Fox, and he agreed that throughout his continuing relationship with Mr Mahony, which lasted until approximately February 1994, no such discussion ever took place.

3.15 Mr Mahony agreed that the manner of the payment of the fees to Mr Dunlop did not amount to a '*legitimate professional transaction*' in the sense that there was no documentary trail and VAT was neither charged nor paid. He did not accept that this supported a perception that he was aware or conscious of Mr Dunlop's practice of making payments to elected councillors to secure their support for rezoning motions, or of his intention to participate in such a practice.

THE AMENDING MOTION TO WITHDRAW MR NOEL FOX'S LANDS FROM THE REZONING PROCESS

4.01 Mr Fox's decision, made between 12 March and 28 April 1993, to withdraw his lands from the rezoning attempt meant that the motion prepared by Mr Dunlop and lodged with the County Council on 12 March required amendment by deleting the reference to Mr Fox's lands.

4.02 The Tribunal was satisfied that Mr Fox in all probability communicated his decision to Mr Mahony and Mr Dunlop in mid April, as is evidenced by entries in their respective diaries for meetings with Mr Fox, and by Mr Dunlop's telephone records indicating calls to his office by Mr Fox. The Tribunal was also satisfied that Mr Fox's decision was communicated to Cllr Wright in the same period and it accepted Mr Dunlop's evidence that from the time Mr Fox indicated his decision to withdraw from the project, Cllr Wright and Mr Dunlop were in discussion as to how this might be put into effect.

4.03 While the Tribunal was satisfied, on balance, that Mr Fox withdrew his lands for the reasons he had stated, i.e. his view that the proposed residential zoning of the lands, if achieved, would not be commercially viable, and that from the outset he was, at best, only lukewarm in relation to the project, the Tribunal was also satisfied that the decision taken by him was to some extent influenced both by discussions that were ongoing with local councillors, and by a motion then being proposed by Cllr Healy, the objective of which was to preserve all 'green belt' lands in the locality. The remit of Cllr Healy's motion, as proposed, included some 18 acres of Mr Fox's lands. Even if steps had not been put in train to remove the Fox lands from consideration by the Council by 28 April 1993, when the Fox & Mahony motion was scheduled for hearing, some 18 acres of Mr Fox's lands would, in any event, have been excluded from consideration by the Council by virtue of the success of the Healy motion on 27 April.

4.04 At a special meeting of the Council on 27 April 1993, a motion was proposed by Cllr David Healy and seconded by Cllr Gordon (the Healy green belt motion) that all land zoned B & G between Baldoyle and Portmarnock (which included approximately 18 acres of Mr Fox's lands) retain that zoning. The motion was passed. Cllr Wright voted in favour.

4.05 The motion to amend the 12 March motion by deleting Mr Fox's lands was signed by Cllrs Wright, Owen, Creaven, Gilbride and Kennedy. It was put to a vote and passed unanimously at the special meeting of 28 April 1993.

THE REZONING OF MR DENIS MAHONY'S LANDS

5.01 The original motion to rezone the lands owned by Mr Fox and Mr Mahony lodged on 12 March 1993 now related only to the Mahony lands. It was duly considered at the 28 April 1993 special meeting. The Healy/Gordon motion had passed the previous day. The rezoning motion was carried by a majority vote of 28 in favour, 11 against, and 2 abstaining. Therefore, when the Draft Development Plan went on public display for the second time, for the month of July 1993, the Mahony lands were zoned A1 (residential), while the Fox lands remained zoned 'B & G' (green belt).

5.02 The meeting to confirm the Draft Development Plan was scheduled for 29 September 1993. By that date, councillors had lodged three separate motions, including one signed by Cllrs Healy and Sargent, seeking to reverse the A1 rezoning on the Mahony lands to its original B zoning; these motions were supported by the County Manager. The Manager's report pointed out that the proposed development *'would encroach on the agricultural and greenbelt areas and would be contrary to the development of policies of the Council and the adopted settlement strategy'.* In addition, 2,530 representations objecting to the rezoning had been lodged, most from members of the public.

5.03 A motion proposed by Cllr Sargent and seconded by Cllr Gordon that Change 4, Map 8 be deleted, thereby zoning the lands B (agricultural) was put before the Council and on a division was lost with 24 members voting in favour and 28 against, with 1 abstention. Accordingly, the rezoning of the Mahony lands was confirmed at this special meeting of the Council on 29 September 1993, and this zoning was ultimately adopted in the 1993 Dublin County Development Plan.

MR DUNLOP'S 'SUCCESS FEE'

6.01 Mr Mahony and Mr Dunlop met on 3 February 1994 at the Berkeley Court Hotel and Mr Dunlop sought a *'success fee'* for the rezoning of Mr Mahony's lands.

6.02 A cash payment of IR£2,000 was made to Mr Dunlop on 8 February 1994 at Mr Mahony's offices. On that date, the following entry appeared in Mr Dunlop's diary: '*9.30 Denis Mahony. Collect message.*'

6.03 Frank Dunlop & Associates Ltd had raised an invoice on 1 December 1993 to Mr Denis Mahony for IR£5,000 plus VAT (IR£6,050) in respect of '*professional fees with regard to public affairs consultancy on Drumnigh file*'.

6.04 The debtors' ledger account of Frank Dunlop & Associates Ltd recorded '*sales invoiced*' on 1 December 1993 for IR£6,050, but on 3 February 1994, a credit note was recorded for IR£6,050, leaving a nil balance. Mr Dunlop told the Tribunal that he had created the invoice on 1 December 1993 with a view to seeking a success fee from Mr Mahony, and that he later cancelled this invoice following his agreement with Mr Mahony for a IR£2,000 cash payment. Mr Dunlop said that he did not send the invoice to Mr Mahony.

6.05 Mr Dunlop maintained that at the February 1994 meeting he had told Mr Mahony of the amount of work he had done at the time of the rezoning of the lands. This included arranging for the removal of Mr Fox's lands from the rezoning process and dealing with zoning motions that had been put forward for consideration in September 1993, in addition to ensuring that councillors' support held firm for the confirmation vote. He asked for IR£5,000. According to Mr Dunlop, as the meeting progressed Mr Mahony became '*a little aggressive*' and asked him if '*all of the IR£10,000 was used up*'.

6.06 Mr Dunlop said he told Mr Mahony that he had used up all the money and that he had had expenses. He did not expressly tell Mr Mahony that he had made payments to councillors, although these were the expenses to which he was referring. Mr Dunlop agreed that he had not spelled out for Mr Mahony what he meant by the term '*expenses*', and had never discussed with him the fact that he had made payments to councillors in relation to the rezoning project.

6.07 Mr Dunlop told the Tribunal that Mr Mahony did not seek clarification from him as to what precise expenses had been incurred or paid. Mr Dunlop claimed that the '*expenses*' he had in mind at the time of his discussion with Mr Mahony were the payments he claimed to have made to four individual councillors (see below).

6.08 Mr Mahony denied asking Mr Dunlop if *'all of the IR£10,000 was used up'* or any such question. He had no recollection of being informed by Mr Dunlop at the meeting on 3 February 1994 that he had incurred expenses. He was annoyed at Mr Dunlop's request for additional fees but agreed in order to '*finalise the proceedings*' and '*finish a deal on a happy note*'. He believed that he and Mr Dunlop had not discussed how the IR£10,000 had been spent. He had not sought any reimbursement or discount of the IR£10,000 paid in March after Mr Fox's lands were withdrawn from the rezoning process in April 1993.

WERE MR FOX AND MR MAHONY AWARE OF MR DUNLOP'S INTENTION TO MAKE CORRUPT PAYMENTS?

7.01 The Tribunal was satisfied that a meeting took place on 10 March 1993 between Mr Dunlop, Mr Mahony and Mr Fox. The Tribunal accepted that Mr Fox did not fully participate in the meeting, although he was present throughout.

7.02 The Tribunal believed it likely that in the course of the meeting on 10 March, Mr Mahony expressed his annoyance to Mr Dunlop that Cllr Wright had decided not to continue with the work necessary to bring the motion to the County Council, hence the decision to engage Mr Dunlop's services.

7.03 The Tribunal was satisfied that, as accepted in evidence by both Mr Mahony and Mr Dunlop, Mr Mahony agreed with Mr Dunlop that he would lobby certain councillors on his own behalf about the project, and that Mr Dunlop would lobby councillors for the same purpose.

7.04 The Tribunal was satisfied that as a matter of probability Mr Dunlop nominated his fee of IR£10,000 and requested that it be paid in cash.

7.05 The Tribunal was satisfied that, while Mr Fox was aware that Mr Dunlop was to be paid for his lobbying efforts, he was probably unaware of the amount of the agreed fee, and that it was to be paid in cash. He was probably unaware that Mr Mahony paid Mr Dunlop IR£10,000 (or any other sum) in cash on or about 23 March 1993.

7.06 As a matter of probability, the Tribunal was satisfied that Mr Fox did not contribute to Mr Dunlop's payment nor did Mr Mahony request him to do so nor did he inform him as to any detail relating to the payment. On the balance of probability, the Tribunal was satisfied that Mr Fox was unaware of and was not privy to any intention on the part of Mr Dunlop to pay money to councillors in the course of his retention as a lobbyist for the Fox and Mahony lands.

7.07 However, although in Mr Mahony's case the Tribunal did not find that he was aware of Mr Dunlop's intention to pay councillors for their support, it did believe, particularly having regard to Mr Dunlop's request for the IR£10,000 to be paid in cash (as it was), that Mr Mahony must have been at least suspicious that Mr Dunlop might use a portion of the funds in such a manner.

THE INVOLVEMENT OF CLLR G. V. WRIGHT (FF)

8.01 It was clear that in the period 1990 to 1993 Mr Mahony and Mr Fox relied heavily on Cllr G. V. Wright to ensure that all necessary steps to advance the rezoning of the Drumnigh lands were taken.

8.02 It was also quite clear that, on 10 March 1993, after Cllr Wright decided not to proceed with the rezoning proposal, Mr Mahony and Mr Fox engaged Mr Dunlop on Cllr Wright's advice.

8.03 Cllr Wright's involvement with the Drumnigh rezoning project after Mr Dunlop's engagement may be summarised as follows:

- Cllr Wright signed the motion and accompanying map, prepared by Mr Dunlop in his offices and lodged with Dublin County Council on 12 March 1993. Mr Dunlop requested signatures from Cllr Wright (and other councillors).
- Cllr Wright signed and probably assisted in drafting the amending motion to remove Mr Fox's lands from the motion on 28 April 1993.
- On 28 April 1993, Cllr Wright proposed both the amending motion and the substantive rezoning motion and voted in favour of both.
- Cllr Wright agreed that he had lobbied approximately 24 fellow councillors to support the rezoning motion.
- Cllr Wright supported the rezoning at the County Council confirmation vote on 29 September 1993.
- There were a number of contacts between Mr Dunlop and Cllr Wright in the period March to September 1993, although not necessarily solely dealing with the Drumnigh lands.

8.04 Cllr Wright's written statement to the Tribunal of 28 July 2003 did not acknowledge his involvement in the 2 December 1991 submission to Dublin County Council. However, in his statement of 20 October 2003, after the Tribunal provided him with documentation including Mr Hogan's statement dated 5 October 2003 which referred to Cllr Wright's involvement in the 1991 submission, he did acknowledge his involvement.

8.05 When asked to explain in evidence why he had failed to disclose this information to the Tribunal, Cllr Wright stated: '*I did not think it was of that great importance to say that I prepared or asked someone to prepare a submission.*'

MR DUNLOP'S ALLEGED PAYMENTS TO CLLR WRIGHT

8.06 In his statement of October 2000, Mr Dunlop alleged that he had paid Cllr Wright IR£2,000 in relation to the Drumnigh lands rezoning project. However, in earlier evidence, on Day 148 (9 May 2000), he had not identified Cllr Wright as a recipient of money in connection with the lands. He explained that his recollection was aided by his perusal of documentation between May and October 2000, including details of motions, voting information and other data referred to in official Dublin County Council records.

8.07 Mr Dunlop said that at some time between the signing and lodging of the motion on 12 March and 25 March 1993, he agreed to pay Cllr Wright IR£2,000. They had not discussed money on 12 March 1993. The agreement to provide Cllr Wright with IR£2,000 had been duly made in the environs of the County Council in the context of a discussion about impending Development Plan votes. Cllr Wright had raised the rezoning issue, and requested payment. According to Mr Dunlop, Cllr Wright said he needed *'two grand for this'*. The parties had made contact on a couple of occasions following Mr Dunlop's retention on 10 March 1993.

8.08 Mr Dunlop was questioned on Day 421 (22 October 2003) as to why Cllr Wright might have requested payment, given that he had a considerable association with the land prior to Mr Dunlop's retention through his friendship with Mr Mahony, and that he supported the motion. Mr Dunlop repeated his claim that Cllr Wright had requested the money and added that he had paid '*because G. V. was important to a lot of things that were happening in Dublin County Council.*'

8.09 Mr Dunlop alleged in evidence that on either 25 March or 19 April 1993 he met Cllr Wright in the visitors' bar in Leinster House in order to pay him IR£2,000. He told the Tribunal that he had handed him the cash wrapped in a newspaper. Mr Dunlop's diary for 25 March 1993 recorded a meeting with Cllr Wright in the Seanad, and a further meeting with him the following day in Leinster House. However, in evidence on Days 420 (21 October 2003) and 421 (22 October 2003), Mr Dunlop ruled out 26 March 1993 as a likely date for the handing over of the money because when he met Cllr Wright that day it was in the company of third parties.

8.10 Cllr Wright strongly denied requesting or receiving IR£2,000 or any sum from Mr Dunlop in return for signing or supporting the rezoning motion for the Drumnigh lands. He denied ever receiving corrupt payments from Mr Dunlop in relation to any issue. He emphasised that in twenty years of public service he

had never asked for or received an improper payment from anyone, or sold his vote to any individual or in respect of any projects. Cllr Wright acknowledged, however, that he had received IR£2,000 from Mr Dunlop, wrapped in a newspaper in the Dáil bar, but maintained that this occurred prior to June 1991 Local Elections. He said that on that occasion the money was placed in an envelope and the envelope was placed inside a newspaper. He believed this to have been an unsolicited and legitimate political donation to him from Mr Dunlop.

8.11 In his October 2000 written statement, Mr Dunlop stated that he paid IR£2,000 in cash to Cllr Wright at the time of the June 1991 Local Elections, and that it was '*handed over in the visitors' bar of the Dáil wrapped in a newspaper'.* On Day 420 (21 October 2003), Mr Dunlop resiled from this statement to some extent and claimed that he used a newspaper to conceal money paid to Cllr Wright in relation to the Drumnigh lands in March or April 1993. Mr Dunlop confirmed, however, that Cllr Wright had been the recipient of IR£2,000 cash in June 1991; although he stated that he could not accurately recall the exact circumstances of how that payment had been effected. His belief was that it was made at some stage during the course of a meeting in Dublin County Council.[1]

8.12 Mr Dunlop told the Tribunal that he also paid Cllr Wright IR£5,000 in cash at the time of the November 1992 general election.[2] He said that he and Mr Owen O'Callaghan[3] attended at Cllr Wright's office in Malahide and in the course of this visit he handed Cllr Wright IR£5,000 in cash.

8.13 Mr Dunlop also gave evidence that in January/February 1993 (at the time of the 1993 Seanad Election) he gave Cllr Wright either IR£2,500 or IR£3,000 in cash by way of a political donation. He said that although this payment, like the June 1991 and November 1992 payments, was made under cover of elections, they were not *bona fide* political donations but were made to secure Cllr Wright's support for rezoning motions.

8.14 In his February 2001 statement, Cllr Wright sought to attribute a lodgement of IR£3,000 made to his ICS building society account on 7 October 1993 to money he claimed to have received from Mr Dunlop in September/October of that year for the Seanad Election. This was at least seven months after the Seanad campaign had concluded. In his October 2003 statement, and in sworn evidence in the course of this module, Cllr Wright

[1] On Day 148, Mr Dunlop's '*1991 Local Elections*' list named Cllr Wright as the recipient of IR£2,000. This payment is dealt with elsewhere in the report.
[2] This payment to Cllr Wright is considered in Chapter 2 (the Quarryvale Module).
[3] Mr O'Callaghan provided Cllr Wright with a cheque for IR£5,000. See Chapter 2 (The Quarryvale Module).

maintained that the IR£3,000 payment was for '*both Senate and constituency expenses*'. While he and Mr Dunlop disputed this payment (Mr Dunlop denied making such a payment at that time), on Cllr Wright's own admission he received monies from Mr Dunlop at a time other than when an election campaign was imminent or underway.

DEALINGS BETWEEN MR DUNLOP AND CLLR WRIGHT IN MARCH 1993

8.15 It was common case that Cllr Wright initiated Mr Dunlop's involvement in the Drumnigh lands rezoning and signed the motion he prepared on 12 March 1993. Telephone records maintained by Mr Dunlop's secretary for the period March/April 1993 indicated a significant level of contact (or attempted contact) between Cllr Wright and Mr Dunlop's office. For example, in the period 9 March to 23 April 1993, there were 11 telephone calls from Cllr Wright to Mr Dunlop's office leaving messages for Mr Dunlop. Five of these calls took place in the week ending 26 March 1993 and four took place in the week ending 23 April 1993. On 22 March 1993 Cllr Wright telephoned Mr Dunlop's office to speak to Mr Dunlop on two occasions, once from Leinster House.

8.16 Mr Dunlop's diaries indicated pre-arranged meetings with Cllr Wright on 22, 25 and 26 March 1993, and 19 April 1993. The relevant rezoning votes on the Drumnigh lands were scheduled for 28 April 1993.

8.17 Mr Dunlop's telephone records for the days leading up to the confirmation motion to rezone the Drumnigh lands on 29 September 1993 indicated four telephone calls from Cllr Wright, on 23, 24, 28 and 29 September 1993.

8.18 Cllr Wright did not dispute that there was a significant level of contact between himself and Mr Dunlop and that this was evidenced by the telephone and diary records referred to above. However, he suggested that not all the calls or meetings were in relation to the Drumnigh lands, that some might have been about other rezoning projects, especially the Baldoyle lands (in which Mr Dunlop had a personal stake) in relation to which he and Mr Dunlop were in frequent contact.

8.19 An analysis of Cllr Wright's accounts did not reveal conclusive evidence of unexplained cash lodgements. However, he conceded that he was the recipient at election times of large sums of money that were not necessarily lodged to any bank account. It was clear that by March/April 1993 Cllr Wright had been the recipient of large sums in cash from Mr Dunlop. On Cllr Wright's testimony alone, by March 1993 he was the recipient of 'political donations' of IR£2,000 in cash from Mr Dunlop in May/June 1991 and IR£5,000 in cash in November 1992. If,

as the Tribunal believed, Mr Dunlop's 1993 payment was made in January/February during the course of the Seanad elections and not in September/October 1993 as Cllr Wright suggested, by March 1993, irrespective of the Drumnigh rezoning issue, Cllr Wright had already received some IR£10,000 in cash from Mr Dunlop over a 20-month period.

8.20 Cllr Wright rejected Mr Dunlop's allegation that he paid him IR£2,000 to support the Drumnigh rezoning motion saying that he was always supportive of Mr Mahony's rezoning endeavours and therefore did not need to be enticed or persuaded in any way to honour a commitment he had made as far back as 1991. It was the case that Cllr Wright was supportive of the rezoning from an early stage, taking it upon himself to unilaterally organise a submission to the Council seeking rezoning during the first statutory public display period of the Draft Development Plan between September and December 1991. In the course of his evidence, Cllr Wright stated that he had had no reservations about promoting the Drumnigh lands for rezoning — his support being grounded on good planning, and his friendship with Mr Mahony over a long period.

8.21 The Tribunal believed that the question of whether or not Cllr Wright sought and was paid IR£2,000 from Mr Dunlop could not be resolved solely on the basis of pre-existing support on his part for the rezoning. It seemed to the Tribunal that the issue was more properly assessed in the light of the relationship between Cllr Wright and Mr Dunlop and the credibility of their evidence.

8.22 Notwithstanding inconsistencies[4] in Mr Dunlop's recollections, the Tribunal found his evidence overall to be more credible than that of Cllr Wright. The Tribunal noted that in the course of his dealings with the Tribunal over a period of time Cllr Wright sought, through evasiveness and delay, to distance himself from payments he subsequently admitted to receiving from Mr Dunlop. The Tribunal believed that Cllr Wright tried to hide the true extent of his relationship and dealings with Mr Dunlop.

8.23 The Tribunal concluded, as a matter of probability, that a IR£2,000 payment was agreed between Cllr Wright and Mr Dunlop at some point between 12 and 25 March 1993, and that in all probability Mr Dunlop made this payment

[4] 1) Mr Dunlop did not identify Cllr Wright as a recipient of money in relation to the Drumnigh lands prior to his October 2000 statement to the Tribunal.
2) Mr Dunlop's October 2000 statement had attributed the 'wrapped in a newspaper' method of payment to the IR£2,000 cash given to Cllr Wright in June 1991, whereas in the course of his evidence in this module he claimed that method of payment had in fact been used for his payment to Cllr Wright in respect of the Fox and Mahony land rezoning.
3) Mr Dunlop's failure to classify the £2,000 payment to Cllr Wright in 1991 as an 'improper payment' on Day 147 (19 April 2000), but doing so in his sworn evidence to the Tribunal on Day 420 (21 October 2003).

on 25 March or 19 April 1993 when he and Mr Wright met in Leinster House. The Tribunal accepted Mr Dunlop's somewhat late recollection that the money was handed over wrapped in a newspaper in the Dáil bar. While, in October 2000, Mr Dunlop had attributed this method of payment to the IR£2,000 he gave Cllr Wright in May/June 1991 (as conceded by Cllr Wright) the Tribunal accepted his explanation that in this statement he had erroneously attributed the newspaper method to May/June 1991.

8.24 Cllr Wright made the case (through his solicitor, in the course of his cross-examination of Mr Dunlop) that Mr Dunlop had a grievance against him because Cllr Wright had voted in favour of the successful Healy 'green belt' motion of 27 April 1993, the result of which had adverse implications for Mr Dunlop's rezoning ambitions for the Baldoyle/Pennine lands.[5] The Tribunal believed it reasonable that such a grievance, if it existed, would have been present from 27 April 1993 (the date of the Healy/Gordon green belt motion). However, Cllr Wright himself maintained (although this was disputed by Mr Dunlop) that he received IR£3,000 from Mr Dunlop in September/October 1993. This undermined any suggestion that Mr Dunlop had a grievance against Cllr Wright.

8.25 The Tribunal accepted Mr Dunlop's evidence that he paid Cllr Wright IR£2,000 in cash on either 25 March or 19 April 1993, and that the payment was wrapped in a newspaper and was given to Cllr Wright in the visitors' bar in Leinster House. The Tribunal was satisfied that the payment was made following a request for payment from Cllr Wright in return for his support for the rezoning of the Drumnigh lands. In requesting and receiving the said payment, Cllr Wright was compromised in the disinterested performance of his duties as a councillor in relation to the rezoning of the Drumnigh lands. The Tribunal was satisfied that the said payment was a corrupt payment.

8.26 The most likely reasons for Cllr Wright's recommendation to Mr Mahony that Mr Dunlop be engaged in March 1993, instead of Cllr Wright himself preparing the motion, were Mr Dunlop's knowledge of the process, his ability to persuade councillors to support rezoning proposals, and his propensity to pay key councillors for their support for rezoning motions, from which Cllr Wright had previously benefited.

8.27 In the 1991/3 period, before his involvement with the Drumnigh lands, Mr Dunlop was a generous donor to Cllr Wright, giving him cash funds of IR£10,000 (Cllr Wright's figure) or IR£9,500–IR£10,000 (Mr Dunlop's figure).

[5] See Chapter 9 (the Baldoyle/Pennine Module). Mr Dunlop had an interest in those lands.

MR MAHONY'S PAYMENT OF IR£500 TO CLLR WRIGHT

8.28 Mr Mahony made a payment to Cllr Wright of IR£500 by cheque on 20 June 1991, and described it as a political donation.

8.29 Mr Mahony should not have paid Cllr Wright at a time when Cllr Wright was actively engaged in assisting Mr Mahony in having the Drumnigh lands rezoned. Equally, Cllr Wright should not have accepted the payment while so engaged. The payment was not a *bona fide* political contribution, undermined Cllr Wright's disinterested performance of his duties as a councillor, and was corrupt.

THE INVOLVEMENT OF CLLR CYRIL GALLAGHER (FF)

9.01 Cllr Cyril Gallagher was the fifth signatory on the Drumnigh rezoning motion and accompanying map.

9.02 Mr Dunlop told the Tribunal that he obtained Cllr Gallagher's signature on 11 March 1993. An entry in Mr Dunlop's diary recorded a 2.30 pm meeting with Cllr Gallagher on that date. According to Mr Dunlop, although Cllr Gallagher appeared on the motion and accompanying map as the fifth and final signatory he was in fact the third of the councillors to sign. When asked to sign, he left a gap for two other signatures before adding his own name.

9.03 At the meeting on 11 March 1993,[6] Mr Dunlop outlined the difficulties which had arisen because of Cllr Wright's failure to progress the rezoning proposal. According to Mr Dunlop, Cllr Gallagher agreed to sign the rezoning motion when Mr Dunlop confirmed that Cllr Wright would also sign it.

9.04 Mr Dunlop's evidence was that Cllr Gallagher requested a payment of IR£1,000 in return for his signature, and that he paid him that sum in cash there and then, although he himself had not yet been paid by Mr Mahony. He said that he had sufficient cash with him at the time of the meeting, as he had expected such a demand. As reported elsewhere, Mr Dunlop alleged that he paid Cllr Gallagher IR£1,000 on 11 March 1993 in return for his signature and support for another land rezoning.[7]

9.05 Cllr Gallagher voted in favour of both the rezoning motion on 28 April 1993 and the confirmation motion on 29 September 1993.

[6] At this meeting Cllr Gallagher also signed the Cloghran rezoning motion for Mr Dunlop. See Chapter 7 (the Cloghran Module).
[7] See Chapter 7 (the Cloghran Module).

9.06 Mr Dunlop had provided the Tribunal with lists of councillors on Day 147 (19 April 2000) and Day 148 (9 May 2000) to whom he alleged he had made 'improper' payments in 1991 and 1992 out of his '042 Rathfarnham account'. He named Cllr Gallagher in the 1991 list. On Day 148 (9 May 2000), he was asked to provide a further list, which was a continuation of the 1991 and 1992 lists,[8] of councillors identified in those lists to whom he alleged he had made payments at other times. Cllr Gallagher's name appeared on that list as well. On day 148, Mr Dunlop was unable to indicate either the date or the amount of a payment made to Cllr Gallagher in 1993. On the same day, Mr Dunlop identified Cllr Gallagher as the recipient of money from him in relation to four named developments with which Mr Dunlop was involved, and cited Cllr Gallagher as being the possible recipient of monies in relation to the Drumnigh lands.

9.07 Mr Dunlop's October 2000 statement made specific reference to his having provided IR£1,000 to Cllr Gallagher in return for his support for the Drumnigh lands. In a statement to the Tribunal on 6 May 2003, prior to giving sworn evidence to the Tribunal, Mr Dunlop described the IR£1,000 paid to Cllr Gallagher as payment '*for his signature of the original motion… on the 11th March 1993*'. In the course of his evidence to the Tribunal, he repeated his claim that he had paid Cllr Gallagher IR£1,000 for his support for the Drumnigh lands rezoning. He said that the signature and payment were exchanged in the environs of Dublin County Council in O'Connell Street.

9.08 Cllr Gallagher died on 2 March 2000 without giving sworn evidence to the Tribunal. Mr Giles Montgomery, solicitor, (since deceased) represented the family of Cllr Gallagher during the course of this module. Mr Montgomery advised the Tribunal that Cllr Gallagher had denied to him in his lifetime that he had received money from Mr Dunlop in 1993. During the course of the module Mr Montgomery availed of the opportunity of cross-examining Mr Dunlop.

9.09 The Tribunal believed it useful to conduct an investigation of Cllr Gallagher's finances with a view to identifying, if possible, the source or sources of a number of lodgements to his accounts in the period from March to May 1993. The bank statements (and in the case of An Post, the applications for Savings Certificates) available to the Tribunal showed the following lodgements to accounts held by Cllr Gallagher in this period:

1) IR£2,000 cash lodgement on 25 March 1993 to his An Post account[9]
2) IR£119.16 to Cllr Gallagher's personal account at Ulster Bank on 7 April 1993 (there was no underlying documentation in relation to this lodgement)

[8] For ease of reference the Tribunal will refer to these lists as follows: '1991 list', '1992 list' and 'continuation list'.

[9] The documentation suggests that Cllr Gallagher bought for cash a savings certificate for this amount.

3) IR£1,000 cash lodgement to Cllr Gallagher's An Post account 26 April 1993[10]
4) IR£360 to Cllr Gallagher's Ulster Bank account on 7 May 1993 (there was no underlying documentation in relation to this lodgement)
5) IR£73.51 to Cllr Gallagher's AIB deposit account on 17 May 1993 (there was no underlying documentation in relation to this lodgement)
6) IR£254.07 to Cllr Gallagher's Ulster Bank account on 18 May 1993 (there was no underlying documentation in relation to this lodgement)
7) IR£2,000 cash to Cllr Gallagher's An Post account on 25 May 1993[11]
8) IR£2,000 to Cllr Gallagher's AIB deposit account on 25 May 1993 (there was no underlying documentation in relation to this lodgement)
9) IR£500 to Cllr Gallagher's Ulster Bank account on 28 May 1993.

9.10 Cllr Gallagher had retired from Eircom in April 1992. In 1993 his only known sources of income were an Eircom pension, County Council and Health Board expenses, and a state retirement pension. The Tribunal sought explanations from Cllr Gallagher's estate as to the source of the above and other lodgements. The Tribunal was told by Mr Montgomery that Cllr Gallagher's family was not familiar with Cllr Gallagher's banking and financial arrangements, and therefore was not in a position to assist the Tribunal, other than to say that he had made a loan to his son in 1992 which was subsequently repaid. Details were also forwarded of expenses payments made to Cllr Gallagher by the Eastern Regional Health Board. Insofar as Cllr Gallagher was in receipt of expenses, the Tribunal was satisfied that such expenses as were received by him were unlikely to relate to the large round-figure lodgements referred to above, particularly those cash lodgements. These expenses and the other sources of income did not provide an obvious or likely source for the substantial lodgements of cash in this period.

9.11 The Tribunal was advised, however, of two gratuity payments made by Eircom to Cllr Gallagher of IR£7,000 and IR£10,101.68 respectively. The first of these payments was made on 27 April 1992, and the Tribunal was satisfied that this sum was lodged to Cllr Gallagher's An Post account on 15 May 1992. Since this sum was received by Cllr Gallagher in 1992, and since it formed part of the monies standing to his credit with An Post the Tribunal discounted this sum as a possible source of the above lodgements made between March and May 1993. The second payment was made on 1 May 1992. Mr Montgomery speculated that Cllr Gallagher must have had another account other than those disclosed as the method of dealing with the draft or cheque for the IR£10,101.68 did not appear

[10] The documentation suggests that Cllr Gallagher bought for cash a savings certificate for this amount.
[11] The documentation suggests that Cllr Gallagher bought for cash a savings certificate for this amount.

to be capable of being identified. The same applied, he said, to the loan to Cllr Gallagher's son and its repayment. He suggested that the IR£10,101.68 must have been lodged in some form or other to an account, or processed in some form, because otherwise Cllr Gallagher would not have been able to make a payment of IR£5,500 of this sum to his wife's account on 2 June 1992. The lodgement to his wife's account left a balance of approximately IR£4,600, which may have been applied towards a sum used to pay off a loan of IR£4,863.64 on or about 25 September 1992. A lodgement of IR£4863.64 on that day could not be otherwise reconciled to a withdrawal from the known accounts of Cllr Gallagher. Even allowing for the likelihood of Cllr Gallagher holding onto this sum until the spring of the following year, this balancing sum could not explain the round-figure lodgements totalling IR£7860 in this period. In the circumstances, the Tribunal was satisfied, after eliminating from its inquiries those recorded lodgements to Cllr Gallagher's accounts which had as their source his earned income, pensions and expenses, that substantial round-figure sums were lodged by him between March and May 1993 for which no credible explanation was forthcoming.

9.12 While there was no conclusive evidence which indicated that Mr Dunlop's alleged payment of IR£1,000 had in fact been lodged (in whole or in part) into any of Cllr Gallagher's accounts, the said round-figure sum of unexplained lodgements totalling IR£7,860 was sufficient to accommodate this alleged payment, in addition to a separate alleged payment also of IR£1,000 by Mr Dunlop to Cllr Gallagher at about the same time. Although not conclusive evidence on this issue, it may be that the IR£2,000 cash lodgement to Cllr Gallagher's An Post account on 25 March 1993 included all or part of the IR£1,000 in cash Mr Dunlop paid Cllr Gallagher on 11 March 1993 in connection with these lands.

9.13 The Tribunal was satisfied that Mr Dunlop obtained Cllr Gallagher's signature for the Drumnigh rezoning motion on 11 March 1993. The issue for the Tribunal was whether money was solicited and paid. As a matter of probability, the Tribunal believed that money was solicited by Cllr Gallagher in return for his signature and support for the Drumnigh land rezoning and duly paid over on that day by Mr Dunlop. This payment constituted an inducement to Cllr Gallagher to perform his duty as a councillor otherwise than in a disinterested fashion, and was corrupt. In all the circumstances, therefore, having regard to the Tribunal's findings in Chapter 7 (the Cloghran Module), Mr Dunlop corruptly paid Cllr Gallagher IR£2,000 between 10 and 12 March 1993, including the IR£1,000 paid on 11 March in respect of the rezoning of these lands.

THE INVOLVEMENT OF CLLR JACK LARKIN (FF)

10.01 In his sworn evidence on Day 148 (9 May 2000), Mr Dunlop identified Cllr Larkin as a recipient of money from him in 1991 and 1992, but not in 1993. He first identified Cllr Larkin as a recipient of money from him in relation to the Drumnigh lands in his statement to the Tribunal of October 2000. His explanation for his failure to do so earlier was that it was only between May and October 2000, when he studied certain County Council documentation detailing the various motions put forward in the course of the review of the Dublin Development Plan, and the attendances and voting details of councillors, that his memory was prompted sufficiently to identify Cllr Larkin (among others) as a recipient of money in connection with the Drumnigh lands.

10.02 Cllr Larkin did not sign either the rezoning motion lodged on 12 March 1993 or the amending motion which was passed unanimously on 28 April 1993 which deleted Mr Fox's lands from the process.

10.03 Cllr Larkin voted against the retention of the green belt zoning on 27 April 1993 (to the benefit of a portion of the Drumnigh lands) and in favour of the rezoning motion on 28 April 1993. He also voted in favour of the Drumnigh confirming motion on 29 September 1993.

10.04 Mr Dunlop stated in evidence that he discussed the forthcoming Drumnigh lands motion with Cllr Larkin between 12 March and 28 April 1993.

10.05 Mr Dunlop claimed that he paid Cllr Larkin IR£1,000 after the vote on 28 April 1993, at his request, in return for his support for the motion. Mr Dunlop said that the payment was made in the environs of Dublin County Council in O'Connell Street.

10.06 Mr Dunlop's diary did not refer to any pre-arranged meeting between himself and Cllr Larkin in the period 12 March to 28 April 1993. Mr Dunlop explained that pre-arranged appointments between himself and Cllr Larkin were generally unnecessary as he was easily contactable at specific locations in the environs of Dublin County Council, and Mr Dunlop generally met him in this manner.

10.07 It was almost certain that Mr Dunlop lobbied Cllr Larkin to support the rezoning of the Drumnigh lands, and there was an opportunity for him to do so in March and April 1993.

10.08 A review by the Tribunal of the bank accounts operated by Cllr Larkin in the period March to July 1993 identified a number of round-figure lodgements, the source of which remained unknown. In the period late March/April 1993, the period in which, according to Mr Dunlop, he paid Cllr Larkin IR£1,000, there was no lodgement which might possibly relate to such a payment.

10.09 Cllr Larkin died without giving sworn evidence to the Tribunal.

10.10 The Tribunal found that Mr Dunlop's claim that he paid Cllr Larkin IR£1,000 was not established in evidence as a matter of probability.

THE INVOLVEMENT OF CLLR SEÁN GILBRIDE (FF)

11.01 Cllr Gilbride was one of the five signatories on the Drumnigh lands motion and accompanying map.

11.02 Mr Dunlop obtained Cllr Gilbride's signature. He had no specific memory of the precise date on which he obtained the signature. Mr Dunlop's diary for 12 March 1993 stated '*10.30 Dev Plan*'. Mr Dunlop may have obtained Cllr Gilbride's signature on this date.

11.03 Cllr Gilbride supported the vote on the rezoning motion of Mr Mahony's lands on 28 April 1993 and the confirming motion on 29 September 1993.

11.04 Mr Dunlop told the Tribunal that he paid Cllr Gilbride IR£2,000 in cash in return for his signature and support for the Drumnigh motion, and the rezoning of two further and unrelated developments (Cargobridge and Cloghran). He made the payment (described by Mr Dunlop as a composite payment) shortly after 28 April 1993, and probably within the first two weeks of May 1993. Mr Dunlop said the payment was made in the environs of Dublin County Council offices in O'Connell Street. Mr Dunlop contended that the agreement to pay Cllr Gilbride was made either at the time he signed the Fox and Mahony rezoning motion or shortly thereafter.[12]

11.05 Cllr Gilbride accepted that he signed the motion lodged with the County Council on 12 March 1993 and that he may have consulted with other (unnamed) councillors before doing so to ascertain their agreement with the proposal, or their views on it. He agreed that Mr Dunlop's secretary's telephone records indicated that on 11 and 12 March 1993 he told Mr Dunlop of his whereabouts, and he agreed that it was likely that he had signed the motion and accompanying map between 4.15 and 5 pm on 12 March 1993.

[12] See Chapters 6 (the Cargobridge Module) and 7 (the Cloghran Module) for further consideration of this composite payment.

11.06 Cllr Gilbride denied receiving money from Mr Dunlop in return for his signature on the Drumnigh rezoning motion or for his support for the rezoning. He specifically denied receiving the sum of IR£2,000 as alleged by Mr Dunlop, or in the circumstances claimed by him.

11.07 The Tribunal wrote to Cllr Gilbride on 28 March 2003, prior to his giving sworn evidence in this (Fox and Mahony) Module. He was asked to state what he knew about Mr Dunlop and to describe his dealings with him. In the course of his written response on his meetings with Mr Dunlop in 1993, Cllr Gilbride advised as follows:

> *No knowledge or dealings with Mr Denis Mahony. No knowledge or dealings with Mr and Mrs Fox . . . to the best of my recollection, Mr Dunlop asked me to sign the motion. I had no involvement with anyone other than signing the Motion. I would've consulted with the other local councillors to see if it was alright, I have no great recollection of the amended motion. I would have voted in favour of the motion, as I did on numerous other occasions. I had no involvement and did not receive any payments or benefits.*

11.08 The Tribunal again wrote to Cllr Gilbride on 17 July 2003 seeking a detailed narrative statement. Cllr Gilbride did not comply with this request.

11.09 On 26 September 2003, in response to a request from the Tribunal for information on his association with Mr Dunlop in relation to the Quarryvale lands, Cllr Gilbride stated: '*I have no great recollection of any meetings with Frank Dunlop, I would have met him in the County Council offices, O'Connell Street on the odd occasion. I remember having lunch with Mr Dunlop once during the summer but I am not sure if it was 1993.*'

DEALINGS BETWEEN MR DUNLOP AND CLLR GILBRIDE IN THE PERIOD 1992 TO 1993

11.10 When giving his sworn evidence on Day 430 (13 November 2003), Cllr Gilbride, having acknowledged that the references to him in Mr Dunlop's diary and phone records were probably accurate, accepted that Mr Dunlop's diaries indicated pre-arranged meetings with him on 15 occasions between 11 May 1992 and 8 September 1993, a period of 15 months.

11.11 In the period April 1992 to December 1993, 49 telephone contacts between Cllr Gilbride and Mr Dunlop's office were recorded. In the period 2 to 31 March 1993, Mr Dunlop's secretary recorded 9 telephone calls from Cllr Gilbride. In acknowledging that he made these calls to Mr Dunlop's office, Cllr Gilbride commented that some of them may have been return calls from him to Mr Dunlop.

11.12 Specifically, Cllr Gilbride stated: '*My recollection, most of my recollection was it would have been in reply, that Mr Dunlop might have been looking for me and I would always reply.*'

11.13 In any event, the number of meetings and the extent of telephone communication between Cllr Gilbride and Mr Dunlop during these periods indicated a significant level of contact between them.

11.14 The Tribunal was satisfied that Cllr Gilbride's suggestion of minimal contact in 1993 between himself and Mr Dunlop was untrue (and designed to minimise his relationship with Mr Dunlop), and belied the relationship which actually existed between them throughout the course of the review of the 1983 Dublin County Development Plan.

11.15 On Day 148 (9 May 2000) Mr Dunlop identified Cllr Gilbride, who appeared on the list of councillors to whom he alleged he had made payments in 1991 and 1992, as one of those who had received additional payments at other times.

THE *'COMPOSITE PAYMENT'* — A SUMMARY

11.16 The following is a summary of the *'composite payment'*

1) Mr Dunlop alleged that he paid a composite payment of IR£2,000 to Cllr Gilbride in recognition of his support for the rezoning proposals relating to three separate landholdings, namely those which were the subject of the rezoning proposals considered by the Tribunal in the Cargobridge, Cloghran and Fox and Mahony Modules, and to ensure support for future rezoning matters. Mr Dunlop maintained that, in effect, the payment was requested by Cllr Gilbride.
2) Cllr Gilbride denied soliciting and receiving the IR£2,000 payment.
3) While the questioning of Mr Dunlop, and the evidence given by him in relation to his allegation, varied in its detail to some extent as between the three modules, Mr Dunlop's evidence to the Tribunal was, save for one aspect of it, generally consistent in all three modules.
4) The inconsistent aspect of Mr Dunlop's evidence related to the approximate period of time in which he had claimed that the question of payment first arose with Cllr Gilbride. In the Cargobridge Module, Mr Dunlop alleged that a discussion about the payment of money first arose within a period commencing on 10 March 1993, and ending on 28 April 1993. However, in the Cloghran Module, Mr Dunlop maintained that the date of the discussion was '*sometime subsequent to the Cloghran rezoning vote'* (i.e. approximately two to three weeks later than suggested by Mr Dunlop in his evidence to the Tribunal in the Cargobridge Module).

The Tribunal did not consider this inconsistency to have been sufficient to discredit Mr Dunlop's evidence on the matter.

THE TRIBUNAL'S CONCLUSION ON THE '*COMPOSITE PAYMENT*'

11.17 The Tribunal accepted Mr Dunlop's evidence in relation to the alleged payment of IR£2,000 to Cllr Gilbride and was satisfied that it was solicited by, and paid to Cllr Gilbride, essentially as claimed by Mr Dunlop. This payment compromised the disinterested performance of Cllr Gilbride's duties as a councillor in relation to his involvement in the review of the 1983 Dublin County Development Plan and was therefore corrupt.

CASH FUNDS AVAILABLE TO MR DUNLOP IN 1993

12.01 In February 1993, Mr Dunlop received a cheque for IR£25,000 from Riga Ltd (see Chapter 2, the Quarryvale Module). He said he cashed the cheque and lodged IR£10,000 to his Irish Nationwide building society account, one of his '*war chest*' accounts, on 19 February 1993. He apparently retained the balance in cash (IR£15,000).

12.02 Mr Dunlop lodged IR£5,000 to the same Irish Nationwide Building Society account on 3 March 1993 from cash in his possession. He made further cash lodgements to the joint bank accounts of himself and his wife at the AIB College Street Dublin branch in two sums of IR£1,000 each on 12 and 15 March 1993. He lodged IR£12,000 in cash to the Irish Nationwide account on 15 March 1993. Mr Dunlop testified that his cash lodgements represented only a portion of his cash reserves. The Tribunal accepted that this was the case.

12.03 Of the IR£10,000 in cash paid by Mr Mahony to Mr Dunlop on 23 March 1993, Mr Dunlop believed he lodged IR£3,500 to his Irish Nationwide account on 26 March 1993. He lodged IR£4,175.36 to an account in the name of himself and his wife Sheila on 26 March 1993.

12.04 The Tribunal was satisfied that Mr Dunlop had sufficient cash funds available to pay the councillors he alleged he had paid in return for their support for the rezoning of the Drumnigh lands.

POLITICAL DONATIONS MADE BY MR MAHONY OR DENIS MAHONY LTD

13.01 Mr Mahony, either personally or through his company, made a number of substantial political donations between 1987 and 1993. These included

payments to the Fianna Fáil Party made between 1987 and 1989 and totalling IR£8,500, IR£6,000 of which was receipted and recorded as received in the party's accounts. He also made payments of IR£500 to Cllr G. V. Wright in 1991, IR£250 to Cllr Larry Butler in 1993, and IR£500 to Cllr Nora Owen in 1991, all by cheque.

13.02 Cllr Butler voted in support of the motion to rezone Mr Mahony's lands on 28 April 1993, but insisted that there was no link between his support and his request to Denis Mahony Ltd for a political donation in relation to a fundraising event on 27 May 1993. He had not associated those lands with Mr Mahony. Cllr Butler stated that Mr Mahony was not known to him personally, and that he had had no dealings with him.

13.03 Cllr Butler said he had no recollection of being lobbied by Mr Dunlop to support the Drumnigh lands rezoning, and he had no reason to believe this had occurred. However, Mr Dunlop's diary for 18 March 1993 recorded a pre-arranged meeting in the Royal Dublin Hotel with Cllr Butler and Cllr Ned Ryan. Cllr Butler was almost certainly lobbied by Mr Dunlop in relation to the Drumnigh lands on this occasion, assuming that the meeting took place.

13.04 On Day 427 (7 November 2003), Cllr Butler suggested that it was unlikely that Mr Dunlop would have lobbied him, because his ward was far removed from the Drumnigh lands, and Mr Dunlop would not have assumed that he had any knowledge or interest in those particular lands. Cllr Butler stated that he had '*no interest in the activities of what was happening in the north side of the city because I didn't know the geography obviously of the lands in question and I would depend totally on the local councillors for to be in tune with what was happening in their own areas.*'

13.05 Cllr Butler told the Tribunal that he would generally have followed the views of local Fianna Fáil councillors when dealing with rezoning issues in relation to lands outside his own electoral area.

13.06 On Day 427 (7 November 2003), the following exchange took place between Tribunal counsel and Cllr Butler:

> Q. *'But it would seem, Mr Butler, with the greatest possible respect to you, that you seem to have abrogated your County Councillor responsibility once you stepped outside the Glencullen ward?'*
>
> A. *'I suppose to a large extent you could say that, yes.'*
>
> Q. *'Right, and you don't dispute that?'*
>
> A. *'Not really, no.'*

13.07 Notwithstanding Cllr Butler's protestation that it was not so, the Tribunal believed it likely that Cllr Butler was aware of the connection between Denis Mahony Ltd and the lands at Drumnigh when he approached Denis Mahony Ltd in May 1993 seeking a political contribution, and ought not to have done so.

13.08 Mr Mahony made a cheque payment to Cllr Nora Owen on 28 June 1991 in connection with the Local Elections on 27 June 1991. Mr Mahony and Cllr Owen knew each other for a number of years, and Mr Mahony occasionally supported Cllr Owen's golf fundraising events in aid of the Fine Gael Party. Cllr Owen was a co-signatory of the motion of 28 April 1993, and generally was a supporter of the project to rezone the Drumnigh lands.

CHAPTER TEN – FOX & MAHONY MODULE

EXHIBITS

1. Motion lodged on 12 March 1993 to rezone the lands of Messrs Fox and Mahony.....2155

2. Amending motion to exclude Mr Fox's lands from the rezoning application.....2157

3. Motion lodged on 12 March 1993 to rezone the lands of Messrs Fox and Mahony.....2159

14(5)(B)(i)

MOTION:

Dublin County Council hereby resolves that the lands outlined in red on the attached map, and signed for identification purposes, which are the subject of a submission to Dublin County Council under the Draft Development Plan Review, Ref. No. 000535, be zoned A1 for low density residential purposes, namely, one house per hectare.

Signed:

C313/B
28/4

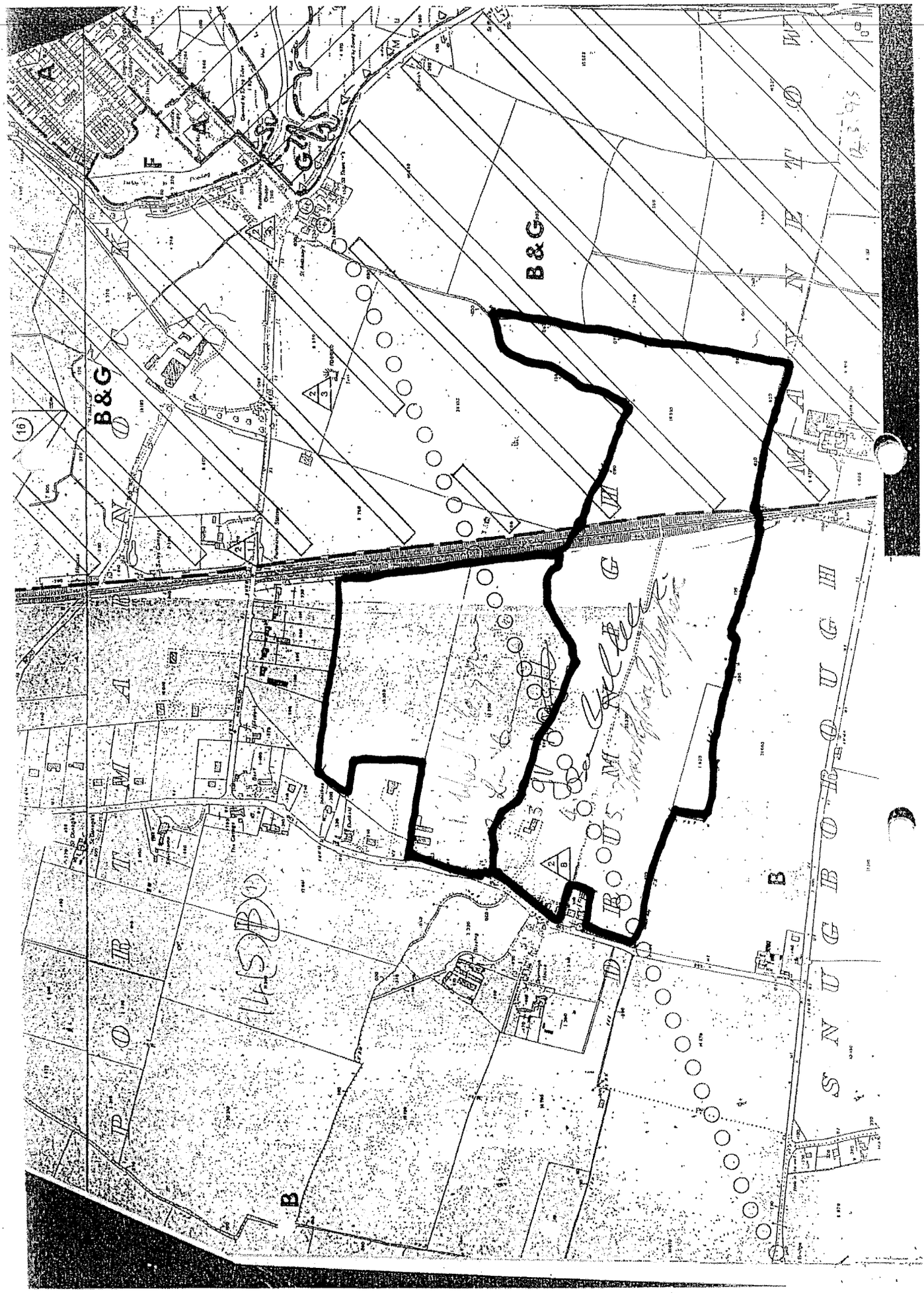
Liam Breen
Michael J. Corrigan
G.N. Wright
Sean Cullen
Thomas Fitzgerald

DUBLIN COUNTY COUNCIL
12 MAR 1993

AMENDED & PASSED 28/4

12.3.93

F+M BRIEF PAGE 935



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Amendment to Motion 14.(5) B

Rep. No. 000535 - M/S Fox and Mahony, Drumnigh.

"Dublin County Council hereby resolve that the lands at Drumnigh outlined in red on the attached map, and signed for identification purposes , which are the subject of a submission to Dublin County Council under the Draft Development Plan Review, Ref. No. 000535 , be zoned A1 for low density residential purposes for not more than 18 houses on 36 acres approximately.

excluding the lands highlighted in yellow on the attached signed by the proposer dated 28th April 93

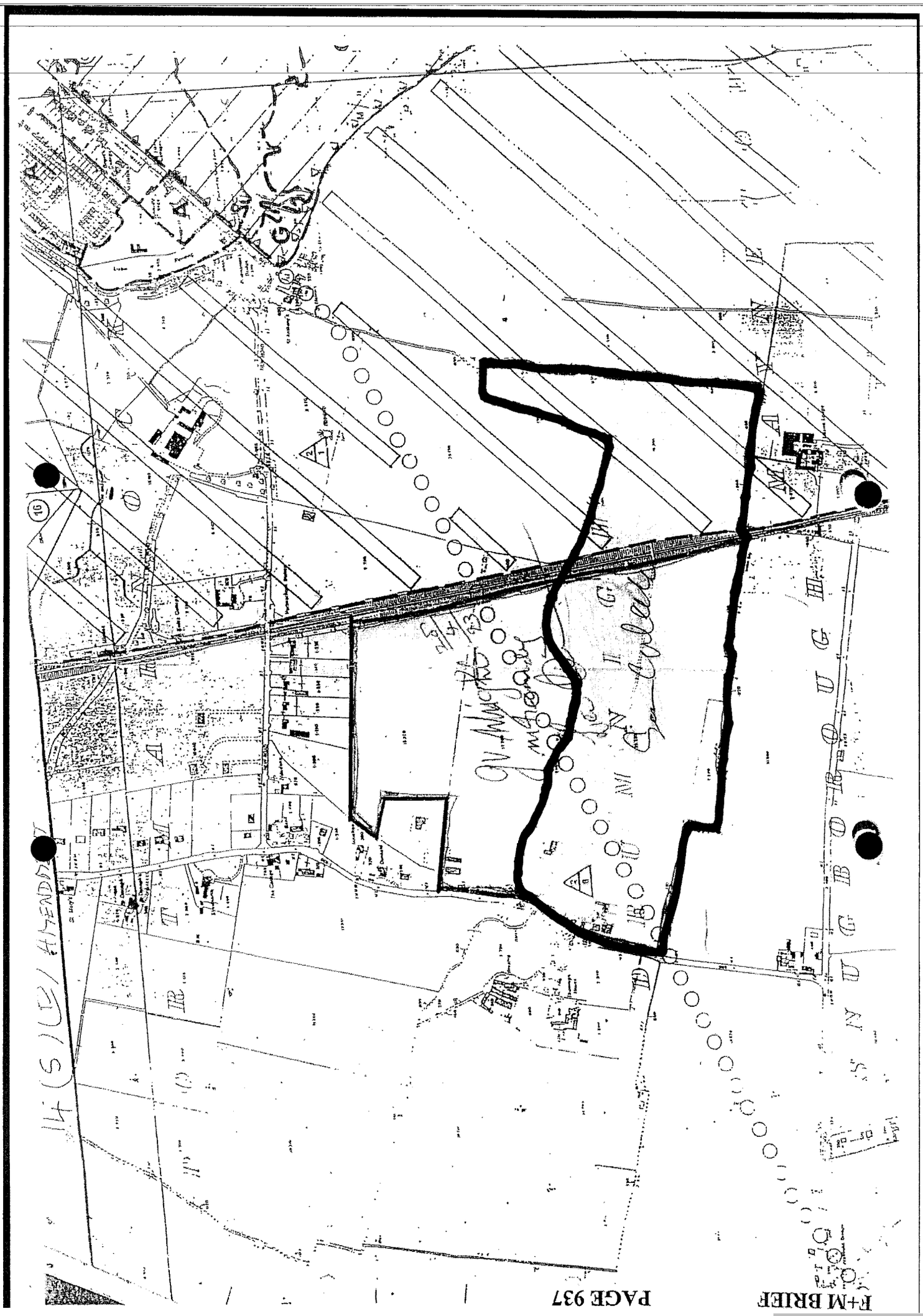
G. Knight

N. Bladwell

Liz Keane

Sean Gilbert

M. Kennedy



Return to report

14(5)(B)(i)

MOTION:

Dublin County Council hereby resolves that the lands outlined in red on the attached map, and signed for identification purposes, which are the subject of a submission to Dublin County Council under the Draft Development Plan Review, Ref. No. 000535, be zoned A1 for low density residential purposes, namely, one house per hectare.

Signed:

C313/B
28/4

Liz Dunne
Michael J. Corcoran
G.N. Wright
Sean Cullen
Winifred Fallon Fox

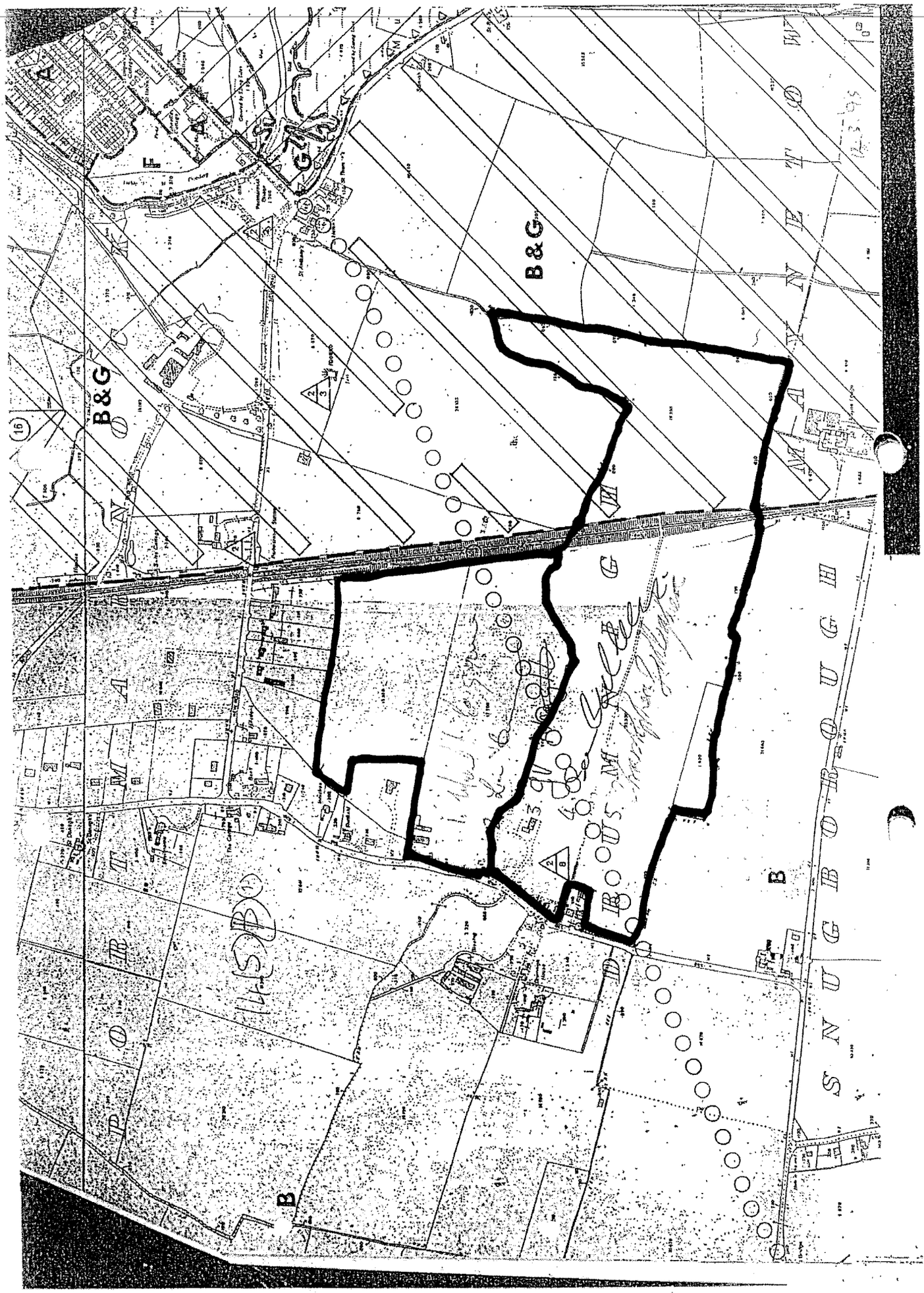
DUBLIN COUNTY COUNCIL
12 MAR 1993
PLANNING DEPARTMENT

AMENDED & PASSED 28/4

12.3.93

F+M BRIEF

PAGE 935


B&G
B&G
B&G

CHAPTER ELEVEN – THE WALLS KINSEALY MODULE

INTRODUCTION

1.01 This module concerned an unsuccessful attempt in 1993 to rezone 54 acres of land (the Walls Kinsealy lands) at Kinsealy Lane, south of Malahide Demesne in north Co. Dublin. The land had been acquired in 1989 by Mr Paul Walls for IR£240,000 through Glenellen Homes Ltd, a property development company and wholly owned subsidiary of Walls Properties Ltd. Glenellen Homes disposed of the lands in 1993 for IR£275,000.

1.02 The module was heard in public over five days between 6 April and 27 July 2006. Eleven witnesses gave evidence.

1.03 The lands were zoned B (agriculture) in Map 6 of the 1983 Dublin County Development Plan, a zoning they retained in the 1991 Draft Development Plan.

1.04 On 18 March 1993, a motion signed by Cllr Seán Gilbride seeking to rezone the Walls Kinsealy lands from agriculture to low density residential, was lodged for consideration at a special meeting of the County Council held on 4 May 1993. The motion was withdrawn in the course of the meeting.

1.05 A few days earlier, on 15 March 1993, Cllr Gilbride had signed and lodged two motions affecting other lands owned by Mr Walls, at Seatown West, Swords, Co. Dublin (the Walls Seatown lands and the Walls Hydraulic lands), to be considered at a special meeting of the County Council on 26 May 1993. Although the motions were proposed and seconded on that date they too were duly withdrawn by Cllr Gilbride.

1.06 The Walls Kinsealy lands retained their 1983 agricultural zoning when the 1993 County Development Plan was adopted on 10 December 1993. The Seatown and Walls Hydraulic Lands, likewise, retained their 1983 G zoning, their protected status having been further enhanced by a series of changes approved in September 1993.

THE SEATOWN AND WALLS HYDRAULIC MOTIONS

2.01 The two motions lodged by Cllr Gilbride on 15 March 1993 concerned parcels of lands at Seatown West, Swords, Co. Dublin which were zoned G in the 1983 Dublin County Development Plan and retained that zoning in the Draft Development Plan 1991.

2.02 The first motion related to four and a half acres of land (the Seatown lands) and sought to exclude them from the proposed area of scientific interest, as set out in the Draft Dublin County Development Plan 1991. The lands were designated as being of scientific interest because of their location at the mouth of the Swords/Malahide estuary, and because of their importance for the passage of migrant and wintering birds.

2.03 The second motion lodged by Cllr Gilbride related to some 12 acres of land (the Walls Hydraulic lands) adjoining the Seatown lands and sought to have them deleted from that portion of the Draft Development Plan 1991 which had as its objective the preservation of views and prospects and of areas of scientific interest.

2.04 Mr Walls' family home was on the Seatown lands, which he owned. The Walls Hydraulic lands were owned by Hydraulic Plant Ltd, a company which, in 1993, appeared to have held these lands in trust for Mr Walls' father. Mr Walls was a director of this company.

2.05 Prior to the first public display of the Draft Development Plan from 2 September to 3 December 1991 the County Council planners had provided councillors with reports on their plans to further protect and enhance areas of scientific interest and these had been incorporated into the Draft Written Statement. Councillors had had the opportunity to submit motions before the plan went on public display but none of the motions submitted sought changes to the zoning of the Seatown or Walls Hydraulic lands.

2.06 On 2 December 1991, on the eve of the expiry date for the first public display, Hydraulic Plant Ltd lodged a representation with Dublin County Council which argued, in effect, that the Walls Hydraulic lands were not an area of scientific interest, an argument also put by Mr Walls in an oral submission to the County Council on 21 February 1992.

2.07 Following the first public display period, the County Council held a series of meetings dealing with the objections, representations and motions that had been lodged relating to the Draft Development Plan.

2.08 Maps 6 and 7 of the Draft Plan, which included the Seatown and Walls Hydraulic lands, were listed for consideration before the County Council at a special meeting on 26 May 1993.

2.09 The minutes of the County Council meeting of 26 May 1993 indicate that Cllr Gilbride withdrew the two motions he had lodged on 15 March 1993 and they were not put to a vote by the councillors.

THE WALLS KINSEALY MOTION

3.01 During the first public display of the Draft Development Plan 1991, the Council planners did not recommend changes to the Walls Kinsealy lands' B zoning.

3.02 On 2 December 1991, the County Council received an objection to the proposed B zoning from Mr Walls of Glenellen Homes. He sought the rezoning of the lands at Kinsealy to A (residential).

3.03 Mr Walls lodged a further written submission for rezoning on 10 February 1992 and he made an oral submission on 11 February 1992.

3.04 The 18 March 1993 motion signed by Cllr Gilbride seeking to rezone the Walls Kinsealy lands was due for consideration at a special meeting on 4 May 1993 held to consider Map No. 7 of the Draft Development Plan which included the Walls Kinsealy lands. At this meeting the County Manager recommended, *inter alia*, against the rezoning of the Walls Kinsealy lands from agricultural to residential, relying on the County Council planners' stated objections to that proposal.

3.05 The minutes of the meeting record that, following the County Manager's recommendation, Cllr Gilbride withdrew his motion.

3.06 During the second statutory display period from July to August 1993, the Walls Kinsealy lands retained their agricultural zoning, and this zoning was confirmed when the Development Plan was adopted in December 1993.

MR FRANK DUNLOP'S INVOLVEMENT

4.01 In a written statement to the Tribunal on 9 October 2000, Mr Dunlop claimed that, in the course of his work as a lobbyist for Mr Paul Walls seeking the rezoning of the Walls Kinsealy lands as residential, he paid Cllr Seán Gilbride IR£1,000 in connection with that attempt.

4.02 Mr Dunlop suggested in the course of that statement that to the best of his recollection and belief he obtained the sum of IR£5,000 from Mr Walls and

the IR£1,000 paid to Cllr Gilbride was from that sum. However, in 2006, Mr Dunlop asserted that he had received only IR£3,025 (IR£2,500 plus VAT) from Mr Walls (see below).

4.03 In the preface to his October 2000 statement, Mr Dunlop stated that the presence of an asterisk beside lands identified in the statement denoted knowledge on the part of the land owner/developer that Mr Dunlop would be likely to, or would be required to, pay councillors for their support for rezoning. An asterisk appeared on the Walls Kinsealy part of Mr Dunlop's October 2000 statement.

4.04 In May 2000, while under examination by Tribunal counsel, Mr Dunlop prepared lists of developments in respect of which he claimed to have paid money to councillors in connection with the rezoning process. He did not allude at that time to the Walls Kinsealy lands or to the names of Mr Paul Walls or Cllr Gilbride in connection with these lands. In evidence, Mr Dunlop stated that he had not recollected his involvement in the rezoning of the lands in April/May 2000 but had recalled it when he had reviewed, in the period May to October 2000, the documentation relating to County Council meetings (*'the road map'*). There was no dispute but that Mr Dunlop did have an involvement as a lobbyist for the Walls Kinsealy lands in early 1993.

4.05 In March 2006, Mr Dunlop prepared a statement in advance of the public hearing of this module. It was received by the Tribunal after a brief of documentation had been circulated to all affected parties, including Mr Dunlop. In this statement Mr Dunlop made reference for the first time, in the context of Walls Kinsealy, to the role played in January 1993 by Mr Tim Collins in introducing him to Mr Paul Walls for retention as a lobbyist. In this statement, Mr Dunlop attributed to both Mr Walls and Mr Collins an awareness in 1993 that some councillors would seek payment from him for either their signature or their support or both when he was lobbying them on rezoning motions.

MR DUNLOP'S RETENTION AND HIS LOBBYING OF COUNCILLORS

5.01 Mr Dunlop maintained in the course of his evidence that he had met Mr Walls and Mr Collins at his office on 7 January 1993, a meeting which he claimed had been arranged by Mr Collins. He said that he had been retained to lobby councillors to support Mr Walls' proposal to rezone the Walls Kinsealy lands from agricultural to residential.

5.02 Mr Dunlop described Mr Walls as one of a number of landowners introduced to him by Mr Collins in the period 1990 to 1993 in the context of the then ongoing review of the 1983 Dublin County Development Plan so that they could retain him in connection with the rezoning of land. All of the individuals introduced by Mr Collins to Mr Dunlop in early 1993, including Mr Walls, had a common objective, namely the alteration of the zoning of their respective landholdings in order to maximise their development potential, and consequently their value.

5.03 Mr Dunlop's impression from the meeting with Mr Walls and Mr Collins on 7 January 1993 was that Mr Walls' intention to seek the rezoning of the Walls Kinsealy lands was a '*last throw of the dice*' by him as an opportunity had presented itself in 1993 to seek the rezoning of the lands.

5.04 Mr Dunlop stated that in the course of the meeting Mr Walls had outlined his proposals for the lands and alluded to the actions which had already been taken in relation to them. Mr Dunlop said that he, Mr Walls and Mr Collins had discussed whether there was likely to be support from councillors for the motion to rezone the lands as residential. Mr Dunlop stated that he had a specific recollection of Mr Collins mentioning Cllr Nora Owen in the context of her known opposition to rezonings in the Walls Kinsealy area.

5.05 Mr Dunlop maintained in his evidence to the Tribunal that the discussions between himself, Mr Walls and Mr Collins had left him in no doubt but that '*the people present at the meeting were aware of what was required in relation to, or maybe required, in relation to disbursements*' to councillors.

5.06 While maintaining that both Mr Walls and Mr Collins were aware of the possibility that, as he put it, councillors might have to be paid, Mr Dunlop was unable to point to any specific utterance on the part of either Mr Walls or Mr Collins which had given him that impression.

5.07 However, Mr Dunlop maintained that Mr Collins' awareness of the likelihood or possibility of his making disbursements to councillors in the course of his lobbying efforts stemmed from an already established relationship between himself and Mr Collins in other rezoning projects which were under way by January 1993.

5.08 Both Mr Walls and Mr Collins acknowledged that the meeting with Mr Dunlop on 7 January 1993 was probably arranged for Mr Walls by Mr Collins. Mr Walls acknowledged this on the basis of the entry in Mr Dunlop's diary on that date which read '*10.30 Tim Collins Paul Walls*'. However, Mr Walls did not

believe that Mr Collins was present at the meeting of 7 January 1993 and professed to have very little recollection of it. Mr Walls acknowledged, however, that he had met Mr Dunlop on that date for the purposes of retaining him to lobby councillors to rezone the Walls Kinsealy lands from agricultural to residential. Mr Walls believed that Mr Dunlop's functions included ensuring that sufficient councillors would attend to vote in any rezoning motion, a point Mr Walls had noted in manuscript on the letter received from Mr Dunlop on 13 January 1993.

5.09 Mr Walls denied any awareness or knowledge on his part of the possibility or likelihood of payments being made to councillors and he rejected Mr Dunlop's evidence that anything was said or done at the meeting of 7 January 1993 which could have suggested to Mr Dunlop that he had such knowledge or awareness.

5.10 Mr Collins said that he had no recollection of attending the meeting of 7 January 1993 and maintained that he had not attended it. He believed that while he had recommended Mr Dunlop to Mr Walls, Mr Walls had '*a tendency to do his own thing*' and had met with Mr Dunlop without him.

5.11 Mr Collins acknowledged that Mr Walls was one of a number of landowners with rezoning ambitions who had met with Mr Dunlop on Mr Collins' recommendation in early 1993. He agreed that he had been in attendance when other landowners/developers had met with Mr Dunlop.[1] Notwithstanding his presence at other meetings, Mr Collins was adamant in evidence that he had not accompanied Mr Walls to Mr Dunlop's office on 7 January 1993. Mr Collins said that, as he had not attended this meeting, he could not have expressed to Mr Dunlop any awareness of the need to make disbursements to councillors.

5.12 Mr Collins professed himself to be unaware of the *'system'* of making disbursements to certain councillors, as described by Mr Dunlop in evidence. Mr Collins also denied that he had ever spoken to Mr Dunlop about Cllr Owen's opposition to the rezoning of the lands in question and maintained that he was acquainted with only one councillor in the north Dublin area, namely Cllr G. V. Wright, then a neighbour of his.

5.13 Mr Dunlop claimed to the Tribunal that from the outset of his retention as a lobbyist in relation to the lands at Walls Kinsealy he did not encourage Mr Walls with regard to the prospects for rezoning these lands. He had, he stated, advised Mr Walls of the need to canvass support from a cross-section of

[1] See the chapters on the Cloghran and Lissenhall modules.

councillors, and in particular from local councillors, before approaching councillors in other areas.

5.14 Documentation produced to the Tribunal revealed that in the period January to May 1993 Mr Walls and Mr Dunlop had regular contact regarding Mr Dunlop's lobbying endeavours. By 4 March 1993, Mr Dunlop was in a position to advise Mr Walls that rezoning proposals had to be submitted by mid March 1993 and of his intention to approach Cllrs Wright and Devitt and others to sign the necessary motion. By 15 March 1993, Mr Walls knew from Mr Dunlop that the Walls Kinsealy motion had to be submitted to the County Council by 18 March 1993. Although Mr Walls disputed this, it was likely that he and Mr Dunlop met on 9 March 1993 to discuss the text of the motion to be lodged. In addition to Mr Dunlop's lobbying efforts, Mr Walls himself lobbied councillors by letters dated 28 April and 3 May 1993.

5.15 While Mr Dunlop acknowledged that by 18 March 1993 Mr Walls (or companies associated with him) had put three proposals before Dublin County Council (including a proposal to rezone the Walls Kinsealy lands), he claimed responsibility only for the Walls Kinsealy motion and professed to have no knowledge of the two motions relating to the Seatown lands and the Walls Hydraulic lands which had been lodged with the County Council on 15 March 1993. Mr Dunlop believed that he had never been informed of Mr Walls' zoning ambitions for these lands, stating that the focus of his retention at all times had been the Walls Kinsealy lands.

THE INVOLVEMENT OF CLLR SEÁN GILBRIDE (FF)

6.01 Mr Walls largely agreed with Mr Dunlop's evidence with regard to the Seatown and Walls Hydraulic lands, although he believed that there had been some discussion with him about his becoming involved in lobbying in relation to these lands should Mr Walls secure local councillor support for his zoning proposals. This support had not materialised, which in turn led Mr Walls to approach Cllr Seán Gilbride to sign the Seatown and Walls Hydraulic motions.

6.02 While retained as a lobbyist for the Walls Kinsealy lands, during the period between 14 January and 18 March 1993, Mr Dunlop turned to Cllr Gilbride to have a motion signed in relation to the lands. On 15 March 1993, Cllr Gilbride had signed the Seatown and Walls Hydraulic lands motions at Mr Walls' request. Mr Walls had called to the councillor's home for that purpose. Cllr Gilbride told the Tribunal that, though he believed that there was no local support for these motions, he had signed them as a favour to Mr Walls whom he had

known through Fianna Fáil connections for thirty years. He told the Tribunal he did not give any specific thought to the merits of the proposals, believing that they would in due course be debated within the County Council.

6.03 While there was evidence that as early as 9 February 1993 Mr Walls was in possession of a typed motion proposing the rezoning of the Walls Kinsealy lands, he did not request Cllr Gilbride to sign it on 15 March 1993. Mr Walls' explanation to the Tribunal for not having done so was that this issue had been left in Mr Dunlop's hands. According to Mr Walls, the Walls Kinsealy issue needed to be handled '*sensitively*' because of the opposition that was expected to emerge locally to his ultimate objective for these lands i.e. to build '*select*' housing.

6.04 Neither Mr Walls nor Cllr Gilbride, in the course of their evidence, could recollect whether in fact Mr Walls had mentioned the Walls Kinsealy rezoning proposal when requesting Cllr Gilbride to sign the other two motions. The Tribunal believed that they did discuss the Walls Kinsealy proposal as there was no conceivable reason why Mr Walls would not have raised his zoning ambitions for these lands with Cllr Gilbride.

6.05 Both Mr Dunlop and Cllr Gilbride agreed that Mr Dunlop presented the Walls Kinsealy motion to Cllr Gilbride for signature in the County Council offices on the evening of 18 March 1993, the final date for lodgement of motions in connection with the lands.

6.06 Mr Dunlop and Cllr Gilbride disagreed about the circumstances in which Cllr Gilbride came to sign the motion. Cllr Gilbride maintained that his meeting with Mr Dunlop on the evening of 18 March 1993 arose following a telephone call to him from Mr Walls who asked him to sign a motion in relation to the Walls Kinsealy lands, which Mr Dunlop would provide. Cllr Gilbride stated that he duly signed this motion after being presented with it by Mr Dunlop in the Fianna Fáil rooms of the County Council. Cllr Gilbride stated that he had a particular recollection of the telephone call from Mr Walls in view of the urgency of the matter, given that 18 March 1993 was the final date for the submission of motions to the County Council.

6.07 Mr Walls said he had no recollection of telephoning Cllr Gilbride or requesting him to sign the Walls Kinsealy motion. His evidence in relation to this motion was that he had left it in Mr Dunlop's hands.

6.08 Mr Dunlop's evidence was that, after his retention as a lobbyist in relation to the lands, he spoke on a number of occasions to Cllr Gilbride about the

rezoning proposal. Although Mr Dunlop had no specific recollection, it was probable that he spoke about the motion to other councillors in addition to Cllr Gilbride. It was likely, having regard to his initial advices to Mr Walls about securing local councillor support, and having regard to Mr Walls' note of his discussion of 4 March 1993 with Mr Dunlop, that Mr Dunlop had approached local councillors for support, but to no avail. While Cllr G. V. Wright told the Tribunal that he had no specific recollection of the matter he did not dispute that Mr Dunlop may have spoken to him about it. Cllr Wright stated that Mr Dunlop would have been told or would have known himself of Cllr Wright's stated opposition to any rezoning of the lands in question.

6.09 Mr Dunlop told the Tribunal that when he approached Cllr Gilbride about the matter Cllr Gilbride stated his belief that the motion was not a '*runner*' but agreed to sign the motion and seek the support of other councillors. Mr Dunlop claimed that Cllr Gilbride had sought payment for his signature and support for the motion, and that a payment of IR£1,000 was agreed. Mr Dunlop described Cllr Gilbride's request for payment as having been conveyed with the words *'it will cost you'* or other similar phrase. Mr Dunlop testified that he duly paid Cllr Gilbride IR£1,000.

6.10 Although adamant that he had paid Cllr Gilbride IR£1,000, Mr Dunlop told the Tribunal that he had no specific recollection of paying the money and could not say when or where he had paid it, save that he believed it may have been in the environs of the County Council, or at a local hotel, at the time of the signing of the motion, or shortly thereafter. Mr Dunlop stated that he made the payment of IR£1,000 to Cllr Gilbride out of cash resources available to him at the time.

6.11 Cllr Gilbride withdrew the Walls Kinsealy motion on 4 May 1993.

6.12 Cllr Gilbride denied receiving any money from Mr Dunlop or from anyone else in relation to the Kinsealy lands motion. It was his recollection that, having signed the motion and map provided to him by Mr Dunlop, he lodged them with Ms Sinéad Collins, the County Council's administrative officer. He did not believe that Mr Dunlop had otherwise lobbied him at any time about the Kinsealy lands. Cllr Gilbride said that he signed the motion/map as '*a favour to Mr Walls*' and in circumstances where he suspected the proposal would not succeed because of opposition from his local councillor colleagues, Cllrs Michael Kennedy and G. V. Wright.

6.13 On the issue of whether or not Cllr Gilbride requested and was paid IR£1,000 for his signature and support for the Walls Kinsealy motion, the Tribunal noted that Mr Dunlop's evidence in this regard was vague and

unconvincing. It was common case that by March 1993 Mr Dunlop and Cllr Gilbride had an established relationship from, at least, early 1991 which had been developed and strengthened throughout the course of the review of the 1983 Development Plan. Although the Tribunal has found as fact, with regard to evidence adduced in other modules, that Cllr Gilbride (in relation to other rezoning matters) received money from Mr Dunlop, both in return for his signature on motions and for his voting support for rezoning motions, the Tribunal was not satisfied in this instance that it has been established, on balance of probability, that Cllr Gilbride sought or received IR£1,000 from Mr Dunlop in relation to the Walls Kinsealy lands.

PAYMENTS TO MR DUNLOP BY MR PAUL WALLS

7.01 In his October 2000 statement Mr Dunlop claimed that he received IR£5,000 from Mr Walls. However, in his 2006 statement and in sworn evidence, Mr Dunlop altered this figure to IR£3,025 (IR£2,500 plus VAT). Documentary evidence established that Mr Dunlop wrote to Mr Walls on 13 January 1993 referring to their recent meeting and setting out a schedule of payments. He sought IR£2,500 plus VAT as an upfront fee, the discharge of all '*legitimate disbursements*' and a success fee of IR£10,000 (plus VAT). The success fee was revised down to IR£6,000 on 22 January 1993. Frank Dunlop & Associates Ltd invoiced Walls Properties Ltd for IR£3,025 (IR£2,500 plus VAT) on 26 February 1993 and payment was received from that company on 1 March 1993 and duly recorded in the accounts of Frank Dunlop & Associates Ltd. Mr Dunlop does not appear to have claimed any '*legitimate disbursements*'. Mr Walls stated that this sum of IR£3,025 was the only sum he paid Mr Dunlop. The agreed revised success fee did not ultimately materialize.

7.02 Mr Dunlop's explanation for the earlier figure of IR£5,000 was that he had not checked his records at the time he was preparing his October 2000 statement. He agreed that, as late as February 2003 (when giving sworn evidence in the Carrickmines I Module), he had continued to maintain that he had received IR£5,000 from Mr Walls.

7.03 Mr Dunlop maintained that a cash lodgement of IR£5,000 to his Irish Nationwide Building Society account on 3 March 1993 was unconnected with monies he received from Mr Walls.

WERE MR WALLS AND/OR MR TIM COLLINS AWARE OF MR DUNLOP'S INTENTION TO BRIBE COUNCILLORS?

8.01 The Tribunal was not satisfied that evidence adduced at the hearing established that Mr Walls was aware that Mr Dunlop would or might make payments to councillors. Mr Dunlop's evidence on this issue was vague and it appeared to the Tribunal that insofar as Mr Dunlop sought to attribute knowledge or awareness to Mr Walls he did so by virtue of Mr Walls' association with Mr Collins.

8.02 The Tribunal was satisfied that by January 1993 Mr Dunlop and Mr Collins had an established association and relationship particularly in the context of the review of the 1983 Development Plan, then ongoing. In the course of giving evidence in other modules (Lissenhall and Cloghran) Mr Dunlop claimed (and the Tribunal accepted) that Mr Collins was aware of the possibility or likelihood that he would make disbursements to certain unnamed councillors while lobbying in support of the rezoning of those particular lands. Mr Dunlop's testimony in those modules was that this had been articulated by Mr Collins in a general way when he had met with him in the company of certain individuals associated with those lands.[2]

8.03 There was a dispute between Mr Dunlop on the one hand and Mr Walls and Mr Collins on the other as to whether Mr Collins had attended the meeting of 7 January 1993. Mr Dunlop was adamant that Mr Collins was present and stated that his recollection was aided by utterances at the meeting regarding a certain councillor's opposition to the rezoning proposition. Mr Collins said he was not at the meeting. The full extent of Mr Walls' evidence on this issue was that he had no recollection of Mr Collins being there but believed that he had not attended.

8.04 It was common case that in the period November 1992 to January 1993 Mr Collins brought individuals who had rezoning ambitions for their lands to Mr Dunlop so that he might be engaged to lobby councillors. Mr Collins accepted that in November 1992 he attended a meeting concerning lands at Lissenhall with Mr Dunlop in the company of Mr Colm Moran and Mr Michael Hughes. It was Mr Collins who had recommended Mr Dunlop as a lobbyist to the promoters of the Lissenhall rezoning project. He accepted (though disputing the circumstances in which the meeting arose) that he was present at a meeting with Mr Dunlop and Mr John Butler (Cloghran Module) on 13 January 1993. The Tribunal was satisfied that the meeting with Mr Butler was pre-arranged by Mr Collins. Therefore, if Mr Collins was not at the meeting between Mr Dunlop and Mr Walls it would have been an exception to his practice in the period November

[2] See the chapters on the Cloghran and Lissenhall Modules.

1992 to January 1993 when introducing Mr Dunlop to individuals in connection with rezoning matters. The Tribunal believed that Mr Collins did attend the meeting with Mr Walls and Mr Dunlop, as evidenced by a note to that effect in Mr Dunlop's diary for 7 January 1993.

8.05 However, while the Tribunal believed that Mr Collins was at the meeting it was not established to its satisfaction that Mr Collins, either by utterances on his part or by his acquiescence with or acceptance of any utterances on Mr Dunlop's part, gave any indication at that particular meeting of his awareness of Mr Dunlop's *modus operandi*.

8.06 The Tribunal believed that it might well have been that on 7 January 1993 Mr Dunlop had in mind the November 1992 meeting between Mr Collins, Mr Moran, Mr Hughes and himself when, the Tribunal was satisfied, Mr Collins gave Mr Dunlop to understand that he was *au fait* with his '*system'.* Equally, the Tribunal was satisfied that, at a meeting on 13 January 1993 between Mr Dunlop, Mr Collins and Mr Butler, Mr Collins' awareness of Mr Dunlop's *modus operandi* was again articulated, as described by Mr Dunlop in the course of his evidence in the Cloghran module.

8.07 Thus, while the Tribunal believed that at least from November 1992 Mr Collins was acquainted with the '*system'* articulated by Mr Dunlop, the Tribunal could not, on the available evidence, make a finding that Mr Collins articulated this awareness in the course of the meeting of 7 January 1993.

CHAPTER ELEVEN – THE WALLS KINSEALY MODULE

EXHIBITS

1. Motion lodged on 18 March 1993 to rezone lands on Kinsealy Lane together with map.....2174

2. Letter from Mr Dunlop to Mr Paul Walls dated 13 January 1993.....2176

3. Copy Frank Dunlop invoice dated 26 February 1993 to Mr Walls for IR£3025.00.....2177

4. Walls Properties Ltd cheque & reverse of cheque payable to Frank Dunlop & Associates in the amount of IR£3025.00.....2178

FD.ST 1 - 252

15(9)(1)

9 February 1993

Mr Al Smith
Principal Officer
Dublin Co Council
Planning Department
Block 2
Irish Life Centre
Lower Abbey Street
Dublin 1

NOTICE OF MOTION - REF NO. 000363

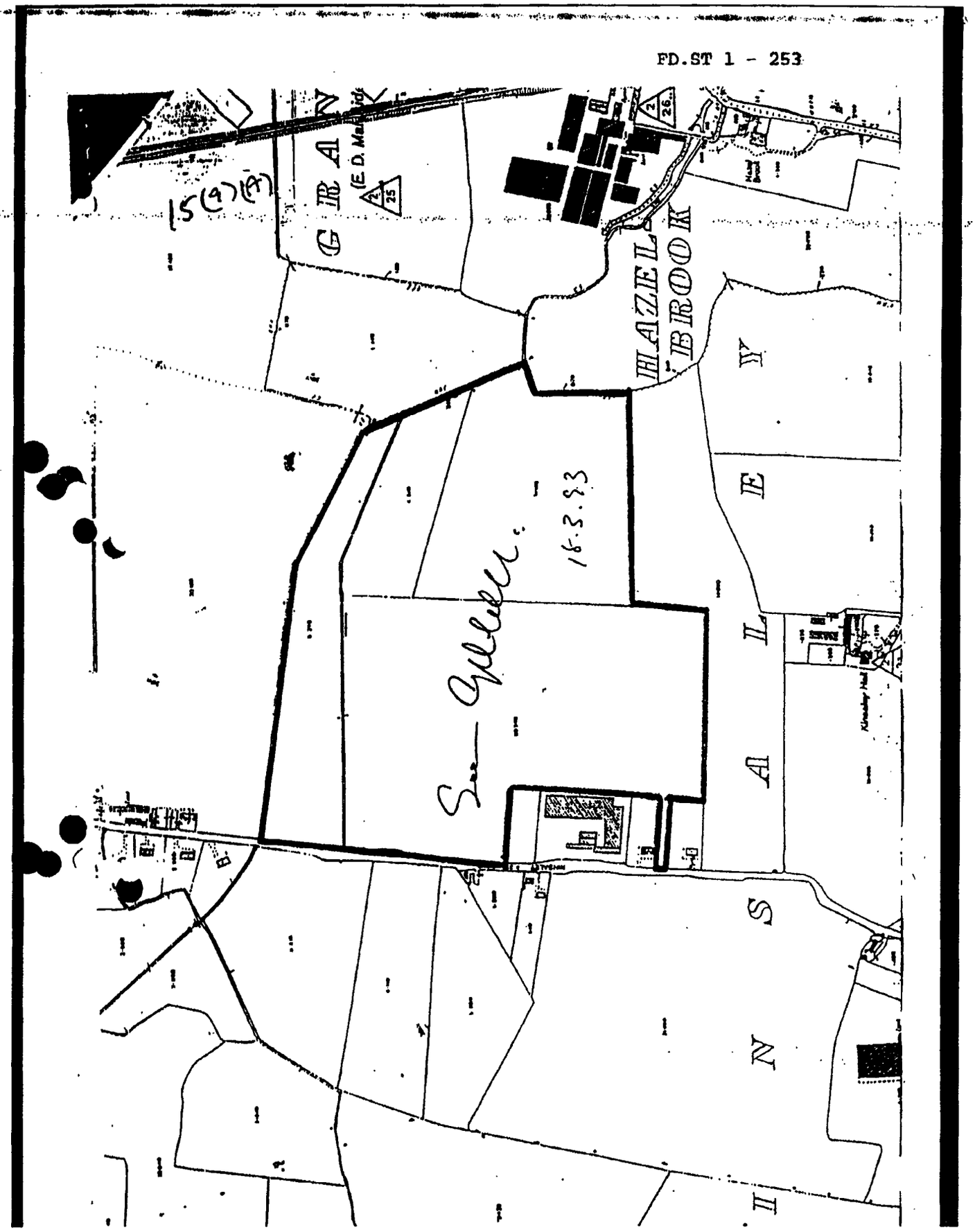
That Dublin Co Council resolve that the lands, on Kinsealy Lane, outlined in red on the accompanying map, comprising approximately 54 acres, and which has been signed for identification purposes by the proposer, be zoned for low density residential with the specific objective "to provide for residential development on pipe sewage facilities to a density not exceeding one house per hectare". (Map No. 7).

Signed:

Councillor

18/3/93
Date

DUBLIN COUNTY COUNCIL
18 MAR 1993


FD.ST 1 - 253
15(a)(A)
GRAY
HAZEL BROOK
See Gilbert 16.3.83
HILLSIDE

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Mr. Paul Walls,
P.J. Walls (Dublin) Ltd.,
Glandore Road,
Griffith Avenue,
Dublin 9.

13th. January 1993

STRICTLY PRIVATE AND CONFIDENTIAL

Dear Paul,

I write regarding our meeting at my office on 7th. January last.

Having thought about the matter in the interim I believe that your proposal regarding the totality of the land will be difficult, 'though not impossible, to implement via the Draft Development Plan in Dublin County Council. However, I am prepared to undertake the task involved and I suggest the following business arrangement:

- IR£2,500 + VAT payable as an up-front fee;
- payment of all agreed legitimate disbursments;
- payment of a success fee of IR£10,000 + VAT. This fee obviously does not become payable if the required zoning is not achieved. It is payable however in circumstances where a compromise is entered into by the planners and the elected members.

I hope this is indicative of the work involved and the fees attached to same. As I explained to you at our meeting this is a cumbersome and time consuming exercise. Nonetheless it has to be done if you want to achieve your objective.

Perhaps you could revert with your views.

Sincerely,

Frank Dunlop

Return to report

Paul Walls,
Walls Properties Ltd.,
Glandore Road,
Griffith Avenue,
Dublin 9.

26th. February, 1993

INVOICE NO.: 800

To public relations consultancy services	£2,500.00
VAT @ 21%	525.00
	£3025.00

Paid with thanks.

1/3/93

VAT NO.: 6547261 I

Return to report

Tribunal Ref : WALLS/KINSEALY LANDS BRIEF
Page No: 300

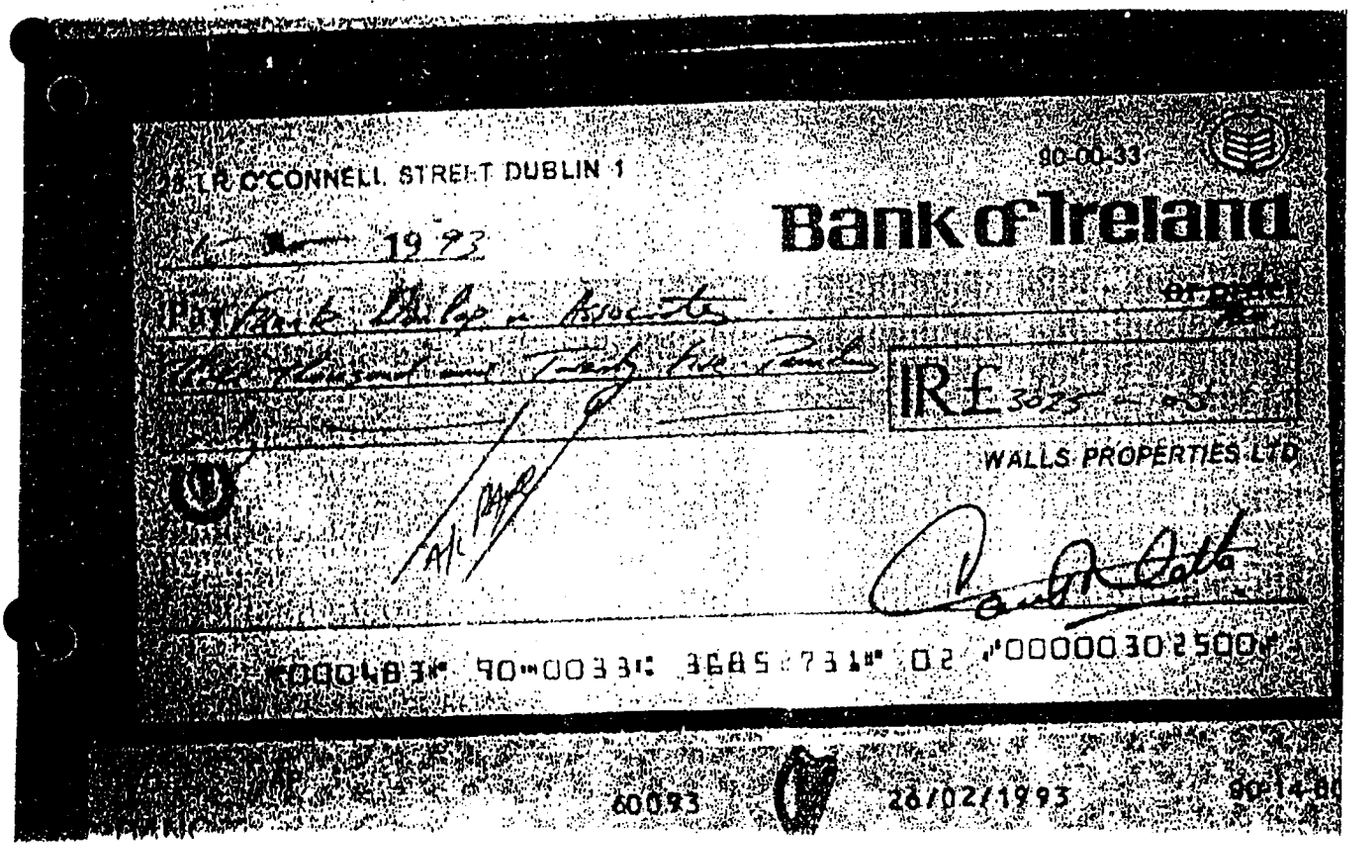
Tribunal Ref : PW.CHEQUE 1
Page No: 3

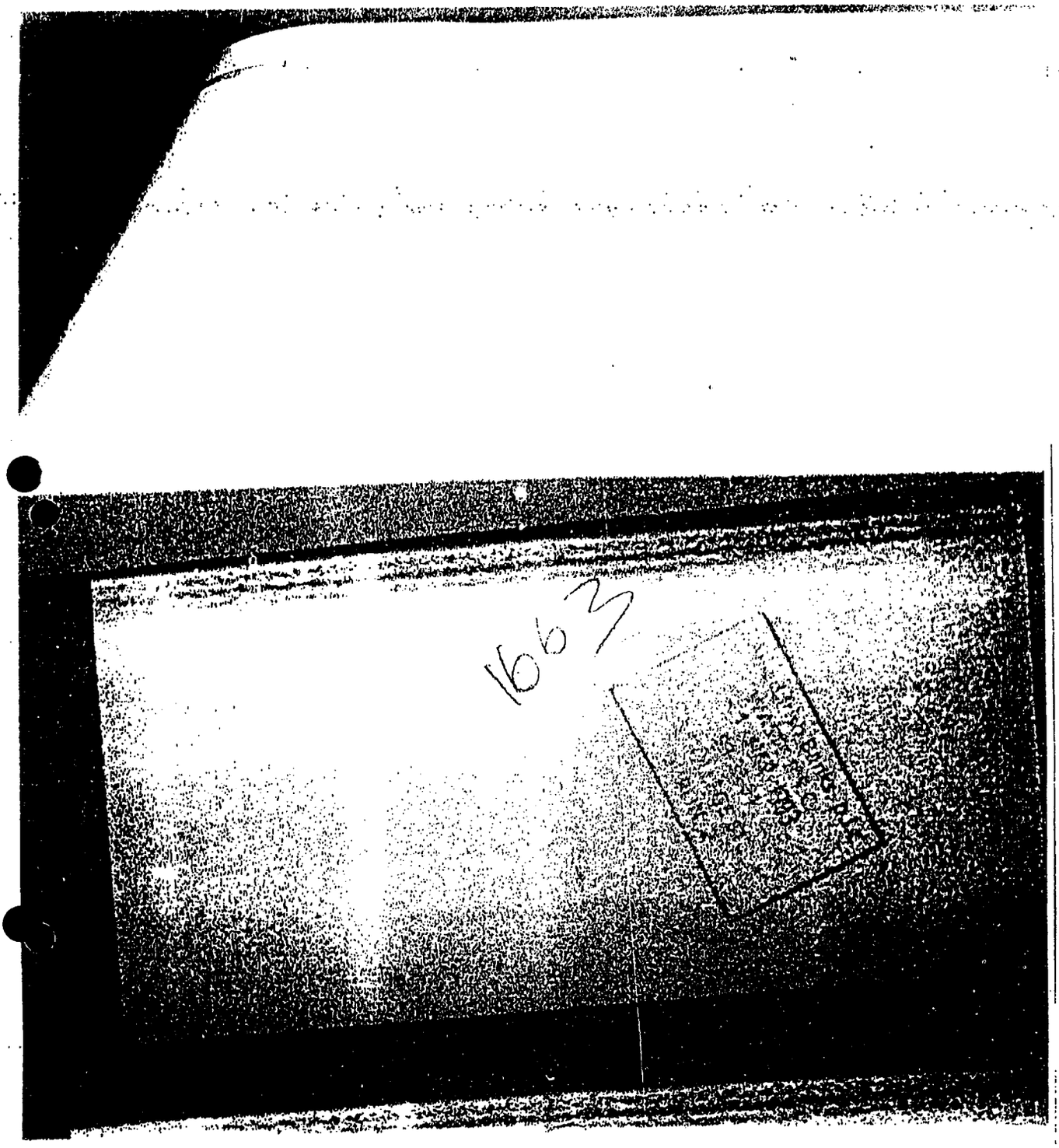
Bank of Ireland

With Compliments

As per request

Bank of Ireland Group





Return to report

CHAPTER TWELVE – THE BALHEARY MODULE

INTRODUCTION

1.01 This module concerned attempts to rezone approximately 70 acres of land situated north of Swords, which had been acquired in the late 1950s by the Irish Christian Brothers 'the Brothers' as part of a larger parcel of land. Mr Joe Tiernan, a property developer, was also involved in the rezoning attempts, having acquired an option on the lands on 8 February 1991.The attempts were unsuccessful.

1.02 The module was heard in public over nine days, between 9 November and 19 December 2006. Twenty-four witnesses gave evidence in public and information was provided to the Tribunal in relation to three deceased persons.

THE PLANNING HISTORY OF THE LANDS 1991 TO 1995

2.01 The lands, which were partly contained in Map 5 of the 1983 Dublin County Development Plan, were shown zoned B ('to protect and provide for the development of agriculture') and G ('to protect and improve high amenity areas').

2.02 A motion dated 29 January 1991, signed by six councillors, seeking to have the lands zoned for residential development was received by the Council on 15 February 1991. The motion was considered at a special meeting of the Council on 21 March 1991 but was withdrawn. Consequently, the lands retained their 1983 zoning when the 1991 Draft Development Plan went on public display between 2 September and 3 December 1991.

2.03 During the 1991 display period Mr Kieran O'Malley, Consultant Planner, made a written submission on behalf of the Brothers and Tiernan Homes Ltd. 'Tiernan Homes'[1] requesting that 75 to 80 acres of the lands zoned B be rezoned to A (to protect and improve residential amenity) or A1(to provide for new residential communities in accordance with approved action areaplans). The submission also supported the amenity zoning along the Broadmeadow River banks, which zoning affected a relatively small area along the southernmost margins of the overall holding.

2.04 On 18 March 1993, a Motion signed by Cllrs Anne Devitt and Cyril Gallagher, proposing that approximately 70 acres at Balheary Demesne, Swords,

[1] Mr Joe Tiernan was a well known developer/builder and operated through companies including Tiernan Homes Ltd, Tiernan Home Builders Ltd and Tiernan Construction Ltd.

be rezoned to A1 was lodged with Dublin County Council. The stated objective of the Motion which was in accordance with the proposals contained in Mr O'Malley's submission was to extend the Broadmeadow linear park to maximize the amenity value of the 0.4 mile Broadmeadow River frontage, and provide three acres for active recreation.

2.05 On 17 May 1993, the County Manager recommended to the elected councillors that no additional lands be rezoned at that time, except in certain limited circumstances. He did not recommend the rezoning of the Balheary lands. Nonetheless, on 21 May 1993 the Gallagher/Devitt motion to rezone the Balheary lands was carried by 39 votes to 27, with 2 abstentions, and as a consequence, the lands were shown zoned A1 when the Dublin County Development 1993 draft amendments to the 1991 Draft Development Plan went on public display between 1 July and 4 August 1993.

2.06 When the lands were reconsidered by the Council following this display period the Manager recommended that new residential zoning for lands in the general Swords area be limited to some 65 acres, which did not include the Balheary lands. Accordingly, his recommendation was that the Balheary lands revert to their prior agricultural and high amenity zoning.

2.07 Prior to the special meeting of 21 September 1993, Cllrs Gallagher and Devitt had lodged a motion seeking the confirmation, (albeit with a limit of 480 houses), of the May 1993 residential zoning which had been granted to a portion of the Balheary lands.[2] However, by September 1993, a number of other motions had also been lodged by councillors who were objecting to the zoning achieved in May 1993, seeking a return to B (agricultural), and G (high amenity), zoning for the lands.

2.08 The first motion concerning Balheary was put to a vote on 21 September 1993 in the names of Cllrs Seán Ryan and Tom Kelleher. It sought the return of a portion of the lands to their 1983 B and G zoning, and was passed, with 35 votes in favour, 28 against, and 1 abstention. The Gallagher/Devitt motion therefore fell without being put to a vote. A second motion, also in the names of Cllrs Ryan and Kelleher, which sought the return of the other portion of the lands, (Change 1B on Map 6), to their 1983 zoning status G (high amenity), was passed unanimously. The result of the votes on the Kelleher/Ryan motions was that the Balheary lands remained zoned agricultural and high amenity when the Development Plan was finalised in December 1993.

[2]The change from B (agricultural) to A1 (residential).

2.09 On 24 September 1993, a motion proposed by Cllr Gallagher and seconded by Cllr G. V. Wright proposed that '*the Manager be requested to prepare and submit to Fingal County Council a Draft Variation of the new County Development Plan as it affects the Swords area*' and that it should '*be available to the Council before 30 April 1994…with a view to having the variation in effect before 31 December 1994*', was passed unanimously. This had the effect of keeping alive the prospect of having the Balheary lands rezoned for residential purposes when they were considered by councillors in the soon to be established Fingal County Council.[3]

2.10 Fingal County Council commenced its variation of the 1993 Plan, in the context of the lands in its functional area, in early 1995. In June 1995, during the display period of a Draft Variation of the 1993 Development Plan in relation to the Swords area, which contained proposals for 14 changes to the plan, Mr Kieran O'Malley made a further written submission on behalf of the Brothers. The submission sought to have the lands zoned 'A' or 'A1', and to have the long-term development area boundary for the town of Swords varied to include these lands, together with consequential adjustments to the written statement. However, since the submission did not refer to any of the 14 proposed changes envisaged by the variation, on the recommendation of the Manager it was not considered by Fingal County Council on 21 November 1995. Thus, the Balheary lands retained their 1983 zoning.

2.11 The councillors agreed at that meeting, (Cllr Cathal Boland wishing to be recorded as dissenting), that, in view of the restricted interpretation of the Fingal County Development Plan 1993 Draft Variation 1995 (Swords), which confined members to considering only representations within the Swords area, the Council should immediately, but not later than, 12 December 1995, review the Development Plan 1993 as it referred to the Swords area.

2.12 This process commenced in late 1995. However no representations were made seeking to have the Balheary lands rezoned. Accordingly when the Fingal County Council Development Plan Swords 1997 was adopted on 29 January 1997, the Brothers' lands retained their B and G zoning.

2.13 During the currency of the making of the 1993 Development Plan, and the Variation of that Plan by Fingal County Council, the attempts to rezone the Balheary lands were largely led by Mr Joe Tiernan who retained Mr Frank Dunlop of Frank Dunlop & Associates Ltd as a lobbyist

[3] Fingal County Council together with South Dublin County Council and Dún Laoghaire-Rathdown County Council was established on 1 January 1994, in place of the old Dublin County Council and the Borough of Dun Laoghaire.

MR JOE TIERNAN'S INVOLVEMENT WITH THE CHRISTIAN BROTHERS, AND THE REZONING CAMPAIGN

1990 TO 1995.

3.01 The Brothers had purchased their lands comprising approximately 160 acres in 1959. By 1978 some 74 acres had been sold to the Industrial Development Authority (IDA). In or about 1989, following a property audit carried out by Hamilton Osborne King (HOK) on their behalf, the Brothers formed the view that they held land surplus to their requirements. Their agents advised them that, '*because* [of] *the current zoning and the possibility of rezoning at the next or subsequent Development Plan review date, we recommend that the property should not be publicly marketed at the present time'.*

3.02 The advice was that the Brothers should instead seek to change the zoning on the lands with a view to enhancing their selling potential. They had an opportunity to do so at that time, as a review of the 1983 Dublin County Development Plan was by then under way. Mr Derek Mulligan of HOK approached a number of third parties with a view to establishing the lands' development potential. In 1990 three expressions of interest were received, including one from Mr Tiernan.

3.03 On 8 February 1991, Mr Tiernan, through his company Tiernan Corporation Ltd, entered into a written agreement with the Brothers in relation to the Balheary lands, which provided as follows:

a) Mr Tiernan would seek to have the Balheary lands rezoned for either residential or industrial development in the new Draft Development Plan.
b) Mr Tiernan thereafter would apply for planning permission in respect of the land.
c) Once full planning permission was obtained within the period of the agreement (four years from 8 February 1991 subject to extensions) the Christian Brothers would sell the lands and the proceeds of sale would be applied as follows:
    i) The first IR£35,000 per acre to belong exclusively to the Brothers.
    ii) The next IR£35,000 per acre to belong exclusively to Tiernan Corporation.
    iii) Any amount in excess of IR£70,000 but not exceeding IR£100,000 to be divided equally between the Brothers and Tiernan Corporation Ltd.
    iv) Any amount in excess of IR£100,000 per acre to be divided as to 70 per cent to the Brothers, and 30 per cent to Tiernan Corporation Ltd.

3.04 It was also agreed that the Brothers would not accept any offer to purchase the lands without first giving Tiernan Corporation Ltd the opportunity of acquiring the relevant property at the price offered—i.e. they would be offered first refusal. Mr Tiernan and the Brothers concluded a similar agreement with regard to lands owned by the Brothers at Santry. The consideration paid by Mr Tiernan for the options he acquired on foot of the two Agreements was IR£850 for Balheary, and IR£150 for the Santry lands.

3.05 Prior to concluding this agreement, both Mr Tiernan and the Brothers had already embarked on a lobbying exercise in relation to the Balheary lands. The Brothers most probably did so at Mr Tiernan's behest.

3.06 Mr Tiernan was anxious to exploit the opportunity presented by the 1983 Development Plan review to have the Balheary lands rezoned, and believed himself best placed to achieve the rezoning of the lands, as evidenced by a letter written by him to Mr Mulligan of HOK on 20 December 1990. He wrote as follows:

> *'I believe that with my contacts that I am the best person to secure the rezoning of theBalheary Demesne lands.'*

3.07 Mr Tiernan told the Tribunal that this was a reference to both his political contacts,[4] and to the fact that he was well known to councillors, as a developer.

3.08 By 1990 Mr Tiernan had a long association with Fine Gael having been actively involved[5] with that party since 1973.

3.09 Asked as to what he meant to convey by the above statement Mr Tiernan responded

> *'Well, like what another well known person said one time, 'I would say that wouldn't I', because I felt it was important to sell myself as being a person that could secure and achieve the development potential of those very desirable lands…'*

3.10 He told the Tribunal in correspondence in June 2000, that he had supported the Fine Gael party since 1973 '*publicly physically and financially during the twenty-seven-year period supporting most fundraising ventures'* and he advised that as far as he was concerned, he was the *'only one of my size in the Construction Industry to be publicly identified with the Party in the Dublin area.'*

[4] Mr Tiernan explained that his political contacts were Councillors who knew his track records as a developer.

[5] He stood unsuccessfully as a local election candidate for Fine Gael in 1994.

MR DUNLOP'S RETENTION IN FEBRUARY 1991

4.01 By February 1991, Mr Dunlop was already known to Mr Tiernan through dealings they had in 1990, having been introduced to him by Mr Liam Lawlor (see below). Asked why he had engaged Mr Dunlop as a lobbyist, Mr Tiernan stated:

> *'well, I was busy with other interests. Construction projects…I was aware of the fact that he was acting for other lands…that he was interfacing and had interaction between a large number of the people on Dublin County Council'*

4.02 It appeared that no specific fee arrangement was agreed between Mr Tiernan and Mr Dunlop in 1991. Mr Dunlop gave evidence that, while he may well have requested a fee, the question of payment was left in abeyance and for later negotiation, pending the outcome of the rezoning vote scheduled for 21 March 1991. Mr Dunlop testified as follows:

> *'..There was – there was a question of money, it would be completely disingenuous to imagine that two people of the status of Mr Tiernan and myself were talking together, and this is in 1991, in the context of the Development Plan, that a fee would not have been mentioned. And I, while I cannot say to you that, how much I asked for or whether I asked for a specific sum, or whether Mr, Tiernan refused, but the arrangement was that there would be a negotiable fee if it was successful.'*

4.03 Mr Tiernan, in his evidence, although he claimed to have no recollection of the matter, did not dispute Mr Dunlop's evidence in this regard, stating:'*I am sure we did* [discuss fees] *but the furthest I could go now because I do not remember, would be that look it we'll agree on a generous fee. A performance related fee.'*

4.04 Mr Dunlop did not allege that he paid any councillor, or that any councillor asked him for money, to support the Balheary rezoning in 1991**.** However, in the course of his evidence he told the Tribunal that in 1991, when he was engaged by Mr Tiernan as a lobbyist in relation to Balheary, he had inferred that Mr Tiernan probably knew and/or expected that he would pay councillors in the course of his lobbying endeavours. Mr Dunlop's inference did not, according to him, come about as a result of any discussion he had with Mr Tiernan in 1991, but rather it dated from a previous encounter in 1990 in connection with a matter unrelated to the Balheary lands.[6]

[6] On Day 352 (4 February 2003), during cross-examination in another module, Mr Dunlop advised the Tribunal (by way of a list) that he had received IR£6,000 from Tiernan Homes in relation to Balheary/Mountgorry. (Mountgorry was another Tiernan project; it was unrelated to Balheary) Mr Dunlop resiled from this on Day 695 (14 November 2006) when giving evidence in the Balheary Module, saying his attribution of this sum to Tiernan Homes/Balheary/Mountgorry was inadvertent.

4.05 Mr Dunlop told the Tribunal that in 1990, or earlier, he had been retained by Mr Tiernan in relation to a planning permission project associated with Mr Tiernan, the progress of which would require a material contravention vote of Dublin County Council. Mr Liam Lawlor, (then a Dublin County Councillor and TD), had introduced them.Both Mr Tiernan and Mr Dunlop agreed that Mr Tiernan handed over a sum of cash to Mr Dunlop in relation to this matter, Mr Dunlop putting the amount at IR£6,000 and Mr Tiernan putting it at IR£4,000.

4.06 Mr Dunlop denied that this sum had been paid to him as a fee. Mr Tiernan acknowledged that the cash had been given to Mr Dunlop to secure his services to lobby councillors in relation to Mr Tiernan's planning permission project.

4.07 Mr Dunlop's evidence was that IR£2,000 of the cash given to him had been duly returned to Mr Tiernan, at his request, because Mr Tiernan wanted, in the words of Mr Dunlop, '*to look after so and so myself*'.

4.08 In the course of his evidence, Mr Dunlop identified *'so and so'* as Cllr Tom Hand. Mr Dunlop maintained that he had inferred from this exchange that Mr Tiernan was paying councillors, and that Mr Tiernan knew in 1990 that Mr Dunlop was likely to pay councillors to ensure support for the planning permission project for which he had been retained by Mr Tiernan.

4.09 It was on the basis of their 1990 exchange, as described by Mr Dunlop, that Mr Dunlop inferred in 1991, when he was again retained by Mr Tiernan, that there was an expectation and/or acceptance on Mr Tiernan's part that he, Mr Dunlop, might have to pay councillors in the course of his Balheary lobbying attempts.

4.10 On Day 695 the following exchange took place between Tribunal Counsel and Mr Dunlop:

> *'Q....Yes. There was no discussion, there were no explicit words --*
>
> *A. No, no.*
>
> *Q. -- words that conveyed that?*
>
> *A. No, no, no.*
>
> *Q.Or that he conveyed to you that he understood that or you said it to him so that he'd know?*
>
> *A.It's my inference in the context of my relationship with Mr.Tiernan.*
>
> *Q.And in other Modules, Mr. Dunlop, you've told the Tribunal that when you had a meeting you were introduced to a developer, Mr. Collins or Mr. Lawlor, or whoever it was. You understood from --*
>
> *A.Yes.*

Q. -- at the meeting from what was said, without anything being said expressly --

A.Yes.

Q. -- and I think you used an expression 'the ways of the world'. You understood that the developers, to whom you were being introduced, knew very well that you were going to pay councillors?

A. Yes, that was the Ballycullen Module that I used that phrase, where that phrase had been used, 'the ways of the world apply.'

Q. All right.There were other Modules though I think where, without you saying expressly I'll have to pay councillors. You realised that they knew that you'd have to pay councillors?

A.Yes.

Q. This was your evidence.

A. Yes.

Q. Is this the same sort of situation?

A. Well, I suppose -- I don't want to go into semantical differences.

Q. No.

A. Which is futile.

Q. Yeah.

A. Bearing in mind what I've said to you in relation to what Mr.Tiernan had said to me on a previous occasion and I have to beabsolutely, absolutely definitive about this, Mr. Tiernan did not say to me, I want you to act for me in relation to Balheary. I know you're going to have to pay councillors. I know you're going to have to give X, Y or Z money. He did not say any of that.

Q. No.

A. However, in context of the background of my relationship with Mr. Tiernan vis-a-vis a previous occasion, my inference was that Mr. Tiernan probably knew. Though no such discussion took place.'

4.11 In reply to questions in cross-examination on Day 695,Mr Dunlop stated:

'... Because the only benchmark that I had in the context of Joe Tiernan was in relation to the comment that he had made to me some time previous in relation to another development when he had, as Mr. O'Dulachain has now pointed out. Where he had asked for money back and because, for a specific purpose, because he wanted to look after a particular individual himself.'

And he went on to say:

'Well if he was asking—well if in one instance sometime previous he was asking me for money back because he[wanted] *to look after Tom Hand himself. I don't think it takes Einstein to come to the conclusion that he*

was going to give Tom Hand some money or that I could infer with some credibility that in fact Joe Tiernan knew that this may be something that was necessary'

4.12 Mr Tiernan denied that he ever used the words attributed to him by Mr Dunlop, and he denied that he ever knew Mr Dunlop would have to pay councillors. Moreover, he denied that he himself had ever paid bribes to councillors.

4.13 Mr Tiernan told the Tribunal that when he terminated Mr Dunlop's (short lived) appointment in 1990, he requested the return of the entire fee, but that Mr Dunlop cited a cash flow problem as the reason for the return of only IR£2,000.

4.14 While he recalled the Environment Minister, Mr Michael Smith's 1993 'debased currency'speech, Mr Tiernan denied any knowledge of the practice of paying councillors for their support in rezoning motions. He denied knowing that Mr Dunlop would engage, or did engage, in such activity while retained by him. Mr Tiernan stated that, had he become aware of any such activity being undertaken by Mr Dunlop, he would have dissociated himself from it.

4.15 On Day 696, Mr Tiernan was questioned as follows:

'Q.Mr. Tiernan, Mr. Dunlop told the Tribunal yesterday and on previous occasions, that once he is engaged to rezone he knows thatthat is going to involve paying money to councillors to secure their vote. He said that yesterday.

A. Well, if he said that, I accept what you're telling me.

Q.Yes. And he said yesterday also he knew that once he wasbrought in by you to Balheary with a view to lobby for the rezoning, that it was -- it was going to be necessary for him to pay councillors to get the vote?

A. Right.

Q.You accept that he said that?

A. Well, you're telling me, I believe you, yes.

Q.All right.Were you aware when you first met him in Balheary that he would have to pay councillors?

A. Not for the vote.

Q.Pardon?

A. Not for their vote.

Q.What were you aware --

A. Or for anything else.

Q.Why did you say not for the vote. Stop. Pause. And then when I'm going onto the question add a next bit on?

A. Well just for completeness.

Q.Yes. Is your evidence that you were not aware that Mr. Dunlop would pay for the vote or for anything else?

A. That is my evidence Mr. Murphy.

Q.All right. When you met him in Balheary and can we take it throughout the Balheary process the rezoning process in Balheary you were not aware that Mr. Dunlop would or did pay councillors?

A. When I met Mr. Dunlop in his office in Upper Mount Street, not in Balheary, regarding the Balheary lands.

Q.Yes?

A. I was not aware. He never mentioned that to me.

Q.All right. Well, okay. We'll be coming that. Perhaps just at the moment if we stick to February March 1991. You weren't aware that Mr. Dunlop would be paying councillors?

A. That is right.

Q.And nothing that happened in the previous experience, the previous development, when Mr. Lawlor introduced to you Mr. Dunlop and you were impressed by Mr. Dunlop. Nothing happened in that that would have led you to believe that Mr. Dunlop would pay councillors?

A. Not to my knowledge.

Q.All right. And in 1991 you weren't aware that that was something that Mr. Dunlop did?

A. That is correct.'

and

'Q.Mr. Dunlop said in evidence that he inferred from the previous experience he'd had with you when you paid him money, I think he believes it's 6,000?

A.Six?

Q.I think you say it's 4,000?

A. I do.

Q.And you looked for it back and he gave 2,000. And you said the reason was that you would look after somebody yourself. He inferred from that, that you were aware of the necessity to pay councillors in relation to these motions?

A. Well, if he inferred that, Mr. Murphy, and Mr. Chairman, he is wrong.'

4.16 With regard to his engagement of Mr Dunlop in 1990 (in relation to the matter unconnected to the Balheary lands) Mr Tiernan advised the Tribunal by letter, on the 25 September 2001, *inter alia*, as follows:

'It was Mr Lawlor who introduced me to Frank Dunlop early in 1990. We met in Mr Dunlop's office and had a general discussion as to whether he could be of assistance.

....I was fully aware that Mr. Dunlop was known to most politicians in Dublin County Council, however I subsequently decided not to have him involved. Consequently there was no written or verbal agreement.'

and,

'At a later date perhaps some few months later, Mr Dunlop and Mr Lawlor called to my office in Abbey House by appointment with me and there was a consensus reached that Mr Dunlop could be of assistance because of his friendship with elected members of Dublin County Council. A sum of IRIR£6,000 was discussed and some few days later I met with Mr Dunlop and gave him IRIR£4,000 in cash, as far as I recall there was no person present and I am not sure of the location of the hand over of the cash perhaps it was at my office. Some few days later I had reservations as to what contribution he could make to canvassing the County Councillors as I was known to most of the County Councillors and certainly all the Fianna Fail, Fine Gael, some PD's and some Labour Party Councillors, I requested from Mr Dunlop by telephone the return to me of the IR£4,000 I gave him some few days earlier. Mr Dunlop immediately returned IR£2,000 to me stating cash flow reasons for the non return of the balance i.e. IR£2,000. There was no person present at the time of the refund to me and I am not sure of the location of the hand over, perhaps it was outside my office at Abbey House.'

4.17 Having regard to the content of his reply to the Tribunal, Mr Tiernan was questioned as to why he had retained Mr Dunlop in connection with Balheary,given that the composition of the Council in the Spring of 1991was the same as the Council which would have been voting on his material contravention application, and given that he himself was known to all the councillors. Mr Tiernan's response, in refuting any suggestion that his retention of Mr Dunlop in 1991 was at odds with the reason he had terminated Mr Dunlop's appointment in 1990 , was as follows:

'..it was my opinion that Mr Dunlop was acting for other clients i.e. landowners. And that he was interfacing and that there was a lot of potential interaction between councillors. I had other responsibilities and I felt that he could contribute because of his lobbying.'

THE 1991 REZONING CAMPAIGN

5.01 On 12 February 1991, Mr Dunlopwas retained by Mr Tiernan as a lobbyist in relation to the rezoning campaign for the Balheary lands[7].

5.02 On 18 May 2006, the Tribunal requested information from Mr Tiernan about his and Mr Dunlop's involvement in relation to the attempts to rezone the Balheary lands. In his reply of 6 June 2006 Mr Tiernan claimed that he did not '*recall or remember what Mr Dunlop's involvement in relation to the 1991 motion was Fifteen years ago (15 years ago)'.* In his sworn evidence to the Tribunal, Mr Tiernan stated that, in providing this response, it had been his understanding that the Tribunal had merely asked about Mr Dunlop's role, (if any), in obtaining councillors signatures to the motion, and not about Mr Dunlop's lobbying activities.

5.03 Notwithstanding Mr Dunlop's retention as a lobbyist, both Mr Tiernan and the Brothers were also involved in lobbying Councillors in support of the rezoning of the lands**.**

5.04 From the date of his retention by Mr Tiernan, Mr Dunlop, through correspondence and meetings, advised the Brothers how best they might lobby the councillors for their support. Mr Tiernan did likewise. This was acknowledged in evidence by Brothers John Heneghan, David Gibson and J. K. Mullan.

5.05 On the 29 January 1991, Mr Tiernan furnished Brother Heneghan with copies of a rezoning Motion and Map which, Mr Tiernan advised, Brother Heneghan should have when meeting councillors. He also provided him with Cllr Hand's (described as the *'leader'*of the Fine Gael group in the Council) telephone number and advised that he had already spoken to Cllr Hand about the matter.He said he he anticipated contact by Cllr Anne Devitt[8] with Cllr Hand, after she had been spoken to by Brother Heneghan.

5.06 On 15 February 1991 the motion (with accompanying map) dated 29 January 1991, seeking to rezone 70 acres of the Balheary lands to A1 residential was lodged with Dublin County Council. Cllrs Jim Fay, Jim Fahey, Ned Ryan, Betty Coffey, Séamus Brock and Donal Lydon were the signatories to the Motion. None of the six represented the Swords area in which the lands were situated. Five of the signatories were members of the Fianna Fáil Party, and the remaining signatory, Cllr Fay, was a member of the Fine Gael Party.

[7] Mr Dunlop's retention is considered in detail below.
[8] Cllr Devitt was a councillor for the Swords area.

5.07 On or about 15 February 1991, the same six councillors lodged a further motion to rezone some 12.5 acres located at Santry,[9] also owned by the Brothers, from F, (to preserve and protect open spaces and recreational amenities),to E, (industrial).

5.08 None of the signatories to the Balheary motion who gave evidence had a clear recollection as to how he or she came to sign the motion. Cllr Lydon told the Tribunal that, although he had no recollection of the motion, or of signing it, having worked for a number of years with the Brothers, and out of respect for them, he would have agreed to sign a motion for them. Cllr Coffey withdrew her name from the motion on 19 February 1991, although in evidence she could not recollect why she had done so.

5.09 Mr Dunlop testified that he did not procure any of the signatures to the motion.

5.10 The Tribunal was satisfied that the Balheary motion was organised by Mr Tiernan, and that he obtained the councillors' signatures, probably with the assistance of Cllr Hand.[10] Mr Tiernan and Cllr Hand were well known to one another through Mr Tiernan's association with the Fine Gael party.

5.11 Brother Heneghan testified that he had been made aware by councillors whom he had approached and by Mr Tiernan, that because of the upcoming local elections they would not sign the motion.[11] The Tribunal believed it probable that the impending elections[12] may indeed have contributed to the councillors' reluctance to be a signatory to the motion, as rezonings could often be quite controversial and strongly resisted by the local community.

5.12 By 26 February 1991, Mr Dunlop, in his role as lobbyist for Mr Tiernan, had engaged with the Brothers by furnishing them with a draft letter to be sent to all councillors, urging them to give favourable consideration to the rezoning Motion. On 5 March 1991, in advance of a scheduled Council meeting of the 7 March 1991 when the rezoning motion was on the Council agenda, he furnished Bro Mullan with a list of eleven named councillors who were to be telephoned in advance of that meeting, although he advised Brother Mullan that he himself

[9] This land (together with the Balheary lands) was the subject of an option agreement between the Brothers and Mr Tiernan.

[10] In his statement to the Tribunal on 6 June 2006, Mr Tiernan took credit for obtaining all the signatures, but appeared to resile from this position in his evidence.

[11] Cllr Sean Ryan believed that Fianna Fail and Fine Gael Councillors had a policy that Councillors outside a local area would be asked to sign a Motion if an election was pending. Cllr Devitt, a local councillor, disputed that she would have refused to sign a motion on those grounds and stated that the Development Plan was replete with examples where local councillors had signed motions at the time of local elections.

[12] The local election was called on 24 May 1991. Voting took place on 27 June 1991.

would oversee much of the contact with the councillors. Mr Dunlop followed up this correspondence, on the 15 March 1991, by providing Brother Mullan with a draft of another letter to be sent to all councillors.

5.13 Mr Dunlop's *'Notes'* on individual councillors contained such diverse information as a councillor's marital status, religion, profession, employment status, sporting affiliation, his or her importance within the respective political parties, and his or her attitude (as of 15 March 1991) to the rezoning motion.

5.14 Prior to the 21 March 1991 Mr Dunlop met with representatives of the Brothers in the company of Mr Tiernan. Mr Tiernan described the meeting as a courtesy visit while Mr Dunlop believed that the purpose of the meeting was that the Brothers *'needed to be reoriented' as,* according to Mr Dunlop,'*Their focus of attention was slightly extra terrestrial*.' As testified to by Brother Mullan, who attended the meeting, Mr Dunlop accepted that the message he was conveying at that meeting was that the rezoning of the Balheary lands was unlikely to be achieved. Mr Dunlop acknowledged that there was opposition to the rezoning proposal within, and without, the County Council. Moreover, Mr Dunlop believed that at the time there was an *'anti-Tiernan'* element on the part of *'certain Fianna Fáil people'*. Mr Dunlop testified:

> *'There being discussion particularly in the Fianna Fáil side, which I was dealing with, of the political affiliations of Joe Tiernan and why Fianna Fáil people should support somebody of the opposite persuasion'.*

Mr Tiernan did not agree with Mr Dunlop's analysis as indicated in his following exchange with Tribunal counsel on Day 697:

> *'Q. 141 - And would that be on the political ground that you were Fine Gael?*
>
> *A. Well be sorry to think that anybody would think that way because it's important that democracy survives and that everybody can survive in freedom, I would be disappointed if anybody had an attitude like that.*
>
> *Q. Are you serious, Mr Tiernan?*
>
> *A. About what?*
>
> *Q. What you've just said ?*
>
> *A. What are you asking me am I serious about?*
>
> *Q. Are you serious in the little speech that you've just given to the Tribunal?*
>
> *A. Yes. I passionately believe that it would be a wrong attitude for any individual to have, that a person of a particular political persuasion should not be co-operated with.*
>
> *Q. Should not what?*
>
> *A. If there was merits in what they were advocating.*

Q. That somebody of a political persuasion---

A. Of a different.

Q. Say for example somebody from Fianna Fail should oppose a rezoning motion because there is some Fine Gael person involved?

A. Yes. Provided that there was merit in what they would be advocating.

Q. You would be disappointed if that happened?

A. I would. Yes.

Q. And you would be surprised?

A. Well, I have no knowledge down the years of building projects being opposed by politicians because of the political persuasionof the promoter. And I'm around this town for 40 years.'

5.15 Mr Dunlop (as indeed did Mr Tiernan) professed to have very little recollection of exactly what lobbying had been done by Mr Dunlop in relation to the 1991 Motion. Mr Dunlop's evidence was that it was his belief that he had lobbied Fianna Fáil councillors in 1991, while Mr Tiernan had concentrated on Fine Gael councillors. Mr Tiernan did not dispute that they had divided up their respective lobbying functions in this fashion but claimed, effectively, (which was probably the case) that the lobbying demarcation lines were not rigidly drawn as suggested by Mr Dunlop, given that he, Mr Tiernan, was well acquainted with a number of Fianna Fail councillors.

5.16 Overall, the Tribunal was satisfied that in the run up to the Council meeting on the 21 March 1991, when the rezoning motion was withdrawn (see below), Mr Dunlop and Mr Tiernan engaged in an intensive lobbying campaign and that likewise, the Brothers too had lobbied councillors at this time, on the advice of Mr Dunlop and Mr Tiernan.

5.17 It would appear that the requirement that they engage in lobbying had not been anticipated by the Brothers when they entered their arrangement with Mr Tiernan. Minutes of the meeting between the Brothers and Mr Mulligan of HOK on 2 July 1991 included the following note: *'Brother Heneghan has said that in his absence the Provincial Council had experienced unexpected pressure from Joe Tiernan for them to lobby Co. Councillors. This was not anticipated or agreed at any stage of the negotiations'.*

THE DUBLIN COUNTY COUNCIL SPECIAL MEETING OF 21 MARCH 1991

5.18 Despite the lobbying efforts of Mr Tiernan, Mr Dunlop, and indeed the Brothers, throughout the month of February 1991, and up to the Council's special meeting of 21 March 1991, it became apparent to all concerned that there was little support for the Balheary rezoning motion. It was probable that the negative responses to the motion were the subject of the meetings recorded in

Mr Dunlop's diary between Mr Dunlop and Mr Tiernan on 20 March 1991 (the eve of the Council Special Meeting) and on the day of the Council meeting.[13]

5.19 Certainly, it was the intention of the Council planners that the Balheary lands retain their 1983 agricultural and high amenity zoning. This zoning was retained on the 1990 Draft Plan map and written statement which had been considered by the Council on 19 January 1991 as part of the Development Plan review. On 21 March 1991, when the Council met to consider the 1990 Draft Plan prior to its first statutory public display, the Manager recommended that the motion to rezone Balheary to A1 residential be rejected. He had made his recommendation after the motion signed by Cllrs Fay, Fahy, Ned Ryan, Brock and Lydon (Cllr Coffey having withdrawn her signature), had been proposed by Cllr Fay and seconded by Cllr Hand. The minutes of the Council meeting indicated that Cllr Fay withdrew the zoning motion prior to it going to a vote.

MR DUNLOP'S RE-ENGAGEMENT IN 1993

6.01 Notwithstanding the failure to progress the rezoning prior to the first statutory display, Mr Tiernan remained optimistic that the rezoning of the lands could be achieved, as evidenced by the contents of a letter written by Mr Mulligan of HOK to Brother Heneghan on 4 September 1992, when he advised, inter alia, as follows:

> *'I had a further meeting with Joe Tiernan yesterday and he is proceeding immediately to strengthen the boundary at the entrance to Santry Avenue to dig a trench inside the boundary to discourage trespassing and to take down the goal posts. In the course of our discussion he went to confirm that he is still optimistic about getting planning permission at Eamus. I think it is encouraging that notwithstanding the changes on the council etc. he remains enthusiastic. By contrast, he went on to express a potential lack of enthusiasm in relation to Santry Avenue…'.*

6.02 The next opportunity to submit a motion arose following the first statutory display of the Draft Development Plan, (which occurred in September to December 1991). As the councillors had made a decision to consider the draft map in sections going from South to North, it would be the Spring of 1993 before lands in North County Dublin would be considered.

6.03 Following the withdrawal of the motion on 21 March 1991, the arrangement between Mr Dunlop and Mr Tiernan had lapsed. It was revived in

[13] Mr Dunlop's diary recorded meetings with Mr Tiernan on both dates.

the spring of 1993 in the context of an opportunity to submit a further motion seeking the residential rezoning of the Balheary lands.

6.04 In March 1993, Mr Dunlop and Mr Tiernan concluded a financial arrangement in relation to Mr Dunlop's continuing lobbying efforts (Mr Dunlop's role was described in this agreement thus: *'act in a professional public affairs capacity…in order to achieve the residential zoning'*of the lands), with regard to the Balheary lands. The agreement was drafted in the form of a letter dated 23 March 1993 by Mr Dunlop and was signed by both parties. Mr Dunlop was to receive a minimum of IR£100,000, of which half was payable after full planning permission was achieved, and the balance 12 calendar months later.

6.05 In addition to the Balheary fees, Mr Dunlop was to receive a further IR£100,000 if lands owned by Mr Tiernan at Mountgorry, (unconnected to the Balheary lands), were rezoned for development under the then review of the County Development Plan. A similar timeframe for the payment of this IR£100,000 was provided for in the letter of 23 March 1993.

6.06 Mr Dunlop's letter to Mr Tiernan dated 23 March 1993 included, *inter alia*, the following,

> *'…It is agreed that I will act in a professional public affairs capacity on your behalf in order to achieve the residential zoning of both these bodies of land under the current review of the County Dublin Development Plan scheduled for finalisation in December of this year.*
>
> *The financial arrangement relating to this professional activity is as follows:*
>
> - *IR£100K (at minimum) for Balheary*
> - *IR£100K (at minimum) for Mountgorry.*
>
> *payable as follows:*
>
> *(a) 50% one year after full planning permission in each case;*
>
> *(b) 50% twelve calendar months subsequent to the payment of the first 50% referred to at (a).'*

6.07 The final paragraph of the document, referred to it as '*an accurate account of the arrangement discussed'*. It was signed by Mr Dunlop and Mr Tiernan. Included in this written agreement was the following clause:

> *'Frank Dunlop will bear all costs relating to the public affairs programme (lobbying) with the sole exception of print work the cost of which will be borne by Mr Joe Tiernan.'*

However, this clause was crossed out from the signed letter, apparently by agreement.[14]

6.08 Both Mr Dunlop and Mr Tiernan agreed that Mr Dunlop may have looked for an upfront payment but, according to Mr Tiernan agreement was reached on a *'generous sum of money' 'contingent on success'* and *'performance related'*.

6.09 Both Mr Dunlop and Mr Tiernan denied that the deleted clause was a reference to the cost of bribing councillors.

6.10 Mr Dunlop stated that the costs which he was to bear related to *'entertainment'*, or, (as he referred to them in the context of a later agreement in 1994), other *'extraneous'* costs. Mr Dunlop also referred to them as *'miscellaneous costs'* and *'postage costs'*.

6.11 Questioned as to what his belief was in 1993, following his re-engagement by Mr Tiernan, of Mr Tiernan's understanding of the necessity to pay councillors, Mr Dunlop stated: *'There [was] no discussion between Mr Tiernan and myself about the necessity to pay anybody'.*

6.12 Asked whether the deleted clause (referred to above) was a reference to Mr Dunlop, as the bearer of all costs (save print work), making payments to councillors, Mr Dunlop responded *'No. I don't think so. No, no, no, absolutely not....because I never had such a- I never had a discussion with Mr Tiernan.'*

6.13 The following exchange took place between Tribunal Counsel and Mr Dunlop:

> *'Q. Can you help the Tribunal as to what that meant? What was in your mind when you dictated that?*
>
> *A. Well, I think to go back to your question of two questions ago. I think it would be for expedition it would be better if I said to you that it certainlydoes not refer to payments to councillors, couldn't refer to payments tocouncillors.*
>
> *Q. Well why not? If -- I mean, if you know that you're going to have to paycouncillors, which you do.*
>
> *A. Uh-huh.*
>
> *Q. And Mr. Tiernan isn't paying you any money. It's making it clear toMr. Tiernan that he doesn't have to make the payments to the councillors.It's a very logical thing to put in if it's referring to payments to councillors.*

[14] The letter of the 23 March 1993, as furnished to the Tribunal, showed the clause crossed out, along which were the words *'J.T deleted by agreement F.T.D. 23.3.97'*.

A. Well whatever logical matrix that you want to outline about it. The fact ofthe matter is that I never received any money from Mr. Tiernan.'

6.14 Pressed again as to what costs the deleted clause could have referred to, Mr Dunlop stated;

'Well the only – the only attendant costs in relation to lobbying might have been, we'd say for example, entertainment costs of councillors or other parties but certainly not in the context of anything to do with payments to Councillors'

6.15 While Mr Dunlop, in the course of his evidence, was at pains to emphasise that this clause did not refer to payments he might make to elected councillors, and was not inserted on the basis of any such discussion between himself and Mr Tiernan having taken place in 1993, he nonetheless told the Tribunal that underlying his re-engagement by Mr Tiernan in March 1993 was his belief that Mr Tiernan knew that he would 'have to' pay councillors to support the Balheary rezoning project. Mr Tiernan disagreed with Mr Dunlop's contention.

6.16 In the course of his testimony Mr Tiernan appeared to suggest that the contents of the written agreement of 23 March 1993 including the deleted portion were all Mr Dunlop's *'doings'*. Mr Tiernan testified that he did not know who had drawn lines through the deleted clause, but acknowledged as a *'possibility'*, that he had done so. He stated:

'...Because as far as I was concerned I had an agreement with him for 100,000 and there was no strings attached. I saw the opportunity here for Mr Dunlop to be raising invoices for other matters and that had not been agreed'

6.17 Mr Tiernan acknowledged that the clause, (prior to its deletion), fixed Mr Dunlop with the costs of lobbying.

6.18 When asked, Mr Tiernan could not recall what discussion took place between himself and Mr Dunlop about the costs of lobbying although he accepted that there may well have been some discussion on the issue. He surmised that he may well have been the one who had the clause deleted, and that he may have misread the clause because, (apart from fixing him with the cost of print work), *'...I may have thought that there was an opportunity for Mr Dunlop to start invoicing me for lobbying and public affairs, apart from the agreement to pay him 100 grand.'*

6.19 The following exchange took place between Tribunal Counsel and Mr Tiernan:

'Q. Now, the paragraph that you're taking out is an assumption by Mr. Dunlop of the costs of lobbying.What are those costs? You can't remember the discussion about it. Looking at it there, you had the paragraph taken out. What costs were in Mr. Dunlop's and your mind there?

A. Well, in my mind, whatever time and effort he was going to put into this.

Q. You have already said that the 100,000 we are talking about, at minimum, it is a success fee?

A. Yes.

Q. There is no other money involved, isn't that right?

A. That's right.

Q. All right. So it can't be -- it can't be him charging you for his time or anything like that?

A. Well it should not be.

Q. Because it's costs relating to lobbying?

A. Yes.

Q. Now, Mr. Dunlop thought -- he used two words. And I'm sure I'll be corrected if I'm wrong. He certainly used the word entertainment and he also used the word extraneous. Now, so he felt that he didn't want to have the bear the costs of entertainment. Can you think of, apart from entertainment, what other costs could be involved in Mr. Dunlop going to lobby the councillors

A. No, no, except that fundraisers are frequent events. Of all descriptions.

Q.But he wouldn't be holding a fundraiser, would he?

A. No, he wouldn't but others would be. And people might lean on him to participate.

Q. All right. And just deal for a second for his entertainment. We'll come on to your invitation to a few people to Dobbins later on. But Mr. Tiernan, if it was entertainment, if that was all Mr. Dunlop could offer. Now, he could only offer the only possible explanation for the cost of lobbying would be entertainment. What on an entertainment category, what costs what, value, what total would you put on the amount that would be spent on entertainment to entertain councillors for the rest of, between March and September?

A. I've no idea, Mr. Murphy. No idea. Sure the sky is the limit.

Q. Were you in the business of taking councillors out for a meal?

A. No, but I'm sure I did.

Q. Yeah?

A. On occasion.

Q. All right. So you can't quantify what the costs of lobbying. I mean, you knew what lobbying was about Mr. Tiernan, didn't you?

A. Well I thought I did.

Q. Yeah. Well did you learn something new?

A. I'm always learning but I know it costs money.

Q. And is it that you now know?

A. All kinds of entertainment, as you well know Mr. Murphy, costs money and time.

Q. You know now?

A. I now know from the media, yes. And from this Tribunal.

Q. Is that a reference to this?

A. No it's not.

Q. Frank Dunlop is writing into this letter and it's being deleted 'Frank Dunlop will bear all costs relating to lobbying', is that what is being spoken of there in the letter and previously at the discussion at the meeting namely, paying councillors for the vote for Balheary?

A. Mr. Murphy, sure it's the converse to the situation. On reflection it would have been much better if that had been left as it was. Because what you're saying is that the converse could have happened.

Q. Mr. Tiernan, that is precisely why I said to you a few moments ago your evidence didn't make sense. You should have left that in?

A. Yes.

Q. Because any costs of lobbying would be left with Mr. Dunlop?

A. Yes, I can see that now.'

6.20 Mr Tiernan was also questioned as follows:

'Q.If Mr. Dunlop had said I'll have to pay councillors and I'd like you, Mr. Tiernan, to put me in funds, what you what would you have said?

A. I would not have agreed.

Q. You wouldn't have agreed to put him in funds?

A. He didn't say that to me that I can recall.

Q. If he had?

A. Well that's hypothetical now, Mr. Murphy.

Q. If he had said Mr. Tiernan 'I'll have to pay councillors' would you have said to him that's fine but you weren't paying it he could pay it himself.

A. Yes and that didn't happen.

Q. Would you have discontinued your relationship?

A. I would not have agreed to it.

Q. You wouldn't have agreed to what?

A. To paying councillors for votes.

Q. Would you have fired Mr. Dunlop?

A. Look at, this is whenever it was, back in 1993. What I would have done then I don't know. I would expect that I would have disassociated myself from him.

Q. All right. At this particular meeting, just before this agreement. Was there any discussion by Mr. Dunlop about paying councillors?

A. I would say not. I don't remember.'

MR TIERNAN'S AND MR DUNLOP'S INVOLVEMENT IN THE REZONING CAMPAIGN IN 1993

7.01 By the time Mr Dunlop and Mr Tiernan signed the agreement of 23 March 1993, the process to have the Balheary lands rezoned had already been put in train. On 18 March 1993, a motion in the names of Cllrs Devitt and Gallagher was lodged with the County Council seeking to have approximately 70 acres of the Balheary lands rezoned A1 residential. It provided as follows:-

'In order to extend the Broadmeadow Linear Park and maximise the amenity value of the 0.4 mile Broadmeadow River frontage and with an objective of providing three acres for active recreation, Dublin County Council hereby resolve to rezone A1 in the current review of the County Dublin Development Plan the 70 acres approximately at Balheary Demesne Swords…'

7.02 Mr Tiernan said he was unable to recollect whether or not he drafted and/or typed and/or requested councillors to sign the above motion, although he accepted that he may have undertaken all or some of these activities. He acknowledged that he canvassed councillors, (both Fine Gael and others), to support the rezoning of the Balheary lands. Mr Dunlop was certain that he had not prepared[15] the 1993 motion, and that he had not obtained Cllr Devitt's signature. He accepted that he might have obtained Cllr Gallagher's signature, although he had no recollection of doing so (see below).

7.03 In the course of his retention, Mr Dunlop, as he had done in 1991, advised the Brothers in relation to the lobbying of councillors. He drafted a letter to be sent by the Brothers to all seventy eight councillors and prioritised twenty four councillors in the Fingal area who were to be telephoned by Brothers Heneghan. Sometime after 23 March and before 21 May 1993, Mr Dunlop himself was engaged in actively lobbying councillors in support of Balheary, as evidenced by his communications to Brother Heneghan on the 5 May 1993.

[15] He claimed it was not the typeface used in his office.

MR DUNLOP'S RE-ENGAGEMENT IN 1994

8.01 In 1994, Mr Tiernan and Mr Dunlop entered into a fresh agreement for Mr Dunlop's retention as a lobbyist in relation to the Balheary, (and Mountgorry), lands in the context of the proposed variation of the 1993 Development Plan to be undertaken by the newly established Fingal County Council. The agreement provided for payment to Mr Dunlop of IR£100,000 for Balheary, and IR£100,000 for Montgorry, which was payable in a similar timeframe as provided for in the 1993 agreement. As with the 1993 agreement, Mr Dunlop's fees were contingent on the lands being rezoned.

8.02 This agreement was written on the letterhead of Mr Tiernan's company, Tiernan Homesteads Ltd, dated 22 September 1994 and signed by both men. It provided, inter alia, that Mr Dunlop would '*bear all costs relating to the public affairs programme lobbying*'.

8.03 Mr Tiernan told the Tribunal that he did not recall the meeting with Mr Dunlop on 22 September 1994 which led to their signed agreement, but acknowledged that under that agreement Mr Dunlop was to *'bear all costs relating to the public affairs programme lobbying'.*

8.04 Questioned as to what lobbying costs were in contemplation in 1994, Mr Tiernan responded *'...whatever costs he's going to incur.'* He continued *'..time is the most important one'*.

8.05 This clause was essentially similar to the clause deleted from the earlier 1993 agreement. Mr Dunlop was again expected to shoulder the costs of '*the public affairs programme lobbying*'. Again, Mr Dunlop was adamant that the clause did not relate to *'...costs in relation to payments to councillors'.*

8.06 Essentially, with regard to the clauses in question, the thrust of Mr Dunlop's testimony was that notwithstanding the unspoken understanding, as he perceived it, between himself and Mr Tiernan which flowed from Mr Tiernan's utterances in 1990 and which gave rise to the inferences described by Mr Dunlop, that understanding was not reflected in any shape or form in the 1993 or 1994 written agreements. Mr Dunlop stated,

> *'...The only evidence that I can give on a factual basis is that neither Mr. Tiernan nor I discussed the payments to councillors, either in relation to 1991 to 1993. And the only benchmark that I have in relation to anything that Mr. Tiernan may have known or believed or knew in relation to payments to councillors was a comment that he made to me in the context of a previous development.*

Now I am absolutely adamant that neither Mr. Tiernan nor I discussed payments to councillors, either individually, collectively, in specific amounts, or otherwise, ever. I am aware of other comments that were made, but that's another issue…'

8.07 Mr Dunlop told the Tribunal that, consequent on the absence of any discussion with Mr Tiernan on the issue of payments to councillors, he had not appended an asterisk[16] to his October 2000 statement in relation to Balheary, Balheary/CBS, or Balheary/Christian Brothers. Mr Dunlop refuted any suggestion that he ought to have done so, on the basis that there had been no discussion between himself and Mr Tiernan on the issue of paying councillors for their votes. Nevertheless, throughout his testimony concerning his dealings with Mr Tiernan in relation to Balheary, it remained Mr Dunlop's position that Mr Tiernan had an awareness that money would be paid to councillors.

8.08 Responding to the suggestion that Mr Dunlop's *'time'* would be accounted for in the agreed success fee of IR£100,000 Mr Tiernan replied; *'well he has to..he has got to speculate..to accumulate that.'* Mr Tiernan refuted Counsel's suggestion that the costs in relation to lobbying had nothing to do with how much time Mr Dunlop would invest in his task'.

THE TRIBUNAL'S CONCLUSIONS AS TO MR TIERNAN'S KNOWLEDGE AS TO WHETHER MR DUNLOP WAS LIKELY TO BE REQUESTED FOR OR PAY MONEY TO COUNCILLORS IN CONNECTION WITH THEIR SUPPORT FOR THE REZONING OF THE LANDS

9.01 There was no dispute but that Mr Tiernan retained Mr Dunlop in 1990 in connection with a material contravention issue which had it progressed, would have required a vote by councillors, and that Mr Dunlop was provided with a cash sum by Mr Tiernan at that time, be it IR£6,000 or IR£4,000.

9.02 The Tribunal was satisfied that the exchange as described by Mr Dunlop did take place between himself and Mr Tiernan in 1990, and that Mr Tiernan made reference to wanting to *'look after'* Cllr Hand himself. The Tribunal did not accept Mr Tiernan's explanation for Mr Dunlop's repayment to him of IR£2,000 from the IR£4,000 which he claimed was given to him. The Tribunal was satisfied to accept Mr Dunlop's evidence that he was asked to return IR£2,000 of the initial cash sum given by Mr Tiernan. The Tribunal was satisfied that Mr Dunlop, in the context in which this exchange took place, reasonably inferred that Mr Tiernan intended to *'look after'* Cllr Hand by the payment of money.

[16] In his October 2000 statement Mr Dunlop said *'the inclusion of an asterisk beside a particular development denotes that monies were given by me with regard to that development in the full knowledge that payments to councillors were required to achieve support.*

9.03 The issue for the Tribunal was whether Mr Tiernan's utterance gave rise to an understanding on the part of Mr Tiernan and Mr Dunlop throughout their dealings in the period 1991 to 1994, that money would be paid to councillors to secure their support for the Balheary rezoning.

9.04 The Tribunal was satisfied that Mr Tiernan's utterance did give rise to the inference which Mr Dunlop took from it.

9.05 Accordingly, the Tribunal was satisfied that, while nothing may have been expressly stated in 1991 at the time of Mr Dunlop's initial engagement as a lobbyist for the Balheary rezoning effort, it was nonetheless understood, as between Mr Dunlop and Mr Tiernan, that certain councillors would seek money from Mr Dunlop and that he would accede to such requests.

9.06 The Tribunal was also satisfied of Mr Tiernan's belief that councillors would have to be paid, if the prospect of rezoning the Balheary lands was to stand a reasonable chance of success, and this was a factor in his decision to engage Mr Dunlop.

9.07 Equally, the Tribunal was satisfied, whether it was articulated or not in 1993 and/or 1994, that it was understood between Mr Dunlop and Mr Tiernan at the time they concluded their written agreements, that Mr Dunlop was likely to be requested for money by councillors.

9.08 The fact that Mr Tiernan and Mr Dunlop were sufficiently concerned about the '*costs relating to… lobbying*' to have specifically included a provision relating to them in 1993, (later deleting it), and again in 1994, and in both instances imposed the liability for such costs on Mr Dunlop, was strongly suggestive that such costs were, potentially at least, considerable. It was unlikely, in the Tribunal's view, that a specific provision in the agreements would have been deemed necessary or appropriate for apportioning liability for out of pocket expenses. In this regard, the Tribunal rejected Mr Dunlop's evidence that the costs referred to in the agreements represented *'entertainment'*, or '*other extraneous'* costs.

9.09 It was probable that the clause in the 1993 Agreement was deleted at Mr Tiernan's instigation, and it may well have been the case that Mr Tiernan's concern to delete the obligation imposed on him to discharge print work invoices led to the whole clause, and not just the reference to Mr Tiernan's obligation for print work bills, being deleted erroneously.

9.10 The Tribunal rejected Mr Tiernan's suggestion that the reference in the written agreements to Mr Dunlop having to bear the costs of lobbying was the time and effort Mr Dunlop would have to spend on lobbying. In the view of the Tribunal, Mr Dunlop's time was provided for by the IR£100,000 agreed fee, (in the event that the lands were rezoned and planning permission obtained). Mr Dunlop himself did not contend that lobbying costs included the time and effort he would have to expend as a lobbyist. The height of his evidence, (rejected by the Tribunal), was that lobbying costs covered *'entertainment'* or *'extraneous'* costs.

9.11 Neither Mr Dunlop nor Mr Tiernan was in a position to provide a credible explanation as to what type of costs associated with lobbying were contemplated when the 1993 and 1994 agreements were entered into.

9.12 A factor which the Tribunal considered significant in its assessment of whether or not Mr Tiernan was likely to have an awareness that Mr Dunlop might make payments to councillors was the rather telling evidence of Mr Tiernan himself when he was questioned about the propriety of a developer making donations/contributions to councillors at times when councillors might be required to vote on projects associated with that developer. Mr Tiernan's evidence in that regard is considered elsewhere in this Chapter.

9.13 The Tribunal also took account of a certain action by Mr Tiernan in 1994 in the course of contact he had with Cllr Cathal Boland. This issue is considered later in this Chapter.

9.14 Having regard to all the circumstances, the Tribunal was satisfied that when Mr Dunlop was engaged by Mr Tiernan in 1991, and re-engaged in 1993, and 1994, to lobby councillors, Mr Tiernan had an awareness that Mr Dunlop might be requested for, and would make payments to councillors to secure their support for the Balheary rezoning.

THE TRIBUNAL'S CONCLUSIONS AS TO MR DUNLOP'S INVOLVEMENT WITH THE CHRISTIAN BROTHERS

10.01 Neither Mr Tiernan nor Mr Dunlop suggested that the Brothers were at any time aware that Mr Dunlop was likely to pay councillors to support the rezoning of their lands in Balheary. The Brothers were adamant that they had no knowledge or suspicion that any such payments might be made, or were made, and in any event would not have condoned such activity. The truth of this evidence was accepted by the Tribunal.

10.02 The Tribunal also accepted the evidence of Brothers Heneghan, Gibson and Mullan, that when making their statements to the Tribunal, they believed that Mr Dunlop's involvement with the lands commenced in 1993, rather than 1991. The Tribunal accepted that this error was an innocent failure of recollection on their part.

MR DUNLOP'S ALLEGATIONS OF PAYMENTS TO COUNCILLORS

11.01 Mr Dunlop alleged that in the course of the Balheary lobbying work he paid four elected councillors IR£1,000 each in return for their support. Mr Dunlop identified these councillors as Cllrs Cyril Gallagher, Tom Hand, Liam T. Cosgrave and Tony Fox. Mr Dunlop contended that he agreed payment with each of the four prior to the vote on the rezoning motion on 21 May 1993, and that he paid them after they had voted in support of the motion.

11.02 Mr Dunlop initially made these allegations in a written statement furnished to the Tribunal in October 2000. He repeated the allegations in a further statement on 30 June 2006, prior to giving evidence at public hearing.

11.03 Mr Dunlop described Cllrs Hand and Fox as individuals who requested money regularly, or *'in virtually all instances'.* Cllr Gallagher was someone to whom he gave money *'...on quite a significant number of occasions'*. Money was given to Cllr Cosgrave *'not as frequently'.* He claimed to have a specific memory of each of the four Cllrs requesting money, when approached in relation to Balheary.

11.04 Mr Dunlop told the Tribunal that he funded the IR£4,000 he paid to the four councillors from a '*confluence of funds'* available to him at the time. Although Mr Dunlop stood to receive IR£100,000 from Mr Tiernan in the event of the Balheary rezoning project being successful, he claimed not to have been paid anything relating to Balheary, either at the time he said he bribed the four councillors, or subsequently.

CLLR TOM HAND (FG)

12.01 Mr Dunlop said that Cllr Hand requested money in return for his support, and that they had agreed the sum of IR£1,000. Mr Dunlop stated that he had a specific recollection of Cllr Hand requesting money from him because, at the time, he was suspicious that Mr Tiernan was also paying Cllr Hand for his support for the Balheary project and because of what Mr Tiernan had said to him in 1990.

12.02 Mr Dunlop told the Tribunal that he paid Cllr Hand IR£1,000 in return for his support for the 21 May 1993 motion to rezone the Balheary lands. Cllr Hand voted in favour of the motion and reaffirmed his support in September 1993 by voting against the Ryan/Kelleher motion.

12.03 Mr Dunlop put it thus;

> *'Well, in the context of Balheary, the Christian Brothers, Joe Tiernan, the outside influence that we've already talked about, the fact that Joe Tiernan was a Fine Gaeler in the context of the Fianna Fail people, that he was a Fine Gaeler. I had some doubts, I have to say, in relation to the payment to Mr. Hand. But he asked for it. Notwithstanding that I knew that Mr. Hand had a relationship with Mr. Tiernan, which I believed arising from a comment that Mr. Tiernan had made to me previously.'*

and,

> *'And the reason I put him* [Tom Hand]*first, is because of what I've just said. Is that I went to Tom Hand in the full knowledge that Tom Hand was, knew Joe Tiernan and was obviously a supporter of, or probably a supporter anyway, I'd already indicated that to the Christian Brothers in a note that I had sent in 1991. And he asked me for money for his support and I agreed, we agreed 1,000 pounds. And I either gave him that money in one of the locations that I met him normally, which was in the environs of Dublin County Council or at a restaurant where I had lunch with him or in his home. I specifically recall having a doubt about having to pay Tom Hand, in this particular instance, given the relationship he had with Mr. Tiernan and that's how I recall him in particular.'*

12.04 In the course of cross-examination Mr Dunlop said:

> *'...In relation to your client [*Cllr Hand*], whom I knew to have an association with Mr. Tiernan, and was suspicious of the fact that I was being asked for 1,000 on the basis that he might also have been, though I have no evidence to this effect, being recompensed by Mr. Tiernan. These are the trigger points, as far as I'm concerned, in relation to developments and in relation to Balheary, that is the one that sticks out in my mind in relation to your client.'*

12.05 Mr Dunlop rejected any suggestion that he had *'deduced'*that he had paid Cllr Hand, as opposed to having a recollection of so doing, and he stated;

> *'...Well I had a discussion with your client* [Cllr Hand] *in relation to Balheary, knowing full well that your client had an association with Mr. Tiernan, who was the main proposer of the land. He asked me for 1,000 pounds. I have a moment of hesitation in the context of how do I know*

that this guy is not double dealing me. He may well also have got money from Joe. I don't know whether he did or not, but I do know that Joe made a remark to me some years previous that he wanted money back, to go back to the, to one of the original points that you made earlier on, he wanted money back because he wanted to look after Tom himself, your client.'

12.06 Mr Dunlop was asked why, having regard to the close political connection between Cllr Hand and Mr Tiernan, he had approached Cllr Hand at all in relation to the Balheary project. Mr Dunlop said that he and Cllr Hand had an ongoing relationship in the context of the Development Plan review and were involved in a number of rezoning issues separate to Balheary. He said that Cllr Hand was '*on the books*'.

12.07 With regard to his testimony as to the inference he took from the words used by Mr Tiernan in 1990, Mr Dunlop was asked by Counsel for Cllr Hand's estate to Cllr Hand with Mr Tiernan, and particularly in response to the question as to why he would have been shy, in 1993, to ask Mr Tiernan straight out if he had taken care of Cllr Hand, Mr Dunlop replied that, he *'did not think it was a matter of shyness'*being *'as brash as the next one'*. Mr Dunlop stated that he had never *'...discussed payments with Joe Tiernan, individually or collectively'.*

12.08 While Mr Dunlop was satisfied that he had paid Cllr Hand a sum of IR£1,000 in relation to Balheary, he was unable to identify the date or location of the payment. It was his belief that the payment was made either in the environs of the County Council offices in O'Connell Street in Dublin, or in a restaurant in Sandymount, sometime after the 21 May 1993 Council meeting. There was no record or diary reference to any such meeting by Mr Dunlop in his diaries.

12.09 No documentary evidence was available to the Tribunal to support Mr Dunlop's evidence that he paid IR£1,000 in cash to Cllr Hand.

12.10 Inquiries made of Cllr Hand's estate revealed that, on 16 June 1993 he purchased a Post Office Savings Certificate for IR£5,000 in the name of a family member. The source of the funds used to purchase this Savings Certificate could not be accounted for by his family.

12.11 While not in any way determinative of the issue as to whether Cllr Hand was in receipt of money from Mr Dunlop, the Tribunal nevertheless noted Cllr Hand's IR£5,000 transaction in the context that it took place within the timeframe in which Mr Dunlop claimed to have paid Cllr Hand.

12.12 The Tribunal was satisfied that Cllr Hand sought money from Mr Dunlop in return for his support for the rezoning of the Balheary lands in 1993, and that Mr Dunlop paid him a sum of IR£1,000 in cash. The Tribunal was satisfied from Mr Dunlop's evidence that he had a clear recollection of making the payment to Cllr Hand, and that his recollection was aided by Mr Dunlop's recollected suspicion that Mr Tiernan had, on a previous occasion, paid money to Cllr Hand. This was a corrupt payment.

12.13 The Tribunal was satisfied that by the Spring of 1993, Mr Dunlop had an established relationship with Cllr Hand in relation to other rezoning projects, and that money had been sought by and paid to Cllr Hand by Mr Dunlop prior to May 1993. The Tribunal found that Mr Dunlop's evidence about his dealings with Cllr Hand in relation to Balheary was credible. The Tribunal was assisted in its conclusions in this regard by the fact that it had been established to the Tribunal's satisfaction, that prior to the Spring of 1993, Cllr Hand had made a corrupt demand (October 1992) in the presence of Mr Dunlop and a third party (Mr Owen O'Callaghan) for IR£250,000 in return for his ongoing support for the Quarryvale rezoning project. To that end had provided Mr Dunlop with the number of an offshore bank account in Australia into which he requested the money to be deposited. Cllr Hand's demand was not acceded to. The fact that Cllr Hand was capable of making such a demand lent credence to Mr Dunlop's testimony in this Module that he had requested money from Mr Dunlop in return for his support.

CLLR CYRIL GALLAGHER (FF)

13.01 In his evidence Mr Dunlop recalled lobbying Cllr Gallagher for his support for the Balheary motion prior to 21 May 1993. Mr Dunlop said that Cllr Gallagher requested payment *'for his support'* of the motion, and that a sum of IR£1,000 was agreed, and subsequently paid, in cash. Mr Dunlop was unable to recollect the precise date or location of payment, but believed that the payment was made some time after the May 1993 vote either, in the environs of Dublin County Council in O'Connell Street, or at a licensed premises in north Co. Dublin, or at Cllr Gallagher's home.

13.02 As previously referred to, Mr Dunlop had no recollection of obtaining Cllr Gallagher's signature, but he accepted that he may have done so.[17] Cllr Gallagher voted in favour of the rezoning on both 21 May and 21 September 1993.

[17] Mr Dunlop procured Cllr Gallagher's signature to a motion to rezone the Lissenhall lands which was lodged with the Council on 18 March 1993, the same date the Balheary motion was lodged.

13.03 While Mr Dunlop and Mr Tiernan's written agreement was reduced to writing on the 23 March 1993, subsequent to the lodging of the rezoning motion, the Tribunal was satisfied that that fact, of itself, did not exclude the possibility that Mr Dunlop may have obtained Cllr Gallagher's signature. Both Mr Dunlop's and Mr Tiernan's evidence suggested that they were in discussion prior to the 23 March 1993 and it may well have been that Mr Dunlop had made an approach to Cllr Gallagher in the context of Balheary prior to, or on, 18 March 1993. Mr Dunlop agreed however, that if Cllr Gallagher had signed the motion before Mr Dunlop was retained by Mr Tiernan, he would have already nailed his colours to the mast (in the context of support for the motion) prior to Mr Dunlop approaching him. Mr Dunlop agreed that it would appear *'illogical'* for Cllr Gallagher to have asked for financial support after he had signed the motion. However Mr Dunlop maintained;

> *'A. But that's at first sight. If we look, take the bird's-eye view of what'shappening in relation to the Council. I've already given evidence, forexample, in another module*(Lissenhall)*, where Mr. Gallagher has signed a motion which is on the same day or virtually the same day that on the agenda that the Balheary motion is and I paid Mr. Gallagher for his signature on that occasion because I obtained his signature on that occasion and I have a recollection of obtaining his signature on that occasion.I think the answer in relation to Cyril Gallagher, looking for something for this in relation to Balheary, is consonant with the difficulties that were taking place in the local area and he was aware of the difficulties that there would be and that we had encountered.'*

13.04 The Tribunal considered that Mr Dunlop may well have obtained Cllr Gallagher's signature, probably on 18 March 1993, having regard to the fact that he obtained Cllr Gallagher's signature to a motion to rezone the Lissenhall lands on the same date.

13.05 Mr Ray Burke (at that time the local Fianna Fail TD) had spoken out publically against the rezoning of the Balheary lands. Mr Dunlop recalled having a discussion with Mr Gallagher about Mr Burke's oposition and that of the Council officials and said that Mr Gallagher was fully aware of the difficulties Mr Dunlop was experiencing as a consequence. Mr Dunlop said that it was because of this context that he specifically recalled Mr Gallagher requesting something 'for his support'.

13.06 Mr Dunlop told the Tribunal that he did not have a specific recollection of handing IR£1,000 cash to Cllr Gallagher. He stated *'...To say specifically where and when I paid him, I cannot say that to you'.* He believed that it was *'...after the vote. Sometime after the vote.'*and that it could have occurred in late

May or in June 1993, in the environs of the Council, or at a variety of hostelries in North County Dublin.

13.07 Asked if he had ever paid Cllr Gallagher, or any councillor, in respect of a number of motions at any one time Mr Dunlop said he could not be absolutely sure. Mr Dunlop stated that Cllr Gallagher had received money from him for *'a signature he put on a motion in relation to Lissenhall*.' While he could not say that he never gave Cllr Gallagher *'...a composite amount in relation to a number of developments' ,* his arrangement with Cllr Gallagher *'...usually was whatever payment was agreed, whatever he asked for and I agreed. That as soon as I could thereafter, it was paid.'*

13.08 An analysis of Cllr Gallagher's finances revealed that between the 25 and 28 May 1993 he made three round figure lodgements to accounts held in his name as follows: On 25 May 1993 he purchased savings certificates in An Post totalling IR£2,000, with IR£2,000 cash. He lodged IR£2,000 to an AIB deposit account, also on 25 May 1993, and some three days later he lodged IR£500 to an account held by him in Ulster Bank.

13.09 While these round figure lodgements of themselves could not be the sole determinant of whether Cllr Gallagher received IR£1,000 cash from Mr Dunlop following the Balheary rezoning vote of 21 May 1993, it was noteworthy that Cllr Gallagher was in possession of such round figure cash sums within days of the vote.

13.10 The Tribunal found Mr Dunlop's evidence that Cllr Gallagher requested, and was paid, money by him to be credible. The Tribunal accepted Mr Dunlop's evidence that he recalled the request in the context of the discussion he had with Cllr Gallagher.

13.11 The Tribunal was thus satisfied that Mr Dunlop paid Cllr Gallagher IR£1,000 in cash in return for his support for the rezoning of the Balheary lands, and that this payment was made in response to the councillor's request. This payment was a corrupt payment.

CLLR LIAM T. COSGRAVE (FG)

14.01 Cllr Cosgrave supported the Balheary rezoning motion in May 1993, and again supported the Balheary project by voting against the September 1993 Ryan/Kelleher motion.

14.02 Mr Dunlop testified that following a request for payment by Cllr Cosgrave in return for his support for the rezoning of the Balheary lands, he paid him a sum of IR£1,000 in cash. This was paid subsequent to the vote on 21 May 1993.

14.03 Mr Dunlop told the Tribunal that his memory of making the payment to Cllr Cosgrave was assisted by a view about Mr Tiernan he says was expressed to him by Cllr Cosgrave at the time. Mr Dunlop stated:

> *'...In relation to Liam Cosgrave. Liam Cosgrave and in fairness to Liam Cosgrave I would prefer that Liam Cosgrave give his evidence in relation to his views of Mr. Tiernan himself. It's relevant to what I'm saying is, Mr. Cosgrave had a view about Joe Tiernan even though he was a Fine Gael man. I'm not saying that they didn't get on or they didn't like one another but the fact of the matter is that Mr. Cosgrave did express a view to me about Mr. Tiernan. And that he said he would support it if I gave him something and we agreed 1,000 pounds...'*

Mr Dunlop maintained that his recollection of the remark which Cllr Cosgrave had made had aided his memory of making the payment to Cllr Cosgrave.

14.04 Cllr Cosgrave, in the course of his evidence, acknowledged that it was possible he had been lobbied by Mr Tiernan in relation to the lands, although he had no recollection of same. Nor did he have a recollection of being contacted by the Brothers in that context. He had recollection of a letter sent to him by Brother Heneghan. The letter was sent on 3 May 1993, and Cllr Cosgrave replied to that correspondence confirming his support for the rezoning. He acknowledged that Mr Tiernan was well known to him for a number of years, but was unable to recall if Mr Tiernan had lobbied him in respect of the lands. In his written statement to the Tribunal, prior to his sworn evidence, Cllr Cosgrave said that it was his belief that '*representations'* had been made to him '*on behalf of both the Christian Brothers and Tiernan Homes Ltd.'*

14.05 Cllr Cosgrave vehemently rejected Mr Dunlop's evidence that he sought payment from him, and he stated that; *'...Mr Dunlop never spoke to me about these lands'*. He rejected Mr Dunlop's evidence of his having a *'view'* of Mr Tiernan or that he had communicated to Mr Dunlop a *'view'* of Mr Tiernan. Cllr Cosgrave's evidence was that Mr Tiernan was; *'...a very good developer'* and he had no other *'personal*' view of Mr Tiernan or personal animosity towards him. Cllr Cosgrave told the Tribunal, that; *'Mr Tiernan is a good developer. He was a friend of mine, remains a friend of mine.'*

RECORDED CONTACT BETWEEN MR DUNLOP AND CLLR COSGRAVE IN MAY 1993

14.07 On 25 May 1993, some four days following the rezoning vote, Mr Dunlop's office recorded a telephone call from Cllr Cosgrave. Cllr Cosgrave was unable to say why he might have been contacting Mr Dunlop at that time, save to suggest that he may have been returning a call from Mr Dunlop. Mr Dunlop's diary for the 26 May 1993 recorded a meeting between Mr Dunlop and Cllr Cosgrave thus; *'3.30 L Cos Gresham*.' Cllr Cosgrave did not recall the meeting but denied any suggestion that its purpose might have been to receive a payment to him by Mr Dunlop. The record of telephone contacts maintained by Mr Dunlop's office logged a call from Cllr Cosgrave at 10.15am on the 21 September 1993, (the day the Balheary rezoning issue was again scheduled for consideration), and noted a telephone number left by Cllr Cosgrave and the message, *'or will see you around O'Connell Street.'* Cllr Cosgrave did not recall any meeting with Mr Dunlop on that date.

14.08 The Tribunal considered as unlikely Cllr Cosgrave's contention that Mr Dunlop had never lobbied him in relation to the Balheary lands. Mr Dunlop was well known to Cllr Cosgrave at this time, and Cllr Cosgrave had been lobbied by Mr Dunlop some months previously in relation to other projects including the Ballycullen/Beechill and Quarryvale rezoning projects..Mr Dunlop's office telephone records and his diary confirmed contact (or attempted contact) between himself and Cllr Cosgrave within days of the Balheary rezoning vote.

14.09 The Tribunal was satisfied that Mr Dunlop's recollection of his lobbying, and of paying money to, Cllr Cosgrave in relation to the Balheary lands was correct. The said payment of IR£1,000 to Cllr Cosgrave was a corrupt payment.

CLLR TONY FOX (FF)

15.01 Mr Dunlop told the Tribunal that he paid Cllr Fox IR£1,000 in cash in return for his support for the Balheary rezoning motion. Mr Dunlop said that Cllr Fox requested money in return for his support. Cllr Fox voted in favour of the rezoning on both 21 May and 21 September 1993.

15.02 Mr Dunlop recalled Cllr Fox specifically raising Mr Tiernan's political affiliations when he approached him seeking his support for the Balheary lands rezoning.

15.03 Mr Dunlop stated:

> *'In relation to Tony Fox. When I approached Tony Fox about it, Tony Fox raised the issue of Joe Tiernan's affiliations. Notwithstanding the fact that he said that he was pro-development and would vote for anything that he felt deserved to be voted for but that it would require something. And again, the reason I am specific about Tony Fox, is in the context of the personality of Joe Tiernan, who was a Fine Gael man and here was Tony Fox being asked by me to vote for something, being promoted by a member, a strong supporter of Fine Gael in the knowledge of what was going on in the wider Fianna Fail party about supporting Joe Tiernan.'*

15.04 In response to questions put in cross-examination by Counsel for Cllr Fox, Mr Dunlop stated that he had a *'vivid recollection'* of lobbying Cllr Fox but while he insisted that he had paid him IR£1,000, he conceded that he was unable to say where or when he had given the IR£1,000 to Cllr Fox, save that as set out in his 2006 statement, it had been in the environs of the Council.

15.05 In the course of that cross-examination, he stated:

> *'...there is a trigger in the context of particular events. Sometimes it's more evident, more -- not, evident is not the word, but more amplified in some cases than it is in others. I've already dealt with an issue in relation to your client vis-a-vis lobbying by another person in which he told me when I went to see him that he had been lobbied but he had gave me nothing. In this particular instance when I approached your client in relation to the Balheary development in 1993, and just for completeness, Mr. Gordon, I just want to say. I have no recollection at all of talking to your client in relation to Balheary vis-a-vis 1991. It is palpably obvious that I did but I have no recollection of it. But in relation to 1993, I approached your client and we had a discussion about this. And the circumstances were such that Mr. Tiernan was of Fine Gael persuasion and there were some comment about this fact, whether or not Fianna Fail people should support it and some of that comment was replicated in my conversation with your client at the time I approached him. However, your client consistently, and I've always said this, was in favour of development and said he would support it. On foot of the payment of 1,000 pounds.'*

15.06 All of this had assisted his recollection that Cllr Fox had sought money from him for his support for Balheary, and that he had been paid money for that purpose.

15.07 Cllr Fox denied receiving money from Mr Dunlop in relation to the Balheary lands. He repeatedly denied receiving money from Mr Dunlop for any purpose whatsoever. His denial was consistent with his responses in a number of modules, to Mr Dunlop's allegations of having made payments to him. Cllr Fox told the Tribunal that he did not remember being lobbied by the Brothers in relation to Balheary, and did not recall a letter from Brother Heneghan on the 3 May 1993 requesting his support, or a letter of thanks sent by Brother Heneghan in the aftermath of the May vote. Cllr Fox was again written to in September 1993**.** He did not recall being lobbied by Mr Dunlop in relation to the lands although he acknowledged that he would have come across Mr Dunlop at the relevant time. He had a vague recollection of being lobbied by Mr Tiernan in relation to the lands.

15.08 Cllr Fox described the evidence given by Mr Dunlop as *'Absolute rubbish. Fantasy..Pure fantasy.'* Cllr Fox denied that he would have known Mr Tiernan's political affiliations, or that such a political affiliation, (if it had been known to him), would have influenced his vote on the Council. He confirmed that he was supportive of the Balheary rezoning both in May 1993 and September 1993.

15.09 Cllr Fox could not account for why Mr Dunlop's office recorded a telephone message from him on the 29 September 1993, leaving a telephone number and a message '*Frank Dunlop would know what it was about'*. Questioned as to why Mr Dunlop would make allegations against him, Cllr Fox stated; *'Well I think I've been asked that question a number of times, Chairman. And I just haven't a clue. I don't know what was in his head in relation to it. Why he would be making these allegations against me because they are totally untrue.'*

15.10 The Tribunal heard evidence of six telephone messages in the period January to March 1993, left by Cllr Fox for Mr Dunlop, and while all of these contacts may not have related to the Balheary rezoning issue they did indicate, to the Tribunal's satisfaction, that Mr Dunlop and Cllr Fox were in contact during this period. Cllr Fox was adamant that these were not related to the Balheary lands rezoning project.

15.11 The Tribunal was satisfied that, contrary to Cllr Fox's evidence to the Tribunal, he was in fact lobbied by Mr Dunlop in relation to the Balheary lands rezoning project, and that he had not forgotten about it at the time he gave his evidence.

15.12 The Tribunal found it inconceivable that Mr Dunlop would not have lobbied Cllr Fox in relation to the Balheary rezoning motion, given that Mr Dunlop saw fit to lobby Cllr Fox in relation to a number of other rezoning projects, (as ultimately accepted by Cllr Fox) including the rezoning of the Quarryvale lands. The Tribunal was satisfied that, by the Spring of 1993, Mr Dunlop and Cllr Fox were in contact in relation to a number of matters including the Balheary lands.

15.13 Overall, the Tribunal preferred the evidence tendered by Mr Dunlop to that of Cllr Fox. In preferring Mr Dunlop's evidence, the Tribunal took into consideration the fact (as found by the Tribunal) that following the establishment of the Tribunal, an approach was made by Cllr Fox to Mr Dunlop, in the context of a history of dealings between himself and Mr Dunlop during the making of the 1993 Development Plan and the 1998 Dun Laoghaire/Rathdown Development Plan, whereby it had been agreed between them that monies provided to Cllr Fox would be designated by both as political donations. The extent to which this agreement influenced the Tribunal in assessing Cllr Fox's credibility is set out in the St. Gerard's lands Chapter in the Report.

15.14 The Tribunal was satisfied that Mr Dunlop's recollection of a request by Cllr Fox for a payment connected to the Balheary rezoning was aided by his clear recollection of Cllr Fox raising Mr Tiernan's political affiliation with him when he lobbied Cllr Fox to support Balheary. The Tribunal rejected Cllr Fox's evidence that he would have been unaware of Mr Tiernan's political affiliations as unlikely in the extreme.

15.15 The Tribunal was satisfied that a request was made by Cllr Fox of Mr Dunlop for money, and that Mr Dunlop paid Cllr Fox IR£1,000 for his support for the rezoning of the Balheary lands. This payment was a corrupt payment.

MR DUNLOP'S PAYMENTS TO THE FOUR ABOVE NAMED COUNCILLORS – AN OVERVIEW

16.01 In arriving at its conclusions that Mr Dunlop made the payments in question the Tribunal considered whether, as a matter of probability, Mr Dunlop would have made payments totalling IR£4,000 in the circumstances claimed by him, given that Mr Dunlop's retention by Mr Tiernan was on a success fee basis.

16.02 The Tribunal was satisfied that, although Mr Dunlop was not put in funds by Mr Tiernan, by way of fees or otherwise, this was not a factor which undermined his credibility on this issue. The Tribunal was satisfied, from evidence adduced in other modules, that in the Spring of 1993, Mr Dunlop did have access to a confluence of funds from which to make payments to councillors.

EVENTS POST 23 MAY 1993

17.01 The successful vote of the 21 May 1993 meant that the Balheary lands were zoned A1 (residential) on the 1993 amendments to the 1991 Draft Development Plan, when publicly displayed in July/August 1993.

17.02 On 18 June 1991, within a month of the successful rezoning vote, the signatories to the rezoning motion, Cllrs Devitt and Gallagher, dined with Brothers Heneghan and Mullan and Mr Tiernan in Dobbins restaurant in Dublin. Cllr Devitt described this event as a '*social dinner*', and she rejected any notion that the dinner was related to her work as a councillor, and indeed, she did not recall Council business being discussed during the evening.

17.03 Brother Heneghan told the Tribunal that it was his impression that the dinner at Dobbins was arranged to reassure the Brothers that he had done everything possible to get the zoning through and that he was still working on it. Mr Tiernan told the Tribunal that it was his recollection that the dinner was held as a 'thank you' to Cllrs Devitt and Gallagher. Cllr Devitt rejected this suggestion, and said she merely understood that; '*I was going out to dinner'.*

17.04 Cllr Devitt earlier described how shemet various parties in the course of her work as a councillor. Some of these meetings took place in hotels or other venues, and Cllr Devitt rejected any suggestion that she might have been influenced in the course of such contact to act otherwise than appropriately as a councillor.

17.05 Cllr Devitt stated:

> *'...I think you have to go back to the role of a councillor. I was full-time, 1993, teaching. I was an apprentice solicitor. I was probably attending at Blackhall Place. I had, I was single, I was a single mother, rearing three teenage children. And I was a volunteer public representative. I had no office in which to carry out my duties as a public representative, I think that should be pointed out. So if you wanted to meet people you met them, either in your own home, at that stage I lived in a two bed apartment in Clontarf, so that inviting people to my home to meet them was out of the question. So therefore, we tended to meet them either in their offices or a hotel.'*

17.06 Cllr Devitt acknowledged that she had signed the motion at the behest of Mr Tiernan but maintained that she had no recollection of being lobbied by Mr Dunlop. She stated that she was supportive of the proposal to rezone the lands.She voted in support of the rezoning on both 21 May and 21 September 1993.

17.07 Cllr Devitt acknowledged that she had a social engagement with Mr Dunlop on 24 March 1993 (the day following Mr Dunlop's conclusion of the written agreement with Mr Tiernan) as part of the *'four by two club'*[18] but could not recollect if the rezoning of the Balheary lands had been a matter of discussion between herself and Mr Dunlop at that time. If it had come up in conversation with Mr Dunlop, Cllr Devitt suggested that she would have extolled the merits of the proposal. She stated: *'And I was very concerned that we would get a linear park. So I would have wanted those things in the motion.'*

And;

> *'And the important thing is that what I was looking for was additional lands over and above what you can normally get in recreational lands from a particular development.'*

17.08 In the course of her evidence she acknowledged that, in 1991, she was the recipient of indirect financial assistance from Mr Dunlop when he paid for some leaflets she had printed. Her recollection was that this printing cost Mr Dunlop between IR£200 and IR£400. She regarded this as a political contribution. It was probable that this assistance was provided by Mr Dunlop at the time of the 1991 local elections.

THE REVERSAL OF THE 'A1' REZONING IN SEPTEMBER 1993

18.01 Between May and September 1993, there was a serious campaign of opposition mounted to the 'A1' zoning which had been achieved for the lands. This opposition culminated in a reversal of the 21 May 1993 vote at a Special Meeting of the Council on the 21 September 1993. A written attendance on Brother Heneghan by the Brothers' solicitor on the 23 September 1993 noted the reversal in the following terms:

> *'Attending Brother Heneghan on the telephone. He said he was just ringing to say that the Council had overturned the re-zoning of the Balheary lands so that the agreement with Tiernan was in effect dead. It was anticipated that it would probably be at least ten years before any new proposal could be brought forward. If another proposal is going to be brought forward it was hoped that it would be done on it's own merits and would not get mixed up with a whole lot of applications at a time when the whole issue was highly politicised.'*

[18] See reference to the *'four by two'* club in Chapter Two.

18.02 Notwithstanding this reversal, Mr Tiernan was intent on keeping alive the prospect of future success for a residential zoning for the lands, and to this end a supplemental agreement was concluded with the Brothers on 12 July 1994. This provided that the 1991 agreement would be revived if the rezoning of the Balheary lands was achieved, on or before 30 September 1995. However, as already set out, notwithstanding Fingal County Council concluding a Variation of the 1993 Development Plan, the Balheary lands did not feature in their considerations. While Mr Tiernan and Mr Dunlop concluded a new agreement in 1994 (as previously referred to) there was no evidence that Mr Dunlop engaged in any meaningful way in lobbying councillors during the Variation process. Mr Dunlop testified that his agreement with Mr Tiernan effectively faded away in or about 1995.

18.03 Following the expiry of Mr Tiernan's 1994 agreement with the Brothers, no further agreement was concluded although it would appear Mr Tiernan made a subsequent approach in this regard in 1997. No further agreement was concluded. In December 1997, Mr Tiernan felt there was another opportunity to re-engage in the process to achieve rezoning of the Balheary lands. However, the Brothers did not wish to proceed and subsequently sold the lands to another party in 2003.

MR TIERNAN'S PAYMENTS TO COUNCILLORS

19.01 The Tribunal was advised that Mr Tiernan made the following payments to councillors:

- 1991 Cllr Liam T. Cosgrave — IR£500
- 1992 Cllr Therese Ridge — IR£1,000
- 1992 Cllr Finbarr Hanrahan — IR£1,000
- 1992 Cllr Jim Fay — IR£250
- 1994 Cllr Cathal Boland — IR£200 (cheque returned to Mr Tiernan by Cllr Boland).
- 1995 Cllr Tom Hand — IR£5,000
- 1995/6 Mr Liam Lawlor — IR£7,000 (refurbishment work to Mr Lawlor's home to the value of IR£7,000)
- Undated; Mr Liam Lawlor — IR£8,000 (a payment of IR£5,000 and a payment of IR£3,000)

19.02 Cllrs Liam T. Cosgrave, Ridge and Hanrahan acknowledged receiving money from Mr Tiernan. Cllr Fay denied receiving payment of IR£250 from Mr Tiernan.

CLLR LIAM T. COSGRAVE (FG)

20.01 Cllr Cosgrave told the Tribunal that he and Mr Tiernan were '*political friends'.* He appeared to acknowledge that Mr Tiernan may have made representations to him in relation to the Balheary lands. Cllr Cosgrave also said that he was unable to recall if he knew of Mr Tiernan's association with the Balheary lands. Cllr Cosgrave was questioned as to his recollection of having been lobbied in relation to the Balheary lands, as follows:

'Q Can you recall whether, in the period early 1991, you are canvassed either by Mr. Dunlop or Mr. Tiernan in relation to these lands?

A. As far as I'm concerned, I can't remember. But I don't think Mr. Dunlop ever spoke to me in relation to these lands. It's possible that Mr. Tiernan, who I've known well and it's possible that I would have met him and he would have canvassed me but I can't honestly recall.

Q. Did you know that Mr. Tiernan had an interest in these lands at all?

A. Not that I can recall.'

20.02 While Cllr Cosgrave told the Fine Gael inquiry in 2000 that he received two payments from Mr Tiernan, in a statement to the Tribunal he stated that he received only one. In his sworn evidence to the Tribunal, Cllr Cosgrave accepted that he had received one payment, but was unsure if he had in fact received a second. Cllr Cosgrave said he was prepared to accept Mr Tiernan's evidence that he had in fact received one payment.

CLLR M. J. COSGRAVE (FG)

21.01 Mr Tiernan claimed, in a letter to the Tribunal dated 27 June 2000, that he paid a sum of IR£500 to Cllr M. J. Cosgrave in 1991. He retracted this statement in a subsequent letter to the Tribunal of 14 May 2004. Mr Tiernan did not include Cllr M. J. Cosgrave's name in a list of elected representatives to whom he claimed he had made payments, (this list was contained in an affidavit sworn by Mr Tiernan on 2 October 2006). Mr Tiernan had earlier, in a letter dated 27 June 2000 claimed that he had made a payment to Mr M. J. Cosgrave, but later (14 May 2004) retracted that claim and apologised for the error.

21.02 In the course of his evidence on 16 November 2006 (Day 697), Mr Tiernan said that he *'could find no evidence'* of any payment made by him to Cllr M. J. Cosgrave, and he was *'not now sure'* that any such payment was made. Cllr M. J. Cosgrave denied receiving a payment of IR£500. Cllr Cosgrave said that he

did not know Mr Tiernan personally, but knew him as a member of the Fine Gael party. Cllr Cosgrave voted in favour of the Balheary rezoning in May 1993, but did not vote in September 1993.

21.03 Having regard to the evidence of both Mr Tiernan and Cllr M J Cosgrave, the Tribunal was satisfied that Cllr M J Cosgrave was not a recipient of any payment from Mr Tiernan in relation to the Balheary lands.

CLLR THERESE RIDGE (FG)

22.01 Cllr Ridge told the Tribunal that she recalled receiving IR£1,000 from Mr Tiernan in 1991, and another IR£1,000 in 1992, a total of £2,000. This was contrary to Mr Tiernan's position, namely, that he had given her only one payment of IR£1,000, and that this was made in 1992. Cllr Ridge said she and Mr Tiernan knew each other very well over many years. Cllr Ridge was unable to recollect ever being lobbied in relation to the Balheary lands by Mr Dunlop or the Brothers. She said it was possible that Mr Tiernan had lobbied her. Cllr Ridge said that at the time she accepted a political donation from Mr Tiernan she was unaware of his involvement with the Balheary lands. The Tribunal considered it extremely unlikely that she would not have been lobbied, given Mr Tiernan's association with Fine Gael, and his evidence that he lobbied Fine Gael and, indeed, other councillors and other parties. Cllr Ridge voted in favour of the rezoning on both 21 May and 21 September 1993.

22.02 Having regard to Cllr Ridges testimony, the Tribunal was satisfied that she had received two payments of IR£1,000 each from Mr Tiernan, one in 1991, and the other in 1992.

CLLR FINBARR HANRAHAN (FF)

23.01 Mr Tiernan told the Tribunal that he paid Cllr Hanrahan IR£1,000 in cash in 1992 because he was a councillor in the Lucan area where Mr Tiernan had a development project. Mr Tiernan saw nothing wrong with making a payment to Cllr Hanrahan in these circumstances.

23.02 Cllr Hanrahan acknowledged that he received a political donation from Mr Tiernan for the 1991 local elections, although he said it might have been paid in relation to the 1992 general election.

23.03 Hemaintained that he was unaware that Mr Tiernan was associated with the Balheary lands at the time he received the contribution from him, and had no recollection of being lobbied by him.

23.04 Cllr Hanrahan voted in support of the Balheary project in May 1993, but was absent from the September 1993 vote.

CLLR JIM FAY (FG)

24.01 Cllr Fay signed, and later withdrew the Balheary rezoning motion in 1991. Cllr Fay denied receiving a payment of IR£250 from Mr Tiernan in 1992. He said that he was not lobbied in relation to the rezoning of the Balheary lands. Cllr Fay left the County Council in 1991, and was not an elected councillor in 1992 when Mr Tiernan claimed that he paid him IR£250. Cllr Fay did not vote at the May and September 1993 meetings relating to the Balheary lands.

24.02 The Tribunal was satisfied that Mr Tiernan had not made a payment of IR£250 to Cllr Fay in 1992.

CLLR TOM HAND (FG)

25.01 In his letter to the Tribunal dated 27 June 2000, Mr Tiernan stated that he had paid a sum of IR£5,000 to Cllr Hand in 1995, following Cllr Hand's request for assistance in financing the purchase of a house in Co. Wicklow where he was proposing to move for health reasons.Mr Tiernan explained that as a friend of Cllr Hand for twenty years he felt obliged to support him, and gave him a cheque for IR£5,000. Mr Tiernan said that no favour of any kind was sought, or received, in relation to the payment.

25.02 In his sworn evidence to the Tribunal, Mr Tiernan repeated his statement that the reason he gave IR£5,000 to Cllr Hand in 1995 was to assist him in relation to a personal matter.

CLLR CATHAL BOLAND (FG)

26.01 Cllr Boland told the Tribunal that, on 28 May 1991, approximately three weeks prior to the local elections in 1991, in which he was a candidate, he attended at an opening of a residential project developed by Mr Tiernan at Mount Argus, Dublin. On that occasion Mr Tiernan gave him a donation of IR£500, in cash, towards election expenses.

26.02 Mr Tiernan accepted that he gave Cllr Boland IR£500 in cash in Mount Argus in 1991, but could not recall doing so. He also accepted that he had canvassed Cllr Boland in relation to Balheary, and that he was aware of Cllr Boland's opposition to the project. Cllr Boland acknowledged having been lobbied by Mr Tiernan to support the Balheary rezoning project, and stated that

when lobbied he had emphasised his opposition to the rezoning proposal. In addition, the Brothers wrote to him on 14 September 1993, although he had no recollection of the letter. Cllr Boland voted against the Balheary rezoning at both the May and September 1993 meetings.

26.03 In 1994, Cllr Boland held a fundraising lunch. Mr Tiernan did not attend but told Cllr Boland on the telephone that he would send a donation. Cllr Boland duly received a cheque for IR£200, together with a compliments slip from Tiernan Homesteads Ltd dated 22 April 1994 stating: '*Cathal…as agreedOn condition you do not vote against me, regards, Joe*'.

26.04 Cllr Boland testified that when he received the cheque, and the attached note, he was unaware which particular motion or issue Mr Tiernan was referring to, but he took objection to a donation being made subject to any condition. He resolved to return the cheque, and to his credit, did so approximately one month later, accompanied by his own compliments slip stating: '*Joe, many thanks but I never accept conditions.*'

26.05 Cllr Boland said he delayed returning the cheque for up to a month as he was inclined to put off dealing with an issue which he regarded as unpleasant.

26.06 Mr Tiernan acknowledged sending Cllr Boland a cheque for IR£200 in 1994, accompanied by the compliments slip, and he confirmed that it was returned soon afterwards by Cllr Boland. He did not accept that his payment constituted a bribe, or any attempt to bribe. Mr Tiernan appeared to distinguish between offering money to a councillor to vote in favour of something, and making a payment on condition that the councillor's vote would not be used against him. However, the Tribunal did not agree that any such distinction could reasonably exist. In its view, Mr Tiernan's letter to Cllr Boland constituted a clear attempt to bribe a councillor to abstain from exercising his vote as an elected councillor.

REASONS GIVEN BY MR TIERNAN FOR MAKING PAYMENTS TO COUNCILLORS

27.01 Mr Tiernan was himself actively involved in Fine Gael politics from 1973 to 1995 approximately. Mr Tiernan said he had a long and active involvement in politics over a number of years, and for that reason he was on friendly terms with a number of politicians, including councillors.

27.02 Mr Tiernan told the Tribunal that as a political activist, he knew of the costs associated with elections, and was anxious to support those councillors to

whom he made payments. With the exception of the payment to Cllr Hand, Mr Tiernan maintained that his payments to councillors were bona fide political donations. Mr Tiernan also told the Tribunal that if requested, he would make a political donation outside of election time.

27.03 In response to the question; *'What is a developer doing making payments to councillors who within a year or two will vote on developments that will rezone the lands and make him a lot of money?'*, Mr Tiernan responded *'...they might not vote. They might not vote on it. They don't necessarily vote.'* He denied any suggestion that such payments might be *'corruption'* and stated that they payments were made *'...in the furtherance of democracy.'* The Tribunal however was satisfied that, contrary to his claim that his payments to councillors had been motivated by his desire to promote democracy, Mr Tiernan's motivation, to a large extent, was his desire to ingratiate himself with councillors (including councillors of a different persuasion than his own) in anticipation of their favourable consideration of projects in which he had an interest which required, or might in the future require, their vote in the County Council

27.04 Asked if he would do so around the time of a Council vote[19], Mr Tiernan stated; *'...If it was close to a vote concerning me I would not'.* In response to the question; *'Where is the date before which you would have said certainly councillor and after which you would have said certainly not councillors because that would be interfering with the democratic process?'* Mr Tiernan replied *'...I cannot visualise a situation that has arisen resembling your question. But I would say anytime up to a week or two before it. I would see nothing wrong with it.'*

27.05 The Tribunal did not accept Mr Tiernan's contention that his motivation for making such payments was the *'furtherance of democracy'.* While the Tribunal acknowledged that Mr Tiernan, particularly because of his own political background, may have been inclined towards supporting councillors financially at the time of elections, the Tribunal was satisfied that a significant motivating factor in making these payments was a desire or intention on his part to ensure that the recipients of such payments would be favourably disposed towards supporting his development projects at Council level. Indeed, Mr Tiernan himself admitted as much in the course of his explanation for the IR£1,000 cash he had provided to Cllr Hanrahan. The Tribunal was also assisted in its arrival at this conclusion having regard to the content of the compliment slip sent by Mr Tiernan with a cheque to Cllr Boland in 1994.

[19] Mr Tiernan was questioned in this regard in the context of him having a rezoning proposal before the Council.

MR TIERNAN'S KNOWLEDGE OF CORRUPTION IN THE 1990S

28.01 Mr Tiernan stated that prior to *'about 1994 or 1995'*, despite being a successful developer, and having at that stage successfully undertaken a number of developments in the Dublin area, he was unaware of rumours or stories to the effect that some elected councillors in County Dublin were providing support for rezoning motions in return for payment.

28.02 When pressed as to whether or not he had heard rumours of corruption involving councillors, Mr Tiernan acknowledged that he had indeed heard of such rumours. When pressed on the issue, he said he heard nothing about it until it appeared in the newspapers. He recalled Minister Smith's phrase; '*debased currency*' but said that he had; '*no knowledge of Minister Smith at the time talking about bribes or County Councillors seeking money for their votes.*'

28.03 Mr Tiernan stated that he had; *'... no knowledge of cash for votes. I had no experience of cash for votes. I saw no cash for votes.'* Mr Tiernan told the Tribunal that he had not made any inquiry of Mr Dunlop in 1993, or subsequently, about whether he had paid councillors in relation to Balheary.

28.04 Having regard, in particular to its finding that in 1990 Mr Tiernan uttered words to the effect that he wanted to *'take care'* of Cllr Hand himself, the Tribunal rejected Mr Tiernan's evidence that he was unaware of a situation where certain councillors were in receipt of money in return for their voting support for rezoning or other projects.

MR TIERNAN'S EVIDENCE AS TO HIS RELATIONSHIP WITH MR LIAM LAWLOR (FF)

29.01 Mr Tiernan told the Tribunal that Mr Lawlor introduced him to Mr Dunlop in early 1990, and that he was friendly with Mr Lawlor for many years. He stated that Mr Lawlor gave him *'political advice'* (rather than business or property advice) which he explained was advice based on Mr Lawlor's knowledge of planning matters as a serving TD and councillor; '*for the area.*'

29.02 Mr Tiernan believed that he paid Mr Lawlor two sums of money, one of IR£3,000 and the other of IR£5,000, following Mr Lawlor's requests to him for money. He classed these payments as political contributions, and as payments based on personal friendship and Mr Lawlor's personal needs, and emphasised that the payments had not been made for advice or in relation to any business matter.

29.03 Mr Tiernan also told the Tribunal that in 1995/6 he carried out building work at Mr Lawlor's home in Lucan, Co. Dublin at Mr Lawlor's request at a cost of approximately IR£7,000. He was not paid for this work, nor had he discussed payment with Mr Lawlor. Mr Tiernan said that he did not raise any invoice for the work. He stated: '...*When the job was completed, I did not raise an invoice. I did not ask him for the money. And he did not make any effort or attempt to pay it by asking me. So it was just left.*'

29.04 Mr Tiernan said that his decision to carry out this work for Mr Lawlor without payment was based on their friendship.

CHAPTER TWELVE – THE BALHEARY MODULE

EXHIBITS

1. Letter from Mr Dunlop to Brother Mullan dated 5 March 1991.....2228

2. Letter from Mr Dunlop to Brother Mullan dated 15 March 1991 enclosing draft letter to councillors dated 19 March 1991.....2229

3. Letter/agreement from Mr Dunlop to Mr Tiernan dated 23 March 1993..... 2231

4. Fax from Mr Dunlop to Brother Heneghan dated 5 March 1993..... 2233

5. Letter/agreement from Mr Tiernan to Mr Dunlop dated 22 September 1994.....2234

6. Compliment slip of Tiernan Homesteads Ltd, dated 22 April 1994.....2236

7. Compliment slip of Fingal County Council dated 22 May 1994 together with cheque for IR£200 dated 22 April 1994 drawn on the account of Tiernan Homesteads Ltd and payable to Mr Cathal Boland.....2237

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

5th March, 1991

Dear Brother Mullan,

As you know the motion relating to Balheary will be taken on Thursday next, 7th March, 1991, at a meeting beginning at 2.30pm. It is the first item on the agenda and it is imperative that the maximum support for the motion be present in the chamber from the very start of the meeting. I will oversee much of the contact but I would like you to phone the attached list of Councillors seeking their support. I know Brother Gibson has phoned some of them already but another call won't go astray.

I will ring you this evening.

Kind regards,

FRANK DUNLOP
MANAGING DIRECTOR

Return to report

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Brother Mullen,
Christian Brothers Provincialate,
Cluain Mhuire,
274 North Circular Road,
Dublin 7.

15th March, 1991

Dear Brother Mullen,

I have been unable to contact you this morning and as I am going away for the weekend I suggest the following course of action:

(a) Draft letter to all Councillors enclosed for your consideration and signature. This letter to be posted pre-lunch on Tuesday next by my office.

(b) List of Councillors, and their phone numbers, to be contacted by you over the next 5/6 days. Notes on each attached.

I will liaise with you first thing on Tuesday morning next and I strongly recommend that we meet with Mr. T. in the early afternoon on Tuesday, or at any other time on that day suitable to you.

Kind regards,

FRANK DUNLOP
MANAGING DIRECTOR

19th March, 1991

Dear Councillor,

Further to my previous letter of 26th February last (copy attached) I am writing to you seeking your support for the first item to be discussed on the agenda of the Development Plan meeting scheduled for Thursday next, March 21st at 2.30pm.

In discussions with our Planning Advisors they inform us that Swords requires substantial infrastructural investment mainly in the upgrading of the foul-drainage system and our proposal would make a substantial contribution to this up-grading to ensure protection to the Broad Meadow Estuary and in particular, water quality. No proposal would be submitted until our technical advisors had liaised with the Council's Engineering Department to comply with environmental guidelines as well as with the good planning of the area.

We will continue our long association with the people of Swords and as you are aware we maintain a Retreat House at Balheary which is renowned both nationally and internationally.

We trust that when you have had time to consider our request you will see your way to giving us your vital support on Thursday next. Should you require any further information please do not hesitate to contact either Brother Gibson or myself at phone number 300247.

Yours sincerely,

Return to report

FRANK DUNLOP

& ASSOCIATES

Frank Dunlop & Associates Ltd • Consultants in Public Relations • 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577

Mr. Joe Tiernan,
40 Deerpark Road,
Castleknock,
Dublin 15,
Ireland.

STRICTLY PERSONAL

23rd. March. 1993

Re. Balheary & Mountgorry

Dear Joe,

Following our meeting at my office of today's date I set out formally our agreement on the above named matters.

It is agreed that I will act in a professional public affairs capacity on your behalf in order to achieve the residential zoning of both these bodies of land under the current review of the County Dublin Development Plan scheduled for finalisation in December of this year.

The financial arrangement relating to this professional activity is as follows:

- IR£100K (at minimum) for Balheary;
- IR£100K (at minimum) for Mountgorry.

payable as follows:

(a) 50% one year after full planning permission in each case;

(b) 50% twelve calender months subsequent to the payment of the first 50% referred to at (a).

Frank Dunlop will bear all costs relating to the public affairs programme (lobbying) with the sole exception of print work the cost of which will be borne by Mr. Joe Tiernan.

deleted this agreement F.T.D. 23.3.99

The agreed amounts referred to above will be invoiced, together with the relevant VAT amounts, by Frank Dunlop, via an appropriate company, to the company to be identified by Mr. Joe Tiernan.

The arrangement is personal to both Mr. Joe Tiernan and Mr. Frank Dunlop and will stand regardless of any change in the business activities or location of either party.

This is an accurate account of the arrangement discussed and you are requested to append your signature at the place identified below as evidence of your good faith in this matter between us. This letter will stand as contractual evidence of our arrangement as set out above and there will be no other documentation required in the matter.

Yours sincerely,

Frank Dunlop

Agreed,

Joe Tiernan

Return to report

FRANK DUNLOP

& ASSOCIATES

• Frank Dunlop & Associates Ltd • Consultants in Public Relations •
• 25 Upper Mount St. Dublin 2 • Phone 613543 • Fax 614577 •

FROM: F. Dunlop	TO: Brother Henerhan	
SUBJECT: ATTACHED	DATE: 5.5.'93	
TO FAX NO.: 381075	TOTAL NUMBER OF PAGES INCLUDING THIS ONE:	1

MESSAGE

Brother,

I am concerned that some Councillors I spoke to today had not received your letter. It is vitally important that all 78 Councillors be in receipt of this letter from you at the latest tomorrow.

Kind Regards,

Frank.

IF PAGES DO NOT COME THROUGH CLEARLY PLEASE CONTACT THE NUMBER ABOVE

(A)

Supercedes any other agreement, documentary or otherwise between us.

TIERNAN HOMESTEADS LTD.

Abbey House
15-17 Upper Abbey Street
Dublin 1
Telephone: 872 4911
FAX: 873 3917

22/9/

Frank Dunlop & Associates,
25 Upper Mount Street,
Dublin 2.

22nd September 1994.

RE: BALHEARY AND MOUNTGORRY LANDS, SWORDS

Dear Frank,

Following our meeting today the 22nd I set out formally our agreement on the above named matters.

It is agreed that you will act in a professional public affairs capacity on my behalf in order to achieve the residential zoning of both these areas of land under the current review of the County Fingal Action Plan for the Swords Area scheduled to be completed in 1995.

The financial arrangement relating to this professional activity is as follows:

£100,000 for Balheary
£100,000 for Mountgorry

Payable as follows:

a) 50% one year after full Planning Permission is granted in each case.

b) 50% 12 calendar months subsequent to the payment of the first 50% referred to at (a).

Frank Dunlop will bear all costs relating to the Public Affairs Programme lobbying.

The Balheary and Mountgorry lands are 80 acres approximately in area each, should there be a significant lesser area of land zoned it is agreed that there will be a pro-rata reduction in

TIERNAN HOMESTEADS LTD.

Abbey House
15-17 Upper Abbey Street
Dublin 1
Telephone: 872 4911
FAX: 873 3917

The agreed amounts referred to above will be invoiced, together with the relevant vat amounts, by Frank Dunlop, via an appropriate company to the company to be identified by Mr. Joe Tiernan.

The arrangement is personal to both Mr. Joe Tiernan and Mr. Frank Dunlop and will stand regardless of any change in the business activities or location of either party.

This is an accurate account of the arrangement discussed and you are requested to append your signature at the place identified below as evidence of good faith in this matter between us. This letter will stand as contractual evidence of our arrangement as set out above and there will be no other documentation required in this matter.

Yours sincerely,

JOE TIERNAN

FRANK DUNLOP

Return to report

06/10 2005 10:34 FAX 016765999 WILLIAM EGAN & ASS 008

TIERNAN HOMESTEADS LTD.

22/4/94

Cathal As agreed
In addition you do
not vote against me
Regard Gal

Abbey House
15-17 Upper Abbey Street
Dublin 1
Telephone: 724911
FAX: 733917

With Compliments

06/10 2005 10:34 FAX 018765999 WILLIAM EGAN & ASS 009

Comhairle Chontae Fhine Gall
Bosca 174,
46/49 Sráid Uí Chonaill Uacht,
Baile Átha Cliath 1.

Fingal County Council
P.O. Box 174,
46/49 Upper O'Connell Street,
Dublin 1.

Tel: (01) 8727777
Fax: (01) 8725782

22/5/94

Joe,

Many thanks but I never accept any conditions

With Compliments

Ulster Bank 98-50-20

LOWER BAGGOT STREET, DUBLIN

22/4 19 94

Pay Cathal Balan or order

Two Hundred Punt -0 IR£200-00

TIERNAN HOMESTEADS LIMITED

Cheque No. Branch Sort Code Account No.

⑈005067⑈ 98⑆50 20⑆ 06032013⑈

CHAPTER THIRTEEN – ST GERARDS MODULE

INTRODUCTION

1.01 This module inquired into attempts during the reviews of the 1983 and 1993 Dublin County Development Plans to rezone approximately 22 acres of lands owned by St Gerard's School Trust at Old Connaught Avenue, Thornhill, Bray, Co. Wicklow. Although the lands had a Co. Wicklow address, until 31 December 1993, they were located within the functional area of Dublin County Council; thereafter they were located within the functional area of Dún Laoghaire -Rathdown County Council.

1.02 Sixteen witnesses gave evidence in public between 26 November and 4 December 2003.

1.03 Development of the lands was severely restricted because they were zoned B (agriculture) and G, (green belt) in the 1983 and 1993 Dublin County Development Plans. The Board of St Gerard's School was anxious to have the lands rezoned.

1.04 The attempts to have the lands rezoned, in both instances, were unsuccessful.

THE ATTEMPT TO REZONE THE ST GERARD'S LANDS IN 1992

2.01 The 1991 Dublin County Draft Development Plan adopted the 1983 green belt zoning for St Gerard's School. The plan was placed on statutory public display from 2 September to 3 December 1991. During this period 52 representations/objections were received by Dublin County Council. These included a representation made on behalf of St Gerard's on 27 November 1991 by Mr Fergal Kenny, Consultant Architect. He sought to have the lands to be zoned residential for low density housing, limited to 18 houses.

2.02 A motion in similar terms signed by Cllr Liam T. Cosgrave was lodged with Dublin County Council on 14 April 1992. It sought to have the land rezoned for residential development at a density of not more than two houses per hectare. This motion was proposed by Cllr Liam T. Cosgrave and seconded by Cllr Michael J. Cosgrave at a special meeting of the County Council on 30 April 1992. The County Council Manager had recommended that councillors reject the motion, as the proposed rezoning could lead to a proliferation of septic tanks. This was because the sewer serving St Gerard's School drained to Bray Urban District Council, where Dublin County Council had no jurisdiction. The motion was

defeated by 22 votes to 19. St Gerard's lands therefore retained their green belt zoning when the Dublin County Development Plan 1993 was adopted on 10 December 1993.

THE REVIEW OF THE 1993 DEVELOPMENT PLAN BY DUN LAOGHAIRE-RATHDOWN COUNCIL

2.03 In 1996**,** Dún Laoghaire-Rathdown County Council began a review of the 1993 Dublin County Development Plan, and the 1991 Dún Laoghaire Borough Development Plan. The Draft Development Plan was put on display between 21 May and 22 August 1997. In the plan, the St Gerard's lands continued to be zoned B and G (green belt) '*to protect and enhance the open nature of lands between urban areas.*'

MR FRANK DUNLOP'S RETENTION IN 1997 AND THE FURTHER ATTEMPT TO REZONE THE ST GERARD'S LANDS AT THAT TIME

3.01 In 1997, Mr Frank Dunlop was retained to promote the rezoning of the school's lands. He was engaged by Mr Marcus Magnier, a Dublin auctioneer, who had been associated with the school from the early 1990s, as a parent of a student at the school, and as a member of its Board of Governors. At all times, Mr Magnier was acting on the board's behalf, and in its interests.

3.02 The Tribunal was satisfied that it was in the context of this further opportunity to attempt to have the lands rezoned, that Mr Dunlop was retained by Mr Magnier on behalf of St Gerard's School in or about August/September 1997.

3.03 Initial contact between Mr Dunlop and Mr Magnier occurred in 1991, in relation to an unrelated matter, and at a time when St Gerard's was engaged in the process of seeking to rezone its lands. There were a number of meetings between Mr Dunlop and Mr Magnier in early 1991. Although Mr Dunlop was not at this time engaged by Mr Magnier as a lobbyist in connection with St Gerard's, it was probable that they discussed the steps necessary to achieve the rezoning of the lands. It was likely that at that time, Mr Dunlop explained to Mr Magnier in some detail, the process of lobbying councillors to support a rezoning vote[1]. The Tribunal was satisfied that Mr Dunlop was not engaged as a lobbyist for St Gerard's in the period 1991 to 1992.

[1] Mr Magnier, while he had no recollection of any such discussion, acknowledged it was possible he had such discussion. Mr Dunlop's diary for 5 February 1991, attributed one such meeting to 'St. Gerard's' FD Day 433, page 31-34, reference page 142.

3.04 At the time of Mr Dunlop's retention in 1997, Auveen Byrne & Associates, Planning Consultants, had made submissions on behalf of the school to the County Council supporting a change of zoning of the lands to permit low density residential development limited to two dwellings per hectare. Mr Magnier provided Mr Dunlop with these submissions, and with the necessary additional documentation including a map of the lands.

3.05 Mr Dunlop expressed the view that Mr Magnier did not, at any time, believe or suspect that in the course of his lobbying work he, Mr Dunlop, would pay, or was likely to pay, councillors for their support for rezoning. Mr Magnier told the Tribunal that the subject of paying councillors never arose in the course of his discussions with Mr Dunlop.

3.06 The Tribunal was satisfied that Mr Dunlop did not, at any stage, advise Mr Magnier of the fact, or likelihood that councillors would be paid in return for their support for a rezoning motion relating to the St Gerard's lands. The Tribunal was also satisfied that neither Mr Magnier nor, at a later stage, Mr Jim Sherwin (Chairman of the school's Board), or anyone else representing the school's interests, suspected, or were aware, that any such payments were contemplated, or made by Mr Dunlop.

PAYMENTS TO MR DUNLOP BY ST GERARD'S

4.01 Mr Dunlop and Mr Magnier, representing St Gerard's, agreed a fee of IR£2,000 plus VAT for Mr Dunlop's lobbying services, to be paid immediately. A success fee of IR£3,000 plus VAT was to be paid, if and when the rezoning was achieved. A cheque for IR£2,420 was sent to Mr Dunlop by the school on 23 September 1997. This payment was fully accounted for in the school's accounts, and in the accounts of Frank Dunlop & Associates Ltd. The proposed success fee of IR£3,000 plus VAT was not paid, as the rezoning of the lands was not achieved.

MR DUNLOP'S LOBBYING EFFORTS ON BEHALF OF ST GERARD'S

5.01 On 12 February 1998, a motion signed by Cllrs Donal Lowry and Larry Butler, proposing that the St Gerard's lands be zoned for residential development with a density limitation of two dwellings per hectare (maximum 18) was put before a special meeting of the Council. The manager had again recommended that the lands retain their 1993 zoning because they formed part of a green belt area. The motion was defeated by 12 votes to 11. Accordingly, the lands retained their 1993 green belt zoning in the 1998 Dún Laoghaire-Rathdown Development Plan.

5.02 Mr Dunlop told the Tribunal that he had lobbied the two councillors to support the rezoning, and that he had obtained their signatures on the motion. He maintained that his approach to Cllr Lowry was made at the suggestion of Cllr Liam Cosgrave, a claim denied by Cllr Cosgrave. He maintained that his approach to Cllr Butler was made in the wake of particular comments made to him by Cllr Tony Fox, a claim denied by Cllr Fox. The aforementioned four councillors were the only people whom Mr Dunlop lobbied in connection with St Gerard's.

5.03 Both Cllr Lowry and Mr Dunlop agreed, that Cllr Lowry's signature was obtained on 22 November 1997, when Mr Dunlop called to his home. Cllr Lowry queried whether the meeting was by prior arrangement, as claimed by Mr Dunlop, but the Tribunal was satisfied that it was, given the fact that Cllr Lowry acknowledged that this was the first time he met Mr Dunlop. Cllr Lowry was unable to say if Cllr Cosgrave had spoken to him in relation to the matter. When asked if he had any contact at all with Cllr Cosgrave in relation to this matter he replied; '*I can't recollect, I can't recollect at all. I used to meet Mr Cosgrave at County Council meetings. I don't recall him mentioning this particular proposal to me.'*

5.04 Cllr Lowry told the Tribunal that he was happy to sign the motion as he had previously received correspondence from Mr Jim Sherwin, Chairman of the Board of Governors of the school, seeking his support. He had indicated that his support would be forthcoming in order to enable the school to sell the lands, and then invest the proceeds in the school's development.

5.05 Cllr Larry Butler had less recollection as to when or where he signed the rezoning motion than Cllr Lowry had, save that he accepted that he signed it at Mr Dunlop's behest. Mr Butler was unclear as to whether he signed the motion at the behest of Mrs Eileen Durkan (who was associated with the school) or Mr Dunlop. He did not dispute that, at a meeting in the Tara Towers Hotel on the 30 September 1997, with Mr Dunlop (in relation to another matter), the issue of the St Gerard's lands may have been discussed and he did not dispute Mr Dunlop's evidence that following that meeting, he agreed to meet Mr Dunlop again in relation to the St Gerard's lands. Mr Dunlop's diary recorded a meeting with Cllr Butler on the 24 November 1997 at Dún Laoghaire Town Hall, and Cllr Butler accepted that although he could not recollect when the motion was actually signed by him, he would not dispute Mr Dunlop's recollection that he had indeed signed the motion at that time. Cllr Butler told the Tribunal that he was happy to sign the motion as he had been contacted by many of the parents of students at the school, seeking his support for the rezoning, and which he was happy to give, notwithstanding the '*green belt'* designation given to the lands in the draft plan. He told the Tribunal he would have told a meeting of his Fianna Fail colleagues

that he would be supporting the motion, and that he felt that it was a reasonable proposal for the school in order to provide it with funding to develop the school, and its sports complex.

THE INVOLVEMENT OF CLLR LIAM T. COSGRAVE (FG)

6.01 Mr Dunlop testified that having been contacted in mid 1997 by Mr Magnier, and having been provided by him with the submission and Map, which had been furnished to Dún Laoghaire-Rathdown County Council by Ms. Auveen Byrne, Planning Consultant, he discussed the matter with Cllr Cosgrave. Mr Magnier had told him of Cllr Cosgrave's involvement in the earlier attempt in 1991 to have the lands rezoned. While Mr Dunlop could not be categoric about the date when the rezoning issue was first discussed with Cllr Cosgrave, he was satisfied that this had occurred prior to 18 September 1997. Mr Dunlop's diary for 16 September 1997, recorded a meeting with Cllr Cosgrave. Mr Dunlop testified that his primary purpose in meeting with Cllr Cosgrave on 16 September 1997, was unconnected with the St Gerard's rezoning issue, although he believed that on that occasion he may well have spoken to Cllr Cosgrave about the lands. In any event the thrust of his evidence was that he and Cllr Cosgrave discussed St Gerard's rezoning issue subsequent to Mr Magnier contacting him, and before he agreed to act, and certainly prior to 18 September 1997, the date on which he wrote to the Financial Officer of the school recording the terms of his engagement and enclosing his fee invoice.

6.02 Questioned by the Tribunal as to what Cllr Cosgrave had said about the St Gerard's lands in the course of their initial discussion, Mr Dunlop responded:

> *'well in relation to what Mr. Cosgrave said, my abiding recollection of what he said to me and the action that I took as a result was that he would not sign it: [the motion] that he recommended that I get somebody else to sign it and that he recommended Donal Lowry, whom I did not know was aware was a councillor but I did not know and had never met.'*

6.03 Questioned as to what explanation Cllr Cosgrave had given for refusing to sign the motion, Mr Dunlop stated:

> *'well I don't know the answer to that. What reason he might have had – he did either on that occasion or on another occasion display an attitude to St. Gerard's which was that, which left me with the distinct impression that he had done his bit for St. Gerard's, it wasn't working and that he wasn't prepared to go up front on it again. And I read no more than what I have said into his remarks. He did say that he thought that St Gerard's, because of*

the nature of the establishment, he thought St. Gerard's had enough money anyway and what did they need their land rezoned for.'

6.04 Mr Dunlop testified that on the occasion, which was prior to 18 September 1997, when he spoke to Cllr Cosgrave about the St Gerard's rezoning, be that 16 September 1997 (when he and Cllr Cosgrave were discussing matters unrelated to St Gerard's), or another date, Cllr Cosgrave did not raise the issue of money in the context of St Gerard's. That conversation, Mr Dunlop maintained, took place on 5 November 1997. Mr Dunlop's diary for that date recorded a meeting with Cllr Cosgrave in the following terms: *'Davenport L Cosg'*. Mr Dunlop told the Tribunal:

'...there was quite a substantial amount of activities going on in Dun Laoghaire/Rathdown Council at that particular time but yes, as I said in my statement, I met him again on the 5th, and he on that occasion raised the question, he raised two matters in fact 1, he raised the question of money and 2, he mentioned another Councillors name, other than Councillor Donal Lowry. That he would have to talk to another Councillor and he mentioned that other Councillor....the discussion on the 5th was a reprise of what had taken place on the 16th; in other words this was Mr. Cosgrave telling me again, that demurring about signing the motion and the map recommending another Councillor, that I should go to another Councillor for the signature.'

6.05 Mr Dunlop also said that in terms of seeking a signature to the motion, Cllr Cosgrave had recommended Cllr Lowry. Mr Dunlop stated:

'Well we discussed the issue of the lands. He repeated what he had said, that he did not want to sign, would not sign. He recommended that I go to Donal Lowry. I went through the discussion with him – I didn't know Donal Lowry, I had never met Donal Lowry, I cant absolutely definitively say to you that he promised me that he would contact Donal Lowry in advance prior to my contacting him. Donal Lowry never indicated to me when I met him subsequently for the signature that he had actually been contacted by Liam Cosgrave....'

6.06 Another Councillor mentioned by Cllr Cosgrave was Cllr Pat Hand, but Mr Dunlop stressed that Cllr Pat Hand's name had only been raised by Cllr Cosgrave in the context of someone whom he, Cllr Cosgrave, would lobby in support of the rezoning motion.

6.07 In relation to his discussion with Cllr Cosgrave concerning money being paid in return for Cllr Cosgrave's support, Mr Dunlop stated:

> *'...he* [Cllr Cosgrave] *raised the question of money. He said he would need to be paid... he raised the question of money being paid. I cannot absolutely say to you definitively he nominated £1,000. But the end result of the conversation between us was that I agreed to pay him £1,000.'*

6.08 Mr Dunlop acknowledged that he had received IR£2,000, plus VAT, which had been nominated by him to St Gerard's, and which he had been paid on 30 September 1997, by the time of his claimed conversation with Cllr Cosgrave. He said that he had told Cllr Cosgrave that he had arranged with the school for payment of a very small amount of money, and thus indicated that any payment to Cllr Cosgrave would have to take account of that fact.

6.09 Questioned as to whether he was optimistic about the rezoning prospects for the St Gerard's lands, Mr Dunlop responded:

> *'I knew from the report of Auveen Byrne, she had outlined fairly serious drawbacks in relation to the possibilities, while not definitively talking about that, she was raising technical issues in her report in relation to this with Marcus Magnier and with the Board of St Gerard's. That never really inhibited either me or councillors before in either supporting or voting for particular motions, notwithstanding the fact that the manager or the officials might recommend against it, which was almost as a given.'*

6.10 He believed that the motion had a '*50:50 chance*', which he gleaned from his meeting with Cllr Cosgrave, who did not appear optimistic. His lack of optimism relating solely to the likely attitude to the proposal by his own Party colleagues.

6.11 Mr Dunlop told the Tribunal that, consequent on the agreement which he and Cllr Cosgrave had entered into on 5 November 1997, he duly paid Cllr Cosgrave the agreed IR£1,000. This payment, Mr Dunlop stated, was made on the 3 March 1998 in cash, at the Davenport Hotel**,** in an envelope. Mr Dunlop's diary recorded a meeting with Cllr Cosgrave on that date, and at that location. The entry read *'10.45 LC @ Davenport'*. Cllr Cosgrave had by then voted in favour of the St Gerard's rezoning motion, at the County Council meeting of the 12 February 1998.

6.12 Outlining what had occurred at the Davenport meeting, Mr Dunlop stated:

'The meeting took place in the Davenport Hotel. We discussed what had occurred in relation to St. Gerard's. I believed the meeting was organised by me.... And that I asked Liam Cosgrave for the list of people who had voted for, against or otherwise and he provided it to me on that day on the same day, I provided him with the £1,000 that I had promised him.'

6.13 Mr Dunlop also stated that the information (written and verbal) which Cllr Cosgrave provided him with on 3 March 1998, enabled him prepare a typed list, in his own office, which he duly furnished to Mr Magnier on 3 March 1998.

CLLR COSGRAVE'S RESPONSE TO MR DUNLOP'S ALLEGATION THAT HE PAID HIM IR£1,000

6.14 In the course of his testimony, Cllr Cosgrave vehemently denied Mr Dunlop's allegation that he had sought, or had been paid IR£1,000, or any sum, in return for his support for the St Gerard's rezoning motion in February 1998. He denied that Mr Dunlop had ever sought his signature on the motion, or that he had suggested that a colleague, Cllr Lowry, be approached with a request to sign the motion. In effect, there was a complete conflict between Cllr Cosgrave and Mr Dunlop on almost every aspect of Mr Dunlop's evidence in relation to the St Gerard's rezoning project.

6.15 Cllr Cosgrave conceded that he and Mr Dunlop met on 16 September 1997, as is indicated by the entry in Mr Dunlop's diary, but he denied any discussion about the St Gerard's lands on that occasion.

6.16 In the course of his evidence, Cllr Cosgrave was questioned as to how he could be so certain that there had been no discussion regarding the rezoning of the St Gerard's lands, in the light of what had been put by his own Counsel to Mr Dunlop in another Module, in the context of Cllr Cosgrave and Mr Dunlop's meeting on 16 September 1997, namely, that he, Cllr Cosgrave, had no memory of what had transpired at that meeting. Cllr Cosgrave said that he was as certain as he could be.

6.17 In relation to the alleged meeting on 5 November 1997, and the entry in Mr Dunlop's diary, Cllr Cosgrave told the Tribunal that he had no recollection of meeting Mr Dunlop. He maintained that he was in the Seanad on that day, and that it was unlikely that he would have arranged a meeting with Mr Dunlop for 2:15pm, as the Seanad sat at 2:30pm. Cllr Cosgrave however did not deny that such a meeting had taken place. However, he was nonetheless adamant that if a meeting had occurred, the St Gerard's lands were not discussed, as he did not

know of Mr Dunlop's involvement with them, nor had he been requested to sign a motion on that date, or on any other occasion. Cllr Cosgrave maintained that had he been asked to do so, he probably would have signed the motion, given his support for the rezoning motion submitted in 1992. In the course of his testimony however, Cllr Cosgrave conceded that it was a *'possibility'* that he had met with Mr Dunlop on the 5 November 1997, and that it was a *'possibility'* that it had been the St Gerard's issue which had brought himself and Mr Dunlop together on that date. Notwithstanding this concession, Cllr Cosgrave continued to maintain that he had not been requested to sign a motion for the lands. Cllr Cosgrave acknowledged that a request by Mr Dunlop that he sign a motion was a matter which would have a required a face to face meeting between them.

6.18 In his response to Mr Dunlop's evidence that he had met with him on 3 March 1998, Cllr Cosgrave did not dispute that such a meeting could have taken place, stating *'...I can't say it definitely took place, can't say it definitely didn't take place.'* He acknowledged that any such meeting was likely to have been in connection with the Development Plan review, then current in Dún Laoghaire-Rathdown Council, and he acknowledged that the vote on the St Gerard's lands motion had taken place by then. Cllr Cosgrave acknowledged that it was *'possible'* that he had provided information to Mr Dunlop as to the way his fellow councillors had voted on 12 February 1998, but he did not *'necessarily'* agree that Mr Dunlop's contact with him on 3 March 1998, with regard to the St Gerard's lands motion had taken place against a backdrop of previous dealings between them in relation to the matter.

6.19 On Day 438, the following exchange took place between Counsel for the Tribunal and Cllr Cosgrave:

> *'Q. But what is a fact Mr. Cosgrave, is when Mr. Dunlop came to seek information in March of 1998 about these lands, it was to you that he turned, isn't that right?*
> *A. That's correct.*
> *Q. And I am suggesting to you that it is unlikely that you would be the councillor he would go to, if you and he did not have a history in connection with these lands?*
> *A. I reject that.*
> *Q. Right. I am suggesting to you that he could equally have gone to Councillor Coffey with whom he was friendly or he could equally have gone to Councillor Fox or Councillor Lydon and sought the same information from them?*

A. He could have gone to most councillors probably, if they knew him, would probably go off and get the -- it's not, you know, rocket science, it wasn't a state secret, the information he was looking for.

Q. Exactly. Mr. Cosgrave, but he did not do any of those things, on your admission he went to you, isn't that right?

A. That's right.

Q. And you gave him the information?

A. That's correct.

Q. And I suggest that it is as a matter of logic that he would have gone to a person with whom he had a history in connection with dealing with these lands, do you agree with that?

A.I don't agree with the inference you are putting on it.

Q. All right. And I also want to put it to you Mr. Cosgrave that it would be unlikely for Mr. Dunlop not to have solicited your support for the St. Gerard's Bray lands, that it was part and parcel of what he did, was to look for support for his projects?

A. Well, I mean, I have read the evidence so far he, there was 28 councillors there, if you take me off the list it appears he only canvassed three people, so you begin to wonder what he actually did in relation to this project.

Q. If you just listen to the question Mr. Cosgrave and perhaps you just answer the question that I ask you, which is, in the light of your evidence, as to how Mr. Dunlop conducted his business with you, which was primarily concerned with the development plan and obtaining your support, I am saying that in the light of your evidence, that it is unlikely that Mr. Dunlop would not have sought your support in connection with the St. Gerard's Bray lands, unlikely?

A. It's possibly unlikely, but it's also, it's not -- it's more than you, be unlikely when you see the evidence in relation to the 24 or 26 councillors that he didn't contact.

Q. That he didn't speak with?

A. Didn't speak with.

Q. Yes although --

A. That's not plausible.

Q. You don't accept that?

A. Well what I don't accept is that -- I mean, if you want to ask I don't accept that a man who gets 2,000 in fees gives it all away and is working as a loss leader...'

THE INVOLVEMENT OF CLLR TONY FOX (FF)

7.01 Mr Dunlop alleged that he paid Cllr Tony Fox IR£1,000 in cash in return for his support for the February 1998 motion, and he claimed that he spoke to Cllr Fox concerning the St Gerard's lands in or around the month of September 1997. On Day 433, Mr Dunlop described his meeting with Cllr Fox in the following terms:

> *'Well, I spoke with Mr. Fox in relation to St. Gerard's. He said he would not sign the motion – sign a motion in relation to these lands, that he would support it. He raised the question of money, he recommended that I get Councillor Larry Butler to sign it, with words to the effect that Larry was signing nothing and he had signed quite a lot and the direct implication to me being that Councillor Larry Butler was manifestly in support for everything but would sign nothing and that Tony Fox wanted a situation where Larry was asked directly to sign something. The question of money was raised by Councillor Fox. He said he would have to talk to some of his colleagues, which is something that Councillor Fox had said to me on previous occasions. I took this to mean simpliciter that he would have to talk to his colleagues in relation to either ascertaining whether they were going to support this or that he could get them to support it. I make no imputation whatsoever other than that. It was agreed between us that I would pay him 1000 pounds.*
>
> *I told him that this was a very small operation in the context of the fee from the School. I did not tall him the amount. And he agreed that he would support it. I, subsequently, having dealt with him on that issue, I subsequently took his advice and went and spoke to Councillor Butler.'*

7.02 Mr Dunlop told the Tribunal that his meeting with Cllr Butler took place on 30 September 1997, and that they discussed the signing of the motion. Cllr Butler did not sign the motion on that date, but did so on 24 November 1997. Because Mr Dunlop was certain as to the dates he met with Cllr Butler, he was satisfied that the meeting with Cllr Fox occurred prior to 30 September 1997.

7.03 Mr Dunlop's diary for September 1997 indicated contact with Cllr Fox on 23 September 1997, in the form of a telephone call, and a meeting at Mount Argus in Dublin. The diary recorded the following for 23 September 1997, *'Call Tony Fox'* and *'11.45 Tony Fox at Mount Argus'*. Mr Dunlop believed that his meeting with Cllr Fox took place at a public house in the vicinity of Mount Argus. Mr Dunlop stated that it was at this meeting that he and Cllr Fox discussed the St Gerard's lands, and other matters, and that the payment of IR£1,000 was requested by Cllr Fox, and agreed.

7.04 Mr Dunlop alleged that he had paid Cllr Fox IR£1,000, in cash, at the Davenport Hotel, two or three weeks after the vote on 12 February 1998. Cllr Fox had voted in favour of the motion.

7.05 There was no reference to Cllr Fox in Mr Dunlop's diary for the period January to June 1998, save for one entry on 16 January 1998, which, Mr Dunlop stated, related to a meeting he had with Cllr Fox unconnected to the St Gerard's lands.

CLLR FOX'S EVIDENCE

7.06 Cllr Fox's evidence to the Tribunal was in stark contrast with that of Mr Dunlop on every issue relating to the St Gerard's School lands. Cllr Fox vehemently denied that he ever discussed the rezoning of the lands with Mr Dunlop, or that he ever met him at Mount Argus. He denied ever receiving money from Mr Dunlop for any purpose, and specifically denied receiving money relating to the St Gerard's School lands, stating; '*I categorically refute that. I never asked or received any sum of money in relation to that lands or any other lands.*'

7.07 Cllr Fox acknowledged that, the effect of his denial of meeting Mr Dunlop on 23 September 1997 at Mount Argus, was to suggest that Mr Dunlop had falsely recorded the relevant information in his diary. Cllr Fox however said that he did not have a '*clue*' as to why Mr Dunlop might have falsified his diary in this manner. It was put to Cllr Fox that had he indeed falsified his diary, he ran the risk of Cllr Fox being in a position to refute the entry with a positive and provable assertion that he had been in a specific place, other than Mount Argus, on the date in question, thus undermining the diary information.

7.08 Cllr Fox accepted that he and Mr Dunlop met at the Davenport Hotel between 23 and 28 October 1997, but maintained that the only subject discussed was the signing of motions relating to rezoning issues unconnected to the St Gerard's lands. He agreed that he signed such motions at Mr Dunlop's behest. Cllr Fox maintained that these other motions were the only matters which he and Mr Dunlop discussed in the course of the making of the 1998 Dun Laoghaire/Rathdown Development Plan. He denied that he had any other meeting with Mr Dunlop in late 1997. Cllr Fox told the Tribunal that in September 1997, he was out of work, and therefore would not have been meeting Mr Dunlop at a location close to his workplace in Terenure. He acknowledged however, while he denied certain meetings with him, claimed by Mr Dunlop, that in previous years he had met Mr Dunlop at named locations specified in Mr Dunlop's diary.

7.09 Cllr Fox was adamant that he had not arranged to meet Mr Dunlop in a public house at Mount Argus on 23 September 1997. He stated that he knew only the Church in that area where he had attended funerals from time to time, and that Mount Argus was not a place where he would normally arrange to meet someone. He denied that, at that or any other meeting, he declined to sign a motion relating to the St Gerard's lands, or that he had suggested that Mr Dunlop should approach Cllr Larry Butler. Cllr Fox believed that he never attended any public house or hotel in the Mount Argus area, and maintained that in any event, had he arranged to meet with Mr Dunlop in a public house in that general area, he would have nominated Comans Public House in Rathgar for that purpose.

7.10 Together with all his Fianna Fáil colleagues who were present at the County Council meeting, and as they had previously done in 1992, Cllr Fox voted in favour of the rezoning of the St Gerard's lands on 12 February 1998. Cllr Fox told the Tribunal that he had been lobbied with correspondence from St Gerard's prior to the vote, urging him to support the proposal. He was generally 'pro development.'

THE SIMILARITIES OF MR DUNLOP'S EVIDENCE AS TO THE APPROACH TAKEN BY CLLRS COSGRAVE AND FOX IN RESPONSE TO HIS REQUEST FOR THEIR SIGNATURES ON A MOTION

7.11 On Day 433, the following exchange took place between Tribunal Counsel and Mr Dunlop:

> *'Q. Now, do you find it unusual, Mr. Dunlop, that both Councillor Fox and Councillor*
>
> *A. Yes is the simple answer.*
>
> *Q. I want to draw to your attention, Mr. Dunlop, a number of similarities --*
>
> *A. Yes.*
>
> *Q. -- about what you say occurred at the meeting with Councillor Cosgrave on the 5th November 1997 and the meeting that you say occurred with Councillor Fox on the 23rd September 1997. In both cases, these councillors, that is Councillors Fox and Cosgrave, refuse to sign the motion.*
>
> *A. Correct.*
>
> *Q. In both cases, these councillors recommended that you obtain the services of a different named councillor?*
>
> *A. Correct.*
>
> *Q. In the case of Councillor Cosgrave, that was Councillor Donal Lowry and in the case of Councillor Fox, that was Councillor Larry Butler?*
>
> *A. Yes.*

Q. To both councillors, you told them, while not naming the specific amount, that the money you were getting was very small?

A. Yes.

Q. Both councillors ultimately agreed to accept 1,000 pounds each for their support?

A. Yes.

Q. That took care of your entire fee from St. Gerard's Bray?

A. Yes.

Q. Leaving you with a VAT liability and an income tax liability?

A. Correct.

Q. As of the date that you agreed to pay it?

A. Yes.

Q. In all of your experience, Mr. Dunlop, in dealing with councillors, had such a parallel set of circumstances occurred?

A. No is the answer.

Q. Yes.

A. The only parallel would be in the context of a development that might not have been profitable.

Q. Yes. Have you any reason to believe that Councillor Fox and Councillor Cosgrave were aware of your separate approaches to them?

A. I have no reason to believe.

Q. Did you tell Councillor Fox that you had discussed this matter with Councillor Cosgrave?

A. No, I don't believe I did.

Q. Did you tell Councillor Cosgrave that you had discussed it with Councillor Fox?

A. No, I don't believe I did.

Q. So, to the best of your information, neither Councillor Fox didn't know what you had discussed with Councillor Cosgrave and Councillor Cosgrave didn't know what you had discussed with Councillor Fox?

A. Correct.

Q. Yet both of them at their respective meetings embark on effectively almost parallel, according to you, approaches in relation to this motion?

A. Yes.

Q. Can you offer any explanation, Mr. Dunlop, as to how that might have occurred?

A. No, other than – no specific explanation, other than to say in each individual instance, the circumstances, as far as Liam Cosgrave were concerned, he had actually signed a motion previously and as I outlined to you this morning, the impression that he gave was that he had done his duty, as it were, in the context of St. Gerard's and that he was reluctant to do so again but that Councillor Donal Lowry, I should

approach Councillor Donal Lowry. In the case of Councillor Fox, while it is true to say in retrospect, I mean I am not saying I was aware of this at the time or took it into consideration, that Tony Fox had signed no such motion previously, albeit we now know he did support it in 1991 but that the circumstances were a little more acrimonious in the context of Tony Fox saying he was the only one signing motions and Larry Butler wasn't signing anything in his estimation. I didn't know whether that was true or not but he did recommend me to go to Larry Butler, which I did.

Q But the unusual features of these two separate meetings you say you had with councillors is that they both contain the same elements, neither of which is peculiar to one meeting; in other words you have the same sequence of events contended for in both meetings by you?

A. Yes.

Q. Yet you have no reason to suggest that either Councillor Cosgrave or Councillor Fox discussed, as far as you are aware, either of their respective meetings with you?

A. None whatever.

Q. Yet they both, according to you, take a similar approach to this venture?

A. Similar as you outlined it.

Q. And you agree, notwithstanding the fact that you have only got 2,000 pounds plus VAT and that your expectation of getting your success fee is not great?

A. Yes.

Q. Isn't that correct?

A. That is correct, yes.'

7.12 Questioned as to why he had agreed to pay two Councillors who informed him that they would themselves not sign the motion to rezone the St Gerard's lands, Mr Dunlop stated:

'Well, in the context of support, both of them had previously been very supportive and had been on-side in the context of support and garnering support in the context of their own parties and if they weren't, if neither of them were on board, as it were, there was very little hope at all that the matter would progress and I had already at that stage been commissioned by St. Gerard's and as I said to you prior to lunch, I believe that St. Gerard's deserved the same attention, notwithstanding the size of the fee, notwithstanding the fact that it was a professional arrangement, duly recorded in each of our books, that they deserve the same effort.'

7.13 Mr Dunlop agreed that his assessment of the situation was that without the support of Cllrs Cosgrave and Fox the proposed motion to rezone the lands had little prospect of success. In the course of his cross-examination by Counsel for Cllr Cosgrave, Mr Dunlop refuted the contention that the similarities in his evidence concerning the two Councillors, as set out above, suggested that his account was an invention. The Tribunal, however, accepted that Mr Dunlop's evidence in this respect had not been invented.

MR DUNLOP'S CLAIM THAT HIS PAYMENTS TO CLLRS COSGRAVE AND FOX WERE HIS LAST CORRUPT PAYMENTS

8.01 In the course of his testimony on Day 433, Mr Dunlop maintained that the payments he made to Cllrs Fox and Cosgrave in the aftermath of the vote on the St Gerard's lands were the last *'corrupt'* payments he made *'ever',* stating *'there have been no others; that is not to say that there has not been a request for others'.* The thrust of Mr Dunlop's evidence was that the payments to Cllrs Cosgrave and Fox in relation to the St Gerard's lands stood out in his mind, because they had been the last payments he made *'...to any politician in the context of any matter relating to planning or development or zoning in either Dublin County Council or Dun Laoghaire/Rathdown County Council.'*

8.02 Mr Dunlop acknowledged that his meetings with Cllrs Cosgrave and Fox, in the final quarter of 1997, took place against the backdrop of the establishment of the Tribunal. On Day 433, Mr Dunlop was questioned as follows:-

> 'Q. *That was something else, Mr. Dunlop, I wanted to take you back to deal with very briefly at your meetings in October and November of 1997 and one other fact that occurred around that time that might possibly, I put it no higher than that, have had a bearing upon the attitude of Councillors Fox and Councillor Cosgrave is that this Tribunal was established on the 7th November 1997.*
>
> *A. Yes.*
>
> *Q. And its remit from the start was planning corruption, isn't that right?*
>
> *A. That's correct, yes.*
>
> *Q. Do you remember ever discussing at that time in November 1997 or December 1997, considering the fact that you were meeting both Councillor Cosgrave and Councillor Fox, this Tribunal and its remit?*
>
> *A. Specifically in relation to the specific question that you have just asked me, no, but I have already given evidence to the fact that I did discuss this Tribunal with quite a range of people, a list of whom I provided to the Tribunal at its request, both in relation to the establishment of the*

Tribunal in the first instance and subsequently to the extension of the remit of the Tribunal. And I qualify that in my evidence by saying that the attitude of everybody, and by everybody I include myself, so I'm not allocating responsibility in any specific regard, I am saying everybody regarded the establishment of the Tribunal as something that would be over and done with, done and dusted in a very short time because nobody would be able to prove anything because nobody would say anything.

Q. But certainly Mr. Dunlop, it is a fact that in October of 1997, when you were meeting with Councillor Cosgrave and Councillor Fox and indeed in late September 1997 when you were meeting with, I think, Councillor Fox, the main political story at that time and the main Dail debate in early October 1997 was the establishment of this Tribunal?

A. Correct.

Q. And this occurred at about the time that you were seeking to get signatures on a motion in connection with the rezoning of the lands in St. Gerard's, isn't that right?

A. Yes.'

THE FUNDS AVAILABLE TO MR DUNLOP IN THE PERIOD JANUARY TO MARCH 1998

8.03 On 29 January 1998, Mr Dunlop negotiated a cheque for IR£10,000, received by him in connection with another development, to the account of Shefran Ltd at AIB and retained IR£3,000 in cash. This was in accordance with Mr Dunlop's normal practice that when making lodgements, he retained portion of the funds in cash. On 10 February 1998, he withdrew IR£1,500 cash from the same AIB account. On 27 February 1998, he withdrew IR£3,000 from the account of Frank Dunlop & Associates Ltd, IR£2,500 of which was lodged to a joint account of Mr Dunlop and his wife, and he retained the balance in cash.

8.04 In early February 1998, IR£300 cash was lodged to an account held in the name of Mr Dunlop and his wife and on 3 March 1998, there was a further lodgement of IR£300 to the same account. A further IR£300 was lodged to that account on 5 March 1998. Mr Dunlop was unable to reconcile any of these lodgements to withdrawals from other accounts, and thus acknowledged that the source of the monies remained unaccounted for. He testified that it was his normal practice to make lodgements from larger cash sums available to him at the time. The Tribunal was satisfied that at the times when Mr Dunlop claimed to have paid IR£1,000 each to Cllrs Cosgrave and Fox, namely within a couple of weeks of the St Gerard's vote in the case of Cllr Fox, and on 3 March 1998 in the case of Cllr Cosgrave, Mr Dunlop had sufficient cash resources available to him.

THE DISCREPANCIES CONTAINED IN MR DUNLOP'S STATEMENTS OF 13 SEPTEMBER 2001 AND 16 APRIL 2003.

9.01 In his first written statement to the Tribunal in October 2000, Mr Dunlop asserted that he had paid Cllrs Cosgrave and Fox a sum of £1,000 each for their support for the St Gerard's rezoning proposal. No details as to when and where such payments had been requested and/or paid were provided in this statement. In his 2001 statement, furnished by way of letter from Mr Dunlop's solicitors in response to queries raised by the Tribunal, it was asserted that, to the best of Mr Dunlop's recollection and belief, he made the payments to the two individuals at, or in the environs of, the Davenport Hotel prior to the rezoning motion. In a more detailed statement furnished and signed by him on 16 April 2003, he maintained that the payments he made to both Councillors were made after the vote, the latter being also the position adopted by him, in his oral testimony to the Tribunal.

9.02 Mr Dunlop accounted for this inconsistency by stating that, in 2001, when his solicitors were responding to the Tribunal, the letter relating to the St Gerard's lands was one of a series of letters concerning a number of matters with which the Tribunal was concerned, and that the inclusion of the assertion that monies were paid prior to the St Gerard's vote in error.

9.03 While there were undoubtedly inconsistencies as between Mr Dunlop's statements and his sworn testimony the Tribunal in relation to his allegation of having paid money to the two Councillors, the Tribunal was satisfied that such inconsistencies were not sufficient to, of themselves, undermine Mr Dunlop's credibility in relation to his evidence concerning Cllrs Cosgrave and Fox.

THE TRIBUNAL'S CONCLUSIONS WITH REGARD TO MR DUNLOP'S ALLEGATION THAT HE PAID COUNCILLORS LIAM T. COSGRAVE AND FOX IR£1,000 EACH IN CONNECTION WITH THE ST GERARD'S LANDS.

CLLR COSGRAVE

10.01 The Tribunal was satisfied that Mr Dunlop and Cllr Cosgrave met and discussed the rezoning of the St Gerard's lands and that they did so, in all probability, prior to the 18 September 1997, and between then and February 1998 .

10.02 Insofar as Mr Dunlop and Cllr Cosgrave had met on 16 September 1997, albeit in relation to a matter unconnected with the St Gerard's lands, it was unlikely, in the Tribunal's view, that Mr Dunlop would have let that

opportunity pass without referring to the St Gerard's lands. Thus, the Tribunal rejected Cllr Cosgrave's assertion that there had been no discussion as between himself and Mr Dunlop regarding the St Gerard's rezoning proposal, on that date.

10.03 As set out above, Cllr Cosgrave had no recollection of meeting Mr Dunlop in the Davenport Hotel on 5 November 1997, notwithstanding an entry in Mr Dunlop's diary to that effect. Insofar as Mr Dunlop claimed to have repeated his request to Cllr Cosgrave to sign the rezoning motion for St Gerard's, Cllr Cosgrave denied that he had been so requested and denied that he had recommended that Mr Dunlop approach Cllr Lowry.

10.04 The Tribunal was however satisfied that a meeting took place between Mr Dunlop and Cllr Cosgrave on 5 November 1997. Such a meeting was listed in Mr Dunlop's diary, and while that fact of itself cannot be the determining factor, the Tribunal also noted that Cllr Cosgrave himself acknowledged to other meetings having taken place between himself and Mr Dunlop in the final quarter of 1997, and which were duly noted in Mr Dunlop's diary[2]. The Tribunal also rejected Cllr Cosgrave's contention that the meeting of 5 November 1997, was unlikely to have taken place, because he was listed as being in attendance in the Seanad on that same date, having regard to the relative proximity of the Davenport Hotel to Leinster House.

10.05 The Tribunal was satisfied that the St Gerard's rezoning motion was likely to have been, *inter alia*, a topic of discussion between Mr Dunlop and Cllr Cosgrave on 5 November 1997.

10.06 It was common case that in the context of the making of the Dún Laoghaire/Rathdown Development Plan 1997, Mr Dunlop had three projects on his books. By the end of October 1997 however, there remained just one matter on Mr Dunlop's books which required a signature or signatures to a rezoning motion. That matter was St Gerard's. For that reason, the Tribunal was satisfied that the St Gerard's lands were discussed with Cllr Cosgrave on 5 November 1997, and moreover, the Tribunal accepted Mr Dunlop's evidence that he requested Cllr Cosgrave to sign the necessary motion. The Tribunal accepted that Mr Dunlop approached Cllr Cosgrave in the knowledge that he had previously signed the motion to rezone the lands in 1992. Moreover, Mr Dunlop and Cllr Cosgrave had ongoing dealings in the final quarter of 1997 in relation to other lands, in respect of which Mr Dunlop was retained as a lobbyist. It was illogical therefore, that Mr Dunlop would not have approached Cllr Cosgrave in relation to St Gerard's.

[2] These meetings were the subject of inquiry in another module.

10.07 In the course of his evidence to the Tribunal, Cllr Donal Lowry agreed with Mr Dunlop that 22 November 1997, the day he signed the St Gerard's motion, was the first occasion on which he had ever met Mr Dunlop. While Cllr Lowry could not recollect if he had any contact with Cllr Cosgrave in relation to the St Gerard's lands, his evidence was that, it was possible that he did.

10.08 Cllr Cosgrave denied that he recommended Cllr Lowry as a possible signatory to the St Gerard's motion, to Mr Dunlop. With regard to the conflict of evidence between Mr Dunlop and Cllr Cosgrave on this issue, the Tribunal was satisfied that Mr Dunlop had been pointed in the direction of Cllr Lowry, by Cllr Cosgrave. The Tribunal considered it unlikely that Mr Dunlop would have approached a Fine Gael Councillor, with whom he had no previous relationship, with a request to sign a motion for the St Gerard's lands at a time when he already had an ongoing relationship with another Fine Gael Councillor, namely Cllr Cosgrave, unless, for some reason, Cllr Cosgrave was unable or unwilling to sign the motion. The Tribunal was satisfied that, theretofore, he, Councillor Lowry had no previous relationship with Mr Dunlop. In those circumstances, the Tribunal was satisfied that Cllr Cosgrave had recommended that Mr Dunlop approach Cllr Lowry.

10.09 Mr Dunlop alleged that in return for Cllr Cosgrave's support, a payment of IR£1,000 was agreed between them on 5 November 1997, and duly paid on 3 March 1998. Cllr Cosgrave categorically denied ever entering into such an arrangement, and denied that he was paid any such sum. Save for Mr Dunlop's testimony, and save for the fact that a meeting took place between the two men on 5 November 1997, there was an absence of documentary evidence of any such financial arrangement. That Cllr Cosgrave supported the rezoning motion could not, of itself, be the sole determinant in assessing whether or not there was a financial arrangement arrived at between himself and Mr Dunlop. Cllr Cosgrave supported and indeed signed the motion to rezone the lands in 1992 and it was therefore expected, even if he decided not to sign a motion in 1997, that he would have lent his support to the proposal to rezone the lands on the 12 February 1998, (even in the face of opposition from the County Manager).

10.10 The Tribunal considered other factors (in addition to Mr Dunlop's and Cllr Cosgrave's oral evidence) in order to ascertain whether or not Mr Dunlop was credible in his claim to have agreed, and paid, IR£1,000 to Cllr Cosgrave in connection with the rezoning of the St Gerard's lands.

10.11 One such factor was the fact that a meeting with Cllr Cosgrave was noted in Mr Dunlop's diary for the 3 March 1998.

10.12 It was common case that Mr Dunlop faxed information provided by Cllr Cosgrave, to Mr Magnier on 3 March 1998, the date on which Mr Dunlop claimed that he had received that information from Cllr Cosgrave, and claimed to have paid him IR£1,000 in cash. On the 16, 18 and 25 September 1997, Cllr Cosgrave faxed Mr Dunlop information concerning the closing date by which motions had to be lodged within Dún Laoghaire-Rathdown Council.

10.13 It was clear to the Tribunal therefore, that a physical meeting as between Mr Dunlop and Cllr Cosgrave on 3 March 1998, was unnecessary, if its only purpose was to hand over County Council information.

TRANSACTIONS EVIDENT FROM CLLR COSGRAVE'S ACCOUNTS IN THE PERIOD MARCH TO APRIL 1998

10.14 In the period March to April 1998, five cash lodgements, all in round figure sums, were made to accounts held by Cllr Cosgrave with AIB and with An Post. These were, IR£100 to an AIB account on 4 March 1998, IR£80 to An Post on 12 March 1998, IR£500 to An Post on 14 March 1998, IR£500 to An Post on 15 April 1998, and a further IR£500 to An Post on 27 April 1998.

10.15 At the time of making such lodgements, Cllr Cosgrave told the Tribunal that his income came from his Oireachtas salary, drawings from his practice as a solicitor, expenses from Dún Laoghaire/Rathdown Council, and from the Seanad. An analysis of funds available to Cllr Cosgrave in the period February to April 1998, suggested that he had approximately IR£6,500. Cllr Cosgrave agreed that this sum represented an accumulation of staggered payments made to him in that time period by way of income and/or expenses. Cllr Cosgrave's Oireachtas salary[3] was paid directly into his AIB account. He agreed in evidence that there were no withdrawals made by him from his AIB account, such as might account for the five An Post cash lodgements made on the dates referred to above.

10.16 An analysis of Cllr Cosgrave's Council expenses between 21 January and 8 April 1998, revealed that he received a sum in total of IR£667.55, broken down as follows: IR£134.97, IR£194.44, IR£194.44 and IR£278.68. Cllr Cosgrave acknowledged that he cashed these monthly cheques on their receipt. He said that, by and large, he met his day to day living expenses for himself and his family from his cashed expenses cheques, and his solicitor's practice drawings. When it was pointed out to him that none of the individual Council expenses cheques could have individually funded a lodgement of IR£500 to his

[3] Approximately IR£1,800 net per month

An Post account on 14 March 1998, Cllr Cosgrave suggested that the IR£500 lodgement was an accumulation of encashed cheques by him.

10.17 With regard to the lodgement of IR£500 on 14 March 1998, Cllr Cosgrave said that he had received a County Council expenses cheque for the month of March of IR£194.44 on 4 March 1998, and that on the same date he was in receipt of an expenses cheque from the Oireachtas [Seanad] for IR£661.25. By 4 March 1998, he was also in receipt of IR£300 as drawings from his solicitor's practice. Thus in March 1998, Cllr Cosgrave was in receipt of approximately IR£1100 in total from the aforementioned sources. Cllr Cosgrave was asked to explain how, in those circumstances, he could have lodged IR£500 in cash from that sum on 14 March 1998 (a lodgement which comprised almost 50% of his available funds). Cllr Cosgrave said that he believed that the 14 March 1998 lodgement came from that source, in addition to unspent funds available to him from cheques cashed in previous months.

10.18 The examination carried out by the Tribunal, in relation to Cllr Cosgrave's finances, in the period February to April 1998, suggested that it was doubtful that Cllr Cosgrave, as he claimed, would have been in a position, based on his acknowledged sources of income, to fund cash lodgements, totalling IR£1,680, over a seven week period.

10.19 The Tribunal was cognisant of the close relationship which Mr Dunlop had with Cllr Cosgrave in 1998, a relationship which had developed over a number of years, largely in the context of the making of the 1993 Development Plan. Having regard to the fact that the Tribunal established, to its satisfaction, that during the course of the making of that plan money was paid by Mr Dunlop to Cllr Cosgrave in return for his support for rezoning issues, in all those circumstances, it was not persuaded to reject Mr Dunlop's evidence that he paid £1,000 to Cllr Cosgrave in relation to the rezoning of the St Gerard's lands. The Tribunal was therefore satisfied that Cllr Cosgrave solicited payment from Mr Dunlop in return for his support for the rezoning of the St Gerard's lands, and was paid IR£1,000 by Mr Dunlop on that basis. The said payment was corrupt. The Tribunal was satisfied that the primary purpose for their meeting on 3 March 1998, was to facilitate the payment of IR£1,000 cash to Cllr Cosgrave.

CLLR FOX

10.20 The Tribunal was satisfied that there was contact and discussion between Mr Dunlop and Cllr Fox in late 1997 relating to, *inter alia*, the seeking of Cllr Fox's support for the St Gerard's rezoning project. The Tribunal rejected Cllr Fox's assertion that no such contact or discussion took place. Cllr Fox was a senior member of the Fianna Fáil Party in Dún Laoghaire/Rathdown Council, and moreover, between 1996 and July 1997, was the Chairman of the Council. The evidence provided to the Tribunal in the course of a number of Modules, and indeed findings made by the Tribunal in those Modules, established that Mr Dunlop and Cllr Fox had dealings during the course of the making of the 1993 Development Plan in connection with a number of rezoning issues.

10.21 The Tribunal was satisfied that a meeting between Mr Dunlop and Cllr Fox took place on 23 September, in the vicinity of Mount Argus, as testified to by Mr Dunlop. The Tribunal was assisted in arriving at this conclusion because of the existence of the entry in Mr Dunlop's diary for the date in question, which the Tribunal was satisfied was authentic.

10.22 The Tribunal was satisfied that Cllr Fox was paid IR£1,000 for his support for the St Gerard's School lands rezoning motion on 12 February 1998, and that this sum was requested by him, and was paid on a date after 12 February 1998, in or close to the Davenport Hotel. This payment was a corrupt payment. A factor which led to the Tribunal's conclusions in this regard was the following:

10.23 In the course of this Module, the Tribunal heard evidence from Cllr Fox of 'an accidental' or 'chance' meeting between himself and Mr Dunlop in Dawson Street, Dublin, after the establishment of this Tribunal, sometime between January and June 1999, and shortly after Cllr Fox had been in contact with Tribunal Counsel in the course of its private inquiries. He had a meeting with Tribunal Counsel on 7 December 1998, and said that he received a telephone call some short time later from that Counsel. It was shortly after the telephone call when he had his chance meeting with Mr Dunlop. He appeared to settle on the meeting having occured sometime between January and June 1999. Cllr Fox testified that in the course of his encounter with Mr Dunlop on that occasion, he asked Mr Dunlop to confirm that he, Cllr Fox, had never received any political contributions from him.

10.24 Mr Dunlop's account of this meeting, in effect, was that he and Cllr Fox had agreed that monies paid by Mr Dunlop to Cllr Fox over the years would be designated by each of them as political donations.

10.25 Mr Dunlop gave evidence that following the establishment of the Tribunal, in the course of face to face meetings and during telephone conversations between Cllr Fox and himself, it was mutually agreed that monies paid to Cllr Fox by Mr Dunlop would be classified as political donations, as there was no point in maintaining that Cllr Fox had not received any money from him. In the course of his testimony, Cllr Fox denied Mr Dunlop's evidence that they had made any such agreement. On Day 435, Cllr Fox advised the Tribunal that he had met Mr Dunlop '*by chance'* around St Stephen's Green/Dawson Street, and that in the course of a discussion between them reference had been made to the Tribunal. Cllr Fox stated:

> *'…We discussed it walking down the street and the Tribunal came up and I said in relation to it and I just took the opportunity that had arisen in relation to, I confirmed to him that I had not received any contributions that is what happened…'*

10.26 Cllr Fox maintained that he was merely double-checking with Mr Dunlop that he had not received any contributions from him, because of an inquiry which had been made of him by telephone by Tribunal Counsel (following his private interview with the Tribunal), as to whether he had received any money from Mr Dunlop. Cllr Fox told the Tribunal:-

> *'Yeah and I was confirming, double checking in relation to that and just in case there was the slightest possibility that if some of my workers or whatever during the campaign, I was working during the campaign, I wasn't out much in the daytime, very little, and just in case that may be there could have been the slightest possibility of some contribution given to one of my workers that might and that would have been used in relation to refreshments or lunch, sandwiches or whatever, that end of it. So, I don't know. And that is the fact in relation to it. So Mr. Dunlop said he'd check and what do you call it, he came back and rang me one Sunday morning in relation to it and he confirmed that what I believed to be true and that is exactly, Miss Dillon, what happened.*'

10.27 Given the vehemence with which Cllr Fox asserted, in a number of Modules, including this Module, that he had never sought, or received, money from Mr Dunlop for any reason, it appeared strange that Cllr Fox should have found it necessary to have sought such confirmation from Mr Dunlop. When, in the course of his evidence, he was pressed as to why he would ask such a question of Mr Dunlop, (if he had never received anything from Mr Dunlop), Cllr Fox told the Tribunal that he wished to confirm what he believed to have been in fact the case, and to check that none of his election workers had received a contribution from Mr Dunlop on his behalf, but without his knowledge.

10.28 The Tribunal found that Cllr Fox's explanation for his approach to Mr Dunlop to lack credibility. In the circumstances, the Tribunal was satisfied that Cllr Fox had a purpose, other than his claimed purpose, for the inquiry he made of Mr Dunlop in the immediate aftermath of the establishment of the Tribunal. The Tribunal was satisfied that Cllr Fox's approach to Mr Dunlop was made in circumstances where Cllr Fox knew that he had received money from Mr Dunlop, and was anxious to ascertain the extent of disclosure (if any) of same made, or likely to be made by Mr Dunlop to the Tribunal.

10.29 Cllr Fox's complete denial of contact with Mr Dunlop in 1997/1998, in relation to the St Gerard's lands was largely consistent with the approach taken by him to claims made by Mr Dunlop in connection with the making of the 1993 Development Plan, and, more particularly, the extent of contact between the two men in that context.

COUNCILLORS LOWRY AND BUTLER

11.01 There was no allegation made by Mr Dunlop that Cllrs Lowry[4] and Butler sought or received payment in return for their signatures to the rezoning motion. The Tribunal was satisfied that neither councillor sought money from Mr Dunlop in return for his support, nor was any money tendered or paid to either of them.

[4] Mr Dunlop provided Cllr Lowry with a IR£250 cheque for *'Bosnia Aid'* after becoming aware of his association with that Charity in the course of his visit to Cllr Lowry's home.

CHAPTER THIRTEEN – ST GERARD'S MODULE

EXHIBITS

1. Extract from Mr Dunlop's diary for 16 September 1997.....2264

2. Extract from Mr Dunlop's diary for 5 November 1997.....2265

3. Extract from Mr Dunlop's diary for 3 March 1998..... 2266

4. Fax message of Mr Dunlop's typed list of councillors.....2267

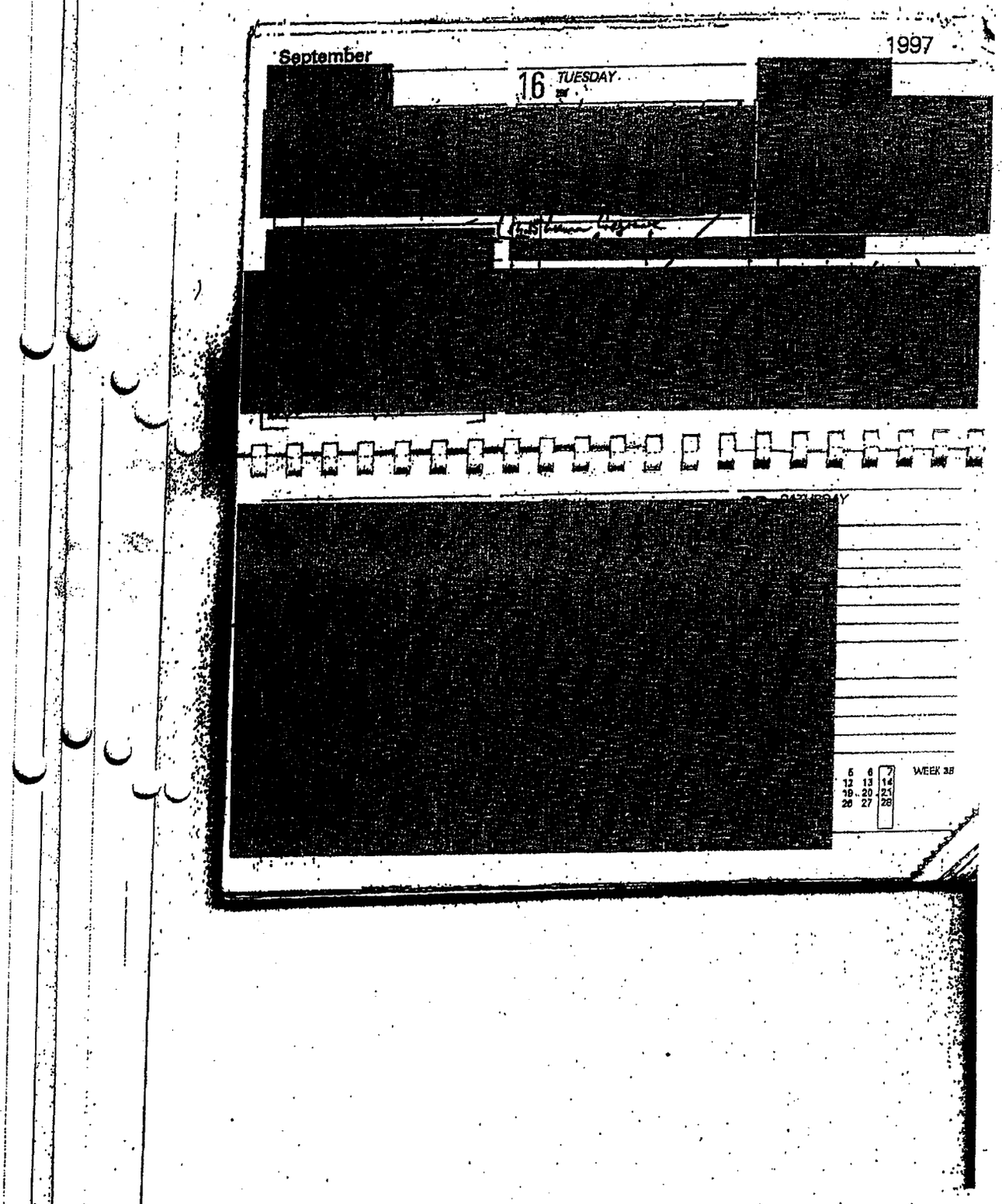
5. Extract from Mr Dunlop's diary for 23 September 1997..... 2270

6. Extract from Mr Dunlop's diary for 16 January 1998..... 2271

7. Motion lodged on 25 November 1997 to rezone the St Gerard's lands together with map..... 2272

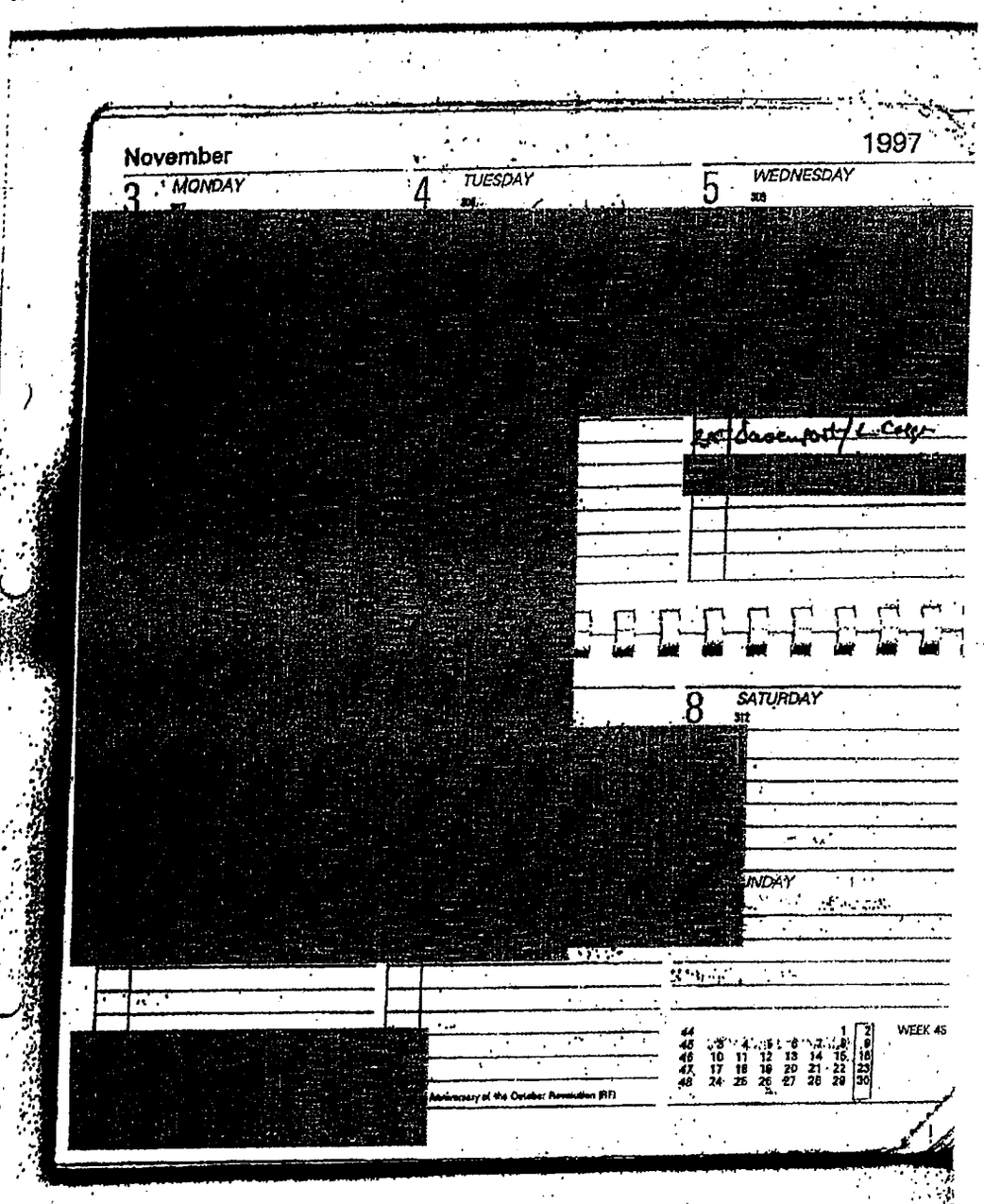
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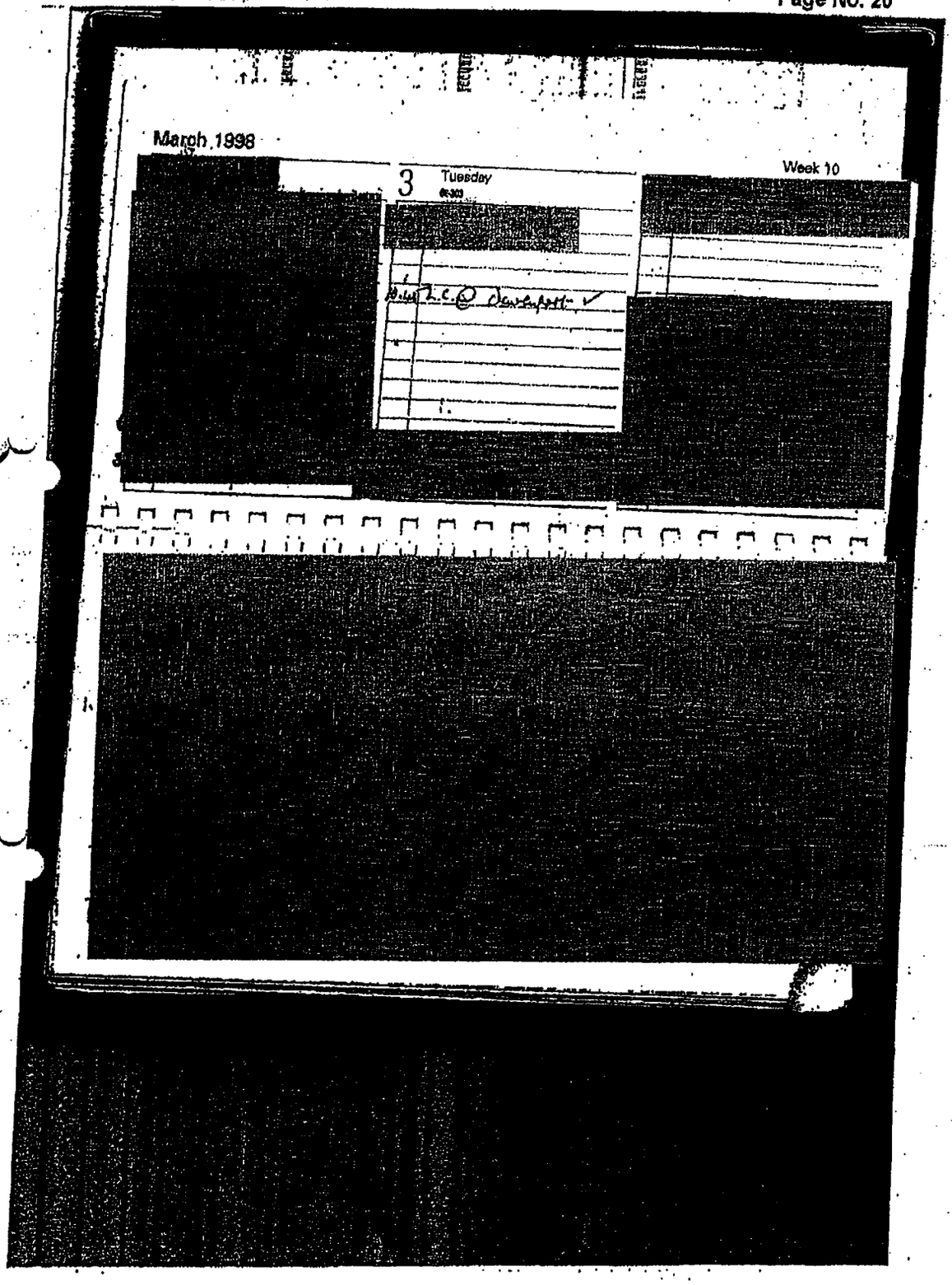
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FRANK DUNLOP

& ASSOCIATES

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FROM: FRANK DUNLOP	TO: MARCUS MAGNIER
SUBJECT: SEE ATTACHED	DATE 3.3.98
6715156	TOTAL NUMBER OF PAGES INCLUDING THIS ONE: 3

MESSAGE

Marcus,
Please see attached.

IF PAGES DO NOT COME THROUGH CLEARLY PLEASE CONTACT THE ABOVE NUMBER

Mr. Marcus Magnier,
Jackson-Stops & McCabe,
51 Dawson Street,
Dublin 2.

3rd March, 1998.

Dear Marcus,

My apologies for the delay in responding to your request but I was away.

The following is the list of those who voted for, who voted against and those who were missing. The vote was: eleven (11) for, twelve (12) against.

FOR:

Fine Gael : Liam Cosgrave
William Dockrell
Patrick Hand
Donal Lowry

Fianna Fail: Betty Coffey
Larry Butler
Don Lydon
David Boylan
Tony Fox
Trevor Matthews
Richard Conroy

Total : 11

AGAINST:

Fine Gael: Donal Marren
Mary Elliot

Labour: Frank Buckley
Jane Dillon Byrne
Sean Misteil
Frank Smyth
Eithne Fitzgerald

Democratic Left: Eamon Gilmore
Denis O'Callaghan
Patrick Fitzgerald

Green Party: Bernadette Connolly
Larry Gordon

Total: 12

MISSING:

Larry Lóhan, Progressive Democrats
Helen Keogh, Progressive Democrats
Olivia Mitchell, Fine Gael
Paddy Madigan, No-Party
Richard Greene, No-Party.

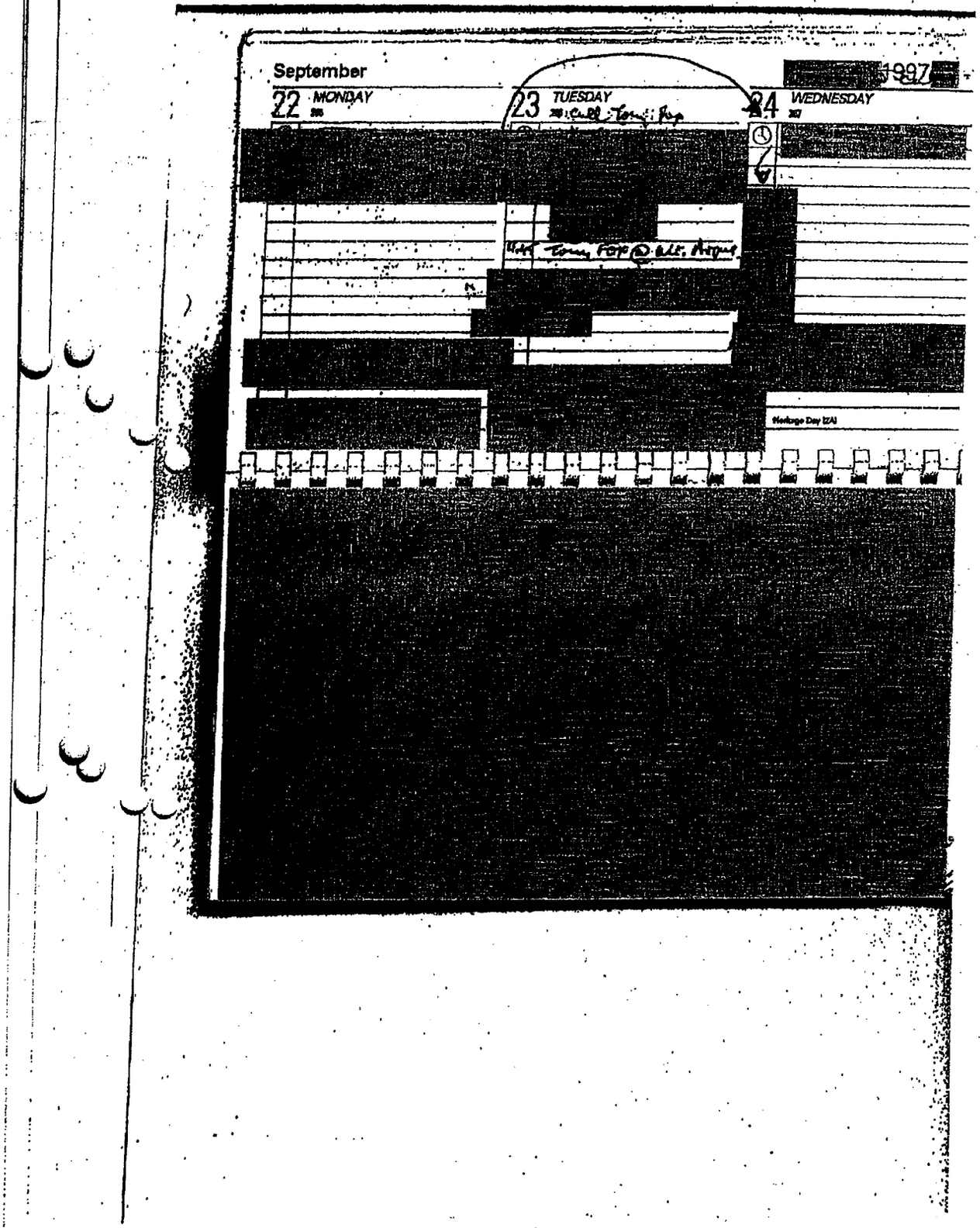
You will appreciate that it is impossible to guarantee attendance by Councillors, notwithstanding any undertakings to do so.

Sincerely,

FRANK DUNLOP

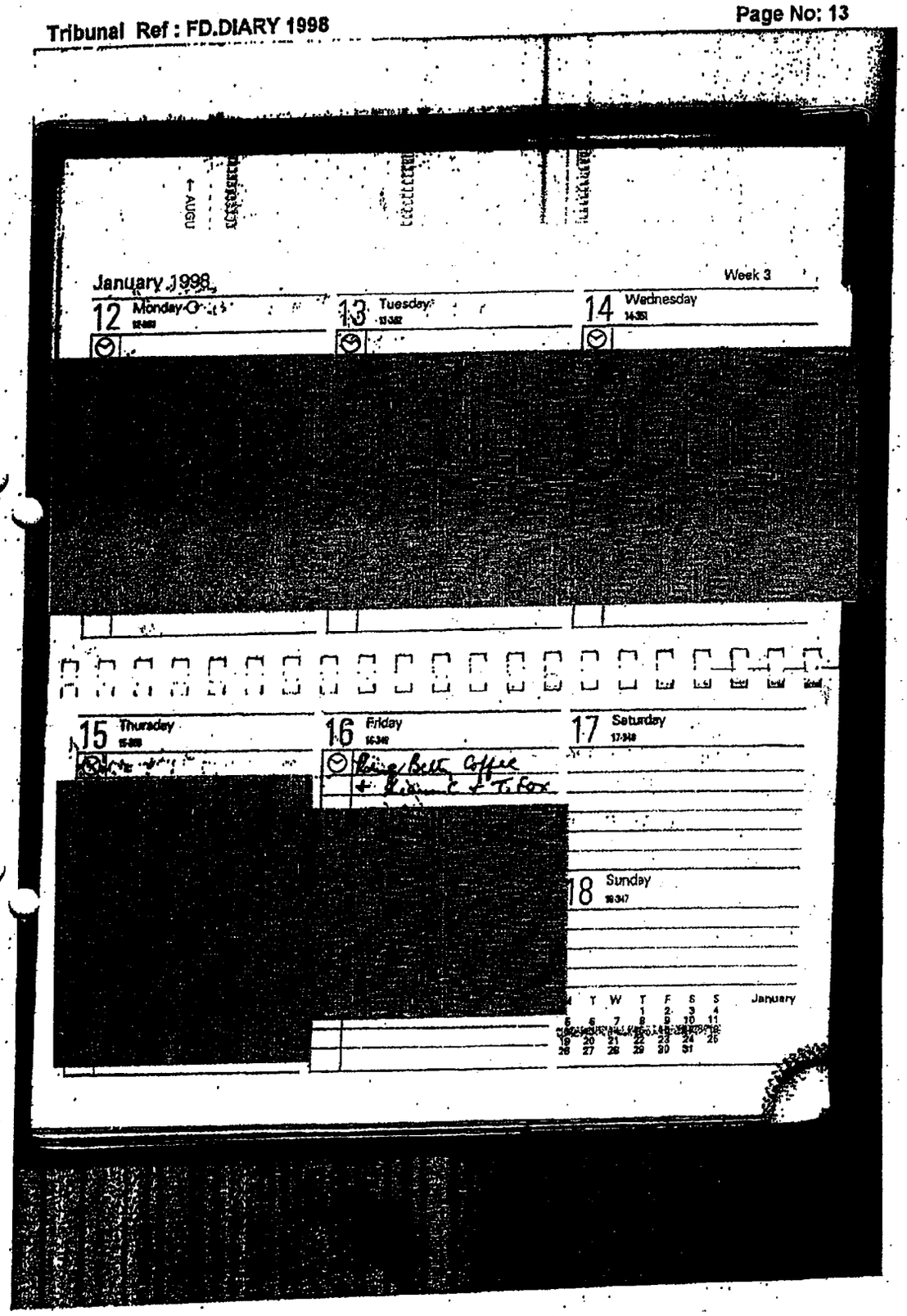
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Motions
Item 14. UA

Dun Laoghaire Rathdown County Council
25 NOV 1997
PLANNING DEPT.
Rec. No.

MOTION

RE. ST. GERARD'S SCHOOL

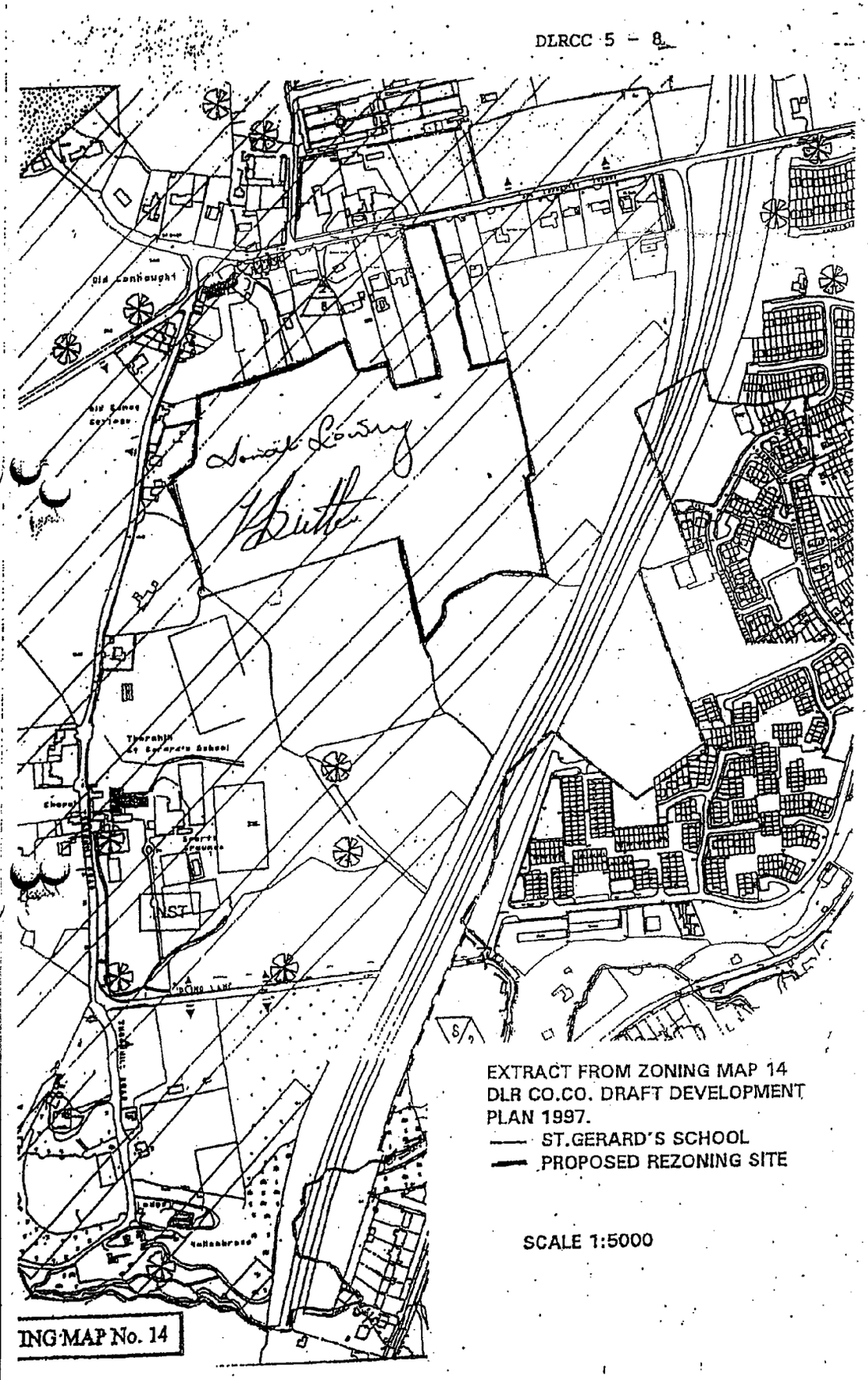
That Dun Laoghaire Rathdown County Council hereby resolves that the lands outlined in red on the attached map (extract from zoning map 14 DLR Co. Co. DRAFT DEVELOPMENT PLAN, 1997) comprising 8.9 hectares, be zoned A - "to protect and/or improve residential amenities" with a density limitation of two dwellings per hectare (maximum of 18 dwellings).

Signed : Donal Lowry.

Tribunal Ref : SGB BRIEF

Page No: 316

DLRCC 5 – 8



EXTRACT FROM ZONING MAP 14
DLR CO.CO. DRAFT DEVELOPMENT PLAN 1997.
—— ST.GERARD'S SCHOOL
▬ PROPOSED REZONING SITE

SCALE 1:5000

CHAPTER FOURTEEN – THE DUFF MODULE

INTRODUCTION

1.01 In this Module, the Tribunal inquired into the circumstances surrounding a planning application and subsequent grant of permission involving a material contravention vote by Dublin County Council in 1991, in relation to a proposed development of approximately 90 acres of land situated to the west of Jugback Lane, northwest of Swords, County Dublin.

1.02 Ten witnesses gave evidence when the Module was heard in public over six days, between 15 March and 5 May 2006. Information provided to the Tribunal by and on behalf of Cllr Cyril Gallagher was read into the record on Day 637 (5 May 2006).

1.03 Between the years 1988 and 1990 Mr Robert White, a Dublin based jeweller, and Nosaka Ltd acquired an interest in a number of land holdings in and around Swords, County Dublin, which were the subject of the aforementioned material contravention vote of Dublin County Council. Nosaka Ltd was incorporated in April 1989 and its directors and shareholders were Mr White and his wife Mrs Ann-Marie White.

1.04 The approximately 90 acres of land which were the subject of the ultimately successful planning permission (following the material contravention vote) included lands acquired by Mr White/Nosaka Ltd from the Duff family. The Duff lands were owned by Mr Joseph Duff, his wife Mrs Alicia Duff, and Mr Matthew Duff and at the time were being farmed, with part being used as a small equestrian centre and riding school.

1.05 In the first instance, Mr White/Nosaka Ltd purchased outright approximately 18 acres of lands (the '*purchased lands*') from the Duffs in November 1989 and shortly thereafter acquired an option to purchase a further 66.6 acres of the lands (the '*option lands'*), on foot of agreements which were signed on 18 December 1989 and 3 August 1990. These option agreements ran until 16 and 30 December 1991 respectively.

1.06 Pursuant to the terms of the agreements, and in consideration of the payment of IR£1.00, Mr White/Nosaka Ltd acquired the right to purchase the lands for a price of IR£30,000 per acre during the option period.

1.07 Prior to entering the aforementioned Agreements, Mr White, together with a third party, had already acquired, by public auction, approximately 18.5 acres of other lands adjoining the Duff lands, following which further lands (the Baker

lands) were acquired by Nosaka Ltd. It would appear that, in part, the purchase of the '*Baker*' lands was necessitated by the need to provide the public auction lands and the Duff lands with access to the main sewer and to the main road network in the locality. Mr White's plan for the lands he was acquiring was to develop them commercially. The lands acquired by public auction together with the 18 acres purchased from the Duffs and the Duff option lands comprised the subject matter of the planning application made by Nosaka Ltd in the period 1990 to 1991. For ease of reference these lands will be referred to hereafter as the '*Duff lands.*' The '*Baker*' lands were never part of the planning application made by Nosaka Ltd and they were ultimately sold to Motorola in 1990, subject to a way leave retained by Nosaka Ltd for roads and services for the Duff lands.

1.08 Mr White's/ Nosaka Ltd's options expired in December 1991 without any of the subject lands having been acquired. On 23 January 1992 a new agreement was concluded, this time between the Duffs and Mr White/Nosaka Ltd and a company, Emargrove Ltd, whereby, in consideration of a payment of IR£50,000 to the Duffs (which was paid on 23 January 1992), particular lands could be acquired for the sum of IR£2.2m pounds approximately if acquired by 31 May 1992. It was also provided in the January 1992 agreement, on payment of consideration of IR£1.00, that, in the event that the lands were not acquired by 31 May 1992, Mr White acquired the right to extend the option, with regard to certain of the lands, to 31 December 1993. However, none of the rights acquired on foot of this new agreement were exercised and ultimately the lands were sold by the Duff family to a third party.

1.09 During the currency of the various option agreements and following a material contravention vote of Dublin County Council, planning permission issued to Nosaka Ltd for a residential and hotel development and distributor road on the Duff lands.

THE NOSAKA PLANNING PERMISSION APPLICATION 1990 – 1992

2.01 Mr White retained the architectural firm Pilgrim Associates in connection with his proposal to develop the lands commercially. From evidence given to the Tribunal by Mr Tim Rowe, Architect, it was clear that his initial assessment of the development potential of the land was a negative one, given that the lands were zoned agriculture under the 1983 Development Plan and that access to the lands was restricted by the narrowness of Jugback Lane. Furthermore, there was no access to a foul sewer, all of which problems Mr Rowe anticipated would be a bar to securing the support of council officials for any proposed planning application. However, following the acquisition of the '*Baker*' lands, Nosaka Ltd was in a position (at Mr Rowe's suggestion) to offer the council a '*planning gain'*

(in the hope that same would be sufficient to assist in allaying any opposition on behalf of the planning authority to the material contravention procedure) by offering to construct, as part of its proposed development, a distributor road to ease traffic congestion, then a problem in the area. This and other issues were the subject of meetings between Mr Rowe and the planning officials over a period of time.

2.02 On 22 August 1990 Pilgrim Associates lodged a planning application with Dublin County Council seeking permission to build a residential development of 501 houses, a 110 bed hotel with related facilities, and a distributor road on the Duff lands.

2.03 The Nosaka Ltd planning application was considered by the Fingal District Committee of the County Council on 21 January 1991 and the Committee recommended that the procedure pursuant to Section 39(d) of the Local Government (Planning and Development) Act, 1976 (the material contravention procedure) be initiated. Notice of the council's intention to consider granting permission appeared in the Irish Press on 30 March 1991.

2.04 Dublin County Council duly convened to consider the matter on 22 April 1991. The Manager's Report, presented to the meeting on that date, stated that there would be no objection from the council officials in the event the council passed a resolution in favour of granting permission. The meeting recorded two written objections to the proposed development, one from Swords Community Council and the other from a named individual. On 22 April 1991 Cllr Cyril Gallagher proposed, and Cllr Anne Devitt seconded, a motion seeking that permission be granted to Nosaka Ltd to develop the lands subject to certain conditions. The motion was adopted when 37 Councillors voted in its favour, 13 voted against and one abstained.

2.05 On 11 May 1991, following this decision, planning permission issued to Nosaka Ltd for housing and a distributor road (subject to 33 conditions) as well as outline planning permission for the hotel and related facilities (subject to nine conditions). Following the withdrawal of a first party (Nosaka Ltd's) appeal to An Bord Pleanala, planning permission and outline planning permission was duly confirmed on 10 April 1992.

THE HISTORY OF THE DUFF LANDS IN THE CONTEXT OF THE 1983 DEVELOPMENT PLAN REVIEW

3.01 The 1991 Draft Development Plan which went out on first statutory public display between September and December 1991 showed the Duff lands as

continuing to be zoned B (agricultural). Prior to such display no motion had been brought to the council proposing any change in the zoning of the lands. However the consequences of Nosaka Ltd's planning application, for a residential development and a hotel, on the population of Swords was referred to by the Manager in the course of a Report made in March 1991 in the context of the Manager's then objection to a rezoning motion being proposed in relation to lands at Balheary.[1]

3.02 In the course of the first statutory display 8 objections and representations were received by the Council in relation to the Duff lands, including a representation made by the Ambrose Kelly Group, on behalf of the Duff family, seeking to have the lands zoned residential.

3.03 These representations were duly considered by the Council on 21 May 1993. No motion was put forward proposing what had been outlined in the submission made on behalf of the Duff family. However, a motion was received regarding a proposed link road affecting the Duff lands and other lands. This Motion was passed (after amendment) with the result (as far as the Duff lands was concerned), that during the second statutory public display (July – August 1993) the Duff lands continued to be displayed zoned agricultural, but with a proposed change outlining a five year road proposal. This change was confirmed on 24 September 1993 and when the 1993 Development Plan was voted on and passed on 10 December 1993 the lands retained their agriculture zoning but with the provision for a distributor link road.

THE INVOLVEMENT OF MR FRANK DUNLOP WITH THE DUFF LANDS

4.01 It was common case that for a period of time during the currency of the planning application/material contravention process concerning the Duff lands Mr Dunlop was retained by Mr White/Nosaka Ltd. However, in the course of evidence heard in this Module, it emerged that there was a very significant conflict of evidence between Mr Dunlop and Mr White as to the reason for Mr Dunlop's retention, the date or approximate date of their initial meeting, the number and frequency of their subsequent meetings and contacts, the duration of Mr Dunlop's retention and the financial arrangements arrived at between them. Moreover, there was conflict as to the timing of and the reason for the cessation of Mr Dunlop's involvement in the project. These issues are addressed by the Tribunal in the course of this Chapter.

[1] See Chapter Twelve, Balheary.

THE SEQUENCE OF MR DUNLOP'S DISCLOSURE TO THE TRIBUNAL OF HIS INVOLVEMENT WITH THE DUFF LANDS

4.02 Mr Dunlop first made reference to the Duff lands on Day 148 when he listed '*Robert White/ Duff site in Swords …. £5,000?'* as no 9[2] in his '*1991 – 1993* (inclusive)' list as provided to the Tribunal on that date, in the course of his public testimony.

4.03 Subsequently, in the course of a private interview with the Tribunal on 19 May 2000, Mr Dunlop again made reference to having been given IR£5,000 by Mr White '*with the express intention and knowledge that I would ensure that people would be on side.'* In the course of that interview, Mr Dunlop stated he believed his fee arrangement with Mr White had been for a payment of IR£10,000. He accounted for the question mark which accompanied the IR£5,000 figure, as appeared on the aforementioned list, on the basis that, while the agreement he had with Mr White had been for IR£10,000, he could not *'absolutely'* say that he had received more than IR£5,000. In the course of the private interview Mr Dunlop made reference, *inter alia*, to having paid to Cllrs Cyril Gallagher and GV Wright in connection with the Duff lands.

4.04 In his written statement of October 2000, under the title '*Duff site in Swords'* [3] Mr Dunlop stated as follows:

> *The land was in Swords and was owned by a family called the Duffs. A company called, I believe, Nosaka was formed with respect to this development. The proposal was to build a hotel in Swords.*
>
> *I was approached by Mr Robert White representing the Nosaka consortium, in the latter part of 1990, early 1991. Mr White is a jeweller. He informed me that he had discussed the matter with Messrs Wright and Gallagher. He wanted my assistance to make sure that other people were looked after and remained supportive. He believed the rezoning could occur quickly. I informed him that I thought it would take some time.*
>
> *It was agreed between Mr White and I that I would get £10,000 plus VAT and that £5,000 cash was paid to me in the corner of the lounge of the Shelbourne Hotel during a meeting with Mr White. Mr White gave me the money with express intention and knowledge that I would ensure that people remained supportive.*

[2] See Exhibit 1

[3] Mr Dunlop appended an asterisk to this title which, according to him, designated that there had been awareness on the part of the landowner that monies would be paid to councillors.

My agreement with Mr White was for a success fee of £4,000 cash to be paid on completion of the preliminary planning process ***(Appendix 1)****.*

I gave Mr Gallagher the sum of £2,000 on the occasion of speaking to him in the Grand Hotel in Malahide.

While the agreement I had was that I was to receive £10,000 plus VAT I cannot say definitively if I got more than £5,000.

4.05 The Tribunal wrote to Mr Dunlop requesting a further detailed narrative statement and his attention was drawn to an apparent omission in his October 2000 statement of the allegation he had made against Cllr Wright in the course of his private interview in May 2000, namely his assertion that he had paid Cllr Wright money in connection to the lands, he having stated, *inter alia*, on that occasion, '*I am certain that it was just £1,000.'* Mr Dunlop was called upon to explain the omission and advised that '(in) *the event that such exclusion was an error'* he *'should deal with his dealings with Mr G.V. Wright.'*

4.06 On 27 May 2003 Mr Dunlop's solicitors advised the Tribunal that the detailed narrative statement was awaited but went on to address the Tribunal's query regarding Cllr Wright in the following manner:

'Mr Dunlop has asked me to bring to your attention that the reference to Councillor GV Wright (during the course of a private interview on May 19th 2000) was erroneous insofar as it was indicated during the course of that interview that Mr Dunlop had made a payment to Councillor GV Wright in relation to these lands. The payments made by Mr Dunlop in connection with these lands are as set out as narrative statement dated 9th October 2000.'

4.07 In the course of his testimony Mr Dunlop acknowledged the error he made in May 2000 in referring to his having paid Cllr Wright IR£1,000 in connection with the Duff lands. His explanation for this error was, he stated, based on his belief, in May 2000, of having done so, given Cllr Wright's close association with the project. Mr Dunlop claimed that having had subsequent sight of the Development Plan '*roadmap*', this had assisted him realising that Cllr Wright had not been the recipient of money from him in relation to the Duff lands, hence the omission of any reference to Cllr Wright in that regard in Mr Dunlop's October 2000 statement.

4.08 On 23 January 2006 the Tribunal renewed its request for a narrative statement in response to which Mr Dunlop furnished a detailed statement on 9 March 2006, within days of commencement of the Tribunal's public hearings in the Duff Module, and following the circulation to him of a brief of documentation.

MR DUNLOP AND MR WHITE'S MEETINGS AND DEALINGS IN THE PERIOD 1990 TO 1991 AND RELATED MATTERS

5.01 An analysis of Mr Dunlop's 1990 and 1991 diaries revealed fourteen entries referable to Mr White between 30 May 1990 and 6 March 1991. Mr Dunlop claimed to have first met with him on 30 May 1990.[4] According to Mr Dunlop, this meeting had come about through Mr Tim Collins. Mr Dunlop and Mr Collins had met by arrangement and Mr Dunlop was apprised that, Pilgrim Architects, with which Mr Collins was associated, had a client who had required Mr Dunlop's lobbying and public relation services. Mr Collins did not go into detail, other than referring to Mr White's planning application for a hotel development. Mr Dunlop told the Tribunal that on 9 May 1990, Mr Tim Collins called to his office, and advised him of his involvement with the Duff lands, and that he would introduce Mr Dunlop to Mr White in due course. Mr Dunlop's diary includes an entry for 9 May 1990 in relation to his meeting with Mr Collins.

5.02 In the course of his testimony Mr Collins acknowledged that he '*may* have been the person who recommended Mr Dunlop to Mr White, and the person who had '*volunteered'* to approach Mr Dunlop in advance of Mr White contacting him. The Tribunal was satisfied that he did so. Mr Collins did not discount 9 May 1990 as being the likely date of his meeting with Mr Dunlop in this regard.

5.03 While Mr Collins, in the course of his testimony to the Tribunal, acknowledged his role in effecting the meeting between Mr White and Mr Dunlop (and indeed acknowledged meeting Mr Dunlop in the company of Mr White, although unsure of when this occurred), his statement to the Tribunal on 23 May 2003 in connection with the matter did not give any hint of this role. The wording of Mr Collins' statement suggested that Mr Dunlop's involvement with Mr White in relation to the Duff lands was at a total remove from Mr Collins. The Tribunal believed that when preparing his statement Mr Collins made a deliberate decision (for whatever reason) not to acknowledge the role he had played in bringing Mr Dunlop and Mr White together. Throughout his evidence Mr Collins claimed to have no recollection of any dealings he had with Mr Dunlop in relation to the Duff lands.

5.04 Mr Dunlop told the Tribunal that following a telephone call from Mr White they met on 30 May 1990 in the Shelbourne Hotel at Mr White's suggestion. In the course of the meeting Mr White informed him that Nosaka Ltd had obtained or alternatively was about to apply for planning permission for a hotel and residential development, and Mr Dunlop was asked to act in a public relations

[4] See Exhibit 2

and lobbying capacity in the context of the contemplated material contravention procedure which was necessary. Mr White had referred to Mr Collins' contact with Mr Dunlop and he had also stated that in discussions he had with Cllr GV Wright, Mr Dunlop had been recommended to him. Mr Dunlop was told that Mr White had already spoken to Cllrs Wright and Gallagher about his proposal for the lands and that '*GV Wright was 100% supportive, was on side*' and also that '*Councillor Gallagher was enthusiastic.'* Mr White made reference to Cllr Wright's belief that the issue could be progressed within a six week timeframe.

5.05 Mr Dunlop outlined the context in which Mr White had spoken about Cllrs Wright and Gallagher, as follows:

> '*...I think the issue in relation to Mr White was relatively simple, and that is that he had the absolute total 100% support of GV Wright. He had had discussions with Cyril Gallagher, but Cyril Gallagher while he was enthusiastic about the possibility of having a hotel in Swords, knew what the situation obtaining in Swords was in relation to all sorts of services, and he had a close contact with the planners and he was dubious about whether or not the planners would be supportive or would endorse it. And I think, and I had nothing other than my impression on this point, and I say that in advance, that my role in relation to this matter was to ensure that Cyril Gallagher was as much on side as GV Wright because the point was that Cyril was from Swords, GV was from Malahide, and that if other Councillors saw that Cyril wasn't on board or wasn't supportive, that could be disastrous.'*

5.06 Later in his evidence Mr Dunlop explained the necessity for Cllr Gallagher to remain supportive of the project in the following terms:

> *'... if Cyril Gallagher was onside well then the system would fall into place, the Fianna Fail vote would fall into place. It would not be necessary if two people in the status in the Council of Cyril Gallagher and GV Wright at a meeting prior to a Council meeting said we are going to, we are for this.'*

5.07 And also stated:

> *'If Cyril said he was supporting something, yes, the distinct possibility, unless there was something seriously wrong or that somebody could point to something serious either in a planning issue or otherwise. Yes, the possibility is that at a meeting of the Fianna Fáil Councillors when Cyril would indicate that he was supporting that. People would say we'll do this for Cyril.'*

5.08 While Mr White, in the course of their discussions, had made reference to it being '*essential to make sure that other people were supportive'*, something which Mr Dunlop had taken to refer to councillors other than Cllrs Wright and Gallagher and in respect of which Mr Dunlop had gleaned that he would have a lobbying role, '*in the actuality*' he had interpreted that comment as a reference to Cllr Gallagher and that he, Mr Dunlop, was required to look after him financially. Mr Dunlop testified that he told Mr White that he would speak to and '*look after Cyril*', although the specifics of how he would do so had not been elaborated on.

5.09 It was Mr Dunlop's evidence that his initial discussion with Mr White had led him to understand that a financial arrangement had been arrived at between Mr White and Cllr Wright. His understanding had come from statements made by Mr White, to wit, '*GV is totally onside, fully supportive'* and '*you needn't worry about GV, I am looking after GV.'*

5.10 Other than Mr White having made the aforesaid comments, the prospect of Mr White paying either Cllr Wright or Cllr Gallagher had not been discussed. Nor had Mr Dunlop specifically discussed with Mr White any payments he himself might make to councillors.

5.11 With reference to his assertion that Mr White had alluded to the necessity '*of keeping people onside,'* it was put to Mr Dunlop by Tribunal Counsel that this statement may have been a reference to the fact that councillors were to be lobbied, as opposed to '*looked after financially'*. Mr Dunlop's response to this, in essence, was that he had taken a different interpretation, having regard to '*the total orientation of the approach, what was said, the nature of it and the culture of it.'*

5.12 Asked how he could claim that Mr White knew of his intention to pay money to councillors for their support Mr Dunlop replied:

> *'I go back again to the context of that meeting that I had with Mr White, its origination, the language that was used, the very phraseology that I need not worry about GV he was looking after GV and he was leaving Cyril to me, as well as other Councillors. Now in, as matters eventuated as I said to you yesterday, I have no recollection of speaking to anyone else other than GV and Cyril Gallagher…'*

5.13 On Day 623 Mr Dunlop was questioned as follows:

> *'Q. Is there any reason why you couldn't have told Mr White subsequently that you had paid Mr Gallagher?*
>
> *A. There is no reason why I couldn't have, but I didn't.*
>
> *Q. So could Mr White say that he had no knowledge of the fact that you either intended to or did in fact pay Councillors?*

A. Well that's a matter for Mr White.

Q. I understand that is his position in fairness to him?

A. Fine. That is his position, I can only give you, Mr Quinn, the context of my meeting with Mr White and the arrangements with Mr White and what was said.

Q. Did you ever ask Mr White if he had paid Mr Wright?

A. No, I did not.

Q. Or how much he might have paid Mr Wright?

A. No, I did not.

Q. Did you ever ask Mr Wright if he had received money?

A. No.

Q. You knew Mr Wright quite well?

A. Yes, I did.

Q. And you had given him money or you alleged to have given him money in other cases, isn't that right?

A. Correct.

Q. So a discussion in the context of receiving money wouldn't have been out of the question vis-à-vis yourself and Mr Wright?

A. It wouldn't have been out of the question but it did not take place.

Q. But you could have asked him?

A. Oh, I could have, yes.

Q. Did Mr Gallagher ask you if any other Councillor was being paid in relation to his support?

A. No, not on this occasion or ever.'

5.14 Mr Dunlop was questioned in relation to the '*commercial reality'* of having agreed a fee of only IR£10,000 with Mr White, given his (Mr Dunlop's) understanding that the purpose of his retention was to keep councillors '*on side*' by making payments to them, Mr Dunlop's response was:

'Well on the face of it you might suggest that there wasn't, but certainly in circumstances that no money was ever handed over by me to any elected representative unless I was asked and in those circumstances this was in the – this was in 1990, it was not in the context of the Development Plan, I didn't see it as uncommercial.'

5.15 Mr Dunlop claimed that on foot of his understanding that his principal function was to keep Cllr Gallagher '*on side*,' he had duly approached him,[5] as well as discussing the Duff lands with Cllr Wright. He restricted his lobbying endeavours to those two councillors. He stated that it was:

'....quite conceivable that people knew, via Robert White and/or G.V. and Cyril Gallagher that I was acting in some capacity and they may well have

[5] Mr Dunlop's contact with Councillor Gallagher is dealt with below.

approached me or asked me about it, but I certainly had no contact with Councillors in the context of getting a Motion signed or getting an application in or whatever.'

5.16 Responding to cross examination by Cllr Wright's solicitor, Mr Dunlop explained his lobbying approach in the following terms:

'...in circumstances where you have two people of the status of GV Wright and Cyril Gallagher, particularly the latter because he came from the area in which the lands were located, who were supportive, that fact alone at a meeting of Fianna Fail Councillors prior to a Council meeting, it would be very odd in fact it would be completely unusual if any other Councillors showed any negativity towards it, once Cyril Gallagher was supportive.'

5.17 Mr Dunlop maintained that an absence of support from Cllr Gallagher would have been seen as '*a serious red flag*' for the project and went on to state:

'Yes, so the fact that Cyril was in favour of it would in my view, combined with that of GV Wright, in a Fianna Fail meeting, prior to, as took place at Fianna Fail meetings to decide prior to Council meetings what way people would vote, that would have been enough if GV Wright and Cyril Gallagher were in favour of it. I do not recollect approaching anybody else in relation to this matter.'

5.18 Mr Dunlop testified that his fees had been discussed at the meeting with Mr White on 30 May but left in abeyance. It was his belief that he had asked for IR£15,000 in addition to a IR£5,000 success fee.

5.19 Mr Dunlop and Mr White next met, by arrangement, on 25 July 1990 [6] at Mr White's office premises on the North Circular Road. They agreed a fee of IR£10,000 plus VAT, with a success fee of IR£4,000, in cash, to be paid if, and when, the planning process concluded successfully.

5.20 Mr Dunlop claimed that, following this meeting he prepared a handwritten note on the agreed payment terms, and maintained that note on his files. He did not record the arrangement in any formal letter to Mr White, nor did he believe he ever submitted an invoice to him. Mr Dunlop was in a position, more than a decade later, to provide his handwritten note[7] to the Tribunal, together with other documentation, comprising architectural drawings by Pilgrim Associates, which he stated he had been provided with during his retention as a lobbyist.[8]

[6] See exhibit 3
[7] See Exhibit 4
[8] The handwritten note detailing the fee arrangement and the drawings were documents which Mr Dunlop appended to his October 2000 statement.

5.21 In the course of his private interview in May 2000 Mr Dunlop appeared to suggest that a search of his offices and files (to that point in time) had yielded no material relevant to the Duff lands. However, at some point between 19 May and 23 October 2000 Mr Dunlop located the documents in question, although he could not specify the circumstances of their retrieval. Mr Dunlop refuted any suggestion (as put to him in cross-examination) that his handwritten note was otherwise than a contemporaneous account of the event which it detailed, and he was adamant that he had prepared it in the immediate aftermath of his meeting with Mr White on 25 July 1990.

5.22 Mr Dunlop explained why he made the note as follows: *'I took a view that having met this man, that it would be preferable for me to keep a note of what we agreed and shook hands on.'*

5.23 On Mr Dunlop's account of events, less than two weeks later, on 7 August 1990,[9] he again met Mr White at the Shelbourne Hotel, at the latter's request. Mr Dunlop stated that in the course of that meeting Mr White had outlined his preference to pay Mr Dunlop's fee in cash, and his presumption that Mr Dunlop would also so prefer. He had '*readily agreed'* to this suggestion. Mr Dunlop described this conversation as having taken place in a corner of the tea room of the Shelbourne Hotel. It was agreed that Mr Dunlop's fee would be paid by an initial IR£5,000 in cash with the remainder of the fee to be paid within three months.

5.24 On 10 August 1990, once again in the Shelbourne Hotel, Mr White had given Mr Dunlop an envelope and he had advised that while he had hoped it would contain IR£5,000, the envelope contained only IR£3,000 but that he would give him the balance of the upfront cash payment (IR£2,000) shortly, a payment, Mr Dunlop maintained, was duly made, once again in the Shelbourne Hotel, on 15 August 1990.

5.25 Mr Dunlop's diary for the aforementioned five dates made reference to Mr White, although there was no reference to either the Shelbourne Hotel or to Mr White's North Circular Road premises as the location for the meetings. On 10 August 1990, the diary recorded as follows: '*Three R.White*,' an entry Mr Dunlop attributed both to the fact of his having met Mr White on that date, and to his receipt of IR£3,000 in cash. His diary entry for 15 August 1990,[10] being the date, on which he maintained he received the IR£2,000 cash, read '4pm R White.'

[9] See Exhibit 5

[10] See Exhibit 6.

5.26 Cross-examined on Day 634, Mr Dunlop denied any suggestion that his diary was doctored or altered to indicate meetings with Mr White that had not in fact taken place. With regard to the entries of 7, 10 and 15 August 1990, he stated that he had a recollection, independent of such diary entries, of the events that occurred on those dates. Based on his diary entries, he testified to further meetings with Mr White, namely on 16 and 21 August 1990, 7, 18 19 and 27 September 1990, 24 October 1990, 22 November 1990, 7, 14 December 1990 and 6 March 1991. Mr Dunlop conceded that his recollection of those meetings was less clear, and he surmised that many of the meetings from 16 August 1990 onwards related to the exchange of information regarding the progress, or otherwise, of Nosaka Ltd's planning permission application, and Mr Dunlop's pursuit of his fees.

5.27 Mr White vehemently denied that he had meetings with, or that he retained, Mr Dunlop prior to the beginning of October 1990 and he denied ever meeting with Mr Dunlop in the Shelbourne Hotel. Insofar as there were entries referable to him in Mr Dunlop's diary for the period May to September 1990, he maintained that these were false and had been fabricated. With reference to the diary entry for 30 May 1990 specifically, Mr White stated that he had begun a two week holiday in the South of France on 17 May 1990 and therefore was not, and could not, have been, present for a meeting in Dublin on 30 May 1990 with Mr Dunlop. To this end Mr White produced a letter to the Tribunal from a travel company, Parker and Palmer Holidays, which indicated that Mr White booked a villa in France for a two week period commencing 17 May 1990.

5.28 Mr White specifically denied that he had ever made cash payments totalling IR£5,000 to Mr Dunlop stating *'I never gave Mr Dunlop one penny in cash.'*

5.29 With regard to Mr Dunlop's belief, from discussions between them, that Mr White knew Mr Dunlop would have to pay councillors, Mr White totally disputed that any such belief on the part of Mr Dunlop could have arisen from their dealings. He told the Tribunal that he had never asked Mr Dunlop to lobby, pay or influence elected representatives and specifically denied that Mr Dunlop had ever been retained on that basis, although he acknowledged that in the course of their discussions Mr Dunlop could have referred to the fact that he knew councillors.

5.30 According to Mr White, Mr Dunlop's services were retained by Nosaka Ltd in order to interact with the media and with local residents in Swords, in the context of Nosaka Ltd's application for planning permission for the residential

and hotel development. Mr Dunlop's brief, *vis-a-vis* the local residents, was to chair meetings and answer questions regarding the proposed development.

5.31 Mr Dunlop acknowledged that he attended a meeting with residents in the course of his retention as a lobbyist, but was unable to state when this had occurred, or whether an entry in his diary for 27 September 1990 indicated that it had taken place on that date (see below).

5.32 Mr White maintained that he had no need of Mr Dunlop's services in respect of the lobbying of councillors, as at the time of Mr Dunlop's retention he, Mr White, had made contact with local councillors (including Cllrs Wright,[11] Gallagher and Devitt) and with some councillors outside the locality. Mr White stated '*I'm clearly saying that the development was agreed to be proposed and seconded and it was agreed to be supported by Councillors before I went near Frank Dunlop.'* Mr White had thus concluded that councillors were supportive because he had been told by Cllr Wright and by Cllr Gallagher and Devitt[12] (the local councillors) that they were supporting the proposal. Mr White claimed that it was '*not particularly'* suggested to him that it would be a good idea to canvass all councillors for their support.

5.33 Mr White testified that, accompanied by Mr Collins, he first met with Mr Dunlop in early October 1990 at Mr Dunlop's offices in Mount Street.[13] He acknowledged Mr Collins' role in recommending Mr Dunlop. Mr Dunlop's retention had commenced from early October 1990, and at their initial meeting a fee of IR£10,000 and Vat had been agreed for Mr Dunlop. Mr White maintained that the fee had been negotiated in Mr Collins' presence. Mr White denied having made any agreement for the payment of a success fee. He described to the Tribunal how, in late October 1990, approximately ten days after they first met, he called into Mr Dunlop's office unexpectedly whereupon he gave Mr Dunlop a cheque for IR£2,500, or perhaps IR£3,000, by way of a payment '*on account.'* Mr White told the Tribunal that he was nearly certain that the cheque he gave Mr Dunlop was a Nosaka Ltd cheque.

5.34 Questioned by Mr Dunlop's Counsel why he had paid Mr Dunlop money *'on account'*, done so, Mr White stated '*I felt Frank Dunlop didn't know me. I had never done business with him.'* And he said he had felt it was '*good practice'* to pay him money on account.

[11]Cllr Wright was not in fact local councillor, having been elected to the adjoining Malahide Ward.
[12]Cllr Devitt acknowledged that she may well have been approached but had no recollection nor a recollection of who asked her to sign the Motion put before the council in 1991
[13]Mr Dunlop had no recollection of meeting Mr White at the offices of Frank Dunlop & Associates Ltd.

5.35 In the course of Mr Dunlop's cross-examination by Mr White's Counsel it was suggested that he had received a cheque for IR£2,500 from Mr White, and that that cheque had been debited to Nosaka Ltd's account on 30 October 1990. On Day 637, in the course of his evidence, Mr White acknowledged that that debit referred to a payment to an individual unconnected to Mr Dunlop, as was apparent from the analysis of documentation pertaining to Nosaka Ltd's bank accounts for the relevant period and which was provided to the Tribunal between the date of Mr Dunlop's cross-examination and Mr White's testimony. The discovered documentation did not show another cheque of IR£2,500 drawn on the account in the relevant period. Nosaka Ltd's account showed a cheque debit of IR£3,000, on 14 August 1990, but, on Mr White's account of his dealings with Mr Dunlop, this could not have related to Mr Dunlop.

5.36 Thus, notwithstanding Mr White's sworn testimony that he was nearly certain that he had paid Mr Dunlop either IR£2,500 or IR£3,000 with a Nosaka Ltd cheque in late October 1990, there was no evidence of such a payment in the documentation (discovered to the Tribunal) which related to Nosaka's accounts.

5.37 An examination of the said bank statements did identify two large round figure withdrawals of IR£35,000 and IR£10,000 from Nosaka Ltd's current account on 30 April and 28 May 1990 respectively. Mr White claimed that these withdrawals (in cash) were made for his '*personal use'* and rejected any suggestion that such withdrawals might have funded cash payments in August 1990 (which he denied) to Mr Dunlop. He was unable to state by what date these funds had been spent. In response to questioning by his own Counsel he stated that the withdrawal of IR£10,000 on 30 May 1990 would have been made by his wife, as on that date, on his account of events, he was not in the jurisdiction. Mr White attributed the withdrawal of these funds to the refurbishment of a house.

5.38 Notwithstanding having been a signatory to Nosaka Ltd's current account, Mrs Ann Marie White testified that she had no knowledge of either withdrawal. The thrust of Mrs White's evidence was that, although a director of Nosaka Ltd, the business of the company was largely conducted by her husband. The Tribunal accepted this to have been the case.

5.39 Insofar as there were recorded meetings with him in Mr Dunlop's diary during the months of November and December 1990, Mr White accepted that these took place. Although professing no recollection of the event, Mr White accepted that Mr Dunlop was his guest at the annual O'Donovan Rossa Cumann fundraising dinner in Kilmainham Hospital on 7 December 1990.[14]

[14] Mrs White, in her evidence, recalled Mr Dunlop's presence at the dinner.

5.40 While Mr White denied that the Shelbourne Hotel had been the venue for his meetings with Mr Dunlop, he claimed to have met with Mr Dunlop at locations other than Mr Dunlop's office, one of which was the bar in Leinster House. Mr White claimed that by arrangement he, Mr Collins and Mr Rowe met Mr Dunlop at that location for a business meeting, during which there had been an '*accidental'* meeting with Cllr Wright.

5.41 Asked to identify the reason for meeting his architect and his public relations advisor in the bar in Leinster House, Mr White stated that his recollection was that they had met there to discuss a forthcoming meeting with local people in Swords, and when pressed further on the matter, exclaimed as follows:

> '*Well, I don't know. That's where it took place. And Mr Dunlop was there. My memory of it, it probably lasted about half an hour. And it the reason I'm so clear about it is that Mr Dunlop had one of these mobile phones at the time which was quite new and he was jumping up and down looking for a signal trying to answer it. And I suppose we spent about five minutes talking about the whole thing and we were there for about twenty minutes. And to be quite blunt, I thought he was quite rude. And also the fact that GV Wright came into the bar, in company, and he called him over and mentioned the Nosaka development and GV said to me that he was aware of it and supported it. That's how I particularly remember that meeting.'*

5.42 Mr White also stated:

> '*I assumed that Mr Dunlop is doing a lot of business there. As I say, he was jumping up and down and meeting various other people. Out of the 25 minutes or half an hour that we were there, I suppose we spent about five minutes talking.'*

5.43 Mr Dunlop's diary for 27 September 1990 had an entry referable to Mr White and Cllr Wright noted as follows: '*12.00 G.V. / Rob W'.*

5.44 There was a further entry referable to Mr White for the same date, namely: *'8.00 R.W. / Residents'*

5.45 Although acknowledging the entry in his diary for 27 September 1990, Mr Dunlop did not have a recollection of meeting Mr White and Cllr Wright together but told the Tribunal that it was possible that he had done so. With regard to Mr White's evidence about a meeting in the Dáil bar, Mr Dunlop did not discount that that could have occurred, stating '*well I don't know if you have been in the*

Dáil bar. It is like the Clapham bus station. You could meet anybody there at any time.'

5.46 Because of his claim to have first met with Mr Dunlop in early October 1990, Mr White disputed the suggestion that he had met with Mr Dunlop on 27 September 1990, or that Mr Dunlop met with the residents of Swords on that date, as he believed that meetings between Mr Dunlop and residents took place in late 1990, or early 1991.[15]

5.47 Mr Collins told the Tribunal that it was his best recollection that he was never at a meeting with Mr White, Mr Rowe and Mr Dunlop together, in Leinster House. Mr Rowe likewise stated that he had not been at a meeting in Leinster House. It was his recollection that he met with Mr Dunlop twice on the same date. Mr Rowe testified that he first met with Mr Dunlop in the presence of Mr White in Mr Dunlop's office in the afternoon, on a date he could not recall, and that this meeting was followed by a meeting later that day with the residents of Swords in the 'Harp' bar (in Swords). Mr Rowe acknowledged that the 27 September 1990 entry in Mr Dunlop's diary could have been a reference to that meeting. He recalled only one such meeting. Insofar as he had met Cllr Wright in connection with the Duff lands, he had done so in the company of Mr White in a public house adjacent to Pilgrim's offices in Mount Street. Mr Collins also recollected meeting Cllr Wright at that location, and in the company of Mr White and Mr Rowe.

5.48 Cllr Wright recalled a meeting with Mr White, Mr Rowe and Mr Collins in O'Dwyer's pub when Mr Rowe briefed him on Nosaka Ltd's proposed development. Cllr Wright said he had no recollection of the meeting (accidental or otherwise) in Leinster House referred to by Mr White and he had no recollection of meeting Mr White and Mr Dunlop together, as Mr Dunlop's diary entry for 27 September 1990 had suggested.

5.49 However, it was common case that Cllr Wright and Mr White met during the currency of Nosaka Ltd's planning permission application. Mr White testified that, indeed, Cllr Wright was the first elected representative he had approached in relation to his proposed scheme for the Duff lands. Cllr Wright was also the person who advised Mr White to approach the '*local'* councillors. The Tribunal was satisfied, based on Mr White's testimony, that the approach to Cllr Wright was likely to have been made at some point prior to the lodging of the planning application, and indeed may well have been as early as 1989.

[15] Mr Matthew Duff, who gave evidence, believed that he met Mr Dunlop at a residents meeting in January 1991.

VISITS TO LEINSTER HOUSE

6.01 A log book maintained by Leinster House staff in 1991 and 1992 indicated that Mr White visited Cllr Wright (then a Senator) on 28 January 1991 (some three months prior to the material contravention vote), on 26 February 1992, on 3 March 1992 and on 19 May 1992. Mr White claimed that these were '*social*' visits based on the friendship which had developed between them subsequent to Mr White's first approach to Cllr Wright at the latter's constituency office in Malahide, concerning the proposal for the Duff lands.

6.02 Cllr Wright acknowledged this friendship, and testified that on occasions Mr White had provided him with political support by purchasing tickets for fundraising events.

6.03 Cllr Wright told the Tribunal that once apprised of Mr White's proposals for the Duff lands (of which he was supportive) he let his views be known to his colleagues within the Fianna Fail Party, although he maintained that he had not '*promoted*' the project. He said he had impressed upon Mr White the need to approach '*local*' councillors, such as Cllrs Gallagher and Devitt, and he recalled discussing the project with Cllr Gallagher following Mr White's approach to Cllr Gallagher. Cllr Wright told the Tribunal that while Cllr Gallagher had recognised the merits of the proposal, he was concerned that the project would have the Council Planners' support. Cllr Wright acknowledged, as indeed was also indicated by contemporaneous documentation provided to the Tribunal, that the Nosaka Ltd planning application, although ultimately successfully voted on and which had the approval of the council officials at the time of the vote, was on occasions met with opposition from both councillors and some council planning officials during the currency of the planning application and material contravention process.[16]

6.04 Cllr Wright acknowledged that he and Mr Dunlop discussed the Duff lands project but, nevertheless, was of the belief that Mr Dunlop had not spoken to other councillors in relation thereto. Cllr Wright testified that he understood Mr Dunlop's role as a '*public relations*' one. If this was so it was at odds with the lobbying role Cllr Wright acknowledged Mr Dunlop undertook in the years 1991 to 1993 during the review of the 1983 Development Plan.

6.05 While he acknowledged the fact that Mr Dunlop had withdrawn his allegation (made on 19 May 2000) that he had paid him IR£1,000, Cllr Wright

[16] The record of the council vote of 22 April, 1991 indicated that there was not total support for the project. Moreover, a record of a meeting of the Fingal Committee of the Council in September, 1990 indicated that not all local councillors supported the planning application, Cllrs Owen and Boland opposing it.

nonetheless reiterated that he had not received any payment from Mr Dunlop in relation to the Duff project. However, he acknowledged that he was the recipient of money from Mr Dunlop, of political donations, in the years 1991 to 1993.[17]

6.06 Cllr Wright's description of Mr Dunlop's role in the Duff project (which suggested that Mr Dunlop did not have a lobbying function) was in contrast to Mr Dunlop's account of his contact with Cllr Wright in relation to the Duff lands. Mr Dunlop told the Tribunal that Cllr Wright, when approached by him in relation to the lands, was supportive but concerned that Mr Dunlop should speak to Cllr Gallagher, as he, Cllr Wright, was of the view the other Fianna Fail Councillors would not support the issue if Cllr Gallagher was not supportive of it. He could not recollect meeting Cllr Wright and Mr White together (as suggested by his diary entry for 27 September 1990).

6.07 Mr Dunlop described regular meetings with Cllr Wright, whom he described as an '*active manager of files,'* (over the years) in the environs of the council, in Cllr Wright's office in Malahide and in the Dáil.

THE CESSATION OF MR DUNLOP'S RETENTION AS A LOBBYIST FOR NOSAKA LTD/MR WHITE

7.01 There was a conflict between Mr Dunlop and Mr White as to the basis upon which Mr Dunlop's retention by Mr White/Nosaka Ltd came to an end and the timing of that cessation. For a period of time during the currency of his public testimony in relation to this issue, Mr Dunlop placed reliance on what he claimed were diary entries in the period October to December 1991, to substantiate his claim that his contact with Mr White continued to the end of 1991. However, Mr Dunlop resiled from this position, in the course of cross examination by Counsel for Mr White.

7.02 Mr White maintained that Mr Dunlop's services were dispensed with in specific circumstances, namely when he, Mr White, became aware of Mr Dunlop's retention as a lobbyist by Mr Joe Tiernan in relation to lands at Balheary.[18] Mr White perceived this association with Mr Tiernan as detrimental to his plans for the Duff lands because of his belief that Mr Dunlop's role in relation to the Balheary lands gave rise to a conflict of interest. Mr White testified that, subsequent to a meeting with Swords residents in the Harp public house, which Mr Dunlop attended, he had spoken to Cllr Gallagher who had advised him

[17] The total figure, the timing of certain of the payments and the circumstances in which they were given were issues of dispute between Cllr Wright and Mr Dunlop. These payments are addressed in Chapters Two, Seven and Nine.
[18] See Chapter Twelve.

that Mr Dunlop was acting for Mr Tiernan. On receipt of this information Mr White said that he telephoned Pilgrim Architects to advise them that he did not want anything further to do with Mr Dunlop. Mr White claimed he left it to Pilgrim to communicate this to Mr Dunlop, as the recommendation to retain him had come from that party. Insofar as Mr Collins' evidence dealt with this issue, he stated that on an occasion which he could not date, he received a telephone call from Mr White informing him that Mr Dunlop's services had been dispensed with.

7.03 While he initially believed his association with Mr Dunlop terminated in February 1990, Mr White conceded that he may have contact with Mr Dunlop in as late as March 1991.

7.04 Mr Dunlop's diary for 6 March 1991 recorded a meeting with Mr White at the Shelbourne Hotel.[19] In the course of his testimony Mr Dunlop was unable to say when exactly his association with Mr White had ended, but he acknowledged (ultimately) that the last recorded entry in his diary for a meeting with Mr White was 6 March 1991, some seven weeks or so prior to the Duff lands material contravention vote. Mr Dunlop stated that he could not '*categorically*' state that he spoke to Mr White after 6 March 1991.

7.05 In his detailed narrative statement furnished to the Tribunal on 9 March 2006, Mr Dunlop had made reference, *inter alia*, to the meetings he had with Mr White between 30 May 1990 and 15 August 1990, as already outlined above and his statement[20] also maintained as follows: '*I met Mr White on approximately twelve (12) other occasions (between August 16th 1990 and 14th December 1991).*'

7.06 On Day 623, while being examined by Tribunal Counsel in relation to Mr White's assertion that his arrangement with Mr Dunlop had terminated prior to the material contravention vote, and indeed terminated as early as February 1991, Mr Dunlop countered this assertion by reiterating what was in his 2006 statement, namely that he and Mr White continued to meet regularly until 14 December 1991, and moreover maintained that he had attended an annual fundraising function on behalf of Fianna Fáil in the Royal Hospital Kilmainham on 7 December 1991. When questioned as to the reason for contact between them after the material contravention vote, Mr Dunlop maintained that he was trying to extract the remaining fees owed to him by Mr White.

[19] This is the first recorded reference to the Shelbourne Hotel as a location for meetings between Mr Dunlop and Mr White.
[20] See Exhibit 7

7.07 Mr Hayden SC (Counsel for Mr White), put it to Mr Dunlop that meetings which Mr Dunlop alleged took place in the final quarter of 1991, and for which he maintained he had diaried records, were in fact meetings which took place in late 1990. Mr Dunlop ultimately conceded this point when Tribunal Counsel indicated that Mr Dunlop's diary for 1991 commenced in October 1990 and that it appeared that Mr Dunlop had commenced using his 1991 diary in this period. When photocopied and added to the documentation circulated to witnesses in advance of public hearings, the entire 1991 diary which including that portion which covered the period from October to December 1990 was allotted a 1991 diary designation, thus leading a reader to erroneously conclude that they were extracts from Mr Dunlop's October to December 1991 diary, rather than extracts for the same period in 1990. When Mr Dunlop received the documentation from the Tribunal he read what appeared to be diaried meetings with Mr White in late 1991, and accordingly, in his statement, and again in his evidence, he relied on the erroneously compiled diary documentation as corroboration for his having met with Mr White in late 1991.

7.08 Mr Dunlop was challenged by Mr Hayden, given his claimed actual recollection of the event, why it was that he could not have identified, as erroneous, the reference to his having attended the Kilmainham dinner on 7 December 1991, when in fact he was Mr White's guest on 7 December 1990.

7.09 The Tribunal considered whether Mr Dunlop's initial reliance on diary entries for the last quarter of 1991 called into question his evidence concerning his recollection of meetings with Mr White generally. The Tribunal's considered opinion was that Mr Dunlop's erroneous reliance on what he believed were diary entries for meetings with Mr White for the months of October, November and December, 1991 did not undermine the general thrust of his evidence, given that in the course of his direct examination he himself had admitted that he had no great recollection of such meetings on dates subsequent to 15 August, 1990.

MEETINGS BETWEEN MR DUNLOP AND MR WHITE IN MAY – SEPTEMBER 1990

8.01 Having regard to the evidence as a whole the Tribunal was satisfied that the vast majority of meetings recorded in Mr Dunlop's diary for the timeframe outlined above, and in respect of which he gave evidence, did in fact take place. The Tribunal had some reservations about whether or not a meeting could have taken place on 30 May 1990, given the content of the letter from Parker and Palmer Holidays (even though that letter in itself was not conclusive proof as to whether Mr White himself was abroad for a full two weeks). However, the Tribunal took the view that Mr Dunlop and Mr White had certainly met by 25 July

1990, and it accepted that Mr Dunlop met Mr White at the latter's office in North Circular Road on that date.

8.02 In arriving at its conclusions that Mr Dunlop and Mr White met in the course of the Summer of 1990, the Tribunal took cognisance of Mr Collins' evidence on Day 624 that Mr Dunlop's diary entry for 9 May 1990 referred to a meeting involving himself and may have been the date on which he had advised Mr Dunlop that Mr White would require his assistance.

8.03 The Tribunal accepted that the handwritten note produced by Mr Dunlop to the Tribunal was compiled on 25 July 1990, following a meeting between them, and rejected the suggestion that the entry had been fabricated by Mr Dunlop. Equally, the Tribunal was satisfied that Mr Dunlop's diary references to meetings with Mr White in May, July and August 1990 had not been fabricated by Mr Dunlop.

8.04 The Tribunal also did not accept, as being credible, Mr White's evidence that he and Mr Dunlop only met in October 1990. It was satisfied that they met in advance of the submission of the planning application that was made to the county council in mid August 1990. The Tribunal did not accept that there was any reality to Mr White's contention in that regard, even if the Tribunal were minded (which it was not) to find that Mr Dunlop was retained solely in a public relations capacity *vis-a-vis* the residents of Swords, and for media purposes. If this was so, then logic dictated that contact with residents would have been made at the time of the lodging of the planning application, or in its immediate aftermath (as opposed to January 1991, as contended for by Mr White).

8.05 In any event the Tribunal was satisfied that the purpose of Mr Dunlop's retention was to keep Nosaka Ltd's planning application (and the likely material contravention process) on track, and as part of that process, lobby councillors in that regard. The Tribunal was satisfied that Mr Dunlop's function was not confined to media or public relations matters in connection with the residents of Swords.

8.06 Moreover, the evidence heard by the Tribunal, and the documentation seen by it in the course of the public inquiry, did not support Mr White's contention that it was his belief, at an early stage, that there was support for the planning application sufficient to guarantee a successful outcome of any material contravention vote that might ensue. It was apparent to the Tribunal that from the time of his retention as an architect to the project, Mr Rowe was alert to problems that might arise in the course of the planning application, given the agricultural zoning of the lands, the lack of access to either the main road network or to a foul sewer. While the offer of a '*planning gain'* by the

construction of a distributor road, in all probability, assisted the planning application, it was clear from Cllr Wright's evidence (notwithstanding Mr White's assertion that he was confident that the project was supported at an early stage) that Cllr Gallagher was less supportive than was Cllr Wright. The Tribunal was satisfied that Cllr Wright's evidence, in that regard, corroborated Mr Dunlop's assessment of Cllr Gallagher's attitude to the project, namely that while generally supportive, he believed that Mr White's plans were too ambitious, both in the timeframe he envisaged for the completion of the project and its scope.

8.07 These factors led the Tribunal to conclude that in 1990 Mr White believed it necessary that someone, other than himself, had to ensure that the councillors would support his project, and that, in particular, local councillors would lead the way in providing that support. It was common case that it was Mr Collins, known to Mr White in 1990 and known to Mr Dunlop at that time also, who recommended Mr Dunlop as a lobbyist to Mr White. The Tribunal was satisfied, that insofar as Mr Collins recommended Mr Dunlop's services to Mr White, this was done in the context of an appreciation that Mr Dunlop's lobbying skills could be applied to councillors, in addition to any other function he might undertake, such as liaising with the residents of Swords and/or with the media.

DISCUSSIONS REGARDING CLLRS GALLAGHER AND WRIGHT AT MR DUNLOP'S AND MR WHITE'S INITIAL MEETING

9.01 There was a significant conflict of evidence on this issue. Mr White specifically denied that he voiced any concern about Cllr Gallagher's support to Mr Dunlop and he denied that there was any circumstances arising from his discussions with Mr Dunlop, from which Mr Dunlop could have been left with an impression that his role was to ensure that Cllr Gallagher remained supportive, either by payment of money, or otherwise. Mr White also totally rejected any suggestion that Mr Dunlop could have been left with an impression that Mr White had himself '*looked after*' Cllr Wright.

9.02 Mr Dunlop's testimony was that other than the impression he had been left with from his discussions with Mr White, neither he nor Mr White had then or subsequently discussed or alluded to the issue of payments to councilors. Mr Dunlop maintained that his understanding of the task he was required to perform was prompted by Mr White use of phrases such as, it was '*essential to make sure that other people were supportive'* and that Mr Dunlop '*needn't worry about GV'* as Mr White was '*looking after GV*.'

9.03 The Tribunal considered that if Mr White had indeed used such phraseology, then Mr Dunlop could reasonably have interpreted his function in

the manner in which he maintained he had done. An issue for the Tribunal was to decide if in fact Mr White had uttered these statements attributed to him. The Tribunal concluded that it could not assess either Mr Dunlop's or Mr White's credibility in this regard, in the absence of a consideration of the financial arrangements which were agreed between them.

9.04 On that issue there was once again a substantial conflict between the evidence of Mr Dunlop and Mr White. They did however both agree that there was a concluded agreement whereupon Mr Dunlop's fee was to be IR£10,000 plus Vat. They disagreed as to the issue of the payment of a success fee, and more importantly, Mr White strongly rejected that their agreement had been subsequently varied, or that he made any cash payments to Mr Dunlop, as alleged by Mr Dunlop.

9.05 In the first instance the Tribunal accepted that there was an agreement for the payment of IR£10,000 (plus Vat) to Mr Dunlop and the payment of a IR£4,000 success fee in cash in the event that the planning process was successful. There was a documented record of this agreement dated 25 July 1990 available to the Tribunal.

DID MR DUNLOP RECEIVE IR£5,000 IN CASH FROM MR WHITE IN AUGUST 1990?

10.01 As a matter of probability, the Tribunal accepted that this sum was paid to Mr Dunlop. The Tribunal was satisfied that the entry in Mr Dunlop's diary for 10 August 1990, namely the words '*three: R White'* did indicate a cash payment of IR£3,000 from Mr White on that date. While there was no similar entry in Mr Dunlop's diary documenting the receipt of IR£2,000 in cash, the Tribunal accepted that this sum too was paid by Mr White to Mr Dunlop. Mr Dunlop claimed that he received it on 15 August 1990 and he pointed to a diary entry meeting with Mr White on that date namely '*4pm R White.'* The Tribunal noted that for the same date Mr Dunlop's diary had an entry '*10.00 London'* and thus, there had to be a question mark as to whether or not Mr Dunlop would have been in a position to meet with Mr White at 4pm in Dublin on the same date. Mr Dunlop testified that he did not believe that he was in London on that date, and also suggested that it was possible that, if he had been in London on that date, he could have returned to Dublin late morning, and in time for a meeting with Mr White at 4 o'clock on that afternoon.

10.02 Notwithstanding the element of doubt concerning the London entry for 15 August 1990, the Tribunal was satisfied that there were sufficient meetings between Mr Dunlop in August and September 1990 to have allowed for Mr

Dunlop's receipt of IR£2,000 from Mr White. Therefore the Tribunal was satisfied that he did receive the balance of the upfront cash payment on a date close to 15 August 1990, if not on that date.

10.03 One factor which persuaded the Tribunal that there had been a revision of the earlier agreement whereby Mr Dunlop was to receive IR£10,000 (plus Vat) and his receiving his fee in cash (half initially with the balance within three months) was the inability of Mr White to substantiate his claim to have made a payment of IR£2,500 or IR£3,000 by way of a Nosaka Ltd cheque to Frank Dunlop & Associates Ltd '*on account',* as maintained by him. There was no evidence of any such payment in the accounts of Nosaka Ltd, and even though certain cheques which underlined payments made out of Nosaka Ltd's account in the month of October 1990 were not available, the relevant Nosaka Ltd bank statements revealed no payment of IR£3,000. It was clearly established that a payment of IR£2,500 or IR£3,000 was not made on the account at the relevant time.

10.04 In these circumstances, the Tribunal was persuaded to accept Mr Dunlop's testimony that he had received a IR£5,000 payment in cash in two tranches, from Mr White.

10.05 The fact that Mr Dunlop received cash from Mr White in the circumstances outlined by Mr Dunlop led the Tribunal to prefer Mr Dunlop's evidence to the effect that their initial discussion centered on issues such as ensuring that councillors would be kept onside, and on Mr White's concern that Cllr Gallagher would remain supportive. Mr Dunlop had indeed been left with the impression that Mr White understood that in order for councillors to remain '*supportive'* money might have to be paid to them.

10.06 There was however no evidence that Cllr Wright was the recipient of any money from Mr White in relation to the Duff lands.

10.07 The Tribunal was also satisfied that at the time of Mr Dunlop's claim to have received cash payments from Mr White, Mr White had access to sufficient funds to make such cash payments, having regard to the substantial sum of IR£35,000 cash he had available to him at the end of May 1990. Accepting that this cash had been withdrawn with other projects in mind, the Tribunal was nevertheless satisfied a portion of this cash was available to Mr White for payment to Mr Dunlop in August 1990. There was no evidence to suggest that Mr White was otherwise privy to any dealings Mr Dunlop subsequently had with Cllr Gallagher, nor indeed did Mr Dunlop suggest that to have been the case.

10.08 It was probable that Mr Dunlop's tenure as a lobbyist terminated as a consequence of Mr White learning that Mr Dunlop had been retained by Mr Joe Tiernan in relation to lands at Balheary,[21] a situation which Mr White perceived as a conflict of interest on Mr Dunlop's part. The final entry for Mr White in Mr Dunlop's diary was 6 March 1991. Evidence heard by the Tribunal in the Balheary Module established that Mr Dunlop was retained by Mr Tiernan on or about 12 February 1991, and that Mr Dunlop lobbied councillors in relation to a Balheary lands rezoning Motion between late February and 21 March 1991. The Tribunal accepted Mr White's contention that he had learned of Mr Dunlop's association with the Balheary lands from Cllr Gallagher.

10.09 By the time their association ended Mr Dunlop had been paid just IR£5,000 by Mr White. Initially, when relying on diary entries referrable to Mr White for the final quarter of 1991, (those entries in fact related to 1990), Mr Dunlop suggested that a possible reason for those meetings was that he was seeking the balance of his fees, notwithstanding having resiled from the aforesaid diary references, and acknowledging that he had no contact with Mr White after March 1991. Mr Dunlop nevertheless maintained that while retained by Mr White, he had pursued the issue of his outstanding fees. Although there may have been some discussion on this issue between them in the final quarter of 1990, the Tribunal did not hear any persuasive evidence which suggested that Mr Dunlop sought to pursue the balance of his fees in any meaningful way.

MR DUNLOP'S DEALINGS WITH CLLR CYRIL GALLAGHER (FF)

11.01 In his March 2006 statement Mr Dunlop stated as follows:

> *'Sometime after my first meeting with Mr White I spoke to both GV Wright and Cyril Gallagher. GV Wright evinced confidence that the proposal would be acceptable to the planners but said that the lands lay in Cyril Gallagher's electoral area and that unless Cyril Gallagher was in favour, none of the other Fianna Fail members would support it. I spoke to Cyril Gallagher about the proposal and he was enthusiast while being dubious about the planners' agreement. He also said that Mr White was too ambitious with regard to timing. He believed it would take much longer than Mr White anticipated and a lot of support would be needed from others.*
>
> *Cyril Gallagher asked me for money for his support. I said that I understood – perhaps wrongly – Mr White has already spoken to him,*

[21] See Chapter Twelve

that is to Cyril Gallagher, and that whatever arrangement had been arrived at between them would cover his, Cyril Gallagher's, involvement and support. Cyril Gallagher said that he had indeed spoke to Mr White but that no arrangement had been arrived at. He said that Mr White had been in contact with him to let him know that I was involved. I paid £2,000 to Cyril Gallagher shortly after this meeting at one of our regular lunches in the Grand Hotel, Malahide, Co. Dublin. I collected Cyril Gallagher from his home, drove him to the hotel and drove him home afterwards. The money was specifically for his support for the Duff lands site proposal by Mr White/Nosaka.'

11.02 In the course of his evidence, Mr Dunlop essentially confirmed the contents of his 2006 statement, but clarified that the IR£2,000 payment he claimed that he made to Cllr Gallagher had occurred shortly after he himself had been paid cash by Mr White. He was unable to state with certainty which of the two cash payments made to him by Mr White had funded the payment to Cllr Gallagher.

11.03 When asked to explain why he had felt able, as he claimed, to enquire of Cllr Gallagher whether any arrangement had been arrived at between him and Mr White, yet had not specifically addressed with Mr White the issue of payments to Cllr Gallagher or to councillors generally, Mr Dunlop stated: *'Well I didn't, this is the first occasion that I met Mr White, I had never met Mr White before whereas Cyril Gallagher was a friend of mine.'*

11.04 Mr Dunlop testified that on the basis of his relationship and friendship with Cllr Gallagher, the latter's confirmation to him that no arrangement had been arrived at with Mr White had been sufficient for him to accept that that was the case.

11.05 Mr Dunlop was unable to say absolutely how the figure of IR£2,000 had been arrived at, and in particular, whether or not Cllr Gallagher had sought a higher figure, Mr Dunlop believed at the time that the sum was '*a suitable arrangement*.'

11.06 Mr Dunlop stated that he did not advise Mr White, in advance of his intention to pay IR£2,000 to Cllr Gallagher, nor did he advise him of the payment subsequently. But he said that he had '*assured Mr White Mr Gallagher was onside supportive*.'

11.07 Responding to questions in cross-examination by the solicitor representing Cllr Gallagher's estate, Mr Dunlop suggested that his association

and friendship with Cllr Gallagher arose in the context of the association of both with Fianna Fail, prior to any involvement on the part of Mr Dunlop with '*anything happening in Dublin County Council*.'

11.08 Mr Dunlop believed that the Duff lands project was the first occasion in respect of which he gave Cllr Gallagher money, although he was unable to exclude the possibility that he contributed to Cllr Gallagher's fundraising events prior to that.

11.09 Mr Dunlop further maintained that he was not surprised to have been asked for money by Cllr Gallagher stating: '*well… it was an understanding on my part this was part of the culture that existed in Dublin County Council I think I have given evidence to that effect previously, I didn't invent it'.*

11.10 Acknowledging that there were no entries in his 1990 diary relating to Cllr Gallagher, Mr Dunlop explained that the luncheon date in the Grand Hotel in Malahide, where he claimed that he paid the money to Cllr Gallagher was set up: '*either by telephone or face to face, that we would meet and I would come and collect him.'*

CLLR GALLAGHER'S INVOLVEMENT IN THE PLANNING APPLICATION / MATERIAL CONTRAVENTION PROCESS

12.01 Following upon the lodging of Nosaka Ltd's planning permission application on 22 of August 1990, the planning file was discussed at a number of county council and Fingal Committee meetings between then and the ultimately successful material contravention vote which took place on 22 April 1991. The earliest written record which documented Cllr Gallagher's interest in this matter was a county council note dated 17 September 1990 which indicated that the planning file was discussed at a meeting of the Fingal Committee on that date. It was noted that Cllrs Wright, Gallagher, Devitt and Mulvahill were recommending that the planning application be granted. Cllrs Owen and Boland were noted as opposing the application. The planning file was next discussed at the Fingal Committee on 19 November 1990 where the records indicated that the issue was to be relisted at Cllr Gallagher's request. Cllr Gallagher again requested a relisting of the issue on 17 December 1990 '*to allow time to assess additional information lodged 19/11/90.'* This was a likely reference to the fact that between August 1990 and January 1991 county council officials had sought further information from Nosaka Ltd pertaining to the planning permission application. On 21 January 1991, as was evident from a note of yet another meeting of the Fingal Committee, the committee voted on and passed a proposal '*that MC procedures be initiated*,' and noted that the '*manager may not accept rec of cmttee.'* The attendees at that meeting were not recorded on the

document. A record of a meeting of 18 February 1991 again noted a request from Cllr Gallagher to relist the matter. It recorded as follows: *'Discussions to be held with Applicant with a view to possible phased development of site.'*

12.02 It was common case that Cllr Gallagher, and Cllr Devitt, respectively proposed and seconded the ultimately successful material contravention vote.

DID MR DUNLOP PAY CLLR GALLAGHER IR£2,000 IN CONNECTION WITH THE DUFF LANDS?

13.01 As was the case in other Modules which were the subject of public inquiry by the Tribunal, Mr Dunlop's evidence concerning Cllr Gallagher, on its face, was undenied, given the fact that Cllr Gallagher was deceased. It appeared from Mr Dunlop's testimony in this Module that the Duff material contravention proposal was the first occasion on which he was asked for money by Cllr Gallagher. The testimony of Mr Dunlop was to the effect that Cllr Gallagher's request for money, and Mr Dunlop's acceding to that request arose from the *'culture'* or '*system'* which Mr Dunlop said he was confronted with from the time he commenced the lobbying of elected representatives of Dublin County Council. The Tribunal has accepted that such a culture existed and that Mr Dunlop both embraced and enhanced it. Mr Dunlop has testified both in this Module, and in other Modules, as to his friendship and long association with Cllr Gallagher, which predated Mr Dunlop's career as a lobbyist.

13.02 Having regard to a number of land zoning matters which came before Dublin County Council during the period March to May 1993, and in respect of which Mr Dunlop claimed he paid Cllr Gallagher in return for his support, the Tribunal accepted as a matter of probability that such payments had been made, having regard in particular to, not only the fact that Cllr Gallagher was a signatory to motions prepared and/or promoted by Mr Dunlop but that in or around the time Mr Dunlop claimed he made payments to Cllr Gallagher, the latter's An Post and bank accounts revealed round figure lodgements which the Tribunal found, did not relate to any known or accounted for source of income available to Cllr Gallagher at the time.

13.03 In the case of this particular Module, the Tribunal established that Cllr Gallagher's bank accounts did not reveal any specific lodgement of sums equivalent to or equating to IR£2,000 in the period August to September 1990, the timeframe,[22] on Mr Dunlop's account of events, in which he made the

[22] Documentary evidence produced in other Modules established that at the time of his death Cllr Gallagher had considerable funds in An Post, accumulated by the purchase of savings certificates some of which were purchased, during the making of the 1993 Development Plan, with unaccounted for cash resources.

claimed payment to Cllr Gallagher. However the Tribunal did not believe that the failure to establish the existence or otherwise of specific unaccounted lodgements to his accounts should be the sole determinant of the issue of whether or not a payment was made by Mr Dunlop, given the fact that Mr Dunlop's claimed payment was in cash.

13.04 In the course of his evidence, Mr Dunlop acknowledged that his 1990 diary did not record any entries relating to Cllr Gallagher, in contrast to 1991 (three entries), 1992 (one entry), 1993 (two entries) and 1994 (two entries). On its face therefore the absence of diary entries for Cllr Gallagher in Mr Dunlop's diary for the relevant period in 1990, to some extent, called into question whether or not Mr Dunlop met with Cllr Gallagher in relation to the Duff lands. Mr Dunlop, in the course of his testimony, while acknowledging the absence of diary entries, nevertheless maintained that he had meetings with Cllr Gallagher on a regular basis at named locations, and the thrust of his testimony in this Module (and indeed in other Modules) was that Cllr Gallagher was accessible to him at those named locations as and when Mr Dunlop required.

13.05 An analysis of Mr Dunlop's diaries in a number of Modules (which related to the making of the Development Plan in the years 1991 to 1993) failed to reveal substantial entries for scheduled meetings with Cllr Gallagher (compared to such entries Mr Dunlop had diarised for other councillors). However, the Tribunal took the view that the absence of diaried entries should not of itself be the sole determinant of whether or not Mr Dunlop met with Cllr Gallagher in 1990. Moreover, given that the evidence over a number of Modules established that Mr Dunlop's involvement in the making of the 1993 Development Plan did not commence until the beginning of 1991, the absence of entries referable to councillors in Mr Dunlop's 1990 diary was not surprising.

13.06 It was accepted that Mr Dunlop did not procure either Cllr Gallagher or Cllr Devitt's[23] signature to the material contravention motion which was put to the council on 22 April 1991. The likely reason for this was that, by that stage, Mr Dunlop's involvement with the Duff lands had ceased.

13.07 Mr Dunlop testified that the location of his payment to Cllr Gallagher was the Grand Hotel, Malahide. He was unsure of the exact date of payment.

13.08 In the course of his cross-examination by the solicitor for Cllr Gallagher's estate, various motives were attributed to Mr Dunlop for the allegation he made against Cllr Gallagher, in the context of the Duff lands. It was suggested to Mr Dunlop that his assertion of a payment of IR£2,000 to Cllr Gallagher was in

[23] Cllr Devitt said that she could not remember who had spoken to her about the proposal.

effect an attempt by Mr Dunlop to reduce a potential revenue liability on his part, having regard to the fact that he was admitting, over the course of evidence given to the Tribunal (in a number of Modules), that he had substantial unaccounted for cash reserves in the 1990s. The Tribunal did not consider this to have been a probable motive for exaggerating or inventing payments made by him to councillors.

13.09 It was also suggested to Mr Dunlop that he was unlikely to have paid Cllr Gallagher half of the total of IR£5,000 cash he claimed to have received from Mr White. Mr Dunlop rejected this suggestion. The Tribunal considered it probable that at the time of his claim to have paid over IR£2,000 to Cllr Gallagher, Mr Dunlop had the expectation of receiving the balance of his IR£10,000 fee from Mr White and had the expectation of a further success fee of IR£4,000 cash if the material vote was successful.

13.10 Mr Dunlop was questioned in relation to the fact that nowhere in his October 2000 statement had he attributed 1990 as a year in which he paid Cllr Gallagher IR£2,000. That statement did however, as already noted above, include his claim to having paid Cllr Gallagher IR£2,000 in relation to the Duff lands. In that portion of his October 2000 statement headed '*Cyril Gallagher*,' Mr Dunlop made reference to his having paid him IR£18,000, in total, in various tranches (a total of IR£1,000 in 1991, a total of IR£4,000 in 1992, a total of IR£10,000 in 1993, together with an estimated undated IR£3,000 amount). Having regard to the fact that Mr Dunlop made reference, on 19 May 2000 (in private interview), to having paid Cllr Gallagher IR£2,000, and having regard to the fact that this claim was repeated in the October 2000 statement and in his later March 2006 statement, the Tribunal did not regard the absence of any reference to the year 1990 in Mr Dunlop's October 2000 statement as a significant credibility factor.

13.11 The Tribunal was satisfied, in all the circumstances, that Mr Dunlop paid IR£2,000 to Cllr Gallagher in return for his support for a positive outcome in the application for planning permission/material contravention in relation to the Duff lands, and that this payment had been, in effect, solicited by Cllr Gallagher for that purpose. The said payment was corrupt.

CHAPTER FOURTEEN – THE DUFF MODULE

EXHIBITS

1. List prepared by Mr Dunlop.....2306

2. Extract from Mr Dunlop's diary for 30 May 1990..... 2307

3. Extract from Mr Dunlop's diary for 25 July 1990..... 2308

4. Note hand-written by Mr Dunlop..... 2309

5. Extract from Mr Dunlop's diary for 7 August 1990..... 2310

6. Extract from Mr Dunlop's diary for 10 August 1990..... 2310

7. Extract from Mr Dunlop's diary for 15 August 1990..... 2311

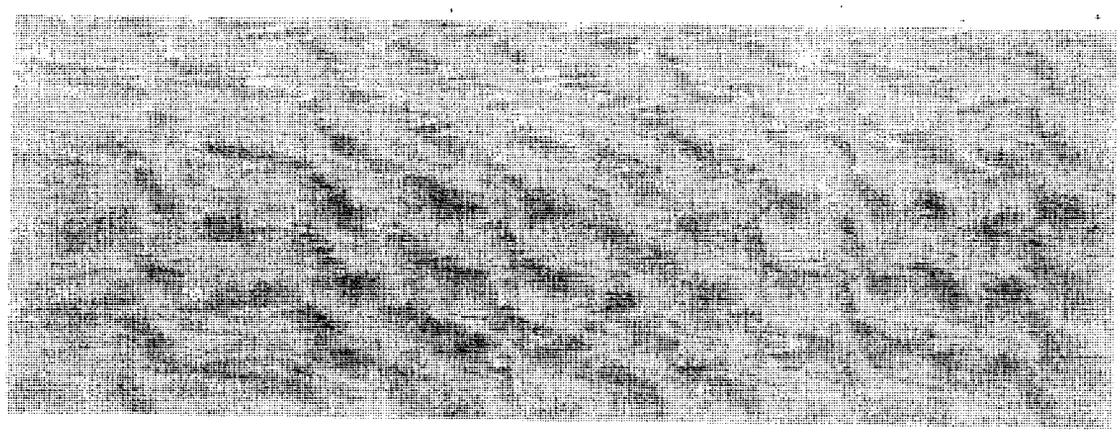
8. Extract from statement of Mr Dunlop..... 2312

2.

6.

7.

8.

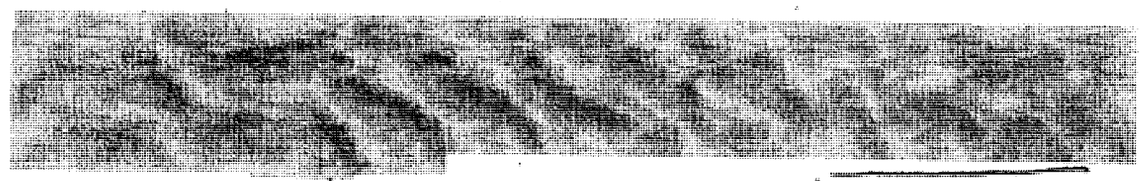


9. Robert White / Duff site in Swords ---------- 5,000.00 ?

10. Denis Mahoney lands in North Dublin ---------- 7,000.00

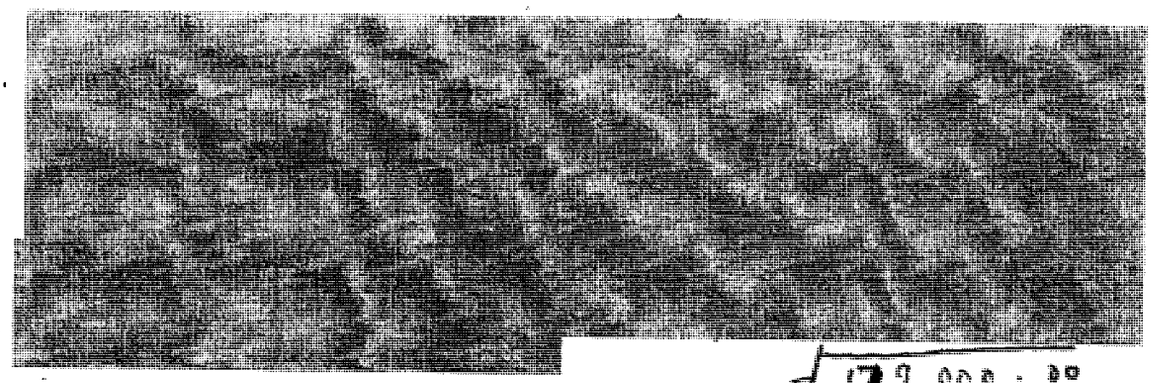
11. Noel Fox lands in North Dublin ---------- 5,000.00

12



£ 154,000.00

13.



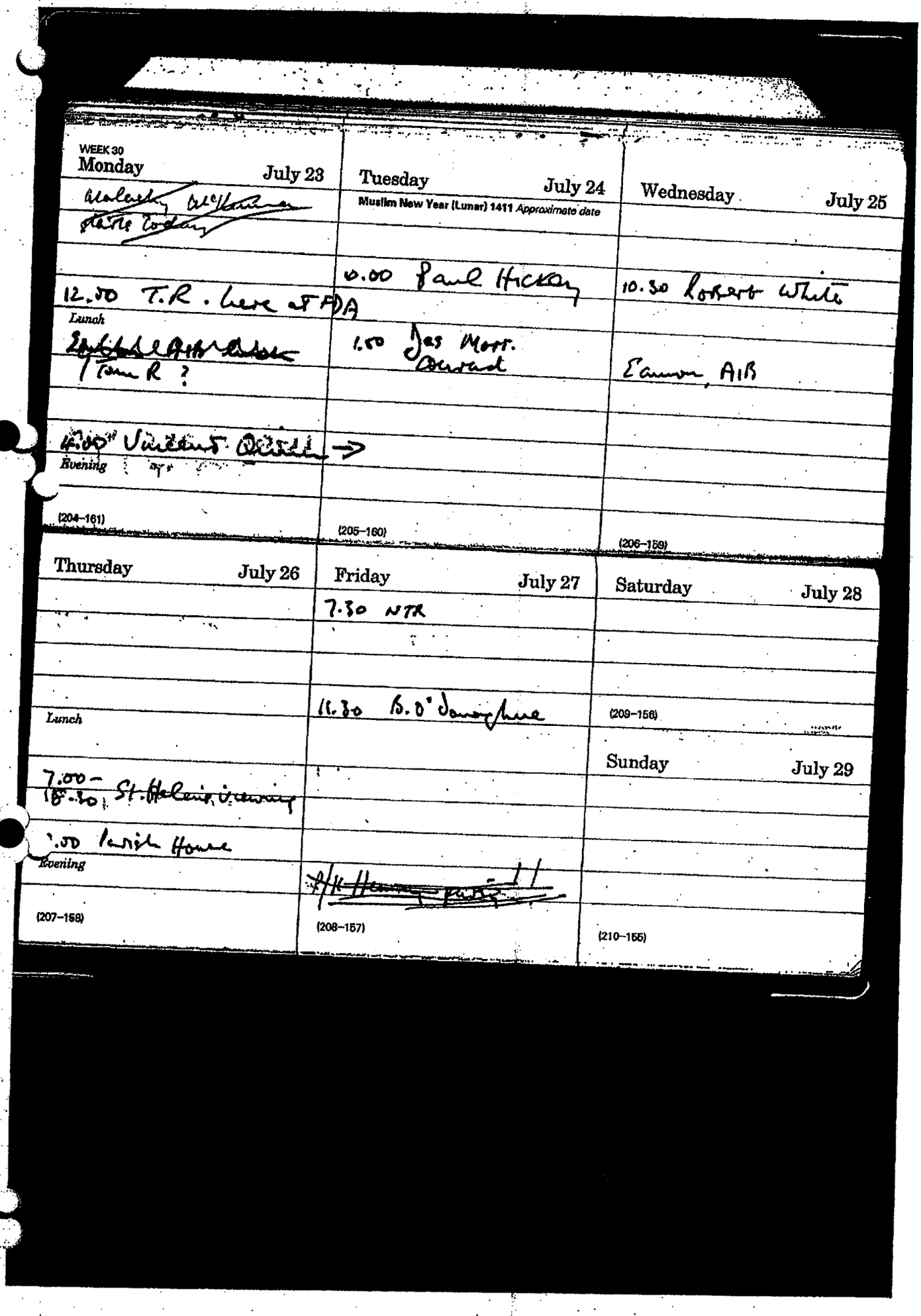
£ 179,000.00

WEEK 22

Monday May 28	Tuesday May 29	Wednesday May 30
Bank Holiday (UK) Memorial Day (Holiday US)		
9.00 Trevor Baylis Brendan Halligan Elan product launch Sign Seam contract 11.30 IRS date ?.	10.00 St. Guerin 64 Lr. Baggot St.	8.45 A. Cassells 9.30 Bernard Somers Ted O'Neill 10.00 C. Comerford 11.00 Interim borrowing 12.30 1.00 der Breen 2.15 Malachy McCann 2.45 Robert White 3.30 Martin Bowers
Lunch	Lunch S. Collins	
2.15 Adam Ulen 2.45 T.R. 4.00pm Lower Abmal	3.00 Vincents Quinn 5.00 Annual Committee Meeting	
Evening 6.30 Reg. Wemyss Coville		
(148–217)	(149–216)	(150–215)

Thursday May 31	Friday June 1	Saturday June 2
	8.30 A. Cassells 10.00 Sugar Co. 11.45 Tom R	(163–212)
Lunch		Sunday June 3
		Pentecost (Whit Sunday)
Evening Sheila's meeting 8.45	Gone for weekend	
(151–214)	(152–213)	(154–211)

Return to report



WEEK 30

Monday July 23

Malcolm McGuinness
starts today

12.30 T.R. here at FDA

Lunch

~~Ephraim Abraham~~
Tom R ?

4.00 Vincent Deane →

Evening

(204–161)

Tuesday July 24

Muslim New Year (Lunar) 1411 *Approximate date*

10.00 Paul Hickey

1.50 Jas Mott. Dorrad

(205–160)

Wednesday July 25

10.30 Robert White

Eamon AIB

(206–159)

Thursday July 26

Lunch

7.00–
18.30 St. Helen's evening

1.30 Parish House

Evening

(207–158)

Friday July 27

7.30 NTR

11.30 B.O' Donoghue

~~Hennessy Park~~

(208–157)

Saturday July 28

(209–156)

Sunday July 29

(210–155)

Today, Wednesday, 25th. July,

At a meeting held with Robert White, Claddagh House, 489 North Circular Road, D.7, (11.00 am – 12.10 pm) it was agreed, and hands shook upon, that a project fee of IR£10,000.00 + VAT would be paid to Frank Dunlop + Associates Ltd. for the Broadmeadow, Newtown, Swords, Co. Dublin development + that IR£4,000.00 in cash would be paid on completion of the preliminary planning process.

F.J.J.
25.7.90
1.00 pm

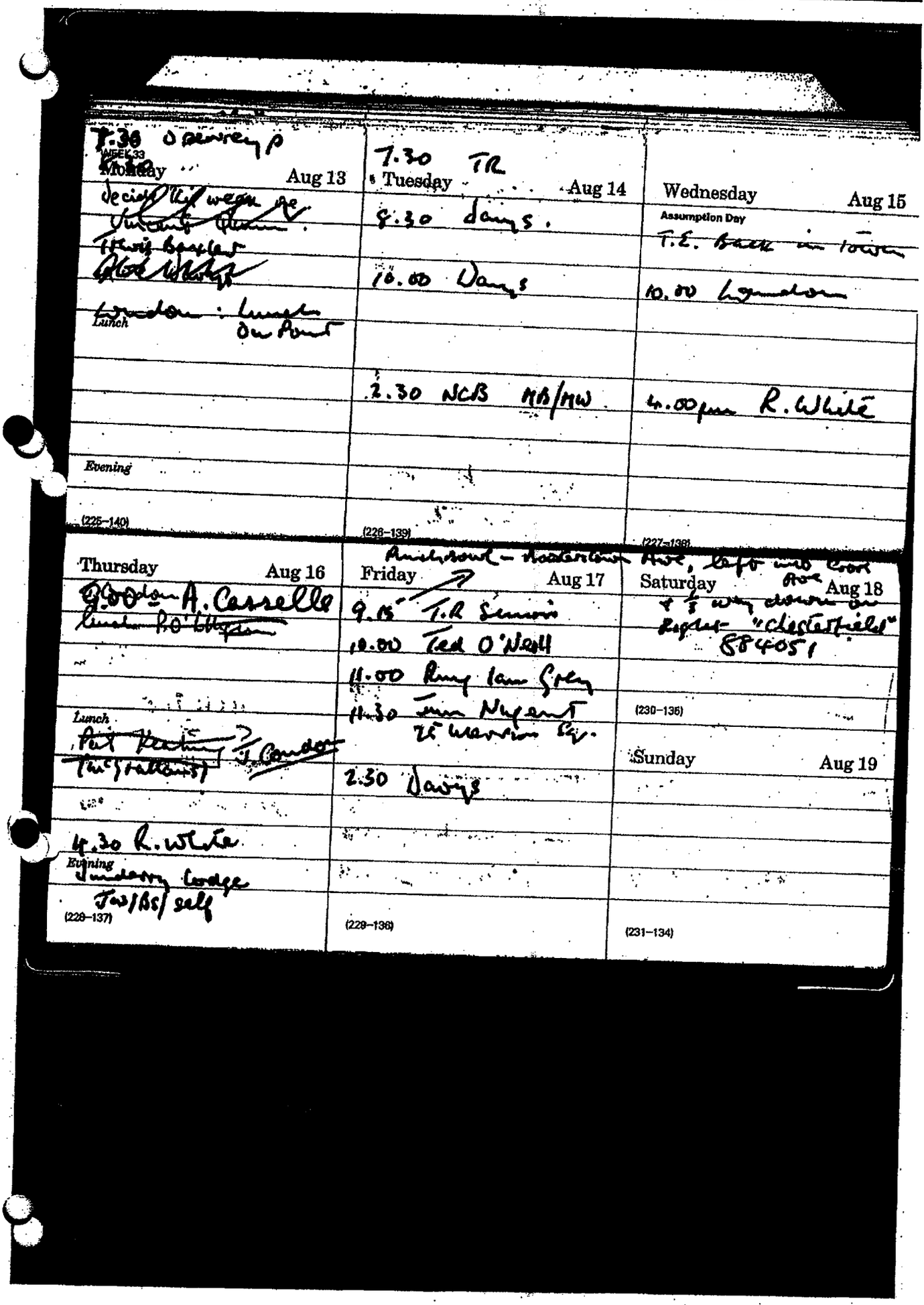
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WEEK 32

Monday Aug 6	Tuesday Aug 7	Wednesday Aug 8
Bank Holiday (Scotland) Nicola on Leave Holidays	8.30 Davy P.	Nicola off
	~~(from S.Coulter)~~ 10.00 D. Scrutton	10.00 Bob S/D Reaston
Lunch	12.00 Ray McSorley lunch TPH 12.45	11.30 T. Barker Samson AIB Lunch
	3.00 Siobhan Coulter	
	3.30 ~~Mum in~~ (cancelled)	
	4.30 Robert White	
Evening	6.30 NTR/MB/MH in FDA	
(218–147)	(219–146)	(220–145)

Thursday Aug 9	Friday 7.30 TR Aug 10	Saturday Aug 11
~~Nicola off~~	~~MMMMM~~ @ NTR	
8.30 LC	8.30 Davy P.	
10.00 M. McGuinness funeral		(223–142)
Lunch		Sunday Aug 12
	4.00 Brendan H.	
Evening	Tree: R. Wh	
(221–144)	(222–143)	(224–141)

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WEEK 33

Monday Aug 13	Tuesday Aug 14	Wednesday Aug 15
7.30 Delivery P Decision re wages pc Union Plaza Henry Bowden Bob Walker London : Lunch Lunch Dan Power	7.30 TR 8.30 Davys. 10.00 Davys 2.30 NCB NB/NW	Assumption Day T.E. Back in town 10.00 London 4.00pm R. White
Evening (225–140)	(226–139)	(227–138)

Thursday Aug 16	Friday Aug 17	Saturday Aug 18
9.00 am A. Carrelle London P.O' Hotel Lunch Port Meeting ? J. Condon (Tue/Thallium) 4.30 R. White Evening Lindeman Lodge Tas/Bc/self (228–137)	Auckland – Masterton Ave, Lafo and Coast Rock 9.15 T.R Simon 10.00 Ted O'Neill 11.00 Rung Ian Gray 11.30 Ian Nugent Ze Warrior Cy. 2.30 Davys (228–136)	2 1/2 way downs on Right "Chesterfield" BB4051 (230–136) Sunday Aug 19 (231–134)

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agreed. He said he would pay me an initial £5,000 cash and the remainder within three months. Again, I agreed.

Mr. White and I met again in the Shelbourne Hotel on 10th August 1990. At this meeting he gave me an envelope which he said he had hoped would contain £5,000 cash but which contained only £3,000 cash. He said would give me the remainder shortly. He did so in the same location on Wednesday, 15th August when he provided me with an envelope containing £2,000 cash.

Thereafter I met Mr. White on approximately twelve (12) other occasions (between August 16th, 1990 and 14th December, 1991).

Sometime after my first meeting with Mr. White I spoke to both G.V. Wright and Cyril Gallagher. G.V. Wright evinced confidence that the proposal would be acceptable to the planners but said that the lands lay in Cyril Gallagher's electoral area and that unless Cyril Gallagher was in favour, none of the other Fianna Fáil members would support it. I spoke to Cyril Gallagher about the proposal and he was enthusiastic while being dubious about the planners' agreement. He also said that Mr. White was too ambitious with regard to timing. He believed it would take much longer than Mr. White anticipated and a lot of support would be needed from others.

Cyril Gallagher asked me for money for his support. I said that I understood – perhaps wrongly – that Mr. White had already spoken to him, that is to Cyril Gallagher, and that whatever arrangement had been arrived at between them would cover his, Cyril Gallagher's, involvement and support. Cyril Gallagher said that he had indeed spoken to Mr. White but that no arrangement had been arrived at. He said Mr. White had been in contact with him to let him know that I was involved.

I paid £2,000 to Cyril Gallagher shortly after this meeting at one of our regular lunches in the Grand Hotel, Malahide, Co. Dublin. I collected Cyril Gallagher from his home, drove him to the hotel and drove him home afterwards. The money was specifically for his support for the Duff lands site proposal by Mr. White/Nosaka.

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CHAPTER FIFTEEN- MR FRANK DUNLOP[1]

INTRODUCTION

1.01 In this Chapter, the Tribunal considered Mr Dunlop's early involvement with the Tribunal and other issues of particular relevance to his credibility as a witness. The individual Chapters relevant to the modules in which Mr Dunlop featured as a witness include the Tribunal's consideration of Mr Dunlop's evidence in those modules and findings made by the Tribunal. This Chapter should therefore be read in conjunction with those preceding Chapters.

1.02 In addition to Mr Dunlop's evidence to the Tribunal on Days 145-148 (April/May 2000), Mr Dunlop gave evidence in 14 of the modules which were the subject of the Tribunal's public hearings. Mr Dunlop gave evidence on 99 days, and was the Tribunal's longest witness. His last day of evidence was 4 March 2008.

THE TRIBUNAL'S EARLY INTEREST IN AND CONTACT WITH MR DUNLOP

2.01 Mr Dunlop initially came to the attention of the Tribunal in early 1998 (within a couple of months following the establishment of the Tribunal), when his name was referred to in a telephone conversation between Counsel for the Tribunal and Mr Tom Gilmartin (who was then living in the UK). In the course of that telephone conversation (the first of many between Counsel for the Tribunal and MrGilmartin) on 5 February 1998, (according to a note compiled by Counsel for the Tribunal at that time), Mr Gilmartin stated that: '*Frank Dunlop is a major bag-man for cash payments to Fianna Fail. He had a major input in relation to Council decisions and rezoning decisions.'* In the course of his evidence, Mr Gilmartin repeated this claim on a number of occasions.

2.02 Notes taken in relation to a subsequent telephone conversation between Counsel for the Tribunal and Mr Gilmartin on 20 February 1998 indicated Mr Gilmartin as informing the Tribunal that:

> '*O'Callaghan then got money* (£300,000) *paid to Frank Dunlop* (who was the 'bag man') *and he paid off Councillors including Hanrahan, Lawlor and others. There had been meetings between Lawlor, O'Callaghan and Dunlop in Dail Eireann and elsewhere. The reason that he was forced out was that he would not pay off the corrupt politicians.'*(The reference to '*the reason that he was forced out'* was apparently a reference to Mr. Gilmartin).

[1] For Mr Dunlop's background see Part 5 of Chapter Two.

2.03 In the course of a further telephone conversation with Counsel for the Tribunal on 26 February 1998, Mr Gilmartin'*talked of his concern at the number of payments that were made out of the accounts of that company* (an apparent reference to Barkhill), *to Chefron* (sic) *and to Frank Dunlop.'* This was the first occasion on which the Tribunal became aware of Mr Dunlop's company, Shefran (and which was mistakenly misspelt in the telephone discussion note as '*Chefron'*).

2.04 In the months that followed, the Tribunal's private inquiries focused almost exclusively on the circumstances relating to the rezoning of the Quarryvale lands.

2.05 On 4 October 1998 articles appeared in the Sunday Business Post newspaper written by one of its senior journalists, Mr Frank Connolly, under the heading '*Lawlor 'fees' now donations.'* The articles were accompanied by photographs of Mr Lawlor and Mr Dunlop. This was apparently the first occasion on which Mr Dunlop was publicly identified in relation to matters then being investigated by the Tribunal. The articles suggested that Mr Dunlop had been paid IR£500,000 in fees for his assistance in obtaining rezoning and planning permission for the Quarryvale lands. It also claimed that Mr Dunlop had confirmed that part of that sum had been used by him to make political donations, which it was said were fully documented. In sworn evidence to the Tribunal subsequently, Mr Dunlop accepted that he may have confirmed the figure of IR£500,000 to Mr Connolly. The article also stated that Mr Dunlop had confirmed that part of his duty as a lobbyist was to make political contributions to a range of politicians and political parties over a number of years.

2.06 The Tribunal's first communication with Mr Dunlop was in the form of a letter addressed to him dated 6 October 1998 in which information was sought from him in relation to the articles which had been published in the Sunday Business Post on 4 October 1998 and other information relating to Quarryvale. Subsequently, all correspondence between the Tribunal and Mr Dunlop was conducted through Mr Dunlop's solicitors, LK Shields.

2.07 Mr Dunlop was aware from possibly late 1997, but certainly by May 1998, that his activities as a lobbyist during the review of the 1983 Development Plan were likely to be the subject of inquiry by the Tribunal. Having regard to his knowledge of Mr Gilmartin's antipathy towards him, Mr Dunlop knew that Mr Gilmartin's interaction both with the Tribunal and the media in September/October 1998 was likely to have adverse consequences for him. Accordingly, by September 1998 Mr Dunlop developed a strategy to deal with the likely fallout from the publicity being generated by MrGilmartin's disclosures, and

the possibility of his (Mr Dunlop's) imminent involvement with the Tribunal. This strategy included: 1) instructing his accountant to make limited disclosure to the Revenue Commissioners to deal with his tax liability from the Shefran payments; 2) requesting Mr O'Callaghan to pay money which Mr Dunlop believed was due to him in order to deal with his tax liability, and 3) briefing journalists to counteract or minimise what was being written about him.

2.08 The Tribunal proceeded to seek discovery from Mr Dunlop and his companies. Mr Dunlop was invited to make written submissions to the Tribunal as to the terms of the proposed orders for discovery, on or before 24 November 1998 or alternatively make oral submissions through his Counsel on 25 November 1998. In due course, 9 December 1998 was fixed as the date for the hearing of oral submissions.

2.09 By letter dated 23 October 1998, Mr Dunlop was requested by the Tribunal to attend its offices for a private interview, as a means of providing the information which had been requested by the Tribunal. This invitation was declined by Mr Dunlop.

2.10 On 12 February 1999 the Tribunal ordered Mr Dunlop and his companies to make discovery on oath on or before 28 February 1999. Following Mr Dunlop's failure to comply with the Tribunal's Order, Mr Dunlop's solicitors were written to on 23 June 1999 and advised that unless he complied forthwith with that order for discovery, enforcement proceedings would be commenced in the High Court pursuant to the provisions of Section 4 of the Tribunals of Inquiry (Evidence) Act 1921/1997.

2.11 Mr Dunlop's solicitors advised the Tribunal on 29 June 1999 that the documents sought (being documents dated between September 1991 and September 1993), were of a historic nature and that the extraction of banking information therefrom had caused difficulties. A further extension of time until the close of business on 2 July 1999 was then granted by the Tribunal. On 6 July 1999, a draft affidavit of discovery together with copy documentation referred to therein was delivered to the Tribunal. The Affidavit as sworn was subsequently provided to the Tribunal on 7 July 1999. On 15 December 1999 Mr Dunlop was requested to provide a statement setting out such information as he was in a position to provide to the Tribunal in connection with the rezoning of Quarryvale, and his role in relation thereto.

2.12 On 27 January 2000, the Tribunal informed Mr Dunlop's solicitors that it would consider on 3 February 2000 whether or not to make an order in relation to an extended period of discovery. Mr Dunlop's solicitors advised the Tribunal

that their client wished to make oral submissions in relation to the making of that order and they were advised that such oral submissions could be made at a public sitting of the Tribunal. However, in advance of the date fixed for those oral submissions, Mr Dunlop's solicitors furnished written submissions under protest because of the insistence of the Tribunal that oral submissions would have to be made in public.

MR DUNLOP'S EVIDENCE IN PUBLIC IN APRIL AND MAY 2000

3.01 The Tribunal made the proposed discovery orders against Mr Dunlop, extending the period of discovery, on 27 March 2000. On 6 April 2000, the Tribunal wrote to his solicitors advising that in view of Mr Dunlop having declined to voluntarily provide a statement to the Tribunal, it had no option but to exercise its statutory powers to otherwise obtain the relevant information in order to progress its inquiries. In that regard, Mr Dunlop was served with a witness summons returnable for 12 April 2000 requiring him to attend at a public sitting of the Tribunal and to give evidence on his own behalf and on behalf of Shefran and Frank Dunlop & Associates. Mr Dunlop, having, through his solicitors, advised the Tribunal of travel arrangements to the United States already made by him, was facilitated by the Tribunal in bringing forward his appearance at the Tribunal's public hearings to 11 April 2000 (Day 145). On the eve of that date, the Tribunal was furnished with an affidavit of discovery sworn by Mr Dunlop, in purported compliance with the order made by the Tribunal on 27 March 2000.

3.02 While in his July 1999 affidavit of discovery Mr Dunlop had discovered accounts held in his and his wife's name, and in the name of Frank Dunlop & Associates, in AIB and accounts held in the name of Shefran in AIB and Bank of Ireland, no disclosure was made by him of other accounts he had in AIB, in the Irish Nationwide Building Society and in Midland Bank Trust in Jersey. This non-disclosure was to remain the position for almost a year save that in February 2000 Mr Dunlop disclosed the existence of the AIB 042 Rathfarnham account in particular circumstances. On 11 February 2000 Mr Dunlop's solicitors wrote to the Tribunal and informed it that Mr Dunlop had *'inadvertently'* failed to disclose a number of other accounts held by him and his wife in AIB, namely a number of home loan accounts, a term loan account and a current account (the AIB 042 Rathfarnham account). It appeared to the Tribunal that Mr Dunlop's decision to disclose the existence, in particular, of the AIB 042 Rathfarnham account, was triggered by an order for discovery made against AIB, of which Mr Dunlop was a notice party. Indeed Mr Dunlop as much as acknowledged that, having become aware that AIB had disclosed the AIB 042 Rathfarnham account (and other accounts) to the Tribunal, he had then (through his solicitor) disclosed them himself.

3.03 Mr Dunlop told the Tribunal that he could not recollect with certainty who had advised him about the extent of AIB's disclosure to the Tribunal. However, an entry in Mr Dunlop's diary for 27 January 2000 read as follows: '*spoke to John Hanafee AIB College St. re 'Flood contact' with Bank!'*

3.04 Mr Dunlop appeared before the Tribunal on 11 April 2000 (Day 145). Limited legal representation was granted to Mr Dunlop's solicitors, LK Shields and his Junior and Senior Counsel.

3.05 This initial period of taking sworn evidence from Mr Dunlop was concentrated over three days in April 2000, namely 11 April 2000 (Day 145), 18 April 2000 (Day 146), 19 April 2000 (Day 147) and on 9 May 2000 (Day 148). Much of the inquiry being made of Mr Dunlop on those dates concentrated on his application of the Shefran payments received from Mr O'Callaghan, and the activity on his AIB 042 Rathfarnham account.

MR DUNLOP'S LISTS

4.01 On a number of occasions, in the course of his sworn evidence to the Tribunal in 2000, Mr Dunlop was requested to provide information to the Tribunal by means of writing information on sheets of paper for provision to the Tribunal via its Registrar. This exercise was conducted in this way in order to avoid or minimise unnecessary or premature public disclosure by Mr Dunlop of the identities of individuals or corporations, in the absence of prior notification to those concerned. Subsequent to such notification the content of those lists, and which were relevant to the Tribunal's public inquiries, was disclosed in the course of its public hearings.

4.02 The majority of Mr Dunlop's lists were provided in the course of his first few days of sworn evidence, namely on Days 145, 146, 147 and 148. While some of the lists contained innocuous information which was of little or no relevance to the Tribunal's inquiries, a number of them revealed important information in relation to alleged payments made to, and by, Mr Dunlop and which were of particular relevance to the Tribunal's Terms of Reference. In particular, in a number of the lists Mr Dunlop identified politicians to whom he paid money and politicians who solicited money from him within specific periods of time, as well as the identities of landowners/developers whom he alleged paid him money, some or all of which was subsequently allegedly paid to politicians.

4.03 Mr Dunlop's July 1999 affidavit of discovery included a document which he said listed legitimate political donations made by himself and Frank Dunlop & Associates Ltd. The lists (entitled *'Frank Dunlop & Associates Limited Political Contributions 1.9.91 – 1.9.93'* and '*Frank Dunlop Political Contributions 1.9.91 – 1.9.93'*) did not identify any political donations for 1991. Mr Dunlop's claimed expenditure by way of political donations and contributions to political fundraising events amounted to IR£18,250.

On Day 145 (11 April 2000) Mr Dunlop confirmed that apart from the information on the aforesaid lists, no other payments or political contributions of any kind had been made by his firm or on its behalf or on behalf of anyone else to elected representatives of Dublin County Council or to any other politician.

4.04 One of the nine lists prepared by Mr Dunlop on Day 145, contained just one name, that of Cllr Tom Hand (who was by that time deceased), who was identified by Mr Dunlop as the only elected public representative who had requested money from him in return for supporting the rezoning of the Quarryvale lands. Mr Dunlop was to, controversially, subsequently, identify a number of other councillors whom he claimed also sought money from him in relation to Quarryvale and in relation to other land rezoning matters in County Dublin.

4.05 In the interval between Mr Dunlop's appearance at the public hearing of the Tribunal on Day 145 and his reappearance at the public hearing on Day 146, media reports suggested that Mr Dunlop would disclose to the Tribunal that Cllr Hand had sought a payment of IR£250,000 in connection with the rezoning of Quarryvale and that he had given Mr Dunlop an offshore account number to facilitate the payment of this money. Mr Dunlop denied that he was the source of those media reports relating to that allegation against Cllr Hand, although he acknowledged that the author of the article (the journalist Mr Sam Smyth), and himself had exchanged telephone calls and that Mr Smyth had attempted to contact him in New York in the period between those public hearings. Up to, and including Day 145, Mr Dunlop had identified Cllr Hand as the only member of Dublin County Council who had ever asked him for money in return for his vote in a rezoning matter.

4.06 On Day 146 Mr Dunlop explained that he had received requests for money, for what he described as legitimate electoral reasons, from councillors whom he identified in a list (described as the *'Preliminary List'*) entitled *'Members of Dublin County Council who requested monies from Frank Dunlop.'*

4.07 At the time this list was created, Mr Dunlop did not state that he had ever made improper or corrupt payments. However, Mr Dunlop would go on to testify that the list included the names of individuals who had requested what he termed legitimate political contributions, and individuals who had requested money in connection with rezoning matters. This distinction, which Mr Dunlop would later make, was not apparent on Day 146.

4.08 Most of Mr Dunlop's evidence on Day 146 was taken up with him being questioned about withdrawals from his AIB 042 Rathfarnham account. This account had been opened with a lodgement of IR£30,600.88 on 9 April 1991, and was followed by a further lodgement on 29 May 1991 of IR£48,400. There were further lodgements of IR£80,000 on 5 June 1991 and IR£15,000 on 11 June 1991. Mr Dunlop was questioned in relation to a number of transactions on this account and in relation to the apparent coincidence in time between the level of activity in the account and the zoning motions affecting Quarryvale then being considered within Dublin County Council. Mr Dunlop stated:

> '*There is an undeniable coincidence in date, in date terms, Mr. Hanratty. That is undeniable. If you are suggesting to me, and I, having listened to the exchange, I do not think you are so suggesting given that you have now said that there are no allegations against me; if you are suggesting that any monies out of any account in my name were used for illicit or improper purposes, the answer to that is an emphatic 'No'.'*

4.09 When Mr Dunlop made the foregoing statement in the course of his evidence to the Tribunal, Counsel for the Tribunal suggested that between then and the following day, Mr Dunlop should try to refresh his memory as to how the AIB 042 Rathfarnham account monies were applied by him. At this point, the Sole Member of the Tribunal addressed Mr Dunlop in the following terms:

> '*Well one thing I would like to know, it seems to me to be an unusual bank account. It doesn't have a cheque book, it's a current account. It doesn't have a cheque book. It has large sums of money in it and it must have been put to or designed for a purpose or purposes and perhaps you might reflect overnight and tell us what was the purpose of the bank account, as such. Because it seems to me to be...there is something unique about it. I don't know what it is by the way and I am not suggesting that I do. Perhaps you might think about that.'*

4.10 On the resumption of the public hearings on the following day, Day 147, Mr Dunlop, when asked if he had considered matters further based on the comments from the Sole Member of the Tribunal made on the previous day, responded as follows: '*I will answer any question that you ask me, to the best of my ability, in relation to the lodgements and the disbursements.*'

4.11 In the course of his evidence on Day 147 Mr Dunlop provided the Tribunal with a list - the *'1991 Local Election Contributions'* list - purported to be Mr Dunlop's explanation of a number of withdrawals made from his AIB 042 Rathfarnham account to fund disbursements to sixteen identified councillors in the course of the 1991 Local Election campaign, totalling IR£112,000. As set out elsewhere in this Report, the Tribunal established that Mr Dunlop's disbursements to identified individuals at that time was not only funded by the AIB 042 Rathfarnham account withdrawals but was also contributed to from other sources, including Mr Dunlop encashing a number of Shefran cheques.

4.12 On Day 148 Mr Dunlop provided the *'1992 List'*, a list numbered 17 to 30, which was a continuation of the 1991 list. It was Mr Dunlop's explanation for the disbursal of monies withdrawn from his AIB 042 Rathfarnham account in 1992.

4.13 Mr Dunlop created yet another list on Day 148, numbered 31 to 38, a continuation of the 1991 and 1992 lists, which he said at that time represented payments made to the individuals named on the 1991 and 1992 lists, on other occasions.

4.14 A further list entitled *'1991 – 1993 (inclusive)'* provided to the Tribunal on Day 148 named developers/landowners whom, it was alleged had provided Mr Dunlop with money in connection with the review of the 1983 Development Plan.

4.15 Mr Dunlop was privately interviewed by members of the Tribunal's legal team on eight occasions in May 2000, and on one occasion in June 2000.

4.16 In the course of his sworn evidence to the Tribunal between 2002 and 2008, Mr Dunlop was closely examined by Counsel for the Tribunal, and by other interested parties, in relation to the accuracy of the information provided in his various lists. In a number of instances, Mr Dunlop acknowledged that some of the information in his lists was inaccurate and he proceeded, in the course of his evidence to qualify, or otherwise alter some of that information.

MR DUNLOP'S CREDIBILITY AS A WITNESS

5.01 Mr Dunlop presented as a problematic witness for the Tribunal. As was the case with many witnesses to the Tribunal in the course of its public hearings, Mr Dunlop's credibility was a subject of continuous scrutiny, both by the Tribunal itself and the parties (or their legal representatives) who exercised their right to have him cross-examined. Such scrutiny was understandable and appropriate having regard to the fact that in many instances certain individuals became the

subject of inquiry by the Tribunal largely, or entirely, as a consequence of Mr Dunlop's allegations that they had been involved in corrupt activity with him. After a dramatic *volte face*, in April 2000, Mr Dunlop sought to present himself as a witness who, from that time, while acknowledging the role he played in receiving payments for disbursement to councillors and in making payments to councillors, implicated named individuals as having been involved in wrongful activity with him.

5.02 The dilemma for the Tribunal arose from the fact that, as referred to in the preceding paragraph, Mr Dunlop, having defied the Tribunal's efforts to obtain truthful information from him prior to April 2000, maintained that from that time and for the entire duration of the Tribunal's public hearings, he provided the Tribunal with truthful information and evidence. Mr Dunlop described this transition from his being a non-cooperate witness to a cooperative witness as *'crossing the Rubicon.'* However, and regretfully, Mr Dunlop did not make the transition from being an untruthful witness to a truthful witness with any sense of completeness. The Tribunal was satisfied that in a number of instances, and in many and important and fundamental respects, Mr Dunlop continued, post April 2000, to actively and purposely mislead the Tribunal. This created an enormous difficulty for the Tribunal and rendered the issue of his credibility to be a persistent complicating factor in its deliberations.

5.03 Particular examples of occasions where the Tribunal found Mr Dunlop to have been an untruthful witness, included his attempts to conceal and/or obliterate information written in his diaries (see below), the assistance provided by him to Cllrs MJ Cosgrave and Liam Creaven in the preparation of their statements to the Tribunal in 2003 (see below) and, perhaps most significantly, his contention that Mr O'Callaghan was, to his knowledge, unaware of his corrupt activity in paying money to councillors in relation to Quarryvale whereas, as found by the Tribunal, the opposite was the case. This false position adopted by Mr Dunlop went to the core of the Quarryvale inquiry (Chapter Two). The Tribunal considered rejecting the entire of Mr Dunlop's evidence for the reasons stated above, on the basis that Mr Dunlop's credibility had been so diluted as to have rendered the reliability of any of his evidence questionable. The Tribunal decided not to take this course of action and was satisfied that in a number of respects and on a number of occasions Mr Dunlop did give truthful evidence which it could and should accept. In arriving at this approach to Mr Dunlop's evidence the Tribunal took account of a number of factors including a distinct lack of evidence of any animus on the part of Mr Dunlop towards *any* of the individuals against whom he gave evidence or who were the object of his allegations of wrongdoing. The Tribunal failed to identify any factors which might explain a motivation on Mr Dunlop's part to damage the reputation of others, with many of whom he had

clearly shared a strong bond of friendship. The Tribunal rejected one particular suggestion put to Mr Dunlop in cross-examination, namely, that his reason for claiming that he paid money to councillors was to reduce the personal profit element of money provided to him by landowners/developers in order to minimise his ultimate tax liabilities. Likewise, it also rejected a reason suggested by some individuals, that he was targeting them with allegations of wrongdoing because of the negative outcome to the rezoning attempt relating to the Pennine Option lands (in which Mr Dunlop had an ownership interest) in April/May 1993. Nevertheless, the Tribunal's approach to Mr Dunlop's evidence was necessarily one of extreme caution, coupled with a determination (made at an early stage of its deliberations in the writing of this Report), to, where appropriate, make adverse findings against individuals based (or largely based) on Mr Dunlop's evidence only in circumstances where it was convinced on the balance of the *strongest* probability that such findings were justified.

5.04 To the extent that Mr Dunlop was motivated to provide the Tribunal with a mixture of truths and untruths, it was the Tribunal's belief that Mr Dunlop, from the outset of his dealings with the Tribunal, set a course for himself designed to protect the interests of certain parties, most evidently Mr O'Callaghan in the Quarryvale inquiry. It appeared to the Tribunal that this course, prior to April 2000, involved a determination on Mr Dunlop's part to mislead the Tribunal in order to thwart its inquiry into Quarryvale in the expectation that the Tribunal would never discover the truth. That course however became unstuck in April 2000 when Mr Dunlop had to contend with the Tribunal's probing of substantial financial transactions which theretofore had not been disclosed by him, and which required explanations from him, which were clearly in conflict with information theretofore provided by him to the Tribunal.

MR DUNLOP'S DIARIES

6.01 In the course of his business as a lobbyist/public relations representative, Mr Dunlop maintained diaries on an annual basis. His usual practice was to record in his diaries details of pre-arranged meetings and other information for his own use. Unexpected or unplanned meetings or events or meetings arranged at very short notice were not necessarily always recorded in his diaries. The diaries were maintained by Mr Dunlop personally.

6.02 On many occasions in the course of the Tribunal's public hearings, the Tribunal acknowledged that Mr Dunlop's diaries provided a useful record of Mr Dunlop's activities, particularly in relation to his contact with councillors, politicians and others. The Tribunal was however conscious of the possibility that the diaries, the originals of which were not provided to the Tribunal until

2001 and 2002 (at the request of the Tribunal) and which had been up to then maintained solely by Mr Dunlop might have been deliberately interfered with or otherwise altered for the purposes of misleading the Tribunal and might not therefore be a reliable record of information and activity which, on their face, they recorded. On occasion, in the course of the Tribunal's public hearings, witnesses against whom Mr Dunlop made allegations of corrupt payments questioned the authenticity of some of his diary entries.

6.03 On many, but not all occasions, Mr Dunlop's diary entries were corroborated by other evidence including, the sworn evidence of witnesses or information found in the diaries maintained by other individuals or by other information/evidence.

THE DISCOVERY OF MR DUNLOP'S DIARIES TO THE TRIBUNAL

6.04 On 12 February 1999 discovery orders were made against Mr Dunlop and against his companies, Shefran and Frank Dunlop and Associates. The Orders required Mr Dunlop to make Discovery on Oath of certain categories of documentation including all records relating to any business, dealings, or transactions between Mr Dunlop or his companies, and Barkhill, Riga and Mr Owen O'Callaghan, in respect of the period 1 September 1991 to 1 September 1993.

6.05 In purported compliance with the Tribunal's discovery order of 12 February 1999, Mr Dunlop swore an affidavit of discovery of 7 July 1999 in which, *inter alia*, he included in its first schedule, 188 extracts from his personal diaries in respect of the aforesaid 1991/1993 period.

6.06 Copies of pages from Mr Dunlop's diaries which included the relevant extracts were provided to the Tribunal, Mr Dunlop having first redacted information which, he claimed, was to his understanding not captured by the discovery order. Mr Dunlop explained to the Tribunal that the method of redaction used for the most part by him in this exercise, involved the application by him of, *inter alia*, '*post-it*' type stickers to conceal the information to be redacted and then copying the diary page with the result that the redacted extract/entry could not be read.

6.07 On 27 March 2000, further orders for discovery were made by the Tribunal against Mr Dunlop and his companies, essentially in similar terms to the Tribunal's Orders made on 12 February 1999, but in respect of different periods. The Orders of 27 March 2000 covered the periods 1 January 1990 to 1 September 1991, and 1 September 1993 to 30 December 1993. In purported

compliance with the discovery order of 27 March 2000, Mr Dunlop swore an affidavit of discovery on 10 April 2000. He alluded, *inter alia*, in its first schedule, to 85 diary extracts in respect of the two additional periods covered by the new orders. As had been done with his earlier discovery of diary material, Mr Dunlop again followed a similar process of redacting from view diary material which was not, in his view, captured by the discovery order.

6.08 The diary extracts referred to in Mr Dunlop's affidavit were provided to the Tribunal on 17 April 2000 some days after he first gave sworn evidence to the Tribunal on Day 145.

6.09 On 25 October 2001 the Tribunal requested Mr Dunlop to provide the originals of his diaries for the period 1988 to 1997. The Tribunal was advised that Mr Dunlop was no longer in possession of his 1988 and 1989 diaries, and the Tribunal was provided with the originals of his diaries for the period 1990 to 1997 on 30 October 2001, and later on 24 October 2002, again at the request of the Tribunal, provided the originals of his diaries for the period 1998 to 2001. A number of diary entries, and their forensic analysis, were the subject of inquiry in the course of the Tribunal's public hearings.

THE ATTEMPTED OBLITERATION OR ALTERATION OF DIARY ENTRIES

6.10 It was not surprising that Mr Dunlop's revelation that, prior to 18 April 2000, his dealings with the Tribunal had been less than frank, called into question the authenticity of his diary entries.

6.11 The redaction of some diary information, (which ought not to have been redacted because it was related to Quarryvale), became evident to the Tribunal when, in 2001, in compliance with the Tribunal's direction, Mr Dunlop provided his original diaries for the period 1990 to 1997.

6.12 When the original diaries were duly provided, it became apparent that a number of diary entries (or parts of diary entries) had been subjected to very heavy overwriting of a nature which indicated that a deliberate attempt had been made to alter them, obliterate them altogether or render them indecipherable. In an effort to identify the concealed information, the Tribunal engaged, initially, a Birmingham, UK based company and subsequently the Federal Bureau of Investigation (the'FBI') to conduct a forensic analysis of a number of diary entries. The FBI declined payment for this service. The Birmingham analysis and subsequent FBI analysis successfully and conclusively identified information which Mr Dunlop had sought to conceal in a significant number of these diary entries, although both failed to yield definite results in relation to others. The

FBI's efforts to decipher (regrettably unsuccessfully) obliteration attempts to diary entries for 17 and 18 September 1992 (which the Tribunal was satisfied related to dealings between Mr Dunlop and Mr O'Callaghan) were aptly described by Mr Dunlop's Counsel as an effort akin to *'a Jackson Pollock painting.'*

6.13 Mr Dunlop was questioned extensively about these diary entries, and particularly those which became apparent to the Tribunal subsequent to the provision of the diaries to the Tribunal in 2001, and after he had become (according to himself) a fully cooperating witness. The Tribunal endeavoured to ascertain both the content of the '*obliterated'* diary entries and to establish when such attempted obliterations had been undertaken by Mr Dunlop, and more particularly, if such had occured between 18 April 2000, and the dates of production to the Tribunal of the original diaries.

6.14 Mr Dunlop's explanations to the Tribunal for the reasons for his attempted (and on occasion, successful) obliterations of diary entries, from the time when such attempts took place, were distinctly evasive, vague and unsatisfactory. Suggestions by Mr Dunlop that his attempted obliterations were merely the consequence of his '*doodling'* was rejected out of hand by the Tribunal. The Tribunal was satisfied that these attempts to obliterate information were deliberate and had been undertaken with considerable resolve. Their aim was, undoubtedly, to conceal certain information from the Tribunal which Mr Dunlop knew to be relevant to its inquiries.

6.15 It was apparent to the Tribunal that having regard to the nature and content of many of the obliterated or altered diary entries, two general facts were established in the context of the reason why the Tribunal believed Mr Dunlop sought to conceal them from the Tribunal. The first was a desire to conceal information which, on its face, established a frequency of contact between Mr O'Callaghan and Mr Lawlor, and the second was a desire to conceal information relating to, in particular, financial transactions involving Mr Dunlop and his clients (including Mr O'Callaghan).

6.16 The Tribunal was satisfied that in relation to a number of these obliterated/altered diary entries, Mr Dunlop undertook the task of rendering or attempting to render certain diary entries indecipherable subsequent to 18 April 2000, and that he did so with the sole aim of concealing information from the Tribunal.

MR DUNLOP'S INVOLVEMENT IN THE PREPARATION OF CORRESPONDENCE AND STATEMENTS PROVIDED TO THE TRIBUNAL BY CLLRS MJ COSGRAVE (FG) AND LIAM CREAVEN (FF)

7.01 On 7 March 2003, the Tribunal wrote separately to Cllrs MJ Cosgrave and Creaven through their shared solicitor requesting from each a narrative statement in relation to issues relevant to the Fox & Mahony lands.

7.02 Cllr MJ Cosgrave responded through his solicitor to the Tribunal's request by providing to the Tribunal a copy of a letter from Cllr Cosgrave addressed to his solicitor, dated 28 March 2003, in which he answered a number of specific questions set out in the Tribunal's letter of 7 March 2003.

7.03 Cllr Creaven's response, through his solicitor, was to provide the Tribunal with a short letter dated 27 March 2003 addressed to Cllr Creaven's solicitor by Cllr Creaven. Both this letter, and the letter dated 28 March 2003 addressed by Cllr Cosgrave to the same solicitor, and also passed to the Tribunal, bore a striking similarity as to its content and layout.

7.04 On 1 April 2003, the Tribunal wrote to Cllr Cosgrave's solicitor expressing its dissatisfaction with the inadequacy of Cllr Cosgrave's response and again requesting a detailed narrative statement from him. On 11 April 2003, Cllr Cosgrave replied directly to the Tribunal with a detailed three page statement.

7.05 As in the case of Cllr Cosgrave, the Tribunal wrote on 1 April 2003 to Cllr Creaven's solicitor expressing its dissatisfaction with the inadequacy of Cllr Creaven's response dated 27 March 2003. On 11 June 2003, Cllr Creaven's solicitor furnished a detailed narrative statement to the Tribunal dated 5 June 2003. While Cllr Creaven's narrative statement of 5 June 2003 and Cllr Cosgrave's narrative statement of 11 April 2003 contained different information, there was nevertheless a clear similarity of style and format between both statements.

7.06 A further request for specific information was made by the Tribunal to Cllr Cosgrave's solicitors and to Cllr Creaven's solicitors on 30 September 2003. A response from Cllr Cosgrave was received dated *'October 2003'* by letter from Cllr Cosgrave addressed to his solicitor. Cllr Creaven responded directly to the Tribunal on 8 October 2003. Cllr Cosgrave's response dated *'October 2003'* and Cllr Creaven's response dated 8 October 2003 were broadly similar in style and format.

7.07 The Tribunal learned that in March and April 2003 Mr Dunlop met with Cllr Cosgrave and Cllr Creaven on more than one occasion. Struck by the similarity of the responses to the Tribunal's request for statements and information from Cllrs Cosgrave and Creaven, the Tribunal sought to establish if there had been collusion between all three in their provision of information to the Tribunal, and if so, the extent of that collusion.

7.08 The Tribunal wrote to Mr Dunlop's solicitors on 28 October 2004. Mr Dunlop advised the Tribunal through his solicitors on 29 October 2004 that he had had a number of meetings with Cllrs Cosgrave and Creaven in the period March/April 2003. In this letter, Mr Dunlop's solicitor stated that Mr Dunlop had told both councillors at these meetings that he could not discuss any Tribunal related matters following his appearance at the Tribunal in April 2000, and that he merely advised both to answer the Tribunal's questions to them as best they could. Mr Dunlop maintained that he repeated that advice to both men at a meeting in Cllr Cosgrave's home in March/April 2003.

7.09 Earlier, Mr Dunlop provided the Tribunal (at its request), with a handwritten list of names of councillors with whom he claimed he had had '*various discussions about the Tribunal subsequent to its establishment.'* Both Cllrs Cosgrave and Creaven were included in this list.

7.10 Throughout Mr Dunlop's sworn evidence to the Tribunal he never once implicated either Cllr MJ Cosgrave or Creaven in any allegations to the effect that either had corruptly demanded or received money from him.

THE EVIDENCE OF MS MARY MAGUIRE

7.11 The Tribunal heard sworn evidence from Ms Mary Maguire who in 2003 had been employed as Cllr MJ Cosgrave's secretary. Ms Maguire said that she had occasionally typed letters for Cllr Creaven in the period when she was employed by Cllr Cosgrave.

7.12 Ms Maguire told the Tribunal that she had never met Mr Dunlop prior to March 2003 but recognised him from television. She testified that on 26 March 2003, Cllr Cosgrave directed her to hold all calls and appointments on the following day because he was expecting a '*special visitor the next day'*, and did not wish to be disturbed. He did not otherwise identify the visitor.

7.13 Ms Maguire maintained that on 27 March 2003 Cllr Cosgrave requested her to, unusually, purchase sandwiches for him in a local supermarket. On her return, she noticed Cllr Cosgrave's car and a '*blue Mercedes jeep'* parked in Cllr

Cosgrave's driveway, and also noticed Cllr Creaven's car parked across the road. Ms Maguire handed Cllr Cosgrave the sandwiches purchased by her. He remained in his apartment while she attended to her work in his constituency office. Sometime later, while at her desk in the constituency office, Ms Maguire said that she noticed, to her surprise, Mr Dunlop attempting to reverse the Mercedes jeep out of the driveway. Shortly afterwards Ms Maguire was asked by Cllr Cosgrave to prepare some correspondence. On entering Cllr Cosgrave's room, she noticed Cllr Creaven was present. Ms Maguire proceeded to type versions of letters in the names of Cllrs Cosgrave and Creaven and was requested by Cllr Cosgrave to make the letters look different, using different typeface and wording. Ms Maguire also said that she had previously typed letters for both men, dictated to her by Cllr Cosgrave.

7.14 Ms Maguire identified the letters typed in the names of Cllrs Creaven and Cosgrave and provided to the Tribunal, as those dated 27 March and 28 March 2003 respectively, to be the letters which she had typed on 27 March 2003.

7.15 On a date in April 2003, Cllr Cosgrave again informed Ms Maguire that he was expecting a visit from his '*special visitor'* on the following day, and to hold calls on that day. The '*special visitor*' was not identified. Ms Maguire also said that she was instructed by Cllr Cosgrave not to record any reference to the visit in Cllr Cosgrave's diary.

7.16 On the following day, Ms Maguire witnessed Mr Dunlop arriving at the premises. He was wearing a sports cap and a fleece zipped to his chin. Ms Maguire said she only recognised Mr Dunlop when he removed his cap on entering the premises. Ms Maguire was unable to recollect, if Cllr Creaven was also present on the occasion of Mr Dunlop's visit on that occasion.

7.17 Following the meeting between Mr Dunlop and Cllr Cosgrave, Ms Maguire was instructed to write certain letters to the Tribunal as directed by Cllr Cosgrave. She did so, preparing the letters to the Tribunal from Cllr Cosgrave dated 11 April 2003 and from Cllr Creaven dated 5 June 2003. Ms Maguire told the Tribunal that Cllr Creaven was not present when she typed the first letter, and that when she typed the second letter (1 May 2003), both Cllrs Creaven and Cosgrave were present, but Cllr Cosgrave dictated the letter, that the third version of the letter was dated 15 May 2003, and the final version 5 June 2003. Ms Maguire recalled Cllr Cosgrave dictating Cllr Creaven's letter to the Tribunal which she described as '*just a version'* of Cllr Cosgrave's letter of 11 April 2003.

7.18 Ms Maguire told the Tribunal that Cllr Cosgrave informed her on 8 October 2003 that his '*special visitor'* (which she then understood to be a reference to Mr

Dunlop), was expected to visit. She did not see him on this occasion as she was absent from Cllr Cosgrave's premises on that afternoon.

7.19 Ms Maguire confirmed that the letters from Cllr Creaven to the Tribunal dated 8 October 2003, and the letter from Cllr Cosgrave to his solicitor dated October 2003 (and which were then provided to the Tribunal) were typed by her having been dictated by Cllr Cosgrave. Cllr Cosgrave directed her not to date the letter from himself, as he intended to send it at a later stage.

7.20 Ms Maguire was cross-examined by Counsel for Mr Dunlop and by both Cllrs Cosgrave and Creaven. None challenged Ms Maguire's evidence that she had witnessed Mr Dunlop's attendances at Cllr Cosgrave's premises on two occasions. Mr Dunlop accepted that he could have visited Cllr Cosgrave's premises dressed in the manner described by Ms Maguire but he disputed the dates of such visits.

7.21 At the time Ms Maguire left Cllr Cosgrave's employment (27 August 2004) she removed from his computer the disks which retained details of the correspondence in question including the dates and times that such correspondence was typed by her. This evidence established that the respective letters typed by Ms Maguire on behalf of Cllr Cosgrave and Cllr Creaven had been indeed typed within a short period of time between each (comprising multiples of minutes).

THE EVIDENCE OF MR DUNLOP

7.22 Mr Dunlop acknowledged that he met Cllrs Cosgrave and Creaven very frequently in different locations over the years. He confirmed that he met the two councillors on three occasions in the period March/April 1993, but vehemently denied any such meetings in Cllr Cosgrave's premises in Baldoyle on either 27 March 2003 or 11 April 2003.

7.23 Mr Dunlop said that he met Cllrs Cosgrave and Creaven on 26 March 2003 in the County Club, Dunshaughlin in Co Meath. He collected them from Cllr Cosgrave's premises and drove them to the venue in Dunshaughlin and drove them to their homes later. Mr Dunlop emphatically denied that he attended Cllr Cosgrave's premises on the following day, 27 March 2003.

7.24 Mr Dunlop told the Tribunal that he again met Cllrs Cosgrave and Creaven in the County Club in Dunshaughlin, Co Meath on 7 April 2003. He denied attending Cllr Cosgrave's premises on 11 April 2003.

7.25 Mr Dunlop did however acknowledge that, in March/April 2003, he did attend Cllr Cosgrave's premises in Baldoyle for a meeting but on a date other than the date stated in evidence by Ms Maguire. Mr Dunlop stated:

> '*There is absolutely no doubt, Ms. Dillon, in my mind, a meeting did take place in College Street (Baldoyle) on a date which unfortunately and sadness from your point of view and mine, I cannot give you the exact date and I cannot give you an explanation either why I didn't put it in. But that be that as it may, there is absolutely no doubt in my mind that I travelled to Mr. Cosgrave's home in College Street in the jeep that I currently possess. I can't actually recall, and it is with interest that I listen to the detail of this inquiry as to where the parking took place. I can't recall where I parked. She (Ms. Maguire) does attest to the fact that it's difficult to park in that street, that is correct, it's difficult to park in the street.*
>
> *Secondly, there were sandwiches delivered. I don't know who bought the sandwiches. I don't know who delivered them. I do not know Ms. Maguire, never met her before in my life, wouldn'trecognise her on the street if I had met her until I saw her photograph in the paper. So I don't know who took the sandwiches. The attestation that sandwiches were delivered is correct, there were sandwiches delivered.'*

7.26 Mr Dunlop told the Tribunal that he was never requested to assist in drafting responses to Tribunal correspondence for Cllrs Cosgrave and/or Creaven. Mr Dunlop maintained that in the course of his acknowledged meetings with Cllrs Cosgrave and Creaven in March/April 2003 there had been no discussion as to the detail in correspondence from the Tribunal or on the subject of information to be supplied to the Tribunal. Mr Dunlop said that he had simply advised them '*...lads, just answer the questions.'* Mr Dunlop also said that he reminded both councillors of his inability to discuss Tribunal matters following his April 2000 appearance at the Tribunal.

7.27 Mr Dunlop suggested that the fact that he had three meetings with both councillors in the period March/April 2003 at a time when they were in receipt of correspondence from the Tribunal was a mere coincidence. Mr Dunlop was certain that the contents of any such correspondence were not discussed, nor was there any discussion on evidence to be given by them at their future attendances in the Tribunal. Mr Dunlop dismissed the meetings as merely '*three old fogies enjoying themselves.'*

THE EVIDENCE OF CLLR MJ COSGRAVE

7.28 Cllr Cosgrave denied dictating letters on behalf of Cllr Creaven to Ms Maguire. Cllr Cosgrave explained that Cllr Creaven did on occasion use Ms Maguire to type for him, but that such letters prepared by her for Cllr Creaven were done on the basis of instructions given to Ms Maguire directly by Cllr Creaven. Cllr Cosgrave also denied instructing Ms Maguire to make letters from himself and from Cllr Creaven to look different to each other.

7.29 Cllr Cosgrave agreed with Mr Dunlop that two meetings had taken place between himself, Cllr Creaven and Mr Dunlop in the County Club in Dunshaughlin, Co Meath on 26 March 2003 and 7 April 2003, and he also agreed that one meeting had taken place in his Baldoyle premises in the period March/April 2003. Cllr Cosgrave was unable to recollect what transpired at meetings between himself and Mr Dunlop in 2002 or 2004.

7.30 Cllr Cosgrave denied that meetings had taken place in his premises on 27 March 2003 and 11 April 2003, or in October 2003 as suggested by Ms Maguire. Cllr Cosgrave denied that he had ever used the term '*special visitor'* in conversation with Ms Maguire.

7.31 Cllr Cosgrave said that he never discussed the content of Tribunal letters or responses to those letters with Cllr Creaven or with Mr Frank Dunlop.

THE EVIDENCE OF CLLR CREAVEN

7.32 Cllr Creaven's evidence was essentially in agreement with that given by Cllr Cosgrave and by Mr Dunlop. He recalled the County Club Dunshaughlin meetings in March and April 2003 but denied attending Cllr Cosgrave's premises for a meeting with Mr Dunlop on 27 March 2003 or 11 April 2003.

7.33 Cllr Creaven denied the suggestion that letters to the Tribunal were dictated or drafted by Cllr Cosgrave or by anyone else. In relation to his correspondence directly or indirectly with the Tribunal, Cllr Creaven said that he dealt directly with Ms Maguire.

7.34 Cllr Creaven recalled Mr Dunlop stopping him dead in his '*track'* if he attempted to discuss anything in relation to the Tribunal.

7.35 Cllr Creaven also denied discussing the content of Tribunal correspondence with Cllr Cosgrave, or of discussing their responses to that correspondence.

THE TRIBUNAL'S CONCLUSIONS IN RELATION TO THE COSGRAVE / CREAVEN / DUNLOP ISSUE

i. The Tribunal accepted in its entirety the evidence given by Ms Maguire and it therefore rejected, also in its entirety, the evidence of Mr Dunlop, Cllr MJ Cosgrave and Cllr Creaven to the extent that it conflicted with Ms Maguire's evidence.

ii. The Tribunal was, in particular, satisfied that Ms Maguire's evidence to it in relation to occasions in March and April 2003 when she recalled witnessing Mr Dunlop attend at Cllr Cosgrave's Baldoyle premises was truthful, and it rejected the contention of Mr Dunlop, Cllr MJ Cosgrave and Cllr Creaven that such meetings did not take place.

iii. The Tribunal was satisfied that the letters/statements provided to it by Cllrs Cosgrave and Creaven on the 28 March, 11 April and October 2003 (for Cllr Cosgrave), and 27 March, 5 June and 8 October 2003 (for Cllr Creaven) were drafted/dictated by Cllr Cosgrave to Ms Maguire following upon detailed discussions between the two councillors and Mr Dunlop and that that correspondence together with correspondence in October 2003 was the result of discussions between the three men and more particularly, advice provided by Mr Dunlop.

iv. The Tribunal rejected the evidence given by Mr Dunlop, and by Cllrs Cosgrave and Creaven, that at meetings between them in April/May 2003, there did not take place detailed discussions as to the content of correspondence from the Tribunal to Cllrs Cosgrave and Creaven, and their responses to that correspondence.

v. The Tribunal believed it as likely that the purpose of the meetings between the three men in April/March 2003 were primarily for the purpose of discussing such correspondence and the responses thereto.

vi. The Tribunal was satisfied that there was collusion between the three men in relation to preparing responses/statements to the Tribunal during 2003.

MR DUNLOP'S ATTEMPTS TO CONCEAL FROM THE TRIBUNAL THE EXTENT OF HIS DEALINGS WITH MR LAWLOR AND THE EXTENT OF THE DEALINGS OF MR LAWLOR WITH MR O'CALLAGHAN

8.01 Prior to Mr Dunlop furnishing the Tribunal in 2001 with his entire unredacted diaries for the years 1990 to 1997, in 1999 he furnished copies of his redacted diaries for the period 1 September 1991 to 1 September 1993 and in April 2000 he gave the Tribunal copies of his redacted diaries covering the period 1 January 1990 to 1 September 1991 and the period 1 September 1993 to 30 December 1993.

8.02 Mr Dunlop was advised by the Tribunal that he could redact diary entries which did not relate to Quarryvale, then the subject of the Tribunal's inquiries.

8.03 On that basis, Mr Dunlop utilized 'post-it' stickers to redact portions of his 1990 to 1993 diaries which Mr Dunlop deemed not relevant to the Tribunal prior to providing copies of the redacted diary entries to the Tribunal.

8.04 Of the entire discovery made by Mr Dunlop, up to April 2000, of his diaries for the period January 1990 to December 1993, Mr Dunlop disclosed only three diary entries which related to Mr Lawlor, (namely 29 April 1992, 8 September 1992 and 21 December 1993).

8.05 Following the production of Mr Dunlop's original (and unredacted) diaries for the years January 1990 to December 1993, it was revealed that Mr Dunlop's 1992 and 1993 diaries contained references to a number of scheduled meetings with Mr Lawlor, either involving Mr Dunlop on his own or, on occasions, involving both Mr Dunlop and Mr O'Callaghan and, on other occasions involving Mr Dunlop, Mr O'Callaghan and Mr Ambrose Kelly. Prior to October 2001 none of these entries, (save for the three diary entries referred to above), had been disclosed by Mr Dunlop to the Tribunal, not withstanding their clear association with Quarryvale.

8.06 Mr Dunlop, when furnishing his 1992 and 1993 diaries in 1999/2000 redacted Mr Lawlor's name from entries made in his diaries on the following dates:

9 January 1992
14 January 1992
3 February 1992
20 March 1992
9 April 1992
23 June 1992

28 September 1992
1 October 1992
9 October 1992
14 October 1992
2 April 1993
10 May 1993
30 August 1993
31 August 1993.

8.07 Similarly, disclosure made by Mr Dunlop of his 1991 diary for the period 1 January 1991 to September 1991 failed to reveal a meeting with Mr Lawlor scheduled for 5 February 1991.

8.08 Furthermore, when the unredacted diaries were provided to the Tribunal in 2001, it was discovered that a number of diary extracts had been partly or entirely rendered illegible by being heavily and repeatedly written over (or, effectively painted over), with ink. It was clear to the Tribunal that a deliberate effort had been made to obliterate certain words or sentences in those diary entries, as other diary entries denoting, for example, cancelled meetings, were merely crossed out in a manner which left the crossed out words still legible.

8.09 Forensic analysis provided by a Birmingham, UK company and by the FBI enabled the Tribunal to indentify (either fully or partially) many of the concealed entries.

8.10 The Tribunal was satisfied that some or all of these attempted obliterations were carried out by Mr Dunlop after he was requested by the Tribunal to provide his complete diaries and at a time when Mr Dunlop insisted that he was providing truthful evidence to the Tribunal.

8.11 The instances, in respect of which the Tribunal was satisfied, Mr Dunlop overwrote diary entries connected to MrLawlor included the following:

- A diary entry of 3 June 1992 which, the Tribunal was satisfied, in its original unadulterated state made reference to a meeting between *'AM K'* (Mr Ambrose Kelly) *'L'* (Mr Lawlor) and *'OOC'* (Mr O'Callaghan) was presented in Mr. Dunlop's 1999 Discovery to the Tribunal in such format as suggesting that *'AMK'*, *'F', and 'OOC'* were meeting in Mr Dunlop's office, Mr Dunlop having converted the *'L'* to *'F.'* The Tribunal established this after Mr Dunlop's diaries were forensically examined by a Birmingham, UK company in 2007, and by the FBI in 2008.
- Mr Dunlop overwrote and attempted to obliterate a diary entry for 25 August 1993 and which was subsequently found, on forensic analysis, to

include a reference to Mr Lawlor. This diary entry was in 2001 presented to the Tribunal by Mr Dunlop as suggesting only a meeting between Mr Dunlop and Mr O'Callaghan when Mr Dunlop's retainer was being discussed. Mr Dunlop acknowledged to the Tribunal that the information he had attempted to obliterate was Mr Lawlor's name.

- Mr Dunlop also made a more dramatic attempt to conceal a diary entry for 10 November 1993. When in 2001 the Tribunal examined the 1993 diary, it noted that the entry for 10 November 1993 suggested the scheduled attendance of Mr O'Callaghan in Mr Dunlop's office from 9:30am to 1:00pm. To the right of this entry, the following appeared: '*GH5924688'*
- There followed thereunder a heavily overwritten passage. Forensic analysis of this entry revealed that its original message read, '*LL1 and a half', '1 ready', 'half CHQ.'*
- The Tribunal was satisfied that this diary entry related to a financial dealing concerning Mr Lawlor which took place or was discussed in Mr Dunlop's office on 10 November 1993 and probably when Mr O'Callaghan was present.

8.12 While Mr Dunlop, in evidence, acknowledged that the 10 November 1993 entry (and indeed the aforementioned 25 August 1993 entry) had been obliterated by him he professed to have no explanation as to why he had concealed the obliterated information.

8.13 Mr O'Callaghan said he could not offer any explanation as to why Mr Dunlop might have felt compelled to attempt to obliterate this information from his diaries.

8.14 The Tribunal was however satisfied that Mr Dunlop's primary purpose in so doing was to conceal from the Tribunal the extent of the close connection that existed, throughout the Quarryvale rezoning, between Mr O'Callaghan and Mr Lawlor. The Tribunal was also satisfied that it was for this purpose that Mr Dunlop chose in 1999 and 2000 to conceal from the Tribunal (by his '*post-it'* redactions) the fact that his 1992 diary in particular was replete with references to Mr Lawlor, often in association with Mr O'Callaghan.

MR DUNLOP'S 'WAR CHEST' MONEY: AN OVERVIEW

9.01 In addition to two Shefran '*war chest'* accounts, Mr Dunlop had three further such accounts, namely an account at Irish Nationwide Building Society ('INBS 910 account') and an account at the Terenure branch of AIB ('AIB 042 Rathfarnham account'). In November 1990 Mr Dunlop opened an offshore account in the name of his company Xerxes Consult (Jersey) Ltd at Midland Bank Trust, Jersey with a sterling deposit of IR£18,050, effectively, as conceded by Mr Dunlop, a *'war chest'* account.

9.02 Insofar as Mr Dunlop utilised 'war chest' accounts in the years 1990 to 1993 in connection with rezoning proposals with which he was involved, his activities in this regard mainly concentrated on the INBS 910 account and the AIB 042 Rathfarnham account.

9.03 Over and above the opening and operation of his *'war chest'* accounts, Mr Dunlop, on his own admission, had in the relevant years access to substantial cash reserves which he accumulated by encashing cheques received from his clients (including landowners/developers) and from cash payments made to him by his clients.

9.04 Mr Dunlop's INBS 910 account was opened on 3 August 1982 with a lodgement of IR£25. There was no significant activity on this account until in or about April 1991 when a number of small lodgements of between IR£700 to IR£2,300 were made, followed by a cash lodgement of IR£14,500 on 17 May 1991. Mr Dunlop said that this cash lodgement may have represented portion of a IR£25,000 Shefran cheque which Mr Dunlop received from Mr O'Callaghan on 16 May 1991 (see Part 5).

9.05 In tandem with his having recommenced activity on the INBS 910 account, Mr Dunlop opened the AIB 042 Rathfarnham account on 9 April 1991, with a lodgement of IR£30,600.88.

9.06 At the time he opened his AIB 042 Rathfarnham account Mr Dunlop was an established customer of AIB and held a number of accounts in his and his wife's names, and in the name of Frank Dunlop & Associates at AIB, 5 College Street, Dublin. Mr Dunlop had been a customer of AIB since 1985.

THE OPENING OF THE AIB 042 RATHFARNHAM ACCOUNT

9.07 On 5 April 1991 Mr John Aherne, Manager of AIB, College Street, Dublin (and the person within the branch who looked after Mr Dunlop's accounts) wrote to the Manager of AIB, Terenure enclosing certain documentation and requesting that a joint account opened in the names of Mr Dunlop and his wife in that branch. In the course of his correspondence with his colleague Mr Aherne advised as follows:

> *Mr. Dunlop is very well got in business circles and operates a very successful Public Relations Business. He trades under Frank Dunlop & Associates Ltd. which is a highly satisfactory account connection at this Branch. A cheque book at this stage is not a reality and a Banklink Card in the name of Frank Dunlop will suffice.*

9.08 In his evidence Mr Dunlop explained his rationale for opening the AIB 042 Rathfarnham account in the following terms:

> *'...AIB were able to look after clients who had large sums of money and they did not want to appear in their own account in their own bank or in another account in their bank. And he* [Mr Aherne] *suggested that he would contact, I see the name here, I wouldn't have been able to recollect it otherwise. He would contact the Manager in Rathfarnham, in a place called Rathfarnham and open an account.'*

9.09 Mr Dunlop maintained that he had been advised by Mr Aherne that *'...it would not be right or advisable to have large sums of money going through my account in his own, in that branch.'* Mr Dunlop was not required to attend at the Terenure branch to conduct his business. The operation of that account was invariably conducted within AIB, College Street.

9.10 Mr Aherne did not take issue with the evidence that he had arranged and facilitated Mr Dunlop with regard to the opening of the AIB 042 Rathfarnham account although he denied Mr Dunlop's contention that he had advised Mr Dunlop in the manner described by him.

9.11 Mr Aherne acknowledged that Mr Dunlop *'...was going to handle the account on a lodgement or a withdrawal basis'* although he claimed that he could not recollect Mr Dunlop telling him that he anticipated substantial sums of money being lodged into the AIB 042 Rathfarnham account. An analysis of relevant bank documentation for the period 9 April 1991 to 21 August 1991 (when there was substantial activity on the account), revealed that all of Mr Dunlop's dealings on the account were conducted via College Street, and were, in the main, conducted with Mr Aherne.

9.12 As set out elsewhere in this Report, over the course of May/June 1991, during the Local Election campaign,[2] Mr Dunlop had access to a minimum of IR£165,000 in cash which was sourced to the encashment of four[3] Shefran cheques and withdrawals from the AIB 042 Rathfarnham account.

9.13 On 9 September 1991 Mr Dunlop withdrew a further IR£10,000 in cash from the AIB 042 Rathfarnham account. The Tribunal was satisfied that this money was in all likelihood expended by him in connection with his then lobbying endeavours as was, in all probability, a IR£5,000[4] INBS cheque encashed by Mr Dunlop at AIB, College Street on 27 September 1991 pursuant to his cheque cashing arrangement with Mr Aherne of AIB (see below). While Mr Dunlop could not account for how he utilised the IR£5,000 cash he stated that he:

> *'withdrew money in the context of having cash available to me for purposes that is the matter of investigation here by the Tribunal and I may well have used that money in specific instances, with specific people.'*

A further INBS cheque for IR£2,500 was cashed by Mr Dunlop on 3 October 1991, again at AIB, College Street.

9.14 In November 1992 it was the AIB 042 Rathfarnham account that was utilised by Mr Dunlop to receive a credit transfer of IR£70,000 from Mr O'Callaghan/Riga on 10 November 1992 and from which he withdrew IR£55,000 in cash[5] on the same date.

9.15 Mr Dunlop made particular use of the INBS 910 'war chest' account in 1993, when in the period between 19 February 1993 and 17 November 1993 he made a series of round figure cash lodgements of between IR£2,500 and IR£15,000 totalling IR£58,500 cash. The Tribunal was quite satisfied that on every occasion when Mr Dunlop made such cash lodgements, he at the same time retained, or had already in his possession, significant sums of cash.

9.16 The frenetic activity in relation to both the AIB 042 Rathfarnham account, and the INBS 910 account coincided with the making of the 1993 Development Plan and in particular with elections which took place during that period. With regard to the cessation of cash lodgements to his INBS 910 account, Mr Dunlop stated '*At that time the Development Plan had concluded and the purpose for which this fund had been established was to have cash available.'* The accounts were effectively dormant after the adoption of the Development Plan in

[2] See Chapter Two, Parts 5 and 7.
[3] Three Shefran payments from Riga (see Chapter Two) and one from interests associated with the Baldoyle rezoning proposal (see Chapter Nine).
[4] Mr Dunlop had this cash sum on the same date as Mr O'Callaghan's cheque for IR£10,000 to Mr Lawlor was debited from his account – see Part 9.
[5] See Chapter Two, Parts 6 and 7.

December 1993, save for a couple of lodgements to the INBS account in August/September 1994. Both accounts were closed in October 1994.

9.17 Mr Dunlop's ability to maintain cash reserves was not only facilitated by the operation of the aforementioned *'war chest'* accounts but also by an arrangement he had with AIB, College Street whereby cheques for large amounts presented by him could be cashed. Mr Aherne confirmed that Mr Dunlop used this facility between 1990 and 1993.

9.18 In the course of his evidence Mr Aherne initially suggested that he became aware of Shefran when an account was opened in the name of the company in April 1992, but then accepted that he had facilitated the encashment of Shefran cheques for Mr Dunlop for a period of two years prior to the setting up of any bank account in the name of Shefran.

9.19 The evidence established that independently of the Shefran cheques which Mr Dunlop presented for encashment at AIB, College Street, Mr Aherne also facilitated Mr Dunlop's requirement for substantial cash funds by encashing cheques drawn by Mr Dunlop on his INBS 910 *'war chest'* account, and encashing cheques for Mr Dunlop which, on their face, showed the payee to be otherwise than Mr Dunlop, or Frank Dunlop & Associates, or indeed Shefran.

9.20 Over the course of a period of several months (from September 1989 to May 1991), Mr Dunlop received seven cheque payments from companies associated with a then client, National Toll Roads (NTR), on foot of invoices from him in the names[6] of *'Barry McCarthy'*, Shefran Limited and *'Shefran (Jersey) Limited.'* In the period in question Mr Dunlop received seven cheque payments from NTR totalling IR£150,000. Five of these cheques were encashed at AIB, College Street. The value of the individual cashed cheques ranged from IR£5,000 to IR£60,000. In three instances the cheques presented by Mr Dunlop (on 9 February 1990, 25 May 1990 and 1 August 1990), were endorsed by him either in the name of *'Barry McCarthy'* or *'Barry McCarthy Shefran Limited.'* Mr Aherne accepted that he facilitated Mr Dunlop to negotiate the cheques, and while acknowledging that Mr Dunlop had presented cheques in the name of *'Barry McCarthy'* for encashment, Mr Aherne claimed that he had *'never realised that he* (Mr Dunlop) *endorsed it accordingly.'* He claimed not to recall the specifics of the cheque payees and professed himself *'intrigued by the endorsement*[s]', saying *'I don't have any recall of the McCarthy connection and it would appear to me while it's the Barry McCarthy Shefran Limited, that endorsement as such would appear to be in Mr Dunlop's writing.'* The Tribunal was satisfied that *'Barry McCarthy'* was a fictitious entity, as was '*Shefran Jersey Ltd.*'

[6] One such cheque was paid to *'cash.'*

9.21 Mr Aherne stated *'Any cheques I encashed for Mr Dunlop I would have done it on the basis that it was his money and that he was endorsing it and that was my recall. And that has always been my recall whether the payee is B McCarthy or whatever. Okay, it was irregular.'* Mr Aherne advised the Tribunal that *'you do irregular things if you value your client and if you have a high regard for your client.'* The Tribunal rejected Mr Aherne's claimed lack of knowledge regarding Mr Dunlop's endorsement of the cheques in question.

9.22 In the course of his testimony Mr Aherne maintained that he had no knowledge of Mr Dunlop's activities, that he had *'believed at all times he operated bona fide lobbying and PR business'* and that he, did not know what Mr Dunlop did with the cash he was receiving from the cheque encashments. Mr Aherne agreed that Mr Dunlop's request for large sums in cash was *'over and above the norm'*, but he *'trusted Mr Dunlop implicitly.'*

9.23 When queried whether, as a matter of banking responsibility, he should have satisfied himself as to why a customer, at fairly regular intervals, had a requirement for the withdrawal or lodgement of very large sums of cash, Mr Aherne stated *'yes, I would say to you on the one hand. On the other hand hindsight is a brilliant thing.'* Mr Aherne stated that he had no recollection of discussing Mr Dunlop's requirement for large sums of cash with him, or of asking him what he was doing with the cash. He did not recall if he had made a connection between cash withdrawals of IR£25,000 and IR£35,000 Mr Dunlop had made on 7 and 11 June 1991 respectively, with the 1991 Local Election, stating *'It may well have been but I cannot say I recall.'* Similarly, he had no recollection whether he had associated Mr Dunlop's cash withdrawal of IR£55,000 on 10 November 1992 with the General Election campaign then underway.

THE TRIBUNAL'S ANALYSIS OF MR DUNLOP'S LIKELY FINANCIAL RESERVES IN THE PERIOD FROM SEPTEMBER 1989 TO SEPTEMBER 1993 (OTHER THAN THOSE OF FRANK DUNLOP & ASSOCIATES)

9.24 The analysis conducted by the Tribunal, insofar as any such analysis was capable of being conducted in circumstances where Mr Dunlop, on his own admission, had access to cash resources which were not the subject of any documentary trail, established that in the period from February 1990 to September 1993 particularly, Mr Dunlop had at his disposal a sum in excess of half a million pounds cash (IR£535,501[7]) for the purposes, *inter alia*, of making disbursements to councillors. In 1991 Mr Dunlop had access to in excess of IR£230,000 cash, in 1992 he had access to IR£124,000 cash and in 1993

[7] IR£5,000 of this fund was available to Mr Dunlop in September 1989

IR£50,000 cash. These sums did not take into account cash sums which came into Mr Dunlop's possession and which were not lodged to or withdrawn from bank accounts. In the course of his testimony in the Quarryvale module, Mr Dunlop advised that, on occasions, he had cash sums ranging between IR£25,000 and IR£100,000 in his briefcase.

9.25 The Tribunal was satisfied that a sum of in excess of half a million pounds available to Mr Dunlop for his lobbying endeavours in the period 1990 to 1993 was, as a matter of the strongest possibility, a conservative figure, and considerably less than the likely actual cash '*war chest'* which Mr Dunlop had available to him during the making of the 1993 Development Plan.

9.26 The Tribunal's analysis of the manner in which Mr Dunlop conducted his financial affairs otherwise than through Frank Dunlop & Associates, and the manner in which he was facilitated by a number of clients with, effectively, the provision of cash payments, coupled with his use of *'war chest'* accounts and cheque cashing facilities led the Tribunal to the inevitable conclusion that Mr Dunlop was easily able to make cash payments to councillors and politicians. Notwithstanding the evidence tendered by Mr Dunlop over the course of a number of modules as to who were the beneficiaries of payments from him in the years 1990 to 1993 particularly, the Tribunal was satisfied that significant disbursements of cash funds by Mr Dunlop remain unaccounted for.

9.27 The Tribunal was satisfied that payments made to Mr Dunlop by landowners/developers, although intended, in part at least, by some landowners/developers to be passed on in the form of corrupt payments (albeit in some instances in the form of contributions at election time) to councillors were not always directly or immediately used for such purposes by Mr Dunlop. Mr Dunlop told the Tribunal that the funds provided to him for such purposes, together with other funds (including the funds lodged to his 'war chest' accounts), constituted a '*confluence of funds*', from which such payments were then made as required and when opportune. There was therefore, in practice, no ring fencing of funds for specific projects. Mr Dunlop, in making payments to councillors (including Mr Lawlor) did so not only using funds already provided to him but also contributed to such disbursements from his '*confluence*' of funds, on the basis of an expectation of payments being made to him in the future by landowners/developers, often by way of a promised or agreed 'success fee.' At times, Mr Dunlop made disbursements to councillors out of this '*confluence of funds'* in relation to particular developments prior to being put in funds by the landowner or developer concerned.

MR DUNLOP'S LOBBYING STRATEGY: AN OVERVIEW

10.01 Mr Dunlop, in the period particularly from late 1990/early 1991, adopted a simple and very successful strategy to achieve his undoubted success in persuading councillors in County Dublin to support a number of rezoning (and on occasion material contravention) proposals which, in order to succeed, required majority councillor approval. On occasion, that support also involved a willingness on the part of councillors to sign motions, and to actively influence fellow councillors to support particular proposals. When that strategy proved successful as it frequently did, the financial rewards for the relevant landowners/developers were enormous by any standards, and very substantial also for Mr Dunlop himself. While the potential financial gain was immeasurable, the outlay necessary to achieve the rezoning of the land in question (in the form of, in particular, payments to councillors) was in most instances, relatively modest, often involving sums of IR£1,000 or IR£2,000 being paid to a handful of councillors. It appeared to the Tribunal, that only rarely, if ever, did Mr Dunlop have to comprehensively brief councillors as to the merits (in planning or community terms), of a particular proposal for the purposes of persuading them to support that proposal. In reality, the money did the talking.

MR DUNLOP'S DESCRIPTION OF 'THE SYSTEM'

11.01 Mr Dunlop maintained that he immersed himself in the business of disbursing money to councillors by virtue of his participation in what he described as *'the system.'*

11.02 In his October 2000 statement Mr Dunlop advised as follows:

> *A 'system' was in operation in Dublin County Council whereby a nexus of councillors –Fianna Fail, Fine Gael and certain Independents- proffered their support in terms of signing motions, for consideration during the course of the Development Plan, and in terms of support via votes in the Chamber, in return for cash. The money was requested. I did not invent the system. I was confronted by it and in the cases listed below I co-operated with it in the full knowledge that it was the only way in which to ensure that certain developments could take place in County Dublin. I believe that the system pre-dated any lobbying I did of councillors in Dublin County Council and, as will be evident from the dates of payments to certain councillors, it persisted after the break up of the old Dublin County Council into three separate County administrations.*

11.03 In the course of his sworn testimony he elaborated on what he meant by *'the system'* as follows:

'Well, the system was such that contrary to what people understood was the legal position vis-à-vis reserved functions, such as the Development Plan, that there was a whip on. In other words, the legal position, as people understood it, was that because it was a reserve function, a whip could not be exercised. That was always a moot point with political parties representatives in Dublin County Council, but notwithstanding that there was a whip on. So, in other words, a particular development would be discussed by each of the political parties prior to that particular submission – sorry, that particular motion being discussed, debated and adjudicated on in Dublin County Council. Another element of the system was that it didn't always necessarily follow that if a particular councillor of whatever political designation was in favour of something, that all of these or her colleagues would follow suit.

The third element of the system was akin to what I have outlined to you earlier this morning in relation to the necessity to make progress was to have the local councillors in the geographic area as part of the positive element. In other words, that they would be supportive of the system – would be—support the motion. Also because it was known among the parties in Dublin County Council who, in fact, would be culturally in favour of development and who would not be in favour of development, a cross party system developed to ensure that the relevant numbers were obtained and we are still talking, because it is Development Plan, which is a reserve function, we are still talking about simple majorities.'

11.04 According to Mr Dunlop, the requirement for cross party support for rezoning motions was essential. The thrust of his evidence in a number of modules was that cross party support became an essential requirement in the period 1991 to 1993, in the wake of the outcome of the Local Elections which left no party with a majority within the County Council.

11.05 A key element of *'the system'* was money. Mr Dunlop testified as follows:

'There were a number of councillors who – and let me put this in two ways – who, one, actively proffered themselves as signatories for motions for the purpose of getting the motion to the agenda, in other words getting to the ball, you couldn't get to the ball unless you had the invitation and the invitation was the motion so you could put in as many submissions as you like for consideration but if you didn't get a motion which transferred itself on to the agenda, you didn't get to dance, so these people were proving themselves as signatories of the motion. Or alternatively, and this is the second part of it, when approached to sign

the motion for the purpose of getting to the agenda for consideration during the course of the Development Plan, they asked for money.'

11.06 Mr Dunlop claimed that he had been directly apprised of the *'system'* by Mr Lawlor *'probably sometime in early 1990.'* He stated *'A discussion, or various discussions, took place about the system and what was required to operate the system, and he* [Mr Lawlor] *said that various people, naming some of them, not everybody, would require to be paid and it was the only way that matters would, could, be brought to success.'*

11.07 The Tribunal accepted that Mr Dunlop and Mr Lawlor had such discussions, having regard, in particular, to the fact that Mr Lawlor from as early as 1988/1989 had himself made demands of Mr Gilmartin in connection with Quarryvale. While the Tribunal accepted that Mr Dunlop was introduced to the '*system'* in this way, it was nevertheless satisfied that the so called '*system*' was substantially perfected, expanded and exploited to a hitherto unachieved level by Mr Dunlop.

11.08 It is important to emphasise that Mr Dunlop could not have pursued his corrupt activity in relation to the planning process had it not been for, on the one hand, obliging landowners/developers who were prepared to lavish large sums of money (and in particular cash, and cheques payable to Mr Dunlop's company, Shefran) to Mr Dunlop, and, on the other hand, compliant councillors who were all too prepared to compromise the disinterested performance of their duties in the cause of personal gain.

MR LAWLOR'S EVIDENCE ON 'THE SYSTEM.'

11.09 Mr Lawlor said that he '*very strongly'* disputed Mr Dunlop's evidence that Mr Lawlor had indicated to him that there was a '*system*' which required to be operated to maximise the chances of obtaining rezoning, and that this system involved the payment of money to local politicians. Mr Lawlor stated that the fact that Mr Dunlop had secured the necessary planning permission for Citywest (having been introduced to the project by Mr Lawlor) by way of a material contravention vote before Dublin County Council without making any corrupt payments to councillors was in conflict with Mr Dunlop's contention that payments to councillors was an '*essential part of the system*.' It was Mr Dunlop's own evidence that he secured the material contravention without the need to bribe any councillor.[8]

[8] Mr Dunlop ultimately received a shareholding in Citywest in lieu of his professional fees. See Pennine Chapter.

11.10 Questioned as to his awareness of a practice whereby councillors received political donations from lobbyists and landowners and what, if anything, was done in return for such payments, Mr Lawlor stated:

> '*Well, there's two ways, if Frank Dunlop before a vote said look I'll pay you X pounds to make sure you turn up on Monday and vote for X motion, I don't believe that ever happened and I think if it did he would get short shrift. Afterwards if he gave a contribution to somebody who had supported something, well he certainly wouldn't have put it as contingent on them voting. If they had voted and he financially supported them, well that's what happened. And when I get back through the contributions over my period in public life, I think about two thirds of the people that financially supported me never owned a blade of grass in County Dublin. So, and all I can relate is that the final major planning matter that came before the Council for decision of the Citywest business park where it's seen as one of the greatest developments this country has ever seen and the planners were wholly opposed to it and Frank Dunlop, on behalf of the promoters, lobbied everyone and secured its proposal without supposedly having to pay a single penalty to people and that was over 30 acres of the then County Development Plan which was a colossal matter.'*

11.11 Asked if he was expressing surprise that the councillors had supported the Citywest project without the payment of money, Mr Lawlor stated:

> '*Not at all, I was the one that brought it forward, submitted documentation to this Tribunal. I thought it was visionary. Thousands of jobs out there now and the management were wholly opposed to it, because they owned land on the other side of the Naas dual carriageway and they didn't want the scheme to proceed in a commercial competition basis. The Minister for Science and Technology afterwards designated it as the National Science and Technology park. So the thing that surprised me was that Frank Dunlop related financially supporting elected members to how they had or would vote because he never suggested it to me and if he had, he would have got short shrift.'*

11.12 Mr Lawlor maintained that Mr Dunlop's allegation that he had paid councillors shocked him because it was not something he had a detailed knowledge of '*the way he* [Mr Dunlop] *outlined it at all.'* Asked if he had any knowledge of the practice alluded to by Mr Dunlop, Mr Lawlor stated:

> '*No, I mean my whole relationship to this issue would have been there was a political donation provided to elected members by whoever lobbied for them or wrote at various times and secured those contributions, and I was never aware and Dunlop wouldn't even dream of suggesting, or any other party, that you could secure somebody's vote by method of payment. I think it would be abhorrent and if anybody ever had suggested*

it to me, one man did and he got short shrift and the reason he did, he was in serious banking trouble. I didn't have the knowledge, Chairman, what Frank Dunlop said of the way he handled affairs throughout the 1990s and not being an elected member of that Council during that period, I really wasn't party to the detail as he has outlined it, ever.'

11.13 Asked if the identity of councillors who might sign a rezoning motion was discussed, in the course of the kind of discussions which might have taken place between himself and Mr Dunlop, Mr Lawlor said that Mr Dunlop would not have required that type of advice from him. Mr Lawlor again claimed that he was not familiar with the '*nitty gritty*' of particular electoral wards in South Dublin, or who might or might not have signed a motion. Mr Lawlor acknowledged, however, that he and Mr Dunlop may have discussed the benefits of getting cross party signatories to a motion, but Mr Lawlor believed that Mr Dunlop himself had this knowledge from his experience with the Citywest material contravention project.

11.14 Mr Lawlor stated that he would be '*amazed'* if any councillor would place himself in the position of having taken money from Mr Dunlop. When asked by the Tribunal to explain why he had not exercised his right to cross-examine Mr Dunlop in relation to his evidence that he had knowledge that monies were paid in relation to a motion which was drafted him, he responded:

'*I wasn't being accused of accepting and receiving monies… I have to just say that Frank Dunlop's evidence was absolutely* staggering *and just by disbelief, I come in here and say why did you, what did he do, give money to these people, sure what had that to do with me? Those people were well capable of coming and representing themselves. If he had said he did it with me, I would have absolutely dealt with it.'*

11.15 Mr Lawlor challenged Mr Dunlop's evidence and maintained that Mr Dunlop's lobbying represented, he estimated, only ten per cent of all the lands that had been rezoned at that time. Moreover, it was Mr Lawlor's contention that nobody else had to embark on the activities which Mr Dunlop claimed he had embarked upon. Mr Lawlor went on to state:

'The conclusions are, Frank Dunlop went to clients, claimed he needed these monies for various purposes and nobody was ever to know whether he did or he didn't. And the consensus is Frank Dunlop probably retained very substantial amounts of the monies he has now accredited to have given to elected members, because the amounts that he had received from people claiming that that's what he needed to do was a fallacy and he certainly never ever, to the best of my recollection, and it would have no impugning on my situation if he had told me these other people accepted or received or sought monies, but I have no recollection of him ever saying he gave any monies to any other elected member.'

MR DUNLOP'S POLITICAL INFLUENCE

12.01 One of the principal facilities Mr Dunlop was in a position to offer clients who sought his services in connection with rezoning matters was his close association with the Fianna Fáil party from his period as Government Press Secretary in the 1970s and 1980s. With this connection, and indeed also from his time spent in the public service, Mr Dunlop had easy access to the 'corridors of power.' There was no doubt but that some of Mr Dunlop's clients appreciated the benefits which attached to his close association with the Fianna Fail party. The Tribunal established that Mr Dunlop exercised his access to the 'corridors of power' on a regular basis in the course of his work as a lobbyist, in particular for Mr O'Callaghan (Quarryvale module) and Mr Michael McGuinness (Cargobridge module). As he testified to in the Quarryvale module, his ease of access to Mr Bertie Ahern and Mr Albert Reynolds was utilised, *inter alia*, to lobby for State financial support for the proposed Neilstown Stadium project (in which Mr Dunlop, Mr Lawlor, Mr Ambrose Kelly and Mr O'Callaghan had a vested interest). At the time of the November 1992 General Election, Mr Dunlop worked in Fianna Fail headquarters, at the invitation of the then Taoiseach Mr Reynolds, in order to oversee its General Election campaign. He described his role at that time as an '*apparatchik.'* From 1993, Mr Dunlop provided assistance to Mr Des Richardson, in the latter's capacity as chief fundraiser for Fianna Fail, by drafting letters for Mr Richardson to send out to potential contributors to the party as part of fundraising endeavours, and by drafting speeches for Mr Richardson to deliver at fundraising events. By the mid to late 1990s Mr Dunlop was also involved with Mr Richardson (and others) in certain business dealings. Between 1997 and 1998 Mr Dunlop employed Mr Richardson as a consultant to Frank Dunlop & Associates. Mr Richardson's function as a consultant to the firm was to source clients for Mr Dunlop.

12.02 Insofar as Mr Dunlop's clients benefited from his political connection and influence, so too did Mr Dunlop himself. The evidence established that in a number of rezoning matters it was Mr Dunlop's connection with individuals who were members of, or who were associated with, Fianna Fáil which facilitated his retention as a lobbyist. For example, Mr Lawlor was the individual who facilitated Mr Dunlop's retention as a lobbyist to promote the Quarryvale, Ballycullen/Beechill and Pennine rezoning proposals. Similarly, it was Mr Tim Collins who effected Mr Dunlop's introduction to the individuals associated with the plans to rezone lands at Lissenhall, Cloghran and Walls Kinsealy.

CHAPTER FIFTEEN – MR FRANK DUNLOP

EXHIBITS

1. Letter from L K Shiels & Co Solicitors, to the Tribunal dated 11 February 2000.....2349

2. Frank Dunlop & Associates Ltd political contributions list 1.9.91-1.9.93.....2354

3. Frank Dunlop political contributions list 1.9.91-1.9.93..... 2355

4. List prepared by Mr Dunlop on Day 145..... 2356

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10. Extract from Mr Dunlop's diary for 17 and 18 September 1992.....2370

11. Letter from Cllr Cosgrave to Mr O'Kennedy solicitor dated 28 March 2003.....2373

12. Letter from Cllr Creaven to Mr O'Kennedy solicitor dated 27 March 2003..... 2374

13. Letter from Cllr Cosgrave to the Tribunal dated 11 April 2003.....2375

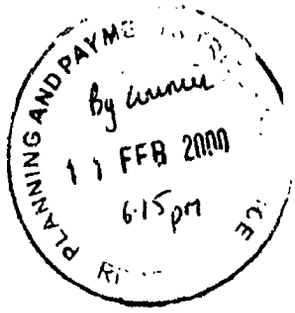
14. Letter from Cllr Creaven to the Tribunal dated 5 June 2003.....2378

15. Letter from Cllr Cosgrave to Mr O'Kennedy dated 'October 93'..... 2380

16. Letter from Cllr Creaven to the Tribunal dated 8 October 2003.....2381

17. Extract from Mr Dunlop's diary for 3 June 1992.....2383

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OUR REF 992-001/HG/MOB/000210s2

YOUR REF PTB/56

11 February 2000

re: Our clients: Frank Dunlop Esq., Frank Dunlop & Associates Limited and Shefran Limited

Dear Madam,

We refer to previous correspondence and in particular to the second issue raised in your letter of the 2nd December last concerning the affidavit of discovery sworn on our clients' behalf on the 7th July, 1999.

As you are aware you have stated that the documents listed in our clients' affidavit, and produced to the Tribunal, do not include the following categories of documents which, you **presume**, contain reference to the transactions referred to at paragraphs (a), (b). (c) and (d) of the Orders made on the 12th February, 1999:-

1. cheque stubs/lodgment books
2. cheque payments journal books
3. nominal ledgers
4. creditors' and debtors' ledgers
5. minutes of meetings with the parties referred to in the Orders
6. correspondence with the parties referred to in the Orders.

Taking each category in turn we reply as follows:-

1. **Cheque stubs/lodgment books**

In the affidavit of discovery sworn on their behalf our clients have made discovery of bank statements in respect of the following accounts:-

JOHN TARPEY, HUGH CARVEY, JOSEPH M. GAVIN, EMMET SCULLY, GERARD HALPENNY, JUSTIN MCKENNA, MICHAEL KAVANAGH

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(a) an account in the names Frank Dunlop and Sheila Dunlop (account no. 12909-006) for the period from 1st September, 1991 to 1st September, 1993

(b) an account in the name Shefran Limited (account no. 48181-083) for the period from 15th April, 1992 (the date the account was opened) to 1st September, 1993

(c) an account in the name Frank Dunlop (account no. 13111-180) for the period from 8th October, 1992 (the date the account was opened) to 1st September, 1993

(d) an account in the name Frank Dunlop & Associates Limited (account no. 11253-067) from 1st September, 1991 to 1st September, 1993

(e) a loan account in the name of Frank and Sheila Dunlop (account no. 12909-279) for the period from 1st September, 1991 to 1st September, 1993.

In addition, as regards the bank accounts mentioned at (a) and (d), our clients have made discovery of various copy cheques, lodgment dockets etc. referred to in the bank statements in question. As you are also aware our clients' discovery discloses, from enquiries conducted with their bankers, that to the best of their knowledge and belief, the bank statements and transaction records discovered in their affidavit of discovery represent the totality of those documents as they currently exist.

In addition our clients have discovered cheque stubs for the account at (d) above and have stated, in their affidavit of discovery, that it has not been possible to locate any additional cheque stubs which, they believe, were destroyed routinely some years ago.

It has recently come to our clients' attention that they, inadvertently, omitted to make discovery in respect of the following bank accounts:-

(a) home loan account in the name Frank and Sheila Dunlop (account no. 15995-188) for the period 1st September, 1991 to 1st September, 1993

(b) home loan account in the name Frank and Sheila Dunlop (account no. 15995-261) for the period 1st September, 1991 to 1st September, 1993

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(c) term loan account in the name Frank J. Dunlop (account no. 1158-316) for the period 1st September, 1991 to 1st September, 1993

(d) current account in the name Frank and Sheila Dunlop (account no. 03375-042) for the period 1st September, 1991 to 1st September, 1993

(e) bridging loan account in the name Frank and Sheila Dunlop (account no. 12909-352) for the period 1st September, 1991 to 1st September, 1993

(f) no. 2 loan account in the name Frank Dunlop (account no. 11158-662) for the period 1st September, 1991 to 1st September, 1993.

As stated above the previous non-disclosure of the aforementioned bank accounts occurred inadvertently for which our clients apologise. We enclose copies of the relevant bank statements as are currently within our clients' possession. When you have considered the bank statements referable to the aforesaid bank accounts you will readily appreciate that the substantial majority (all bar one) are loan accounts of one sort or another. We enclose a Supplemental Affidavit of Discovery sworn by our clients for the purpose of formally discovering the inadvertently omitted bank statements.

2. Cheque payments journal books

In the affidavit of discovery sworn on their behalf on 7th July, 1999 discovery has been made of 15 pages from the cheque payments journal of Frank Dunlop & Associates Limited. No cheque payments journal exists, or existed, in the case of Shefran Limited whether for the period specified in the Order of 12th November, 1999 or otherwise. As we have previously stated the aforementioned discovered extracts are the only extracts from those books that are relevant to the Orders for Discovery made by the Sole Member on 12th February, 1999.

3. Nominal ledgers

Such a document, if it existed, would have been prepared by and retained by our clients' auditors. Our clients have instructed their auditors to ascertain definitively whether such a document existed and, if so, whether it still exists. We understand that our clients' auditors believe it highly unlikely that this document would contain any information within the terms of the Sole Member's Orders of the 12th February, 1999. No equivalent document exists, or existed, in the case of Shefran Limited whether for the period specified in the Order of the 12th November, 1999 or otherwise.

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4. Creditors' and Debtors' ledgers

In light, inter alia, of the size and number of clients of Frank Dunlop & Associates Limited it was the practice of Frank Dunlop & Associates Limited, rather than having a separate creditors' and debtors' ledger, to use the actual invoices received from creditors and copy invoices sent to debtors for the purposes for which one might separately create and maintain a creditors' and debtors' ledger. In their Affidavit of Discovery (sworn on 7th July, 1999) our clients have made discovery of all relevant invoices, within their possession, power of procurement, falling within the terms of the Sole Member's Orders of the 12th February, 1999.

No creditors' or debtors' ledgers exist, or existed, in the case of Shefran Limited whether for the period specified in the Order of 12th November, 1999 or otherwise.

5. Minutes of meetings with the parties referred to in the Orders

The documents within this category are dealt with in the Second Schedule, Part II of the affidavit sworn on our clients' behalf in compliance with the Order for Discovery made by the Sole Member on 12th February. We draw your particular attention to the Second Schedule, Part II, and in particular to Section (a) thereof.

6. Correspondence with the parties referred to in the Orders

The documents within this category are dealt with in the Second Schedule, Part II of the affidavit sworn on our clients' behalf in compliance with the Order for Discovery made by the Sole Member on 12th February. We draw your particular attention to the Second Schedule, Part II, and in particular to Section (a) thereof.

Fee Invoices and Expenses Invoices relating to Quarryvale

You state that it appears that the fee invoices and expenses invoices relating to Quarryvale, discovered in our clients' Affidavit of Discovery, were incomplete and that there may have been further invoices. As we believe is clear from the Second Schedule Part II of our clients' Affidavit of Discovery, in the event that there were any additional fee invoices and/or expenses invoices relating to Quarryvale (other than those discovered in our clients' Affidavit of Discovery) those documents are no longer within our clients' possession, power or procurement.

We have dealt above with your observations with regard to the extracts discovered in our clients' Affidavit of Discovery.

We look forward to hearing from you if, having considered the foregoing, it remains the case that you wish to raise any issue concerning our clients' Affidavit of Discovery.

FD.CORR 1 - 178

Yours faithfully,

L.K. Shields Solicitors

L.K. SHIELDS SOLICITORS

Return to report

FD. 1.9 - 3

Sheet1

Frank Dunlop & Associates Limited
Political Contributions 1.9.91- 1.9.93

1.9.91-31.12.91

None

Y/e 31.12.92

Fianna Fail	1,000

Y/E 31.12.93

Don Lydon	1,000
Liam Cosgrave	1,000
Ann Ormond	1,000
Michael Cosgrave	1,000
Larry Butler	500
	4,500

In Addition to the above payments the company has over the years sponsored golf outings, bought tickets for raffles, paid for lunches and dinners attended by staff and guests at fund raising events organised by both individuals and parties. The amounts in aggregate for each year is:-

Y/E 31.12.91	3,700
Y/E 31.12.92	2,600
Y/e £1.12.93	3,700
	10,000

Return to report

FD. 1.9 - 2

Sheet2

Frank Dunlop
Political Contributions 1.9.91-1.9.93

1.9.91-31.12.91

None

Y/E 31.12.92

Terese Ridge	500
Sean Barrett	1,000
Olivia Mitchell	500
	2,000

Y/e 31.12.93

Terese Ridge	500
Richard Greene	250
	750

Return to report

Tribunal Ref : QV II

Page No: 13772

DAY 145 (11th APRIL 2000) P128 Q745 FRANK DUNLOP IDENTIFIES T. HAND AS THE ONLY COUNCILLOR WHO ASKED HIM FOR MONEY.

Tribunal Ref : QV II

Page No: 13773

TOM HAND (FG)

DAY 146 (18th APRIL 2000) Q174-182 FRANK DUNLOP IDENTIFIES A LIST OF PERSONS WHO REQUESTED LEGITIMATE POLITICAL DONATIONS FROM HIM. FRANK DUNLOP DOES NOT MAKE ANY ALLEGATIONS OF CORRUPTION.

18/4/2007

Members of Dublin County Council who requested monies from Frank Dunlop

Preliminary List:

1. Tom Hand (FG)
2. Jim Lydon (FF)
3. Larry Butler (FF)
4. Colm M'Grath (FF)
5. Marion M'Jennie (FF)
6. Liam Lawlor (FF)
7. Tommy Bolands (FF)
8. Cathal Bolands (FG)
9. Ann Ormonde (FF)
10. M. J. Cosgrave (FG)
11. Liam Cosgrave (FG)

[redacted]

(2)

12. Olivia Mitchell (FG)

13 Therese Ridge (FG)

14. Jack Lawless (FF)

15. Peter Brady (FG)

16. Betty Coffey (FF)

DAY 147 (19th APRIL 2000) Q96-100 P24 FRANK DUNLOP IDENTIFIES A LIST OF PEOPLE WHOM HE PAID FROM WITHDRAWALS FROM HIS AIB RATHFARNHAM ACCOUNT.

1991 Local Election Contributions

1. John (Sean) Gilbride (FF) 12
2. G.V. Wright (FF) 2
3. Jack Larkin (FF) 1
4. Tommy Boland (FF) 1
5. Sean Lyons (IND) 1
6. Pat Dunne (FF) 15
7. Jim Fahey (FF) 2
8. Cyril Gallagher (FF) 1
9. Liam Lawlor (FF) 40

.500

11. Jim Daly (FF) 2
12. Tom Hand (FG) 20

2

14. Tony Fox (FF) 2
15. Colm McGrath (FF) 2
16. Liam Lawlor Election HQ 8.5

Return to report

DAY 148 (9th MAY 2000) P14-P16 THIS LIST IS A CONTINUATION OF THE LIST PREPARED BY FRANK DUNLOP ON DAY 147 ENTITLED "1991 CONTRIBUTIONS". THIS LIST DEALS WITH THE WITHDRAWALS FROM THE RATHFARNHAM ACCOUNT IN 1992.

1992 List (1)

17. Marian McGennis (FF) 1400.00 (cheque from FDA)

phone?

3000.00 (pos cheque for campaign from FDA)

18. J.V. Wright (FF) 5000.00 (cash).

19. Richard Greene (Ind) 500.00 (cash).

20. Tom Kitt ?? (FF) 750.00

21. Olivia Mitchell (FG) 500.00 (cash)

22. Colm McGrath (FF) 2000.00 (cash)

23. Pat Rabbitte (New Workers Party) 3000.00 (cash)

[This were later returned in the form of a cheque

(2)

24. Finbarr Hanrahan (FF) 2500.00 (cash)

25. Liam Lawlor (FF) 8,000.00 (cash)

26. Sean Ingoldsby (Ind) 500.00 (cash)
[This may have been 1000]

27. Terence Ridge (FG) 500.00 (cash)

28. Sean Barrett (FG) 1000.00 (cheque)

29. Betty Coffey (FF) 1000.00 (may have been 2000.00) + probably cash.

30. Liam Cosgrave (FG) 5000.00 (cash)

Return to report

DAY 148 (9th MAY 2000) P83-84 Q514-522 THIS LIST IS A CONTINUATION OF THE 1992 LIST PREPARED BY FRANK DUNLOP OF COUNCILLORS TO WHOM PAYMENTS WERE MADE AT OTHER TIMES.

31. Liam Lawlor (FF)
32. Tom Fox (FF)
33. Liam Corgrave (FG)
34. Colm McGrath (FF)
35. Sean Sherwin (FF)
36. Tom Hand (FG)
37. Betty Coffey (FF)
38. Cyril Gallagher (FF)

1991 - 1993 (inclusive)

1. Paisley Park (Carrickmines)
[Paisley Park were dissolved + reformed into or sold to Jackson Way after 1993]

via J. Kennedy + J. Caldwell, mainly re former ..... 25,000.00 (cash)

2. Ballycullen Farms, near Rathfarnham ..... 17,500.00 (chqs mainly cashed)

4. Newlands / City West ..... 30,000.00 (two cheques 20 - June 91 10 - Nov 92)

4(a) Baldoyle / Feehilly ← Jan. 1992 ..... 10,000.00

5. Carpenbridge lands, near Airport 10,000.00

2.

6. Other lands near Airport 10,000.00

9. Robert White / Duff site in Swords ..... 5,000.00 ?

10. Denis Mahoney lands in North Dublin 7,000.00

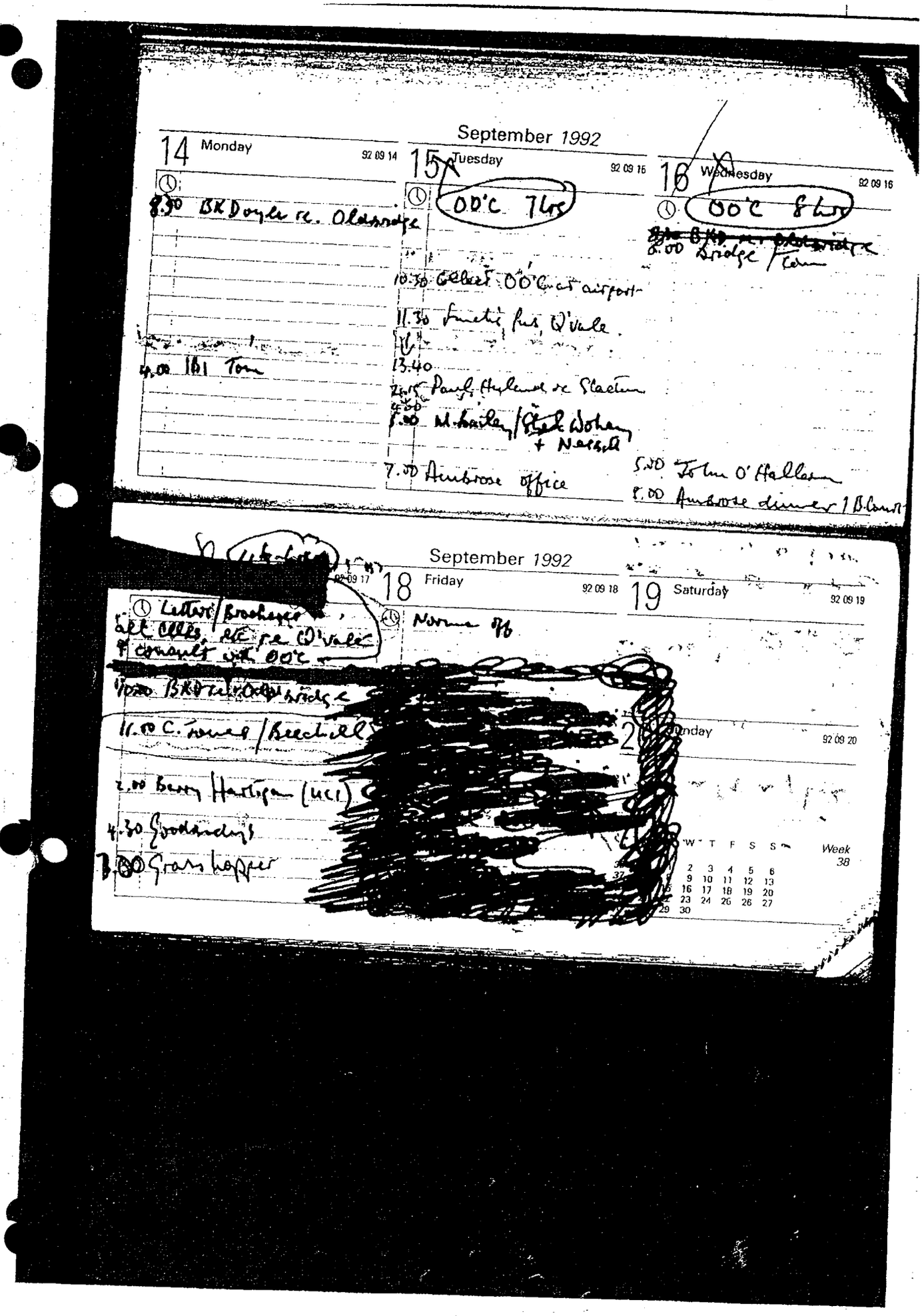
11. Noel Fox lands in North Dublin 5,000.00

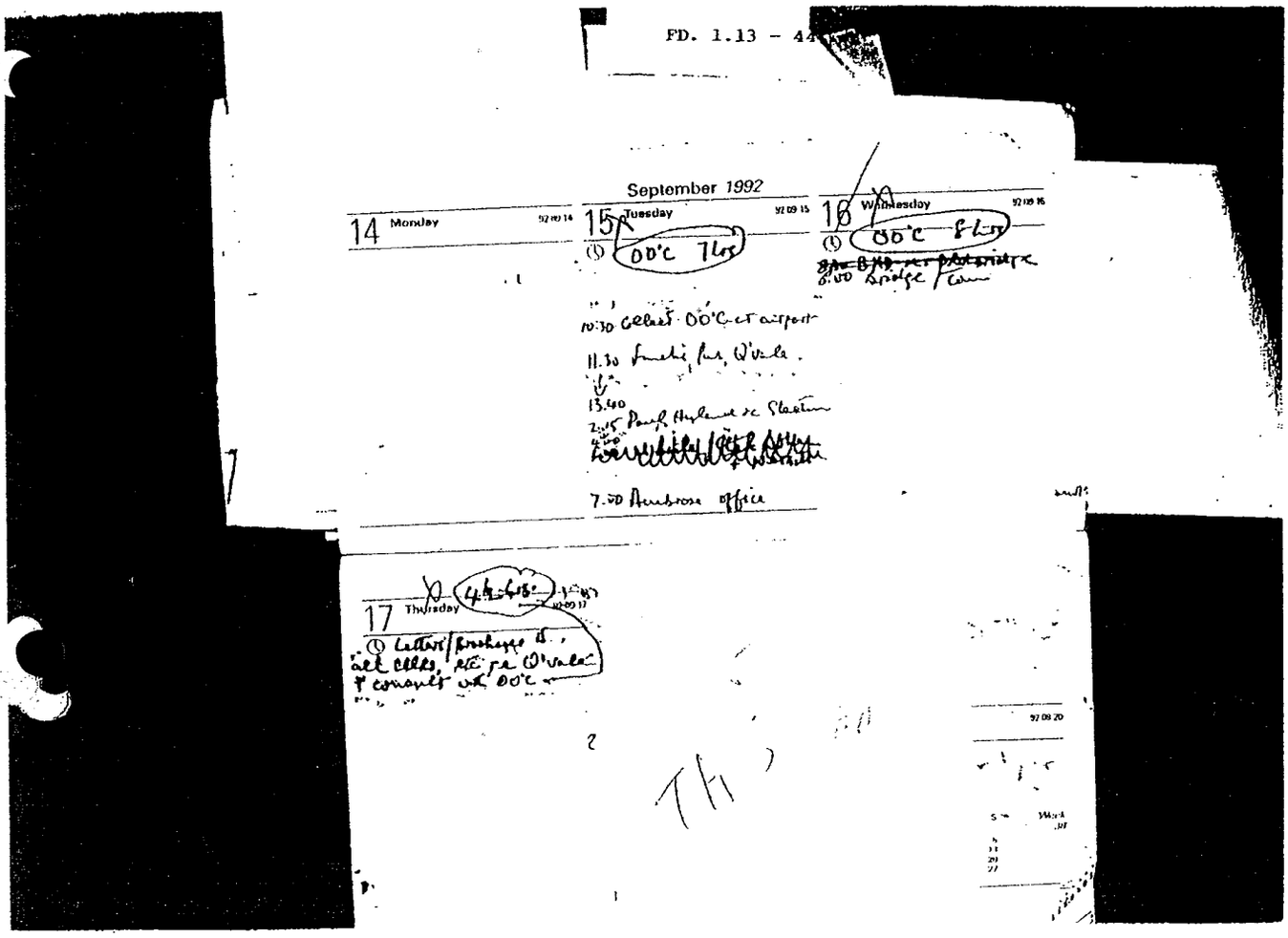
£154,000.00

13. In 1994 I was paid £25k. by Monarch re. Cherrywood for work / advice carried out / given in the previous 12/18 months; two cheques : 15k + 10k 25,000.00

£179,000.00

Return to report


September 1992
14 Monday 92 09 14
8.30 BK Doyle re. Oldbridge
4.00 IBI Tom
15 Tuesday 92 09 15
OO'C TLK
10.30 Gilbert OO'C at airport
11.30 Finetic Fus, O'Vale
13.40
7.00 Ambrose office
16 Wednesday 92 09 16
OO'C & Lu
8.00 Bridge / Tom
5.00 John O'Hallaran
8.00 Ambrose dinner / Blan
September 1992
17
18 Friday 92 09 18
Norma 9/6
2.00 Barry Hartigan (UCI)
4.30 Goodlanding's
7.00 Grasshopper
19 Saturday 92 09 19
Sunday 92 09 20
Week 38


FD. 1.13 - 44
September 1992
14 Monday
15 Tuesday
16 Wednesday
00°C 7kts
00°C 8kts
10:30 Collect 00°C at airport
11.30
13.40
7.00 Anderson office
17 Thursday
00°C

Return to report

01/04/03 11:07
01/04 '03 12:01 FAX
002
31/03/2003 13:36 01-8390309 COSGRAVE OFFICE PAGE 02

Comhairle Contae Fhine Gall
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832 2554 (Home)
Fax: 839 0309 (Office)

March 28th, 2003

Mr Paraic O'Kennedy
O'Sullivan & Associates
Solicitors
10 Herbert Street
Dublin 2

Dear Paraic

Re: O'Mahony Lands and Fox Lands

I enclose herewith the Tribunal Letter of 7th March 2003, Ref: PTB/169 regarding the above. To the best of my recollection my replies are as follows.

a) I signed the motion referred to following lobbying by Mr Dunlop in order that the matter would be included in the Agenda for consideration by the Council.
b) Mr Dunlop only.
c) No further information.
d) All Council meetings and meetings with Mr Dunlop to familiarize me with the motion.
e) I had meetings and dealings with Mr Dunlop in relation to several re-zoning motions with which he was dealing. I was happy to help in instances where the motions and proposals merited my support. I received political donations of £1,000 in the 1993 Senate Election and £250 in the 1997 General Election. Details herewith. In this regard, I now understand that Msars Ballymore Homes Ltd have purchased Mr O'Mahony's lands and on checking with Msars Ballymore Homes Ltd, I understand that I received a political donation of £1000 in 1993.
f) I received no monies or benefits to my recollection in 1989.

Yours sincerely

Michael J. Cosgrave

Cllr. Michael Joe Cosgrave.

Encl

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01/04/03 11:05
01/04 '03 11:58 FAX
002

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Co. Dublin.

43 St Fintan's Park
Sutton
Dublin 13

27 March 2003

Mr Paraic O'Kennedy
o'Sullivan & Assocs
Solicitors
10 Herbert St
Dublin 2

Re: O'Mahony Lands and Fox Lands

Dear Paraic

I refer to your letter dated March 7th 2003 re the above lands and following to the very best of my recollection are my replies to the Tribunal of Inquiry.

A) The motion was signed by me thus enabling the matter to come before the Council meeting. Mr Dunlop lobbied me to do so.
B) Only Mr Dunlop.
C) No further information.
D) All Council meetings and 2/3 meetings with Mr Dunlop briefing me on the O'Mahony and Fox lands.
E) Regarding item E I had several dealings with Mr Dunlop in relation to the putting forward of this motion and other motions. Where appropriate, I was delighted to support motions that merited my support. Regarding the O'Mahony lands I now know that Mr O'Mahony sold these lands to Mr Mulryan and on checking with Mr Mulryan I understand that I received a political donation of £1,000.00 from him in 1993.
F) Re item F no monies or benefits were received to the best of my recollection.

Yours sincerely

Liam Creaven

LIAM CREAVEN MCC

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3

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April 11, 2003

Ms. Marcelle Gribbin,
Sate Apartments,
Upper Castle Yard,
Dublin Castle,
Dublin 2.

Re: Lands at St. Gerards School, Bray

Dear Ms. Gribbin,

I refer to your letter of the 30th inst., addressed to my Solicitors, O'Sullivan & Associates requesting a more detailed narrative of the queries which were contained in your letter of the 28th March.

Accordingly, I now reply to same as follows :-

(a) From my recollection, I was not involved nor was I approached or lobbied by any individual in relation to the proposed rezoning of the above lands. In that regard, it was not until I received the Dublin County Council Agenda which contained the proposed rezoning, was I aware of the fact that there was a Motion which proposed to rezone the said lands.

(b) I seconded the Motion on the basis of the representations which had been submitted by St. Gerards School to Dublin County Council, as in my opinion, the representations merited a debate by the Council with regard to the proposed development. In particular, the fact that the development which was proposed by St. Gerards School, was a low density development and that the proceeds of the sale of the houses would be applied towards the refurbishment of the school buildings, was of particular appeal to me. In addition, a further attraction of the proposed development was that St. Gerards School had indicated that they would enter into a restrictive covenant with Dublin County Council whereby they would covenant to limit the development to 18 houses.

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(c) In addition to what has been pointed out at paragraph (a) above, at my meetings with Mr. Dunlop, he would have stressed to me the positive aspects of the development. I did not attend any meetings in relation to the proposed rezoning in 1993 and 1994, apart from the meetings with Frank Dunlop which are referred to in paragraph (e) below, and also the Dublin County Council meetings. As you are aware, I have already provided this information to you. With regard to the Council meeting, I am not in a position to advise you at this stage, exactly which meetings I attended, because as I cannot recall same, it would be necessary for me to obtain the Minutes of the Dublin County Council meetings for that period from the archives, which I have been advised by the Archive Section will take approximately 2 – 3 weeks.

Also, I would presume that you already have in your possession copies of the said Minutes of Meetings, which will indicate to you which meetings were attended by me. If you wish me to obtain copies of the Minutes from the archives, please let me know.

I met Mr. Dunlop on numerous occasions in 1992 and 1993, where we would have discussed the proposals in relation to the O'Mahony and Fox lands (and other proposed rezoning at the time. During this period, Mr. Dunlop attended at Dublin County Council offices very frequently where I would have met him. As Mr. Dunlop was very often in the vicinity of the Dublin County Council offices, the meetings were informal and I often simply met him by chance. On other occasions, Mr. Dunlop would have contacted me requesting that I meet him.

(d) In addition, I also met Mr. Dunlop in the Royal Dublin Hotel, the Gresham Hotel and Conways of Parnell Street. I am not in a position to advise you of the time and place on which these meetings took place, because I do not and did not maintain a diary for that period. In such circumstances, I am sure that you will appreciate that it is impossible for me to advise you of specific information regarding the time and place of meetings, and I cannot put it any further.

(e) The donations I received for this period were referred to in paragraph (e) of my letter of the 28th March last.

I recall discussing the political donation of £1,000.00 received from Mr. Dunlop in the Council Offices in O'Connell Street, in early November 1992. As far as I am aware, I received this cheque in February 1993 and to the best of my knowledge, I lodged this cheque to my special savings account towards the end of February 1993.

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The £500.00 political donation from Monarch Properties was received sometime prior to the 1992 General Election. To the best of my knowledge, the political donation from Ballymore Homes was received in or around September/October 1993.

I may have received one further donation of £500.00 or £1,000.00 from Mr. Joe Tiernan at some stage in 1991.

The above is as detailed a response as I can possibly give to the queries which were raised by you. As I do not and did not maintain a diary, unfortunately, I cannot be anymore specific with regard to the date, times and locations of the lobbying by Mr. Dunlop.

I trust that the above is of assistance to you.

Yours sincerely,

Michael Joe Cosgrave

MICHAEL JOSEPH COSGRAVE

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Co. Dublin.

43 St Fintan's Park
Sutton
Dublin 13

5 June 2003

Ms Marcelle Gribben
Solicitor to the Tribunal of Inquiry
Into Planning Matters
State Apartments
Upper Castle Yard
Dublin Castle
Dublin 2

Dear Ms Gribbin

Re: O' Mahony Lands and Fox Lands.

I refer to your letter of the 1st April to my Solicitors wherin you requested a more detailed response to your letter of the 7th March last. Accordingly I now reply to same in the following terms:

a) Whilst the development plan was in the course of being drafted by Dublin County Council, I met with Mr Frank Dunlop on numerous occasions with regard to the proposed rezoning. It was Mr Dunlop who furnished me with the proposed motion and map which indicated the lands which were involved in the proposed rezoning. To the best of my recollection, I signed the Motion for the proposed rezoning in Dublin County Council offices.

b) I don't recall discussing these lands with anyone other than Mr Dunlop. I would have been very familiar with the lands, the subject matter of the rezoning, because they are situate nearby to where I have lived for the past 33 years. In the early 1970's, I worked as an estate agent and on occasions, I would have been asked for opinions on houses for sale in the Portmarnock area by people who were considering living in the area. As a result, I would have been familiar with the residential market in the area and as such in my opinion, I was of the view that it was suitable to rezone these lands for development.

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c) While the development plan was in draft stage, I would have met Mr Dunlop on numerous occasions in Conway's Public House, The Royal Hotel and Dublin County Council offices. Unfortunately, I cannot be specific as to the exact dates and times on which I met him, because, as I did not have a diary for that period, I am sure that you will acknowledge that it is difficult to furnish specific information regarding same. During the Draft Development Plan, Councillors would gather in Conways Public House or the Royal Dublin Hotel for lunch or coffee before the meetings commenced and Mr Dunlop would meet me on these occasions.

d) I know Mr Dunlop for many years. I was introduced to him by my wife, who like Frank, grew up in Kilkenny city and their respective families would have known each other for many years. We would be family friends. Although I may have met Mr Dunlop in relation to other dealings, again, as I did not keep diaries for this period, unfortunately, I cannot be specific as to the dates and locations. Mr Dunlop made no donation of payments to me. I received a payment of £1,000.00 from Mr Mulryan by cheque and to the best of my knowledge, it was lodged into our joint account at the Bank of Ireland, Sutton Cross. In addition, there was a report in the papers some time ago, that Monarch Properties gave a contribution of £500.00. Although I do not recall receiving this money, I am currently trying to ascertain if in fact I received this donation and I have requested Monarch Properties to verifiy this for me.

Yours Faithfully

Liam Creaven

LIAM CREAVEN

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Return to report

09/10/03 15:30
10 2003 THU 15:28 FAX
09/10/2003 11:14 01-8390309 COSGRAVE OFFICE PAGE 02
002/002

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PAYMENTS TRIBUNAL OFFICE
09 OCT 2003
PLANNING RECEIVED

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email: thecosgraveoffice@eircom.net

October 2003

Mr Páraic O'Kennedy
O'Sullivan & Associates
Solicitors
10 Herbert Street
Dublin 2

Re: Tribunal of Inquiry: Ref: PTB 169

Dear Páraic

With regard to the Tribunal's letter dated September 30, 2003, ref PTB 169, I enclose herewith my replies to the matters raised to the best of my recollection:

Item 1: I had no discussions with Mr Dunlop or any other party since November 4, 1997 regarding the items in this question.

Item 3: Please refer to my answer in Item 4.

Item 4: On three or four occasions per year I had an understanding to meet with Mr Dunlop and Liam Creaven for lunch. Mr Creaven usually contacted me by phone when such arrangements were made. The luncheon arrangements were usually in The Grand Hotel in Malahide or in the Country Club Dunsaughlin close to Mr Dunlop's home

Subsequent to the establishment of the Tribunal and after he had given evidence, Mr Dunlop felt that we should not meet as often as before. Eventually he agreed to meet whenever he was free to do so. We re-established contact for social meetings on the condition that matters relating to the Tribunal were not discussed. However, those matters that were of public knowledge were allowed for discussion.

Kindest regards

Cllr. Michael Joe Cosgrave.

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09/10 2003 THU 17:03 FAX 002/003
08/10/2003 15:44 8397684 FLINTSTONES PAGE 02

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Dublin 13

8 October 2003

Ms Marcelle Gribbin
Solicitor to the Tribunal of Inquiry
Into Planning Matters
State Apartments
Upper Castle Yard
Dublin Castle
Dublin 2

Re: Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Ms Gribbin

Regarding your letter dated 30th September 2003; the following is my reply to the best of my knowledge.

Q1: I did not have any discussions with Mr Dunlop or his agents since 4th November 1997 regarding matters raised in the question.

Q3: Please see my reply to Q4 below.

Q4: I had a social arrangement to meet Mr Dunlop and Michael J Cosgrave for lunch 3 or 4 times a year. Sometimes Mr Dunlop would ring me and on other occasions I would ring him and then I would contact Michael J Cosgrave about the venue and time for lunch.

After the Tribunal was established, and particularly when Mr Dunlop gave evidence to the Tribunal, on his insistence I met with him less frequently. However, after a period of time had elapsed, Mr Dunlop agreed to meet on occasions when he was available.

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09/10/03 17:06
09/10 2003 THU 17:04 FAX
003/003
08/10/2003 15:44 8397684 FLINTSTONES PAGE 03

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There meetings took place in public: the Grand Hotel in Malahide and on 1 or 2 occasions at least in the Country Club in Dunsaughlin. The latter venue was chosen because of its proximity to Mr Dunlop's home.

After his evidence to the Tribunal Mr Dunlop was reluctant to continue meetings but as time passed he agreed to continue our social occasions on the condition that matters relating to the Tribunal would not be discussed other than that which was in the public domain.

Yours faithfully

LIAM CREAVEN

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Return to report

June *1992*

1 Monday 92 06 01
First Monday in June (IRL)

2 Tuesday 92 06 02
10.00 John Allen
5.30 P. Dempsey
7.00 Reception/Nacta

3 Wednesday 92 06 03
10.00 Aurora K, KF, OOC.
2.30 Stanley Leinup (DCC)
4.30 Liam Cosgrave (Dail)
9.00pm. Tony Fox

June *1992*

4 Thursday 92 06 04
10.30 De Valera + Tonelli
1.00 Olivia Mitchell (Sunday)
7.30 Grenadier Hotel

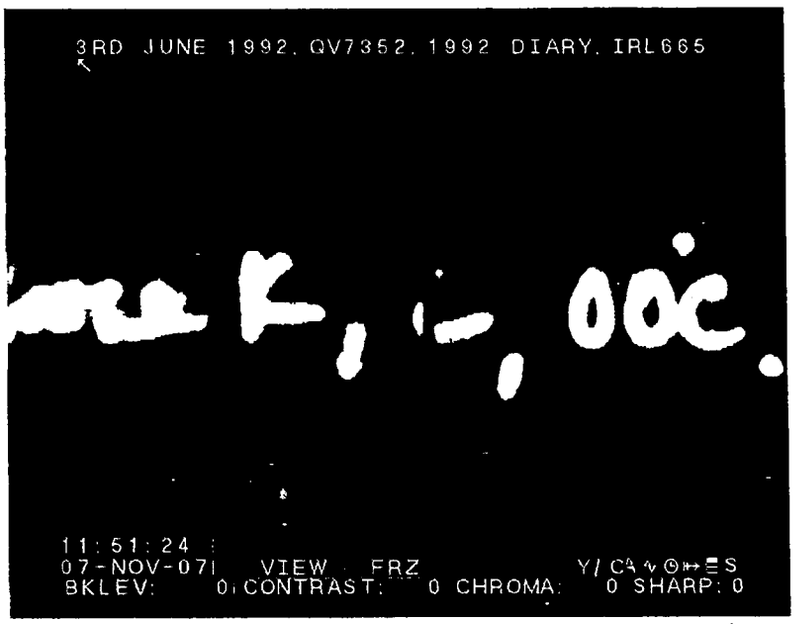
5 Friday 92 06 05
Signing with Neil Today
Where? Time?
9.30 Tom Ryan ✓
10.30 Aurora Kelly ✓
2.30 — Navan

6 Saturday 92 06 06

7 Sunday 92 06 07
Whit Sunday (IRL)

	M	T	W	T	F	S	S	Week
23	1	2	3	4	5	6	7	23
24	8	9	10	11	12	13	14	
25	15	16	17	18	19	20	21	
26	22	23	24	25	26	27	28	
27	29	30						

Tribunal Ref : QV II
Page No: 25049



CHAPTER SIXTEEN - MR LIAM LAWLOR

INTRODUCTION

1.01 Mr Lawlor featured in a number of modules which were the subject of public inquiry by the Tribunal between 2002 and 2008. Within this period, Mr Lawlor gave sworn evidence to the Tribunal in the course of its public hearings on 21 days. On a minority of those occasions, Mr Lawlor was legally represented. Mr Lawlor, both by himself and through his solicitors, engaged in voluminous correspondence with the Tribunal between October 1998 and late 2005. Mr Lawlor died in a road traffic accident near Moscow in October 2005.

1.02 A detailed consideration by the Tribunal of evidence by and relating to Mr Lawlor is to be found in the Chapters relevant to the individual modules in which Mr Lawlor featured as a witness, as are findings made in relation to Mr Lawlor, relevant to those modules. In this chapter, Mr Lawlor's background and involvement in the Tribunal's inquiries are examined in summary format.

1.03 Mr Liam Lawlor was a member of the Fianna Fail Party until his resignation from the party in June 2000. He was a councillor on Dublin County Council representing the Lucan Ward, between 1979 and 1991. In 1991, Mr Lawlor lost his seat in the Local Elections of that year. Mr Lawlor was a TD representing the constituency of Dublin West between 1977 and 2002, with the exception of the periods June 1981 to February 1982, and November 1982 to February 1987. At various times during his political career, he held the positions of Chairman of the Board of the Eastern Regional Development Organisation (ERDO), Chairman of the Joint Committee on Commercial State-Sponsored Bodies, a member of the Committee on Members Interests in Dáil Eireann, Vice Chairman of the Finance and Public Services Committee. He was a salaried National Organiser for the Fianna Fail Party, between 1982 and 1987.

THE TRIBUNAL'S REQUESTS FOR INFORMATION FROM MR LAWLOR

1.04 Perhaps the most powerful inquiry tool available to a Tribunal established pursuant to the provisions of the Tribunal of Inquiry Acts 1921 (as amended) in its quest to establish facts, is its power to order discovery of documents. The Tribunal made in excess of 9,000 discovery orders in the course of its work, many of them directed to financial institutions as part of a process to identify the movement of funds into, and out of, bank accounts of individuals and corporations which were the subject of inquiry.

1.05 Eight discovery/production orders were made by the Tribunal against Mr Lawlor personally. Many more were made against financial institutions and individuals with whom Mr Lawlor was associated, as part of the Tribunal's inquiry into Mr Lawlor's activities, and more particularly, to assist it in establishing the source of the enormous sums of money which moved through Mr Lawlor's bank accounts, or bank accounts with which he was associated, or which were otherwise operated for his benefit.

1.06 Notwithstanding exhaustive research carried out by the Tribunal, the exercise of its power to make discovery and production orders, and the taking of evidence on oath from many witnesses, the Tribunal was provided with explanations for just 53% of the lodgements of over IR£1,000 totalling circa IR£1.4m which were identified in bank accounts controlled by, or for the benefit of Mr Lawlor in the period 1991–1997.

1.07 On 30 October 1998, Mr Lawlor's solicitor, Mr Brian Delahunt, was advised of certain orders the Tribunal proposed to make against Mr Lawlor including:

i. An order requiring Mr Lawlor's attendance at the Tribunal's offices to answer questions to be put to him by Counsel for the Tribunal relating to certain payments to him.

ii. An order for discovery and production of documentation relating to Mr Lawlor's finances.

iii. An order for discovery and production of documentation relating to payments to Mr Lawlor by Arlington Securities PLC and/or Mr Tom Gilmartin.

iv. An order for discovery and production of documentation relating to the negotiation of cheques given to Mr Lawlor by Arlington Securities PLC and/or Mr Tom Gilmartin.

v. An order for discovery and production of documentation relating to the provision of services by Mr Lawlor to Arlington Securities PLC and/or Mr Gilmartin.

vi. An order directing Mr Lawlor to furnish to the Tribunal an affidavit stating the names of companies with which he, Mr Lawlor is, or has since 20 June 1985 been, a shareholder or director or in which he had any beneficial interest, giving details of any such shareholding or directorship.

1.08 Following this request, Mr Lawlor's solicitor sought the opportunity to make oral representations to the Tribunal in relation to the proposed orders.

1.09 On 24 November 1998, the Sole Member of the Tribunal sat in private to hear oral submissions by Mr Lawlor's legal representatives, Mr Hardiman SC, Mr Delahunt BL and Mr Brian Delahunt solicitor, in relation to the said proposed orders.

1.10 Mr Lawlor's Counsel submitted that the Tribunal lacked jurisdiction to make the proposed order directing Mr Lawlor to attend at the Tribunal's offices and there be questioned by Tribunal Counsel. It was further submitted that it was '*manifestly unjust*' that a request for discovery of all bank accounts and financial transactions on the basis of an allegation[1] against Mr Lawlor which his Counsel described as*'bizarre', 'incredible', 'crazy stuff'*, and *'intrinsically unworthy of belief.'*

1.11 On 27 November 1998, the Tribunal wrote to Mr Lawlor's solicitors with its considered response to the oral submissions made to it on 24 November 1998. In that letter, the Tribunal provided additional information relating to the matters then under investigation by it for the purposes of enabling Mr Lawlor make representations to the Tribunal in relation to the proposed discovery orders, but it declined to disclose at that time, the '*evidential base of the allegations'* concerning Mr Lawlor.

1.12 The Tribunal's letter was responded to by Mr Lawlor's solicitors on 3 December 1998. In that response Mr Lawlor offered to provide a narrative statement to the Tribunal subject to specified conditions, including a condition as to the confidentiality of any such statement, or any documentation he would provide to the Tribunal.

1.13 Ultimately, Mr Lawlor provided the Tribunal with a narrative statement dated 10 March 1999. Mr Lawlor made, in effect, a further statement to his solicitor on 21 April 1999, and this was provided to the Tribunal on 26 April 1999. The Tribunal informed Mr Lawlor's solicitors that it intended to make certain orders against Mr Lawlor.

1.14 On 26 April 1999, the Tribunal made three orders directed to Mr Lawlor:

- An order for discovery and production of certain categories of documentation.

[1]The allegation in question suggested that Mr Lawlor had, while demanding a share of a then proposed development, stated himself to be acting as a representative of the Irish Government. The Tribunal, in this Report, has essentially found that this allegation was in fact true.

- An order directing Mr Lawlor to attend at the offices of the Tribunal on a date to be agreed to answer questions by Counsel to the Tribunal in relation to matters which were the subject of inquiry by the Tribunal
- An order requiring Mr Lawlor to provide on affidavit the names of companies with which he was associated.

JUDICIAL REVIEW LITIGATION

1.15 Mr Lawlor instituted judicial review proceedings against the Tribunal on 19 May 1999 challenging the Tribunal's powers to direct his attendance at the Tribunal's offices for questioning by Tribunal Counsel, and to quash the Tribunal's proposed discovery orders directing Mr Lawlor to provide it with the names of the companies with which he was associated in the period 1987 – 1994.

1.16 While the High Court quashed the orders requiring Mr Lawlor to attend the Tribunal's offices for questioning, and directing him to provide an affidavit identifying the companies he was associated with, it upheld the Tribunal's order for discovery and production of documents.

1.17 The decision of the High Court was confirmed by the Supreme Court. In their judgments, Hamilton CJ and Denham J referred to the Supreme Court decision in the case of Haughey-v-Moriarty (1999) 3IR, 1, and reiterated with approval the following passage:

> '*A Tribunal of Inquiry of this nature involves the following stages:*
> 1. *A preliminary investigation of the evidence available;*
> 2. *The determination by the tribunal of what it considers to be evidence relevant to the matters in which it is obliged to inquire;*
> 3. *The service of such evidence on persons likely to be affected thereby;*
> 4. *The public hearing of witnesses in regard to such evidence, and the cross-examination of such witnesses by or on behalf of persons affected thereby;*
> 5. *The preparation of a report and the making of recommendations based on the facts established at such public hearing.'*

1.18 Hamilton CJ also quoted the following passage from the Salmon Commission (paragraphs 27 and 28):

> '*The exceptional inquisitorial powers inferred upon a Tribunal of Inquiry under the Act of 1921 necessarily expose the ordinary citizen to the risk of having aspects of his private life uncovered which would otherwise remain private, and to the risk of having baseless allegations made against him. This may cause distress and injury to reputation. For these*

reasons, we are strongly of the opinion that the inquisitorial machinery set up under the Act of 1921 should never be used for matters of local or minor public importance but always be confined to matters of vital public importance concerning which there is something in the nature of a nationwide crisis of confidence. In such cases we consider that no other method of investigation would be adequate.'

MR LAWLOR'S DISCOVERY

1.19 Following the Superior Court's confirmation of the Tribunal's power to make the discovery order of 26 April 1999, Mr Lawlor, in purported compliance with that order furnished the Tribunal with an unsworn document headed '*Statement of Liam Lawlor',* in which Mr Lawlor revealed that ('*to the best of my knowledge*') he had bank accounts at ACC Bank, Hatch Street, the AIB branch at Crumlin Road, Dublin, the Bank of Ireland branch at Lucan, Co. Dublin in his own name and an account at the AIB branch in Lucan in the name of his wife, Mrs Hazel Lawlor, from which he said he derived some benefit. Mr Lawlor did not provide any further details of accounts or transactions, and more particularly, failed to swear an affidavit of discovery.

1.20 A further order for discovery against Mr Lawlor was made by the Tribunal on 8 June 2000. This Order required Discovery on Oath and production to the Tribunal of all documentation and records in Mr Lawlor's possession or power relating to any accounts held in any financial institution either within or outside the State, in Mr Lawlor's name (either individually or jointly) or for his benefit, or into which he made lodgements of money or into which he caused or procured lodgements of money to be made, or into which lodgements of money were made for his benefit.

1.21 On 10 July 2000, the Tribunal made 223 orders directed to financial institutions conducting business within the Republic of Ireland, requiring them to make Discovery on oath and production of any documentation in their possession, power or procurement relating to Mr Lawlor.

1.22 Mr Lawlor did not comply with the Tribunal order of 8 June 2000. Summonses were then issued by the Tribunal directing Mr Lawlor to attend before the Tribunal on 10 October 2000 for the purposes of giving evidence to the Tribunal and to produce and hand over to the Tribunal certain categories of documentation. Mr Lawlor failed to comply with these orders and on 10 October 2000 the Sole Member of the Tribunal directed that proceedings be instituted pursuant to Section 4 of the Tribunals of Inquiry (Evidence) Act 1997.

1.23 The matter came before the High Court on 24 October 2000, whereupon Mr Lawlor was ordered to comply with the Tribunal's orders of 8 June 2000. This decision of the High Court was appealed by Mr Lawlor to the Supreme Court. The Supreme Court upheld the order of the High Court in every respect, save that it extended the compliance period of one week to two weeks. .

1.24 On 7 November 2000, Mr Lawlor attended before the Tribunal in the company of his solicitor Mr Brian Delahunt. Mr Lawlor confirmed that the documentation delivered to the Tribunal's offices on the previous day was the documentation required to be discovered and produced pursuant to the orders of the Tribunal and of the High Court.

1.25 The accompanying affidavit of discovery listed eighteen bank accounts all within the jurisdiction.

1.26 The Sole Member determined that Mr Lawlor had not complied with the discovery order, and details of that lack of compliance were conveyed by the Tribunal to Mr Brian Delahunt, solicitor. An examination of other documentation made available to the Tribunal revealed the existence of twelve additional bank accounts of which there had been no mention by Mr Lawlor.

1.27 Mr Lawlor swore a supplemental affidavit of discovery on 11 December 2000, in which he listed an additional ten bank accounts. None were outside the jurisdiction.

1.28 On 12, 13 and 14 December 2000, Mr Lawlor was examined on oath at the public sessions of the Tribunal in relation to his discovery and production of documentation. Mr Lawlor was questioned in relation to lodgements of approximately IR£4.6 million which appeared to have been made to his accounts and which were disclosed in documentation provided to the Tribunal.

1.29 There followed further hearings before the High Court and the Supreme Court. In the course of his judgment in the High Court, Smyth J stated:

> *'The blatant defiance of Mr. Lawlor to the Tribunal in his refusal to answer questions is failure to abide not only by the Order of the High Court of 24th October 2000, but much more importantly the Order of the Supreme Court, that Mr. Lawlor attend to give evidence to the Tribunal in relation to the documents and records to which the Orders related. That he did so as a citizen is a disgrace. That he did so as a public representative is a scandal…'*

1.30 On 15 January 2001 the High Court ordered the attachment and committal of Mr Lawlor to prison for a period of three months commencing on 17 January 2001, the first seven days of which were to be served in Mountjoy prison, the balance thereof to be suspended until 23 November 2001 so as to enable Mr Lawlor to comply with the orders of the Court and to swear and file full and proper affidavits of discovery, and to produce and hand over documentation referred to in the order of the Tribunal being documents and records mentioned at paragraphs a, b and c of the order of the Tribunal dated 8 June 2000[2], such documentation to be furnished to the Tribunal at fortnightly intervals, with the final affidavit of discovery to be filed by 30 March 2001.

1.31 On 29 January 2001 Mr Lawlor delivered sixty-nine lever arch files numbered B1 to B69 inclusive together with an affidavit entitled '*First Affidavit of Liam Lawlor*.' One of the files produced at that time entitled '*Schedule of receipts*' (B42) reported to be a schedule of receipts prepared by Burke Burns Blake, Mr Lawlor's accountants, from information and explanations provided to them by Mr Lawlor. Item No. 2 in that schedule contained the heading '*Income including political contributions, donations and consultancy fees being approximate and as recollected by Liam Lawlor in respect of period 1973 – 2000.'* This list revealed a total of IR£1,521,500 as having been paid by a number of entities including:

- National Toll Road (1990s)	IR£74,000
- Mr Frank Dunlop & Associates (1990s)	IR £60,000
- Green Property Company (1970s, 1980s)	IR £35,000
- Monarch Properties (1970s, 1980s, 1980s)	IR £40,000
- O'Callaghan Properties (1990s)	IR £25,000
- Davy Stockbrokers (1980s, 1990s)	IR £5,000
- Ganley International (1990s)	IR £30,000
- Arlington Securities plc (Tom Gilmartin) (1980s, 1990s)	IR £35,000
- Arlington Securities plc, (Direct) (1990s)	IR £100,000
- Mr Michael Quinn (1970s, 1980s, 1990s)	IR £46,000
- Political fundraisers (estimated over 26 years)	IR £300,000
- Mr Pat Murphy (1980s, 1990s)	IR £40,000
- Eleven local / General elections (estimated over 26 years)	IR £100,000
- Jones Group Ltd (1990s)	IR £5,000
- Captain Tim Rogers (1970s)	IR £10,000

[2] Mr Lawlor was also fined IR£10,000.

1.32 On 12 February 2001, Mr Lawlor delivered to the Tribunal a further eight folders of documents numbered B70 to B77 together with a sworn affidavit described as '*Second Affidavit of Liam Lawlor.'*

1.33 On 26 February 2001 Mr Lawlor delivered to the Tribunal an additional ten folders of documents numbered B78 to B87 followed on 2 March 2001 by a sworn affidavit described as '*Third Affidavit of Liam Lawlor.'*

1.34 On 12 March 2001, Mr Lawlor delivered to the Tribunal an additional four folders of documents numbered B88 to B91 together with his fourth and fifth affidavits of discovery.

1.35 On 27 March 2001, Mr Lawlor delivered to the Tribunal a further three folders of documents numbered B92 to B94 together with his sixth, seventh and eighth sworn affidavits of discovery. On 29 March 2001, further affidavits sworn by Mr Lawlor, accompanied by additional folders of documents (B95-97) were delivered to the Tribunal.

1.36 On 30 March 2001 Mr Lawlor delivered to the Tribunal a further fourteen folders of documents numbered B98 to B111 together with a sworn affidavit in respect of each one of these files, being Mr Lawlor's twelfth to twenty fifth affidavits of discovery.

1.37 On 18 April 2001 Mr Lawlor delivered an additional seventeen folders of documentation entitled B112 to B127, with seventeen sworn affidavits of discovery.

1.38 On 4 May 2001, Mr Lawlor delivered a further sixteen folders of documents to the Tribunal numbered B128 to B142 and B144, together with sixteen sworn affidavits of discovery.

1.39 On 11 May 2001, Mr Lawlor delivered five folders with five further affidavits of discovery.

1.40 By 10 July 2001, Mr Lawlor had furnished to the Tribunal a total of 157 folders of documentation and a large number of sworn affidavits of discovery. However, the Tribunal believed that Mr Lawlor had still failed to comply with the discovery orders, and the matter again came before the High Court on 31 July 2001 whereupon the High Court committed Mr Lawlor to prison for a further week for non-compliance, and directed him to make further and better discovery to the Tribunal. The Court also imposed a further fine of IR£5,000 on Mr Lawlor.

1.41 A stay of execution on the committal order was granted to Mr Lawlor while he appealed the High Court decision to the Supreme Court. In due course, the Supreme Court dismissed Mr Lawlor's appeal and directed that his period of imprisonment commence on 2 January 2002.

1.42 Mr Lawlor provided the Tribunal with a further affidavit of discovery together with an additional 7 folders of documents, on 7 September 2001, but this was also found to be deficient. This deficiency was brought to the attention of the High Court on 3 December 2001. On 1 February 2002 Mr Lawlor was again committed to prison by the High Court for non-compliance with the orders of the Court dated 15 January 2001 and 31 July 2001. The Court ordered that Mr Lawlor be committed to prison for a further 28 days of the (suspended) sentence imposed on him on 15 January 2001, to commence on 5 February 2002. Mr Lawlor was also ordered to pay a fine of €12,697.38, and to make further and better discovery by 9 April 2002.

1.43 Following his release from prison, there followed a further series of correspondence between Mr Lawlor and the Tribunal.

1.44 On 14 February 2003, Mr Lawlor was notified by the Tribunal of its intention to consider making an order for discovery and production of documentation relating to the sale by him and his wife Mrs Hazel Lawlor of one acre of land at Somerton, Lucan, Mr Lawlor's home address. On 11 March 2003 Mr Lawlor provided the Tribunal with a file of documentation relating to the sale of these lands by him.

1.45 The discovery order relating to this matter was then made against Mr Lawlor by the Tribunal on 12 March 2003 relating to the sale of one acre of lands at Somerton, Co. Dublin. In purported compliance with that order, Mr Lawlor's swore an affidavit on 31 March 2003, and provided two further files of documentation designated C54 and C55 to the Tribunal. A further affidavit of discovery was sworn by Mr Lawlor on 15 April 2003. Deficiencies in Mr Lawlor's discovery were identified by the Tribunal and notified to Mr Lawlor.

1.46 On 5 June 2003, Mr Lawlor took issue with the Tribunal's criticisms of his discovery affidavit of 31 March 2003. Mr Lawlor advised the Tribunal that it was his belief that he had complied with the Tribunal's order of 12 March 2003, to the best of his ability, and having regard to the absence of legal representation.

1.47 On 19 June 2003, Mr Lawlor was informed by the Tribunal that it intended to hear evidence from Mr Lawlor at a public hearing of the Tribunal on or after 8 July 2003.

1.48 On 3 July 2003, Mr Lawlor acknowledged to the Tribunal that some documentation properly discoverable by him pursuant to the order of the Tribunal of 12 March 2003 had in fact not been discovered. Mr Lawlor said that the reason for this was that the documentation in question was in the possession of a firm of lawyers in the Channel Islands who themselves were in turn represented by two London firms of solicitors and that the relevant documentation was in effect being withheld by these law firms because of the non-payment by Mr Lawlor of fees due, amounting to at least stg£60,000. Mr Lawlor sought payment of these fees by the Tribunal in order to effect the release of the said documentation. This application for payment of the fees was rejected by the Tribunal.

THE COMPLIANCE HEARING IN JULY/SEPTEMBER 2003

1.49 Evidence was heard from Mr Lawlor and others between 8 July 2003 and 23 September 2003 for the purposes of ascertaining if Mr Lawlor was in fact in breach of the discovery order made by the Tribunal on 12 March 2003 and, if he was, the extent of that breach.

1.50 Following these public hearings, the Tribunal gave its formal ruling in public on this compliance issue, on 24 September 2003. The ruling of the Tribunal was as follows:

> *'This ruling of the Tribunal and any findings expressed therein relates solely to evidence concerning the issue of compliance by Mr. Liam Lawlor with an Order of this Tribunal made on the 12th March 2003 and is particularly concerned with the close and detailed examination of the steps taken by him in purported compliance with that Order.*
>
> *The Order of 12th March 2003 required Mr. Lawlor to make discovery on oath and produce all documentation in his possession or within his power and procurement concerning the sale by him, jointly with Mrs Hazel Lawlor, of approximately one acre at Somerton, Lucan, County Dublin in or about November 2001 and including, but not limited to, the receipt and application of the proceeds of sale of the said transaction. The Order further provided that the Affidavit of Discovery be made in the form provided for in Form 10, Appendix C of the Rules of the Superior Courts 1986 (as amended). Mr. Lawlor had been notified on the 14th February 2003 that the Tribunal had intended making an Order in these terms and was advised as to his entitlement to make submissions to the Tribunal before any such Order was made. No submissions were, in fact, made by Mr. Lawlor.*

In purported compliance with the Order of the Tribunal of the 12th March 2003, Mr. Lawlor swore a number of affidavits commencing with an affidavit sworn on 31st March 2003. This affidavit was clearly deficient in both form and substance. An extension of time was granted to Mr. Lawlor for the swearing of further affidavits in the correct form. On 7th April 2003 Mr. Lawlor was informed that as he failed to comply with the Discovery and Production Order, the Tribunal would consider applying to the High Court pursuant to Section 4 of the Tribunal of Inquiry (Evidence) (Amendments) Act 1997 for an order compelling Mr. Lawlor to comply with the Tribunal Order.

A further warning letter was sent by the Tribunal to Mr. Lawlor on the 15th May 2003, once again elaborating on the deficiencies in his purported discovery to date. Mr. Lawlor was advised on 19th June 2003 that the Tribunal had decided to summon him to give oral evidence on the compliance issue not before the 8th July 2003.

Oral evidence has been taken from Mr. Lawlor between 8th July 2003 and the 31st July 2003 and again between 16th September and 23rd September 2003 with evidence from Mr. Tony Seddon, solicitor, on 17th and 18th September. During these periods, and with the leave of the Tribunal, Mr. Lawlor had discovered and delivered some 17,000 additional pages of documentation pursuant to the order of the 12th March 2003. The most recent delivery of a substantial amount of documentation by Mr. Lawlor occurred as late as 12th September 2003, some six months or so after the making of the initial Order.

Prior to the Order of 12th March 2003, Orders for discovery and production were made by the Tribunal to Mr. Lawlor, relating to other matters relevant to the Tribunal's Terms of Reference, the first one being made on the 8th June 2000. Arising from same, Mr. Lawlor was subsequently referred by this Tribunal to the High Court pursuant to Section 4 of the Tribunal of Inquiry (Evidence) (Amendment) Act 1997. On three occasions the High Court has found Mr. Lawlor not to have complied with the Tribunal discovery and production Orders resulting in Mr. Lawlor serving three terms of imprisonment.

Notwithstanding the fact that Mr. Lawlor is not on this occasion legally represented, the Tribunal is satisfied that, because of Mr. Lawlor's previous dealings with the Tribunal on the question of discovery and consequent upon his appearance in the High and Supreme Court over the past three years, he has a detailed and thorough knowledge of the

discovery process including the necessity to use the form of affidavit provided for in the Rules of the Superior Courts, and he is well aware as to what is required to comply with the Order of 12th March 2003.

Furthermore, the contention made by Mr. Lawlor that he has been unable to secure any legal advice relating to the discovery Order because of lack of funds is totally rejected by the Tribunal. The Tribunal was satisfied that Mr. Lawlor has access to sufficient funds to pay for legal advice, if it was his wish so to do.

Having considered the documentation discovered and produced by Mr. Lawlor in purported compliance with the Order of 12th March 2003, and with the benefit of oral evidence of Mr. Lawlor together with that of Mr. Michael Whelan, Mr. John Barrett and Mr. Tony Seddon, solicitor, the Tribunal now makes the following findings and conclusions, solely in relation to this compliance issue:

1. *Prior to the commencement of Mr. Lawlor's oral testimony on 8th July 2003, Mr. Lawlor had failed to comply with the order of 12th March 2003 to a degree that was very significant and which amounted to obstruction of the Tribunal in its work, and he persisted in doing so in spite of generous extensions of time granted by the Tribunal to enable him to comply. This failure to comply not only related to the persistent failure by Mr. Lawlor to use a format of Affidavit provided for in the Rules of the Superior Courts as he was directed to use, but also as to the substance and content of the affidavits actually sworn by him.*

2. *Mr. Lawlor's non-compliance not only related to relevant documentation in his possession but also documentation within his power and procurement, including documentation physically held by Seddons solicitors in London and Prague. Much of this documentation was only identified and made available by Mr. Lawlor in September 2003, by which time the Tribunal had secured the agreement by Mr. Tony Seddon, solicitor, to attend and give evidence, which he did at considerable expense to the Tribunal and resulting in further additional delay to the Tribunal.*

3. *Mr. Lawlor's non-compliance with the order of 12th March 2002 continued after the 8th July 2003 and throughout his oral testimony.*

4. *The contention of Mr. Lawlor that he was unable to access or was in some way fettered in his access to certain relevant documentation held by his foreign solicitors because of lack of funds is rejected as being totally false and grossly exaggerated by him. The Tribunal takes this view only after close examination and consideration of the evidence given by Mr. Lawlor on this particular subject.*

5. *The Tribunal is, at this belated stage, reasonably satisfied that Mr. Lawlor has now complied with the Order of 12th March 2003 insofar as he may be able so to do at present. In arriving at this conclusion the Tribunal accepts that Mr. Lawlor's failure to procure documentation in the possession of Haynes & Trias, solicitors, Gibraltar, Nicholas Morgan, solicitor, Jersey and David Morgan deceased, Whitehead & Company, solicitors, Jersey may, on its face be as a result of the refusal of all or some of these parties, (who are outside the jurisdiction), to permit access to and production of such documentation to the Tribunal for reasons of solicitor/client confidentiality involving third parties or on the grounds of relevance. However, the Tribunal remains anxious to examine this documentation and will continue to seek its production by other means, including, if possible, securing the attendance of Nicholas Morgan, solicitor, to give evidence to this Tribunal. Therefore the Tribunal expressly reserves the right to revisit the question of Mr. Lawlor's compliance with the Order of 12th March 2003 in respect of this particular documentation at a date in the future should it be appropriate so to do.*

6. *The Tribunal is satisfied that apart from the other documentation referred to in paragraph 5 above, all other documentation furnished by Mr. Lawlor since commencement of this compliance module was within the possession, power and procurement of Mr. Lawlor at the time he swore his first Affidavit of Discovery. Having heard evidence from Mr. Lawlor the Tribunal is satisfied that the withholding of this documentation was a deliberate act on his part, and amounted to non-cooperation with the Tribunal.*

7. *Mr. Lawlor, over the course of his oral examination commencing on 8th July 2003, repeatedly lied to this Tribunal, was evasive, dismissive, unco-operative, obstructive and lacking in cooperation to a degree which can only amount to a very serious attempt to knowingly mislead, obstruct and hinder the Tribunal in its work and, more particularly, in its lawful pursuit of the documentation sought in the Order of 12th March 2003.*

Section 4 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1997 is the statutory provision enabling the Tribunal to refer a person to the High Court in the face of that person's failure to comply with or his disobedience of an Order of (the) *Tribunal whereupon the High Court is empowered to make such orders as it deems appropriate to give effect to such Order.*

It is this section of the Act of 1997 which has been utilised by this Tribunal on previous occasions to compel Mr. Lawlor to comply with the Tribunal's Orders for Discovery and which has resulted in the imprisonment of Mr. Lawlor for contempt of Court arising from his failure to comply with discovery orders made by the Courts.

There is, however, no statutory provision enabling a Tribunal to refer a person to the High Court purely for punitive purposes where that person has complied with the relevant Tribunal order, however belated, as has occurred on this occasion.

The Tribunal could have chosen to stand down Mr. Lawlor on 8th July 2003 or soon afterwards, and to have then referred him to the High Court pursuant to Section 4 of the Act of 1977, but the Tribunal chose instead to attempt to exact the relevant documentation from him under examination on oath and with the aid of information obtained in the course thereof. In so doing, the Tribunal believes that the relevant documentation that has been now obtained by the Tribunal has been secured much earlier than would have been the case had it stood Mr. Lawlor down in July 2003 and referred the matter to the High Court.

In proceeding in this manner, the Tribunal was particularly mindful of its remit to conduct its areas of investigation in as an efficient and cost effective manner as possible.

In the course of its work the Tribunal has frequently to contend with evidence which, on its face appears less than truthful, but on many such occasions an actual finding that such evidence is in fact untruthful must await later evidence from others or evidence gleaned from a close perusal of documentation. It is for this reason that the Tribunal will only occasionally make a finding that particular evidence was given by a witness knowing it to be untrue until such time as all related evidence has been considered. On this occasion, however, and as the Tribunal concludes this compliance hearing, which is effectively a module in its own right, we deem it appropriate to express our deep concern at the

evidence given by Mr. Lawlor in such circumstances where he knew that such evidence was false and untrue. There are a number of instances where the Tribunal is satisfied that untruthful evidence was knowingly given by Mr. Lawlor over this period. However, in respect of two particular instances given Mr. Lawlor's blatant disregard for the truth, the Tribunal hereby directs that the relevant transcripts of evidence together with the relevant documentation be referred to the Director of Public Prosecutions to enable him to decide if any further action was appropriate.

These two instances are:

(1) Evidence given by Mr. Lawlor on 8th July 2003 and following days relating to an explanation for a payment for Stg100,000 pounds and Stg17,500 pounds by Mr. Michael Whelan/Maplewood Holdings/Lunar Sea Developments for himself or for his benefit; and

(2) Evidence given by Mr. Lawlor on the 8th July 2003 and following days relating to the source, preparation and delivery of an invoice of Stg100,000 pounds plus VAT of Stg17,500 pounds on a bill heading purporting to be from Seddons Solicitors, London and Prague.

In both these instances the Tribunal is satisfied that Mr. Lawlor gave evidence under oath which he knew to be false and he did so for the purposes of obstructing or hindering the work of the Tribunal.

This referral of course in no way inhibits the DPP from examining other evidence given by Mr. Lawlor and others should he wish to do so.

That concludes the ruling of the Tribunal.'

1.51 The issue of costs arising from the completed compliance hearing was left in abeyance, until after the publication of the Tribunal's final Report.

OFFSHORE PAYMENTS TO MR LAWLOR

1.52 In the course of its public hearings (in July/September 2003) arising from compliance issues in relation to the discovery of documents by Mr Lawlor, the Tribunal heard sworn evidence from Mr Lawlor (over a period of 13 days) and from others including Mr Lawlor's then solicitor in London and Prague, Mr Tony Seddon. In the course of those hearings, it was established that very substantial sums of money running to many hundreds of thousands of pounds had been paid to Mr Lawlor from offshore sources.

1.53 Mr Lawlor told the Tribunal that he had engaged in business ventures in the Czech Republic. One company with which he said he was involved with in 7 or 8 projects was Long Water Investments Ltd (Long Water), a company registered in the Bahamas. Mr Lawlor told the Tribunal that during a period in the mid 1990s when he had very heavy personal bank debts in Ireland, he obtained loans from Long Water. Mr Lawlor said that in 1995 and 1998 respectively he received two sterling loans worth over IR£330,000 each from this company, which were guaranteed against his personal assets in Ireland. More specifically, in the period 1995 to 1999, IR£664,000 (being the total of the two 'loan' amounts, less IR£20,000 transferred into another account) was transferred from accounts sourced in Liechtenstein into accounts in Ireland and the United States for Mr Lawlor's use.

1.54 In the course of evidence given by Mr Lawlor to the Tribunal on Day 222, in response to a question posed to him by Tribunal Counsel seeking information as to his involvement with Long Water, Mr Lawlor stated:

> '*There is about 7 or 8 projects which I have an arrangement with that investment company. I had a lot of bank debts in the mid 90's and they advanced two loans and they are due for repayment, and they are also partners in a number of these property projects that are at various stages of negotiation.'*

1.55 Mr Lawlor told the Tribunal that the loans were to himself, and that the agreements relating to them were in an office in Prague. Mr Lawlor named a Doctor Kavalak of Winchester Square in Prague as his lawyer in that location.

1.56 In the course of his evidence on that occasion, Mr Lawlor gave the Tribunal the following information:

- Mr David Morgan (Deceased) a solicitor in the Channel Islands made lodgements into a bank (Landesbank) in Liechtenstein.
- Mr Lawlor opened an account at a bank in Liechtenstein from which monies were transferred to Mr Lawlor into his Ulster Bank and National Irish Bank accounts in Dublin, as well as accounts in the US for himself and his children, and the accounts of his solicitor and a car dealership. The monies in the Irish banks were then drawn down by him.
- In order to trigger a withdrawal of funds, Mr Lawlor had to first contact Long Water to request a drawdown and then telephone a Mr Kieber at Landesbank to authenticate the instruction, whereupon the requested funds would then be transferred to Mr Lawlor in Ireland.

1.57 A number of documents were provided to the Tribunal in the course of Discovery. These included:

i) A loan agreement dated 5 July 1995 and made between Long Water Investment Ltd C/O PO Box 302 Westaway Chambers, 39 Don Street, St. Helier, Jersey, Channel Islands, and Mr Lawlor whereby Long Water agreed to grant Mr Lawlor a loan facility of up to stg£500,000. The agreement provided that Mr Lawlor would provide introductory services to Long Water and its principals and their clients in the context of business in Prague and the Czech Republic generally.

ii) A supplemental loan agreement made on 22 August 1998 between Long Water Investment Ltd of the same address and Mr Lawlor under which Long Water agreed to increase the amount of the facility set out in the original loan agreement by stg£400,000 to stg£900,000.

iii) A letter dated 30 October 2000 from Andrew J. Haynes of 2/3b Horse Barrack Lane, PO Box 156 Gibraltar to Mr Lawlor at Somerton House, Lucan, Co. Dublin entitled *'Loan Repayment'* which stated:

> *We act for the Directors of Long Water Investments Ltd ('the Company') and are instructed that the date for repayment of the loan to you from the Company has now passed. We are further instructed that the balance of capital and interest repayable as at the date of repayment, being 30th September 2000, amounts to Stg£1,111,023.81 (as per attached copy statement) and that interest continues to accrue at the rate of Stg£456.59 per day.*
>
> *Please arrange for payment of the overdue amount together with interest thereon to be made forthwith to the following account:* (Details of a Barclays Bank account in Gibraltar bearing the account name Andrew Haynes Client Account).

iv) A letter dated 27 December 2000 from Haynes and Trias to Delahunt Solicitors (the Dublin firm of solicitors, then acting for Mr Lawlor) on behalf of their clients Long Water Investments Ltd which referred at paragraphs 5 and 6 to the loan to Mr Lawlor in the following terms:

> *We are instructed that a loan was granted to the said Mr. Lawlor during the period from 1995 to the present and that the capital and accrued interest is presently outstanding. The term of the loan expired on the 30th September 2000 and by letter dated 30th October 2000 we made a formal request for repayment of the principal and interest on the loan in the amount of Stg£1,111,023.81.*

We were given to understand that following the sale of the lands in Ireland in or about September 2000, we would receive an initial payment of circa IR£690,000 (less any relevant deductions) in part settlement of the amount due to the company.

v) A letter dated 20 March 2001 from C.I. Law Trust Group Ltd (formally [sic] Westaway Trust Company Ltd) PO Box 303 Chancery Chambers, St. Helier, Jersey.

1.58 This documentation indicated, on its face, that the loans in question were *bona fide* advances of monies to Mr Lawlor which required repayment with interest.

1.59 The Tribunal was informed by Mr Lawlor that he had, pursuant to a settlement of a dispute between himself and Mr John Caldwell, become entitled to a payment from Mr Caldwell amounting to IR£350,000 in 1995. Although Mr Caldwell agreed a settlement with Mr Lawlor, he denied any legal liability (save for the settlement terms) to Mr Lawlor. The Tribunal inquired as to whether there was a connection between Mr Caldwell's agreement to pay IR£350,000 to Mr Lawlor, and the lodgement at about the same time in 1995 of DM825,000 (circa IR£350,000) in the Landesbank account and which in turn funded the transfer of funds to bank accounts of Mr Lawlor in Ireland. The Tribunal engaged in correspondence with Mr Caldwell, and heard evidence from him in relation to the matter.

1.60 Mr Caldwell told the Tribunal that he met Mr Nicholas Morgan[3] in London on 14 January 2002, and that he understood that following that meeting, Mr Morgan met Mr Lawlor on 16 January 2002. Following these meetings, it was disclosed to the Tribunal that the Long Water loans may not have been *bona fide* loans but rather had been used by Mr Lawlor as a means of repatriating income into Ireland which had been generated as a result of his business dealings relating to Irish property interests. From meeting notes taken by Mr Morgan and provided to the Tribunal, it appeared that Mr Morgan blamed Mr Lawlor for providing him with false information which had been furnished to the Tribunal. Mr Morgan attributed his own poor knowledge on the issue to the fact that his late father *'was an old school solicitor who kept most of the information in his head and was not a great believer in file notes*' (Mr Morgan was here referring to his late father, who like Mr Morgan was a solicitor and who had previously dealt with Mr Lawlor's affairs in relation to Long Water). Mr David Morgan said that he had relied upon information provided by Mr Lawlor in 1999 and suggested that

[3] Mr Nicholas Morgan, solicitor is the son of Mr David Morgan, solicitor, deceased.

Mr Lawlor had not been candid with him in relation to these financial arrangements.

1.61 Mr Caldwell told the Tribunal that shortly after lands at Coolamber (in West County Dublin) were sold to Mr Joe Tiernan in 1994, Mr Lawlor had made demands of Mr Caldwell for a share in the proceeds of the sale. In or around 1995, Mr Noel Smyth solicitor wrote on behalf of Mr Lawlor claiming an interest in the proceeds of sale of the property. Mr Caldwell said that it was his belief that he had denied any liability to Mr Lawlor and he was satisfied that there was no merit whatsoever in Mr Lawlor's claim to a share in the proceeds of sale. Mr Caldwell told the Tribunal that in an effort to avoid a public confrontation and association with Mr Lawlor which would have followed the issue of proceedings threatened by Mr Lawlor, and in spite of the fact that he felt he was being in effect blackmailed by Mr Lawlor, he agreed to make a payment to Mr Lawlor of DM825,000 (circa IR£350,000) through his Jersey lawyers (David Morgan Whitehead and Co.). Mr Caldwell claimed that he left the process by which the monies were paid to Mr Lawlor to his Jersey lawyers. In due course the proceeds of sale were used to fund two loans, one to Long Water Investments Ltd which was a company owned by a David Morgan Trust. The other was (based on Mr Caldwell's belief) an entity associated with the developer, Mr Jim Kennedy. The Long Water funds were then transferred to another trust company Drebbin Ltd (an Isle of Man company), and deposited in Landesbank in Liechtenstein. Mr Caldwell said that he understood that funds were then transferred to Mr Lawlor as a Long Water loan through the Liechtenstein bank account of Drebbin Ltd.

1.62 Bank statements provided to the Tribunal established that on 14 September 1995, DM825,000 was paid from a deposit account to the current account of Drebbin Ltd at Landesbank, Liechtenstein, and that on that day DM825,412.50 was debited from this current account. DM825,000 was in due course paid into Mr Lawlor's account.

1.63 Mr Caldwell claimed that in 1997, notwithstanding the earlier settlement made between himself and Mr Lawlor in 1995, Mr Lawlor made a further attempt through his solicitor Mr Noel Smyth to procure monies from him. Similarly as before, and in an effort to avoid any public dispute between himself and Mr Lawlor, and amid his concerns relating to his own health, and although he was again satisfied that he had no liability to Mr Lawlor, Mr Caldwell nevertheless agreed a further settlement with Mr Lawlor. Under the second settlement, Mr Lawlor was provided with a 2.5% interest in Pentagon Property Services Ltd and a 25% interest in Sabre Developments Ltd in relation to industrial lands at Baldoyle in County Dublin. This interest was ultimately reflected in a 25% shareholding in Trennery Investments Ltd. Mr Lawlor was also

given a 25% shareholding in a company called Valley Holdings Ltd, which had an interest in pipes going through lands in Coolamber, in west County Dublin. Mr Caldwell said he left the implementation of this second settlement to his Jersey lawyers. A second payment, arising from those interests was in due course made to Mr Lawlor in October 1998, amounting to circa IR£335,000. This payment was structured as a loan to Mr Lawlor from Long Water.

1.64 Mr Lawlor claimed that he tried on many occasions to obtain copies of all relevant documentation from Landesbank in Liechtenstein, and he had signed an authority to enable the Tribunal obtain such documentation. Mr Lawlor said he himself travelled to Liechtenstein in January 2002 to retrieve documentation. He succeeded in obtaining some further documentation, and said he had been informed by Landesbank that it was the entire of the relevant documentation relating to the Landesbank account. The Tribunal was however not satisfied that it was provided with all relevant documentation relating to Mr Lawlor's offshore financial dealings.

MR LAWLOR'S INVOLVEMENT IN MODULES INQUIRED INTO BY THE TRIBUNAL

1.65 Evidence relating to Mr Lawlor was considered in 6 modules of inquiry concluded by the Tribunal. Of these, the sworn evidence of Mr Lawlor was taken in two. His untimely death in late 2005 deprived the Tribunal of the opportunity to hear evidence from Mr Lawlor in relation to all the Tribunal's public inquiries, and in particular in the Quarryvale module.

MR LAWLOR'S MONEY

1.66 When asked for details of his sources of income in the period 1977 to 2002/3, other than that derived from his position as an elected public representative (including the 1982-1987 period when he was not a TD but was paid the equivalent salary as a Fianna Fail official), Mr Lawlor was unable to provide specific information, other than to refer the Tribunal to documentation discovered to the Tribunal. However, on his own admission Mr Lawlor received income into a large number of bank accounts in his own name or in the names of others, representing many multiples of his state funded income.

1.67 In the course of its public inquiries in the Quarryvale, Cherrywood, Balheary, Baldoyle/Pennine and Ballycullen/Beechhill modules, the Tribunal established payments of approximately IR£400,000 as having been made to Mr Lawlor by individuals and/or entities associated with the lands which were the subject of inquiry by the Tribunal in those modules. Over 80% of this figure was

found to have been paid within the period 1988 to 1993. The total found by the Tribunal to have been paid to Mr Lawlor, directly or indirectly, significantly exceeded the total payments which Mr Lawlor acknowledged receiving from those individuals/entities, in statements or in the course of information provided by him to the Tribunal during its private inquiry and on the occasions when he gave sworn evidence to the Tribunal. The Tribunal was satisfied that Mr Lawlor, at all times in his dealings with the Tribunal, failed to disclose to it the total payments received by him from the individuals/entities associated with the aforesaid lands.

1.68 In his dealings with the Tribunal, both in correspondence and in his sworn evidence, Mr Lawlor, to the extent that he acknowledged the receipt of money in relation to the Tribunal's inquiries in the aforementioned Modules, invariably described these payments as consultancy fees or political contributions (mostly the latter).

1.69 While the Tribunal did not always find it possible to determine the true purpose and reason for every payment to Mr Lawlor which was the subject of its inquiries, it was satisfied that the majority of the payments made to Mr Lawlor within the period 1988 to 1998 were payments which, having regard to Mr Lawlor's role as an elected councillor (until June 1991) and an elected TD (until 2002), were entirely inappropriate, improper and on occasion corrupt. The Tribunal was absolutely satisfied, that, with the possible exception of a few thousand pounds, none of the payments to Mr Lawlor could reasonably or accurately be described as political donations.

1.70 The bulk of the total amount found by the Tribunal to have been paid to Mr Lawlor by individuals/entities associated with the lands, the subject matter of inquiry in the aforementioned modules related to Mr Lawlor's involvement with Mr Gilmartin/Arlington Securities Plc, Mr Dunlop and Mr O'Callaghan. (See Chapter Two – Quarryvale)

1.71 In respect of the payments to Mr Lawlor investigated by the Tribunal, a clear and obvious link was established between many of those payments and the planning process (in particular the rezoning of land). The extent to which Mr Lawlor provided services in return for such payments was not always clear. Indeed the Tribunal was satisfied that on occasion money was paid to Mr Lawlor based solely on the perception on the part of a developer/landowner that it was necessary to keep Mr Lawlor 'on-side', for fear that not paying him would serve to negatively impact on a particular development or planning issue.

1.72 The fact that Mr Lawlor had an insatiable appetite for money was without doubt. His tendency to request or demand amounts of money from Mr Dunlop and others and to use his status as an elected public representative and on occasion as a member of the governing Fianna Fail Party was well established in the course of evidence heard by the Tribunal. The Tribunal was satisfied that on occasions, Mr Lawlor openly presented himself as a representative of the Irish Government as a means of extracting personal beneficial gain.

1.73 The methods often used by Mr Lawlor to obtain and receive money were occasionally ingenious. These methods included the use of third party bank accounts, false and bogus invoices, the use of third party payees, the false use of names to endorse cheques, and falsely claiming that his own off-shore funds were in fact repayable loans made to him. Significant features of the bulk of the payments were their clandestine nature and frequently a lack of comprehensive documentary trail in relation to them.

1.74 While the use of such secretive and devious means to seek and receive substantial sums of money did not of themselves prove wrongdoing or any improper motivation, the Tribunal was nevertheless satisfied that in most of the instances considered by the Tribunal such payments arose directly as a consequence of corrupt or improper activity associated, directly or indirectly with the planning system.

1.75 In reality Mr Lawlor engaged in a business which was inextricably linked to his positions as an elected county councillor and a TD and which in turn was inextricably linked to influence exerted by Mr Lawlor with fellow politicians and some public officials. Many of the *'services'* provided by Mr Lawlor to those developers/landowners who so generously paid and sponsored him were of a category which an elected representative might reasonably be expected to have provided as an integral part of his public office and in the absence of personal gain (or an expectation of personal gain).

1.76 The Tribunal was satisfied that Mr Lawlor abused his public office by, in effect, charging enormous sums of money to perform the work of an elected representative. Mr Lawlor's abuse of his public office could not have occurred and he could not have used his position as an elected representative to produce substantial income for himself, without the willing participation of some landowners and developers who had access to substantial funds, and who recognised, appreciated and profited from strategic advice and other services provided by Mr Lawlor.

1.77 Both in the information provided to it in statements and correspondence and in his sworn evidence to the Tribunal, Mr Lawlor's evidence was on many occasions deemed by the Tribunal to have been untrue.

OTHER PAYMENTS MADE TO MR LAWLOR, AS DISCOVERD BY THE TRIBUNAL IN THE COURSE OF ITS INQUIRIES, AND HIS USE OF REAL AND FICTITIOUS BUSINESS NAMES IN ORDER TO FACILITATE SUCH PAYMENTS.

1.78 In the course of the Quarryvale module, the Tribunal heard evidence of payments made to Mr Lawlor some of which were not necessarily linked to the subject of the Tribunal's inquiries in the Quarryvale module. The Tribunal also heard evidence in relation to what might be described as the unconventional means adopted by Mr Lawlor to seek and obtain money from third parties, and in particular the use by him of both fictitious and real business or company names for the purposes of generating false invoices and concealing payments made to him, as well as the use of bank accounts in the names of his own family members and others for the purposes of processing payments to himself. The usefulness (and relevance) of the evidence adduced in relation to these matters assisted the Tribunal, to some extent at least, in understanding the manner in which Mr Lawlor conducted his activities while an elected representative and how he managed his financial affairs.

1.79 The Tribunal considered evidence relating to Mr Lawlor's dealings with:

- Green Property Plc
- Industrial Consultants International Ltd
- Mr Dunlop
- Ganley International Ltd
- Mr Seamus Ross
- Mr Louis FitzGerald/Palmerstown House
- Mr Ambrose Kelly

and, payments which were made to Mr Lawlor by such individuals and entities.

1.80 In relation to certain of the individuals/entities listed above, the payments made to Mr Lawlor were invoiced and/or made through real or fictitious entities, as listed below:

- Comex Trading Corporation (Comex)
- Industrial Consultants International Limited/Industrial Consultants Associates (Industrial Consultants)
- Economic Reports Limited
- Ganley International Ltd
- Baltic Timber Products Ltd
- Long Consultants/Long Associates

MR LAWLOR AND GREEN PROPERTY PLC.

1.81 Mr Lawlor in his 'B42' list, provided to the Tribunal on 29 January 2001, purported to provide to the Tribunal details of:

> *Income, including political contributions, donations and consultancy fees being approximate and as recollected by Liam Lawlor in respect of period 1973 – 2000*.

1.82 In that list, Mr Lawlor stated that he received payments totalling IR£35,000 from Green Property plc during the 1970s and 1980s. Subsequently in his June 2003 '*Political Contributions Schedule*' Mr Lawlor, claimed the receipt by him of political contributions from Green Property totalling IR£42,000, broken down as follows:

1985 - IR£5,000
1986 - IR £5,000
1987 - IR £5,000
1988 - IR £5,000
1989 - IR £17,000
1990 - IR £5,000

1.83 Prior to Mr Lawlor furnishing his June 2003 schedule, discovery made by him on 16 May 2002 revealed a lodgement of a cheque for IR£13,953.50 to a bank account in the name of Economic Reports Limited on 3 November 1988. The narrative accompanying Mr Lawlor's discovery of the Bank of Ireland statement which documented the lodgement stated '*this is a cheque received from Green Properties…*'

1.84 In December 2000 Mr Lawlor's solicitors commenced correspondence with Green Property advising them of Mr Lawlor's claim to have had an *'involvement'* with that company in '*his personal, political and business capacity*' and requesting that they be furnished with any documentation in its possession, power, procurement or control relating to its dealings with Mr Lawlor. In January 2001 Green Property's solicitors advised Mr Lawlor's solicitors that it had no documentation which related in any way to Mr Lawlor. Corresponding personally with Green Property on 14 August 2001, Mr Lawlor advised the company that he had informed the Tribunal of his recollection of having received IR£35,000 from Green Property in political contributions since his entry into political life in 1977, and he advised them that, on foot of the Tribunal's request to him to provide details of the payments he claimed to have received from Green Property, he was now requesting Green Property to assist him in answering the Tribunal's queries.

1.85 On 24 August 2001 Green's solicitors advised Mr Lawlor, *inter alia*, that its clients were '*surprised*' that Mr Lawlor recollected receiving IR£35,000 from it in political donations as its review of its political donations had not revealed any such payments to Mr Lawlor.

1.86 On 28 August 2001 Mr Lawlor sought to assist Green Property by advising them that the contributions he had received were made by cheque by its then Managing Director, Mr John Corcoran, on two or three occasions during the 1980s.

1.87 In February 2002 (Green Property being to that point in time apparently unable to trace any records of payments made to Mr Lawlor) Mr Lawlor, in an effort to further assist them in their endeavours, apprised Green Property, *inter alia*, of meetings he had had with Mr Corcoran in the lead up to the 16 May 1991 rezoning vote on Quarryvale.

1.88 Working back from that date Mr Lawlor advised them that his involvement with the company would have commenced some four years prior to 1991 and that this involvement would have been attending meetings to discuss the lobbying then being conducted by Green Property of the County Council in respect of planning applications which had been lodged in connection with the development of the Blanchardstown Town Centre.

1.89 It was in this general period that, Mr Lawlor maintained to Green Property, that he received IR£35,000 in total from Mr Corcoran, as contributions to his election campaigns and constituency office costs.

1.90 By way of postscript to his 18 February 2002 letter Mr Lawlor also reminded Green Property in an effort presumably to assist them as to the time frame in which payments had been made to him, that: '*documents may also exist in relation to efforts to secure tax designation for the Blanchardstown Town Centre site.*'

1.91 Notwithstanding the aide memoires provided by Mr Lawlor in his February 2002 correspondence, Green Property wrote to Mr Lawlor on 4 March 2002 advising him that:

> *The current position is that Green Property's bankers have been unable to find any records of any payments made to you during the period to which you have referred. Whilst you have provided further narrative information in your recent letter, we do not believe that this will assist Green Property's bankers in identifying any payments allegedly made. On this basis and in order to assist Green Property, please could you provide us with the following information:*

a). Specific dates when such payments were allegedly made; and

b). The payee of such alleged payments; and

c). The specific amounts of such alleged payments.

1.92 On 6 March Mr Lawlor advised Green Property as follows:

The information you require is as follows:

a) My recollection is from 1981 to 1989;

b) Payee would have been Liam Lawlor;

c) £17,000 cheque and the balance in varying amounts…

1.93 The Tribunal itself commenced correspondence with Green Property plc on 15 March 2002 as part of its inquiry into Mr Lawlor's claim that he had received IR£35,000 from Green Property.

1.94 The Tribunal requested Green Property to provide a narrative statement in respect of, *inter alia*,

…all dealings between Green Property and any political representative or political party, including Mr. Liam Lawlor TD, and it sought details of: *all payments made to and/or benefits conferred upon any public representative, public official and political party whether made directly or indirectly, whether in the course of business dealings or otherwise and whether within the State or otherwise from 1975 to date.*

1.95 In the course of this correspondence the Tribunal advised that:

arising from previous experience the Tribunal finds it necessary to state the following:

- *Payments of the type under investigation by the Tribunal are not always easily identifiable in the books and records of the payor;*
- *Such payments may have been entered in the books of account as payments to a person other than the payee under inquiry;*
- *Such payments may have been made on foot of invoices for goods or services, whether in the name of the payee under inquiry or otherwise;*
- *Such payments may have been made through an offshore company, servant, agent, advisor or nominee associated with the payor and/or payee respectively or jointly;*
- *An alleged payor from whom the Tribunal seeks information is not entitled to limit his/her/it's investigation of his/her/it's own affairs to written records but must also inquire (while preserving the confidentiality of the work of the Tribunal) of such persons as it considers appropriate.*

1.96 On 22 March 2002 the Tribunal alerted Green Property that Mr Lawlor had used the following entities to invoice third parties:

- Comex Trading
- Long Consultants
- Long Associates
- Industrial Consultants / Industrial Consultant Associates / Industrial Consultants International
- Demographic & Strategic Consultants
- King & Co.

In a letter to the Tribunal from Mr Lawlor's solicitor, Mr Dermot P. Coyne dated 1 May 2002, the Tribunal was advised of the names used by Mr Lawlor for the purposes of creating invoices. All of the above names (with the exception of King & Co, Industrial Consultants/Industrial Consultant Associates) were listed in the letter, in addition to Economic Reports, Eastern International and Advanced Proteins Limited.[4] Also listed were a number of companies which may have received invoices under those names but Green Property plc was not one of them.

1.97 In an '*information statement*' provided by Green Property to the Tribunal on 15 April 2002, the company dealt with its dealings with Mr Lawlor as follows:

> *Green are advised by Mr Corcoran, that he met Mr Lawlor on several occasions (as referred to by Mr Lawlor in his letters to the Tribunal) in the late 1980's/1990/1991. Mr Corcoran has advised Green that these meetings were at the behest of Mr. Lawlor and the purpose of such meetings was for Mr. Lawlor to reassure Green as to the extent of the proposed development at Quarryvale as Green feared this development would be adverse to its own proposed development at Blanchardstown. Mr. Corcoran has stated that at these meetings he was assured by Mr. Lawlor that the size of the lands proposed to be rezoned at Quarryvale amounted to no more than 300,000 square feet and that there was nothing for Green to be concerned with. It is Mr. Corcoran's opinion in hindsight that the purpose of these meetings was to prevent Green from going public in its objections to the proposed rezoning of lands at Quarryvale.*

[4] This letter also listed the entities whom Mr Lawlor believed received or may have received invoices which used one of the identified names. These entities were listed as National Toll Roads, Frank Dunlop & Associates Ltd, Monarch Properties, Ganley International, Lark Developments, Arlington Securities Plc, Menolly Homes Ltd, Ballymore Properties Ltd, Jones Group Ltd, Dwyer Nolan Ltd and Rotary.

1.98 And:

> *In relation to the specific issue of payment made to and/or benefits conferred upon Mr. Liam Lawlor TD, Green can find no records whatsoever of any payment made to Mr. Lawlor at any time, having carried out searches itself and having asked its Auditors and Bankers to carry out searches.*
>
> *Mr. John Corcoran has informed Green that he did not make payments by cheque to Mr. Lawlor on behalf of Green totalling IR£35,000 (as has been alleged by Mr. Lawlor) either at the time of his aforementioned meetings with Mr. Lawlor in the 1980's or at any time. Mr. Corcoran has also advised Green that no cash payments were made by him to Liam Lawlor at any time. It is Mr. Corcoran's recollection that Mr. Lawlor approached him in the course of an election campaign in either the late 1970's or 1980's and asked Mr. Corcoran if Green would make a contribution to his election campaign by paying an invoice either for £3,600 or £6,300 issued by a printworks in Kilmainham for work done for Mr. Lawlor in the course of that election campaign. Mr. Corcoran's recollection is that he agreed to discharge this invoice and believes that Green did so. As Mr. Corcoran cannot recollect the identity of the payee or the date of the payment, Green is not in a position to trace such a payment.*

1.99 An affidavit of discovery sworn by Mr David McDowell, the Company Secretary of Green Property plc, on 23 August 2002, did not refer to any payments by Green Property to Mr Lawlor directly or otherwise. Mr McDowell was the Financial Controller of Green Property plc from 1979, and a co-signatory of a cheque to Mr Lawlor which used the name Comex Trading Corp as payee.

1.100 Green Property's '*informationstatement*' of 15 April 2002 listed the banking institutions with which the company held funds in the period 1980 to 1994 as:

- AIB, South Richmond Street, Dublin 2
- NIB, 138 Lower Baggot Street, Dublin 2
- Bank of Ireland, 177 Drimnagh Road, Walkinstown, Dublin 12
- AIB, 100 Grafton Street, Dublin 2
- AIB, 2 Lower Baggot Street, Dublin 2
- AIB, Bruton Street, London
- Bank of Ireland, Berkeley Square, London.

1.101 On 11 December 2003 the Tribunal wrote to Green Property's solicitors advising Green that:

> *The affidavit of discovery of your client sworn in purported compliance with the above order* (22nd March 2002 Order for Discovery) *does not disclose a cheque payment dated 3rd November, 1988 in the sum of IR£13,953 by your client to Economic Reports Limited, Mr Lawlor's company. The cheque was drawn on your client's account number 76757157 at Bank of Ireland, St. Stephen's Green, Dublin 2.*
>
> *The Tribunal now requires that your client furnish all documents and records in its possession, power or control relating to the above payment and, in light of the deficiency in the affidavit of discovery, requires that your client file a Supplemental affidavit of discovery in conclusive compliance with the Order of 22nd March, 2002.*

1.102 In a supplemental affidavit sworn by Mr McDowell, Green Property discovered the Economic Reports Limited cheque.

1.103 In the course of evidence provided to the Tribunal, Mr McDowell and Mr McKenna (a director of Green Property Plc and a co-signatory of the cheque to Mr Lawlor in which the payee was stated as Economic Reports), stated that the Bank of Ireland account on which the cheque had been drawn had been dormant since 1992 and for this reason it had been overlooked when they initially made discovery to the Tribunal.

1.104 Mr McKenna maintained that even if the dormant BOI, St. Stephen's Green account had been recollected, the Economic Reports Ltd cheque would still not have been disclosed by Green Property on the basis that they had, by August 2002, no reason or information which established any connection between this cheque to Economic Reports Ltd and Mr Lawlor. Mr McKenna maintained that the company had contacted Mr Corcoran in March 2002 in connection with the Tribunal's inquiries and while Mr Corcoran told them that he had met Mr Lawlor on several occasions between the late 1980s and 1991, at Mr Lawlor's request, Mr Corcoran had denied making payments totalling IR£35,000 to Mr Lawlor.

1.105 In his statement to Tribunal of 3 November 2004, Mr Corcoran effectively conceded to the Tribunal that he had made a payment to Mr Lawlor. He said that he could not recall the payment, and assumed that it was in respect of Mr Lawlor's services as a planning consultant.

1.106 Following upon the Tribunal providing Green Property, on 11 December 2003, with the copy of the Economic Reports cheque for IR£13,953.50 the Tribunal was informed by Green Property's solicitors that they no longer represented Mr Corcoran.

1.107 On 15 January 2004, the Tribunal were advised by Green Property's solicitors that with regard to its NIB, Baggot Street, account, a further number of cheques had been identified which were relevant to the terms of the Tribunal's March 2002 order for discovery. One such cheque, which was furnished to the Tribunal on 15 January 2004, was a Green Property cheque written to '*Comex Trading Corp*' for IR£10,000 on 22 February 1991.

1.108 While in August 2002 Green Property may not have known that Economic Reports Ltd was one of the entities used by Mr Lawlor, it was nonetheless extraordinary that Green Property could have overlooked discovering to the Tribunal the bank account on which that cheque had been drawn.

1.109 It was equally extraordinary that Green Property had not, in August 2002, discovered the February 1991 Comex cheque, given the fact that Comex was one of the entities identified by the Tribunal to Green Property in March 2002.

1.110 Green Property's disclosure of this Comex cheque was only made after the Tribunal, in December 2003, had reminded Green Property that it had paid Mr Lawlor IR£13,953.50 via Economic Reports Limited.

1.111 Thus, by January 2004, the Tribunal's information of payments to Mr Lawlor was Mr Lawlor's claimed recollection of having received a total of IR£35,000 in the 1970s and 1980s, (later revised by him to IR£42,000 between 1985 and 1990), and a documentary trail which established that Green Property had made cheque payments to Economic Reports Limited in the sum of IR£13,953.50 on 3 November 1988 and in the sum of IR£10,000 to Comex Trading Corporation on 22 February 1991.

1.112 An examination of the Comex cheque for IR£10,000 indicated that it had been endorsed on the reverse as follows: '*Niall Lawlor*' and '*M. Quinn for Comex TRD*.'

1.113 It was established from bank records, that on 27 February 1991 Mr Niall Lawlor (Mr Liam Lawlor's son) made a cash lodgement of IR£10,000 (comprising

IR£8,000 in IR£20 notes and IR£2,000 in IR£10 notes) to an account in his own name at NIB, South Circular Rd., Dublin.

1.114 While the Tribunal was unable to determine conclusively that the IR£10,000 cash lodged to the account of Mr Niall Lawlor represented the proceeds of the Comex cheque, it was probable that Mr Lawlor arranged to cash the Comex cheque for IR£10,000 and to have the cash lodged to his son's account. Mr Lawlor, in correspondence with the Tribunal, attributed the source of the IR£8,000 cash lodgement to Mr Niall Lawlor's account to '*Possibly Palmerstown House.'*[5] It was possible therefore that the Comex cheque was cashed by, or with the assistance of, personnel in the Palmerstown House licensed premises.

MR CORCORAN'S ACCOUNT TO THE TRIBUNAL OF HIS FINANCIAL DEALINGS WITH MR LAWLOR

1.115 Contrary to Mr Lawlor's assertions that he received political contributions from Green Property over a period of years, Mr Corcoran in his statement dated 13 November 2004, and in his evidence, claimed that, save for his recollection of having discharged a printing bill for Mr Lawlor during the course of an election campaign, any monies paid by Green Property to Mr Lawlor were for services rendered by him as a *'Consultant.'* Mr Corcoran, in his statement to the Tribunal variously described Mr Lawlor's relationship with Green Property Plc as that of a '*consultant development advisor/planning consultant*' and a '*planning consultant*.' In his later evidence to the Tribunal, Mr Corcoran appeared to resile from his earlier stated position, namely, that Mr Lawlor had acted as a planning consultant, when he said the following:

> *'Not so much the planning. He was more involved in the, in the infrastructure and the roads and services. I may have mentioned planning but I mean it wasn't. He wasn't involved in that. That was a matter – and any planning problems we had, they were dealt with, with the planning authority. And Gareth May was our town planning consultant and he was up and down to the planning office every other day dealing with planning application.'*

1.116 In his statement dated 3 November 2004 (in response to the Tribunal's letter dated 11 June 2004), Mr Corcoran said the following:

> *I found Liam Lawlor helpful and knowledgeable as to how to deal with planning applications and approaches to Local Authorities. He knew who*

[5] Mr Lawlor's relationship with this entity, a public house, and its principal Mr Fitzgerald is dealt with later in this part of the Report

to contact re road alignment, land acquisitions in Local Government and how generally to go about it.

1.117 Mr Corcoran said that he believed Mr Lawlor's '*consultancy services*' were largely provided in the context of the provision of infrastructural advice to Green Property, in the course of its endeavours associated with the development of a shopping centre at Blanchardstown. Notwithstanding his recollection of Mr Lawlor's provision of such consultancy services to Green Property, Mr Corcoran was unable to recall the details of specific payments made to Mr Lawlor, save that he acknowledged that the payments made to Economic Reports Ltd and to Comex Trading Corporation were in fact payments to Mr Lawlor. Mr Corcoran professed to have no specific recollection of these payments. Mr Corcoran stated that Mr Lawlor had always been paid by cheque and never in cash. He was not in a position to state whether Mr Lawlor had received only the two payments in respect of which documentary evidence has been produced to the Tribunal.

1.118 Mr Corcoran's belief was that Mr Lawlor was solely paid on foot of invoices produced by Mr Lawlor. No invoice to Green Property, whether from Economic Reports Limited, Comex Trading Corporation or otherwise, was discovered to the Tribunal, either by Mr Lawlor or by Green Property plc.

1.119 According to Mr Corcoran, '*spasmodic*' payments were made to Mr Lawlor. Mr Corcoran said that he, on behalf of the company, had no problem making the payments as Mr Corcoran believed that the company was getting *'good value'* from Mr Lawlor for its money. Mr Corcoran said that at no time had he negotiated with Mr Lawlor on price.

1.120 Mr Corcoran testified that invariably, when seeking payment, Mr Lawlor would arrive at Green Property's office in a chauffeur driven car. Mr Corcoran described Mr Lawlor's requests for payments in the following terms: '*He'd say I want a few bob and he'd produce this invoice but there was nothing regular about it*.' He described Mr Lawlor as: '*a very avaricious man and all he wanted was to get as much money as he could as quickly as he could whenever he could.*'

1.121 Notwithstanding documentary evidence being available only in respect of two payments by Green Property to Mr Lawlor, the Tribunal was satisfied that Mr Lawlor received other monies from Green Property. Indeed Mr Lawlor asserted as much in his June 2003 correspondence with the Tribunal. It was also the thrust of Mr Corcoran's evidence that Mr Lawlor was in fact the recipient of more than two payments from Green Property, howsoever they were paid or received by him. Both Mr McDowell and Mr McKenna acknowledged that further

payments could have been made given the fact that payments to Mr Lawlor were not documented in a transparent manner in the books of the company.

1.122 Contrary to Mr Corcoran's assertions that Mr Lawlor was remunerated as a '*consultant*' for his expertise and for providing infrastructural advice, the Tribunal was satisfied that Mr Lawlor was in reality being remunerated for using his influence, as a county councillor and a TD, to advance the Green Property's Blanchardstown Town Centre development, and which included steps designed to thwart the Quarryvale development (a rival development to Blanchardstown) or reduce in size its retail element.

1.123 Furthermore, in the period 1987 to 1993/1994 in particular, Green Property conducted a very intensive campaign of lobbying, at governmental and ministerial level, for tax designation status for its Blanchardstown Town Centre development. As a matter of probability the Tribunal believed, despite Mr Corcoran's protestations to the contrary, that the IR£13,953.50 paid to Mr Lawlor on 3 November 1988, was probably associated with this campaign.

1.124 The Tribunal was also satisfied that the payment of IR£10,000 made to Mr Lawlor via Comex on 22 February 1991, at a time when Mr Lawlor was an elected Councillor, was directly connected to the campaign that was then ongoing to rezone the Quarryvale lands from industrial to town centre and which was a proposal which was fiercely opposed by Mr Corcoran.

1.125 On 15 February 1991 the formal process of the Quarryvale rezoning campaign had commenced with the lodging by Cllr McGrath of a motion to rezone Quarryvale to *'Town Centre.'*

1.126 Mr Corcoran told the Tribunal that relations between himself and Mr Lawlor deteriorated following the successful Quarryvale rezoning vote of 16 May 1991.

1.127 The Tribunal rejected Mr Lawlor's assertion, made by him in correspondence with the Tribunal, that he was given '*political contributions*' by Mr Corcoran. Equally the Tribunal rejected Mr Corcoran's evidence that Green Property retained Mr Lawlor as a consultant or that Mr Lawlor provided consultancy services to Green Property. The Tribunal was satisfied that Mr Lawlor simply sought financial recompense for the use of his political influence, both as a councillor and as a TD, on behalf of Green Property, a request readily acceded to by Mr Corcoran.

1.128 Both Mr McDowell and Mr McKenna claimed not to have been aware of the fact that Mr Lawlor had been paid by Green Property in 1988 and 1991. It was common case that Mr Lawlor did not appear as a named payee, either as a recipient of political contributions or otherwise, in the books of Green Property plc. When Green Property provided information to the Revenue Commissioners in 1998 in relation to political contributions made by it, Mr Lawlor's name was not mentioned. None of the invoices grounding these payments to Mr Lawlor were furnished to the Tribunal.

1.129 The Tribunal was satisfied that Mr Corcoran, as Managing Director, had the freedom to deal with Mr Lawlor in an unorthodox business manner, in that payments were made by Green Property plc on foot of false invoices, in order to ensure that Mr Lawlor's identity would not be disclosed. Mr McDowell acknowledged that he co-signed cheques on many occasions at the request of Mr Corcoran without necessarily seeking details as to the nature of the payments.

1.130 While the evidence of Mr Corcoran was that Mr McKenna and Mr McDowell should have been aware in 1988 and 1991 of the payments made to Mr Lawlor (a suggestion denied by both of them), the Tribunal accepted that they may not have had such an awareness. It appeared quite clear that dealings with Mr Lawlor were conducted by Mr Corcoran.

1.131 At the time (February 1991) when Mr Lawlor received the IR£10,000 '*Comex'* payment and at a time when, according to Mr Corcoran, Mr Lawlor assured Mr Corcoran that Green Property had nothing to fear from the plans then being proposed by the promoters of the Quarryvale lands for a town centre development, Mr Lawlor was, for all intents and purposes, retained as Mr O'Callaghan's principal strategist in relation to the Quarryvale project. Less than one week prior to the receipt of IR£10,000 from Green Property, Mr Lawlor drafted and secured Cllr McGrath's signature to a Motion to *'dezone'* the Neilstown lands from Town Centre to Industrial and related uses, in an attempt to improve Mr O'Callaghan's /Barkhill's chance of securing Town Centre zoning status for Quarryvale.

1.132 Save for the IR£5,000 January 1991 '*Comex*' payment made by Mr Dunlop to Mr Lawlor supposedly in return for Mr Lawlor's promise to effect Mr Dunlop's introduction as the lobbyist for Quarryvale, Mr Lawlor, as of February 1991, had received no payments from Mr O'Callaghan. The Tribunal was nevertheless satisfied that Mr Lawlor at that time anticipated that his endeavours on behalf of Quarryvale would in time be rewarded by Mr O'Callaghan and/or Mr Dunlop (as proved to be the case).

1.133 The Tribunal was satisfied that Mr Lawlor's primary objective in his dealings both with Mr Corcoran and with Mr O'Callaghan and Mr Dunlop was to secure as much financial gain for himself as was possible.

MR LAWLOR AND INDUSTRIAL CONSULTANTS INTERNATIONAL LIMITED

1.134 Industrial Consultants International Limited was a company with its registered address at Harcourt Road, Dublin 2. It operated the business of providing consultancy services outside the jurisdiction and principally in Nigeria. Its principals included Mr Michael Quinn and Mr Brendan Cahill, both Directors of the company.

1.135 Documentation provided to the Tribunal by Mr Tom Roche of National Toll Roads (NTR) established that on 6 July 1990 NTR wrote a cheque in favour of '*Industrial Consultants*' for IR£44,150 on foot of an invoice dated 2 July 1990 by '*Industrial Consultant Associates*' with an address at '*22, Castle Road, Camberley, Surrey…*' The services for which the sum of IR£44,150 was invoiced were stated on the invoice to be as follows:

> '*Brief: Strategic study of the greater Dublin West Area.*
> *Analyse demographics for the 90's.*
> *Overview study of the National Investment plans for Spain and Portugal, relative to Roads Investment Programs.*'

1.136 Some three months later, on 1 October 1990, '*Industrial Consultants International Limited*' invoiced NTR for IR£30,000 in respect of '*advice provided in relation to Dublin Ring Road Project*' – an invoice subsequently discharged by NTR.

1.137 The ultimate beneficiary of both of those payments was certainly Mr Lawlor.

1.138 The payments made by NTR to '*Industrial Consultant Associates*' and '*Industrial Consultants International Limited*' were noted in the minutes of a NTR board meeting of 18 April 1991 in the following manner:

> *Various expenditures related to planned consultancy and other services, in respect of further tolling of the Dublin Ring Road, had been authorised by the Board during 1990. It was noted that the following expenditures had been made by West-Link Toll Bridge Limited in this regard:*
>
> - *9th February 1990 B. McCarthy & Associates IR£20,000*[6]
> - *24th May 1990 B. McCarthy & Associates IR£20,000*[6]
> - *6th July 1990 Industrial Consultants Associates IR£44,150*

- *1st August 1990 Shefran (Jersey) Limited IR£20,000*[6]
- *10th October 1990 Shefran (Jersey) Limited IR£60,000*[6]
- *1st November 1990 Industrial Consultants International Limited IR£30,000.*

1.139 In the course of evidence given by Mr Lawlor on Day 223 he described the payments made to him by NTR via '*Industrial Consultants*' as follows:

'*Well it was – they were political donations that I received and the late Tom Roche, when I was having trouble and bad publicity about difficulties with banks and so forth, offered to give me two contributions which the Tribunal is fully aware of. And as he wanted some invoices for the amounts and I had prepared feasibility studies for a cold storage project in Nigeria associated with a fish processing company in Killybegs and I issued two invoices because I had that company's head bills to National Toll Roads and that has been discovered to the Tribunal..*'

1.140 Asked by Tribunal Counsel on Day 223 as follows:

'*Yes now you have told us that you, as I understand it, at the request of the late Mr. Tom Roche, issued fake invoices using the notepaper of Industrial Consultants Limited of Middle Abbey Street in respect of two substantial payments that you received from Mr. Roche?'*

1.141 Mr Lawlor replied:

'What Mr. Roche said at the time was 'Look I will give you these contributions and I need some paperwork for the accounts' and I explained that I had been doing a feasibility study for Industrial Consultants and it was agreed that I would provide him with those two invoices.'

1.142 Mr Lawlor described the payments made by NTR to him as:

'...political donations. I probably gave some general advice about the demographics of West Dublin and so forth at the time Tom Roche was looking at the feasibility of the West-Link bridge and so forth.'

1.143 Subsequently in an Affidavit sworn by him on 21 January 2002 in relation to High Court proceedings taken by the Tribunal against him, Mr Lawlor, in addressing the fact that invoices from '*Industrial Consultant Associates*' and '*Industrial Consultants International Limited*' had been furnished to the Tribunal by Mr Roche, provided the following explanation:

[6]The payments to '*B. McCarthy & Associates*' and '*Shefran (Jersey) Limited*' were payments to Mr Dunlop. This issue is dealt with elsewhere in this Report

In relation to these invoices from Industrial Consultants Associates and Industrial Consultants International Limited, the position is as follows. During 1990 I had agreed, at the request of a friend of mine, Michael Quinn, to provide certain advice relating to the possibility of designing, constructing and operating low temperature cold storage facilities at various locations in Nigeria to receive Irish frozen fish products. Mr. Quinn carried on business through a number of corporate entities which included Industrial Consultant Associates, Industrial Consultants International Limited and Comex Trading Corporation. These businesses all had a presence at 22, Castle Road, Camberley, Surrey and had other business addresses elsewhere, including within the State. As it was convenient for Mr. Quinn that I would prepare correspondence for these companies, Mr. Quinn provided me with letter headed paper for these companies. I used this letter paper to prepare cold storage proposals and the like. However, in some cases, when I received political donations or contributions, the donors sought to be furnished with a business invoice against which they could make the donations. In the case of Mr. Roche I was asked to make the invoices out to National Toll Roads PLC. To comply with this request I generated the invoices exhibited by Ms. Howard for the sums in question using the letter paper referable to Industrial Consultants Associates and Industrial Consultant International Limited.

1.144 In the course of his evidence on Day 732 Mr Michael Quinn told the Tribunal that Industrial Consultants International Ltd had never traded in Ireland nor had it a client base in Ireland to whom it issued invoices. Mr Quinn stated categorically that Industrial Consultants International Ltd had never provided services for or invoiced NTR, nor had the company received any payments from NTR. It was also stated that Industrial Consultants International had never used the name Industrial Consultant Associates.

1.145 Mr Quinn maintained that insofar as Mr Lawlor had used the name of Industrial Consultants International Ltd to invoice third parties he had done so without his knowledge or authority. Mr Quinn maintained that Mr Lawlor had never prepared correspondence for his company, nor had Mr Lawlor ever been provided with the company's letterhead. Mr Quinn professed to have no knowledge as to how NTR came to make payments to Mr Lawlor in the name of Industrial Consultants International Ltd.

1.146 Mr Quinn told the Tribunal that while he was unable to assist it as to the provenance of the two invoices furnished by Mr Lawlor to NTR, he could confirm that the English address on both invoices was an address associated with an employee of Industrial Consultants International Limited. Moreover, the Swiss

address listed on the October 1990 invoice may have been a business address associated with a Nigerian General with whom Mr Quinn's company had done business.

MR LAWLOR'S FINANCIAL RELATIONSHIP WITH INDUSTRIAL CONSULTANTS INTERNATIONAL LIMITED

1.147 In his '*B42*' list, as furnished to the Tribunal on 29 January 2001, Mr Lawlor listed payments totalling IR£46,000 from '*Mr Michael Quinn*' in the 70s, 80s and 90s. In June 2003, in his Schedule 6 '*Political Contributions*' document, as provided to the Tribunal, Mr Lawlor attributed a total figure of IR£36,000 to '*Mick Quinn*' broken down as follows: 1992 £16,000, 1993 £20,000.

1.148 In the course of their respective testimonies, both Mr Quinn and Mr Cahill agreed that in the period 1992 to 1993 payments totalling IR£36,000 had been made to Mr Lawlor. The 1992 payments were:

- 31 August - IR£6,000;
- 23 September - IR£5,000
- 2 November - IR£5,000.
- The two 1993 payments of IR£10,000 each were made on 4 February and 13 April 1993 respectively.

1.149 On the issue of his company's payments to Mr Lawlor, the thrust of Mr Quinn's evidence to the Tribunal was that the payments had been made as monetary compensation for work Mr Lawlor was to do for the company, in addition to assisting Mr Lawlor at a time of financial hardship for Mr Lawlor. Mr Quinn made reference to Mr Lawlor having carried out feasibility studies for his company. Mr Lawlor also referred to such a study himself in evidence to the Tribunal in December 2000 and again referred to it in his January 2002 Affidavit.

1.150 The Tribunal however was satisfied that the circumstances in which Mr Lawlor was paid substantial monies by Industrial Consultants International Ltd in 1992 and 1993 were probably more accurately described by the evidence of Mr Cahill. On Day 732 the following exchange took place between Tribunal Counsel and Mr Cahill:

> '*Q: Were you aware of – can I ask you first of all, did you have an association with Mr. Lawlor - other personal friendship with Mr. Lawlor?*
>
> *A: I knew Mr. Lawlor from his occasional visits to the office, when he would come in, sometimes he would have spoken to Mick at home and would have mentioned the possibility of obtaining some money. He would then come into the office perhaps later on in the day and I would meet with him and talk with him then. Look forward to his visits, he was a very*

pleasant, very entertaining person indeed to come in, but he was always, in general, pushing for money.

Q: Yes. Is it the position that you would have – you would have regarded you and your company as not being obligated to pay any money to Mr. Lawlor?

A : Yes, yeah I would have thought so, yes.

Q: So is it fair to say then that the sums that you did pay Mr. Lawlor of IR£36,000 was as a result of requests for funding from Mr. Lawlor?

A: Yes. And the sequence of events there would have been – if I recall it right. First of all there would have been pressure for the money from Mr. Lawlor. The amounts, which would have been given on a particular date, would probably have been down to me because I'd have been trying to minimise, frankly, the exposure because our business is very cyclical and there can be great delays between receiving funds. It was then probably, at a later stage, that the actual allocation took place. In other words, the monies would have been paid and then the actual allocations probably arose when we'd have had somebody like Mr. Hender looking for invoices and so on, so as to know how to treat the payments properly in the accounts of the company. In the event those payments in both years were put down because I was able to check it out, as feasibility studies, both the initial amount of 16 and the second amount of 20.

Q: They were recorded as feasibility studies, is that right?

A : Both lots were recorded as feasibility studies and charged in that way.

Q: But they weren't recorded as political donations:

A : There was no mention of political donations whatsoever in the records of the company.

Q: But is it your evidence to the Tribunal that the monies were in fact paid following requests by Mr. Lawlor to assist him effectively?

A: That was the sequence of events. Yes, absolutely.

Q: Yes and insofar as Mr. Lawlor may have carried out some work for your company in terms of feasibility studies. That was really (irrelevant) *to the main issue as to why you paid him?*

A: Yes actually, there was only one feasibility study and that was in connection with cold storage. The other was actually to find a client or a company in Ireland who would be prepared to invest in a Nigerian company in mechanical and electrical work who wanted to expand their operations and he did come up with a suitable introduction and set up a meeting, which I attended. It didn't – in the end of it, it didn't develop into a transaction, but he did come up with a very good…

Q: Insofar as you have knowledge of the payments of the £36,000 to Mr. Lawlor, they relate to payments as a response to requests for funding from Mr. Lawlor, as opposed to payments for services rendered by Mr. Lawlor to your company?

A: Precisely. The sequence of events was that he was looking for the money in the first instance. There was a question then of allocating the fundings and the fact was that he had and did do both of those particular tasks for the company.'

COMEX TRADING CORPORATION/COMEX TRADING: (COMEX)

MR LAWLOR AND COMEX

1.151 Comex Trading Corporation featured on a number of occasions in the course of the Tribunal's public hearings, in relation to issues directly concerning Mr Lawlor (and Mr Niall Lawlor) and Mr Dunlop.

1.152 Mr Lawlor acknowledged using the name Comex/Comex Trading Corporation in the collection of money on a number of occasions and also acknowledged issuing bogus invoices in the name of that entity in order to facilitate the payment of money to him.

1.153 In the course of its public hearings, the Tribunal identified sums totalling IR£78,800, which were payments invoiced by and/or paid to Comex in circumstances where, in reality, the payments were sought by, and paid to Mr Lawlor. These included:

• Frank Dunlop & Associates Ltd	late January, 1991[7]	IR£5,000
• Green Properties Plc.	22 February, 1991	IR£10,000
• L & C Properties Limited (part of the Monarch Group)	16 October, 1990 (in two payments)	IR£56,300
• The Jones Group	30 July, 1991	IR£7,500

1.154 The Tribunal was satisfied that in all these instances Mr Lawlor used Comex for the purposes of providing a bogus invoice and to facilitate the payments of funds to him.

MR DUNLOP AND COMEX

1.155 The payment of IR£5,000 to Comex Trading Corporation in January 1991, by Mr Dunlop (and which was in reality a payment to Mr Lawlor), was not the only occasion that the Tribunal established a connection between Mr Dunlop and Comex.

1.156 There were references to transactions with Comex Trading Corporation in the books and records of Frank Dunlop & Associates Ltd for the accounting years ending 31 October 1990 and 31 October 1999.

1.157 An analysis of the audit working papers of Frank Dunlop & Associates Ltd revealed that in its audit for the year ended 31 October 1990 the firm's auditors, Coyle & Coyle, documented in its list of '*creditors'* amounts of stg£79,850 (in two tranches of stg£45,500 and stg£34,350) as being due to Comex Trading Corporation.

1.158 In their working papers for the year ended 31 October 1991 Mr Dunlop's accountants also attributed a lodgement of IR£86,605.21 made to the current account of Frank Dunlop & Associates Ltd on 31 October 1991 to Comex, and this attribution was recorded in the following manner:

> *Comex Trading Corporation stg £45,500 and £34,350 = 79850@ 92.2 £86,605.21.*

1.159 Mr Dunlop was asked to explain these large transactions to the Tribunal and to identify people behind the entity Comex Trading Corporation Limited. Mr Dunlop claimed that he was unable to provide any definite explanation and in essence pleaded ignorance of these transactions. No relevant bank documentation (other than the bank statement showing a credit of IR£86,605.21) was available to the Tribunal.

[7] Date in January 1991 unknown

1.160 With regard to the lodgement of IR£86,605.21 made to the Frank Dunlop & Associates Ltd current account on 31 October 1991, Mr Dunlop speculated that this lodgement may have been a re-lodgement of two tranches of money totalling IR£87,945.53 which had been withdrawn from Frank Dunlop & Associates Ltd by way of two bank drafts in August of 1991. This explanation appeared to the Tribunal as unlikely to be correct given that the sum withdrawn by way of drafts in August of 1991 (IR£87,945.53) did not equate with what was lodged on 31 October 1991 (IR£86,605.21). The origins of the IR£86,605.21 lodged to the current account of FD & A remained a mystery, other than that in the books of the firm it was attributed to *'Comex.'* Mr Dunlop was unable to assist the Tribunal as to whether contact between himself and Mr John Ahern of AIB on 31 October 1991 and again on 1 November 1991 (as noted in Mr Dunlop's diary) was connected with this transaction.

1.161 The Tribunal noted however the fact that Mr Dunlop's auditors recorded the IR£86,605.21 sum attributed to Comex under '*creditors*' as having its origins in two sums of sterling of £45,500 and £34,350 – sterling sums which equated with what was recorded as having been received by Frank Dunlop & Associates for the year ended 30 October 1990.

1.162 Mr Dunlop claimed not to be able to assist the Tribunal as to how Frank Dunlop & Associates came to credit Comex as being owed by Frank Dunlop & Associates a sterling sum of £79,850 by year end October 1990 or in the event that the IR£86,000 odd sum carried in the books of Frank Dunlop & Associates as owing to Comex for the year end October 1991 was not a carryover of the first sum, his firm had again by year end 1991 incurred a second debt to Comex.

1.163 Asked on Day 764 of what he knew of Comex Mr Dunlop replied as follows:

> '*Well, I know very little about Comex, and it has been the source of ongoing investigation by my accountants and solicitors and otherwise in relation to Comex. But in general terms I understood, have always understood, Comex to be some type of international trading advisory grouping, located somewhere in the main continent of Europe, either Switzerland or Austria or somewhere like that…'*

1.164 Previously, in the course of his private interview with the Tribunal Mr Dunlop stated that he had associated Comex with an individual '*Mick Quinn'* who was a friend of Mr Lawlor's.

1.165 Mr Dunlop further stated that he had never engaged in any business with Comex, nor had Comex had any business with him. He stated that the extent

of his association with Comex was his recollection of Comex '*in the context of headed notepaper'* and of writing a cheque to Comex '*in the context of Mr Liam Lawlor.'*

1.166 Mr Dunlop claimed that he did not know what Comex was or did. He claimed that he had never met anyone from Comex nor was he, Mr Dunlop, Comex. On Day 765 Mr Dunlop told the Tribunal that in his mind he had always associated Comex with Mr Lawlor (notwithstanding his earlier assertion at private interview that he associated Comex with Mr Mick Quinn).

1.167 Mr Dunlop was adamant that notwithstanding the attribution in the books of Frank Dunlop & Associates of Comex as a creditor from the year 1990, Mr Lawlor had not '*personally, corporately or otherwise or through others or with others, made any investment in Frank Dunlop & Associates or pay money into Frank Dunlop & Associates.'*According to Mr Dunlop, in respect of Mr Lawlor, '*the money was going the other way.'*

THE EVIDENCE OF MR QUINN IN RELATION TO A CLAIMED CONNECTION BY OTHERS ON HIS PART TO COMEX

1.168 Mr Lawlor and indeed Mr Dunlop (in his initial dealings with the Tribunal at least) maintained that Mr Quinn was '*Comex*', a suggestion vehemently denied by Mr Quinn. Save for Mr Lawlor's assertions and Mr Dunlop's evidence, no document or record was produced to the Tribunal which linked Comex to Mr Quinn.

1.169 Mr Quinn professed himself to have no idea as to how it was that Mr Lawlor or Mr Dunlop could inform the Tribunal that Comex Trading Corporation was a company in his ownership. Mr Quinn stated that he had no knowledge of Comex Trading Corporation.

1.170 Mr Quinn denied that the purported signature of '*M. Quinn for Comex Limited*', as appeared on the reverse of the Green Property cheque to Comex, was his signature. The Tribunal was satisfied that this signature was not that of Mr Quinn.

1.171 Mr Quinn professed himself to have no knowledge as to the circumstances in which Comex Trading Corporation appeared as a '*creditor*' in the books of Frank Dunlop & Associates Ltd from the year 1990, or of the circumstances in which a lodgement of IR£86,605.21 to the 067 Account of

Frank Dunlop & Associates Ltd on 31 October 1991 came to be attributed to '*Comex*' in the books and records of Frank Dunlop & Associates Ltd.

1.172 Mr Brendan Cahill similarly, in evidence, stated that he had no knowledge of or dealings with Comex.

DEALINGS BETWEEN MR QUINN AND MR DUNLOP IN THE YEARS 1990 TO 1993

1.173 Mr Quinn told the Tribunal that while he knew Mr Dunlop, neither he nor his company, Industrial Consultants International Limited, conducted any business with Mr Dunlop.

1.174 Mr Dunlop's diary for 16 October 1990 noted a scheduled meeting with Mr Quinn. There was a diaried meeting between the two men on 21 January 1991, eight days prior to the Frank Dunlop & Associates Ltd payment of IR£5,000 to '*Comex Trading Corporation*' having been lodged to Mr Niall Lawlor's account. A further meeting was diaried on 19 February 1991 between Mr Dunlop, Mr Quinn and '*KS*'(the latter described as a friend of Mr Quinn's since deceased). Three days later, Green Property paid Mr Lawlor a IR£10,000 cheque made payable to Comex.

1.175 Mr Dunlop's office records of telephone messages indicated that a substantial number of messages were left by Mr Quinn for Mr Dunlop in late 1991 and in 1992. There was again similar telephone contact made towards the end of 1992 and into 1993.

1.176 Mr Dunlop's office noted a message from Mr Quinn's company's accountant on 14 September 1992 as follows: '*Jim Hender,- Michael Quinn's office looking for an invoice.'* Mr Quinn suggested that this request probably referred to an invoice being sought in respect of a golf classic fundraising event. Mr Quinn reiterated that he had no commercial relationship with Mr Dunlop. Mr Quinn stated that Mr Hender's request to Frank Dunlop & Associates Ltd for an invoice was unconnected to payments of IR£6,000 and IR£5,000 which were made by Mr Quinn/his company to Mr Lawlor on 31 August and 23 September 1992 respectively and maintained that the invoice request had nothing to do with any reference to Comex in the books of Frank Dunlop & Associates Ltd.

1.177 Notwithstanding Mr Quinn's assertion that his relationship with Mr Dunlop was one of friendship only and involved no commercial element, the Tribunal was satisfied that their relationship embraced matters of a political nature, as was evidenced by Mr Quinn on 13 November 1992 (during the

currency of the 1992 General Election campaign) passing on documents to Mr Dunlop's office for transmission to Fianna Fail headquarters, and Mr Dunlop's subsequent note that Mr Quinn's documents had been '*passed by Taoiseach*.' Mr Quinn was unable to recall the nature of the documents in question save that he surmised that it may have been a position paper on energy. Mr Cahill suggested that the documentation transmitted to Fianna Fail headquarters had been a position paper prepared by an employee of Industrial Consultants International Ltd although he was unaware that Mr Dunlop had been used as the conduit of that information to the then Taoiseach.

1.178 Discovery made by Mr Dunlop to the Tribunal indicated that on 19 February 1992 Frank Dunlop & Associates Ltd invoiced '*Mick Quinn, Industrial Consultants*' for IR£625.02 for services as follows: '*To type setting and design of headed paper for the candidate' and 'to hire of office facilities*.' Mr Quinn did not recall the invoice nor the identity of '*the candidate*' referred to therein.

1.179 The Tribunal accepted Mr Quinn's assertion that he had no association with Comex. The background to Comex therefore remained a mystery to the Tribunal, save it was satisfied that Mr Lawlor and Mr Dunlop were linked to Comex.

1.180 The Tribunal rejected Mr Dunlop's denial of any knowledge on his part in relation to the substantial transactions in the accounts of his company Frank Dunlop & Associates Ltd in 1990 and 1991. Given the substantial size of the sums involved, the Tribunal rejected as incredible Mr Dunlop's claimed ignorance of the sums in question or the reason for the use of *'Comex.'*

MR LAWLOR AND GANLEY INTERNATIONAL LTD

1.181 British Company Office records established that Ganley International Ltd was a UK registered private limited company incorporated on 1 February 1994. The registered offices of Ganley International Ltd were located at 128 Mount Street, London. Its principals included Mr Declan Ganley and Mr Gary Hunter. In the course of his evidence to the Tribunal, Mr Ganley stated that in addition to being involved in Ganley International Ltd he was associated with two other companies – Anglo Adriatic Investment Company and Baltic Timber Products Ltd. Mr Ganley told the Tribunal that Baltic Timbers operated from the London address while Anglo Adriatic Investment Company was an Albanian company with a representative address at Mount Street, London.

1.182 Ganley International Ltd was a company involved in international business, primarily in the countries of the former Soviet Union and Eastern Europe.

1.183 In the course of his compliance with a High Court Order in 2000, Mr Lawlor advised the Tribunal that he operated as '*Long Associates*' (one of the entities used by Mr Lawlor to invoice companies / third parties) out of the offices of Ganley International Ltd and that he had used these offices extensively over a short number of years. Mr Lawlor told the Tribunal then that he would have discussed the matter with Mr Gary Hunter, a director of Ganley International Ltd, a claim denied by Mr Hunter in correspondence with the Tribunal. Mr Hunter, who was resident outside the jurisdiction, elected not to attend to give evidence to the Tribunal.

1.184 When asked in the course of his evidence if he knew that Mr Lawlor had carried on business from the Ganley Group offices in London, Mr Ganley replied '*it's news to me.'* Mr Ganley recollected only once meeting Mr Lawlor in London and that was on the occasion of a dinner hosted by Ganley International Ltd to which he had invited Mr Lawlor. It was his belief that this was the only occasion when Mr Lawlor was in his office.

1.185 Included in documents furnished to the Tribunal by Ulster Bank, on foot of discovery orders made by the Tribunal in respect of Mr Lawlor's bank accounts, was a facsimile to Ulster Bank dated 24 November 1998, purporting to be from '*Gary J. Hunter, Director*' of '*Long Consultants*' which related to the subject of '*Mr John Long.'* The faxed letterhead, as sent to Ulster Bank from '*Long Consultants*', gave a UK office address as '*26-28 Mount Row, London*' and gave also an Eastern European office address in the Czech Republic. The faxed letter was purportedly signed by '*Gary J. Hunter*.' It read as follows:

> *This letter is to confirm that Mr. John Long has had a major role in the Long Consultancy business, which was taken over by the Ganley Group. Mr. Long retired to Ireland and various funds will transfer from time to time to his bank account at Ulster Bank, Palmerstown, Dublin, Ireland.*

1.186 Mr Ganley told the Tribunal that he had never heard of '*Long Consultants*' until he was presented with the aforesaid documentation by the Tribunal. Mr Ganley claimed that the purported signature of Mr Gary J. Hunter was not the true signature of Mr Hunter.

1.187 Mr Ganley also told the Tribunal that neither he nor his company had any knowledge of a *'Long Consultants'* invoice provided to the Tribunal in Mr Lawlor's discovery, which invoice, addressed to a named property company, claimed

IR£46,104 for consultancy services and requested payment be made to '*Long Consultants, Ganley International Headquarters, 128 Mount Street, London…*'

THE GANLEY INTERNATIONAL LTD/ LIAM LAWLOR FINANCIAL DEALINGS[8]

1.188 Mr Ganley told the Tribunal that he first encountered Mr Lawlor when the latter '*gate-crashed*' the Ganley tent at the Galway Races. On becoming aware that Mr Lawlor was a Fianna Fail TD for Dublin, one of Mr Ganley's group invited Mr Lawlor to Mr Ganley's home on the following day for a post race-meeting function. Mr Lawlor told Mr Ganley that he was a member of the '*Trilateral Commission.*'[9] According to Mr Ganley, Mr Lawlor's membership of this body coincided with interests which he, Mr Ganley, had (via Anglo Adriatic Investment Company) in Albania. Mr Ganley told the Tribunal that on one occasion he and Mr Lawlor were in Albania at the same time and they met with members of the Albanian Cabinet. He said that Mr Lawlor had travelled on a number of occasions to Albania, at the behest of Ganley International Ltd, to lobby the Albanian Government to close certain *'pyramid'* schemes. Mr Ganley also stated that Mr Lawlor, on the company's behalf, had introduced international delegations to the IDA, Aer Rianta and ESB International.

1.189 Mr Ganley believed that his company had made total payments in the region of IR£25,000 to IR£30,000 to Mr Lawlor for his services and expenses.

1.190 In the course of correspondence with the Tribunal in January 2001 and again in 2003 Mr Lawlor acknowledged that he had received payments totalling IR£30,000 from Ganley International Ltd during the 1990s. Mr Lawlor's discovery to the Tribunal included a communication from Mr Lawlor of 16 July 1996 to Mr Gary Hunter directing that IR£22,600.17 be transferred to an account held at the Naas branch of National Irish Bank, broken down as follows:

(i) IR£20,000

(ii) IR£2,423 described as balance due to Mr Lawlor of $10,000 owing

(iii)Together with a further sum of IR£177.17 described as the balance of expenses due of IR£577.17.

[8] The Tribunal also considered a 'Ganley International Ltd' invoice used by Mr Lawlor in Chapter Two (Part 9).

[9] The Trilateral Commission was originally created in 1973 to bring together experienced leaders within the private sector to discuss issues of global concern at a time when communication and cooperation between Europe, North America and Asia were lacking.

1.191 On the document, as sent by fax to Mr Hunter on 16 July 1996, reference was made to *'Declan'* having already paid US$6,100 of the US$10,000 owing and having paid IR£400 of the expenses sum owing to Mr Lawlor.

1.192 Included also in Mr Lawlor's discovery, as furnished to the Tribunal, was an undated invoice headed '*Eastern International Ltd*' with an address in Prague, Czech Republic which read as follows:

To consultancy work in Eastern Europe
To carrying out studies as requested.
The agreed fee of $10,000.

1.193 Mr Lawlor's documentation also revealed that on 8 August 1996 he requested a transfer of IR£3,519.60 from Mr Gary Hunter of Ganley International Ltd by way of monies due in respect of the costs of an '*Albanian delegation visit to Dublin July 29th to August 2nd.'*

1.194 While Mr Ganley believed that the 16 July and 8 August 1996 communications from Mr Lawlor were the documents on foot of which Mr Lawlor was paid by Ganley International Ltd, he claimed that no invoice from '*Eastern European Ltd'* had ever been produced to Ganley International Ltd by Mr Lawlor and that he knew nothing about it.

1.195 As already referred to, it appeared to the Tribunal that Mr Lawlor was possessed of an ability to utilise contacts he had with companies and businesses (including Mr Ganley's) in such manner as to be in a position to 'adopt' certain details pertaining to these businesses and then apply that detail to facilitate financial reward for himself. Long before his use of the Ganley invoice, Mr Lawlor demonstrated this ability when he invoiced NTR in the name of '*Industrial Consultants Associates*' and '*Industrial Consultants International Ltd.'*

MR LAWLOR AND ECONOMIC REPORTS LIMITED

1.196 Mr Lawlor told the Tribunal that Economic Reports Ltd was established with the intention that it be engaged in carrying out consultancy work. In fact it never engaged in any such activity. Its directors were Mr Lawlor and Mr Lawlor believed, his wife, Mrs Hazel Lawlor.

1.197 Mr Lawlor operated bank accounts in the name of Economic Reports Ltd, two with Bank of Ireland, Lucan, and two loan accounts with Bank of Nova Scotia, Dublin.

1.198 Mr Lawlor told the Tribunal that a loan advanced to Economic Reports Ltd by Bank of Nova Scotia was used *'to discharge accounts and debts and so forth...'*

FINANCIAL TRANSACTIONS INVOLVING MR LAWLOR AND MR NIALL LAWLOR WITH MR LOUIS FITZGERALD AND COMPANIES ASSOCIATED WITH MR FITZGERALD

1.199 In September 2002 Mr Lawlor furnished the Tribunal with documentation which purported to provide explanations as to the source of a series of lodgements (all in excess of IR£1,000) made to accounts held in the name of his son Mr Niall Lawlor.

1.200 In one document entitled '*Niall Lawlor 1992 response to queries arising over £1,000*' the late Mr Lawlor attributed '*Palmerstown House*' and/or '*Bigger Staff Services Limited*' as the source of seven lodgements which had been made to the AIB Grafton Street account of Niall Lawlor in the months of February and March 1992. The lodgements ranged from IR£2,000 to IR£16,000.

1.201 Returned paid cheques provided to the Tribunal established that Mr Niall Lawlor wrote a series of cheques drawn on his AIB Grafton Street Account payable either to *'Palmerstown House'* or *'Bigger Staff Services Limited'* as follows:

- 7 February 1992 - IR£2,000
- 18 February 1992 - IR£4,000
- 20 February 1992 - IR£6,000
- 24 February 1992 - IR£7,000
- 27 February 1992 - IR£8,000
- 2 March 1992 - IR£16,000
- 4 March 1993 - IR£16,000

All of which sums were subsequently debited from Mr Niall Lawlor's account. Mr Lawlor told the Tribunal that all of the cheques had been cashed at the Palmerstown House Public House and the proceeds then immediately lodged to Mr Niall Lawlor's AIB Grafton Street account save that, with regard to three of the cheques, the sums lodged were IR£1,000 less than the encashed proceeds.

1.202 An analysis of Mr Niall Lawlor's account established that with regard to each individual cheque written by him in the period in question there were insufficient funds in the account to meet the cheques, save for the lodgements (said to be the encashed proceeds of the cheques) made by him on the same days the cheques were written. In all, on the assumption that the lodgements to

Mr Niall Lawlor's account were the encashed proceeds of the aforesaid cheques, Mr Niall Lawlor cashed cheques to the value of IR£59,000 and lodged back to his account some IR£56,000 of the proceeds.

1.203 No explanation was furnished to the Tribunal as to why Mr Niall Lawlor cashed a series of cheques at Palmerstown House and then lodged the proceeds back to his account. It appeared to the Tribunal that this process had no logical purpose, and was suspicious.

1.204 Bank records available to the Tribunal established that none of the cheques payable to Palmerstown House or Bigger Staff Services Limited for which Mr Niall Lawlor had received value from Palmerstown House (according to Mr Liam Lawlor) were lodged to any account connected with these businesses.

1.205 Mr Louis Fitzgerald, the proprietor of the Palmerstown House, told the Tribunal that while he was aware that on occasions cheques were cashed for Mr Lawlor at his licensed premises, he, Mr Fitzgerald did not have any knowledge of the individual transactions queried by the Tribunal.

1.206 On 2 October 2007 Mr Fitzgerald's solicitors, in response to queries raised by the Tribunal provided the following explanation for the fact that in the accounts of Palmerstown House/Bigger Staff Services Limited there was no evidence of Mr Niall Lawlor's cheques having been lodged:

> '*Given the substantial value of cheques presented, there was frequently insufficient cash on the premises to match the amount on the cheques that were presented;*
>
> *An arrangement was made with the local Ulster Bank branch whereby the Manager of the Palmerstown House – Mr. Luke Byrne – on being presented with a cheque to be cashed by Niall/Liam Lawlor would call to the local Ulster Bank branch and present this cheque to be cashed. Ulster Bank would then pay over the cash equivalent to Mr. Byrne who would return to the premises and hand over the cash to Niall Lawlor or Liam Lawlor. In these circumstances, the cheques were not lodged to a Palmerstown House Account.*'

1.207 While such explanation was given for the absence of any reference to the Niall Lawlor cheque transactions appearing in the accounts of Palmerstown House, the Tribunal was left no wiser as to the reason why Mr Niall Lawlor engaged in the aforesaid transactions.

1.208 In his evidence to the Tribunal Mr Fitzgerald, who described Mr Lawlor as a good customer of his Palmerstown House Pub, restaurant, and off license business, claimed to have engaged in only one financial transaction with Mr Lawlor, namely the provision to him of a IR£15,000 loan in the early to mid 1990s, a time when Mr Lawlor, according to Mr Fitzgerald, was experiencing difficulties with his own bank. Mr Fitzgerald may also have given Mr Lawlor a donation of IR£500 in 1989.

1.209 According to Mr Fitzgerald, Mr Lawlor requested him to cash a cheque for IR£15,000 and as he did not have sufficient cash funds to hand he provided Mr Lawlor with a cheque for IR£15,000, in return for Mr Lawlor providing Mr Fitzgerald with a post dated cheque. Documentation discovered to the Tribunal by Mr Lawlor established that on 20 April 1992 Mr Fitzgerald wrote a cheque for IR£15,000 to '*cash*' for which Mr Lawlor received value on 27 April 1992.

1.210 Mr Fitzgerald claimed that when he presented Mr Lawlor's post-dated cheque for payment in 1992 it was returned unpaid. No copy of this cheque was made available to the Tribunal.

1.211 The Tribunal had sight of a cheque dated 2 February 1995 for IR£15,000 payable to '*cash*' drawn on an account of Mr Lawlor, said by Mr Fitzgerald to be Mr Lawlor's purported repayment of the IR£15,000 advance. On two occasions, probably in February 1995 and on 26 July 1995 this cheque was returned unpaid and marked '*refer to drawer*.' Mr Fitzgerald claimed that, following correspondence having been initiated by his solicitors on 20 July 1995 with solicitors for Mr Lawlor, Mr Lawlor repaid the outstanding IR£15,000 on a piece meal basis. Mr Fitzgerald was unable to provide any evidence of Mr Lawlor's repayment.

MR LAWLOR AND LONG CONSULTANTS/LONG ASSOCIATES

1.212 Mr Lawlor informed the Tribunal in correspondence that he used invoices headed '*Long Consultants*' or '*Long Associates*' in order to raise funds.

1.213 According to Mr Lawlor, Long Associates was a consultancy business which operated from an address in England used by the Ganley Group. It was neither registered as a business or a company, nor was it registered for VAT. It did not operate a bank account. He maintained he used the company name to provide advices to three or four customers but could not recall the nature of those services.

1.214 Mr Lawlor advised that Long Consultants and Long Associates (along with Economic Reports and Eastern International) were interchangeable for invoicing purposes, and were deployed by him for the purposes of receiving a '*contribution.*'

1.215 Mr Lawlor said he invoiced Mr Dunlop using these entities because it was '*convenient'* and because he was '*using that office'* and '*travelling back and forth through London to Prague and Tirana.'*

BALTIC TIMBER PRODUCTS LTD

1.216 Mr Seamus Ross (of Menolly Homes Ltd) told the Tribunal that following efforts which he claimed were made by Mr Lawlor to persuade the postal authorities to extend a postal district to include lands on which Mr Ross was constructing houses in West County Dublin (and thereby, he believed, enhance their sale value), he agreed to pay IR£20,000 to Mr Lawlor. He duly paid the sum on foot of an invoice in the amount of IR£20,002.79 provided to him by Mr Lawlor in the name of the Baltic Timber Products Ltd. Mr Lawlor had no known connection to that company.

1.217 The invoice provided to the Tribunal by Mr Ross was headed Baltic Timber Products Ltd, with a London address. It was dated 26 June 1996 and was marked paid on 8 July 1996. The description on the invoice referred to a quantity of *'Latvian sawn softwood.'* Mr Ross told the Tribunal that he never purchased timber from Baltic Timber Products Ltd, and had never heard of the company, save for its name on the invoice.

1.218 In a letter to the Tribunal dated 17 September 2004, Mr Lawlor took issue with the manner in which the Tribunal had examined Mr Ross in public. In the course of this letter, Mr Lawlor acknowledged that he did contact An Post in 1995 requesting confirmation that the proposed new parish of Lucan South would '*be served by the Lucan sorting office.'* Mr Lawlor said that some weeks later An Post wrote to him and confirmed that the area in question would be served by the Lucan sorting office. Mr Lawlor denied that he requested An Post to alter its postal districts. Mr Lawlor maintained that the issue which led to his writing to An Post for the aforesaid confirmation arose as a result of him being approached by Mr Ross and other constituents in relation to the matter in the summer of 1995. Mr Lawlor contended that '*any payments made to me by Mr Ross were solely for political and constituency purposes*.'

1.219 In a further letter from Mr Lawlor to the Tribunal dated 4 February 2005, he dealt specifically with Mr Ross's allegation (as summarised by Mr Lawlor in his

letter) that: '*In July 1996. Menolly Homes cheque for IR£20,002.79 paid on a Baltic Timber Products Ltd invoice.'* Mr Lawlor stated that it was his recollection that he had received approximately IR£25,000 from Mr Ross and that '*this could comprise the IR£20,000 + cheque from Menolly Homes and IR£5,000 cash.'* The Tribunal understood this to have been an acknowledgement on Mr Lawlor's part that the Menolly Homes cheque for IR£20,002.79 paid on foot of a Baltic Timber Products Ltd invoice was indeed paid to and received by Mr Lawlor.

1.220 There was no allegation of impropriety on the part of An Post nor was there any allegation made that Mr Lawlor had offered or paid any money to An Post in relation to the matter. The relevance of Mr Ross's evidence related solely to the Tribunal's inquiries into the use of false or bogus invoices by Mr Lawlor to developers for the purposes of facilitating the payment of money to himself at a time when he was an elected public representative.

MR AMBROSE KELLY AND MR LAWLOR

1.221 According to Mr Kelly, he became acquainted with Mr Lawlor in or about September 1991 in relation to a matter which Mr Kelly claimed was unconnected to the Quarryvale project. Notwithstanding this evidence, it was common case that Mr Kelly was retained by Mr O'Callaghan in early 1991 relating to Quarryvale, at a time when Mr Lawlor was heavily involved with Mr O'Callaghan in the Quarryvale rezoning project. Whether or not Mr Kelly met Mr Lawlor in early 1991, it was the case that Mr Kelly's involvement in Quarryvale was certainly known to Mr Lawlor as early as February 1991, as was evidenced from communication passing between Mr Lawlor and Mr O'Callaghan at that time.

1.222 In the course of his evidence, Mr Kelly acknowledged the role played by Mr Lawlor in relation to the '*Stadium*' project which had been envisaged for the Neilstown lands, a project in respect of which it had been proposed that Mr Kelly, together with Mr Lawlor, Mr Dunlop and Mr O'Callaghan was to have a shareholding.[10]

1.223 Mr Kelly described Mr Lawlor, both when he was a councillor and subsequently, as a person who exercised influence on councillors – influence which '*could be good or could be bad*.' Mr Lawlor's influence could, according to Mr Kelly, manifest itself by Mr Lawlor disrupting the potential of getting a development scheme through the County Council. Equally, Mr Lawlor had the ability to exert his influence to promote a development scheme within Dublin

[10] See Part Six of Chapter Two

County Council. Mr Lawlor, Mr Kelly claimed, had retained his position of influence even after he had lost his Council seat in 1991. Mr Kelly agreed with a suggestion from Tribunal Counsel that it was important to keep Mr Lawlor '*on side at all times*.'Mr Kelly acknowledged that his client, Mr O'Callaghan, had also been conscious of the need to keep Mr Lawlor '*on side*.'

1.224 Asked to explain the way in which Mr Lawlor could be obstructive to a project Mr Kelly stated as follows:

> '*He was a strong political machine. He produced a lot of documentation, a lot of paper and took a lot of meetings and met a lot of people and was quite articulate at speaking and could be quite a powerful force in just verbal conversation and debate.*'

1.225 Mr Kelly said that Mr Lawlor, although no longer an elected member of the Council:

> '*...still had the same ability to speak very well on subjects and put arguments up and debate subjects whether he was a member of the Council or not. And of course the fact that he wasn't a member of the Council, he was still the elected TD for that district or for that area.*' Mr Lawlor '*could turn the* (political) *machine for or against depending on his stance that he took on the project*.'

FINANCIAL DEALINGS BETWEEN MR LAWLOR AND MR KELLY – THE PRAGUE CONNECTION

1.226 During the period in which Mr Kelly and Mr Lawlor worked together as part of Mr O'Callaghan's strategic team for the progressing of the Quarryvale rezoning and the Neilstown lands Stadium Project, Mr Lawlor, independently of the foregoing, was engaged in a commercial relationship with Mr Kelly and/or companies associated with him.

1.227 In the early 1990s Mr Kelly said he started a small business in Prague with the intention of extending his business into Central Europe particularly in the development of shopping centres.

1.228 According to Mr Kelly, he told Mr Lawlor of his plans and Mr Lawlor volunteered to go to Prague to '*motivate*' Mr Kelly's team there. Mr Lawlor's visits to Prague were on a fee paying consultancy basis.

1.229 Questioned as to what Mr Lawlor might have brought to Mr Kelly's European venture, Mr Kelly stated that Mr Lawlor's expertise was bringing people together. Mr Kelly told the Tribunal that he did not know whether Mr Lawlor had any other interest in Prague prior to his retention by Mr Kelly as a consultant.

1.230 Mr Kelly acknowledged that Mr Lawlor claimed an interest in his Prague project and that he claimed to have been entitled to a share in the business – an issue Mr Kelly described as a '*hypothetical question*' as nothing had come of it because Mr Kelly's Prague project '*fell asunder*.'

PAYMENTS MADE TO MR LAWLOR BY MR KELLY

1.231 Mr Kelly stated that following their agreement that Mr Lawlor would be remunerated for his consultancy work in Prague, Mr Lawlor received a series of payments from companies associated with Mr Kelly. Mr Kelly said that he could not recall any detail relating to these payments.

1.232 Documentation provided to the Tribunal by Mr Lawlor established that between December 1993, and April 1995, Mr Lawlor received a total of IR£50,083.22 from companies associated with Mr Kelly - IR£3,000 in 1993, IR£34,740.08 in 1994, and IR£12,343.14 in 1995. The majority of the payments made to Mr Lawlor were round-figure payments ranging from IR£1,000 to IR£2,500. While the documentation suggested that some cheque payments had been made to Mr Lawlor, the majority of the entries documenting the payments were non-specific as to the mode of payment. Mr Kelly said that he could not say if Mr Lawlor had been paid by cheque or in cash, although he claimed that Mr Lawlor had always signed for such payments.

1.233 While the Tribunal heard evidence of Mr Lawlor's ability to produce invoices in other instances (unconnected to Mr Kelly) to facilitate money being paid to him by third parties, there was no evidence produced to the Tribunal that Mr Lawlor had invoiced Mr Kelly or his companies.

THE TRIBUNAL'S GENERAL CONCLUSIONS RELATING TO MR LAWLOR

These conclusions of the Tribunal should be read in conjunction with findings elsewhere in the Report relating to Mr Lawlor.

i. The Tribunal was satisfied that Mr Lawlor abused his role as an elected public representative (in his capacity both as an elected councillor until June 1991, and as an elected TD representing the Dail Constituency of Dublin West) to a very significant degree, in that during the period of the late 1980s, and the 1990s, he provided services and advice to landowners/developers (including Mr Dunlop as their agent) in his capacity as an elected politician for personal gain. In effect, Mr Lawlor conducted a personal business in the course of which he corruptly sold his expertise, knowledge and influence as a councillor, and as a TD, for personal financial reward.

ii. The Tribunal was satisfied that decisions were made, on occasion, by developers/landowners (or Mr Dunlop as their agent) to pay Mr Lawlor for 'consultancy' services, in relation to the rezoning or development of their lands. This was not simply to have the benefit of his undoubted knowledge of the planning process and the influence he undoubtedly exerted over councillors, both as a councillor and as a TD, but was also to allay concern on the part of developers that a failure to engage with Mr Lawlor in this manner might result in a failure to have their property rezoned, or otherwise dealt with in the course of the planning process.

iii. Mr Lawlor's close involvement with landowners/developers (and particularly with Mr Dunlop as their agent) and his frequent demands for and receipt of substantial sums of money from them in the late 1980s and throughout the 1990s, coupled with his propensity to use false and fictitious business names and/or invoices to facilitate such payments, rendered Mr Lawlor hopelessly compromised in the required disinterested performance of his public duties as an elected public representative.

CHAPTER SIXTEEN – MR LIAM LAWLOR

EXHIBITS

1. Letter from Andrew J Haynes to Mr Lawlor dated 30 October 2000..... 2442

2. Cheque dated November 1988 from Green Property to Economic Reports Ltd for IR£13,953..... 2443

3. Letter from Dermot P Coyne to Tribunal dated 1 May 2002..... 2444

4. Cheque dated 22 February 1991 from Green Property to Comex Trading Corp for IR£10,000..... 2445

5. Lodgement docket dated 27 February 1991 to account of Niall Lawlor of IR£10,000 with National Irish Bank..... 2446

6. Invoice dated 2 July 1990 from Industrial Consultant Associates to National Toll Roads PLC for IR£44,150..... 2447

7. Fax dated 23 November 1998 from Long Consultants and signed by 'Gary J Hunter' director..... 2448

8. Undated invoice from Long Consultants, Ganley International Head office for IR£46,104..... 2449

9. Fax dated 16 July 1996 from Mr Lawlor to Mr Hunter seeking transfer of IR£22,600.17 to designated account at National Irish Bank..... 2450

10. Fax dated 8 August 1996 from Mr Lawlor to Mr Hunter enclosing costs of IR£3519.60..... 2451

11. Invoice dated 26 June 1996 from Baltic Timber Products Ltd to Menolly Ltd for IR£20,002.79..... 2453

TOTAL P.

ANDREW J HAYNES
Barrister-at-Law

2/3b Horse Barrack Lane, P.O. Box 156, GIBRALTAR
Telephone: 74261 Telefax: 72137
e-mail: andrew-haynes@gibnynex.gi

30th October 2000

Liam Lawlor Esq,
Somerton House,
Lucan,
Co. Dublin
Eire

Dear Mr Lawlor

Loan Repayment

We act for the directors of Long Water Investments Limited ("the Company") and are instructed that the date for repayment of the loan to you from the Company has now passed. We are further instructed that the balance of capital and interest repayable as at the date of repayment, being 30th September 2000, amounts to £1,111,023.81 (as per attached copy statement) and that interest continues to accrue at the rate of £456.59 per day.

Please arrange for payment of the overdue amount together with interest thereon to be made forthwith to the following account:

Bank: Barclays Bank plc
84/90 Main Street
Gibraltar

Account name: Andrew Haynes Clients Account

Account no: 7135488

Sort Code: 23-33-74

Yours sincerely

PENNY MACEWEN

91

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lodgement
3 Nov 88

Year 1988
NO: 73
TAB 40

⑈301537⑈ 90⑆0017⑆ 10049924⑈ 02

[redacted]

ST STEPHEN'S GREEN DUBLIN 2 90-00-84

Bank of Irela

ober 3, 1988

Economic Reports Ltd.

rteen thousand nine hundred and fifty three pounds - 50p

IR£ 13,953---------

GREEN PROPERTY COMPAN

⑈000147⑈ 90⑆0084⑆ 76757157⑈ 02

[redacted]

Tab 57
Page 8

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PLANNING AND PAYMENTS TRIBUNAL
02 MAY 2002
RECEIVED

DERMOT P. COYNE
SOLICITORS

LIFFEY BRIDGE HOUSE,
1 MAIN STREET, LUCAN, CO. DUBLIN.
(ALSO AT 3 CORNER PARK, MAIN STREET, NEWCASTLE, CO. DUBLIN)

D.P.C

TELEPHONE:
01 - 628 1000

FACSIMILE:
01 - 628 1231

E-MAIL:
dpc@indigo.ie

www.firstlegal.ie

DX LUCAN:
102 001

Our Ref: 003.2215/DPC/AB
Your Ref: PTB/61/S4

1 May 2002

Tribunal of Inquiry into Certain
Planning Matters and Payments
State Apartments
Upper Castle Yard
Dublin Castle
Dublin 2

FAO Maire Anne Howard
Re: The Honourable Mr. Justice Feargus M. Flood, Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments -v- Liam Lawlor

Dear Madam

We refer to your letter of the 13th March, 2002 in relation to Invoices issued by our client. We are advised by Mr. Lawlor that the following is a list of names used by him for the purposes of creating Invoices:

a. Industrial Consultants International
b. Comex Limited
c. Economic Reports
d. Eastern International
e. Long Consultants
f. Long Associates
g. Advanced Proteins Limited
h. Demographic and Strategic Consultants

Mr. Lawlor advises that the following entities received or may have received Invoices under the above Titles:

a. National Toll Roads
b. Frank Dunlop & Associates
c. Monarc Properties
d. Ganley International
e. Lark Developments
f. Arlington Securities plc
g. Menolly Homes Limited
h. Ballymore Properties Limited
i. Jones Group Limited
j. Dwyer Nolan Limited
k. Rotary

Yours faithfully

Dermot P Coyne

DERMOT P. COYNE, SOLICITOR, B.C.L., DIP. P. TAX
MIRIAM CARR, ANN BENSON (DIP LEGAL STUDIES)
LISA EDWARDS (LEGAL EXECUTIVES), PHIL O'ROURKE (ACCOUNTS).

Return to report

GREEN PROPERTY plc

05-15-50

National Irish Bank
138 Lr. Baggot St. Dublin 2.

DATE 22029 | PAY TO THE ORDER OF Comex Trading Corp

AMOUNT IN WORDS: HUND THOUSANDS ZERO | TEN THOUSANDS ONE | THOUSANDS ZERO | HUNDRENS ZERO | TENS ZERO | UNITS ZERO

AMOUNT IR£ IR£***10000.00

For and on behalf of GREEN PROPERTY plc

National Irish Bank Ltd. TELLER No. 4 25 FEB 1991

"002759" 95"4550: 9106596" 02"00001000000"

26 FEB 1991 Allied Irish Banks

28/02/91

113/592935/02

592935

10-12-91

National Irish Bank

Branch: S.C.R.D.

CURRENT ACCOUNT LODGMENT

Cashier's Brand & Initials

Date 27/2/1991

No. of Cheques

CASH

Account Name: WILLIAM A LAWLOR

Paid in by: William Lawlor

Account Number: 9 1 1 0 1 9 8 6

IR£ Large Notes		
IR£20 Notes	8000	—
IR£10 Notes	2000	—
IR£5 Notes		
IR£1 Notes		
IR£1 Coin		
50p		
Silver		
Bronze		
Cash	IR£10,000	—
Cheques	IR£	
Total	IR£10,000	—

34 - 1991

C7

MARKED 6

1 AIB 12

Industrial Consultant Associates

22 Castle Road, Camberley
Surrey GU15 2DS, England
Tel: 0276 66810

National Toll Roads PLC.,
Toll Plaza,
Castleknock,
Dublin 15.

Attention: Mr. Thomas Roche, Managing Director.

Date: July 2nd., 1990

Invoice Reference : Study Irl.808

Brief:

Strategic study of the Greater Dublin West Area.
Analyse demographics for the 90's.

Overview study of the National Investment Plans for Spain and Portugal, relative to Roads Investment Programmes.

To Amount Agreed

£ 44,150.00 Ir.
(Irish Punts)

1/

Payment Terms:

On presentation of documentation.

POSTED	JUL 90
A/c. NAME	R Road
A/c. No:	F 10.6
PASSED	J. Roche

Return to report

'98-11-24 15:45 UB.LL 5.4 - 38 P.2

Ulster Bank Palmerstown Dublin
24 NOV 1998
Received
98-NOV-24 15:45

LONG CONSULTANTS

U.K. Offices
26-28 Mount Row,
London W1Y 5DA
United Kingdom.
Tel: + 44 (0) 171 4931955
Fax: + 44 (0) 171 4931944

Eastern Europe Offices:
Prague - Dukelskych hrdinu 968/9
Czech Republic.
Tel/Fax: + (42) 02 804535

Date: November 23.1998

This letter is to confirm that Mr John Long has had a major role in the Long Consultancy business, which was taken over by the Ganley Group. Mr Long retired to Ireland and various funds will transfer from time to time to his bank account at Ulster Bank, Palmerstown, Dublin, Ireland.

Signed :

Gary Hunter
Director

Registered in G UK - 124514
Directors: G. Hunter, D.Ganley

Return to report

'02-01-22 18:20 P.2

LONG CONSULTANTS

26-28 Mount Row,
London W1Y 5DA
United Kingdom.
Tel: + 44 (0) 171 4931955/ Fax: + 44 (0) 171 4931944

Eastern Europe Office: Prague Dukelskych hrdinu 968/3, Praha 7, Holesovice 170 00
Tel/Fax: + (42) 02 804538

INVOICE NO 29518

T: Lark Developments Ltd,
Old Lucan Road,
Lucan,
Co Dublin

TO CONSULTANCY

Final payment, as agreed, regarding UK and European property development opportunities as requested.

We trust the schedule of projects provided will identify development opportunities for your company.

On your further instructions, we will pursue the individual projects you wish to target for acquisition and development.

TO FINAL PAYMENT (payment in Irish Punts, as agreed)	£46,104.00
	£46,104.00

Payment to: -
Long Consultants,
Ganley International Head Office,
128 Mount Street,
London W1Y 5HA,
U.K.

Chairman: Mr P Long
'A Ganley Associated Consultancy'

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'96-07-16 11:58 - - -

AA96/063

Somerton
Lucan
Co Dublin
Tel: 00-353-1-6280507
Fax: 00-353-1-6241842

To: *Mr Gary Hunter*

From: *Liam A Lawlor*

Date: *August 08.1996*

Attached are the costs incurred during the visit to Ireland of the Albanian Delegation.

Can you please transfer the funds to the following Bank Account:

National Irish Bank
33 North Main Street
Naas
Co Kildare

A/C Name *L & S Lawlor*

Sorting Code *96 1699*

Account No *010 16237*

RECEIVED
13 AUG 1996
10

Liam A Lawlor
l/ay

21

ALBANIAN DELEGATION VISIT TO DUBLIN
JULY 29TH - AUGUST 2ND

1.	Berkeley Court Hotel (Accommodation & Banqueting) (Copy of cheque issued, attached)	£ 2705.80	② 1·559 4,218·34
2.	Gifts for the Visitors	£ 201.25	313·75
3.	Mr & Mrs Vrioni - Lunch	£ 112.55	175·47
4.	Secretarial Services Telephone/Faxes etc.	£ 500.00	779·50
	Total Amount Due	£ 3519.60	5,487·06

RECEIVED
13 AUG 1996

28

3769

Baltic Timber Products Ltd.

INVOICE

P O Box 2292
London W1Y 5HA
United Kingdom
Tel: 44 (0)171 491 0441
Fax: 44 (0)171 491 0442

Invoice No: BTP96006
Date: 26th June 1996
VAT No: 674 8737 79

To: Menolly Ltd
The Village
Lucan
Dublin
Ireland

PACKS	QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
		Latvian sawn softwood as per		
		Contract No: BTP/96/006 dated 22-06-96		
		Loaded on "Omskiy 125" at Riga port, Latvia.		
		To FOM Drogheda, Ireland.		
26	40.580m3	42mm x 200mm		
10	18.523m3	42mm x 225mm		
23	39.103m3	73mm x 200mm		
45	72.758m3	73mm x 225mm		
104	170.964m3	Total	I£117:00	I£20,002:79

Sub Total	I£20,002:79Irish
VAT@ %	NIL
TOTAL	I£20,002:79Irish

pd 8/7/96

E&OE

PAYMENT DUE 7 DAYS OF B/L TO:

BALTIC TIMBER PRODUCTS LIMITED
BARCLAYS BANK PLC
MAYFAIR GROUP OF BRANCHES
STERLING A/C NO. 70923176 **SORT CODE: 20-66-11**
USD A/C NO. 67827744 **SORT CODE: 20-66-11** **SWIFT: BARCGB22**

(19)

Return to report

CHAPTER SEVENTEEN – SUMMARY[1] OF THE TRIBUNAL'S MAIN FINDINGS IN ITS FINAL REPORT

INTRODUCTION

1. In the course of this, its final Report, the Tribunal made findings of fact, based on the civil standard of proof, the balance of probability[2]. In this Chapter, the Tribunal has compiled a summary of its main findings[3], on a chapter by chapter basis for ease of reference. The evidence relevant to each finding is to be found in the transcripts of evidence (available on the Tribunal's website), which were considered and analysed by the Tribunal in the preparation of Chapters One to Sixteen of this Report, and of which a comprehensive understanding can only be achieved by reference to this material.

CHAPTER TWO - THE QUARRYVALE MODULE

THE GRANT OF IMMUNITY TO MR TOM GILMARTIN

1. The Tribunal was satisfied that the request for immunity from prosecution was made by Mr Gilmartin on the advice of his then solicitor, Mr Noel Smyth. Nothing in the Tribunal's Terms of Reference, and nothing stated by the Tribunal at any time, prohibited any party from requesting a similar grant of immunity to that granted to Mr Gilmartin.

2. The Tribunal rejected any suggestion that the grant of immunity to Mr Gilmartin in any way, of itself, facilitated Mr Gilmartin to lie to, mislead, or otherwise fail to cooperate with, the Tribunal in any way. The grant of immunity was conditional upon Mr Gilmartin's cooperation with the Tribunal and this requirement necessarily included giving truthful evidence to the Tribunal. The Tribunal was satisfied that the conditions under which the grant of immunity was made to Mr Gilmartin were met, and it has informed the Director of Public Prosecutions.

MR LIAM LAWLOR AND MR TOM GILMARTIN

1. The Tribunal accepted as accurate Mr Gilmartin's account of his first meeting with Mr Lawlor, and it accepted that it took place in its entirety in the Deadman's Inn, and not as claimed by Mr Lawlor, partially in the latter's clinic. The Tribunal

[1] In the unlikely event of there being any inconsistency as between a summarised finding in this Chapter, and the actual finding in the relevant Chapter (One to Sixteen), the ordinary meaning of the latter shall prevail.
[2] See Chapter One.
[3] Additional findings have been made in Chapters One to Sixteen.

accepted Mr Gilmartin's evidence that it was Mr Lawlor who introduced the topic of Bachelors Walk and Arlington at the meeting in the Deadman's Inn. The Tribunal also accepted Mr Gilmartin's evidence that Mr Lawlor claimed to be a representative of the Irish government and, also, that he told Mr Gilmartin that Bachelor's Walk was '*on his patch'.*

2. The Tribunal was satisfied that on a date in early May 1988, Mr Lawlor attended, uninvited, at the London offices of Arlington plc, and that he, as maintained by Mr Gilmartin, claimed to be a representative of the Irish Government.

3. The Tribunal was satisfied that, on the basis of Mr Lawlor's representations, Arlington believed that Mr Lawlor was so close to the government and the authorities in Dublin that a failure on their part to make significant payments to Mr Lawlor might result in a lack of support by the government, and those authorities, for the proposed development at Bachelor's Walk, rendering the aims of that project more difficult to achieve. The Tribunal believed that this aforesaid belief on the part of Arlington prompted it to expend the equivalent of almost IR£75,000 in payments to Mr Lawlor over an eleven month period. Having regard to the fact that he was a councillor and a TD at that time, Mr Lawlor's demands for payments, and his acceptance of money in these circumstances were entirely inappropriate and were corrupt.

4. The Tribunal was satisfied that Mr Lawlor was paid a sum of Stg £33,000 from Arlington Securities plc in April 1989, and that the payment was not, as claimed by Mr Lawlor, a political donation. The Tribunal rejected the evidence of Mr Ted Dadley and Mr Raymond Mould, executives of Arlington that they had no recollection of the reasons for the payment of Stg £33,000 to Mr Lawlor in April 1989, or of the circumstances surrounding the payment.

5. The Tribunal was satisfied that between June 1988 and January 1989, Mr Lawlor received approximately IR£32,200 in periodic payments from Arlington, through Mr Gilmartin, and a further Stg £3,500 around November 1988.

6. The Tribunal was satisfied that Mr Lawlor accompanied Mr Gilmartin to a meeting with Mr George Redmond, Assistant City and County Manager, in May 1988 and that in the course of the meeting corruptly requested payment of IR£100,000 for himself and a similar amount for Mr Redmond. The request was rejected by Mr Gilmartin and no money was paid to Mr Lawlor or Mr Redmond by Mr Gilmartin. The Tribunal was satisfied that Mr Redmond was aware of the request for money made on his behalf by Mr Lawlor, and was complicit in that request.

7. The Tribunal was satisfied that Mr Lawlor, as claimed by Mr Gilmartin, did seek a 20% stake of the Quarryvale project from him on two separate occasions. Such demands were corrupt, having regard to Mr Lawlor's position as an elected public representative.

MR TOM GILMARTIN AND CLLR FINBARR HANRAHAN

1. The Tribunal was satisfied that, at a meeting in Buswells Hotel in Dublin between Mr Gilmartin and Cllr Hanrahan in late January/early February 1989, Cllr Hanrahan corruptly sought a payment of IR£100,000 (of which IR£50,000 was to be paid upfront), from Mr Gilmartin, in return for his support for the rezoning of the Quarryvale lands. (No money was paid by Mr Gilmartin to Cllr Hanrahan.)

2. The Tribunal was satisfied that, shortly after Mr Gilmartin's meeting with Cllr Hanrahan, Mr Owen O'Callaghan was made aware by Mr Gilmartin of Cllr Hanrahan's demand for IR£100,000. Furthermore, the Tribunal rejected Mr O'Callaghan's contention that he did not believe Mr Gilmartin's claim in relation to Cllr Hanrahan's request to be true.

THE LEINSTER HOUSE MEETING IN 1989

1. The Tribunal was satisfied that, in or about early February 1989, Mr Gilmartin, having emerged from a meeting in a room in Leinster House with the then Taoiseach Mr Charles J. Haughey and a number of Government Ministers, was confronted by an unidentified individual who proceeded to corruptly demand a payment of IR£5m from him, and that he was provided by that individual with details of an offshore account into which the money was to be paid. This demand (which was not acceded to by Mr Gilmartin), was corrupt.

THE 1989 GARDA CORRUPTION INQUIRY

1. The Tribunal was satisfied that Mr Gilmartin received a telephone call from an individual who introduced himself as *"Garda Burns"* and that he was effectively warned away from the path that he had by then embarked on, namely, dialogue with the Gardai relating to allegations of corrupt practices and demands for money. It was common case that Mr Gilmartin's liaison with Gardai ended on 20 March 1989. The Tribunal was satisfied that the purpose of the telephone call (and indeed its effect) was to discourage, intimidate or warn Mr Gilmartin to desist from any further cooperation with the Garda inquiry. The Tribunal was also satisfied that prior to this telephone call, Mr Gilmartin had cooperated with the

Garda inquiry, and had provided it with information which he believed to be true and accurate.

2. The Tribunal was satisfied that complaints made to the Gardai by Mr Gilmartin about Mr George Redmond, Mr Liam Lawlor and Cllr Finbarr Hanrahan were not thoroughly investigated by the Gardai in the course of their inquiry. Notwithstanding Superintendent Burns' evidence to the contrary, the Tribunal believed it likely that Mr Lawlor's position as a TD was a factor in the decision taken by the investigating Gardai not to interview him in the course of their inquiry. The Tribunal was puzzled as to why the final Garda report went to such lengths to exonerate Mr Lawlor and Mr Redmond in the absence of a more comprehensive inquiry into complaints of corruption involving those two individuals.

MR TOM GILMARTIN'S CONTACT WITH CLLR JOE BURKE

1. The Tribunal accepted that Mr Gilmartin was driven by Cllr Burke to the airport, and that, en route, Cllr Burke stopped on two occasions in search of Mr Bertie Ahern. The Tribunal was satisfied that a discussion took place in the course of which Mr Gilmartin understood that Cllr Burke was, in a roundabout fashion, seeking money for himself, or for Mr Ahern, and that Mr Gilmartin's suspicion in this regard was fuelled by Cllr Burke's efforts to locate Mr Ahern in the course of that journey to Dublin Airport.

2. The Tribunal had insufficient evidence to enable it make a finding on the issue as to whether or not, Cllr Burke, directly or indirectly, sought money from Mr Gilmartin either for himself or for Mr Ahern. There was no evidence that Mr Ahern was aware of Cllr Burke's said discussion with Mr Gilmartin, or of Cllr Burke's attempts to locate him in the course of the journey to Dublin Airport.

MR TOM GILMARTIN AND MR PADRAIG FLYNN

1. The Tribunal was satisfied that Mr Padraig Flynn requested Mr Gilmartin to make a substantial donation to the Fianna Fáil party, most probably at their meeting on 19 April 1989, and that the request was made on the understanding that steps would be taken by Mr Flynn to ease or remove obstacles and difficulties then being faced by Mr Gilmartin in relation to Quarryvale, and which Mr Gilmartin perceived to have been improper or unlawful.

2. The Tribunal accepted Mr Gilmartin's evidence that it was his intention at all time that the cheque for IR£50,000 which was provided to Mr Flynn, would be

passed on to the Fianna Fáil party, and that Mr Flynn was not given this money for his own personal use.

3. The Tribunal was satisfied that Mr Flynn, at the time he accepted the cheque from Mr Gilmartin, was aware of Mr Gilmartin's belief and understanding that he, Mr Flynn, would proceed to pass on the cheque to the Fianna Fáil party.

4. Mr Gilmartin presented Mr Flynn with a cheque, in which the payee section of the cheque was left blank, at Mr Flynn's request. The Tribunal was satisfied that the word *"cash"* was written on the cheque subsequently by Mr Flynn (or a person on his behalf).

5. Mr Flynn, in his capacity as a Government Minister, and in that capacity alone, had contact with Mr Gilmartin and received information, including complaints of corruption involving individuals known to him (including members of his own political party), and proceeded to wrongfully and, in the circumstances, corruptly, seek the payment of money from Mr Gilmartin purportedly for the benefit of the Fianna Fáil party.

6. Mr Flynn, having wrongfully and corruptly sought a substantial donation from Mr Gilmartin for the Fianna Fáil party, and having been paid IR£50,000 by Mr Gilmartin for that purpose, proceeded to utilise the money for his personal benefit.

7. The decision on the part of Mr Gilmartin to make a payment to the Fianna Fáil party through Mr Flynn was misconceived and entirely inappropriate on his part. However, the Tribunal accepted that he did it in circumstances, which included an element of duress or coercion, where he believed he had no choice but to act accordingly in order to avoid obstructive and improper behaviour on the part of elected public representatives (and a senior public servant) and, in order (to use Mr Gilmartin's own words) to create *"a level playing field"*, in relation to his plans to develop Quarryvale.

8. The Tribunal rejected the suggestion that Mr Gilmartin's motivation in making the payment was to promote or secure a Government decision to grant tax designation status to the Quarryvale lands (which was not in any event granted). There was no evidence to suggest that Mr Gilmartin, subsequent to the payment of the IR£50,000, complained that Mr Flynn had broken an agreement or understanding that, in return for the payment, Quarryvale would receive tax designation status.

9. The Tribunal was satisfied that, contrary to what was claimed by Mr Flynn, the IR£50,000 paid to him by Mr Gilmartin in late May/early June 1989, having followed a circuitous route of withdrawals, investments and reinvestments, ultimately funded at least a significant portion of the purchase of a farm at Cloonanass in County Mayo, in the name of Mrs Flynn and was not used (save to a minimal extent) for any expenditure associated with any political purpose associated with Mr Flynn.

10. The Tribunal was satisfied that Mr Flynn contrived, in his note taking of telephone conversations between himself and Mr Gilmartin in September / October 1998 (after the establishment of the Tribunal) to represent wrongfully that Mr Gilmartin had confirmed to him that the payment of IR£50,000 was intended for Mr Flynn personally, and not for the Fianna Fáil party.

THE KNOWLEDGE OF MR TOM GILMARTIN'S PAYMENT OF IR£50,000 TO MR PADRAIG FLYNN WITHIN FIANNA FAIL

1. The Tribunal accepted Mr Gilmartin's recollection of his discussion with Mr Bertie Ahern (then a Government Minister) in the course of a telephone conversation on the 20 June 1989, and, more particularly, Mr Gilmartin's claim that in the course thereof Mr Ahern raised with Mr Gilmartin the subject of him making a donation to the Fianna Fáil party (in a manner which suggested to Mr Gilmartin that Mr Ahern was seeking such a payment). The Tribunal was satisfied that Mr Gilmartin informed Mr Ahern, in the course of their telephone conversation of his then very recent payment to Mr Flynn of IR£50,000, and that it was intended as a donation to the Fianna Fáil party.

2. The Tribunal was satisfied that at a meeting in or about October/November 1990, Mr Gilmartin informed Mr Sean Sherwin, the then National Organiser for the Fianna Fáil party, that he had paid IR£50,000 to Mr Flynn for Fianna Fail, and that Cllr Finbarr Hanrahan had demanded IR£100,000 from him.

3. The Tribunal was satisfied that Mr Gilmartin's claim to have paid IR£50,000 to Mr Flynn on behalf of the Fianna Fáil party was a matter about which Mr Sherwin informed Mr Paul Kavanagh, who was a senior Fianna Fail fundraiser involved in fundraising for the Party. The Tribunal also believed it likely that Mr Kavanagh was told of Mr Gilmartin's claim to have been asked by Cllr Finbarr Hanrahan for IR£100,000.

4. The Tribunal was satisfied that Mr Kavanagh, in turn, instructed Mr Sean Fleming, the then financial controller of Fianna Fáil, to conduct an examination of

Fianna Fáil's records to determine if there was a record of any donation from Mr Gilmartin, and that none was found.

5. The Tribunal was satisfied that Mr Sherwin advised Mr Albert Reynolds of the IR£50,000 payment made by Mr Gilmartin to Mr Flynn, for Fianna Fáil, in February 1992 at a meeting in Mr Reynolds' home at a time when Mr Reynolds was in the process of identifying suitable individuals within his party to serve in his Cabinet.

6. Neither Mr Ahern, nor Mr Reynolds, nor Mr Sherwin, nor Mr Kavanagh, nor Mr Fleming contacted Mr Flynn in relation to Mr Gilmartin's payment of IR£50,000 at any time prior to the establishment of this Tribunal. The Tribunal considered it noteworthy that Mr Bertie Ahern's decision to contact Mr Flynn in 1998/1999 in relation to Mr Gilmartin's allegation that he had paid him IR£50,000 for Fianna Fail followed media speculation relating to that payment. When in October/November 1990 (and indeed in 1992) senior personnel within Fianna Fail had essentially the same information (effectively from 'the horse's mouth') the matter was not raised with Mr Flynn at that time.

AIB AND QUARRYVALE

1. The Tribunal was satisfied that commercial/banking considerations, in particular, AIB's fear of an inability on the part of Mr Gilmartin/Barkhill Ltd to repay its debts to the bank, prompted AIB to pressure Mr Gilmartin to enter into an agreement with Mr O'Callaghan so as to ensure that Mr O'Callaghan would be the driving force in the Quarryvale project from February 1991 onwards.

2. The Tribunal did not accept Mr O'Callaghan's evidence that as of 15 February 1991 he was ignorant of the fact that that date was the deadline for the lodging of a motion to rezone Quarryvale or that he was ignorant of the fact that a motion was lodged on that date. The Tribunal was satisfied that Mr O'Callaghan had been advised on or before 15 February 1991 (probably before) by Mr Lawlor of the necessity to lodge a motion to rezone Quarryvale. It appeared quite incredible to the Tribunal having regard to Mr O'Callaghan's own evidence and the content of Mr Lawlor's communication with him, that Mr O'Callaghan was not fully conscious of these matters at the time of his meeting in AIB on 15 February 1991. The Tribunal was thus satisfied that the issue of the Quarryvale rezoning motion was a subject of consideration at the meeting in AIB on 15 February 1991.

MR GILMARTIN'S EFFORTS TO CONTACT COUNCILLORS ON 17 DECEMBER 1992

1. The Tribunal heard evidence of attempts by Mr Gilmartin to make contact with Cllrs McGrath and Gilbride on the evening of 17 December 1992. It was established, to the Tribunal's satisfaction, that his attempts were not successful largely because the telephones in the Fianna Fail rooms in Dublin County Council were, on the evening in question, being manned by Mr John Deane in order to control contact by Mr Gilmartin with Cllrs McGrath and Gilbride.

MR TOM GILMARTIN AND MR OWEN O'CALLAGHAN

1. The Tribunal was satisfied that in or about the spring of 1991, Mr Gilmartin attended a meeting in licensed premises in Clondalkin, with Mr O'Callaghan, and that the meeting was also attended by a Sinn Fein activist, Mr John McCann, and by Mr Pat Jennings. Mr McCann and Mr Jennings were, respectively, the Secretary and Chairperson of the Quarryvale Residents Association. The Tribunal was satisfied that the meeting was conducted in a strained atmosphere and that while the Tribunal was unable to determine whether or not Mr Gilmartin was, as he alleged, threatened in the course of that meeting, it was satisfied that Mr Gilmartin genuinely believed himself to have been threatened and that such a belief may have arisen as a consequence of the negative tone of the meeting, and because of references made to Mr Gilmartin about his previous business dealings in Northern Ireland.

2. The Tribunal was satisfied that Mr Christy Burke, who was then an elected Sinn Fein Dublin City Councillor whom Mr Gilmartin identified as the person with whom he spoke in the course of the said meeting had not attended the meeting, and had never met Mr Gilmartin.

3. In relation to the allegation by Mr Gilmartin (which was denied by Mr O'Callaghan), that when he and Mr O'Callaghan were sharing a taxi to Dublin Airport, Mr O'Callaghan informed him that he had Cllr McGrath "*on his payroll"*, and had waved a cheque in front of him for either IR£10,000 or IR£20,000 which he intended paying to Cllr McGrath, the Tribunal was satisfied that such an incident occurred, and specifically, was satisfied that Mr O'Callaghan informed Mr Gilmartin that Cllr McGrath was "*on his payroll".*

MR LIAM LAWLOR AND QUARRYVALE

1. The Tribunal was satisfied that Mr Lawlor was, by December 1990, aware of Mr O'Callaghan's increasing engagement with Mr Gilmartin and his involvement

with the Quarryvale project, and by the time the second '*heads of agreement'* were signed on 15 February 1991 by Mr O'Callaghan, Mr Gilmartin and AIB Bank, Mr Lawlor was proactively engaged with Mr O'Callaghan in promoting the project to have the Quarryvale lands rezoned.

2. The Tribunal was satisfied that Mr Lawlor was paid IR£40,000 in cash by Mr Dunlop on a date in May/June 1991 and that this payment was funded by payments made by Mr O'Callaghan to Shefran Ltd (or Sheafran Ltd), totalling IR£80,000 between 16 May and 7 June 1991. It was also satisfied that Mr O'Callaghan was fully aware of the payment of IR£40,000 made to Mr Lawlor by Mr Dunlop, from his, Mr O'Callaghan's, funds.

3. Mr Lawlor received in excess of IR£150,000 from Mr Dunlop in the period 1991 to 1998. Of this sum a large proportion represented payments arising directly from Mr Lawlor's involvement in Quarryvale. In addition, Mr Lawlor received payments totalling IR£41,000 from Mr O'Callaghan between 1991 and 1996. The Tribunal was satisfied that Mr O'Callaghan was aware of Mr Dunlop's practice of making substantial payments to Mr Lawlor relating to Quarryvale, including in particular, the payment of IR£40,000 paid to Mr Lawlor in May/June 1991. The Tribunal was satisfied that Mr Lawlor's relationship with Mr Dunlop and Mr O'Callaghan was firmly based in corruption and that the bulk of funds paid by Mr Dunlop and by Mr O'Callaghan to Mr Lawlor, particularly in the period 1991 to 1996, were payments made directly in relation to Mr Lawlor's activities concerning the rezoning of the Quarryvale lands, and were corrupt.

MR OWEN O'CALLAGHAN'S AND MR FRANK DUNLOP'S STRATEGY OF CORRUPTLY PAYING ELECTED POLITICAL REPRESENTATIVES AS PART OF THE CAMPAIGN TO REZONE THE QUARRYVALE LANDS

1. The Tribunal was satisfied that of the three cheque payments by Mr O'Callaghan to Shefran Ltd (or Sheafran Ltd), between 16 May 1991 and 7 June 1991, amounting to in total IR£80,000, at least IR£65,000 was retained by Mr Dunlop in cash, and that Mr Dunlop paid most, or all, of this money, in addition to other funds available to him at the time, to councillors at, or close to, the time of the 1991 Local Elections, for the purposes of securing the support of those councillors for the rezoning of the Quarryvale lands. Such payments were corrupt.

2. The Tribunal was satisfied that the arrangement arrived at between Mr O'Callaghan and Mr Dunlop, most probably on 26 April 1991, was that Mr Dunlop would be put in funds by Mr O'Callaghan for the purposes of making disbursements to councillors and that he would be facilitated in this regard by

payments made to him otherwise than to his public relations company, Frank Dunlop & Associates. The Tribunal was satisfied that because of the imminent local elections, the likelihood, as appreciated by Mr Dunlop and Mr O'Callaghan, was that certain councillors would seek money from Mr Dunlop in the course of his lobbying and that both knew Mr Dunlop would need funds for this purpose. Moreover, the Tribunal was satisfied that by 26 April 1991, Mr O'Callaghan and Mr Dunlop knew of a demand then being made by Mr Lawlor (then a councillor and T.D.) for a substantial payment in connection with the assistance he had provided and was likely to render in the future to Mr O'Callaghan and Mr Dunlop in connection with securing support for the Quarryvale rezoning.

3. The Tribunal rejected the evidence of Mr O'Callaghan and Mr Dunlop that the IR£80,000 paid to Mr Dunlop through Shefran Ltd in 1991 was for professional fees as a lobbyist. The payment was never intended to have been Mr Dunlop's fee as understood in the ordinary sense of that word. The Tribunal was satisfied that the primary purpose of the funding of IR£80,000 over a three week period in May/June 1991 was to provide Mr Dunlop with money from which disbursements would be made to councillors in the course of the Local Election campaign. The Tribunal was satisfied that such funds were used by Mr Dunlop to make payments to elected councillors in the period May / June 1991 for the purposes of ensuring their ongoing support for the rezoning of the Quarryvale lands.

4. The Tribunal was satisfied that Mr O'Callaghan provided these funds to Mr Dunlop in the full knowledge that they would be used by him for the purposes of corruptly paying councillors to ensure their support for Quarryvale. This known purpose was part of an agreed strategy involving Mr O'Callaghan and Mr Dunlop to ensure that councillors standing for election in the local elections of 1991 would receive substantial sums of money in order to ensure, or copper-fasten, their support for Quarryvale related motions in respect of which they would exercise their vote in the review of the County Dublin Development Plan. In some instances, and to some extent, such payments were made also in recognition of the councillors' then recent support for the Quarryvale project, and to ensure that they were well disposed in relation to that project, and the future confirmation of its then recently rezoned status.

5. The Tribunal was satisfied that payments made by Mr O'Callaghan to Shefran Ltd totalling IR£70,000 in 1992 and IR£25,000 in early 1993 were used in part for the purposes of making payments to councillors.

6. The Tribunal was satisfied that Mr Gilmartin's knowledge of a link between Shefran Ltd and Mr Dunlop was learned by him on an incremental basis. The probable timeframe regarding Mr Gilmartin's awareness of Shefran Ltd and its link to Mr Dunlop was as follows. In January 1992, Mr Gilmartin was made aware through AIB of three payments to Shefran Ltd totalling IR£80,000 in 1991. Mr Gilmartin understood these to have been the discharge of monies claimed by professional experts employed by Mr O'Callaghan. On 5 June 1992, Mr Eddie Kay of AIB telephoned Mr Gilmartin in relation to the 30 April 1992 Shefran Ltd invoice for IR£30,000, which was then about to be paid. Mr Kay at that time was aware of the Dunlop / Shefran Ltd connection. It was likely that Mr Kay apprised Mr Gilmartin, to some extent at least, of a link between Mr Dunlop and Shefran Ltd at that time.

7. It was likely that by the time Mr Kay of AIB wrote to Mr Gilmartin on 10 June 1992, Mr Gilmartin knew of payments to Shefran Ltd totalling IR£110,000 and of a link between Shefran Ltd and Mr Dunlop.

8. The Tribunal was satisfied that AIB was aware that Shefran Ltd was Mr Dunlop's company; that round figure sums were being paid by Mr O'Callaghan to Shefran Ltd; that there were no invoices available in respect of the three 1991 Shefran Ltd payments; and that the IR£80,000 paid to Mr Dunlop over the course of a three to four week period in 1991 related to the 1991 local election campaign and was "*for purposes associated with the 1991 local election*".

9. The Tribunal was satisfied that Mr Dunlop advised Mr O'Callaghan that he required an immediate transfer to himself of IR£70,000, on 10 November 1992, in order to facilitate payments of money to politicians in the course of the November 1992 General Election.

10. The Tribunal was satisfied that Mr O'Callaghan was aware, based on information provided to him by Mr Dunlop, coupled with his own knowledge and experience of paying money to councillors, and to other politicians, that Mr Dunlop intended to expend a large portion of the IR£70,000 in substantial payments to councillors to secure and consolidate their support for the then imminent Quarryvale vote in Dublin County Council.

11. The Tribunal was satisfied that while the IR£70,000 paid to Mr Dunlop may have included an element of fees, its primary purpose, and the greater percentage of it, was intended to fund payments to politicians, associated with the Quarryvale project.

12. Having regard to the intention on the part of Mr O'Callaghan and Mr Dunlop that the IR£70,000 was to be largely used to fund disbursements to councillors who were likely to be candidates in the November 1992 General Election and the related Seanad Election, the Tribunal was satisfied that both men were involved in an endeavour the purpose of which was to compromise the required disinterested performance by councillors of their duties in the making of a development plan, and as such, the Tribunal was satisfied that the activities of Mr O'Callaghan and Mr Dunlop in relation to the said IR£70,000 were corrupt.

13. The Tribunal rejected Mr Dunlop's claim that he was unable to recollect the amounts of the payments and the identities of all those to whom he disbursed funds from the IR£55,000 withdrawn in cash from the IR£70,000 (paid into his account on Mr O'Callaghan's instructions on 10 November 1992, and withdrawn by Mr Dunlop on the same date), in addition to cash available to him at that time from other sources.

14. The Tribunal was satisfied that the *"big one"* references in Mr Dunlop's diaries was, in fact, a reference to Mr Dunlop's proposed 25% shareholding in Leisure Ireland / Leisure West Ltd, the entity which was to create and run the proposed Stadium at Neilstown.

15. Mr O'Callaghan was aware of, and actively engaged in, facilitating the corrupt disbursement of substantial sums of money to politicians by Mr Dunlop in the period 1991 to 1993.

16. The Tribunal rejected the often repeated evidence of Mr O'Callaghan that he was unaware of Mr Dunlop's corrupt activity in paying councillors to support the rezoning of the Quarryvale lands in the period 1991 to 1993, prior to Mr Dunlop's disclosure to the Tribunal of such activity in April 2000.

17. The Tribunal rejected the often repeated evidence of Mr Dunlop that prior to April 2000 Mr O'Callaghan was, to his knowledge, unaware that he, Mr Dunlop had corruptly paid councillors to support the rezoning of the Quarryvale lands.

18. The Tribunal was satisfied that Mr O'Callaghan personally made corrupt payments totalling IR£119,950 (or otherwise authorised such payments through his companies) to certain politicians for the purposes of ensuring their continued support and assistance for the rezoning of the Quarryvale lands: IR£17,250 paid to Cllr Sean Gilbride in 1992 / 1993; IR£5,000 paid to Cllr GV Wright in November 1992; IR£5,000 paid to Cllr O'Halloran in November 1993; IR£10,000 paid to Mr Lawlor (a TD and an elected councillor until June 1991) in September 1991, IR£10,000 to Mr Lawlor in September 1994, IR£20,000 paid

to Mr Lawlor in March 1995, IR£1,000 paid to Mr Lawlor in 1996; IR£10,000 to Cllr McGrath in October 1991, IR£1,000 to Cllr McGrath in May 1992 (via Tower Secretarial Service), IR£10,700 on behalf of Cllr McGrath in May 1992, IR£20,000 to Cllr McGrath in November 1993, IR£10,000 to Cllr McGrath in May 1997 (via Essential Services).

19. Furthermore, the Tribunal was satisfied that Mr O'Callaghan was aware of a payment made by Mr Dunlop to Mr Lawlor in May/June 1991, amounting to IR£40,000.

20. The Tribunal was satisfied that the process of paying councillors to ensure and copper-fasten support for the project to rezone the Quarryvale lands during the course of the review of the County Dublin Development Plan (in the period 1991 to 1993) was strategic. This strategy was planned, promoted and organised by Mr O'Callaghan, together with, and based on advice from, Mr Dunlop and Mr Lawlor.

21. The Tribunal recognised the possibility that Mr O'Callaghan may have been, initially, a reluctant participant in the corrupt activity in which both he and Mr Dunlop engaged. However the Tribunal was also satisfied that if such was the case, Mr O'Callaghan nevertheless readily embraced and adopted the strategy of corruptly engaging with councillors, as espoused by Mr Dunlop and Mr Lawlor.

22. The Tribunal was satisfied that the IR£85,000 referred to in the AIB memorandum of 1 December 1992 was comprised of IR£70,000 hurriedly paid to Mr Dunlop on 10 November 1992, in addition to the IR£10,000 paid to Mr Batt O'Keeffe on 7 November 1992 and IR£5,000 paid to Cllr GV Wright in Malahide on 11/12 November 1992, when Mr O'Callaghan and Mr Dunlop visited Cllr Wright in his constituency office in Malahide.

23. The Tribunal rejected Mr Dunlop's claimed lack of recollection in relation to his requirement in September 1993 for IR£25,000 cash. Neither did it accept Mr Dunlop's claimed lack of recollection about the identity of the person or persons he met in Powers Hotel on 17 September 1993. The Tribunal did not accept as credible that Mr Dunlop could have forgotten the use to which he applied such a substantial sum, in circumstances where, shortly after receiving the cheque, he proceeded to encash it. The Tribunal was satisfied that Mr Dunlop chose not to disclose either the purpose for which he received a sum of IR£25,000 from Mr O'Callaghan which he effectively treated as cash or the name(s) of the individual or individuals to whom he probably paid money on 17 September 1993, probably in Powers Hotel (a premises close to Leinster House).

24. The Tribunal rejected the evidence of Mr Dunlop and Mr O'Callaghan to the effect that the IR£25,000 paid to Mr Dunlop in September 1993 was a payment to Mr Dunlop for work done by him in relation to the Neilstown Stadium project

25. The Tribunal believed it probable that Mr Dunlop disbursed either the entire, or a significant portion of, the IR£25,000 cash to whoever he met in Powers Hotel on 17 September 1993, and that almost certainly the beneficiaries were one or more politicians.

26. Mr Dunlop and Mr O'Callaghan in effect acknowledged that the September 1993 cheque for IR£25,000 from Riga Ltd was the final large round figure payment without VAT paid to Mr Dunlop by Riga Ltd/Barkhill Ltd, through Shefran/Sheafran or Frank Dunlop & Associates Ltd

27. The Tribunal noted that the payments of these large, round, effectively cash sums to Mr Dunlop ceased at around the same time as the zoning of the Quarryvale lands was confirmed by Dublin County Council. The Tribunal also noted that Mr Dunlop was paid the IR£25,000 in September 1993, the same general timeframe in which Cllrs McGrath and O'Halloran were paid IR£20,000 and IR£5,000 respectively by Mr O'Callaghan. The Tribunal also noted that this, in effect, cash payment of IR£25,000 was paid to Mr Dunlop at a time when he was actively lobbying in support of the All Purpose National Stadium.

28. The Tribunal was satisfied that Mr Dunlop and Mr O'Callaghan's necessity for a cash payment system for councillors ceased in September 1993 because to all intents and purposes, the rezoning of the Quarryvale lands, the objective for which Mr Dunlop had been retained as a lobbyist in the context of the Development Plan review, had effectively been achieved.

29. The Tribunal was satisfied that by January 1996, Riga Ltd, possibly Mr O'Callaghan, and certainly Mr Deane, were aware that the existence of a number of round figure payments, for which there were no invoices and on which VAT had not been charged or paid, in the Riga/Barkhill intercompany loan balance would be likely to present difficulties in the course of any due diligence process embarked upon by potential investors in Barkhill Ltd. At this time, Barkhill was actively seeking outside investors in a bid to develop the Quarryvale lands as a district/town centre.

30. The entire contemporaneous documentary trail examined by the Tribunal and which referred to, or touched upon, the issue of the three 1991 Shefran payments, on the face of them, indicated that invoices for the three payments of IR£25,000, IR£40,000 and IR£15,000 had not been issued in 1991. Mr

O'Callaghan's handwritten notations on the AIB document of January 1992, and his handwritten notations on Mr Fleming's schedule as recopied by Mr Fleming to Riga on 3 May 1993, indicated, in the Tribunal's view, that no invoices had issued in 1991.

31. The Tribunal took the view that if the invoices had been available to Mr O'Callaghan from 1991, he would have provided them to Mr Lucey to be forwarded to Deloitte & Touche at the time when their production was requested. Moreover, the Tribunal did not see why, if copies of the original invoices were made in (or prior to) 2000, the originals were subsequently maintained in storage in Mr O'Callaghan's personal office until furnished to the Tribunal in July 2008. The Tribunal believed that a likely explanation for the foregoing was that the invoices were not generated at all until many years after 1991.

32. The Tribunal rejected the evidence of Mr O'Callaghan and Mr Dunlop that invoices referrable to the said payments totalling IR£80,000 made to Shefran Ltd (or Sheafran Ltd), were generated at or close to the time when the said payments were made, or indeed at any time prior to the establishment of this Tribunal.

33. The Tribunal was satisfied that the agreement reached between Mr O'Callaghan and Mr Dunlop for the provision of funds to Mr Dunlop through Shefran was for the purposes of keeping the scale of the payments to be made to Mr Dunlop by Mr O'Callaghan secret from Mr Gilmartin. The Tribunal was satisfied that the payments made to Mr Dunlop through Shefran allowed Mr Dunlop, at all relevant times, to have sufficient funds for the purposes of complying with requests or demands which he anticipated would be made of him by councillors.

34. The Tribunal was satisfied that Shefran was nominated by Mr Dunlop to Mr O'Callaghan as the vehicle whereby Mr Dunlop was to receive large, VAT free, round figure payments from Mr O'Callaghan for utilisation in connection with the agreed purpose. The happenstance of Mr Dunlop having available to him such a company coupled with the cheque cashing arrangements which Mr Dunlop had negotiated with Mr John Aherne of AIB, College Green, provided Mr Dunlop with an effective mechanism to shield from the scrutiny of Mr Gilmartin the fact that he was the recipient of large round figure sums in connection with his Quarryvale lobbying endeavours.

35. It was patently clear from the evidence of Mr Dunlop, Mr O'Callaghan and Mr Gilmartin, that Mr Gilmartin in the course of the meeting which took place between Mr Mr Dunlop, Mr O'Callaghan, Mr Gilmartin and Mr Lawlor on 25 April

1991 was made privy to Mr O'Callaghan's intention to retain Mr Dunlop as a lobbyist, something which, Mr Dunlop and Mr O'Callaghan agreed, Mr Gilmartin was objecting to from the outset. There was no dispute but that 2 May 1991, Mr Dunlop's involvement as a lobbyist for Quarryvale was made known to Mr Gilmartin in a direct fashion, when Mr Dunlop faxed to Mr Gilmartin certain information connected with the Quarryvale rezoning proposal. By 16 May 1991, the day of the Quarryvale rezoning vote, and the day when Shefran received the first payment from Riga, Mr Dunlop's involvement in the lobbying campaign for Quarryvale was known to all concerned, including Mr Gilmartin. Thus, the Tribunal gave no credence to Mr O'Callaghan's contention that the purpose of using Shefran was *"....to protect whatever Councillors (who) would support Quarryvale, Tom Gilmartin's Councillors that would support Quarryvale, protect them and make sure that they stayed inside with me. That's the reason the whole thing was set up".*

36. The Tribunal was satisfied that at least some of the payments made by Mr Dunlop on the part of Mr O'Callaghan to, or for the benefit of, councillors by the mechanism of invoices generated by Frank Dunlop & Associates were an attempt to influence those councillors in the performance of their public duties and were therefore corrupt. The Tribunal was also satisfied that Mr O'Callaghan was aware that some of these payments were made for this corrupt purpose.

MR O'CALLAGHAN'S OCTOBER 1998 PAYMENT OF IR£300,000 TO MR DUNLOP

1. The Tribunal believed that Mr Dunlop had not, as claimed by him, simply *"called in"* his *"success"* fee on 1 October 1998. Rather, the Tribunal believed it likely that Mr Dunlop approached Mr O'Callaghan on that occasion and requested payment of the sum which then remained outstanding, as part of the arrangement entered into on 22 May 1998, namely the *"300,000 pounds remaining"* as noted in Mr Dunlop's diary on that date. The Tribunal was satisfied that Mr Dunlop requested payment of this money in the context of the inquiries he anticipated the Tribunal would make of him. It was further satisfied that Mr Dunlop's disclosures to the Revenue in October 1998 were precipitated by his anticipation that his activities as a Quarryvale lobbyist, especially his use of Shefran to receive substantial round sum amounts from Mr O'Callaghan, would be a matter that was likely to be focused on by the Tribunal and likely to be the subject of ensuing publicity, as in fact occurred.

MR O'CALLAGHAN'S PAYMENT OF MR DUNLOP'S LEGAL FEES EXCEEDING IR£300,000 IN THE PERIOD 1998/2000

1. The Tribunal was satisfied that the question of Mr O'Callaghan's undertaking to discharge Mr Dunlop's legal fees could not have been predicated on Mr O'Callaghan's belief that Mr Dunlop had not engaged in making payments to councillors/politicians, given that the Tribunal was satisfied that Mr Dunlop had engaged in making a series of payments to election candidates in 1991 and 1992 respectively, with the imprimatur of Mr O'Callaghan, and had been funded by Mr O'Callaghan to enable him to do so. Moreover, as found by the Tribunal, Mr Dunlop paid Mr Lawlor IR£40,000 in or about May/June 1991, with Mr O'Callaghan's knowledge.

MR DUNLOP'S DIARIES

1. In purported compliance with Tribunal orders for discovery, Mr Dunlop had provided his *"redacted"* diaries for specific years (1 January 1990 to 30 December 1993). In the course of his evidence, Mr Dunlop conceded that a number of matters recorded in his diaries and which were relevant to meetings relating to Quarryvale had been concealed by him, on occasion with the use of "*post-it type stickers*", when he made discovery to the Tribunal. These became apparent to the Tribunal when, subsequently, Mr Dunlop's entire unredacted diaries were furnished to it at its request. When these diaries were provided to the Tribunal in 2001, however, it was noted that they contained many heavily obliterated entries. The Tribunal also noted other diary references which had been wrongly redacted by Mr Dunlop when he had previously provided his redacted diaries to the Tribunal. The Tribunal was satisfied that some, if not all, of these heavy attempted obliterations were made by Mr Dunlop prior to his furnishing the diaries to the Tribunal in 2001, with some made prior to his having sworn his first Affidavit of Discovery. The Tribunal was satisfied that Mr Dunlop's objective in this regard was to conceal certain information from the Tribunal (including references to meetings which Mr Dunlop had with a number of politicians and others), and particularly concerning financial matters, including financial matters relating to himself and Mr O'Callaghan, and on occasions Mr Lawlor.

MR OWEN O'CALLAGHAN'S DONATIONS TO THE FIANNA FAIL PARTY

1. The Tribunal was satisfied that at the time Mr Albert Reynolds (the then Taoiseach), and Mr Bertie Ahern (the then Minister for Finance) wrote, in their capacities as senior officers of the Fianna Fail Party, their September 1993 letter to Mr O'Callaghan, seeking a substantial donation to the Fianna Fail Party, and

which culminated in the following year in a payment of IR£80,000 to the Fianna Fail Party, it was against the backdrop of consistent lobbying by Mr O'Callaghan and Mr Dunlop at Government level, for State subvention for the *"All Purpose Stadium"* project at Neilstown.

2. The Tribunal was satisfied that Mr O'Callaghan felt himself compelled to make this substantial payment to the Fianna Fail Party in circumstances where his company was obliged to use borrowed funds in order to do so, because of his concern (be that perceived or real), that a failure on his part to so contribute would impact negatively on his efforts to secure government support and financial assistance for the Stadium project.

3. Having regard to the evidence heard by it in relation to the request for, and the payment of, the substantial donation to the Fianna Fail Party, the Tribunal did not deem it appropriate in the circumstances to determine this payment was corrupt. The Tribunal nevertheless considered that the concept whereby senior members of a government would seek a financial contribution to their political party, with the assistance of a former government Minister and EU Commissioner closely associated with that party, and would actively engage in (what amounted to in reality) pressurising a businessman, then involved in lobbying the government to support a commercial project, to pay a substantial sum of money to that political party, was entirely inappropriate, and was an abuse of political power and government authority.

4. The similarity noted by the Tribunal to have existed in many important aspects as between, on the one hand, the request made of Mr Gilmartin by Mr Flynn, then a government Minister, for a substantial donation to the Fianna Fail Party in 1989, and on the other hand the request made of Mr O'Callaghan by Mr Reynolds and Mr Ahern in 1993 were, the Tribunal believed, remarkable. In both instances individuals who were engaged quite legitimately in promoting their interests with members of government, were subjected to requests for substantial financial donations to the political party with whom those Ministers were affiliated, and in circumstances where those individuals felt themselves to have had little choice but to comply (albeit for different reasons and in markedly different circumstances) with such requests.

5. On 17 November 1992, Mr O'Callaghan wrote to the then Taoiseach Mr Albert Reynolds enclosing a cheque for IR£5,000 as a political donation for the Fianna Fail Party in relation to the General Election campaign which was then underway. In the course of that letter, Mr O'Callaghan referred to his "*policy over the years to support individual candidates, and in particular this time, both in Dublin and Cork"*, and that his total support in that context was "*in excess of six figures".* Mr

O'Callaghan told the Tribunal that the *"in excess of six figures"* sum was a reference to the approximate total expenditure on his part in political donations to the Fianna Fail Party over a number of years up to that time. Mr O'Callaghan was adamant that the reference could not reasonably be interpreted as suggesting that he had spent in excess of IR£100,000 in political donations in the context of the 1992 General Election campaign then underway. In particular, Mr O'Callaghan denied that the *"in excess"* of IR£100,000, included the IR£70,000 which Mr Dunlop had been paid by Mr O'Callaghan on 10 November 1992. However the Tribunal was satisfied that the *"in excess"* of IR£100,000 did in fact include this IR£70,000 which had been used (or at least most of it) by Mr Dunlop to make disbursements to politicians. The Tribunal was also satisfied that the *"in excess"* of IR£100,000 also included the IR£10,000 paid to Mr Batt O'Keeffe on 7 November 1992, IR£5,000 paid to Cllr GV Wright on 11 / 12 November 1992, IR£3,500 paid to Cllr Gilbride (out of a total of IR£17,250 eventually paid to Cllr Gilbride), IR£10,700 paid on behalf of Cllr Colm McGrath in May 1992, and the IR£5,000 cheque included with the letter to Mr Reynolds. The Tribunal has found that the payments to Cllrs Wright, Gilbride and McGrath were corrupt.

MR BERTIE AHERN AND QUARRYVALE (EXCLUDING THE INQUIRY INTO HIS FINANCES)

1. The Tribunal was satisfied that Mr Ahern was probably aware, prior to his trip to Los Angeles on 11 March 1994, of Mr Niall Lawlor's association with Chilton & O'Connor (Investment Bankers based in LA) having regard to the specific reference to that connection in the documents faxed from the Irish Consulate in Los Angeles to Mr Ahern's private secretary on 4 March 1994. The Tribunal believed it most unlikely that Mr Ahern would not have been fully advised on the content of the Consulate's memorandum of 4 March 1994, including the specific reference to Mr Lawlor's son, and his expected attendance at the planned reception for Mr Ahern.

2. The Tribunal rejected Mr Ahern's evidence that the *'All Purpose National Stadium'* project had not been a principal topic of discussion between himself and Mr O'Connor on 11 March 1994. Mr Ahern sought to maintain this position, notwithstanding the clear and unambiguous terms of Mr Burke of Chilton O'Connor's letter of 3 March 1994 to the Irish Consulate.

MR O'CALLAGHAN AND MR BERTIE AHERN

1. The Tribunal rejected as not credible Mr O'Callaghan's evidence that although probably aware of the fact that Mr Ahern was meeting Chilton & O'Connor on 11

March 1994 in Los Angeles, he remained unaware of the outcome of such a meeting. The Tribunal was satisfied that in all probability Mr O'Callaghan was briefed on this meeting by either Chilton & O'Connor, or by Mr Lawlor, and perhaps by Mr Ahern himself on 24 March 1994.

2. The Tribunal was satisfied that the topics discussed at a meeting between Mr O'Callaghan and Mr Ahern at a meeting between them on 24 March 1994, were Mr O'Callaghan's concerns regarding the Blanchardstown tax designation issue, and his plans for the *'All Purpose National Stadium'.* The Tribunal was satisfied that in all probability, Mr O'Callaghan lobbied Mr Ahern for government support and funding for the stadium project. It was inconceivable that such discussion would not have taken place, having regard to Mr Dunlop's letter of 1 December 1993 to Mr Ahern wherein a meeting was sought for Mr O'Callaghan with Mr Ahern regarding the stadium, and having regard to the fact that as of 1 December 1993, Mr Ahern was in possession of documentation relating to the stadium project which had been enclosed by Mr Dunlop in correspondence with him. Moreover, it appeared to the Tribunal extremely unlikely that the issue of the stadium project and its funding would not have been discussed between Mr O'Callaghan and Mr Ahern having regard to the fact that Mr Ahern had met with Chilton & O'Connor on 11 March 1994.

3. The Tribunal rejected the evidence of Mr O'Callaghan and Mr Dunlop that on 10 November 1994, Mr O'Callaghan's stadium proposal was dismissed or rejected by Mr Ahern in the manner described by them. The Tribunal rejected their evidence notwithstanding the fact that the Department of Finance had given the stadium proposal a negative appraisal on 7 September 1994. In arriving at this determination, the Tribunal took particular note of the contemporaneous documentation relating to the meeting of 10 November 1994 which was made available to the Tribunal, and which suggested that, subsequent to his 10 November meeting with Mr Ahern, Mr O'Callaghan had spoken of the project as if it were clearly still live.

4. The Tribunal was satisfied that as of 10 November 1994, contrary to evidence given by Mr O'Callaghan and Mr Dunlop (and also notwithstanding Mr Ahern's evidence) there remained on the part of Mr O'Callaghan and Mr O'Connor and indeed of Mr Dunlop, every expectation that they would further progress their stadium proposals in subsequent contact with Mr Ahern.

THE INQUIRY INTO MR BERTIE AHERN'S FINANCES

THE LODGEMENT OF IR£22,500 TO MR AHERN'S SPECIAL SAVINGS ACCOUNT ON 30 DECEMBER 1993

1. The Tribunal rejected the evidence that in December 1993, there had been a collection organised by Mr Des Richardson and / or Mr Gerry Brennan from friends of Mr Ahern, or that IR£22,500 was provided to Mr Ahern, in the manner claimed, on 27 December 1993. Equally, the Tribunal was satisfied that Mr Ahern did not receive any such sum, either as a gift or as a loan, from the identified individuals.

2. The Tribunal rejected the evidence of Mr Ahern, Mr Richardson, Mr Charlie Chawke, Mr Michael Collins, Mr David McKenna, and Mr Jim Nugent in relation to their involvement in a collection for Mr Ahern of IR£22,500 in December 1993.

3. The Tribunal accepted Mr Padraic O'Connor's contention that he and Mr Ahern were not close personal friends in 1993, and that such friendship as did exist between them at that time was based on an occasional, albeit close working or professional relationship in the course of which Mr Ahern, in his capacity for Minister for Finance, received professional advice from Mr O'Connor on economic and currency issues.

4. The Tribunal accepted Mr O'Connor's evidence that Mr Des Richardson requested a donation towards the expenses of Mr Ahern's constituency office, St. Luke's, and that he had not been requested to make a donation to Mr Ahern personally.

5. Contrary to what had been claimed by Mr Des Richardson, the evidence to the Tribunal did not establish that a bank draft for IR£5,000 (which was included in the IR£22,500 provided to Mr Ahern in December 1993), had been funded, directly or indirectly, by the payment of IR£6,050 which had been paid by NCB Stockbrokers, on Mr O'Connor's instructions, following the request for a donation to Mr Ahern's constituency office made by Mr Richardson. Nor, contrary to Mr Ahern's claim, did it come from Mr O'Connor personally.

6. The Tribunal accepted Mr O'Connor's evidence that, contrary to what Mr Ahern had claimed, Mr Ahern never acknowledged to him, either formally or informally, that he had received a contribution of IR£5,000 from Mr O'Connor, and had also accepted Mr O'Connor's evidence that Mr Ahern had never offered to repay money to Mr O'Connor

7. Because the Tribunal was not provided with a truthful account as to the source of the said lodgement of IR£22,500 to Mr Ahern's bank account on 30 December 1993, it was unable to determine the original source of such funds.

MR AHERN'S CLAIM TO HAVE ACCUMULATED SAVINGS OF CIRCA IR£54,000 IN THE PERIOD 1987 TO 1993

1. While the Tribunal accepted that Mr Ahern's usual practice in the period 1987 to 1993, was to cash salary and expenses cheques, and to generally pay bills, living expenses and other disbursements with cash, rather than using a bank account, it rejected Mr Ahern's evidence that over this period of time, he had accumulated approximately IR£54,000 in cash savings.

THE LODGEMENTS TOTALLING IR£30,000 MADE ON 25 APRIL 1994

1. The Tribunal rejected Mr Ahern's evidence as to the funds which sourced these lodgements, and was satisfied that most, if not all, of the said IR£30,000 cash came into the possession of Mr Ahern between 23 December 1993 and 25 April 1994.

2. Because Mr Ahern failed to disclose the true source of these lodgements to the Tribunal, the Tribunal was unable to determine the source of these funds.

THE LODGEMENT OF IR£20,000 MADE ON 8 AUGUST 1994

1. The Tribunal rejected Mr Ahern's evidence as to the source of the IR£20,000 cash which funded the lodgement to his account on 8 August 1994. The Tribunal was satisfied that, contrary to what Mr Ahern had stated, a significant portion, if not the entire, of the said funds came into Mr Ahern's possession between 25 April 1994 and 8 August 1994.

2. Because Mr Ahern failed to disclose to the Tribunal the true source of the said lodgement, the Tribunal was unable to determine the source of those funds.

THE LODGEMENT OF IR£24,838.49 TO A BANK ACCOUNT OF MR AHERN ON 11 OCTOBER 1994

1. Mr Ahern maintained that this lodgement was comprised of approximately IR£16,500, collected for him by identified friends and then accepted by him as a repayable loan, together with Stg £8,000 approximately, presented to him following a dinner engagement in Manchester. The Tribunal rejected the evidence of Mr Ahern, and of others, to the effect that such collections had taken

place and were the source of the funds lodged to Mr Ahern's account on 11 October 1994.

2. The Tribunal was satisfied that the said lodgement of IR£24,838.49 on 11 October 1994 had in fact been funded by Stg £25,000 cash.

3. Because of Mr Ahern's failure to account to the Tribunal for the source of the funds which comprised this lodgement, the Tribunal was unable to determine the source thereof.

THE LODGEMENT OF IR£28,772.90 TO A BANK ACCOUNT OF MS CELIA LARKIN ON 5 DECEMBER 1994

1. Mr Ahern claimed that the source of this lodgement on 5 December 1994 was approximately Stg £30,000 cash provided to him by his friend Mr Michael Wall (as a fund for use in connection with 44 Beresford Avenue, Drumcondra), and which, in turn, he provided to Ms Larkin for lodgement to an account in her name. The Tribunal rejected the evidence of Mr Ahern and Mr Wall to the effect that Mr Wall paid approximately Stg £30,000 cash to Mr Ahern for the said, or any, purpose.

2. The Tribunal was satisfied that the source of the foreign currency which funded the lodgement of IR£28,772.90 on 5 December 1994 was not, as contended by Mr Ahern, approximately Stg £30,000 cash, but was in fact US$45,000, cash.

3. Because of Mr Ahern's failure to account to the Tribunal as to the true source of the foreign currency which funded the said lodgement, the Tribunal was unable to determine the source of these funds.

THE LODGEMENT OF IR£11,743.74 TO A BANK ACCOUNT OF MS CELIA LARKIN ON 15 JUNE 1995

1. This lodgement was comprised of two separate sums, namely IR£9,743.74 from an exchange of Stg £10,000 cash, and IR£2,000 cash. Mr Ahern maintained that the Stg £10,000 cash element of the lodgement represented part of a purchase of Stg £30,000 cash by him (or by others on his behalf), which in turn had been funded by some of the IR£50,000 cash withdrawn by Ms Larkin from the Larkin 015 account on 19 January 1995 (which had originally been lodged on 5 December 1994) following Mr Ahern's request that she return these monies to him. The Tribunal rejected Mr Ahern's evidence that he had purchased Stg £30,000 cash, and therefore rejected his evidence that the said lodgement

of IR£11,743.74 on 15 June 1995 had been part funded by sterling purchased, as claimed, by Mr Ahern.

2. Because Mr Ahern failed to account to the Tribunal as to the true source of the said Stg £10,000 cash element in the lodgement on 15 June 1995, the Tribunal was unable to determine its actual source.

THE LODGEMENT OF IR£19,142.92 TO A BANK ACCOUNT OF MR AHERN ON 1 DECEMBER 1995

1. This lodgement was funded entirely by Stg £20,000 in cash. The Tribunal rejected Mr Ahern's evidence that the Stg £20,000 was purchased by him (as part of the Stg£30,000 purchase referred to above). It followed therefore that the IR£19,142.92 lodgement was unrelated to the IR£50,000 which had been withdrawn in cash by Ms. Larkin from the Larkin 015 account on 19 January 1995.

2. Because Mr Ahern failed to truthfully account to the Tribunal as to the source of the sterling used to fund the IR£19,142.92 lodgement on 1 December 1995, the Tribunal was unable to pronounce as to its source.

THE IRISH PERMANENT BUILDING SOCIETY ACCOUNTS

1. The Tribunal rejected Mr Ahern's contention that he had no recollection of lodging or causing to be lodged, the Irish pound equivalent of Stg £15,500 in cash over a period of approximately seven months in 1994, to his own account and to those of his daughters with the Irish Permanent Building Society.

2. The Tribunal rejected Mr Ahern's explanation as to the sources of the said Stg £15,500, including his claim, that having cashed salary cheques and expenses cheques, he intermittently conveyed that cash to the UK, and there converted the proceeds into sterling cash, then bringing the sterling amounts back to Dublin and there holding the sterling cash in his safe. The Tribunal also rejected Mr Ahern's evidence that he had saved sterling towards the purchase of an investment property in Manchester.

3. Because Mr Ahern failed to truthfully account as to the true source of the Stg £15,500 cash, the Tribunal was unable to determine the source of those funds.

THE B/T ACCOUNT

1. The Tribunal was satisfied that the B/T account was opened by Mr Tim Collins in 1989 for purposes, other than the upkeep and maintenance of St. Luke's, Drumcondra. The Tribunal entirely rejected the evidence of Mr Collins, Mr Joe Burke and Mr Ahern as to the claimed purpose of this account.

2. The Tribunal rejected in its entirety the evidence of Mr Collins and Mr Burke (and the belief expressed by Mr Ahern) as to the reason and purpose for the withdrawal of IR£20,000 from the B/T account in August 1994. The Tribunal was satisfied that the purpose for which this cash sum was withdrawn in August 1994 was unconnected with any intended repair or refurbishment of St. Luke's. The true purpose of this IR£20,000 cash withdrawal remains unexplained.

3. The Tribunal was satisfied that the IR£20,000 lodged to the B/T account on 26 October 1994 (and exchanged into Irish punts from a sterling sum of £20,000) was not a refund of monies earlier withdrawn from that account. The source of the Stg £20,000 which funded this lodgement remains unexplained.

4. The Tribunal believed that Mr Ahern and Mr Collins were in a position to accurately account for the origins of substantial lodgements of IR£19,000 (being the bulk of the proceeds of an IR£20,000 cheque) and the IR£10,000 cash made to the B/T account on 25 August 1992 and 18 July 1995 respectively but did not do so.

5. The Tribunal believed that the B/T account was operated (at least until 1997) for the personal benefit of Mr Ahern and Mr Collins.

44 BERESFORD AVENUE, DRUMCONDRA

1. The Tribunal was satisfied that Beresford was never beneficially owned by Mr Wall or intended to be beneficially owned by him. The property was beneficially owned by Mr Ahern between 1995 and 1997, and was legally and beneficially owned by Mr Ahern from 1997 onwards. The Tribunal rejected the evidence of Mr Ahern and Mr Wall which indicated otherwise.

2. The Tribunal was satisfied that the Will executed by Mr Wall on 6 June 1996, and which bequeathed Beresford to Mr Ahern (and in the event that Mr Ahern pre-deceased Mr Wall, to Mr Ahern's daughters) was a mechanism designed to provide Mr Ahern with a degree of asset protection in respect of the property. The Tribunal was satisfied that the Will was, in all the circumstances, evidence of Mr Ahern's beneficial ownership of the property and it believed that Mr Ahern was

aware of its existence from its date of execution by Mr Wall, contrary to the position maintained by Mr Ahern in his evidence to the Tribunal.

MR TOM GILMARTIN'S ALLEGATION THAT MR OWEN O'CALLAGHAN INFORMED HIM THAT HE HAD PAID IR£80,000 (IN TOTAL) TO MR BERTIE AHERN, AND THE EVIDENCE OF MR EAMON DUNPHY.

1. The Tribunal was satisfied that Mr Dunphy gave his evidence honestly, and in the belief that it was true and accurate. It rejected any suggestion (to the extent that it was made) that Mr Dunphy embellished or otherwise altered his evidence to the Tribunal.

2. The Tribunal was satisfied that Mr Dunphy, in his sworn evidence to the Tribunal, accurately described the words and terminology used by Mr O'Callaghan in discussions between the two men relating to Mr Ahern, Mr Reynolds, and the issue of the granting of tax designation for the Golden Island development in Athlone.

3. The Tribunal accepted that the inferences taken by Mr Dunphy in relation to information provided to him by Mr O'Callaghan were, as described by Mr Dunphy, honestly drawn, and were, in the Tribunal's view, reasonable inferences for him to have taken, having regard to the words spoken by Mr O'Callaghan and the context in which they were spoken.

4. The Tribunal was satisfied that Mr O'Callaghan made verbal statements to Mr Dunphy which by their ordinary meaning conveyed the following:

- That Mr Ahern had been given an inducement and was "*taken care of*" by Mr O'Callaghan in return for a promised favour.

- That Mr O'Callaghan gave inducements to politicians

- That Mr O'Callaghan found it necessary to engage in corrupt activity in order to successfully develop property in Dublin.

5. The fact that Mr O'Callaghan was found to have disclosed information to Mr Dunphy which, at least implied or inferred that Mr O'Callaghan had corruptly paid money to Mr Ahern was corroborative of Mr Gilmartin's allegations that Mr O'Callaghan had, likewise, disclosed information to him in which he stated or implied that he, Mr O'Callaghan, had paid money to Mr Ahern in return for favours from Mr Ahern in connection with matters associated with the Quarryvale project.

6. The Tribunal was satisfied from its consideration of the evidence of Mr Gilmartin and of Mr Dunphy, that Mr O'Callaghan was prepared to divulge, and did indeed divulge, to third parties, with whom he was at the time closely associated in the Quarryvale project (and which included the Neilstown Stadium project), information which expressly or by implication suggested that he, Mr O'Callaghan, had made corrupt payments to politicians, including Mr Ahern.

7. The Tribunal accepted Mr Gilmartin's evidence that he had been informed by Mr O'Callaghan that he had paid sums of IR£30,000 and IR£50,000 to Mr Ahern. The Tribunal also acknowledged that Mr Gilmartin did not offer this evidence to the Tribunal as proof that any such money had in fact been paid by Mr O'Callaghan or received by Mr Ahern.

8. The Tribunal accepted Mr Gilmartin's evidence that following a Barkhill board meeting in AIB, Mr O'Callaghan advised him that he had paid IR£30,000 to Mr Ahern in return for an assurance that the Blanchardstown development would not receive tax designation status. The Tribunal was satisfied that Mr O'Callaghan had indeed been advised by Mr Ahern, the then Minister for Finance, at a meeting on 24 March 1994 that neither the Blanchardstown or Quarryvale developments would receive tax designation. The Tribunal also believed it to have been quite possible that Mr O'Callaghan received a similar assurance on an unknown date considerably prior to 24 March 1994, and that the reason for Mr O'Callaghan's again raising the issue with Mr Ahern on 24 March 1994 arose from a concern on his part that Mr Ray MacSharry's then imminent appointment to the board of Green Property plc (the developers of Blanchardstown) might precipitate a reversal of Mr Ahern's earlier stated position that Blanchardstown would not receive tax designation.

9. While Mr Gilmartin's evidence in relation to his allegation that Mr O'Callaghan had informed him that he, Mr O'Callaghan, had paid Mr Ahern IR£50,000 in order to ensure that the corporation owned lands in Quarryvale were not sold to Green Property plc, was considerably less specific that his evidence in relation to the alleged IR£30,000 payment, and was probably mistaken in terms of aspects of its detail because of poor recollection on Mr Gilmartin's part, the Tribunal was nevertheless satisfied the Mr Gilmartin was provided with information by Mr O'Callaghan which led him to understand that Mr O'Callaghan had indeed advised him that he had paid IR£50,000 to Mr Ahern.

ADDITIONAL FINDINGS RELATING TO THE TRIBUNAL'S INQUIRY INTO MR BERTIE AHERN'S FINANCES

1. Those findings of fact which are adverse to Mr Ahern (and on occasion to others) clearly demonstrated that important aspects of Mr Ahern's evidence (and the evidence of others) were rejected by the Tribunal. Much of the explanation provided by Mr Ahern as to the source of the substantial funds identified and inquired into in the course of the Tribunal's public hearings was deemed by the Tribunal to have been untrue.

2. The purpose of the Tribunal's inquiries into Mr Ahern's finances was to identify the sources of substantial lodgements and movements of funds into Mr Ahern's bank accounts, and other accounts associated with him, within a specific time period, and by so doing establish or exclude a connection between any of these funds, and Mr O'Callaghan, either directly or indirectly. Regrettably, the Tribunal's inquiries were rendered inconclusive for the reasons stated in the preceding paragraph. Because the Tribunal has been unable to identify the true sources of the funds in question, it could not therefore determine whether or not the payment to Mr Ahern of all or any of the funds in question were in fact made by, or initiated or arranged, directly or indirectly by Mr O'Callaghan, or by any other identifiable third party or parties.

CLLR LIAM T. COSGRAVE AND QUARRYVALE

1. The Tribunal was satisfied that Cllr Cosgrave solicited, and was paid, IR£2,000 in May/June 1991, and that the payment was improper having regard to Cllr Cosgrave's role as a councillor.

2. The Tribunal found that Cllr Cosgrave solicited, and was paid, a sum of IR£5,000 by Mr Frank Dunlop on 11 November 1992 at Newtownpark Avenue, Blackrock, Co. Dublin in relation to his support for the rezoning of the Quarryvale lands. The payment was corrupt.

3. In relation to the Frank Dunlop & Associates cheque payment of IR£1,000 on 12 January 1993 to Cllr Cosgrave's Seanad campaign, Cllr Cosgrave had knowledge of Mr Dunlop's role as a lobbyist in relation to zoning proposals which remained before the Council for consideration, not least of which was Quarryvale. Thus the acceptance of this payment compromised Cllr Cosgrave in the performance of his duties as a councillor, and was improper.

CLLR PAT DUNNE AND QUARRYVALE

1. The Tribunal was satisfied that Cllr Dunne solicited, and was paid, a sum of IR£15,000 by Mr Dunlop between 16 May 1991 and 27 June 1991 in the context of his support for the rezoning of the Quarryvale lands. The said payment was corrupt.

CLLR SEAN GILBRIDE AND QUARRYVALE

1. The Tribunal was satisfied that Cllr Gilbride solicited, and was paid, a sum of IR£12,000 by Mr Dunlop in 1991 in the context of Cllr Gilbride's support for the rezoning of the Quarryvale lands. The payment was corrupt.

2. In the period September 1992 to April 1993 Mr Owen O'Callaghan, directly or indirectly, paid Cllr Gilbride a total of IR£17,250. The Tribunal was satisfied that this money was paid in the context of Cllr Gilbride's support, as a councillor, for the rezoning of the Quarryvale lands, and was corrupt. The Tribunal was satisfied that the disinterested performance of Cllr Gilbride's role and duty as an elected representative was entirely negated by his position as a paid employee of Mr O'Callaghan from September 1992 to April 1993. The agreement entered into between Mr O'Callaghan and Cllr Gilbride and the payments made on foot of this agreement clearly constituted corruption.

CLLR TOM HAND AND QUARRYVALE

1. The Tribunal accepted Mr Dunlop's evidence that within a period of weeks in May/June 1991, he paid Cllr Hand a total of IR£20,000 in two amounts of IR£10,000 each. The first cash payment was made when Cllr Hand signed the Quarryvale amending motion and the second cash payment was made at Cllr Hand's home following the Quarryvale 16 May 1991 vote. The Tribunal was satisfied that this money was paid in the context of Cllr Hand's support, in his capacity as a councillor, for the rezoning of the Quarryvale lands. The said payment was corrupt.

2. The Tribunal were satisfied that in 1992 Cllr Hand corruptly sought payment of IR£250,000 initially from Mr Dunlop and subsequently from Mr O'Callaghan, in return for his support, in his capacity as a councillor, for the rezoning of the Quarryvale lands. The money was not paid to Cllr Hand.

3. The Tribunal was satisfied that Cllr Hand received money from Mr Dunlop on 11 November 1992 in the context of for his support for the rezoning of the

Quarryvale lands. The Tribunal was unable to determine the amount paid. Such money as was paid to Cllr Hand on that occasion was corrupt.

CLLR FINBARR HANRAHAN AND QUARRYVALE

1. The Tribunal was satisfied, notwithstanding Cllr Hanrahan's and Mr O'Callaghan's denials, that in the course of their *"walk around the block"* on 17 December 1992, Cllr Hanrahan corruptly solicited money from Mr O'Callaghan in return for his voting support for Quarryvale. The Tribunal accepted Mr Dunlop's evidence that on his return from his walk with Cllr Hanrahan, Mr O'Callaghan appeared angry. The Tribunal believed it likely that Mr O'Callaghan's anger stemmed, not from the fact that Cllr Hanrahan had made a demand for money from him, but rather because of the size of that demand.

2. The Tribunal was also satisfied that Mr Dunlop, in the course of the 1992 General Election, in all probability paid Cllr Hanrahan a sum of either IR£2,000 or IR£2,500 in the circumstances, and for the reasons, outlined by Mr Dunlop. The Tribunal was satisfied that the primary purpose of the payment was an attempt by Mr Dunlop to compromise Cllr Hanrahan's disinterested performance as a councillor in the context of providing future voting support for Quarryvale. The acceptance by Cllr Hanrahan of this money from Mr Dunlop in circumstances where he knew of Mr Dunlop's role as a lobbyist in relation to rezoning matters, was improper.

CLLR COLM MCGRATH AND QUARRYVALE

1. The Tribunal was satisfied that Cllr McGrath solicited a payment of IR£10,000 from Mr O'Callaghan, and that Mr O'Callaghan paid that sum to Cllr McGrath in October 1991. The payment was made in the context of Cllr McGrath's support, in his capacity as a councillor, for the rezoning of the Quarryvale lands. The said payment was corrupt.

2. The Tribunal was satisfied that a payment made in the sum of IR£1,000 in April 1992 to Tower Secretarial, a business operated by Cllr McGrath, by Frank Dunlop & Associates on behalf of Riga Ltd, and in respect of which Riga Ltd subsequently reimbursed Frank Dunlop & Associates, was not a payment for *bona fide* secretarial services but was in fact a corrupt payment made in the context of Cllr McGrath's support, in his capacity as a councillor, for the rezoning of the Quarryvale lands.

3. The Tribunal was satisfied that a payment of IR£10,700 made by Frank Dunlop & Associates Ltd, on the authority of Mr O'Callaghan (and which sum was

subsequently reimbursed to Frank Dunlop & Associates Ltd) in discharge of a debt due to a third party by Cllr McGrath, was corrupt, it having been paid in the context of Cllr McGrath's support, in his capacity as a councillor, for the rezoning of the Quarryvale lands. This financial assistance was solicited by Cllr McGrath. This payment was not (as claimed), a loan, nor was it ever intended to be, or treated as, a loan.

4. The Tribunal was satisfied that a payment of IR£20,000 made by Mr O'Callaghan to Cllr McGrath in November 1993, which had been solicited by Cllr McGrath, was a payment made in the context of Cllr McGrath's support, in his capacity as a councillor, for the rezoning of the Quarryvale lands, and was corrupt.

5. The Tribunal was satisfied that the payment of IR£10,000 (to Essential Services Ltd) by Riga Ltd was not as claimed, a payment for the provision of office accommodation. The Tribunal believed that the payment, which was a fifth substantial round figure payment to Cllr McGrath from Mr O' Callaghan in the period 1991-1997, was in reality a payment made in connection with Cllr McGrath's ongoing supportive role in Quarryvale and was corrupt.

6. The Tribunal was satisfied that, as alleged by Mr Dunlop, cash donations of IR£2,000 were paid to Cllr McGrath at the time of the Local Elections in 1991 as well as during the course of the General Election campaign in 1992 totalling IR£4,000. The Tribunal accepted Mr Dunlop's contention that Cllr McGrath solicited both payments. Also, given the key role played by Cllr McGrath in the Quarryvale rezoning process from as early as February 1991 and given his role as a Quarryvale strategist Mr Dunlop's payments to Cllr McGrath were in all the circumstances corrupt.

COUNCILLOR JOHN O'HALLORAN AND QUARRYVALE

1. The Tribunal was satisfied that Cllr O'Halloran indicated to Mr Dunlop that he would, or would have, supported rezoning proposals being promoted by Mr Dunlop in return for money. The Tribunal was satisfied, that Cllr O'Halloran did on occasion receive small payments in the region of IR£500 each from Mr Dunlop in the course of the making of the Development Plan 1991-1993. The Tribunal could not determine which of Mr Dunlop's development projects these payments related to. The Tribunal considered these payments improper.

2. The Tribunal was satisfied that Cllr O'Halloran solicited and was paid IR£5,000 in November 1993 by Mr O'Callaghan, in the context of Cllr O'Halloran's support, in his capacity as a councillor, for the rezoning of the Quarryvale lands. The said payment was corrupt.

3. The Tribunal accepted Mr Dunlop's evidence that Cllr O'Halloran solicited a payment from him in 1996 in the context of earlier assistance provided by him in his capacity as a councillor to, in particular, the Quarryvale rezoning project. In those circumstances, the Tribunal was satisfied that both the request for, and the receipt of the sum of IR£2,500 were corrupt, being in reality an attempt by Cllr O' Halloran to personally financially benefit from the exercise of his duties as an elected councillor.

CLLR GV WRIGHT AND QUARRYVALE

1. The Tribunal was satisfied that Mr Dunlop corruptly paid IR£2,000 to Cllr Wright in mid 1991 in order to ensure Cllr Wright's support for the rezoning of the Quarryvale lands and Cllr Wright's acceptance of the payment was improper having regard to Cllr Wright's role as a councillor.

2. The Tribunal was satisfied that on 11 or 12 November 1992, Mr Dunlop and Mr O'Callaghan travelled together to Cllr Wright's Malahide constituency office, and there, each paid IR£5,000 to Cllr Wright. These payments were paid in the context of Cllr Wright's support, in his capacity as a councillor, for the rezoning of the Quarryvale lands, and were corrupt.

CLLR DONAL LYDON AND QUARRYVALE

1. The Tribunal was satisfied that Cllr Lydon sought an election contribution from Mr Dunlop in or about May 1991 and that IR£1,000 was paid to him on a date between 16 May 1991 and 6 June 1991, in the context of Cllr Lydon's support for the rezoning of the Quarryvale lands. Cllr Lydon's soliciting and acceptance of a payment in the circumstances in which he did compromised the requirement on him as councillor to act in a disinterested fashion in making a Development Plan. This payment was improper.

CHAPTER THREE - THE CHERRYWOOD MODULE

THE LOBBYING OF COUNCILLORS

1. The Tribunal was satisfied that within six days of the Dublin County Council vote of 24 May 1991, Monarch began an intensive lobbying campaign of councillors to support its rezoning objectives in relation to its lands in the Carrickmines Valley. The Tribunal was satisfied that within Monarch there was a belief or perception that the support of certain councillors could be secured in exchange for financial payments, and that a decision was made by the board of Monarch Property Services Ltd (MPSL) in 1991 to make payments to councillors

in advance of the June 1991 Local Elections. It began a series of payments to a number of identified candidates standing in those Local Elections, amounting to IR£23,450.

MONARCH AND MR BILL O'HERLIHY

1. The Tribunal was satisfied that a discussion did indeed take place between Mr O'Herlihy and Mr Richard Lynn (of Monarch) on 27 May 1992 in the Royal Dublin Hotel, and that Mr O'Herlihy's account of that discussion, and in particular his recollection of the information provided to him by Mr Lynn, was accurate. In particular, the Tribunal was satisfied that Mr Lynn conveyed information to Mr O'Herlihy to the effect that Monarch had paid substantial sums to councillors in an effort to secure support for the rezoning of the Cherrywood lands, and that Mr Lynn had informed Mr O'Herlihy that Cllr Don Lydon was the lead councillor involved in this activity, on Monarch's behalf.

2. The Tribunal was conscious of Mr O'Herlihy's personal discomfort in revealing the details of a private discussion between himself and Mr Lynn, and accepted that Mr O'Herlihy imparted those details honestly and in good faith, albeit with reluctance, and with the benefit of a clear recollection of the event. The Tribunal was also satisfied that at all relevant times Mr O'Herlihy carried out his functions for Monarch in an entirely proper and professional manner.

3. The Tribunal was satisfied that at the time of his discussion with Mr O'Herlihy, Mr Lynn was aware of substantial payments already having been made to identified councillors by Monarch, and he was also aware that Monarch was contemplating and planning further such payments.

MONARCH'S KNOWLEDGE OF MR DUNLOP'S INTENTION TO MAKE CORRUPT PAYMENTS TO COUNCILLORS

1. The Tribunal was satisfied that Mr Dunlop was retained by Monarch in the knowledge that, as part of his lobbying function, it was likely that he would pay money to certain councillors in return for their support. Factors which led the Tribunal to this conclusion included the following:

(i) The nature of the financial arrangements entered into between Monarch and Mr Dunlop, particularly the manner in which a payment of IR£15,000 was made to him on 2 November 1993, and

(ii) The culture and attitude towards rezoning which, the Tribunal was satisfied, existed within Monarch by 1993 and thereafter, as evidenced by the Tribunal's findings in relation to the Lynn / O'Herlihy issue, and, as

evidenced by findings made by the Tribunal regarding substantial cash expenditure by Monarch in the years 1992 to 1996.

(iii) The Tribunal believed it likely that Mr Lynn did indeed comment to Mr Dunlop that Monarch was making payments to elected councillors in connection with the review of the County Dublin Development Plan. Having regard to the Tribunal's finding that Mr Lynn confirmed similar activity to Mr O'Herlihy in May 1992, it was understandable that such candour would likewise have been a feature of discussions between himself and Mr Dunlop.

MONARCH'S CHEQUE PAYMENTS TO COUNCILLORS, 1991 TO 1997

1. The Tribunal was satisfied that payments made to elected and "would-be" elected councillors by Monarch were made as an important feature of a systematic, organised and concerted operation designed to ensure the greatest possible level of councillor support for its project to rezone the Cherrywood lands, and were not, as contended by Monarch, *bona fide* political donations to individuals standing for election as part of the democratic process. On the contrary, the system adopted by Monarch was the antithesis of democracy, and was in reality intended to corrupt councillors by way of inducement, to compromise the disinterested performance of their public duty to consider rezoning applications on their merit, and with due regard to proper planning and the common good.

2. The purpose of this financial campaign, from Monarch's perspective, was to garner support for the rezoning proposals that were underway or imminent at the time of payments, and which would be presented to councillors in the course of the review of the two Development Plans. There was a direct and identifiable association between the payments to councillors (or would-be councillors), and the pending or expected proposals to the County Council relating to the rezoning of the Cherrywood lands.

3. While the extent of lobbying of individual elected councillors by Monarch (including lobbying conducted by its agents, such as Mr Dunlop), varied from councillor to councillor, the Tribunal was satisfied that most, if not all, of the recipients of Monarch's financial largesse would have known, and probably did know, in 1991, and almost certainly knew in 1992, that it was Monarch which was funding the payments to them, and that at the same time Monarch was closely and actively associated with the proposed rezoning of a substantial portion of the lands in Carrickmines, and that accordingly, it would require and would be seeking their voting support at County Council meetings, in order to ensure its zoning objectives.

4. Many of the recipients of payments from Monarch protested that there was no link (and that there could never be any link) between the payment(s) made to them, and the exercise by them of their vote at relevant County Council meetings, and that the payments did not influence them in their voting on motions relevant to Monarch's lands. The extent to which such payments did in fact induce councillors to consider the rezoning applications (and related motions) in a manner which would or might benefit the Cherrywood lands was impossible to determine in most instances. The Tribunal was satisfied that some of the councillors who received payments from Monarch and who proceeded to exercise their votes in support of motions favourable to those lands, did so solely or primarily on the merits of the proposals, and with due regard to proper planning considerations and the common good. Notwithstanding that this may have been the case with regard to certain of the recipients of Monarch's political donations, the fact of the matter was that, viewed objectively, the acceptance of such donations by a politician from a landowner / developer who was seeking the rezoning of his lands, an aspiration which usually required the votes of individual councillors, served only to negate the required disinterested exercise by a councillor of that voting duty.

MONARCH'S CASH PAYMENTS, 1992 TO 1996

1. The Tribunal was satisfied that a significant portion of Monarch's cash expenditure of IR£162,885 in the period 1992 to 1996, consisted of secret payments to certain elected councillors as part of its campaign to secure support for its rezoning project. While the Tribunal was unable to establish the identity of such individuals, it was satisfied, as a matter of probability that such payments were indeed made. Such expenditure was almost certainly corrupt. Those persons likely to have participated in this activity, or to have known of it, within Monarch included Mr Phil Monahan, Mr Richard Lynn, Mr Dominic Glennane and Mr Eddie Sweeney.

2. The Tribunal was satisfied that Monarch maintained their books and records in a manner designed to conceal the true nature and identity of the ultimate recipients of these payments.

3. The Tribunal was satisfied that, at all relevant times, Mr Monahan, Mr Lynn, Mr Glennane, and Mr Sweeney were parties to the deliberate concealment of the identity of the recipients of these funds in Monarch's books. In particular, the Tribunal found Mr Glennane's claimed ignorance of the purpose of these cash payments to have been unconvincing, given his role as financial director for Monarch.

4. In relation to the IR£41,885 cash payments recorded in Monarch's books between 11 October and 7 December 1993, the Tribunal rejected as completely implausible Mr Glennane's evidence that the probable purpose of these payments was to put Mr Monahan in funds to buy cars or antiques, or to have cash at Christmas time. Not a single documentary record, memorandum or otherwise to underpin Mr Glennane's belief in this regard was provided to the Tribunal.

5. Equally implausible to the Tribunal, was Mr Glennane's contention that postings to the books of MPSL were done "*willy-nilly*" and that any errors in such postings were corrected at year's end. There was no documentary evidence to suggest that any "*error*" in posting the IR£41,885 cash expenditure to the *"sponsorship"* or *"general promotions"* account was ever detected or sought to be corrected by Monarch personnel. The Tribunal was also satisfied that by posting the payments in this way in MPSL's books, Monarch recorded expenditure that had in fact been incurred by it in connection with the Cherrywood lands.

6. The Tribunal was satisfied that in all likelihood, a substantial portion of the cash obtained by Monarch from its bank accounts in 1994 (totalling IR£42,500) was paid to certain elected councillors in Dun Laoghaire / Rathdown County Council. In particular the Tribunal was satisfied that Monarch used the cash amounts obtained in June and October 1994 for making payments to certain councillors in return for their vote and support in Monarch related proposals coming before the Council.

7. In relation to the 1995 / 1996 cash withdrawals, the Tribunal was likewise satisfied that all, or a substantial proportion of this expenditure (IR£49,000 in 1995 and IR£11,500 in 1996) was incurred by Monarch in making payments to certain councillors in Dun Laoghaire / Rathdown County Council and / or other politicians.

MONARCH'S PAYMENTS TO MR FRANK DUNLOP

1. The sum of IR£85,000 was recorded in Monarch's books as the total amount paid to Mr Dunlop, of which IR£80,000 was paid between March and December 1993, with a balance of IR£5,000 being paid in August 1995. Payments made by Monarch to Mr Dunlop were miscalculated by both parties in information they provided to the Tribunal prior to the relevant oral evidence being heard in the course of the Tribunal's public hearings.

2. The Tribunal was satisfied that Mr Monahan, Mr Glennane, Mr Sweeney and Mr Lynn knew of the primary purpose of Mr Dunlop's engagement (that is, the lobbying of County councillors and making corrupt payments in order to ensure their support for motions promoting the rezoning of the Monarch lands in Cherrywood). The Tribunal was satisfied that the IR£85,000 paid to Mr Dunlop in the period from 1993 to 1995 had the dual objective of, firstly, remunerating and rewarding him for his efforts in promoting the Cherrywood project, and, secondly, providing him with funds for disbursement to councillors in the course of the Cherrywood project, in order to ensure their support for that project.

MONARCH AND MR LIAM LAWLOR

1. The Tribunal was satisfied, that from Monarch's perspective, Mr Liam Lawlor was remunerated in October 1990 for services already provided by him in relation to Monarch's Tallaght development, and in contemplation of future services that he might provide in respect of ongoing developments, including Cherrywood. For reasons better known to Monarch, and which no Monarch witness has shared with the Tribunal, Monarch went to considerable efforts in its books to conceal the nature of the services provided by Mr Lawlor, when it used the term *"strategy plan".* Mr Glennane suggested that the term may have been taken from Mr Lawlor's invoice.

2. The Tribunal believed that there was no justification for the payment by Monarch, or the acceptance by Mr Lawlor, of a sum of IR£56,300 in 1990 in circumstances where the Tribunal was satisfied, both Monarch and Mr Lawlor knew that Dublin County Council (of which Mr Lawlor was an elected member in October 1990) had embarked on its consideration of rezoning proposals for the Carrickmines valley. The timing of the two payments of IR£28,000 and IR£28,300 (comprising the total of IR£56,300), coupled with their designation in Monarch's books and records under the heading "*Professional and Consultant Fees"* as *"strategy plan"* (a term akin to that used by Monarch in 1992 to describe payments it had made to local Election candidates in 1991), led the Tribunal to conclude that the payments were, in part at least, connected to Mr Lawlor's role as a member of Dublin County Council. In all the circumstances, these payments were corrupt.

3. Mr Lawlor was paid IR£10,000 by Monarch between November and December 1993. While Mr Lawlor was not a councillor at that time, the Tribunal was nevertheless satisfied that in the run up to the November 1993 Cherrywood votes in Dublin County Council, Monarch perceived Mr Lawlor as a person with influence over certain Fianna Fáil councillors within the Council. Consequently

the Tribunal concluded that the payments made to Mr Lawlor in November / December 1993 were likely to have been made in this context.

4. Although Mr Lawlor dealt mostly with Mr Phil Monahan in connection with Monarch related matters, Messrs Glennane, Sweeney and Lynn were at all times fully aware of Mr Lawlor's involvement with Monarch, and were probably aware of the extent of the payments made to him in the period 1990 to 1996.

5. The Tribunal was satisfied from documentation it examined, that between October 1990 and 1996, Mr Lawlor received payments amounting to at least IR£72,800 from Monarch. Save in the case of three of these payments (IR£3,000 paid in 1994, IR£2,500 paid in 1995 and IR£1,000 paid in 1996) and a further IR£3,000 identified as being to Hazel Lawlor, Monarch's books and records did not identify Mr Lawlor as the recipient of the payments.

CLLR TONY FOX AND CHERRYWOOD

1. The Tribunal rejected Cllr Fox's evidence that he was unaware that Mr Dunlop had been retained by Monarch. The Tribunal was satisfied to accept Mr Dunlop's evidence that he had lobbied Cllr Fox in relation to Cherrywood, and it preferred Mr Dunlop's evidence that the question of money arose in the course of such lobbying endeavours. The Tribunal was assisted in reaching this conclusion by Mr Dunlop's clear recollection of Cllr Fox's reference to Monarch as being *"mean"*.

2. The Tribunal was satisfied that Mr Dunlop did in fact pay IR£2,000 in cash to Cllr Fox shortly after the Dublin County Council vote on the 11 November 1993, that he did so at Cllr Fox's request and that the payment was corrupt.

3. Cllr Fox received cheque payments of IR£600 on the 5 June 1991 and IR£1,000 on the 29 January 1993, from Monarch. The Tribunal was satisfied that these payments were made to Cllr Fox to ensure his support for Monarch's rezoning plans for their lands in Cherrywood.

4. The Tribunal was satisfied that Cllr Fox probably solicited the payment of IR£1,000 from Monarch made in late January 1993, although he had not been a candidate in either the November 1992 General Election or the subsequent Seanad Election. His probable soliciting of the IR£1,000 payment in late 1992 arose in circumstances where some six months previously, he had done Monarch's bidding by lodging a motion, the objective of which was to enhance Monarch's chances of having a greater portion of its lands rezoned.

5. Cllr Fox's receipt and acceptance of a payment of IR£1,000 on 29 January 1993, was improper having regard to his knowledge of Monarch's interests in the Cherrywood lands, and the fact that, in his capacity as an elected councillor, he would be called upon to exercise his duty and power to vote on rezoning related motions associated with the Cherrywood lands.

6. The Tribunal was satisfied that the true purpose of these two payments to Cllr Fox from Monarch was to copper-fasten Cllr Fox's support for its project to rezone its lands at Cherrywood. These payments were intended to compromise the disinterested performance by Cllr Fox of his duty as a councillor and were made corruptly by Monarch.

CLLR COLM MCGRATH AND CHERRYWOOD

1. The Tribunal was satisfied that Mr Dunlop did pay Cllr McGrath a sum of IR£2,000 in cash after the Special Meeting of Dublin County Council on the 11 November 1993, and that he did so in response to a request for payment by Cllr McGrath. This payment was solicited and paid in the context of the provision of support by Cllr McGrath for the rezoning of the Cherrywood lands. This payment was corrupt.

2. The Tribunal was satisfied that on those occasions when Cllr McGrath received cheque payments from Monarch of IR£600 on the 5 June 1991 and IR£500 on the 17 November 1992, he was aware of Monarch's interest in the Cherrywood lands, and of the fact that those lands were the subject of rezoning proposals, and that motions to facilitate that end would come before the County Council of which he, Cllr McGrath, was a member, and that he would be called upon to exercise his vote in relation to such proposals. Until January 1994, Cllr McGrath was in a position, by virtue of the casting of his vote, to assist Monarch in its rezoning ambitions for the rezoning of the Cherrywood lands. Thus, his acceptance of payments, and the possibility of he having solicited the payments made to him in 1991 and 1992, compromised him in the required disinterested performance of his duties as a councillor in the making of a Development Plan.

3. While Monarch maintained that the payments it made to Cllr McGrath and in particular the payments of IR£600 and IR£500 (in 1991 and 1992 respectively) were *bona fide* political contributions, the Tribunal was satisfied that this was not the case. The Tribunal believed that the purpose of these payments was to ensure and copper-fasten Cllr McGrath's support for Monarch's project to rezone its Cherrywood lands and that accordingly Monarch's purpose in making these payments was corrupt.

CLLR TOM HAND AND CHERRYWOOD

1. The Tribunal was satisfied that Cllr Hand knew, both on the occasion in 1991 when he was paid IR£5,000 and the occasion in 1992 when he was paid IR£1,000 by Monarch, that Monarch had an interest in lands which were the subject of rezoning proposals which had come, or were likely to come, before the County Council of which he, Cllr Hand was a member, and that he would be called upon to vote on those proposals. The acceptance by Cllr Hand of sums of IR£5,000 and IR£1,000 in 1991 and 1992 respectively, compromised the requirement that he discharge his duties as an elected representative in a disinterested manner. The scale of the payment made by Monarch to Cllr Hand in 1991 can only be regarded as having been extraordinarily large, particularly when compared to the amounts other local election candidates received from Monarch. While the Tribunal has rejected Mr Lynn's evidence that the provision of IR£5,000 to Cllr Hand was intended for disbursement among local Fine Gael election candidates (including Cllr Hand himself), it was satisfied, given the general thrust of Mr Lynn's evidence, that a discussion took place between them prior to the provision of the IR£5,000. It was therefore probable that Cllr Hand sought this amount of money and that his request was readily acceded to by Monarch. The Tribunal was also satisfied that when seeking such a large payment, Cllr Hand was aware of Monarch's rezoning ambitions for its lands.

2. Although the Tribunal did not identify evidence sufficient to link the payments to Cllr Hand totalling IR£6,000 specifically to any particular agreement by him to support County Council motions relating to Cherrywood, it was satisfied that Monarch, in making these payments to Cllr Hand in 1991 / 1992, and Cllr Hand in receiving these payments, did so expressly or by implication on the understanding that Cllr Hand would provide that support. As such, the payments were corrupt.

CLLR G.V. WRIGHT AND CHERRYWOOD

1. The acceptance by Cllr Wright of sums totalling IR£3,300 from Monarch between 1991 and 1992 compromised the required disinterested performance of his duties as a councillor in the making of the Development Plan, particularly in circumstances where, from at the latest May 1992 he was in no doubt about Monarch's rezoning ambitions for its lands. IR£3,000 of the IR£3,300 was paid after this date.

2. The Tribunal was satisfied that Monarch's payments to Cllr Wright totalling IR£3,300 within an eighteen month period were not *bona fide* political contributions, particularly having regard to the substantial total sum involved. On

the contrary, the payments were part of a systematic financial assault by Monarch on elected councillors/candidates designed to secure support and favouritism in respect of proposals coming before the Council seeking the rezoning of Monarch's lands in Cherrywood, are proposals which, if successful, would facilitate the rezoning of its lands. As such, the making of these payments was corrupt.

CLLR DON LYDON AND CHERRYWOOD

1. The Tribunal was satisfied that Cllr Lydon was considered by Monarch to have been an important councillor, particularly in 1992/1993, in the context of its proposals to rezone their lands at Cherrywood, and that he facilitated Monarch at crucial stages within that period and when requested to do so by Monarch.

2. The receipt by Cllr Lydon of sums totalling IR£3,100 (whether or not they were solicited by him) within an eighteen month period in 1991 / 1992, and in circumstances where he knew that lands in which Monarch had an interest were to be the subject of proposals coming before Dublin County Council seeking the rezoning of those lands for development, and in respect of which Cllr Lydon would be called upon to exercise his vote, compromised the requirement incumbent on Cllr Lydon that he exercise his functions as an elected representative in a disinterested fashion. The acceptance by him of a sum of IR£2,500 in December 1992, in the wake of the role he played as an active promoter of Monarch's interests within the County Council (by virtue of his actions in May 1992 in both signing and promoting motions supportive of Monarch), emphasised the extent of Cllr Lydon's abuse of his role and duty as an elected representative in the course of the review of the Development Plan.

3. The Tribunal rejected Monarch's contention that the payments of IR£600 in June 1991 and IR£2,500 in December 1992 were *bona fide* political contributions, whether or not one or both had been solicited. Monarch's primary purpose in making the payments was to ensure Cllr Lydon's support for its proposals relating to the Cherrywood lands and to ensure that he would do their bidding in that regard. As such, the said payments were made corruptly.

MR RICHARD LYNN

1. The Tribunal was satisfied, that in the course of his extensive lobbying activities, that Mr Lynn tapped into the very considerable financial resources made available to him by Monarch and used them to influence many of the elected councillors to promote and support Monarch's ambition to rezone as much of its land bank at Cherrywood as was possible. The emphasis was on

residential development, and increasing the density of housing to the greatest possible extent.

2. The Tribunal was satisfied that Mr Lynn masterminded the Monarch strategy of making generous payments of money to large numbers of councillors at election time for the purposes of ensuring their support for the Monarch project to rezone its Cherrywood lands. Moreover, the Tribunal was satisfied that Mr Lynn was instrumental in the disbursement of cash payments to certain unidentified councillors, which were funded from the substantial cash withdrawals made from accounts associated with Monarch in the years 1992 to 1996, while Monarch's campaign to rezone its lands was ongoing and was part of Monarch's corrupt campaign to bestow councillors with generous cash payments either on the basis of their express agreement to support that campaign within the County Council, or in the expectation that they would do so. Such payments were a cynical and corrupt attempt to compromise the required disinterested performance of the duties of elected representatives.

3. The Tribunal considered that this blatant use of money constituted, in reality, an abuse of the democratic system in that it facilitated Monarch in its bid to influence the voting patterns of elected councillors while exercising their public duty to make decisions in the course of the review of the Dublin County Development Plan. More particularly, the Tribunal considered that it was a means of influencing or persuading significant numbers of elected councillors to support rezoning proposals favouring the Cherrywood lands, and, in consequence, enormously increase their market value.

CLLR SEAN BARRETT

1. The Tribunal accepted Mr Michael Smyth's evidence that in the course of a heated exchange of words with Mr Monahan in 1992, Mr Monahan made serious allegations against Cllr Barrett to the effect that Monarch had paid, or was paying, money to Cllr Barrett to ensure that Fine Gael councillors supported the Monarch proposals to develop the Cherrywood lands, and that Mr Monahan had favoured Cllr Barrett with his bloodstock insurance business for the same reason.

2. The Tribunal was however satisfied that neither of these allegations was true and that Mr Monahan's motivation in making them was to goad Mr Smyth.

3. The Tribunal was satisfied that Cllr Barrett at the material time was a genuine opponent of Monarch's proposals to develop the Cherrywood lands and that he

did not seek to persuade or influence his fellow Fine Gael councillors to support those proposals in any way.

CHAPTER FOUR - THE BALLYCULLEN / BEECHILL MODULE

THE RELATIONSHIP BETWEEN MR FRANK DUNLOP AND MR CHRISTOPHER JONES SNR AND MR DERRY HUSSEY

1. Mr Christopher Jones Snr, at the time of Mr Dunlop's retention as a lobbyist in relation to the attempts to rezone the lands at Ballycullen and Beechill, had an awareness of the need for and intention on the part of Mr Dunlop to make payments to councillors in order to ensure support for the rezoning of the Ballycullen and Beechill lands.

2. The Tribunal accepted that Mr Hussey did not possess a similar degree of knowledge/awareness of Mr Dunlop's actual or intended practice of paying councillors to that of his business colleague, Mr Jones.

3. Although Mr Dunlop expressed his belief to be that both Mr Jones and Mr Hussey were aware of the perceived need to pay particular councillors in order to secure their support for rezoning proposals and of both having acquiesced when he stated that the *"ways of the world"* would have to apply, the Tribunal was satisfied that only Mr Jones had a full awareness of this perceived need.

4. The Tribunal was not satisfied on the balance of probability that Mr Hussey possessed the degree of knowledge and awareness of Mr Dunlop's actual or intended practice of paying councillors to support the rezoning of land, which Mr Dunlop suggested he had.

CLLR DON LYDON AND BALLYCULLEN / BEECHILL

1. The Tribunal was satisfied that the payments made to Cllr Lydon by Mr Christopher Jones Snr., amounting to IR£9,000, over a 20 month period in 1992/1993 were inextricably linked to Cllr Lydon's support for, in particular, the rezoning of the Ballycullen lands. The Tribunal was satisfied that these payments were, in reality, solicited by Cllr Lydon at a time when Mr Jones was engaged in a process which required councillors to exercise their vote in relation to specific motions relating to lands in which Mr Jones had an interest. The Tribunal was satisfied that the three payments totalling IR£9,000 were solicited and paid in connection with the rezoning of the Ballycullen lands, and were intended to influence, by inducement, the disinterested performance by Cllr Lydon of his public duties as an elected councillor. The said payments were corrupt.

2. The Tribunal was satisfied that Mr Dunlop paid Cllr Lydon IR£2,000 in return for Cllr Lydon's support for the rezoning of the Ballycullen / Beechill lands. The said payment constituted an inducement intended to compromise the disinterested performance of public duties on Cllr Lydon's part, and was corrupt.

3. In total, Cllr Lydon received corrupt payments of IR£11,000 in connection with his support for the rezoning of the Ballycullen / Beechill lands in 1992 / 1993.

CLLR GV WRIGHT AND BALLYCULLEN/BEECHILL

1. The Tribunal was satisfied that the primary motivation in Mr Christopher Jones IR£5,000 payment to Cllr Wright in November 1992 was not a desire to assist him in relation to his political expenses associated with the General Election at that time, but was in fact paid in recognition of the support previously given by Cllr Wright to Mr Jones in relation to the Ballycullen/Beechill lands rezoning projects, and for the purposes of ensuring Cllr Wright's support in the confirmation vote in the following year in relation to the Ballycullen lands, and also to ensure that Cllr Wright would exert influence on his Fianna Fail councillors colleagues to support that rezoning project. The Tribunal was satisfied that the payment was an attempt to influence by inducement, Cllr Wright's disinterested performance of his public duties. The payment was corrupt.

CLLR TOM HAND AND BALLYCULLEN / BEECHILL

1. The Tribunal was satisfied that Cllr Hand corruptly sought two payments of IR£1,000 each from Mr Derry Hussey/Beechill Properties Limited, through Mr Frank Dunlop. Cllr Hand solicited these payments on the basis of his past support for the rezoning of the Beechill lands. Payment of the first IR£1,000 was authorised by Mr Hussey, while the payment of the second IR£1,000, having been refused by Mr Hussey, was subsequently paid by Mr Jones from his personal bank account through Mr Dunlop. The cheque was probably made out to cash.

2. The Tribunal was satisfied that Mr Dunlop paid IR£2,000 in cash to Cllr Hand at Cllr Hand's request in return for his signature on two motions which came before Dublin County Council on 16 and 29 October 1992, relating to the Beechill and Ballycullen lands respectively. This payment was a corrupt payment.

CLLR TONY FOX AND BALLYCULLEN / BEECHILL

1. The Tribunal was satisfied that Cllr Fox was paid IR£1,000 by Mr Dunlop in 1992 in return for his support for the rezoning of the Ballycullen lands. This payment was corrupt.

CLLR COLM MCGRATH AND BALLYCULLEN / BEECHILL

1. The Tribunal believed it likely that Cllr McGrath received a payment of IR£1,000 from Mr Dunlop sometime in October / November 1992. The Tribunal found that this payment was corrupt.

CLLR SEAN GILBRIDE AND BALLYCULLEN / BEECHILL

1. The Tribunal was satisfied that Mr Dunlop paid Cllr Gilbride IR£1,000 in return for his support for the rezoning of the Ballycullen/Beechill lands, and that the payment was solicited by Cllr Gilbride. This payment was corrupt.

CLLR LIAM T. COSGRAVE AND BALLYCULLEN/BEECHILL

1. The Tribunal was satisfied that a sum of IR£1,000 was paid by Mr Dunlop to Cllr Cosgrave and that this was paid in connection with the Ballycullen / Beechill rezoning project, and more specifically Cllr Cosgrave's support for it. The payment was corrupt.

MR LIAM LAWLOR AND BALLYCULLEN/BEECHILL

1. The Tribunal was satisfied that the primary reason for four payments to Mr Lawlor amounting to IR£17,500 in 1991/1992 was in recognition of Mr Lawlor's role as an advisor to Mr Christopher Jones. None of the four payments to Mr Lawlor amounting to IR£17,500 bore the hallmarks of legitimate political donations as they were claimed to have been.

2. The Tribunal was satisfied that the said payments were made by Mr Jones to Mr Lawlor on account of Mr Lawlor's position, at all material times, as a public representative (including an elected councillor at the time of the first payment). In that capacity, Mr Lawlor was in a position to exercise his vote and to influence fellow councillors up to June 1991 and continued thereafter to be in a position to exercise influence over councillors in his capacity as a TD. These payments were corrupt.

CLLR PAT RABBITTE

1. The Tribunal was satisfied that Mr Frank Dunlop paid Cllr Rabbitte IR£2,000 in Cllr Rabbitte's home in 1992 at the time of the 1992 General Election. The Tribunal was satisfied that shortly thereafter the said donation was returned by way of cheque from the Democratic Left Party, because of an appreciation on the part of Cllr Rabbitte and his Democratic Left colleagues of the inappropriateness of retaining the money in circumstances where they were aware of Mr Dunlop's active involvement as a lobbyist for landowners engaged in pursuing land rezoning. This decision was both commendable and correct.

CHAPTER FIVE - THE PYE LANDS MODULE

MR AIDAN KELLY

1. The Tribunal accepted as essentially accurate the evidence of Mr Aidan Kelly in relation to his meeting with an unidentified County Council official and of the request by that individual for money in 1988. This request was corrupt. The Tribunal was also satisfied that Mr Kelly communicated the allegation to Mr Al Smith, a senior County Council official, albeit in a vague and unspecific manner.

2. The Tribunal did not accept that there was a common intention between Mr Dunlop and Mr Kelly that Mr Dunlop's assignment to lobby Cllrs Hand and Lydon would involve the payment of money to these councillors.

3. There was no evidence to suggest that Mr Kelly paid money or attempted to pay money to any elected councillor in relation to the Pye lands rezoning project. Indeed, there was evidence from Mr Kelly that he had himself rejected one explicit demand for money, and another implicit request, in the past. Both requests were planning related.

MR GEORGE REDMOND AND MR AIDAN KELLY

1. The Tribunal rejected Mr George Redmond's contention that he had no memory of any contact or meetings in 1988 relating to the Pye lands, and believed it probable that Mr Redmond withheld information from the Tribunal on the subject of such contact or meetings.

2. The Tribunal believed it likely that Mr George Redmond's admonishment to Mr Aidan Kelly for bringing a third party to a meeting arranged with Mr Redmond in February 1988 was, as suggested by Mr Kelly, linked to the fact that Mr Kelly had not attended the meeting alone, and that it was reasonable for Mr Kelly to infer

(having regard to his previous experiences) that the motivation for such a request was to facilitate a demand for payment by Mr Redmond.

CLLR. TOM HAND AND PYE

1. The Tribunal was satisfied, having regard to the evidence given by Cllr Donal Marren, that from his exchanges with Cllr Hand in the 1991/1992 period relating to the Pye lands, Cllr Marren understood Cllr Hand to have linked such support as Cllr Marren might give for the rezoning of the lands to the prospect of financial reward for Cllr Marren. (There was no finding that Cllr Marren sought, or received money in relation to the Pye lands.)

2. The Tribunal was satisfied that following *"negotiation"* between Mr Dunlop and Cllr Hand, Mr Dunlop paid Cllr Hand IR£2,000 in cash in return for Cllr Hand's continued support for the rezoning of the Pye lands. The purpose of the payment was to compromise Cllr Hand in the disinterested performance of his duties as a councillor. The said payment was corrupt.

3. The Tribunal was satisfied that as of September/October 1992, Mr Dunlop had an established relationship with Cllr Hand, and had dealings with him in relation to the rezoning of the Ballycullen/Beechill lands at this time. Moreover, on 6 October 1992, Cllr Hand had made a demand for IR£250,000 in the presence of Mr Dunlop and Mr O'Callaghan in return for his support for the rezoning of Quarryvale, and had prior to that date, provided Mr Dunlop with the number of a bank account in Australia into which the money demanded was to be deposited. While the Tribunal accepted that Cllr Hand's demand for payment of a sum of IR£250,000 was not acceded to, what had taken place prior to, and on 6 October 1992 in this regard, rendered entirely credible Mr Dunlop's evidence that Cllr Hand had indeed requested money in return for his continuing support for the rezoning of lands, including the Pye lands. In all of those circumstances, the Tribunal was satisfied to accept Mr Dunlop's testimony that in the course of his approach to Cllr Hand, pursuant to the basis on which he, Mr Dunlop, was retained, namely on the basis to ensure Cllr Hand's continuing support for the rezoning of the Pye lands, Mr Dunlop was requested by Cllr Hand for money, a request duly acceded to by him.

CLLR DONAL LYDON AND PYE

1. The Tribunal was satisfied that Cllr Donal Lydon was paid IR£1,000 in cash by Mr Dunlop, and that Cllr Lydon solicited the payment in return for his continued support for the rezoning of the Pye lands. The purpose of the payment was to

compromise Cllr Lydon in the disinterested performance of his duties as a councillor. The said payment was corrupt.

CLLR. TONY FOX AND PYE

1. The Tribunal was satisfied that Cllr Tony Fox solicited from Mr Dunlop, and was paid, the sum of IR£1,000 in cash in return for his continued support for the rezoning of the Pye lands, and that the purpose of the payment was to compromise Cllr Fox in the disinterested performance of his duties as a councillor. The said payment was corrupt.

CHAPTER SIX - THE LISSENHALL MODULE

MR DUNLOP'S RETENTION AS A LOBBYIST

1. The Tribunal was satisfied that Mr Dunlop's practice of making payments to councillors to support rezoning projects was known to those who met with him in November 1992 at the time of his retention as a lobbyist in relation to the Lissenhall lands, namely Mr Tim Collins, Mr Michael Hughes and Mr Colm Moran. The Tribunal accepted Mr Dunlop's evidence of what occurred at the November meeting and concluded that Messrs. Hughes, Collins and Colm Moran acquiesced in the contemplated corrupt activity on the part of Mr Dunlop in relation to the lobbying he was to undertake to secure the rezoning of the Lissenhall lands.

2. The Tribunal was satisfied that the primary purpose and motivation for the initial payment of IR£12,500 to Mr Dunlop personally, rather than to his company, and in the absence of an invoice and provision for VAT, was designed to facilitate easily accessible funds for the purpose of making payments to councillors in order to secure their support in the planning process.

3. The Tribunal was satisfied that both Mr Hughes and Mr Colm Moran knew at all relevant times that the manner by which Mr Dunlop was to be paid IR£12,500 in January 1993 followed upon the understanding which had been articulated at the meeting in November 1992, that he would require funds for payments to councillors.

CLLR CYRIL GALLAGHER AND LISSENHALL

1. The Tribunal was satisfied that Cllr Gallagher received a sum of IR£1,000 from Mr Dunlop in or about 18 March 1993, in return for his signature on, and his support for, the motion lodged with Dublin County Council on 18 March

1993, which was the subject of a successful vote in Dublin County Council on 21 March 1993. This payment was a corrupt payment.

CLLR TONY FOX AND LISSENHALL

1. The Tribunal was satisfied that Mr Dunlop paid IR£1,000 to Cllr Fox in return for his support for the rezoning of the Lissenhall lands, and that this was paid in the circumstances as indicated by Mr Dunlop in the course of his evidence, and was corrupt.

CLLR ANN DEVITT AND LISSENHALL

1. The Tribunal took the view that the actions of Cllr Devitt in acting as a consultant to Rayband Ltd, with the promise of payment, and her acceptance of a payment of IR20,000, were entirely inappropriate, having regard to the positions she then held both as an elected councillor in Fingal County Council, and as chairperson of the northern area of the Eastern Health Board.

CHAPTER SEVEN - THE CARGOBRIDGE MODULE

MR MICHAEL MCGUINNESS

1. The Tribunal was satisfied that letters written by or on the instruction of Mr McGuinness to the Minister for Transport, and to Dublin County Council dated 12 and 13 March 1992, were written in an attempt to stop rumours circulating at the time concerning the involvement of Celtic Helicopters and/or Mr Haughey and/or Mr Barnicle in the Cargobridge consortium. The rumours had the potential to damage the consortium's efforts to obtain planning permission and/or rezoning and an upgraded right of way for its lands.

2. The Tribunal was satisfied that in paying IR£10,000 cash to Mr Dunlop, Mr McGuinness anticipated that Mr Dunlop might pay councillors in the course of his lobbying and / or counter lobbying activity. Given that Mr Dunlop stated in evidence that the possible payment of councillors was raised by Mr McGuinness, the Tribunal believed that Mr McGuinness was aware, from whatever source, that Mr Dunlop engaged in the practice of making corrupt payments to councillors. The Tribunal was therefore satisfied that Mr McGuinness' payment of IR£10,000 to Mr Dunlop was made, in part at least, for corrupt purposes.

MR CIARAN HAUGHEY AND MR JOHN BARNICLE

1. Abervanta Ltd sold its interest in the consortium in 1994 realising a gain after the repayment of interest of IR£164,000. The Tribunal rejected the evidence of

Messrs. Haughey and Barnicle to the effect that, they believed, when initially giving sworn evidence to the Tribunal on 3 October 2006, that they each had received only IR£10,000 from the proceeds of the sale of Abervanta Ltd's interest in the Cargobridge lands, and that they had forgotten or were otherwise unaware of the disbursement details of the great bulk of those funds. The Tribunal was satisfied that this evidence was given with the full knowledge that it was false, and that it was given for the purpose of concealing from the Tribunal the fact that Mr Haughey and Mr Barnicle had received between them, directly or indirectly, approximately IR£164,000 in total of those proceeds. Their false and misleading information necessitated their recall to give additional evidence to the Tribunal in relation to the disbursal of the proceeds of sale.

CLLR TONY FOX AND CARGOBRIDGE

1. The Tribunal was satisfied that Mr Dunlop paid IR£1,000 in cash to Cllr Fox in return for his support for the Cargobridge lands rezoning, and that Cllr Fox solicited the payment. This payment was intended to ensure that Cllr Fox would act otherwise than in the disinterested performance of his public duties as a councillor. This payment was corrupt.

CLLR CYRIL GALLAGHER AND CARGOBRIDGE

1. The Tribunal was satisfied that Mr Dunlop paid IR£1,000 in cash to Cllr Gallagher in return for his support for the Cargobridge lands rezoning, and that Cllr Gallagher solicited the payment. This payment was intended to ensure that Cllr Gallagher would act otherwise than in the disinterested performance of his public duties as a councillor. This payment was corrupt

CLLRS COLM MCGRATH AND DONAL LYDON AND CARGOBRIDGE

1. The Tribunal was satisfied that Mr Dunlop erroneously identified councillors McGrath and Lydon as recipients of money in relation to the Cargobridge lands, in the course of his private interview with members of the Tribunal's legal team on 18 May 2000.

CLLR ANN DEVITT AND CARGOBRIDGE

1. The Tribunal was of the view that Cllr Devitt's actions in taking on a role in the Cargobridge planning application process between 1994 and 1997, together with the agreement she reached with Mr Michel McGuinness that she would be paid for her role, compromised the requirement on her as an elected representative to perform her duties in a disinterested manner. In effect, Cllr

Devitt, a local councillor, in anticipation or expectation of reward, assisted the Cargobridge Consortium in its ultimately successful planning application. The Tribunal took the view that Cllr Devitt's actions, in agreeing to act for financial reward, for the advancement of matters, the outcome of which rested in the decision making powers of the Council of which she was a member, were entirely inappropriate.

2. The Tribunal believed that Cllr Devitt permitted herself to become engaged in the Cargobridge project in circumstances where there was a clear conflict of interest with her role and her duty as a councillor. This conflict arose by her intermingling two clearly separate and distinct aspects of her work; that of a councillor on the one hand, and that of a lawyer/advisor on the other.

3. The Tribunal was satisfied as a matter of probability that Mr McGuinness' motivation in engaging Cllr Devitt's services related to her role as a councillor, and the positive influence which she would bring to bear in that capacity on his interests in relation to the Cargobridge.

CHAPTER EIGHT - THE CLOGHRAN MODULE

MESSRS. JOHN BUTLER, NIALL KENNY, TOM WILLIAMS AND TIM COLLINS

1. The Tribunal was satisfied that, in the course of their first meeting, Mr Butler and Mr Collins indicated to Mr Dunlop their awareness that payments by him might be required to obtain the support of certain unnamed councillors. It was satisfied to accept that the words attributed by Mr Dunlop to Mr Collins and Mr Butler were so stated on 13 January 1993, and that the words led Mr Dunlop to conclude that both men were *au fait* with Mr Dunlop's "*system"*, and that all three left the meeting on 13 January 1993 in the knowledge that Mr Dunlop might well engage in corrupt activity in the course of his retention as a lobbyist for the rezoning of the Cloghran lands.

2. The Tribunal was satisfied that neither Mr Michael Kenny nor Mr Tom Williams were privy to the fact that at the time of his retention as a lobbyist for the rezoning of the Cloghran lands, Mr Dunlop contemplated making corrupt payments to councillors to ensure their support for that rezoning.

CLLR GV WRIGHT AND CLOGHRAN

1. The Tribunal was satisfied that Cllr Wright solicited a payment of IR£1,000 from Mr Dunlop in return for his support of the rezoning of the Cloghran lands, including his signature on the rezoning motion which was passed by Dublin County Council on 1 April 1993. The Tribunal believed that this payment was

also intended to provide for Cllr Wright's future support for relevant motions, up to and including the confirmation motion in relation to the Cloghran lands in October 1993. The Tribunal was satisfied that Cllr Wright, in these circumstances, did not perform his duties as a councillor in a disinterested fashion, as he was required to do. It was satisfied that the payment of IR£1,000 was corrupt.

CLLR CYRIL GALLAGHER AND CLOGHRAN

1. The Tribunal was satisfied that Mr Dunlop paid Cllr Gallagher a sum of IR£1,000 between 10 and 12 March 1993, in return for his signature on the Cloghran rezoning motion, and also for his support for the rezoning process thereafter. This payment, the Tribunal believed, constituted an inducement to Cllr Gallagher to perform his duty as a councillor otherwise than in a disinterested fashion, and was corrupt.

CLLR TONY FOX AND CLOGHRAN

1. The Tribunal was satisfied that Mr Dunlop lobbied Cllr Fox in relation to the Cloghran lands, particularly in the period leading up to the confirmation process in late September/early October 1993, and that in the course of that process, Cllr Fox solicited a payment of money from Mr Dunlop in return for his support, and, that Mr Dunlop duly paid IR£1,000 to Cllr Fox in or about this time. The Tribunal was satisfied that the payment represented an inducement to Cllr Fox to ensure that he would act other than in the disinterested performance of his duties as a councillor. The said payment was corrupt.

CHAPTER NINE - THE BALDOYLE PENNINE MODULE

THE INTERESTS OF MR BRENDAN HICKEY, MR DAVID SHUBOTHAM AND MR FRANK DUNLOP IN AN OPTION RELATING TO THE BALDOYLE LANDS

1. The Tribunal was satisfied that Mr Brendan Hickey (a property developer), Mr David Shubotham (a stockbroker in Davy Stockbrokers) held a beneficial interest in an option (the "Pennine Option") to purchase up to 250 acres of approximately 400 acres of land (the "Baldoyle Lands") during the period from 4 November 1991 to 25 January 1996 from Mr John Byrne. In arriving at this conclusion the Tribunal rejected the evidence of Messrs Hickey and Shubotham that in this period neither they nor Davy Hickey Properties Ltd, the corporate vehicle used by them (and others) to invest in and develop property, had any beneficial interest in the Pennine Option.

2. The Tribunal rejected Mr Dunlop's claim that he had no beneficial interest in the Pennine option between January 1991 and May 1993. Notwithstanding the absence of evidence of any concluded partnership arrangement or agreement, the Tribunal was satisfied that he had, in that period, an arrangement, whether formalised or otherwise, whereby it was understood that he had a beneficial ownership in the Pennine option.

3. The Tribunal was satisfied that Mr Lawlor had the original idea of the Pennine Option and that he brought Mr Byrne, Mr Dunlop, Mr Hickey and Mr Shubotham together. While there was no documentary or oral evidence before the Tribunal that Mr Lawlor would have been entitled to any benefit which might have accrued had the Pennine option lands been rezoned and the option exercised, the Tribunal could not rule out the possibility that had this occurred under the stewardship of Messrs Hickey, Shubotham and Dunlop, Mr Lawlor, would, in some shape or form, have received recompense from the assistance he rendered.

4. The Tribunal was satisfied that in the period January 1991 to May 1993 there was ongoing and significant involvement on the part of Messrs Hickey and Shubotham in the attempt to rezone the Pennine Option lands. Mr Byrne, who did not give evidence to the Tribunal because of ill health, involved himself in the rezoning process and to this end liaised with Mr Hickey, Mr Dunlop, Mr Lawlor and with his own solicitor on a ongoing basis.

5. The Tribunal was satisfied that Messrs Hickey and Shubotham, in the course of their evidence, went to considerable lengths to distance themselves from the Baldoyle rezoning project. The Tribunal believed they did so in order to distance themselves from actions in respect of which Mr Dunlop had appraised the Tribunal, and had testified to, namely, his contention that he made payments to a number of councillors in connection with the Baldoyle rezoning project. Moreover, the Tribunal concluded that the cut off point testified to by Mr Hickey and Mr Shubotham (namely, October/November 1992) as the date of cessation of their involvement in the Option lands and their rezoning was in no small way connected to their resolve to distance themselves from payments that were made to Shefran (Mr Dunlop's company) in the period June 1991 and March 1993 totalling IR£62,500.

PAYMENTS MADE TO MR DUNLOP THROUGH SHEFRAN.

1. The following five round figure sums totalling IR£62,500 were received by Shefran in the period 1991 to 1993 from Davy Hickey Properties and or entities

or individuals associated with that company including the Eastview Partnership account and from companies associated with Citywest;

(i) IR£20,000 on 6 June 1991 from Newlands Industrial Park Ltd
(ii) IR£10,000 on 6 January 1992 drawn on an Eastview Partnership bank account
(iii) IR£2,500 on 6 August 1992 drawn on Newlands Industrial Park Ltd
(iv) IR£10,000 on 11 November 1992 drawn on Newlands Industrial Park Ltd, and
(v) IR£20,000 in March 1993 drawn on the account of Mr Shubotham.

2. The Tribunal was satisfied that the primary reason for the provision of IR£20,000 on 6 June 1991 was to enable Mr Dunlop make payments to councillors to court their support for the Baldoyle rezoning project which Mr Dunlop knew he would in due course be promoting in the course of the review of the County Dublin Development Plan. The Tribunal was satisfied that he added this IR£20,000 to his confluence of funds from which he made payments to councillors over the course of the May /June 1991 Local Election campaign.

3. The Tribunal was satisfied that the payment of IR£10,000 on 6 January 1992 was intended to enable Mr Dunlop to have access to funds, in the course of the ongoing review of the Dublin County Development Plan, from which he could make payments to councillors, in the event of requests by councillors of him for the payment of money.

4. The Tribunal was satisfied that a payment of IR£2,500 to Shefran on 6 August 1992 was a payment to Mr Dunlop to be expended by him in connection with the Baldoyle rezoning project.

5. The Tribunal was satisfied that a payment of IR£10,000 made to Shefran on 11 November 1992 was to provide funds to Mr Dunlop from which he could make payments to councillors/politicians during the course of the 1992 General Election campaign. The Tribunal was satisfied that Mr Dunlop's purpose in seeking the money and Mr Hickey's purpose in providing it was in the context of Mr Dunlop' lobbying endeavours for the Baldoyle Option lands.

6. The Tribunal was satisfied that the payment of IR£20,000 in March 1993 was made in order to provide funds to Mr Dunlop from which payments to councillors could be made in relation to the Baldoyle rezoning project. The Tribunal rejected the evidence of Mr Shubotham that this payment related to work done by Mr Dunlop for Citywest.

7. The Tribunal was satisfied that all of the above payments were corrupt.

CLLR LIAM T. COSGRAVE AND THE BALDOYLE LANDS

1. The Tribunal rejected the evidence of Mr Dunlop that he paid IR£1,000 in cash to Cllr Cosgrave in relation to the rezoning of the Baldoyle lands.

CLLR JACK LARKIN AND THE BALDOYLE LANDS

1. The Tribunal rejected the evidence of Mr Dunlop that he paid IR£1,000 in cash to Cllr Larkin in relation to the rezoning of the Baldoyle lands.

CLLR CYRIL GALLAGHER AND THE BALDOYLE LANDS

1. The Tribunal was satisfied that Mr Dunlop paid IR£1,000 to Cllr Gallagher in return for his support for the rezoning of the Baldoyle lands. The payment was corrupt.

CLLR TOM HAND AND THE BALDOYLE LANDS

1. The Tribunal was satisfied that Mr Dunlop paid IR£1,000 to Cllr Hand in return for his support for the rezoning of the Baldoyle lands. The payment was corrupt.

CLLR TONY FOX AND THE BALDOYLE LANDS.

1. The Tribunal was satisfied that Mr Dunlop paid IR£1,000 to Cllr Fox in return for his support for the rezoning of the Baldoyle lands. The payment was corrupt. The Tribunal rejected Cllr Fox's contention that he had never been lobbied by Mr Dunlop in relation to the lands.

CLLR DONAL LYDON AND THE BALDOYLE LANDS.

1. The Tribunal rejected the evidence of Mr Dunlop that he paid IR£1,000 in cash to Cllr Lydon in relation to the rezoning of the Baldoyle lands.

CLLR JOHN O'HALLORAN AND THE BALDOYLE LANDS.

1. The Tribunal was satisfied (from evidence in this and other modules) that Cllr O'Halloran did on occasion receive small payments in the region of IR£500 each from Mr Dunlop in the course of the making of the Development Plan 1991-1993, although it could not determine which of Mr Dunlop's development projects these payments related to. The Tribunal was however satisfied that

insofar as Cllr O'Halloran solicited and or accepted such payments, he did so improperly in the knowledge that Mr Dunlop was a lobbyist in relation to rezoning issues then current in Dublin County Council including the Baldoyle lands.

CLLRS M. J. COSGRAVE AND LIAM CREAVEN AND THE BALDOYLE LANDS

1. Although from opposing political parties Cllrs M. J. Cosgrave and Liam Creaven were closely involved in the project to rezone the Baldoyle lands. Both were signatories to two crucial motions drafted by Mr Dunlop with assistance from Mr Lawlor in relation to the lands though they claimed to be unaware of Mr Lawlor's involvement with these motions.

2. The Tribunal was satisfied that they consented to correspondence (addressed to the acting chairperson Dublin County Council, Cllr Ridge and designed to ensure that the rezoning of the Baldoyle lands would remain a live issue in the Council) being prepared and sent in their names by Mr Dunlop. Almost certainly, and contrary to what was stated by them, they had a clear recollection of those events which led to that correspondence being sent. It was unlikely that they were directly involved in the strategy or preparation of the correspondence.

3. The Tribunal believed that both councillors acted to promote the rezoning of the Baldoyle lands in the absence of any individual or independent assessment on their part of the merits of that proposal.

4. It appeared to the Tribunal that both Cllr M. J. Cosgrave and Creaven permitted themselves to be controlled and used for the purposes of promoting the private interests of Mr Dunlop (and others) and that this amounted to an abuse of their role, duty and obligations as councillors. The Tribunal rejected their claimed ignorance of the extent to which they permitted themselves to be used and manipulated by Mr Dunlop.

CHAPTER TEN - THE FOX & MAHONY MODULE

CLLR GV WRIGHT AND FOX & MAHONY

1. The Tribunal accepted Mr Dunlop's evidence that he paid Cllr Wright IR£2,000 in cash, on either 25 March or 19 April 1993, and that the payment was wrapped in a newspaper and was given to Cllr Wright in the visitors' bar in Leinster House. The Tribunal was satisfied that the payment was made following a request for payment from Cllr Wright in return for his support for the rezoning of the Drumnigh lands. In requesting and receiving the said payment, Cllr Wright was compromised in the disinterested performance of his duties as a councillor

in relation to the rezoning of the Drumnigh lands. The Tribunal found that the payment was corrupt.

CLLR CYRIL GALLAGHER AND FOX & MAHONY

1. The Tribunal was satisfied that Mr Dunlop obtained Cllr Gallagher's signature for the Drumnigh rezoning motion on 11 March 1993. As a matter of probability, the Tribunal believed that money was solicited by Cllr Gallagher in return for his signature and support for the Drumnigh land rezoning, and that IR£1,000 was duly paid to him on that day by Mr Dunlop. This payment constituted an inducement to Cllr Gallagher to perform his duty as a councillor otherwise then in a disinterested fashion, and was corrupt.

CLLR SEAN GILBRIDE AND FOX & MAHONY

1. The Tribunal accepted Mr Dunlop's evidence in relation to the alleged payment of IR£2,000 to Cllr Gilbride, in respect of this and two other rezoning proposals, and was satisfied that it was solicited by, and paid to, Cllr Gilbride, essentially as claimed by Mr Dunlop. This payment compromised the disinterested performance of Cllr Gilbride's duties as a councillor in relation to his involvement in the review of the 1983 Dublin County Development Plan, and was corrupt.

CHAPTER ELEVEN - THE WALLS KINSEALY MODULE

CLLR SEAN GILBRIDE AND WALLS/KINSEALY

1. The Tribunal was not satisfied that Mr Dunlop had, as he alleged, paid IR£1,000 to Cllr Gilbride in relation to the Walls Kinsealy lands, or that Cllr Gilbride had sought money from Mr Dunlop in relation thereto.

CHAPTER TWELVE - THE BALHEARY MODULE

MR JOE TIERNAN

1. The Tribunal was satisfied that, at the time Mr Tiernan retained the services of Mr Frank Dunlop to assist in the project to have the Christian Brothers lands at Balheary rezoned for development, in 1991and subsequently, he was aware of, and understood that, in the course of that undertaking, Mr Dunlop intended to make payments to councillors in order to secure support for the project.

THE CHRISTIAN BROTHERS

1. The Tribunal accepted that the Christian Brothers were unaware that Mr Dunlop, when retained to lobby for support for the rezoning of their lands at Balheary, intended to make corrupt payments to councillors as part of that process or that he made any such payments in the course of the project.

CLLR TOM HAND AND BALHEARY

1. The Tribunal was satisfied that Cllr Hand sought money from Mr Dunlop in return for his support for the rezoning of the Balheary lands in 1993, and that Mr Dunlop accordingly paid him IR£1,000 in cash. This payment was corrupt.

CLLR CYRIL GALLAGHER AND BALHEARY

1. The Tribunal was satisfied that Cllr Gallagher requested a payment of money from Mr Dunlop in return for his support for the rezoning of the Balheary lands, and that Mr Dunlop duly paid Cllr Gallagher IR£1,000 in cash for that purpose. This payment was corrupt.

CLLR LIAM T. COSGRAVE AND BALHEARY

1. The Tribunal was satisfied that Cllr Cosgrave sought payment from Mr Dunlop in return for his support for the rezoning of the Balheary lands in 1993, and that Mr Dunlop duly paid Cllr Cosgrave IR£1,000 in cash. This payment was corrupt.

CLLR TONY FOX AND BALHEARY

1. The Tribunal was satisfied that Cllr Fox sought money from Mr Dunlop in return for his support for the rezoning of the Balheary lands in 1993, and that Mr Dunlop duly paid Cllr Fox IR£1,000 in cash for that support. This payment was corrupt.

CHAPTER THIRTEEN - THE ST. GERARD'S SCHOOL MODULE

MR DUNLOP'S RETENTION

1. The Tribunal was satisfied that neither Mr Marcus Magnier (a member of the Board of Governors of St. Gerard's School) nor Mr Jim Sherwin (Chairman of the school's Board) nor anyone else representing the school's interests, suspected, or was aware, that payments to councillors were contemplated or made by Mr

Dunlop in the course of his retention of a lobbyist on behalf of St. Gerard's School.

CLLR LIAM T. COSGRAVE AND ST. GERARD'S

1. The Tribunal was satisfied that Cllr Cosgrave solicited from and was paid IR£1,000 by Mr Dunlop in return for supporting the rezoning of the St. Gerard's School's lands in 1998. The said payment was corrupt.

CLLR TONY FOX AND ST. GERARD'S

1. The Tribunal was satisfied that Cllr Fox solicited, and was paid, a sum of IR£1,000 on a date after 12 February 1998, by Mr Dunlop, in return for his support of the motion to rezone the St. Gerard's School's lands on 12 February 1998. This payment was corrupt.

2. The Tribunal was satisfied that Cllr Fox's approach to Mr Dunlop in Dawson Street, Dublin in 1999, after the establishment of this Tribunal, was made in circumstances where Cllr Fox was concerned about the monies he had received from Mr Dunlop, and was anxious to ascertain the extent of disclosure (if any) of same made, or likely to be made, by Mr Dunlop to the Tribunal.

CHAPTER FOURTEEN - THE DUFF LANDS MODULE

CLLR CYRIL GALLAGHER AND THE DUFF LANDS

1. The Tribunal was satisfied that Mr Dunlop paid IR£2,000 to Cllr Gallagher in return for his support for a positive outcome in the application for planning permission/material contravention in relation to the Duff lands, and that this payment had been, in effect, solicited by Cllr Gallagher for that purpose. This payment was corrupt.

CHAPTER FIFTEEN - MR FRANK DUNLOP

1. The analysis conducted by the Tribunal, insofar as any such analysis was capable of being conducted in circumstances where Mr Dunlop, on his own admission, had access to cash resources which were not the subject of any documentary trail, established that, in the period from September 1989 to September 1993 particularly, Mr Dunlop had at his disposal a sum in excess of half a million pounds cash (IR£535,501) for the purposes, inter alia, of making disbursements to councillors. In 1991, Mr Dunlop had access to in excess of IR£230,000 cash, in 1992, he had access to IR£124,000 cash, and in 1993,

IR£50,000 cash. These sums did not take into account cash sums which came into Mr Dunlop's possession and which were not lodged to, or withdrawn from, bank accounts. In the course of his testimony in the Quarryvale Module, Mr Dunlop advised that, on occasions, he had cash sums ranging between IR£25,000 and IR£100,000 in his briefcase.

2. The Tribunal was satisfied that a sum of in excess of half a million pounds available to Mr Dunlop for his lobbying endeavours in the period 1990 to 1993 was, as a matter of the strongest possibility, a conservative figure, and considerably less than the likely actual cash "*war chest"* which Mr Dunlop had available to him during the period of the 1993 Development Plan.

3. The Tribunal's analysis of the manner in which Mr Dunlop conducted his financial affairs otherwise than through Frank Dunlop & Associates, and the manner in which he was facilitated by a number of clients with, effectively, the provision of cash payments, coupled with his use of "*war chest"* accounts and cheque cashing facilities, led the Tribunal to the inevitable conclusion that Mr Dunlop was easily able to make cash payments to councillors and politicians. Notwithstanding the evidence tendered by Mr Dunlop over the course of a number of modules as to who were the beneficiaries of payments from him in the years 1990 to 1993 particularly, the Tribunal was satisfied that significant disbursements of cash funds by Mr Dunlop remain unaccounted for.

4. The Tribunal was satisfied that payments made to Mr Dunlop by landowners/developers, although intended, in part at least, by some landowners/developers to be passed on in the form of corrupt payments to councillors (albeit in some circumstances in the form of contributions at election time) were not always directly or immediately used for such purposes by Mr Dunlop. Mr Dunlop told the Tribunal that the funds provided to him for such purposes, together with other funds (including the funds lodged to his "*war chest"* accounts), constituted a "*confluence of funds"* from which such payments were then made as required and when opportune. There was therefore, in practice, no ring fencing of funds for specific projects. Mr Dunlop, in making payments to councillors (including Mr Lawlor) did so not only using funds already provided to him, but also contributed to such disbursements from his "*confluence"* of funds, on the basis of an expectation of payments being made to him in the future by landowners/developers, often by way of a promised or agreed "*success fee".* At times, Mr Dunlop made disbursements to councillors out of this "*confluence of funds"* in relation to particular developments before he was put in funds by the landowner or developer concerned.

5. Mr Dunlop, in the period particularly from late 1990/early 1991, adopted a simple and very successful strategy to achieve his undoubted success in persuading councillors in County Dublin to support a number of rezoning (and on occasion material contravention) proposals which, in order to succeed, required majority councillor approval. On occasion, that support also involved a willingness on the part of councillors to sign motions and to actively influence fellow councillors to support particular proposals. When that strategy proved successful, as it frequently did, the financial rewards for the relevant landowners/developers were enormous by any standards and very substantial also for Mr Dunlop himself. While the potential financial gain was immeasurable, the outlay necessary to achieve the rezoning of the land in question (in the form of, in particular, payments to councillors) was, in most instances, relatively modest, often involving sums of IR£1,000 or IR£2,000 being paid to a handful of councillors. It appeared to the Tribunal that only rarely, if ever, did Mr Dunlop have to comprehensively brief councillors as to the merits (in planning or community terms) of a particular proposal for the purposes of persuading them to support that proposal. In reality, the money did the talking.

6. The Tribunal emphasised that Mr Dunlop could not have pursued his corrupt activity in relation to the planning process had it not been for, on the one hand, obliging landowners/developers who were prepared to lavish large sums of money (and in particular cash and cheques payable to Mr Dunlop's company Shefran) on Mr Dunlop, and, on the other hand, compliant councillors who were all too prepared to compromise the disinterested performance of their duties in the cause of personal gain.

CHAPTER SIXTEEN - MR LIAM LAWLOR

1. The Tribunal found that Mr Lawlor abused his role as an elected public representative (in his capacity as a councillor until June 1991 and as an elected TD representing the Dáil constituency of Dublin West until 2002) to a very significant degree. In the period of the late 1980's and the 1990's, Mr Lawlor provided services and advice to landowners/developers (including to Mr Dunlop as their agent) in his capacity as an elected politician, for personal gain. In effect, Mr Lawlor, while an elected public representative, conducted a personal business in the course of which he corruptly sold his expertise, knowledge and influence as a councillor and as a TD for personal financial reward.

2. The Tribunal was satisfied that decisions were made, on occasion, by developers/landowners (or by Mr Dunlop as their agent) to pay Mr Lawlor for '*consultancy'* services in relation to the rezoning or development of their lands. This was not simply to have the benefit of his undoubted knowledge of the

planning process and the influence which he undoubtedly exerted over councillors, both as a councillor and as a TD, but was also to allay their concern that a failure to engage with Mr Lawlor in this manner might result in a failure to have their property rezoned, or otherwise dealt with advantageously in the course of the planning process.

3. Mr Lawlor's close involvement with landowners/developers (and particularly with Mr Dunlop as their agent) and his frequent demands for, and receipt of, substantial sums of money from them in the late 1980's and throughout the 1990's, rendered Mr Lawlor hopelessly compromised in the disinterested performance of his public duties as an elected public representative. The Tribunal also noted Mr Lawlor's propensity to use false and fictitious names and/or invoices to facilitate many of these substantial payments.

4. Mr Lawlor failed on many occasions to give truthful information and evidence to the Tribunal and was found by the Superior Courts in 2001 and 2002 to have failed to comply with the Tribunal's discovery requirements.

CHAPTER 18 - RECOMMMENDATIONS

EXECUTIVE SUMMARY

1.01 Corruption, and in particular political corruption, is a deeply corrosive and destructive force. While frequently perceived as a victimless crime, in reality its victims are too many to be identified individually. Political corruption diverts public resources to the benefit of the few and at the expense of the many. It undermines social equality and perpetuates unfairness. Corruption in public office is a fundamental breach of public trust and inherently incompatible with the democratic nature of the State.

1.02 In accordance with its terms of reference, the Tribunal is making a number of recommendations which it considers will assist in combating corruption in Irish political life. These recommendations are informed by its inquiries. However, while those inquiries focused on corruption in planning, its recommendations are not and cannot be limited to this issue. Corruption is a multi-faceted phenomenon capable of manifesting itself in countless ways. Efforts to combat it must therefore take a holistic approach. The corrupt and the corruptible will inevitably gravitate to the weakest link in the chain of anti-corruption measures. Consequently, to combat corruption in planning it is necessary to combat corruption generally.

1.03 Although the Tribunal recognises that corruption is most obviously a failing of individual morality, it believes that it is also a problem of systemic failure. There will always be individuals who are tempted to use their public office to further their own interests rather than those of the public. The task therefore is to ensure that there are systems in place which greatly reduce both the incentive and opportunity to engage in corrupt activity. While anti-corruption measures may vary considerably in their detail, their underlying principles are the same. Corruption thrives in shadows and darkness. Consequently anti-corruption measures must focus on ensuring transparency and accountability in public life. Ignorance and apathy are both corruption catalysts. Therefore, anti-corruption measures must be supported from the top-down and from the bottom up. The pathways of corruption are ever-changing, therefore, measures to fight corruption must be kept under constant review to ensure that they do not become irrelevant to that fight.

1.04 However, the Tribunal recognizes that combating corruption is not an end in itself: it is simply a means to an end. Ultimately, anti-corruption measures seek to ensure the existence of the necessary conditions for the effective functioning of democratic government. As a result, the overall aim of those measures is not necessarily the complete elimination of all corruption. Rather it is to ensure that corruption is reduced to a level consistent with that end.

1.05 The Tribunal's recommendations affect the following areas: planning; conflicts of interest; political finance; lobbying; bribery; corruption in office; money laundering; asset confiscation; as well as a number of miscellaneous measures.

PLANNING

1.06 The Tribunal's inquiries focused on corruption in the area of planning and development. During the period at the focus of those inquiries, the Development Plan was the primary instrument for regulating that area. In particular, that plan zoned land for development purposes and the relevant zoning was capable of having significant implications for the value of that land. The elected members of the local planning authorities (the "elected members") played a key role in adopting that plan and enjoyed significant powers in this respect.

1.07 In the intervening years, enormous changes have occurred in the planning system. Specifically, while the Development Plan remains a key element of that system, it is now part of a hierarchy of plans. In the context of that hierarchy, long term strategic policies are determined in national instruments, namely, the National Development Plan (the "NDP") and the National Spatial Strategy (the "NSS") as well as in regional instruments in the form of the Regional Policy Guidelines (the "RPGs"). The role of the Development Plan is to provide for the detailed implementation of those policies.

1.08 Other changes have also impacted on the role of the elected members in regulating planning and development. Overall, this role has been significantly curtailed and is subject to considerably more checks and balances than was the case in the period inquired into by this Tribunal. However, while the gaps in transparency and accountability at local level have been reduced, they have not been eliminated. Moreover, others have emerged at regional and national level. The Tribunal's recommendations seek to plug those gaps. They also aim at ensuring the more effective enforcement of the existing planning provisions.

1.09 As is clear from the above, at national level, both the NDP and the NSS play a key role in the planning system. However, neither has a statutory basis and the Minister for the Environment, Community and Local Government (the "Minister for the Environment") enjoys considerable discretion in determining their scope and content. The Tribunal recommends that both of those instruments be placed on a statutory footing. The relevant statutes should specify the procedure for adopting and/or reviewing those instruments and make provision for public consultation when carrying out those procedures. In addition, the Oireachtas should approve the adoption of both the NDP and NSS.

1.10 At regional level, the Regional Authorities are responsible for adopting the RPGs. The National Transport Authority (the "NTA") also plays a role. The Tribunal is concerned that the Regional Authorities are insufficiently accountable given the importance of their role in the planning system and that their role is insufficiently transparent. It is consequently recommending that those authorities be directly elected. It is also recommending a number of changes in the procedure for adopting the RPGs in order to ensure increased accountability and transparency in that procedure.

1.11 The NTA performs several functions which have direct implications for planning and development. Members of that Authority are appointed by the Minister for the Environment. The Tribunal is recommending that, in future, those Members should be appointed by an Independent Appointments Board.

1.12 At local level, the Tribunal's recommendations are largely aimed at ensuring transparency over the way in which the elected members exercise their powers. They include measures to promote the role of the public consultation process, in particular by providing that both submissions received in the course of that process and the Manager's Report dealing with those submissions be available on the internet. In addition, the Tribunal is recommending that where the elected members decide to depart from the recommendations made in the Manager's Report, they should be required to state their reasons for doing so.

1.13 The Tribunal's recommendations also contain a number of other measures designed to promote transparency and accountability in the grant of planning permission. Specifically, where the elected members use the material contravention procedure to grant planning permission, they should be required to give at least one month's notice of their intention to do so to the relevant Regional Authority and to the Minister for the Environment. The power of the elected members to direct the Manager to grant planning permission in a

specific case should be subject to increased restrictions. Specifically, where the elected members disagree with the advice of the professional planners and intend to issue a direction to the Manager to grant planning permission, they should be required to state their reasons for doing so. In addition, both that advice and those reasons should be sent to An Bord Pleanála which should have the power to veto that direction. Other recommendations include requiring that interventions made by elected members in respect of specific planning applications be noted on the file and that applicants for planning permission be required to disclose if they have made a political donation to a member of that authority within a specified period when making the planning application, as well as the identity of the donation's recipient.

1.14 Finally, with regard to enforcement, the Tribunal is concerned that recent changes in the planning system have resulted in an over-centralisation of power in the hands of the Minister for the Environment which is not subject to sufficient checks and balances. Consequently, the Tribunal is recommending that the Minister for the Environment's ability to give directions to Regional Authorities and Local Planning Authorities should be entrusted to a Planning Regulator. However, the Minister for the Environment should continue to play a key role in adopting the NSS and NDP.

1.15 While the Planning Regulator should assume some of the Minister for the Environment's existing role in relation to enforcement, the Tribunal considers that his or her role should not be confined to this. In particular, the Tribunal is recommending that the Regulator should also be entrusted with the power to investigate possible systemic problems in the planning system, including those raising corruption risks, with the aim of making recommendations to address those problems. The Regulator should also be responsible for providing training to members of both local and regional authorities on planning and development to enable them to discharge their functions in this area more effectively. The Regulator should have sufficient powers to carry out his or her functions effectively, including the power to question witnesses and compel the production of documents.

CONFLICTS OF INTEREST

1.16 Conflicts of interest are a root cause of corruption. A conflict of interest arises where an elected or appointed public official has a private interest which is likely to be affected by the exercise of his or her public powers. Logically, a public official is less likely to exercise those powers in the public interest when he

or she is in a position to use them for his or her own personal benefit. Moreover even where a public official does not use his or her public powers to further his or her own interests, the mere appearance that he or she has done so is in itself problematic. In particular, apparent conflicts of interest weaken the public's faith in democratic institutions and distract its attention from substantive policy issues focusing it instead on scandals. Several of the inquiries conducted by this Tribunal involved such apparent conflicts of interest.

1.17 Controlling conflicts of interest is therefore a central element in an effective anti-corruption strategy and plays an essential role in promoting transparency and accountability in public life. Generally measures aimed at controlling conflicts of interests seek to ensure that those interests likely to give rise to such conflicts are identified and, if necessary, subject to further regulation.

1.18 Currently, conflicts of interest at national level are regulated by the Ethics Acts 1995 and 2001 (the "Ethics Acts") and their related codes of conduct, while those at local level are regulated by Part 15 of the Local Government Act 2001 (the "LGA") and its related codes of conduct (collectively, "the conflict of interests measures"). These acts and codes essentially require the disclosure of interests likely to give rise to a conflict of interest as well as the supplementary regulation of certain types of conflicts. Enforcement of the conflict of interest measures is in the hands of the Standards in Public Office Commission (SIPO), the Dáil and Seanad Select Committees on Members Interests and Local Authorities.

1.19 The Tribunal is concerned that the existing conflicts of interests measures do not sufficiently identify or otherwise regulate certain types of conflicts of interests. Consequently, it is making a number of recommendations which are designed to ensure the full disclosure of all interests likely to give rise to an actual or apparent conflict of interest. It is also recommending that certain types of interests which pose particular risks of corruption be subject to increased regulation. Other recommendations seek to make the enforcement of the conflict of interest measures more effective, mainly through increasing the role of SIPO. In this respect, the Tribunal believes that there are significant problems with the existing enforcement provisions which greatly weaken the ability of the conflict of interest measures to control corruption in politics. This is also true of sanctions for breaches of the Ethics Acts which are also the subject of a recommendation.

DISCLOSURE

1.20 The conflict of interests measures provide for two types of disclosure, periodic and ad hoc. Under the periodic disclosure provisions, public officials must make an annual disclosure of certain categories of interests to a register of interests. This helps both the public official him or herself and others to determine in advance whether a particular interest is likely to give rise to a conflict of interest. It can also be used by the criminal investigating authorities for the purpose of investigating corruption offences. In contrast, ad hoc disclosure is made if and when a conflict of interest arises. Typically, it covers a far broader range of interests than periodic disclosure.

1.21 One of the problems with the current disclosure requirements is that they predominantly apply to interests held by the public official him or herself. Specifically, in the case of periodic disclosure, only certain public officials are required to disclose interests held by family members and/or dependent persons and only to a very limited extent. Moreover, they are not required to disclose interests held by corporate entities or other legal arrangements, even those entities/arrangements in which they have a controlling interest. While the ad hoc disclosure requirements have a broader personal scope, they do not, for example, cover interests held by friends, employers, electoral donors, business associates or certain legal arrangements. In the course of its inquiries, the Tribunal inquired into several conflicts arising from interests held by such persons and arrangements. For the disclosure requirements to be effective, it is therefore imperative that these interests be covered. Consequently, the Tribunal is making a number of recommendations aimed at extending the personal scope of the periodic and ad hoc disclosure requirements.

1.22 The Tribunal is further concerned that the material scope of both the periodic and the ad hoc disclosure requirements is too narrow and that a number of types of interests capable of giving rise to conflicts of interests are not covered by those requirements. Consequently, in so far as periodic disclosure is concerned, the Tribunal is recommending the removal of several exceptions and limitations contained in the existing requirements. It is also recommending that those requirements be extended to cover a number of interests which they do not currently cover, including liabilities and assets as well as any non-pecuniary interest capable of being reasonably perceived to give rise to a conflict of interests.

1.23 With regard to ad hoc disclosure, the Tribunal is recommending that the disclosure requirements be extended to cover those interests which could reasonably be seen to be capable of influencing a public official in the performance of his or her public functions. In certain instances, this will mean that public officials will be under a new obligation to disclose the following interests: apparent conflicts of interests; non-material interests; electoral donations; interests enjoyed by a public official as part of a class of persons; as well as those interests already disclosed in the context of a periodic disclosure.

1.24 The Tribunal's recommendations also affect the timing of periodic disclosure. Currently, public officials are required to make a periodic disclosure of interests on an annual basis. Consequently, in some instances, a significant period may elapse between the time a person becomes a public official and his or her first disclosure of interests. Moreover, where there is a material change in those interests in the course of a year, a public official is not required to disclose this change until the following year. The Tribunal is concerned that both of these issues may seriously and adversely affect the accuracy of the register. It is consequently recommending that public officials be required to make a periodic disclosure of interests within 30 days of entering public office and to update any interest contained in such disclosure within 30 days of a significant change in that interest, or after the acquisition of a new interest.

1.25 Other recommendations focus on extending the disclosure requirements to interests in the form of gifts or income which either pre-date or post-date the public official's time in public office. Gifts or income which pre-date that time may be as likely to give rise to conflicts of interest as those received while in public office. Moreover, the disclosure of gifts or income received after the public official has retired from public office can be important for the purpose of uncovering undeclared conflicts of interest while in office, or even actual corruption.

1.26 As part of the purpose of disclosing interests likely to give rise to a conflict of interest is to promote transparency in public decision-making, the Tribunal is also recommending that both periodic and ad hoc disclosures of interest be more widely published and disseminated. This should have the added benefit of increasing the likelihood of non compliance with those requirements being drawn to the attention of the relevant authorities.

REGULATION

1.27 Certain types of interests pose particular risks from an anti-corruption perspective including in particular: gifts; access to inside information; and ancillary and post-term employment. The Tribunal considers that merely requiring the identification of these interests is not sufficient to control the risks of corruption which they present. Consequently, several of its recommendations seek to further regulate such interests. In this respect, the Tribunal is recommending that public officials be prohibited from accepting any gift in excess of a stipulated amount where that gift could reasonably be considered to be connected with their public office. In addition, it is recommending that the Officeholders' Code of Conduct further regulate conflicts of interests arising from the use of insider information.

1.28 With regard to ancillary employment, the Tribunal is recommending that each public official who falls within the scope of the Ethics Acts be prohibited from entering into a contract for the provision of goods or services to a public body while a public official and for a period of one year thereafter. Similarly, at local level, it is recommending that public officials falling within the scope of the LGA be prohibited from entering into such contracts with the local authority of which he or she is a member/employee. It is also recommending that an elected member who is engaged in ancillary professional activities involving the sale and/or development of land should be prohibited from dealing with any land which has been the subject of a decision changing its planning or rezoning status during that Member's term of office and for two years thereafter, unless he or she has recused him or herself from voting on that decision. Furthermore, public officeholders should be required to obtain permission before accepting employment or a consultancy position after leaving public office where the nature or terms of that employment or position could be reasonably perceived to give rise to a conflict of interest.

ENFORCEMENT

1.29 Successful enforcement of the conflict of interest provisions is clearly a key element in ensuring their effectiveness. Currently, SIPO is largely responsible for enforcing those provisions in respect of public officials who are officeholders. The provisions covering Oireachtas Members are enforced by the members themselves. Similarly, local authority members have a role in enforcing the conflict of interest measures applicable to them, in conjunction with local authority management.

1.30 The Tribunal is of the view that there are a number of problems with the existing enforcement mechanisms. In this regard, the Tribunal believes that the self-regulatory approach to enforcement of the conflict of interest provisions is a matter for concern. In particular, it is questionable whether either Oireachtas Members or Local Authorities enjoy the requisite independence or resources to carry out effective investigations. More generally, the public tends to view self-regulation as a soft option and to lack credibility. Consequently, the Tribunal is recommending that SIPO be given an increased role in the enforcement of the conflict of interest measures in so far as both Oireachtas Members and local councillors are concerned. It is also making a number of other recommendations designed to improve SIPO's effectiveness. Specifically, it is recommending the introduction of simplified complaint procedures, that anonymous complaints be permitted, and that SIPO be given increased powers of investigation. At local level, the Tribunal is recommending that the LGA be amended so as to provide for a formal complaint procedure regarding possible non-compliance with the conflict of interests provisions, make provision for whistleblower protection and require local authorities to provide information regarding the enforcement of the conflicts of interests measures in their annual reports.

1.31 It is also recommending that increased emphasis be placed on the prevention of conflicts of interest, at both national and local level, through training, education and research. .

SANCTIONS

1.32 The Oireachtas may either suspend or fine an Oireachtas Member who has breached the conflict of interest provisions. In contrast, a local councillor who breaches the conflict of interest provisions at local level may be the subject of a criminal prosecution. The Tribunal considers that in some instances at least, a breach of the Ethics Acts by an Oireachtas Member should be a criminal offence and it is consequently making a recommendation to this effect.

POLITICAL FINANCE

1.33 Money plays a key role in politics and makes a vital contribution to a healthy democracy. However, if insufficiently regulated it can also have a corrupting influence and lead to distortions in the democratic process. Bribes may be made in the guise of political donations and large donations may in themselves exert a corrupting influence even absent the quid pro quo characteristic of bribery. The challenge for political finance regulations therefore is to distinguish between funds which positively contribute to the political process and those which undermine it.

1.34 Money in politics is regulated by the Electoral Act 1997, as amended and the Local Elections (Disclosure of Donations and Expenditure) Act 1999, as amended, (the "LEA"). Those acts largely seek to balance the competing roles of money in politics through: prohibiting donations from certain sources and in excess of specified amounts; regulating electoral expenditure; requiring the public disclosure of both donations and electoral expenditure; and providing for some degree of exchequer funding for political activity. The government sponsored Electoral (Amendment)(Political Funding) Bill 2011, (the "2011 Bill") will, if enacted in its current form, modify those two acts significantly.

1.35 The Tribunal is concerned that the Electoral Act 1997 and the LEA (collectively, "the political finance acts") suffer from several deficiencies which adversely affect their ability to adequately control money in politics and the corruption risks which it poses. It is consequently making a number of recommendations designed to remedy those deficiencies, which affect the provisions on political donations, electoral expenditure, disclosure, enforcement and sanctions.

POLITICAL DONATIONS

1.36 The recommendations on political donations affect: the definition of a donation, restrictions on the sources of donations; and restrictions on donation amounts:

Definition of a donation

1.37 There are several difficulties with the way the political finance acts define the term "donation" namely as "any contribution given for political purposes". In particular, whether or not a contribution is a political donation is dependent on the reasons the contribution was made rather than on the uses to which it is put. Moreover, several types of contributions fall outside this definition including, for example commercial loans. The Tribunal is therefore recommending that the definition of the term "donation" be amended in both the political finance acts so as to define a donation as "any contribution given, used or received for political purposes."

Source Restrictions

1.38 The existing political finance acts permit all donations except those made by non-resident individuals who are non Irish citizens and from foreign corporations or unincorporated bodies. Donations from domestic corporations

are permitted as are indirect donations, cash donations and anonymous donations of less than €127. The Tribunal believes that some of these types of donation sources pose corruption risks and should consequently be more strictly regulated. For example, donations may be made indirectly in order to distance the donor and recipient from each other and disguise its true source and/or destination. Consequently, the Tribunal is recommending that indirect donations be prohibited.

1.39 Anonymous and cash donations also pose corruption risks in that they make the tracing and monitoring donations more difficult. Currently, anonymous donations in excess of €127 are permitted and cash donations are not specifically limited. The Tribunal is recommending that both anonymous or cash donations of above a certain value be prohibited, namely, €55 in the case of a donation to an individual electoral candidate or elected representative and €175 for donations to a political party.

1.40 In order to avoid the possibility of multiple anonymous or cash donations being made in order to circumvent the donation amount restrictions, the Tribunal is also recommending that an overall limit be placed on the amount which an individual, political party or third party may receive by way of anonymous donations, namely €2,000 for an individual and €5,000 for a political party or third party.

Donation amounts

1.41 The political finance acts limit the amount of money which either an individual politician, a political party or a third party may accept from an individual donor. The Tribunal is concerned that the existing limits are too high and notes that this concern is also reflected in the 2011 Bill, which lowers those limits to €2,500 in the case of donations to a political party, "accounting unit" and "third party" and to €1,000 in the case of donations to an individual electoral candidate or elected representative. While the Tribunal welcomes this proposal, it notes that at the moment, there is nothing to prevent an individual donor from giving a donation to each member of a political party and the political party itself. This could amount to a significant amount of money capable of giving rise to corruption or the appearance of corruption. Consequently, the Tribunal is recommending that an overall limit be placed on the amount which an individual may give to a political party and electoral candidates or elected representatives who are members of that party.

POLITICAL EXPENDITURE

1.42 Political finance expenditure rules essential seek to reduce the incentive for political parties or politicians to accept corrupt funding by restricting the amount which may be spent for political purposes. The political finance acts limit the expenditure which may be incurred in the electoral period on the part of electoral candidates in Dáil, Local, Presidential and European elections.

1.43 The Tribunal is of the view that the existing expenditure rules suffer from a number of deficiencies from an anti-corruption perspective. First, they only cover expenditure during the electoral period. As there are no restrictions on expenditure outside that period, they do nothing to reduce the incentive to accept corrupt funding in respect of that expenditure. Secondly, few candidates meet the expenditure limits, which suggests that they are too high and therefore ineffective. Thirdly, those limits do not apply to expenditure by third parties which may serve to undermine the limits applicable to electoral candidates. Finally, they do not apply to Seanad elections.

1.44 The Tribunal is therefore recommending that the existing expenditure rules be extended to cover all political expenditure, that the permitted amount of expenditure by sufficiently low to be an effective ceiling on expenses and that the rules be extended to cover third parties and candidates running in Seanad elections.

DISCLOSURE

1.45 Disclosure provides transparency over the sources, amounts and use of money in politics. It is the bedrock of all attempts at controlling that money and preventing corruption and several of the Tribunal's recommendations affect the existing rules. First and foremost, the Tribunal is recommending that political parties and elected representatives be required to disclose their annual (audited) accounts. It is the Tribunal's view that there cannot be any true transparency in political finance in the absence of such a requirement. In addition, the Tribunal considers that the existing disclosure thresholds for political donations are too high and that donations below this threshold could have a corrupting influence. Consequently, it is recommending that individuals be required to disclose the receipt of a donation in excess of €55 and that political parties be required to disclose the receipt of a donation in excess of €175. It is also recommending that those making disclosure be required to provide more detailed information regarding both the source and nature of the donations disclosed. Finally, the Tribunal considers that the information provided through disclosure should be available to the electorate prior to an election so that they can take it into

consideration when voting. It is therefore making a recommendation to this effect.

ENFORCEMENT

1.46 To be effective, the political finance rules must be actively enforced. However, enforcement itself depends at least in part on transparency regarding who is receiving political donations or incurring political expenditure. While political parties are currently required to provide information to SIPO regarding their subsidiary organisations and branches, this requirement is honoured as much in the breach as in the observance. The Tribunal therefore considers that it should be strengthened and is recommending that political parties be required to provide details of their organisational structure, including the above information, as a condition of registration under the Electoral Act 1992. The Tribunal also considers that there should be restrictions regarding who can accept a political donation and/or lodge such a donation and is making a recommendation to this effect.

1.47 SIPO is responsible for enforcing the political finance measures at national level, however the Tribunal is concerned that it does not have sufficient powers to carry out this task with maximum efficacy. It is therefore recommending that those powers be increased. Enforcement of those measures at local level is in the hands of the local authorities. The Tribunal has serious concerns about the ability of those authorities to play an active enforcement role. Consequently, it is recommending that that enforcement should be entrusted to an external independent body.

SANCTIONS

1.48 For the most part, breach of the political finance measures is a criminal offence. However, the Tribunal does not believe that all breaches of those measures necessarily warrant a criminal conviction, in particular where the breach is minor or inadvertent. It therefore recommends that provision also be made for administrative sanctions, for example, fines, which may be imposed in the case of those types of breaches. As certain breaches of the political finance acts are not subject to sanction, the Tribunal is also recommending that those acts be amended to provide for such sanctions. The Tribunal is also concerned that political actors maybe able to find loopholes in the political finance acts which enable them to act within the letter of the law while undermining its spirit. It is consequently recommending the introduction of a new provision sanctioning those who deliberately circumvent the requirements set down in the political finance acts.

LOBBYING

1.49 Lobbying is an important part of the process of government and provides policy makers with important information and feedback thereby contributing to better and more effective policy outputs. However, it is clear form this Tribunal's inquiries, that lobbying is also associated with certain risks and in particular may play a key role in corruption. It can also result in unfair advantages for vested interests if there is insufficient transparency over lobbying activities.

1.50 Lobbying is not currently regulated. However, the Tribunal is of the view that regulating lobbying is likely to decrease the corruption risks associated with that activity by increasing transparency and accountability in the policy making process. Such regulation would not however, adversely affect the positive role played by lobbyists in the political system. On the contrary, it could well help promote a more positive perception of that role.

1.51 The Tribunal's recommendations affect both professional lobbyists and the public officials who are the subject of their lobbying activity. Regarding the former, they essentially seek to ensure that lobbyists are required to register as well as to adhere to a statutory Code of Conduct. Lobbyists should also be required to disclose information regarding the persons for whom they are lobbying, the public officials and public institutions being lobbied and the objects of that lobbying activity. In so far as public officials are concerned, the Tribunal recommends that officials be given clear guidance on conducting relationships with lobbyists, and in particular those who are themselves former public officials. Moreover, in order to ensure that the public are aware of the role played by lobbyists in the policy process, senior officeholders should be required to record and publish details of their contacts with lobbyists in the development of legislative initiatives.

BRIBERY, CORRUPTION IN OFFICE, MONEY LAUNDERING AND MISUSE OF CONFIDENTIAL INFORMATION

1.52 A number of the Tribunal's recommendation concern the offences of Bribery, Corruption in Office, Money Laundering, as well as the misuse of confidential information.

BRIBERY

1.53 Bribery is the classic form of political corruption and, in the past, efforts to control corruption have largely focused on the criminalization of bribery. Bribery is now criminalized by both common law and statute and the main statutory offences are to be found in the Prevention of Corruption Acts 1889 – 2010 (the "PCA") and the Criminal Justice (Theft and Fraud) Offences Act 2001 (the "CJ(TFO)A 2001"). Generally, the bribery offences set out in those acts are relatively robust. However, the Tribunal has concerns regarding their effectiveness in criminalizing those who engage in bribery through an intermediary or bribery involving commercial undertakings. Specifically, intermediaries play a key role in many corrupt transactions and, in some instances, the use of an intermediary may enable the person who engaged that intermediary to successfully distance themselves from such a transaction, even when there were clear signs of that intermediary's involvement in bribery. Similar concerns arise in relation to commercial undertakings who may claim that they were unaware of bribery engaged in by their employees or other business associates on their behalf. Consequently, the Tribunal is recommending the introduction of two new offences. The first of these criminalizes the making of payments to a third party in instances where the payer ("P") knows or is reckless as to whether that party uses that payment as a bribe to further P's interests. The second criminalises a lack of supervision or control on the part of a commercial entity which facilitates the commission of bribery to the benefit of that entity by one of its employees or other business associates.

1.54 Bribery is a notoriously difficult crime to prosecute successfully and the PCA contain three presumptions of corruption which facilitate its prosecution by providing that, once certain facts are established, the burden of proof shifts to the defendant who must then rebut that presumption of corruption. One of these presumptions arises where an individual fails to disclose a donation which he or she was required to disclose under the political finance acts. The other two both focus on the payment of gifts or other advantages to public officials. Given the importance of presumptions of corruption in successfully prosecuting a corruption offence, the Tribunal is recommending that two of the existing presumptions be extended. Specifically, under the existing legislation a presumption of corruption does not arise in instances where a political party fails to disclose a donation which it is required to disclose under the Electoral Act 1997, as amended. It may also be the case that such a presumption will not arise where an individual or a political party fails to disclose a prohibited donation. The Tribunal considers that a presumption of corruption should arise in both these cases.

1.55 With regard to the payment of gifts or other advantages to a public official, the Tribunal is recommending that a presumption of corruption should generally arise where an advantage is conferred, directly or indirectly, on a public official who is an Officeholder, Oireachtas Member or Local Elected Member where that public official does or fails to do an act in connection with his or her public office thereby benefiting the person who conferred that advantage. This presumption should be subject to the restriction that the payment must be one which the public official fails to disclose as required under the conflicts of interests acts.

1.56 Other recommendations focus on the sanctions for bribery. The Prevention of Corruption Act 1889 (the "1889 Act") does not apply to the bribery of Oireachtas Members. While the Prevention of Corruption Act 1906 (the "1906 Act") does cover that form of bribery, it does not provide for the same sanctions as the 1889 Act. Specifically, under the earlier Act, the court may prohibit a public official from holding public office and/or order that he or she forfeit any pension rights arising from that office. As these sanctions appear particularly appropriate in the case of bribery involving Oireachtas Members, the Tribunal is recommending that the 1889 Act be extended to cover them. It is also recommending strong sanctions for those who engage in commercial bribery. Specifically, where an undertaking is convicted of bribery, that undertaking should be banned from tendering for public contracts for a 7 year period. Moreover, a person who pays bribes for the purpose of influencing a public official in the performance of his or her public functions in the area of planning- or development should be prohibited from applying for planning permission for that same period, save in respect of his or her own private residence.

1.57 Finally, the Tribunal is also of the view that whistleblower protection plays an important role in the detection of corruption offences and that the protection offered to prospective whistleblowers should be as robust as possible. While those who blow the whistle on corruption are protected to a certain extent under the Prevention of Corruption Act 2010 and the Criminal Justice Act 2011, the Tribunal believes that this protection could be made more robust. In particular, it is recommending that that protection be extended to protect independent contractors from penalization where they blow the whistle on a person to whom they are providing services and that the limits on the amount of compensation which may be awarded to those penalized for whistleblowing be removed.

CORRUPTION IN OFFICE

1.58 Not all corruption is in the form of bribery. In particular, even in the absence of a bribe, a public official may exercise his or her official functions to further his or her own private interests or the private interests of another person, instead of in the interests of the public. This form of corruption is generally criminalized by the offence of corruption in office. This offence was first introduced in 2001 and is obviously a very essential weapon in the arsenal of anti-corruption measures. However, as currently formulated, that offence appears too narrow to cover all instances where a public official uses his or her public office to further private interests. Specifically, it is doubtful whether it covers instances where a public official fails or omits to perform his or her public functions in order to further private interests. Moreover, it does not appear to cover situations where a public official mis-uses confidential information for his or her own benefit or for the benefit of another person. The Tribunal is recommending that the corruption in office offence be extended to cover both these situations.

UNDUE PAYMENTS

1.59 Under the Ethics Acts 1997 and 2001, officeholders must surrender all gifts received by them to the State where the value of the gift is in excess of €650 and where it is received by them in their capacity as officeholders.

1.60 Gifts raise particular difficulties from a corruption perspective. Most obviously, they may be bribes disguised as gifts. However, even if this is not the case, gifts tend to engender a feeling of reciprocity. Moreover, they easily give rise to apparent corruption. For these reasons, the Tribunal is recommending a stricter approach to the receipt of gifts by holders of ministerial office. Specifically, it believes that it should be a criminal offence for a holder of ministerial office to retain a gift of above a nominal value which he or she receives in connection with that office and where that gift or benefit is not lawfully due.

MONEY LAUNDERING

1.61 Money laundering controls are set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and are an important element in an effective anti-corruption policy. In particular criminalizing the handling of the proceeds of crime makes it more difficult for those involved in corruption to profit from their corrupt activities. Moreover, the requirement that certain “designated

bodies" monitor the activities of their customers increases the likelihood that those activities will be uncovered. In recognition of this fact, the money laundering provisions specifically require those bodies to pay particularly close attention to the activities of their customers who are considered to be "politically exposed persons", including persons holding prominent public positions, for the purposes of the money laundering legislation.

1.62 The Tribunal fully endorses this approach to politically exposed persons. However, it is concerned that the manner in which the term "politically exposed persons" is defined under the relevant legislation exclude domestic politically exposed persons. It is also concerned that a person ceases to be considered to be so exposed within 1 year of leaving public office. It is consequently recommending that the definition of a politically exposed person be extended to cover domestic persons and that a person continue to be considered to be politically exposed for 10 years after leaving public office

CASH TRANSACTION REPORTING

1.63 A cash transaction reporting requirement essentially requires those institutions that carry out such transactions to report those involving significant sums of money. Like money laundering controls, such requirements can help alert the authorities to instances where the financial system is used to transfer corrupt funds. On the other hand, requiring financial institutions to monitor cash transactions may impose extra costs on those institutions. In view of this, the Tribunal is recommending that a cost benefit analysis be carried out with a view to considering the imposition of such a reporting requirement.

ASSET RECOVERY

1.64 Corruption is primarily a financial crime and asset recovery can assist in preventing corruption by ensuring that those who engage in it cannot hope to retain their corrupt profits if they come to the attention of the relevant authorities. Asset recovery can be either conviction based or non-conviction based and both forms of recovery are available in this jurisdiction.

1.65 Generally the asset recovery mechanisms are very robust. However, the Tribunal is making a number of recommendations which affect conviction based recovery provided for under the Criminal Justice Act 1994. For the most part these involve permitting a court to determine whether a convicted person has benefited from his or her crime of its own motion and restricting its discretion regarding the amount of the confiscation order where such a benefit is

found to have occurred. However, the Tribunal is also of the view that there would be some merit in having a single conviction based asset recovery regime, rather than three separate regimes (for drug-trafficking, terrorist financing, and for other indictable offences) as is currently the case.

MISCELLANEOUS RECOMMENDATIONS

1.66 The Tribunal's other recommendations concern corruption prevention, the ownership of corporate vehicles, including corporations, companies, trusts, partnerships and foundations, as well as the powers of Tribunals of Inquiries.

CORRUPTION PREVENTION

1.67 With regard to corruption prevention, the Tribunal considers that considerably more attention should be focused on this issue as it is a key element in an effective anti-corruption strategy. Preventing corruption from occurring in the first place has several key benefits which are not associated with punishing those involved once it occurs. Moreover, public education and awareness raising form an important part of any preventative strategy: there is no realistic possibility of successfully combating corruption without the public support and involvement which is usually dependent on that education and awareness raising.

TRANSPARENCY OVER CORPORATE VEHICLES

1.68 In the course of its inquiries, this Tribunal witnessed first hand the way in which corporate vehicles, including corporations, companies, foundations, trusts and partnerships, can be used for corrupt purposes and in particular to hide the source and/or destination of corrupt funds. It is very concerned about the lack of transparency over the beneficial ownership of those vehicles and is recommending that this be addressed as a matter of priority, including that it to referred to the Law Commission for further study and recommendations.

TRIBUNALS OF INQUIRY

1.69 Over the past number of years, Tribunals of Inquiry have played a key role in inquiring into and revealing corrupt activities. For the most part, as is clear from those inquiries, the powers contained in the Tribunals of Inquiry (Evidence) Act 1921 – 2004 are sufficient for these purposes. Nevertheless, the Tribunal believes that conferring on such Tribunals three additional powers would considerably enhance those powers and enable it to carry out its inquiries more efficiently and more expeditiously. It is consequently recommending that

Tribunals of Inquiry be conferred with the power to: require a person to attend the Tribunal for private interview; order the discovery of documents without prior notice; and to seize documents. It also recommends that the Tribunals of Inquiry Acts be amended so as to provide that a Tribunal's terms of reference be drafted as precisely as possible, again in the interests of a speedy and effective inquiry.

1.70 The Tribunal is convinced that if the above recommendations are adopted, they will do much to prevent a repeat of the corruption which necessitated its establishment.

INTRODUCTION

2.01 Corruption is universally condemned and for good reasons. It undermines the equality of individuals before the law, produces unfairness in public policies and distorts the allocation of resources. Corruption is also inimical to democratic government. It alienates the public from those who are supposed to represent it and instills in it the belief that the political system is there to serve vested interests rather than those of the public which it is supposed to serve. It also discourages individuals from becoming engaged in politics and, more generally, from participating in the democratic process. Moreover, by focusing attention on scandals, corruption distracts public attention from substantive public policy issues thereby weakening public debate on these issues. Where political corruption is pervasive it calls into question the very legitimacy of a country's political institutions:

> *A well functioning democracy cannot survive without citizen trust and confidence in those who govern. Thus, behaviours or acts by officials that diminish citizen trust and confidence are a direct threat to democratic governance. While trust is a renewable resource, 'it is much easier to destroy than to renew' (....). Many factors can destroy trust in government. However, none may destroy trust easier or faster than unethical behaviour or blatant corruption of public officials.*
>
> Donald C. Menzel (2007)

2.02 Corruption is also self-perpetuating. Unless unchecked, a corrupt system is likely to become ever more corrupt as the existing moral standards are progressively eroded. Political corruption is a form of social rust which corrodes and delegitimises the political and institutional systems in which it takes root.

2.03 The Tribunal's recommendations affect each of the following areas: planning; conflicts of interest; political finance; lobbying; bribery; corruption in office; money laundering; asset confiscation; as well as a number of miscellaneous areas. In making them, the Tribunal has taken into consideration the very significant developments which have taken place in these areas since the period which formed the focus of its inquiries. While prior to the 1990's, anti-corruption legislation consisted primarily in the common-law and statutory bribery offences, since 1994 a number of other laws have been adopted. These have not only updated the existing bribery offences but introduced a number of new measures, several of which affect the above areas. For obvious reasons, these recommendations focus on the now existing legislative framework.

2.04 In formulating these recommendations, the Tribunal was influenced by a number of considerations regarding the purpose and content of anti-corruption measures.

2.05 Specifically, as is widely known, this Tribunal was established in response to grave public disquiet regarding corruption in the planning system. While actual corruption in public life is itself deeply problematic, it is clear that the mere appearance of corruption also gives rise to serious problems. Specifically, the rumours and allegations in which that disquiet manifested itself were in themselves sufficient to seriously undermine the public's faith in politicians and the political system and to call into question the democratic legitimacy of this State. It follows therefore, that anti-corruption measures must have a dual purpose. First, to control the abuse of public power for private gain and secondly, to promote public confidence in the fact that public power is being exercised in the public interest.

2.06 This dual purpose has evident implications for the scope and content of anti-corruption measures which must be capable of combating not only actual corruption but, also and almost as importantly, apparent corruption. Specifically, in order to restore the public's faith in the political system, anti-corruption measures must take into account the fact that instances of apparent corruption can undermine that faith as effectively as instances of actual corruption. This is not least because the appearance standard is the only standard by which the public can judge the behaviour of public officials. Consequently, anti-corruption measures must ensure that apparently corrupt behavior is either controlled or explained: such behavior cannot be simply ignored if those measures are to fulfill their purposes.

2.07 While traditionally corruption has been viewed as an issue of individual morality, in recent years, advances in understanding both its causes and its consequences mean that it is now also viewed as a problem of systemic failure. In other words, where an individual behaves corruptly, then the problem lies as much with the system which permitted or failed to prevent that behavior as with that individual. Specifically, corruption is most likely to occur where there is a combination of low ethical standards, incentive and opportunity. There will always be individuals tempted to use public power for their own personal profit and the task therefore is to devise a system which substantially reduces both the opportunity and, if possible, the incentives for doing do. This is not to absolve the individual of responsibility for his or her behavior, but merely recognises that institutional factors may play a role in facilitating that behavior.

2.08 Although an effective anti-corruption strategy includes a criminal component, as corruption itself is often rooted in deeper social, cultural and economic factors, these must also be addressed if the fight against corruption is to succeed. Consequently that strategy must also embrace preventative measures as well as supporting measures such as asset recovery. However, this division between the different types of measures is relatively fluid as some preventive measures may have criminal sanctions and criminalisation and asset recovery can be expected to have preventative effects.

2.09 Despite corruption's destructive nature, the Tribunal is conscious of the fact that anti-corruption measures are not an end in themselves. Rather they are a means to an end, namely that of ensuring public power is used as efficiently and effectively as possible in order to promote the welfare of society as a whole. Consequently, in considering these recommendations, the Tribunal did so from the premise that the overall objective of any anti-corruption measure should be to maximize the efficacy of government rather than the complete elimination of any sort of corruption, a goal which may not be achievable without seriously compromising that efficacy. To the extent that corruption can be eliminated, then this depends on the public adopting a zero tolerance approach to all instances of corruption and, in particular, corruption in public office.

2.10 Although the Tribunal acknowledges that some of its recommendations may require a constitutional amendment, it does not consider that this should constitute a barrier to their full implementation, subject to public approval.

2.11 The following chapters describe both this Tribunal's recommendations and the reasons for them in more detail. Overall, these recommendations are rooted in the Tribunal's inquiries and in the vast amount of information contained in the numerous letters which it received from the public concerning corruption. However, the Tribunal has also considered the lessons to be learned from experiences overseas and evolving best practice standards in combating corruption. In addition, it has identified five fundamental principles which have guided and informed these recommendations.

2.12 The Tribunal is convinced that if its recommendations are adopted and actively implemented they will do much to prevent a repetition of the type of corruption which necessitated its establishment in the first place.

2.13 The Tribunal considers that the following five high level principles are key components to combating corruption: a) transparency; b) accountability; c) top-level commitment; d) public involvement; and e) monitoring and review.

The Five Anti-Corruption Principles

Transparency

The decisions and actions of holders of public office must be subject to public scrutiny and the public must have access to the information necessary to make that scrutiny effective

Accountability

Holders of public office must take responsibility for their decisions, provide information about their decisions and justify the correctness of those actions

Top-Level Commitment

Anti-corruption measures must be visibly and consistently supported from the top

Public Support

The public must be fully engaged in and committed to combating corruption

Monitoring and Review

Anti-corruption measures must be constantly monitored and reviewed so that they can be quickly adapted to meet changing corruption risks

TRANSPARENCY

2.14 Transparency is a fundamental principle in combating corruption which is a disease that flourishes in the shade. As U.S. Justice Lewis Brandies, who would later become a member of the U.S. Supreme Court, famously observed, "*Sunshine is said to be the best of disinfectants*".

2.15 Transparency requires that the decisions and actions of those in government are open to public scrutiny and that the public has a right of access to the information necessary to make that scrutiny effective. It helps to prevent the misuse of public power for private gain by ensuring that where public power is exercised it is possible to identify the person who authorised that exercise and the reasons for it. This constrains that person's ability to exercise public power on illegitimate grounds. It also increases the likelihood that a decision made on such grounds can be overturned, thus reducing the motive for making such a decision in the first place. On a related point, transparency facilitates the retrospective scrutiny of decisions made, thus providing an incentive for people to behave in a principled manner. As such, transparency is also a necessary corollary to accountability.

2.16 More broadly, transparency is fundamental to a functioning democratic society which depends on both the consent of the people and their participation in the democratic process. Both consent and effective participation turn on the public being able to scrutinise the actions of government and having the knowledge to do so effectively:

> *A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors must arm themselves with the power knowledge gives.*
>
> *James Madison (1822)*

ACCOUNTABILITY

2.17 While accountability can be defined in a number of ways, central to all definitions is the idea that one person or institution is obliged to give an account of his, her, or its activities to another. Accountability has two significant contributions to make to combating corruption. First, it is a necessary means of ensuring the identification of malfeasance in office and those individuals or organisations that perform corruptly. In this respect, the concept of accountability includes that of responsibility.

2.18 Secondly, and perhaps more significantly, accountability ensures answerability. In other words, it ensures that public officials are required to both provide information about their actions and justify their correctness. Ideally, it means that public officials must not only reason their decisions but fully disclose the evidentiary basis upon which those decisions were taken. Such disclosure makes it more difficult for public officials to use their public powers for private gain because it requires them to justify why that use is in the public interest. In addition, it increases the likelihood that those who engage in corrupt conduct will be found out:

> *As political accountability increases, the costs to public officials of taking decisions that benefit their private interests at the expense of the broader public interest also increase, thus working as a deterrent to corrupt practices.*
>
> *Kaufmann and Dininio (2006)*

2.19 Accountability is also central to the process of detecting and correcting errors, which in turn contributes to the monitoring and review of anti-corruption programmes. Moreover, like transparency, it is essential for the legitimacy of democratic government as it provides a means of assessing just what government has actually produced for its citizens. It also contributes to good governance through promoting informed debate and more effective public participation in the political process:

> *Poor governance is often associated with a culture of impunity where public officials feel little obligation to be accountable to citizens, and citizens have limited expectations that their elected leaders should be accountable to them. This situation reinforces monopolies on power, which undermine the operation of institutional checks and balances, and create an atmosphere of tolerance for corrupt practices. In such an environment, officials face few pressures for changed behaviour. The power of vested interests remains strong, while reformers find little traction to build coalitions to address corruption problems. Further, poor governance constrains the emergence of a strong civil society and disempowers citizens who would become advocates for anti-corruption policies and programmes.*
>
> *U4 Brief (2010)*

TOP-LEVEL COMMITMENT

2.20 The third of the Tribunal's anti-corruption principles emphasises that if anti-corruption measures are to succeed and high ethical standards are to prevail, then the example must come from the top. Conversely, corruption at the

top tends to repeat itself throughout the entire governance system. Anti-corruption measures have little point absent top level support for and commitment to those measures.

2.21 Top-level commitment to combating corruption can manifest itself in a variety of ways. These include strong support for transparent, accountable, corruption free government. They also include the adherence to and effective implementation of international anti-corruption efforts and a commitment to the monitoring and review of anti-corruption efforts on a longer term basis. Also significant is the depoliticisation of anti-corruption inquiries and in particular ensuring that authorities at the front line of corruption prevention and control are sufficiently politically and financially independent to carry out their tasks.

PUBLIC INVOLVEMENT

2.22 Top down initiatives to combat corruption while necessary are in themselves insufficient for combating corruption. To be successful, such initiatives must be mirrored by bottom up demands coming from a public which is fully engaged in and committed to combating corruption. These demands help to strengthen and reinforce political will to confront corruption. In addition, the willingness of the public to engage in anti-corruption efforts through whistleblowing as well as voicing concerns and demands is likely to greatly enhance attempts to uncover corruption when it occurs and to undo its effects.

MONITORING AND REVIEW

2.23 There is no magic cure for corruption and anti-corruption measures which work well in one context or at one time may work badly or not at all in another. Consequently, to be effective, anti-corruption measures must be constantly monitored and reviewed so that they can be quickly adapted to meet changing corruption risks. In the absence of such a monitoring and review function, anti-corruption measures may quickly become obsolete as those to whom they apply learn to exploit loopholes or because new areas of corruption risks emerge. Ideally, those carrying out those functions should receive regular feedback from all authorities involved in combating corruption so as to ensure that they have the information necessary to carry out those functions effectively.

PLANNING

The Tribunal recommends:

1. **Both the National Development Plan (the "NDP") and the National Spatial Strategy (the "NSS") should be placed on a statutory footing and the relevant statute should:**
    - **state when, how and by whom these measures are to be adopted and reviewed**
    - **provide for public involvement in adopting those measures including the involvement of local elected members**
    - **require that the adoption of the NDP and the NSS be subject to Oireachtas approval**
    - **include equivalent provisions to those that currently apply in relation to development plans for material variations to the NDP or NSS**

2. **Consideration should be given to providing for the direct election of the members of the Regional Authorities**

3. **Each Regional Authority should be required to:**
    - **compile a report summarising observations, submissions or recommendations made by a local planning authority or the Minister for the Environment, Community and Local Government (the "Minister for the Environment") when making the draft Regional Planning Guidelines (the "RPGs") or the RPGs**
    - **Inform the relevant local authority(s) or Minister for the Environment in writing if it decides to reject a recommendation made by that authority in that report, giving reasons for its decision**

The Tribunal recommends:

4. **The Chairman and the Ordinary Members of the National Transport Authority should be appointed by an Independent Appointments Board**

5. **Further efforts should be made to increase transparency in the planning process. In particular:**
   - **submissions and observations received in the context of public consultation should be published on the relevant planning authority's website as should the Manger's Report drafted on the basis of any such submissions or observations**
   - **where the elected members of a planning authority decide to depart from the Manager's recommendations as made in that report, they should be required to give reasons for that decision**
   - **motions submitted when making the draft development plan or the development plan should be published on the relevant planning authority's website**

6. **Where the elected members intend to grant planning permission in material contravention of the development plan they should be required to give advance notice of at least one month of this intention to the relevant Regional Authority and to the Minister for the Environment and be required to invite and consider submissions in relation to the same**

7. **The use of the procedure set out in s. 140 of the Local Government Act 2001 should be restricted in the case of planning decisions**

8. **Interventions made by elected members in respect of specific planning applications should be noted on the file and that file should be available for inspection on the relevant planning authority's website**

The Tribunal recommends:

9. **Applicants for planning permission should be required to indicate on their application whether they have made a political donation in excess of €55 to an elected member of the planning authority and, if so to identify the member to whom the donation was made**

10. **The Minister for the Environment's enforcement powers should be transferred to an Independent Planning Regulator who should also be charged with carrying out investigations into systemic problems in the planning system as well as being conferred with educational and research functions**

3.01 The Tribunal's inquiries have primarily focused on corruption in planning and related matters. While these inquiries have necessarily centred on the activities of specific individuals, it is the Tribunal's belief that in many cases those activities were facilitated by systemic weaknesses in the planning system. Removing those weaknesses and establishing a system which prevents new systemic weaknesses from arising in the future is central to preventing the reoccurrence of corruption in that system.

3.02 The Tribunal recognises that enormous changes have been made in the legislative framework regulating planning and development since the period at the focus of the Tribunal's inquiries, in particular by the Planning and Development Acts 2000 - 2011. It also recognises that the corruption into which it inquired was largely fuelled by the significant profits which were to be made in land development at that time. Because of the collapse in property prices in recent years, such profits are not currently a significant issue in planning. Moreover, the introduction of an 80% windfall tax on profits/gains attributable to land rezoning by the National Asset Management Agency Act 2009 is likely to dramatically reduce incentives to make corrupt payments to influence land zonings should the opportunity to make such profits return.

3.03 Nevertheless, despite these changes, planning and development is likely to continue to pose corruption risks which need to be effectively countered. These recommendations seek to eliminate the existing corruption risks identified by the Tribunal. In broad terms, they seek to improve transparency and accountability in planning and development as well as to ensure that sufficient checks and balances exist to provide a bulwark against the corrupt exercise of public power in this area. They affect all levels of the planning and development system, including the NDP and the NSS, as well as the role of Regional Authorities, the National Transport Authority, the Planning Authorities and the Minister for the Environment in that system.

3.04 In making these recommendations, the Tribunal has taken account of views expressed publicly by the Irish Planning Institute and An Taisce, as well as by several legal commentators. It has also carried out a survey of planning among the planning authorities and taken into consideration various reform proposals contained in the responses to that survey. While the Tribunal notes that the current programme for government proposes further changes in the planning and development system it has based its recommendations on the existing system.

3.05 The Tribunal is aware that a number of commentators have called for the abolition or significant curtailment of the role of the elected members of the planning authorities ("elected members") in the development process. The Tribunal does not support these calls, for a number of reasons. First, as mentioned, the system for regulating planning and development has changed substantially since the period which formed the focus of this Tribunal's inquiries and these changes have significantly restricted the role of elected members in that system. Specifically, during that period, the development plan was the key instrument for regulating planning and development. The elected members were responsible for adopting that plan and enjoyed considerable latitude in this respect. Under the current system, the development plan plays a less significant role in that it is subordinate to the NDP, the NSS and the RPGs. Moreover, in making the plan, the planning authorities must take into account submissions made by the Minister for the Environment as well as have regard to guidelines and comply with policy directives issued by him or her.

3.06 In addition, the role of the elected members in the planning process is subject to more checks and balances than was previously the case. For example, when making the development plan they must now engage in a broad consultative process involving the Minister for the Environment, the Regional Authorities and the general public. If those members decide not to comply with a recommendation made by the Minister for the Environment, the relevant planning authority must so inform the Minister and give reasons for its decisions. In addition, the Minister for the Environment may issue directions to planning authorities regarding the content of the development plan. A planning authority cannot exercise a power or perform a function conferred on it by the Planning and Development Acts 2000 – 2011 in a manner that contravenes such a direction.

3.07 Other changes in the role of elected members in the planning and development system have occurred as a result of the reforms introduced by Better Local Government as well as those resulting from laws regulating conflict of interests and political finance. Overall, elected members now have a reduced role in that system, that role is more transparent and they are more accountable for their actions than during the period which formed the focus of this Tribunal's inquiries.

3.08 Secondly, there are convincing reasons for supporting the continuing role of elected members in the development process and the Tribunal does not consider it appropriate to make recommendations which would undermine or erode that role unless this is absolutely necessary. In particular, the elected

members provide the link between local government policy in the area of planning and development and the people most affected by that policy. Over the past years, there has been a growing recognition of the importance of the role played by democratically accountable representatives in local government both domestically and internationally. This is now expressly recognised by Article 28A of the Constitution which provides:

> *The State recognises the role of local government in providing a forum for the democratic representation of local communities, in exercising and performing at local level powers and functions conferred by law and in promoting by its initiatives the interests of such communities.*

It is also recognised in s. 63(1)(a) of the Local Government Act 2001, according to which:

> *The functions of a local authority are to provide a forum for the democratic representation of the local community ..... and to provide for civic leadership for that community.*

3.09 On an international basis, the Council of Europe's European Charter of Local Government is based on the premise that the safeguarding and reinforcement of local self-government makes an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power. According to that Charter:

> *This entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfillment.*

3.10 Thirdly and finally, the Tribunal is unconvinced that further restricting the role of democratically elected members in the development process would necessarily alleviate corruption risks. There is no reason to suppose that these members are more prone to corruption than other individuals. Rather, planning and development are areas which are particularly likely to give rise to corruption because of the financial opportunities which can be created by the rezoning or development of land and because of the fact that land is a finite resource. Corruption risks in planning must be properly managed irrespective of the identity of the decision making authority and the Tribunal considers that the best

way to do so is through ensuring transparency and accountability in the planning system.

NATIONAL DEVELOPMENT PLAN AND NATIONAL SPATIAL STRATEGY

The NDP and the NSS should be placed on a statutory footing and the relevant statute should:

state when, how and by whom these measures are to be adopted and reviewed

provide for public involvement in adopting those measures including that of local elected members

require that the adoption of the NDP and the NSS be subject to Oireachtas approval, and

include equivalent provisions to those that currently apply in relation to the development plan for material variations to the NDP or NSS

3.11 Both the NDP and the NSS play a key role in the planning system. The NDP "sets out the roadmap to Ireland's future". It anticipates future socio-economic needs and identifies the measures necessary to meet those needs. It has four basic objectives, namely: 1) to continue sustainable national economic and employment growth; 2) to strengthen and improve Ireland's international competitiveness; 3) to foster balanced Regional Development; and 4) to promote Social Inclusion.

3.12 The NSS seeks to guide "*future infrastructural, industrial, residential and rural development in Ireland while providing protection for our culture, natural and environmental heritage*". It aims at achieving a more balanced regional development and identifies a framework of Gateways, Hubs and other urban and rural areas to drive that development. It also provides for a framework for the development of effective transport, communications, energy and linkages which will be necessary to support those Gateways, Hubs, etc, if they are to achieve their objectives. In this respect, it sets down indicative policies in relation to the location of industrial development, residential development, services, rural development, tourism and heritage. The detailed implementation of the NSS is entrusted to the RPGs, the Development Plan and Local Area Plans.

3.13 Despite their importance in the planning hierarchy, neither the NDP nor the NSS have a specific statutory basis. In particular, there are no provisions providing for or requiring their adoption or stipulating the relevant adoption procedure. Nor are there any provisions regulating the variation of either instrument, despite the fact that there may be substantial socio-economic changes during the period covered by those instruments which may necessitate revisiting some of their objectives.

3.14 The Tribunal is also concerned that the planning and development system introduced pursuant to the Planning and Development Act 2000 adversely affected the role of democratically elected members in the development process without providing for an increased role for national elected representatives to counter balance this effect. Moreover, it conferred more extensive powers on the executive in the planning process without providing for effective Oireachtas supervision over the exercise of those powers.

3.15 The Tribunal recommends that both the NDP and the NSS be placed on a statutory footing. The relevant provisions should specify when and how the relevant instruments are to be adopted/varied. They should also provide for a public consultation process involving the elected members as well as the broader public. This should help ensure increased transparency in the process for adopting these instruments and also ensure that local interests are taken into consideration. Once drafted, the adoption of the NDP and/or the NSS should be subject to Oireachtas approval in order to increase the accountability of the executive and to ensure increased transparency in the adoption of those measures.

REGIONAL AUTHORITIES AND REGIONAL PLANNING GUIDELINES

Consideration should be given to providing for the direct election of the members of the Regional Authorities

Regional Authorities should be required to:

- **compile a report summarising observations, submissions or recommendations made by a local planning authority or the Minister for the Environment when making the draft RPGs or the RPGs**

- **Inform the relevant local authority or Minister for the Environment in writing if it decides to reject a recommendation made by that authority in that Report, giving reasons for its decision**

3.16 The regional authorities were established by the Local Government Act, 1991 (Regional Authorities) (Establishment Order), 1993 and came into existence in 1994. There are 8 such authorities and their size varies from 21 Members to 37 Members. Members of the regional authorities are not directly elected but are nominated from among the elected members of the local authorities in the region.

3.17 The regional authorities play an important role in the planning process both as regards the adoption of the RPGs and as regards the adoption of Development Plans within the relevant regions.

3.18 The regional authorities are responsible for adopting the RPGs. Their principal function is "*to link national strategic spatial planning policies to the planning process at City and County Council level by co-ordinating the Development Plans of these 34 local authorities through the Regional Planning Guidelines.*" As previously mentioned, each development plan must demonstrate its consistency with the regional development objectives set out in the relevant RPGs. In addition, when making a development plan or a local area plan, a planning authority must ensure that it is consistent with any RPGs in force for its area.

3.19 Regional authorities also have a strong input in the making of the Development Plan. Specifically, each planning authority must notify the relevant regional authority when making a draft development plan, a development plan or when varying an existing plan. That authority must then make written submissions or observations. In the case of the draft plan, these must contain a report on matters which the regional authority thinks require consideration by the planning authority concerned in making the development plan. In the case of the development plan or a variation to the plan, the submissions or observations must contain a report setting out whether the regional authority considers the plan or variation to be consistent with the RPGs in force in the area affected by that plan or variation. Where the regional authority considers the plan or variation of it to be inconsistent with the RPGs, it must indicate the amendments required to ensure consistency in this respect. The regional authority must also send a copy of these submissions or observations to the Minister for the Environment.

3.20 In exercising their functions under the planning acts, the regional authorities are primarily accountable to the Minister for the Environment who may issue directions to the regional authorities regarding compliance with their responsibilities under those acts.

ELECTED MEMBERS

3.21 The increased role of the regional authorities in the planning process has largely been at the expense of the planning authorities despite the fact that the regional authorities do not have a direct democratic mandate for that role. The lack of such a mandate is an important lacuna in ensuring the accountability of those authorities for their role in the planning process.

3.22 In addition, members of the regional authorities are drawn from local elected representatives nominated from amongst the members of the local planning authorities in the relevant region. The Tribunal is concerned that individuals who are members of both a planning authority and a regional authority may have a disproportionate impact on the planning process. These individuals can influence the content of RPGs as well as that of the relevant planning authority's Development Plan and Local Area Plan. They also play a role in monitoring the compliance of their own local authority with the requirements of the Planning and Development Acts 2000 – 2011. Moreover, while accountable to their own constituents, regional authority members are not accountable to the broader electorate of the relevant local area, whom they also represent. Further, on a practical note, it is questionable whether regional authority members have the necessary time to devote to their regional tasks given that they are also members of planning authorities, and given that regional issues may be of, at most, peripheral interest to their constituents. This may detract from their optimal performance of those tasks.

3.23 Overall, the Tribunal is concerned that the importance of the role played by the regional authorities in the planning process is not adequately reflected in the manner in which their members are appointed and that this has adverse implications both for their accountability and for the transparency of their decision making processes. The Tribunal is also concerned that the regional authorities are relatively invisible players from a public perspective and believes that their activities may not be subject to the intensity of public scrutiny which their powers would appear to warrant.

3.24 The Tribunal believes that the direct election of the members of the regional authorities would counter many of these risks mentioned above and therefore recommends that consideration be given to providing for such elections.

3.25 In the event that members of the regional authorities are to be directly elected, the Tribunal recommends that a certain percentage of those members should be elected by the entire electorate of the relevant region. In the course of its inquiries, the Tribunal came across instances where developments which were unpopular in their own locality were rejected by the specific members of those localities but then supported by their political colleagues. In at least some instances this was a deliberate and cynical ploy to ensure that the members of those constituencies could repudiate responsibility for the development and thus avoid any ensuing electorate consequences. In turn those members voted for developments which were unpopular in other localities. The Tribunal considers that making at least a proportion of the members directly accountable to the entire regional electorate might contribute to some extent to preventing such practices.

INCREASED ROLE OF LOCAL PLANNING AUTHORITIES AND MINISTER FOR THE ENVIRONMENT

3.26 The Tribunal considers that the planning authorities should have an increased role in the adoption of the RPGs, largely through amendments in the consultation process. In addition, the Minister for the Environment should play a more active role in supervising the adoption of those guidelines.

3.27 Under the existing provisions, regional authorities are required to consult with various persons including the Minister for the Environment and planning authorities when drafting and making RPGs. However, they are simply required to consider any submissions received, following from that consultation.

3.28 This contrasts sharply with the obligations placed on planning authorities when they receive submissions or observations from the regional authorities regarding the draft Development Plan or the Development Plan. Specifically, as well as being obliged to consult with those authorities, the planning authority Manager must issue a report summarising the issues set out in those submissions or observations. The Manager must also outline his or her recommendations regarding the manner in which those issues and recommendations should be addressed in the development plan. Moreover, when making the development plan, if a planning authority decides not to comply

with a recommendation made by a regional authority it must so inform that authority in writing as soon as practicable setting out reasons for its decisions.

3.29 The Tribunal is recommending that the existing provisions requiring regional authorities to consult with planning authorities and/or the Minister for the Environment when drafting the RPGs be amended so as to mirror more closely those which apply to those planning authorities when consulting with the regional authorities, albeit with some differences. Specifically each Regional Authority should be required to write a report on the submissions or observations received following on from the consultation process indicating its views on any issues raised and that report should be publicly available. Moreover, where the Minister for the Environment or a planning authority makes a recommendation regarding the RPGs, the regional authority should be required to give written reasons if it decides not to comply with that recommendation and to communicate those reasons to the Minister for the Environment or planning authority, as the case may be.

THE NATIONAL TRANSPORT AUTHORITY

The Chairman and the Ordinary Members of the National Transport Authority should be appointed by an Independent Appointments Board

3.30 The National Transport Authority is a statutory body established in 2009, the Members of which are appointed by the Minister for Transport. The NTA performs a number of different functions, several of which impact directly and significantly on planning and development. Specifically, the NTA has a role in the adoption of the RPGs, the Development Plan as well in the adoption of Local Area Plans.

3.31 With regard to the RPG's, a regional authority in the Greater Dublin Area (GDA) must consult with the NTA when it intends to draw up RPGs. The NTA must then prepare a report for that authority on the issues it considers pertinent to those RPGs. Subsequently, when preparing the draft RPGs the regional authority must explain how those guidelines intend to address the matters identified in the NTA's report. It must also give reasons if it does not intend to address those matters, or to only address them partially. On completion of the draft RPGs, the NTA must make a written submission indicating whether or not they are consistent with its transport policy and any amendments necessary to achieve such consistency. It must also indicate what amendments it considers necessary to the RPGs to ensure effective integration of transport and planning planning. The NTA must send copies of these submissions to the Minister for the

Environment and the Minister for Transport. The Minister for the Environment may issue binding directions to the authorities for the Greater Dublin Area to take measures to review the draft RPGs to ensure consistency with the transport strategy of the NTA.

3.32 A regional authority outside the GDA must also consult with the NTA when it intends to make RPGs or to review existing guidelines. The NTA must then prepare a report for that regional authority indicating the issues which it thinks should be addressed by that regional authority in making those RPGs.

3.33 With regard to the Development Plan, the planning authorities in the GDA must ensure that their plans are consistent with the NTA's Transport Strategy. In addition, all planning authorities must consult with the NTA when making either a draft development plan or a development plan. In the case of the draft plan, the NTA must then prepare a report on the issues which, in its opinion, should be considered in the review of its existing development plan and the preparation of a new development plan. In the case of the development plan, the NTA must prepare written submissions indicating whether the draft is consistent or inconsistent with its transport strategy, indicating what amendments it considers necessary to achieve such consistency. The NTA must then send a copy of its submissions to the Minister for the Environment and the Minister for Transport. Similar provisions apply to the variation of a development plan. Where the Minister for the Environment receives a submission from the NTA indicating that a plan of a planning authority in the GDA is not consistent with its transport strategy, the Minister may direct that planning authority to take such specified measures as he or she may require in relation to the plan.

3.34 Planning authorities are required to consult with the NTA when making, amending or revoking a Local Area Plan. The NTA must prepare a written report setting out its opinion on issues which should be considered in relation to that Plan.

3.35 In view of the considerable powers exercised by the NTA in the planning and development system, the Tribunal is of the opinion that its members should be appointed by an Independent Appointments Board.

THE DEVELOPMENT PLAN

Submissions and observations received in the context of public consultation should be published on the relevant planning authority's website as should the Manager's Report drafted on the basis of those submissions or observations

Where the Elected Members of a planning authority decide to depart from the Manager's recommendations as made in his or her report they should be required to give reasons for this decision

Motions submitted when making the draft development plan or the development plan should be published on the relevant planning authority's website

3.36 In recent years, public consultation has become a far more significant part of the process of making the draft development plan, the development plan and/or varying that plan than was previously the case. The Tribunal fully supports this development and considers public involvement in the planning and development process to be an important factor in promoting transparency and accountability in that process. The Tribunal believes that strengthening the public consultation process could bring further gains in this respect.

3.37 Under the current system, when making the draft development plan, the development plan and/or when varying the development plan, the planning authority must engage in public consultation. The public is thereby given the opportunity to make its views known to that authority. At the end of each public consultation period, the Manager must summarise the submissions or observations made by outlining the issues raised and giving his or her response to those issues and the reasons for rejecting certain views, if this be the case. This report is then given to the elected members for their consideration.

3.38 The Tribunal believes that the public should have the opportunity to verify that the Manager has in fact addressed each of those issues in his Report and that it should kept fully informed of the Manager's views of and responses to these issues. Consequently, it recommends that the submissions and observations made in relation to the development plan should be made routinely available to the public at large as should the Manager's Report.

3.39 While, as mentioned, the Manager is currently required to give reasons if he or she rejects views raised in the public consultation process, the elected members are not subject to an equivalent requirement. Nor are those members required to give reasons for rejecting the Manager's recommendations. The

Tribunal considers that requiring the elected members to collectively agree and give reasons in both these instances, would help promote the transparency of the decision-making process and the accountability of those members to the electorate. In addition, such reasons are crucial for ensuring that those members comply with their obligation to base their decisions on the proper planning and sustainable development of the area to which the plan relates. Moreover, the Tribunal is of the view that requiring reasons in these instances could promote public involvement in the consultation process. Specifically, members of the public maybe more likely to engage in that process if they are assured that their views will be subject to reasoned consideration on the part of the elected members.

3.40 Finally, the Tribunal notes that some local authorities already publish motions submitted by the elected members during the course of the preparation, consideration and making of the draft development plan and the development plan on their website. The Tribunal considers such publication to make an important contribution to transparency in the planning process and recommends that this practice be followed by all planning authorities.

PLANNING PERMISSION

Where Elected Members intend to grant planning permission in material contravention of the development plan they should be required to give notice, of at least 1 month, of this intention to the relevant Regional Authority and the Minister for Environment and to invite and consider submissions in relation to this intention

3.41 The purpose of the development plan is to set out an overall strategy for the proper planning and sustainable development of the area of the development plan. Planning permission which is in material contravention of that development plan can only be given if the elected members pass a motion granting that permission using the material contravention procedure. Under this procedure the relevant planning authority must first engage in a process of public consultation with regard to the proposed decision. The Manager must then prepare a report for the planning authority on any submissions or observations received in the context of that consultation as well as on the compatibility of the proposed development with relevant ministerial policies or objectives or with the RPGs. Finally, a decision to grant permission in material contravention of the development plan must be passed by three quarters of the total number of the members of the planning authority.

3.42 The material contravention procedure ensures an important element of flexibility into the planning system. However, the Tribunal is concerned that the current discretion enjoyed by elected members to grant planning permission in material contravention of the development plan undermines the system of checks and balances which applies when making and/or varying that plan. For example, the consultation procedures which apply when making or varying the development plan are more onerous than those applicable under the material contravention procedure. Moreover, whereas the development plan must be consistent with the RPGs, there is no equivalent requirement where planning is granted in material contravention of that plan.

3.43 The Tribunal recognises that it is more difficult for the elected members to pass a motion which is in material contravention of the plan than to either adopt or vary that plan. Nevertheless, it considers that increased measures are necessary to ensure that the material contravention procedure does not undermine the overall system for regulating development. The measures being recommended by the Tribunal largely affect the consultation procedures which apply when making or varying a development plan.

3.44 With regard to public consultation, the making of a development plan usually attracts considerable publicity. This is not always the case when it is proposed to make a decision to grant planning permission in material contravention of a development plan. Moreover, the existing requirement to give public notice where it is intended to grant such permission is confined to publishing notice of that intention in a newspaper circulating in the area and giving copies of the notice to those who have made a submission or observation in writing in relation to the application for planning permission. The Tribunal considers that increased efforts are needed to draw such proposed decisions to the attention of the section of the public most likely to be affected by them. The Tribunal is therefore recommending that those in the area who will be directly affected by a decision to grant planning permission in material contravention of the development plan should be specifically informed about the proposed decision.

3.45 In addition, the Tribunal is recommending that the consultation procedure applicable to decisions to grant planning permission in material contravention of the development plan should be amended so as to mirror that applicable to the procedure to vary a development plan. Under the material contravention procedure, the planning authority is only required to specifically notify a prescribed body which has been notified of the application of the planning authority. In contrast, when a planning authority is intending to vary a

development plan, it must give notice of its intention to do so to both the relevant regional authorities and the Minister. Once such a notice is received, those regional authorities must make written submissions and observations including a report stating whether the proposed variation is compatible with the RPGs in force for the area of the development plan. If the Minister makes submissions, the Manager must specifically address the issues raised in those submissions in the Manager's Report. The Tribunal considers that incorporating these requirements into the procedure for granting planning permission in material contravention of the development plan would increase the accountability of planning authorities when granting that planning permission. It should also mean that that procedure cannot be used as a means of undermining the role of RPGs, the NDP and the NSS in the regulation of planning and development.

3.46 The Tribunal is aware that some commentators have proposed applying the same voting requirements to the procedure for varying the development plan as currently apply to the material contravention procedure. This would mean that a motion to vary the development plan would have to be passed by three quarters of the total number of the members of the planning authority rather than by a majority of those members, as is currently the case. The reason for this proposal is that, in many instances either procedure can be used to the same effect. For example, where permission is sought for planning in material contravention of the plan, the elected members may be able to vary the plan so that the permission sought is no longer in material contravention of it. This obviously by-passes the requirements of the material contravention procedure.

3.47 While the Tribunal has considered making a recommendation requiring decisions to vary the development plan to be passed by three quarters of the total number of a planning authority's elected members, in the end it has chosen not to do so. In this respect, the Tribunal was concerned that imposing such a voting requirement carries its own risks in that it could confer on a minority of elected members a disproportionate amount of power in the planning process. It is also aware that in its original form the Planning and Development Bill 2009 proposed such a voting requirement but it was subsequently amended after substantial objections were raised to it on a number of compelling grounds.

SECTION 140

The use of the procedure set out in s. 140 of the Local Government Act 2001 should be restricted in the case of planning decisions

3.48 Section 140 of the Local Government Act 2001 empowers the elected members of a local authority to direct the Manager to do "*any particular matter or thing specifically mentioned in the resolution and which the local authority or the manager concerned can lawfully do or effect to be done or effected in the performance of the executive functions of the local authority*". Section 140 is the successor to s. 4 of the City and County Management (Amendment) Act, 1955.

3.49 While s. 140 is not confined to planning, members may use their powers under this section to direct the Manager to grant or refuse planning permission. As in the case of other decisions on planning permission, when deciding whether to direct the Manager to grant permissions, the Members are restricted to considering the proper planning and sustainable development of the area.

3.50 Section 140 is an important tool in establishing the primacy of the elected members in local affairs. However, insofar as planning is concerned, the use of the power conferred by s. 140 and, previously, its predecessor, s. 4 has long been the subject of severe criticism. In particular, there is a widespread view that the elected members have used that power to instruct the Manager to grant planning applications against the advice of the professional planners in the local authority planning departments and to the general detriment of planning and development in the relevant area. Moreover, it is considered to introduce an unacceptable subjective element into the planning process in that who you are or who you know can determine the outcome of a planning application. There is also a view that in some instances at least some elected members have used their powers under s. 140 corruptly.

3.51 The use of s. 140 in planning is a clear source of corruption risks. Consequently, the Tribunal considered whether or not planning should be excluded from the s. 140 procedure or whether the use of that section should be restricted in the case of planning decisions. The Tribunal is reluctant to recommend that planning be excluded from the s. 140 procedure given that the changes brought about by the Planning and Development Act 2010 and those which will result from the implementation of these recommendations may be sufficient to counter the corruption risks to which that procedure gives rise. However, it is recommending that its use be subject to a number of restrictions.

3.52 Generally, s. 140 should only come into play when there is some disagreement between the professional planners and the elected Members regarding the proper planning and sustainable development of the area. The Tribunal considers therefore that when a s. 140 motion is being proposed, the elected members should be required to give written reasons specifying precisely why they disagree with the recommendations of the professional planners. The Tribunal also recommends that in the event the motion is passed, notice of it together with the reasons justifying it and the advice of the professional planners should be sent to An Bord Pleanála who should have the power to veto the direction within a specified period, having heard submissions from the elected members, objectors or affected persons and the Manager.

3.53 The use of s. 140 motions in planning should be kept under on-going review in order to determine whether these measures are sufficient to minimise the actual and apparent corruption risks arising from those motions.

PLANNING APPLICATIONS

Interventions made by elected members in respect of specific planning applications should be noted on the file and that file should be made available for inspection on the relevant planning authority's website

Applicants for planning permission should be required to indicate on their application whether they have made a political donation in excess of €55 to an elected member of the planning authority and, if so, to identify the member to whom that donation was made

3.54 Elected members have an important representative role in local communities. In some instances this role requires an elected member to liaise between members of the public and the planning department. However, this representative role may be in conflict with that member's role in the overall planning process and give rise to certain corruption risks, both actual and apparent.

3.55 While the Code of Conduct for Councillors (2004) gives some guidance to councillors in respect of their planning functions, it is quite general in this respect. The Tribunal recommends that more specific guidance be given on this issue.

3.56 The Tribunal is also aware that some planning authorities keep a written note on representations made on the relevant file. In the interests of

transparency, the Tribunal recommends that this practice should be followed by all planning authorities and cover both oral and written representations. In addition, the relevant file should be made available for inspection via the internet. The Tribunal notes that this will contribute to the attainment of one of the goals of the Code of Conduct for Local Government Councillors, according to which the involvement of elected members in planning matters should be carried out in a transparent fashion, including input by individual councillors in relation to planning applications.

3.57 The Tribunal also recommends that where an elected member has made a representation on behalf of a planning applicant, that member should be required to make an ad hoc declaration to that effect prior to voting on a matter before the planning authority pertaining to that application or the lands to which it relates. Similarly, members should be required to declare on an ad hoc basis whether or not they have received a political donation in excess of the disclosure thresholds specified in the Local Elections Acts by a person likely to be affected by the council's decision in respect of the relevant planning application. This recommendation is set out in more detail in the chapter of conflicts of interest.

3.58 In addition, in order to ensure maximum transparency over the role of elected members in the planning process, the Tribunal recommends that applicants for planning permission should be required to indicate on their application whether they have made a political donation in excess of €60 to an elected member of the planning authority and to identify that member.

THE PLANNING REGULATOR

The Minister for the Environment's enforcement powers should be transferred to an Independent Planning Regulator who should also be charged with carrying out investigations into systemic problems in the planning system as well as educational and research functions

3.59 Under the current system, the Minister for the Environment plays a dual role in the planning system. First, he or she is responsible for issuing planning guidelines and policy directions. Secondly, he or she plays a significant role in enforcement and in particular in ensuring that the national hierarchy of plans is observed. This is in itself a key element in ensuring the existence of effective checks and balances in the planning system.

3.60 In so far as enforcement is concerned, the Minister's powers affect both regional authorities and planning authorities. Specifically, in both cases, the Minister may direct the relevant authority to take such measures as he or she may require in relation to either the RPGs or the development plan, as the case may be. In both cases, the Minister may issue such directions when: the authority has ignored submissions made by the Minister or failed to take sufficient account of them; the plan or guidelines are not in compliance with the requirements of the PDA 2000 – 2011; and where they are not consistent with the NTA's transport strategy in circumstances where they are required to be consistent with that strategy. Where the Minister issues a direction the relevant authority must comply with it and must not exercise a power or perform a function conferred on it by the PDA 2000 – 2011 in a manner that contravenes that direction. With regard to the development plan, the Minister's power to give directions also arises where the plan fails to set out an overall strategy for the proper planning and sustainable development of the area. Similarly, in the case of RPGs, that power arises where the guidelines fail to provide a long-term strategic planning framework for the development of the region in respect of which they are made, in accordance with the principles of proper planning.

3.61 The Tribunal is concerned at the extent of the Minister's powers in the planning system as a whole. Specifically, the Minister is heavily involved in the making of both the NDP and the NSS. He or she also plays a significant consultative role in the making of the RPGs and development plans and may also play a significant role in determining some of the contents of those guidelines and plans.

3.62 Moreover, there appear to be significant gaps in the enforcement system. In particular, ensuring that the development plan and/or the RPGs actually comply with the NSS and the NDP as well as the terms of the PDA 2000-2011 appears largely dependent on the Minister. However, it is far from clear that the Minister has either the necessary time or the resources to monitor compliance with the PDA 2000 – 2011. If the Minister chooses not to exercise his or her powers, the only other option for challenging the plan or guidelines appears to be a judicial review action, the costs of which may be prohibitive for either individuals or groups.

3.63 Another difficulty with the current system is that no provision is made for continuing professional education or the on-going review of that system. However, there appears to be a broad-based need for such provisions. For example, while in exercising some of their powers under those Acts the elected members are restricted to considering the proper planning and sustainable

development of the area to which the development plan relates, they may have little awareness of what constitutes such "proper" planning and development. Consequently educating members as to best practice in planning and development appears essential to a well functioning planning system.

3.64 On-going research into best practice in the area of planning and development as well as systematic monitoring of the existing provisions in order to identify any issues or problems arising would also provide an important bulwark against corruption. Again, however, under the current system no one is entrusted with these functions.

3.65 In view of the above, the Tribunal is recommending the creation of a new post, to be known as the Independent Planning Regulator, and that the Minister's current role in enforcement be conferred on that Regulator. Provisions currently requiring regional authorities and planning authorities to notify and consult with the Minister regarding RPGs and Development Plans should be extended to cover the Planning Regulator. The Regulator should have the power to issue directions to local and regional planning authorities to ensure compliance with the planning hierarchy, along with the overall responsibility for ensuring that the decisions of planning authorities take account of the proper planning and sustainable development of the relevant area. Moreover, he or she should have the power to investigate instances where there appear to be systemic problems in the planning system, including possible corruption. As part of this process, the Regulator should be empowered to conduct reviews (including spot-checks) of any aspect of the work practices and/or procedures of planning authorities, including those relating to applications for, refusals of, and grants of planning permissions, and to do so without advance notice to a planning authority, or any other party. In addition, he or she should provide the elected members with ongoing guidance and education as to what constitutes proper planning and development as well as providing updates on all matters to which they are obliged to have regard. He or she should also keep the planning system under review and carry out relevant research activities in order to ensure that corruption risks are identified and corrected as they arise and more broadly, that the planning and development system is functioning optimally. Finally, the Regulator should prepare and publish a report annually, relating to all aspects of the Regulator's work carried out within the previous 12 month period, and to make in that report (or at any time) recommendations for legislative or other change in the planning system.

3.66 The Regulator should be appointed by an independent board following an open application procedure and should have a good knowledge of both

planning and development law and best practice in planning and development. He or she should have wide powers of investigation, including the power to question witnesses and to compel the production of documents.

CONFLICTS OF INTEREST

The Tribunal recommends:

(1) Each person falling within the scope of the Ethics in Public Office Acts 1995 and 2001 (the "Ethics Acts") or Part 15 of the Local Government Act 2001 (the "LGA"), (collectively "public officials") should be required to disclose periodically his or her own specified interests as well as those held by:

- **his or her family members, or any other person who is wholly or substantially dependent on that public official or whose affairs are so closely connected with that official's affairs that a benefit derived by the person, or a substantial part of it, could pass to the public official (a "related person")**

- **corporate entities and/or other legal arrangements in which the public official or one of the above mentioned persons has a controlling legal or beneficial interest as well as any other entities or arrangements in which the former entities/arrangements have a controlling interest**

(2) In addition, to the interests which currently require disclosure, each public official should be required to disclose periodically the following categories of interests:

- **assets**

- **liabilities**

- **sources and amounts of income**

- **any company in which the person has a legal or beneficial interest**

- **all company offices held by the person and all company management positions**

- **the person's legal and beneficial interests in land including the family home**

The Tribunal recommends:

Cont.

- **all gifts and benefits of more than a specified amount received by the person in the relevant period which reasonably appear to be unconnected with that person's public office**

- **non-pecuniary interests in so far as those interests are capable of being reasonably perceived to give rise to a conflict of interests**

(3) each public official should be required to:

- **Make a periodic disclosure of interests within 30 days of entering public office and update any interest disclosed in the context of a periodic disclosure within 30 days of a significant change in that interest**

- **disclose the source of any income in excess of €1,000 and gifts/benefits in excess of €250 received either within the twelve months prior to assuming public office or subsequent to leaving it**

(4) Each public official should be required to disclose on an ad hoc basis any interest which could be reasonably seen to be capable of influencing him or her in the performance of his or her public functions ("ad hoc disclosure")

(5) Both periodic and ad hoc disclosures should be made more widely available. In particular:

- **Periodic disclosures made under the LGA should be published on the relevant local authority's website as should minutes of local authority meetings and documents debated in the course of those meetings**

- **Ad hoc disclosures made by both elected and senior non elected public officials should be published, including those made at cabinet meetings**

The Tribunal recommends:

(6) Both the Members' and Officeholders' codes of conduct should be amended so as to define a conflict of interest to include all interests which could be reasonably considered to influence a Member's or Officeholder's performance of his or her public functions

(7) Each Public official should be prohibited from receiving any gift or benefit which could be reasonably perceived to be connected with the performance of his or her public functions other than gifts of a nominal value provided in the course of the performance of those functions

(8) Further measures should be introduced to regulate conflicts of interest arising out of the use of inside information by Officeholders

(9) Each public official falling within the scope of the Ethics Acts ("national public official") should be prohibited from entering into a contract for the provision of goods or services to a public body both while a public official and for a period of one year following the end of his or her term in office. Equivalent restrictions should be placed on a public official falling within the scope of the LGA ("local public official") from entering into such contracts with the local authority of which he or she is a member/employee

(10) Each local elected representative should be prohibited from dealing with land both during his or her term of office and for a period of two years thereafter where the Local Authority of which that representative is a member has made a decision changing the planning or zoning status of that land during that representative's term of office, where he or she has voted on that decision and where he or she is engaged in an outside activity which primarily involves the sale and/or development of land

(11) Conflicts of Interest on the part of Officeholders arising from post-term employment should be subject to increased and more effective regulation

The Tribunal recommends:

(12) The enforcement provisions applicable to conflicts of interests at national level should be modified so as to:

- **Give the Standards in Public Office Commission (SIPO) a supervisory role over the Select Committees**

- **Permit SIPO to: (i) accept an anonymous or oral complaint (ii) sit with a quorum of three members; (iii) appoint an inquiry officer when carrying out its own investigations; and (iv) seize documents**

- **Place increased emphasis on the prevention of conflicts of interests through training, education and research**

(11) The system for enforcing the conflict of interests provisions in the LGA should be modified so as to:

- **Give SIPO a supervisory role over enforcement at local level**

- **Provide for a formal complaint procedure**

- **Provide for whistleblower protection for complainants**

- **Require each local authority to include information on the application and enforcement of the conflict of interests measures in its annual report**

- **Place increased emphasis on the prevention of conflicts of interests through training, education and research**

4.01 In the public sphere, a conflict of interests occurs where a person exercising a public power has a private interest which could reasonably be seen to be affected by the exercise of that power. Such conflicts can arise from both pecuniary and non pecuniary private interests. This Tribunal inquired into several conflicts of interests in the course of its inquiries.

4.02 Conflicts of interests pose an interesting challenge from an anti-corruption perspective. On the one hand, they are inevitable and a public official may have any number of private interests capable of giving rise to a conflict of interests. On the other, they are a root cause of corruption as a public official is more likely to abuse his or her public powers when he or she benefits directly or indirectly from doing so. Eliminating all interests likely to give rise to a conflict of interests is neither possible nor necessarily desirable. The challenge therefore is to ensure that conflicts of interests are appropriately identified and controlled.

4.03 Meeting this challenge is crucial to ensuring transparency and accountability in the exercise of public power. Specifically, the effective identification and control of conflicts of interests plays a significant role in ensuring that public power is exercised legitimately in the public interest rather than for the private gain of those public officials entrusted with its exercise. The willingness of public officials to open up their affairs to public scrutiny also expresses their strong commitment to combating corruption in public office and demonstrates that they are worthy of the trust placed in them by the public.

4.04 Conflicts of interests are currently regulated at national level by the Ethics Acts and at local level by the LGA (collectively, "the conflict of interest acts"), together with their related codes of conduct. These acts largely ensure the identification and regulation of conflicts of interests through disclosure. The Tribunal is aware that the efficacy of disclosure in dealing with such conflicts has been questioned. Nevertheless, it is not aware of any alternative proposal for dealing with them more effectively. The Tribunal's recommendations therefore focus on ensuring that the existing conflicts of interests acts ensure the effective identification and, in some instances, further regulation of all interests capable of giving rise to a conflict of interests. These recommendations can be broadly divided into four categories, namely, those relating to: 1) the disclosure of conflicts of interests; 2) the further regulation of conflicts of interests; 3) the enforcement of the conflicts of interests measures; and 4) sanctions.

4.05 Currently, there are a number of differences between the rules applicable to conflicts of interest at national level, on the one hand, and at local level on the other. Overall, those at local level are stricter than those which apply

at national level and the consequences of infringing them are more severe. This appears illogical: generally, the more senior the public official the more significant the existence of a conflict from a corruption perspective. In particular, there does not appear to be a convincing rationale for controlling conflicts of interests at local level more strictly than at national level. Consequently, the Tribunal's recommendations apply equally to conflicts of interests at both national and local level. However, the Tribunal recognises that there maybe some justification for attenuating the strict implementation of some of these recommendations at local level.

4.06 In formulating these recommendations the Tribunal has taken into account the corruption risks posed by both actual and apparent conflicts of interest. Actual conflicts of interests essentially arise where a public official has a private interest which is likely to be affected by the exercise of his or her public powers. Such interest give rise to risks of actual corruption as a public official is more likely to exercise his or her powers other than in the public interest when he or she gains personally from doing so.

4.07 Apparent conflicts of interests arise where a public official has an interest which could be reasonably perceived to be capable of influencing him or her in the exercise of those powers but it cannot in fact do so. While apparent conflicts of interest do not pose risks of actual corruption, they pose other corruption risks. Specifically, if unregulated, apparent conflicts of interest can give rise to a perception of corruption which can be as damaging to the public's faith in the democratic institutions of the State as actual corruption. Moreover, like actual conflicts of interest, apparent conflicts of interest focus the public's attention on scandals, thereby distracting it from substantive policy issues and weakening public participation in debates on those issues. Apparent conflicts of interests can also make instances of corruption arising from actual conflicts of interests appear less reprehensible on the basis of a mistaken assumption that "everyone is doing it".

4.08 The Tribunal considers the regulation of apparent conflicts of interest to be vital to an effective conflict of interests policy. It notes that this view is widely shared in conflict of interests literature as well as in the conflict of interests measures recommended by various international organisations.

> *perceived conflicts of interest even when the right decisions are made, can be as damaging to the reputation of an organisation and erode public trust as an actual conflict of interest.*
>
> Pope (2000)

> *One of the axioms of our system of government is that public officials should subordinate to the interests of the public their own personal interests and those of their associates. Few things are more subversive of public confidence in government than the appearance that officials might not be doing so.*
>
> Royal Commission into Commercial Activities of Government (1992)

4.09 In considering these recommendations, the Tribunal consulted with a number of third parties including, in particular, SIPO and TASC. It also took into account conflict of interest measures adopted by a number of international organisations, namely the U.N. the OECD and the Council of Europe as well as those applied in the U.K., Canada, and Australia. Annex 1 gives a brief overview of some of these measures.

4.10 Ultimately, however, each recommendation arises from the deficiencies which the Tribunal has identified in the existing domestic conflict of interest measures and the need to remedy those deficiencies.

DISCLOSURE

4.11 The identification of interests likely to give rise to a conflict of interests is a key element in ensuring their effective regulation and disclosure is the main way of ensuring that identification. The conflict of interests acts provide for two types of disclosure, namely periodic and ad hoc, each of which fulfils slightly different objectives.

4.12 Periodic disclosure is made at specified intervals and normally concerns defined interests. It permits the advance identification of those interests most likely to give rise to a conflict of interests. It is made to a Register of Interests which can be consulted before an issue arises and which enables others to take a view as to the existence and nature of a conflict of interests. Where the periodic disclosure requirements are sufficiently comprehensive, they can assist in the detection of illicit enrichment and contribute to investigations and disciplinary procedures. They may also improve public confidence in public officials by demonstrating that the vast majority of them live within their means.

4.13 In contrast to periodic disclosure, ad hoc disclosure is made if and when a conflict of interests arises. It is generally more effective than periodic disclosure at identifying interests likely to give rise to such a conflict as the nature of the private interest to be disclosed can be defined in more general

terms. Consequently, it is also better at bringing such interests into the public arena.

4.14 While the two forms of disclosure do not necessarily cover the same types of interest, to be effective, they should collectively cover all interests capable of giving rise to an actual or apparent conflict of interests.

PERIODIC DICLOSURE – PERSONAL SCOPE

Each public official should be required to disclose periodically his or her own specified interests as well as those held by:

- **his or her family members**

- **a related person, and**

- **corporate entities or other legal arrangements in which the public official or one of the above mentioned persons has a controlling legal or beneficial interest as well as any other entities or arrangements in which those former corporate entities/legal arrangements have a controlling interest**

4.15 Public officials falling within the scope of the conflict of interests acts ("public officials"), including Officeholders, high level public servants, Oireachtas Members, local elected representatives and local authority employees ("public official(s)") must disclose specified pecuniary interests on an annual basis. The term "Officeholder" includes both Ministers and Ministers of State.

4.16 All public officials must disclose their own interests. However, only an Officeholder or public servant is required to disclose interests held by his or her spouse and/or children. Moreover, this requirement only arises once two conditions are fulfilled. First, the Officeholder/public servant must have actual knowledge of the relevant interest. Secondly, that interest must be capable of exerting a material influence on him or her in the performance of his or her public duties.

4.17 The Tribunal is concerned that the personal scope of the periodic disclosure requirements is too limited to ensure the effective disclosure of all interests likely to give rise to a conflict of interests. Clearly, interests held by a public official's close family members or dependents are as likely to influence that official in the exercise of his or her public powers as that official's own interests. This is also true of interests held by other persons closely linked to a

public official including those held by corporate entities and other legal arrangements in which the official has a controlling interest or entities/arrangements in which those entities/arrangements have controlling interests. Moreover, the limited disclosure required of interests held by persons close to a public official may encourage at least some public officials to divest interests to these persons in order to avoid the disclosure requirements.

4.18 The Tribunal is conscious that in so far as natural persons, including family members, are concerned extending the personal scope of the periodic disclosure requirements may raise certain privacy concerns. However, it considers that the need to ensure that public power is exercised in the public interest outweighs these concerns. Moreover, if necessary such disclosures could be subject to more limited publication than those of public officials themselves. For example, they could be made on a confidential basis to the relevant supervisory authority and then be published in summary form by that authority.

4.19 Clearly, the same privacy concerns do not arise in the case of interests held by corporate entities and, in the event that they did, the Tribunal would again consider them to be outweighed by the public interest in combating corruption.

4.20 The OECD has published a generic law on the registration of interests in its Toolkit for Managing Conflicts of Interest in the Public Service. The Tribunal notes that under that law a parliamentarian must disclose interests held by his or her spouse, dependent child or any other person who is wholly or substantially dependent on the parliamentarian or whose affairs are so closely connected with his or her affairs that a benefit derived by that person, or a substantial part of it, could pass to the parliamentarian. That law also requires each parliamentarian to make extensive disclosure of interests held by corporate entities in which he or she has a controlling interest.

4.21 The Tribunal further notes that a number of the other jurisdictions considered in preparing these recommendations require the disclosure of interests held by family members, including, in particular: England, Canada, and Australia. Several of the jurisdictions considered also require the periodic disclosure of interests held by corporate entities.

4.22 In the event that limitations are imposed on the publication of disclosures of interests held by family members, the Tribunal recommends that

the full disclosure remain available to other anti-corruption authorities including, in particular, the Garda Siochána. This is necessary to ensure that periodic disclosure can fulfill some of its subsidiary goals such as providing information regarding possible illicit enrichment.

PERIODIC DISCLOSURE – MATERIAL SCOPE

In addition, to the interests which currently require disclosure, each public official should be required to disclose periodically the following categories of interests:

- **assets**
- **liabilities**
- **sources and amounts of income**
- **any company in which the person has a legal or beneficial interest**
- **all company offices held by the person and all company management positions**
- **the person's legal and beneficial interests in land including the family home**
- **all gifts and benefits of more than a specified amount received by the person in the relevant period which reasonably appear to be unconnected with the person's public office**
- **non pecuniary interests in so far as those interests are capable of being reasonably perceived to give rise to a conflict of interests**

4.23 Both of the conflict of interests acts specify a range of interests which must be disclosed on a periodic basis. These interests are largely the same for both acts although there are some key differences. They are essentially pecuniary in nature and fall broadly into the following categories: remunerated occupations; certain investments; company directorships; interests in land; gifts, property and services; travel facilities, living accommodation, meals or entertainment; remunerated positions as a political or public affairs lobbyist, consultant or advisor; and public contracts in which the public official has a direct or indirect interest. Several of these categories are subject to exceptions and/or limitations.

4.24 The Tribunal is concerned that the range of interests subject to the periodic disclosure requirements is too narrow to ensure the effective disclosure of all those interests capable of giving rise to a conflict of interests and which are suitable for periodic disclosure. Specifically, key pecuniary interests, namely assets and liabilities are not covered by the disclosure requirements. In addition, the categories of interests are themselves too narrowly defined as they are

subject to a number of restrictions and limitations. Moreover, the periodic disclosure requirements do not cover non-pecuniary interests.

Assets

4.25 The conflict of interest acts require public officials to disclose certain assets. However, those acts do not require them to disclose their overall assets. This prevents the periodic disclosure requirements from giving a comprehensive overview of a public official's pecuniary interests. It also inhibits those requirements from fulfilling some of their subsidiary objectives, namely demonstrating that public officials live within their means and providing a basis for identifying assets that may have been acquired through corruption.

4.26 The Tribunal notes that under the OECD's generic law, a parliamentarian must disclose assets which exceed a specified value, subject to certain exceptions. Moreover, Canada and Australia each require the disclosure of assets under their conflict of interests measures.

Liabilities

4.27 The conflicts of interests acts do not require public officials to disclose their liabilities. However, these are also a ripe source of conflicts of interests. Where a public official has a liability which could be affected by the exercise of his of her public functions, it could clearly induce him or her to perform those functions other than in the public interest, or at least create the appearance of doing so.

> *....indebtedness can easily give rise to conflicts of interest and even corruption as at times, legislators, ministers and officials may be tempted to enjoy a lifestyle similar to that enjoyed by financially successful constituents when their own incomes are insufficient to support this. When debt accrues ethical problems arise.*
>
> Gerard Carney (1998)

> *a politician who is hugely indebted is perhaps more likely to try to use their official position to secure additional sources of funding.*
>
> Greg Power (2008)

4.28 Liabilities are particularly likely to give rise to an apparent conflict of interests as many will assume that the creditors of a person in public office can exert influence over him or her. The converse is also true. Where a debtor holds a public office and is given more favourable terms than other debtors, this may give rise to the appearance that those terms are attributable to that office.

4.29 Because of the risks which liabilities pose from a conflict of interests perspective, the Tribunal considers that each public official should be required to disclose his or her liabilities when making a periodic disclosure of interests. This should include the disclosure of loans received from credit or financial institutions in their ordinary course of business. The mere fact that the creditor is such an institution does not prevent the existence of a loan from giving rise to an actual or apparent conflict of interest. Moreover, the inclusion of such loans in the pecuniary disclosure requirements is necessary to ensure that those requirements can fulfill some of their ancillary functions including alerting the relevant authorities to the possibility of illicit enrichment.

4.30 The Tribunal notes that under the OECD's generic law, a parliamentarian must disclose his or her liabilities, including the liabilities of a trust of which a Member or a related person is a beneficiary or a private company of which a Member or a related person is a shareholder. Liabilities must also be disclosed in Canada and Australia, subject to certain exclusions.

Sources and amounts of income

4.31 Both the conflict of interests acts require public officials to disclose remunerated occupations exercised during the period to which the disclosure applies. However, neither act requires a public official to disclose the remuneration received by virtue of that occupation nor the precise source of that income if self-employed.

4.32 These limitations may make it difficult to decide whether the occupation in question gives rise to a conflict of interests. Specifically, the financial significance of a public official's occupational income is likely to be relevant in determining the existence or extent of such a conflict. Moreover, the fact that a public official who is also self-employed need not disclose his or her principle clients means that he or she could be substantially dependent on a single client or a very restricted number of clients and would not have to disclose this fact. This is undesirable even where the relationship is a bone fide one involving an independent contractor and his or her clients. However, it also provides an incentive to those who wish to keep their relationships from the

public view to structure what may in reality be an employment relationship to one involving independent contractors.

4.33 As both the source and amount of income received by a public official are important indicators as to the existence and extent of a conflict of interest, the Tribunal recommends that this information should be disclosed. In the case of public officials who are independent contractors, this disclosure should include information regarding the identity of specific clients. Nevertheless, it would appear sufficient to restrict this obligation to those who provide a substantial amount of income to the public official, for example in excess of €1000 or over 1% of his or her total earnings, whichever is the less.

4.34 The Tribunal notes that other jurisdictions require the disclosure of remuneration arising from secondary occupations, including, in particular, the U.K. and Canada.

Companies

4.35 Both the conflict of interests acts require the disclosure of investments in companies or undertakings where the aggregate value of that investment exceeds €13,000. A public official is not obliged to disclose the existence of a substantial interest or even a controlling interest in a company as long as the value of that interest is less than this amount. Nor is a public official required to disclose the existence of a beneficial interest in such investments. Moreover, where a public official holds an interest in a company and that company itself holds an interest in another company, the public official is not required to disclose this latter interest.

4.36 The Tribunal is of the view that merely requiring public officials to disclose legal interests in excess of €13,000 is insufficient. Specifically, other types of corporate interests, including in particular those mentioned above, are equally likely to give rise to a conflict of interests and should be disclosed. In the course of its inquiries this Tribunal inquired into a significant number of conflicts of interests which originated in corporate interests, both legal and beneficial.

4.37 As explained above, the Tribunal is generally of the view that where a public official has a controlling interest in a company, then he or she should be required to make a periodic disclosure of that company's interests. However, as any corporate interest is capable of giving rise to a conflict of interests the Tribunal considers that public officials should be required to disclose all such interests. It therefore recommends that public officials be required to disclose

periodically all of their legal and beneficial interests in companies and undertakings irrespective of the actual value of those interests.

4.38 The Tribunal notes that the OECD's generic law on the registration of interests requires parliamentarians to disclose any company in which the Member or a related person is a shareholder. Similar requirements apply in Canada and Australia.

Company Offices and Management Positions

4.39 Currently, a public official who is a director or a shadow director of a company must disclose this fact. However, he or she need not disclose other offices held in a company, despite the fact that those offices are equally likely to give rise to a conflict of interest. Nor is a public official required to disclose the fact that he or she is on a company's board of management although such a position is similarly capable of giving rise to such a conflict. While in many cases such a position will be remunerated and will consequently require disclosure under another category, this may not always be the case.

4.40 Consequently, the Tribunal is recommending that public officials be required to disclose any offices held in a company and any position held on a company's board of management.

4.41 The Tribunal notes that under the OECD's generic law on the Registration of Interests, parliamentarians must disclose all offices held in a company. Similar disclosure requirements apply in Canada and in New South Wales, Australia.

Family home and beneficial land interests

4.42 Both the conflict of interests acts require the disclosure of certain interests in land. However those contained in the LGA are considerably more extensive than the equivalent provisions in the Ethics Acts. Consequently, our recommendations with respect to this category of disclosure are confined to the Ethics Acts.

4.43 The Ethics Acts require those falling within their scope to disclose a legal interest in land held during the previous year where the value of that interest exceeds €13,000 as well as interests in any contracts for the purchase of land and interests in options to purchase land.

4.44 Those acts do not require public officials to disclose interests in land consisting of the family home or holiday homes. Nor is there any requirement to disclose land that is subsidiary or ancillary to the private home as long as it is required for its amenity or convenience and is not being used or developed primarily for commercial purposes. It appears that those who intend to use or develop such land primarily for such purposes need not disclose the land in their periodic disclosure statement. Moreover, the Ethics Acts do not require a public official to disclose interests or dealings with lands in the hands of a company of which the public official or his or her nominee is a member. Nor is a public official obliged to disclose beneficial interests.

4.45 These constitute potentially significant lacunae. Clearly, where a public official performs a public function which may have implications for his family home or for land in which he has a beneficial interest, this is likely to influence that performance. In addition, the fact that periodic disclosure does not cover the family home or beneficial interests limits its usefulness as a method for monitoring the assets of public officials, which, as discussed, is one of the subsidiary goals of periodic disclosure.

4.46 While the Tribunal is of the opinion that public officials should be generally required to disclose their assets, including the family home and beneficial interests in land, even in the absence of such a general requirement, they should be obliged to declare these interests in particular, due to the specific risks they pose from a conflict of interests perspective.

4.47 The Tribunal notes that the LGA requires local public officials to disclose an interest in the family home as well as beneficial interests in land in excess of a specified threshold including interests held by a company of which the representative or his or her nominee is a member. The OECD's Generic Law on the Registration of Interests and Assets also requires the disclosure of the family home as do several of the other jurisdictions considered, including Canada and Australia. However, in Canada this disclosure is not published.

Gifts and Benefits

4.48 Both the conflict of interests acts require the periodic disclosure of gifts in excess of €650. However, both acts exclude gifts given by friends or relatives for purely personal reasons from this disclosure requirement. In the case of the Ethics Acts, to be excluded such gifts must fulfill the supplementary condition that the acceptance of the gift could not materially influence the public official in the performance of his or her public functions.

4.49 The current provisions suffer from a number of defects. Specifically, determining whether or not a person is a "friend", whether or not the gift was given for personal reasons, and whether or not it is capable of giving rise to a "material influence" is likely to give rise to difficulties. More significantly however, those provisions ignore the fact, which was also recognised by the McCracken Tribunal, that gifts in excess of a certain threshold are always suspect from a conflict of interests perspective. At the very least such gifts are capable of giving rise to an appearance of corruption, irrespective of the identity of the gift-giver or his or her personal relationship with the recipient.

4.50 As discussed below, the Tribunal considers that a public official should be prohibited from receiving gifts of more than a token value given, or which could reasonably appear to be given in connection with his or her public office.

4.51 Where a gift is not actually or apparently connected to that office, the Tribunal recommends that a public official should nevertheless be required to disclose that gift, once it exceeds a specified amount.

Travel, Accommodation, Meals and Entertainment

4.52 The Ethics Acts treat benefits provided in the form of travel, accommodation, meals and entertainment as a distinct category of disclosure. As in the case of gifts, such benefits need not be disclosed under either act if given for personal reasons as long as they may not be reasonably seen to be capable of influencing the public official in the performance of his or her official functions. That act also excludes from the disclosure requirements benefits received within the State and those connected with a public official's public functions or secondary occupation.

4.53 As in the case of gifts, the Tribunal considers that a public official should be generally prohibited from accepting any benefit received from a non-public source which is in excess of a certain amount and which could reasonably appear to be connected to the exercise of his or her official functions.

4.54 Moreover, a public official should be required to disclose all other benefits received which are in excess of a specified amount.

4.55 Travel and accommodation provided in the context of secondary occupations may be excluded from this requirement but only in so far as that travel and accommodation is disclosed as income under the relevant category.

Non Pecuniary Interests

4.56 The existing periodic disclosure requirements focus exclusively on pecuniary interests. However, conflicts arising from non-pecuniary interests pose many of the same risks from a conflict of interests perspective and may be even more difficult to deal with:

> *to ignore such interests increases the likelihood of distortion in government decision-making.*
>
> Gerard Carney (1998)

4.57 Non pecuniary conflicts likely to give rise to a conflict of interests include, in particular those arising from friendships and/or professional associations.

> *Yet legislative judgment can be compromised in many ways, apart from conflict of financial interests. There is after all the intricate web of friendships and relationships which involve the giving and receiving of favours.*
>
> Andrew O Brien (1998)

> *A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and associations and family interests, if those interests could reasonably be considered likely to influence improperly the official's performance of their duties.*
>
> OECD (2003)

> *The source of COI is any kind of personal bias based on personal relationships (community, ethnic, or religious), material interests, personal interests and political or personal affiliations. Any interest is relevant if it could be reasonably considered to improperly influence a public official's performance of duties in the relevant circumstances or context.*
>
> *OECD* (2007)

4.58 While it is difficult to provide for the periodic disclosure of each specific type of non pecuniary interest, both unremunerated offices and positions as well as membership of organisations should be listed as disclosure categories. Moreover, the disclosure of other non-pecuniary interests could be ensured, at least to some extent, by requiring each public official to disclose any

interest which could reasonably be considered to be capable of influencing the performance of his or her public functions.

4.59 Consequently, the Tribunal recommends that public officials be required to disclose: unremunerated offices and positions; memberships of organizations; as well as other non-pecuniary interests which could reasonably be seen to give rise to a conflict of interests.

4.60 The Tribunal notes that the OECD's generic law specifically requires parliamentarians to disclose memberships of any political party, trade or professional organisation or the name of any other organisation of which the Member is an officeholder or a financial contributor donating more than a specified amount in a single calendar year to that organisation. It also requires parliamentarians to disclose other interests which might reasonably be seen to give rise to a conflict of interests.

4.61 Moreover, a number of the other jurisdictions considered require public officials to disclose non pecuniary interests which might be thought by a reasonable member of the public to influence the public official's performance of his or her public duties. These include, in particular, England and Australia.

TIMING OF DISCLOSURE

Each public official should be required to:

- **Make a periodic disclosure of interests within 30 days of entering public office and update any interest disclosed in the context of periodic disclosure within 30 days of a significant change in that interest**

- **disclose the source of any income in excess of €1,000 and gifts/benefits in excess of €250 received either within the twelve month period prior to assuming public office or subsequent to leaving it**

4.62 As discussed, the purpose of periodic disclosure is to ensure the advance identification of those interests most likely to give rise to a conflict of interests. Currently, under the Ethics Acts, a public official must make his or her periodic disclosure of registrable interests by the 31st of January each year. Under the LGA, a local public official must normally furnish his or her disclosure

of interests by the last day of February. These disclosures are then compiled in a Register of Interests.

4.63 The provisions relating to the timing and updating of disclosures suffer from several weaknesses. Specifically, the fact that a public official is not required to make a disclosure of interests upon assuming public office means that there may be a considerable time lapse between the date of a public official's election/appointment to that office and his or her first declaration of registrable interests. This may adversely affect the ability of the register to accurately reflect those interests capable of giving rise to a conflict of interests on the part of that public official. This is also true of the fact that a public official is not required to update the register during the course of the year in cases where there is a material change in his or her registrable interests during that year, including where he or she acquires new registrable interests.

4.64 Two other weaknesses stem from the fact that under the current provisions public officials are not required to disclose interests arising prior to assuming public office or after ceasing to hold that office. Specifically, upon assuming public office, a public official must only declare registrable interests which existed during the registration period. He or she is not required to disclose interests which existed prior to that period although such interests may also be capable of giving rise to a conflict of interest. For example, where someone receives a valuable gift within the 12 month period prior to assuming public office, that gift could clearly give rise to a conflict of interest on the part of the public official but would not have to be registered under the existing provisions.

4.65 Regarding post-term disclosures, the requirement to make a periodic disclosure ceases to apply once the public official leaves public office. However, payments received post-term can be an important indicator of the existence of an undeclared conflict of interests while in public office. They can also assist in ensuring that the registration requirements fulfill some of their subsidiary functions, in particular by alerting the relevant authorities to the possible occurrence of a corrupt transaction.

4.66 In view of the above, the Tribunal recommends that public officials should be required to disclose their registrable interests within 30 days of taking public office and to update that disclosure within 30 days of a material change in those interests.

4.67 The Tribunal notes that in a number of the jurisdictions considered for the purposes of these recommendations, public officials are only required to make a declaration of interests upon taking up public office and to notify any material changes: they are not required to make annual disclosure. This would appear to have the advantage of lessening the burden of disclosure on public officials while keeping the register up to date. While the Tribunal does not consider it necessary to make a recommendation to this effect, it is a matter which the relevant authorities themselves may wish to consider.

4.68 The Tribunal also recommends that on assuming public office, each public official should be required to disclose the source of income, gifts and benefits received in the previous twelve month period and which are in excess of a stipulated threshold, for example, €1000 in the case of income and €250 in the case of gifts. Similar requirements should apply in the twelve month period following a public official's retirement from public life.

AD HOC DISCLOSURE

Each public official should be required to disclose on an ad hoc basis any interest which could be reasonably seen to be capable of influencing him or her in the performance of his or her public functions

4.69 Both the conflict of interests acts provide for the ad hoc disclosure of certain interests likely to give rise to a conflict of interests. Under both acts a public official must make an ad hoc disclosure once two conditions are fulfilled. First, the public official must propose to perform a function of his or her public office. Secondly, that official must have actual knowledge that he or she or various other specified persons have an interest in a matter to which that function relates.

4.70 While the acts differ both as to their personal scope and the type of interests covered, the Tribunal is concerned that neither act ensures the effective disclosure (and hence identification) of all those interests likely to give rise to a conflict of interest.

4.71 The Ethics Acts require a public official to make an ad hoc disclosure of his or her own interests as well as those of a "connected person". According to those acts, a person is connected with another person in the following circumstances:

- If those persons are relatives of each other. The term "relative" means a brother, sister, parent, civil partner or spouse of the person or a child of the person, civil partner or of the spouse.
- Where a person is the trustee of a trust and the other person is a beneficiary of the trust or any of whose children or company is a beneficiary of the trust;
- Where one person is in a partnership with another;
- Where one person is a company and another controls that company or if that other person and any person connected with that person together have control of it;
- Any persons acting together to secure or exercise control of a company and any person acting on the directions of any of those persons to secure or exercise control of the company are connected with each other in relation to that company;

4.72 As is clear from the above, the term "connected person" does not include interests held by employers, business clients, friends, electoral donors, or bodies of which the public official is a member. Furthermore, a public official must only disclose an interest in a corporate entity if he or she controls that entity either individually or jointly. This means that a public official may have a significant interest in a corporate entity which is likely to be affected by that official's exercise of his or her public powers and will not have to declare this interest as long as it is not a controlling interest.

4.73 Some of these shortcomings are also relevant to the LGA. Under that act, a duty to make an ad hoc disclosure arises in respect of interests which include those held by local public officials, "connected persons" and other specified persons. The term "connected persons" is defined differently under the LGA than under the Ethics Acts. For the purposes of the LGA it means "a brother, sister, parent or spouse of the person or a child of the person or of the spouse (including co-habitees). However, that act also requires the ad hoc disclosure of interests held by a: body of which the person or a connected person is a member either directly or through a nominee; partnership in which the person or a connected person is a partner or by such a person's employer; trust in which the person or a connected person is either a trustee or a beneficiary; company in respect of which the person or a connected person is acting with another person to secure or exercise control.

4.74 As is clear from the above, unlike the Ethics Acts, the ad hoc disclosure requirements set out in the LGA apply to interests held by employers and bodies of which the relevant public official is a member. However, as in the

case of those acts, the LGA does not apply to interests held by business associates, friends and/or electoral donors. Moreover, it only applies to interests held by corporate entities where the public official exercises control over those entities.

4.75 As mentioned, the material scope of the ad hoc disclosure provisions in the Ethics Acts also differs from the scope of the corresponding provisions in the LGA. Under the Ethics Acts, a public official must make an ad hoc disclosure where he, she or a connected person has a "material interest" in a matter related to that official's public functions, if the public official is proposing to perform those functions. According to that act, such an interest exists where the consequence or effect of a public official's exercise of his or her public functions could be to confer on those persons falling within the scope of the disclosure requirements a substantial benefit or impose on them a substantial liability without also conferring it on, withholding it from or imposing it on persons in general or a class of persons which is of significant size. However, public officials are not required to disclose interests already disclosed in the context of periodic disclosure even if those interests constitute a material interest.

4.76 There are four principle problems with the definition of a material interest under the Ethics Acts. First, it does not cover apparent conflicts of interest despite the corruption risks posed by such conflicts. Specifically, that definition refers to interests which "could" confer a benefit or impose a liability rather than one which could be reasonably perceived to do so.

4.77 Secondly, the disclosure obligation is confined to interests likely to incur significant benefits or liabilities resulting from the public official's exercise of his or her public functions. It therefore excludes some interests which, although not capable of giving rise to significant benefits or liabilities, are still such as to be sufficiently affected by the public official's exercise of those functions as to be capable of influencing that exercise.

4.78 Thirdly, public officials are not required to disclose interests enjoyed as a general class of persons. However, it is not at all evident that such interests are less likely to give rise to a conflict of interests than individual interest. Moreover, even if this is the case, requiring their disclosure still permits others to more accurately judge any contribution made or the reasons for any position taken by the public official making the disclosure.

> *Are parliamentarians which belong to a class of large landowners say, or shareholders in oil, pharmaceutical or medical companies, any less disinterested when legislating in a manner that benefits these grounds*

> *than if they are acting to advance an individual private interest? The distinction may not seem too obvious to the public.*
>
> *Inter-Parliamentary Union, Parliament and Democracy in the 21st Century (2006)*

> *It is desirable that there be a wider obligation to disclose any interest which may benefit from legislation whether or not this occurs simply as one of a class of beneficiaries.*
>
> *Gerard Carney (1998)*

4.79 Fourthly and finally, registrable interests are excluded from the disclosure requirements. There does not appear to be any convincing rationale for this exclusion. Moreover, periodic disclosure is best viewed as complementary to ad hoc disclosure rather than a substitute for it. Ad hoc disclosure is clearly more effective at identifying conflicts of interest than disclosure made to a register months earlier. There is no reason to expect officials to have such an in-depth knowledge of the register of interests as to obviate the need for the ad hoc disclosure of interests contained in that register when a conflict of interests situation arises. Exempting such interests makes it more difficult for those concerned to identify relevant conflicts of interest and to take them in to consideration when and if the need arises.

4.80 In contrast to the Ethics Acts, the LGA requires the ad hoc disclosure of pecuniary and other beneficial interests. The LGA does not define the term "beneficial interests" but it does provide that it includes all interests covered by the periodic disclosure requirements of which the relevant public official has actual knowledge and which are material to the matter which arise from or which regard the performance of the local authority's functions. It is not clear what other interests are covered by the ad hoc disclosure requirements, and in particular, the extent to which non pecuniary interests is covered. Nor does the act give guidance as to when an interest will be "material" to a matter.

4.81 It is the Tribunal's view that, to be effective, both the personal and material scope of the conflict of interest acts should be extended. The Tribunal considers that the most effective way of ensuring that the ad hoc disclosure requirements cover all those whose interests are capable of giving rise to a conflict of interests and all such interests is simply to require public officials to disclose all interests capable of being reasonably perceived to give rise to a conflict of interest. In appropriate circumstances, such a provision would require the ad hoc disclosure of apparent interests, interests disclosed in the context of periodic disclosures, interests enjoyed as part of a class of persons and both

pecuniary and non pecuniary interests. It would also cover certain political donations. Obviously, such an obligation could only apply in respect of interests of which the public official is aware.

4.82 SIPO has voiced the concern that a provision such as the one proposed by the Tribunal may lack precision and could lead to difficulties in interpretation by persons who may have to comply with it and by SIPO in providing advice to such persons. It also observes that once a disclosure is made some non elected public officials must withdraw from performing the relevant function and thus the categories of disclosure should be precisely defined. It suggests that the Commission broaden the scope of the definition of a "connected person" to include well-defined persons whose interests could create a conflict.

4.83 While the Tribunal appreciates SIPO's concerns, for the reasons expressed above, it is reluctant to confine the scope of ad hoc disclosure requirements in this way. Moreover, it considers that enumerating in advance the precise categories of persons whose interest could influence a public official's performance of his public functions presents considerable difficulties. Any attempted categorisation will undoubtedly exclude certain persons whose interests are capable of exerting such an influence. The Tribunal notes that other jurisdictions have similarly broad ad hoc disclosure provisions.

4.84 The Tribunal recognises that requiring public officials to make ad hoc disclosure of interests which could be reasonably perceived to affect their performance of their public duties could result in some donations being disclosed on an ad hoc basis as well as under the Electoral Act 1997 as amended or the Local Elections (Disclosures of Donations and Expenditure) Act 1999. Nevertheless, it considers that elected representatives should be required to disclose donations received in excess of the disclosure threshold stipulated in those acts whenever they are proposing to exercise their public functions in a way which could reasonably be perceived to be capable of affecting the donor.

4.85 Currently, under the LGA, local elected representatives who make an ad hoc disclosure of interest are prohibited from either taking part in the discussion or voting in relation to the matter in question and must withdraw from any meeting at which the matter is being discussed for the duration of that discussion. The Tribunal does not consider that these prohibitions should apply to disclosures regarding electoral donations. In particular, at least in the case of non-pecuniary interests, a better approach might be to permit each local authority to determine whether a declared interest is such as to warrant the

recusal of the relevant local authority members. Similarly, in the case of public servants under the Ethics Acts, it may be sufficient to declare a non-pecuniary interest without that interest necessarily leading to the recusal of the relevant public servant.

PUBLICATION OF DISCLOSURES

Both periodic and ad hoc disclosures should be made more widely available. In particular:

- **Periodic disclosures made under the LGA should be published on the relevant local authority's website. In addition, minutes of local authority meetings and documents debated in the course of those meetings should be available on that website**

- **Ad hoc disclosures by both elected and senior non-elected public officials should be published, including those made at cabinet meetings.**

4.86 Under the Ethics Acts, disclosures of periodic interests by Members are entered into the Register of Member's Interests which is published in Iris Oifigiúil and is also available on-line. Ad hoc disclosures made by Oireachtas members in Oireachtas proceedings are also published. Other disclosures of interest are not published. Under the LGA, disclosures of periodic interests by local elected representatives are entered into a public register which is available for public inspection. Ad hoc disclosures made by those representatives are published in the minutes of the meeting and in the Register of Interests.

4.87 As discussed, the purpose of disclosure is to ensure the identification of those interests which could reasonably appear to influence a public official's performance of his or her public functions. Consequently, the Tribunal considers that disclosures should be widely published in the interests of both transparency and accountability. This is particularly true in the case of elected representatives as the electorate should be in a position to take conflicts of interest into consideration when voting. In addition, the widespread publication of declarations of interests is likely to assist in the enforcement of the conflict of interest provisions. Specifically, it is likely to lead to increased information being provided by the general public, regarding possible instances of non-compliance with those provisions.

4.88 The Tribunal considers that the extent to which both periodic and ad hoc disclosures are currently published is too restricted to fulfill the purposes outlined above. While it appreciates that there are privacy arguments against the widespread disclosure of private interests and particularly those held by persons other than the public official him or herself, it believes that a compromise must be found between the need for disclosure and the right to privacy.

4.89 The Tribunal is recommending that all disclosures made by elected and senior appointed public officials be published in full. It further recommends that those furnished by public officials regarding their family members and other related persons be published in summary form. The Tribunal considers this to be an appropriate compromise between the need to ensure the control of conflicts of interest and the right to privacy. It notes that, in Canada, a similar approach is adopted to periodic disclosures of interest. Obviously all disclosures should be available to investigative authorities, including in particular the Garda Siochána.

4.90 With regard to the LGA specifically, the Tribunal recommends that local authorities publish disclosures of interest as well as minutes of public meetings and papers relevant to those meetings on their websites. The Tribunal notes that SIPO has recommended that minutes of council meetings be published on council websites.

REGULATION OF CONFLICTS OF INTEREST

Both the Members' and Officeholders' codes of conduct should be amended so as to define a conflict of interests include all interests which could be reasonably considered to influence a Member's or Officeholder's performance of his or her public functions

Each Public official should be prohibited from receiving any gift or benefit which could reasonably be perceived to be connected with the performance of his or her public functions other than gifts of a nominal value provided in the course of the performance of those functions

Further measures should be introduced to regulate conflicts of interests arising out of the use of inside information by officeholders

National public officials should be prohibited from entering into a contract for the provision of goods or services to a public body both while a public official and for a period of one year following the end of his or her term in office

Equivalent restrictions should be placed on a local public official from entering into such contracts with the local authority of which he or she is a member/employee

Each local elected representative should be prohibited from dealing with land both during his or her term of office and for a period of two years thereafter where the Local Authority of which that representative is a member has made a decision changing the planning or zoning status of that land during that representative's term of office, where he or she has voted on that decision and where he or she is engaged in an outside activity involving the sale and/or development of land

Conflicts of interest on the part of Officeholders arising from post-term employment should be subject to increased and more effective regulation

CODES OF CONDUCT

4.91 As well as assisting in the identification of conflicts of interests, disclosure also plays a role in their regulation. Specifically, it ensures that others are informed about the existence and nature of a conflict of interest thus providing them with a corrective lens with which to assess the public official's performance of his or her public functions. However, in some cases, disclosure does not sufficiently regulate a conflict. This is particularly true of certain types of interests which pose increased dangers from a corruption perspective. Such interests include those arising from: gifts; inside information and ancillary or post-term employment.

4.92 While the Ethics Acts do not regulate conflicts of interests on the part of members and/or officeholders, the codes of conduct adopted pursuant to those acts do contain provisions regulating such conflicts. According to the codes for Oireachtas Members, Members must endeavor to arrange their financial affairs so as to avoid conflicts of interests and take all reasonable steps to avoid such conflicts should they nevertheless arise. In addition, they must refuse gifts that may pose a conflict of interests.

4.93 In themselves, these provisions are both desirable and necessary. However, the definition of a conflict of interests in these codes has a number of shortcomings which undermine their effectiveness. Specifically, the Oireachtas codes define a "conflict of interest" as follows:

A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private financial interest or another person's private financial interest directly or indirectly.

A conflict of interest does not exist where the Member or another person benefits only as a Member of the general public or a broad class of persons.

4.94 This definition does not cover apparent or non-pecuniary conflicts of interests. Moreover, it excludes interests enjoyed by the Member as part of a class. For the reasons explained above the Tribunal considers it imperative that the members' codes cover these types of conflicts and these types of interests.

4.95 The Officeholders' code does not define the term "conflict of interests".

4.96 The Tribunal recommends that each of the codes be amended so as to recognise that a conflict of interests exists where a member/officeholder has an interest which could be reasonably perceived as capable of influencing him or her in the performance of his or her public functions.

GIFTS/BENEFITS

4.97 As mentioned, public officials are currently required to disclose certain gifts/benefits under the conflicts of interest acts. Specifically, a public official must disclose gifts in excess of €650, including all gifts whose acceptance could materially influence the recipient in the performance of his or her public functions. A public official must also disclose a benefit in excess of €650 including all benefits whose acceptance could reasonably appear to influence him or her in the conduct of his public functions.

4.98 In addition, the Ethics Acts regulate gifts to an Officeholder which are received by him or her by virtue of his or her public office. The various codes of conduct also contain provisions regulating the receipt of gifts/benefits. In particular, both the codes for Oireachtas Members as well as the councillors' code, which applies to local elected representatives, prohibit the receipt of gifts that may pose a conflict of interests.

4.99 Although a normal part of life, a gift or other benefit can easily give rise to a conflict of interests. Specifically, any gift and especially a valuable cash gift can create a sense of obligation or indebtedness on the part of the recipient and engender expectations of reciprocity. This is also true of most benefits. Moreover,

whether or not such a gift or benefit does actually influence the recipient public official's behaviour it is at the very least likely to give the appearance of doing so.

4.100 The Tribunal considers the existing measures regulating gifts and benefits to be inadequate in view of the dangers they pose from a corruption perspective. Rather than requiring a public official to disclose the receipt of gifts/benefits in excess of €650 which could materially influence that official's performance of his or her public office, or reasonably appear to do so, the Tribunal considers that such gifts/benefits should be banned. The Tribunal does not see any justification for permitting public officials to receive gifts/benefits which could materially influence the performance of their public office or indeed any gift/benefit connected with that office, with the exception of gifts or benefits of a very nominal amount.

4.101 The Tribunal therefore recommends that each public official be prohibited from accepting gifts/benefits which could materially influence that official's performance of his or her public office, or which could reasonably be perceived as being connected to that office. An exception should be provided for gifts and benefits of nominal amounts provided in the course of and for the performance of the recipient's official functions.

4.102 As previously discussed, the Tribunal is also of the view that each public official should be required to disclose the receipt of any gifts/benefits in excess of a stipulated amount where that gift/benefit does not reasonably appear to be connected with his or her public office.

INSIDE INFORMATION

4.103 The use or abuse of confidential information is not regulated by either of the conflicts of interest acts. However, the matter is dealt with by the Oireachtas Members' Codes and the Councilors' code. These effectively prohibit a public official from using official information which is not in the public domain or which the official obtained in confidence in the course of his or her official duties for his or her own personal gain or for that of others.

4.104 The Tribunal is concerned at the lack of guidance given to Officeholders regarding the disclosure of confidential information. In particular, Officeholders enjoy very powerful positions in the context of which they have access to confidential and other valuable and privileged information. The potential for abusing such information is significant. The Tribunal notes that both it and other

Tribunals have inquired into situations involving the disclosure of confidential information by Ministers and other senior officials.

4.105 The Tribunal therefore recommends that the use of confidential and/or other privileged information by Ministers be appropriately regulated.

CONTRACTS

4.106 An apparent conflict of interest readily arises when a public official enters into a contract with a public entity for the provision of goods or services in the context of his or her ancillary occupational activities. In such instances, the majority of the public will reasonably believe that the individual's position as a public official assisted directly or indirectly in obtaining that contract. Moreover, such contracts also give rise to a significant number of corruption risks. Specifically, a public official may use his or her public position to obtain such a contract, for example, by using the influence given to him by that position and/or the access it gives him or her to decision makers to lobby for the contract. There is also the related risk that a public official may agree to do something in his or her public capacity in exchange for the contract. Overall, such contracts present a significant number of corruption risks.

4.107 In view of these risks, the Tribunal recommends that a national public official be prohibited from entering contracts for the provision of goods or services to public bodies while holding public office other than in his or her public capacity. This prohibition should continue to apply for a one year period after that official ceases to hold such office. Moreover, it should apply both to the public official him or herself, his or her family members and any corporate entity in which that public official or those members has a controlling interest.

4.108 Similar risks apply to contracts between a local public official and the local authority of which he or she is a member/employee. Consequently, a local public official should also be prohibited from entering such contracts with that local authority.

4.109 The Tribunal does not believe it necessary to extend either of these prohibitions to contracts entered into by a public official before entering public office as the reasons underlying this recommendation do not apply to such contracts.

DEALING WITH LAND

4.110 As discussed in the previous chapter, elected members exercise relatively significant powers in the area of planning and development. In particular, they are responsible for deciding on the zoning of land in the context of the development plan, a decision which may have significant consequences for the value of that land, and also influence planning decisions.

4.111 Many elected members also carry out ancillary activities which may include those connected with land, for example in the capacity of an estate agent. In some instances this can result in that member benefitting professionally from decisions made by the planning authority of which he or she is a member. The Tribunal considers this to be inappropriate as, at the very least, it is likely to give rise to a reasonable perception that the member's professional activities may have influenced the performance of his or her functions as an elected member.

4.112 Consequently, the Tribunal recommends that where an elected representative is engaged in an outside activity whose principal focus involves the sale and/or development of land, he or she should be prohibited from dealing professionally with land which has been the subject of a decision changing its planning or rezoning status by the relevant planning authority of which he or she is a member, both during the elected member's term of office and for two years thereafter if he or she has voted on that decision. The feasibility of extending this restriction to all planning decisions should be considered.

POST-TERM EMPLOYMENT

4.113 Currently, post-term employment on the part of both members and councilors is unregulated. However, the Officeholders' Code of Conduct regulates post-term employment on the part of officeholders. It advises officeholders to be careful to avoid any real or apparent conflicts of interest with their former public office in taking up employment on leaving office. It also states:

> *Officeholders should act in a way which ensures it could not be reasonably concluded that an officeholder was influenced by the hope or expectation of future employment with the firm or organisation concerned or that an unfair advantage would be conferred in a new appointment by virtue of, for example, access to official information the officeholder previously enjoyed.*

4.114 Post-term employment may give rise to several different types of conflicts of interest. For example, a public official may use information or contacts acquired in government to benefit him or herself or another party after leaving government:

> *The horizontal movement of personnel between the public and private sectors known as the "revolving door" phenomenon has supported labour market dynamism and the development of skills and competencies. However, it has also raised the risk of post public employment conflict of interest situations. These may result in the misuse of commercially sensitive information or privileged access, for example, when ex officials lobby their former government institutions*.
>
> OECD, Post-Public Employment (2010)

4.115 Moreover, in some instances, the issue of post-term employment may give rise to a conflict of interest while a public official still holds public office. For example, a public official may give preferential treatment to a particular individual in the hopes of obtaining employment or business from that individual after leaving that office:

> *Whole networks of corruption can be constructed by outside suppliers, not only through cash bribes and expensive overseas holidays, but also through the promise to officials of lucrative employment when they retire.*
>
> Transparency International (2000)

4.116 Furthermore, even where the issue of post-term employment does not give rise to an actual conflict of interest it is a ready source of apparent conflicts:

> *The appearance of impropriety exacerbates public distrust in government, ultimately causing a decline in civic participation. It also demoralises honest government workers who do not use their government jobs as a stepping stone to lucrative employment government contractors or lobbying firms*.
>
> Revolving Door Working Group (2005)

4.117 The Tribunal is concerned that given the corruption risks posed by post-term employment it is not sufficient to regulate it through codes of conduct. The Tribunal is of course cognisant of the very positive role played by codes of conduct in promoting ethical principles. It also believes that the control of

conflicts of interest through a combination of rules and principles provides the most desirable framework for the regulation of such conflicts. Nevertheless, they tend to be less effective at regulating post-employment conflicts, mainly because the codes of conduct no longer apply to individuals who have ceased to hold public office, one of the key moments when post-term employment becomes an issue.

4.118 Consequently, the Tribunal recommends that post-term employment be regulated by legislation. That legislation should stipulate that, both while an officeholder and for a specified period thereafter, a person is required to obtain approval from an independent board before any remunerated position, including but not limited to employment or a consultancy position where the nature and terms of that employment could lead to a conflict of interests. This mirrors the provisions contained in the Ethics Acts in respect of civil servants holding designated positions for the purposes of those acts.

4.119 The Tribunal notes that Article 12(2)(e) of UNCAC suggests that State Parties prevent conflicts of interest

> *by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.*

4.120 The Tribunal does not consider it necessary at this stage to regulate post-term employment on the part of Oireachtas members or local elected representatives. However, this issue should be kept under review as such regulation may become necessary in the future. The Tribunal notes that the Government has already committed to regulating post-term employment in its Programme for Government.

ENFORCEMENT

The enforcement provisions applicable to conflicts of interests at national level should be modified so as to:

- **Give SIPO a supervisory role over the Select Committees**

- Permit SIPO to: (i) accept an anonymous or oral complaint, (ii) sit with a quorum of three members; (iii) appoint an inquiry officer when carrying out its own investigations; and (iv) seize documents

- Place increased emphasis on the prevention of conflicts of interests through training, education and research

The system for enforcing the conflict of interests provisions at local level should be modified so as to:

- Give SIPO a supervisory role over enforcement at local level

- Provide for a formal complaint procedure

- Provide for whistleblower protection for complainants

- Require each local authority to include information on the application and enforcement of the conflict of interests measures in its annual report.

- Place increased emphasis on the prevention of conflicts of interests through training, education and research

4.121 Provisions requiring public officials to disclose conflicts of interest serve as a useful guide to and reminder of the dangers of such conflicts. However, they are unlikely to be truly successful in controlling conflicts of interests in the absence of an effective enforcement regime.

4.122 There are substantial differences between the enforcement regimes applicable at national and at local level. Consequently, these recommendations deal first with the Ethics Acts and then with the LGA.

THE ETHICS ACTS

4.123 Currently, the supervision and enforcement of the Ethics Acts is split between the Select Committees on Members Interests of Dáil and Seanad Éireann (collectively, the "Select Committees") and SIPO. The Select Committees exercise advisory and investigative functions in relation to Members' compliance with the Ethics Acts. SIPO is primarily responsible for the application of the Ethics Acts to Officeholders and high level public servants, although it also has certain functions relevant to Oireachtas Members.

4.124 The Tribunal has a number of concerns regarding the enforcement of the Ethics Acts. These principally relate to the enforcement of the conflict of interests provisions applicable to Oireachtas Members, SIPO's investigative powers, and the lack of provisions dealing with prevention.

Oireachtas Members

4.125 As is clear from the above paragraph, Oireachtas Members essentially self-regulate the application of the conflict of interests provisions. In the Tribunal's view, self regulatory systems lack the requisite independence to ensure the robust investigation of possible breach of those provisions. Specifically, self-regulatory bodies tend to be more vulnerable to political interference. There is also a risk that members of a self-regulatory body will act so as to protect their own colleagues and will be less vigilant in investigating suspected breaches and more lenient when imposing sanctions than an independent body. In addition, self regulatory bodies lack the appearance of independence and an inquiry conducted by politicians into the behaviour of another politician is likely to be seen by many people, rightly or wrongly, as partial and lacking in objectivity and independence. Moreover, in instances where corruption is deep rooted and pervasive, self regulation tends to be particularly ineffective. In other words, there is an inverse relationship between the seriousness of corruption and the effectiveness of self regulation. Finally, it is questionable whether legislators have the necessary time or skill to carry out an investigative role.

4.126 The Tribunal considers that the introduction of an independent element in the enforcement of the conflict of interest measures applicable to the Houses of the Oireachtas is vital to respond to the concerns outlined above and to promote public confidence in those provisions.

4.127 There are a number of ways of introducing such an independent element to the enforcement of the conflicts of interest provisions. For example, an ethics officer could be appointed for each of the Houses of the Oireachtas on a statutory basis as is the case in some of the other jurisdictions considered. Alternatively, SIPO could be given a supervisory role over the existing Select Committees, including the ability to take over an investigation involving a member and to commence an investigation should it deem such an investigation necessary.

4.128 The Tribunal's preference is for the second of these two options. The Tribunal is of the view that concentrating investigative powers in one institution

will promote the development of more in-depth investigative expertise than is possible where there is a proliferation of ethics institutions. The Tribunal therefore recommends that SIPO be given a supervisory role over the existing Select Committees. This role should include empowering SIPO to commence an investigation into an Oireachtas Member on its own initiative and to take over such an investigation should it deem this to be necessary.

Powers of the Standards Commission

4.129 SIPO has wide ranging investigative powers under the Ethics Acts and under the LGA. It is empowered to initiate an investigation either on the basis or a complaint or, in certain circumstances, on its own initiative. When carrying out an investigation, SIPO can order the production of documents and statements, hold private and public hearings, compel the attendance of parties and witnesses and administer an oath. Moreover, it can appoint an inquiry officer to make a preliminary inquiry into a matter which is the subject of a complaint.

4.130 Nevertheless, the Tribunal considers that SIPO lacks a number of powers which would enable it to play a more effective role in the enforcement process. Specifically, it may only accept written complaints and there are a number of restrictions and limitations as to who can make a complaint. In addition, all six members of SIPO must participate in an investigation. Furthermore, SIPO may not appoint an inquiry officer when carrying out investigations on its own initiative. Finally, it does not have the power to seize documents.

4.131 Under the complaints procedures for breach of the conflicts of interests' provisions, complaints must be in writing. In addition, SIPO may not accept anonymous complaints. The Tribunal believes that the public interest in uncovering infringements of the conflict of interest provisions warrants a much broader and more flexible approach to complaints than that which currently applies. Complaints are an integral part of an effective enforcement mechanism. They are a principal means of alerting the enforcement authorities to possible non-compliance with the conflicts of interest measures and also play an important role in promoting public confidence in those measures. Effective complaint mechanisms also promote the perception that information regarding possible contraventions of those provisions is welcome and will be properly investigated.

4.132 The Tribunal does not see any reason for prohibiting SIPO from accepting complaints made orally. In addition, it is of the view that there are strong arguments in favour of permitting complaints to be made anonymously. In particular, fear of reprisals is one of the main reasons why individuals do not complain about possible infringements of which they are aware and anonymity offers the ultimate protection against such reprisals. While the Ethics Acts do provide for protection for complainants, it is likely that at least some of those who truly fear retaliation may prefer anonymity. The Tribunal recognises that permitting anonymous complaints may increase the number of frivolous or vexation complaints made, however, it is also likely to increase the number of valid complaints.

4.133 The Tribunal notes that SIPO is not in favour of anonymous complaints. It considers that complainants should be required to identify themselves when making a compliant but should then be able to request anonymity. While this would clearly be more permissive than the current complaints system, it may still deter some complainants. Moreover, the important issue in any disclosure is whether or not it is true. This does not necessarily turn on the identity of the person making the disclosure. While the Tribunal acknowledges that investigating anonymous complaints may pose increased difficulties it notes that the Competition Authority, the Environmental Protection Agency and the Health and Safety Authority each accept anonymous complaints. Moreover, SIPO would retain its current powers not to pursue an investigation including in situations where it is unable to do so because it has insufficient information.

4.134 At present, the Ethics Acts require that all members of SIPO be present for investigations. The Tribunal is concerned that this compromises the efficacy of those investigations. Specifically, SIPO comprises six members, only two of whom are full time. The requirement that all six members be present for investigations is likely to present difficulties in coordinating and scheduling hearings. Moreover, the Tribunal does not see any rationale for requiring each member to be involved in every investigation. Several other investigative bodies sit with three or even sole members. The Tribunal considers that empowering the Standards Commission to sit with three members would contribute to the efficiency of its investigations and is therefore making a recommendation to this effect. The Tribunal notes that SIPO supports this recommendation.

4.135 The appointment of an inquiry officer to carry out a preliminary investigation enables SIPO to take an initial view as to whether or not a case merits a full blown investigation. In particular, it permits SIPO to determine

whether or not to conduct a full investigation on the basis of more information than would otherwise be available to it and to thereby use its resources more effectively. However, currently, SIPO may not appoint an inquiry officer when carrying out an investigation on its own initiative. The Tribunal does not see any rationale whatsoever for restricting SIPO's powers in this way. In fact, arguably it is particularly important to permit SIPO to appoint an inquiry officer in the case of such investigations. Specifically, a complaint may contain relatively significant information regarding the alleged infringement whereas SIPO must rely on its own inquiries when commencing an investigation on its own initiative. Consequently, the Tribunal recommends that SIPO be given the power to appoint an inquiry officer to investigate possible instances of non-compliance with the Ethics Acts and related codes of conduct as and when it sees fit. The Tribunal notes that SIPO has also requested that it be permitted to appoint an inquiry officer in the absence of a complaint.

4.136 Finally, while SIPO currently enjoys relatively extensive powers of investigation, it does not have the power to seize documents. While it may order the production of documents, production orders take time to implement and the relevant documentation may be destroyed in the intervening period. Consequently the Tribunal recommends that SIPO be permitted to seize documents, subject to appropriate safeguards, where there is a real risk of documents being destroyed, altered or concealed.

Prevention

4.137 The Ethics Acts place relatively little emphasis on the prevention of conflicts of interests. While the existing measures confer an advisory role on both SIPO and the Select Committees, they do not provide for training on conflicts of interest, for promoting public awareness of the conflict of interest measures or for on-going research on sound management practices for dealing with such conflicts.

4.138 The Tribunal is of the view that the prevention of conflicts of interest through promoting awareness of the conflict of interest measures and of ethical standards generally is a vital aspect of an effective enforcement policy. In particular, a policy which places strong emphasis on prevention has several advantages over one which relies exclusively on investigations and sanctions. Specifically, preventative measures help promote conflict of interest resolution as a key component of sound administration and good governance rather than a mere bureaucratic formality. Moreover, such measures can help the evolution of a common ethical standard within public bodies and assist public officials in

making informed decisions as to whether a conflict of interest exists and the steps needed to resolve it. Additionally and crucially, prevention can help conflicts of interests from impacting on public decisions in the first place, thus avoiding the reputational damage associated with investigation and sanctions.

4.139 Training, promoting public awareness and on-going research into the management of conflicts of interest are all essential components of an effective preventative strategy. Training promotes awareness of the conflict of interests measures and helps public officials to recognise such conflicts and resolve them appropriately. It can also assist in developing an agreed understanding as to what constitutes proper and/or what constitutes improper behaviour. Furthermore, training may help ensure that officials understand the importance and role of conflict of interests measures and help combat the tendency to view such measures as paper exercises or bureaucratic annoyances with little practical effect.

4.140 Measures promoting public awareness can help clarify to the public what sort of behaviour they can legitimately expect from public officials. Moreover, such measures are necessary to inform the public of the existence of the conflict of interests measures and to promote confidence in them. They are also a crucial element of an effective complaints procedure.

> *Mobilizing public opinion in support of strong anti-corruption measures also entails mobilizing popular support for high standards of integrity and performance in public and private administration and opposition to corrupt practices wherever they occur. If this is done, anti-corruption strategies are unlikely to fail. If it is not, they are unlikely to succeed*.
>
> U.N. (2003)

4.141 Finally, the type of interest likely to give rise to a conflict of interest may change over time as may public expectations regarding appropriate behaviour for public officials. Consequently, to be effective, conflict of interest measures must be continually adjusted to meet the needs of a changing environment. This requires on-going research, the ability to take account of lessons learnt and to use them to modify those measures as the need arises.

4.142 The Tribunal therefore recommends that provision be made for: conflict of interests training; promoting public awareness on conflicts of interests and the measures controlling them; and carrying out on-going research in conflict of interest prevention and management. While the Tribunal is aware that SIPO

frequently makes recommendations regarding reforms to the conflict of interest provisions, it considers that this role should be formalised, expanded and given a specific statutory basis.

THE LGA

4.143 Principle responsibility for the implementation of the conflicts of interests provisions in the LGA rests with the relevant Local Authority. That act provides for the appointment of an ethics register as well as conferring various supervisory and enforcement functions on local authority managers, the Cathaoirleach of a local authority council and the council itself. While investigations are primarily the responsibility of the local authority manager and/or Cathaoirleach, they may refer a complaint to SIPO which can use its powers under the Ethics Acts to investigate and report on possible breaches of ethics at local level. The LGA does not confer any specific investigative powers on either the local authority manager or the Cathaoirleach. Nor does it make provision for the acceptance of complaints or whistleblower protection.

4.144 The Tribunal is concerned that the manner in which the LGA is currently implemented lacks independence, credibility and effectiveness. Many of the concerns the Tribunal has about self-regulatory systems expressed above also apply in this context. Specifically, it is unlikely that either the Manager or the Cathaoirleach possesses either the actual or apparent independence necessary for credible enforcement. Moreover, the lack of a formal complaint system suggests that facilitating complaints under the act is of low priority while the lack of information as to how complaints should be made is likely to deter at least some complainants. This is also true of the fact that no provision is made for whistleblower protection. In addition, it is extremely doubtful as to whether either the Cathaoirleach or the manager has the necessary experience and/or resources to carry out an investigation into a possible infringement. Nor do they appear to have the necessary investigative powers to carry out such an investigation. Furthermore, the lack of preventative measures belies the importance of such measures in an effective conflict of interest policy.

4.145 Finally, the Tribunal is concerned that there is an overall lack of transparency regarding the application and enforcement of the conflicts of interests provisions at local level. In order to promote public confidence in the system, the public need to know about the measures being taken to ensure the integrity of local government and little information of this type is currently available to it.

4.146 Given the inadequacies of the current system for enforcing the conflicts of interest measures at local level, the Tribunal believes that this system needs to be radically overhauled. Specifically, it recommends that SIPO be given a supervisory role in the enforcement process with the power to initiate an investigation into a possible infringement of those measures as well as to take over an investigation being conducted at local level should it consider this to be necessary. In carrying out its role under the LGA, SIPO should be able to use its full panoply of powers.

4.147 In addition, explicit provision should be made for the making of complaints, including anonymous complaints under the LGA and for whistleblower protection. Local authorities should also be conferred with extensive powers of investigation. Moreover, far greater emphasis should be placed on the prevention of conflicts of interests including through increased training, education and on-going research.

4.148 The Tribunal also recommends that local authorities be required to include information on the enforcement of the conflicts of interests provisions in their annual reports, including in particular, information regarding ad hoc disclosures, complaints made, investigations undertaken and sanctions imposed.

4.149 In this respect, the Tribunal notes that the Electoral (Amendment) (No. 2) Act 2009 requires local authorities to publish the aggregate election expenditure of each candidate, designated person, third party and national agent in its annual report in respect of the year in which the election is held.

SANCTIONS

The failure of a public official to make a disclosure required under the Ethics Acts should be a criminal offence as should the making of disclosure which is false or misleading in a material respect

4.150 Where an elected representative breaches the Ethics Acts the primary sanction is suspension. Certain allowances may also be withheld. Once a breach of those acts is established, the decision as to whether or not to impose a sanction in respect of that breach is a matter for the relevant House of the Oireachtas.

4.151 The Tribunal is not convinced that these sanctions are such as to provide an effective deterrent against breaching the Ethics Acts. Specifically, it is

deeply concerned by the fact that a decision as to whether or not to impose a sanction is a matter for the relevant House of the Oireachtas. The Tribunal considers it to be highly unlikely that the Dáil would ever agree to impose a sanction on, for example, a Minister or the Taoiseach. Moreover, even in the case of ordinary members it is likely that the relevant House would, as often as not, divide along political party lines when determining whether or not to suspend a member for breach of the Ethics Acts.

4.152 The Tribunal is also concerned that the fact that failure to make a disclosure or making a false/misleading disclosure are not offences has repercussions for the civil recovery of assets obtained through corrupt conduct. Specifically, under the Proceeds of Crime (Amendment) Act 2005, the High Court has the power to make a corrupt enrichment order ordering the confiscation of a person's assets where that person has been corruptly enriched. According to that act, a person is corruptly enriched if he or she derives a pecuniary advantage or other benefit as a result of or in connection with corrupt conduct. The term "corrupt conduct" is defined to include any conduct which at the time it occurred was an offence under the Ethics Acts. However, as the failure to make disclosure under the Ethics Acts is not an offence under those Acts nor is the making of a false or misleading disclosure, these do not fall within that definition of corrupt conduct.

4.153 The Tribunal therefore recommends that the breach of the disclosure requirements in the Ethics Acts should be a criminal offence. Specifically, it should be a criminal offence to fail to make a disclosure under the Ethics Acts or to intentionally make a disclosure which is false or misleading in a material respect.

4.154 The Tribunal notes that under Part 15 of the Local Government Act 2001, it is already an offence to fail to make the requisite declarations or to make a declaration containing particulars which are false or misleading in a material respect.

POLITICAL FINANCE

The Tribunal recommends:

1. **The definition of the term "donation" should be amended to cover all donations, given, received or used for political purposes**

2. **The following types of donations should be prohibited:**

   - **Indirect donations**

   - **anonymous or cash donations to an electoral candidate or elected representative of more than €55 and to a political party or third party of more than €175**

   - **the receipt by an electoral candidate or elected representative of more than €2,000 in total by way of anonymous or cash donations and of more than €5,000 by a political party or third party**

3. **The thresholds for permitted political donations should be lowered to €1,000 in the case of donations to an electoral candidate or an elected representative and €2,500 in the case of donations to political parties or third parties**

4. **An overall limit should be placed on the aggregate amount which an individual can donate to an electoral candidate or elected representative who is a member of a political party and the party itself**

5. **The existing expenditure restrictions should be:**
   - **extended to cover all political expenditure**

   - **lowered to an amount which constitutes an effective ceiling on political expenditure**

   - **extended to cover Seanad electoral candidates and third parties.**

The Tribunal recommends:

6. **Political Parties, elected representatives and electoral candidates should be required to disclose their audited annual accounts**

7. **The level at which donations must be disclosed should be lowered to:**
   - **€55, in the case of a donation received by an electoral candidate or elected representative**
   - **€175, in the case of a donation received by a political party or third party**

7. **Donation recipients should be required to provide more detailed information regarding the source and nature of donations which they have received**

8. **Political parties, third parties and electoral candidates should be required to disclose donations received prior to elections**

9. **Political parties should be required to supply details of their organisational structure including their subsidiary organisations and branches as a condition of registration under the Electoral Act 1992**

10. **Restrictions should be placed on the persons entitled to receive donations on behalf of a political party, third party, elected representative or electoral candidate**

11. **The Standards in Public Office Commission should be given increased resources for the purpose of enforcing the political finance acts**

12. **The enforcement of the Local Elections (Disclosure of Donations) Act 1999, as amended (the "LEA") should be entrusted to an external, independent body**

13. **Sanctions for breaching the political finance acts should include administrative sanctions**

The Tribunal recommends:

14. The following acts or omissions should be subject to sanction:

- **Failing to open a donations account**
- **Making a prohibited donation**
- **Deliberately circumventing the requirements set down in the political finance acts.**

5.01 Bribes and political donations differ from each other in fundamental ways. In particular, bribery involves an element of exchange of official power for the receipt of money which is absent from a political donation. In the case of such a donation, the payer merely gives the donation and the recipient merely accepts it without requesting, offering or agreeing anything in return. Moreover, in contrast to bribes, political donations serve important legitimate functions. Electoral candidates and electoral representatives (collectively "politicians") as well as political parties need funding in order to survive, compete and perform their democratic functions. In addition, contributing money is an important form of political participation and may also be a component of political expression. Furthermore, the need to fundraise may make both politicians and political parties more responsive and accountable to their electoral base.

5.02 Despite these differences, at times the distinction between bribes and political donations may become blurred. For example, political donations may be given in anticipation of or in return for the recipient's stance on a particular issue. The more specifically the recipient and the donor exchange views on future issues to be voted upon, the more clearly the recipient falls within the scope of the bribery offence. In some such instances, the differences between a bribe and a donation may effectively disappear and it may become almost impossible to distinguish one from the other.

5.03 Moreover, even in the absence of such an exchange of views, a political donation may be based on an implicit acknowledgement that one day the benefit will be returned. That return may take any number of forms. At one extreme, the recipient may reward the donor with lucrative government contracts or even introduce legislation and/or policies favourable to the donor's interests. At the other, the donation simply guarantees the donor increased access to policy makers as politicians may listen more to those who finance their campaigns than to those who voted for them or their party. In such cases, politicians may become overly compliant with the wishes of large contributors thus enabling them to exercise undue influence over or even to capture the political process. Even entirely legitimate donations can have undesirable consequences by fostering overly close relationships between donors and their recipients.

5.04 Aside from actual corruption, large donations almost inevitably give rise to an appearance of impropriety and may in themselves be damaging to the political process even in the absence of any type of quid pro quo, whether express or implied.

> *The familiar maxim that he who pays the piper calls the tune is widely believed to operate in the sphere of politics: whether or not the suspicion is justified, the ordinary voter is apt to suspect that a very large gift to a political party must be made with some objective in view.*
>
> Fifth Report of the Committee for Standards in Public Life (1998)

> *Leave the perception of propriety unanswered and the cynical assumption that large donors call the tune could jeopardise the willingness of voters to take part in democratic governance.*
>
> Nixon v Shrink Missouri PAC (2000)

5.05 Aside from corruption risks, ineffectively regulated political finance can also have other adverse repercussions on the political process. For example, the ability of major contributors to have access to and influence that process means that where the electorate have unequal levels of income, this inequality is imported into the political process. On a related point, those who are in power are more likely to attract funding than those who are not and unequal access to and the unequal distribution of finance may have an adverse effect on the equality of political participation and competition.

5.06 Political finance is currently regulated by the Electoral Act 1997, as amended and the LEA, (the "political finance acts"). These acts largely seek to balance the competing roles of money in politics through: prohibiting donations from certain sources and in excess of specified amounts; regulating electoral expenditure; requiring the public disclosure of both donations and electoral expenditure; and providing for some degree of exchequer funding for political activity.

5.07 The issue of political finance featured frequently in the inquiries conducted by this Tribunal and it is concerned that the existing acts do not sufficiently combat the corruption risks to which this issue gives rise. Consequently, it is making a number of recommendations designed to make those acts more effective. These can be loosely divided into five main categories, namely: (1) the regulation of donations; (2) the regulation of electoral expenditure; (3) disclosure; (4) enforcement; and (5) investigations and sanctions.

5.08 In making these recommendations, the Tribunal has taken into account the fact that any attempts to regulate political finance must take into consideration both its positive and negative aspects. Specifically, the goal of any such regulation must be to safeguard as far as possible those positive aspects

while minimising the extent to which political finance can be used as a cloak for corruption or to otherwise undermine the democratic process.

5.09 The Tribunal has also taken into account the recommendations made by the Moriarty Tribunal upon the conclusion of its inquiries. Those which directly relate to the recommendations made below are discussed in the relevant section of these recommendations.

5.10 In formulating these recommendations, the Tribunal consulted with SIPO, TASC, Transparency International and other bodies. It also took account of political finance measures adopted by a number of international organisations, including, in particular, the U.N. and the Council of Europe, several NGOs as well as that of a number of other jurisdictions, namely the U.K., Canada, Australia and the U.S. Annex 2 gives a brief overview of some of these measures. Obviously, the decision to make any particular recommendation was based on deficiencies in the existing domestic conflict of interest provisions and the need to remedy those deficiencies.

5.11 The Tribunal notes that the Government has published draft legislation in the form of the Electoral (Amendment) (Political Funding) Bill 2011 (the "2011 Bill") which will, if enacted in its current form, introduce several significant amendments to the political finance acts. The Tribunal welcomes this proposed legislation. However, for obvious reasons, these recommendations focus on the existing political finance acts.

THE REGULATION OF POLITICAL DONATIONS

The definition of the term "donation" should be amended to cover all donations, given, received or used for political purposes

The following types of donations should be prohibited:

- **Indirect donations**

- **anonymous or cash donations to an electoral candidate or elected representative of more than €55 and to a political party or third party of more than €175**

- **the receipt by an electoral candidate or elected representative of more than €2,000 in total by way of anonymous or cash donations and of more than €5,000 by a political party or third party**

The thresholds for permitted political donations should be lowered to €1,000 in the case of donations to elected representatives and elected candidates and €2,500 in the case of donations to political parties or third parties

An overall limit should be placed on the aggregate amount which an individual can donate to each electoral candidate or elected representative who is a member of a political party and that party itself

5.12 The political finance acts regulate political donations in two ways. First, they prohibit political parties and politicians from accepting donations from certain sources ("source restrictions"). Secondly, they limit the overall amount which politicians or political parties may accept by way of political donation ("amount restrictions").

5.13 Both types of rules play an important role in combating corruption. Specifically, source restrictions may prevent politicians or political parties from accepting donations from sources which are considered particularly likely to give rise to corruption risks. For their part, amount restrictions seek to prevent the actual corruption associated with large financial contributions. In this respect, they are premised on the belief that large donations are more likely to be given with the expectation or promise of some sort of return, whether this is in the form of a specific outcome, increased access to policy makers or some other advantage. Amount restrictions also seek to combat apparent corruption recognising that, whatever the reality of the situation, large donations tend to give rise to an appearance of impropriety, thus eroding public confidence in the democratic process. In this respect, the familiar maxim that he who pays the piper calls the tune is thought to apply in politics, as in other areas.

5.14 The Tribunal is concerned that the existing rules governing the permitted sources and amounts of political donations suffer from several deficiencies which adversely affect their ability to combat the actual and apparent corruption associated with these issues. Consequently, it is making a number of recommendations affecting the definition of a political donation, as well as the permitted source and amount restrictions.

DEFINITION OF "DONATION"

5.15 The existing political finance acts define the term "political donation" in slightly different ways. According to the Electoral Act 1997 as amended, a donation comprises "any contribution given for political purposes by any person whether or not a member of a political party." Generally, according to that Act, a

contribution is given for political purposes if it promotes or opposes the interests or policies of a political party, politician or third party or otherwise influences the outcome of a relevant election, referendum or campaign. The LEA, defines a donation as "any contribution given for political purposes to a candidate at an election, or a member of a local authority, political party or third party in connection with an election, plebiscite or campaign."

5.16 The Tribunal considers both these definitions to suffer from a number of short-comings. Specifically, they do not cover contributions given for a non political purpose but used for political purposes. For example, they do not cover personal gifts, loans and/or payments for professional services received by a recipient which he or she subsequently uses for political purposes. On a related point, they do not cover contributions given by a politician to him or herself: a politician can use an unlimited amount of his or her personal funds to finance his or her political activities. The fact that such contributions are not covered appears to provide both an incentive and a relatively easy way to circumvent the donations restrictions, through gift giving, the advancement of loans or the acceptance of professional payments.

5.17 Nor do loans given at commercial rates constitute political donations. As a consequence, the political finance acts do not regulate either loans provided by financial institutions where normal commercial rules apply or loans where the lender is not a financial institution once the terms and conditions of the loan are clearly stated in writing and the interest charged reflects that charged by financial institutions. However, evidently such loans may be given for corrupt purposes or at least give rise to the appearance of corruption. Moreover, the exclusion of these types of loans from the definition of a donation may facilitate donors and donees in circumventing the provisions of the political finance acts either completely or partially. For example, a lender could write off part of the loan. Pursuant to the current provisions of the acts, the recipient could claim that such a decision was made in the normal course of business and consequently the relevant sum of money does not constitute a donation. At the very least the fact that such loans are excluded enables the recipient to manipulate the time at which the loan must be disclosed.

5.18 More practically, whether or not a contribution falls within the definition of a donation is dependent on the donor's intention and it is not clear how the recipient is meant to ascertain this.

5.19 The definition of the term "donation" under the LEA raises supplemental difficulties. Specifically, for the purposes of that act, a contribution will only constitute a political donation where two conditions are satisfied. First, the donation must be given for political purposes and secondly it must be given in connection with an election, plebiscite or campaign. This latter condition may well exclude some donations given for broader political purposes from the scope of the LEA.

5.20 It is not entirely clear whether or not the definition of the term "donation" in the Electoral Act is similarly restricted. As mentioned, that act applies to donations given for "political purposes". It then gives a list of such purposes which finishes with the words "otherwise to influence the outcome of the election or a referendum or campaign". It is therefore unclear whether, like the LEA, the Electoral Act imposes a dual condition before a contribution will be considered to be a political donation or whether the various purposes outlined in the list are all deemed to influence the outcome of the election, without it being necessary to actually establish such an influence.

5.21 These problems raise serious questions regarding the adequacy of the definitions of the term "donation" in each of the political finance acts. Moreover, the primary purpose of regulating donations is to regulate the sources and amounts of money contributed and/or used for political purposes. From this perspective, it matters little whether a contribution is given directly for political purposes or whether it is a loan, gift or other payment which is not given for such purposes but is used for them.

5.22 The Tribunal therefore recommends that the definition of the term "donation" in both the political finance acts be amended so as to focus as much on the purposes for which the money is used as on the donor's motivation for giving it. Consequently, it recommends that a "donation" be defined as any contribution given, received or used for political purposes.

5.23 The Tribunal notes that in the U.K., the Political Parties, Election and Referendums Act 2000 (the "PPERA") defines a "controlled donation" as a donation in excess of £200, which is received by a "regulated donee" and which is offered to him or accepted or retained by him for his use or benefit in connection with the any of the recipient's political activities. The term "regulated donee" includes Members of Parliament but not political parties. A donation to a political party includes any donation of money or property irrespective of its purpose. In Canada, the Canada Elections Act (the "CEA") defines a contribution simply as a monetary or non-monetary contribution. This includes both loans

given on a commercial basis and self-contributions. These are also covered by the Federal Election Campaign Act 1971 as amended ("FECA") in the U.S.A.

5.24 The Tribunal is aware that, if adopted, this recommendation will have consequences for third parties who also fall within the scope of the Electoral Act 1997. That act defines a "third party" as:

> *Any person, other than a political party registered in the Register of Political Parties under Part III of the Electoral Act 1992, or a candidate at an election who accepts, in a particular year, a donation the value of which exceeds €127.*

Defining the term "donation" to cover any contribution given, received or used for political purposes could lead to certain parties falling within those rules who should not do so. The Tribunal therefore considers it advisable that the definition of a third party be amended to focus exclusively on those parties who incur expenditure for political purposes. In this respect, the legislature may wish to give further consideration to the suggestion made by SIPO in a submission made to the then Minister for the Environment, Heritage and Local Government in 2003. In that submission, SIPO highlighted the difficulties which it was encountering in supervising the existing legislation in relation to third parties and suggested:

> *that, instead of concentrating on the receipt of a donation, an alternative approach might be to focus as in the case of elections, on spending by individuals or groups and to regard them as third parties if they intend to incur expenditure over a certain threshold, say €5,000, in relation to a campaign which is for political purposes as defined in the legislation.*
>
> *SIPO (2003)*

SOURCES RESTRICTIONS

5.25 The existing political finance acts prohibit donations from non-resident individuals who are not Irish citizens and from foreign corporations or unincorporated bodies. Donations from all other sources are permitted, including domestic corporate donations, indirect donations, anonymous donations, and cash donations. The Tribunal is concerned that some of these sources pose clear corruption risks and consequently require increased regulation. Specifically, it considers that indirect donations should be prohibited as should anonymous and/or cash donations of above a minimum amount.

Indirect Donations

5.26 As discussed, both the political finance acts limit the sources and amount of donations as well as requiring the disclosure of donations above a specified threshold. However, neither of the acts regulates indirect contributions, namely contributions made by a person on behalf of another, in any detail. More specifically, it is clear from those acts that indirect contributions are permitted if the recipient knows the name and address of the person on whose behalf the donation is made. It is not however an offence to fail to inform the recipient of that person's true name and address.

5.27 Indirect contributions raise specific risks from a corruption perspective. For example, an individual may channel donations through a diverse number of persons in order to circumvent the donation limitations and/or to conceal the true identity of the donor. The Tribunal considers that these risks can be best combated by prohibiting this type of donation and making it an offence for a person to make a donation in his or her own name with resources given for those purposes by another person. It therefore makes recommendations to this effect.

Anonymous or Cash donations

5.28 The existing political finance measures prohibit the acceptance of anonymous donations in excess of €127. They do not prohibit the offer or acceptance of cash donations.

5.29 Anonymous donations give rise to a number of corruption risks. Specifically, they may be used to circumvent restrictions on the source and/or amount of donations as they are difficult to trace and monitor. This is also true of cash donations and it is noteworthy that a hall mark of several of the payments found to be corrupt payments by this and other Tribunals is the fact that they were made in cash. Where a donation is routed through a bank account this increases its transparency and is of significant assistance should it require subsequent investigation.

5.30 The Tribunal considers that the corruption risks posed by anonymous and cash donations justify increased regulation of these types of donations and that both should be regulated in the same way. While from the perspective of corruption prevention it would be preferable to prohibit all such donations the Tribunal accepts that in so far as low value donations are concerned, the advantages of such a prohibition may be disproportionate to the potentially severe administrative costs associated with its implementation. Even more

significantly, the Tribunal considers that individuals should be permitted to make small value donations without having to declare their political allegiances. Nevertheless, the Tribunal is concerned that the current threshold of €127 for anonymous donations is too high. It consequently recommends lowering the threshold for anonymous and cash donations to €55 where the recipient is an electoral candidate or elected representative and €175 in the case of political parties. The Tribunal notes that in Canada, electoral candidates are prohibited from receiving an anonymous donation or a cash contribution of more than $20.

5.31 In addition to lowering the thresholds at which anonymous and cash donations are permitted, the Tribunal considers that there should be an overall limit on the total amount which political parties, electoral candidates, elected representatives and third parties can accept by way of anonymous or cash donations. Such a limit is necessary to ensure that these types of donations are not used to circumvent the amount restrictions. It is also necessary from an appearance perspective as, where a party or person is largely funded by anonymous or cash donations this is likely to give rise to conjecture and concern about the sources of those donations.

5.32 The Tribunal therefore recommends that the total amount which an individual may accept by way of anonymous or cash donation should not exceed €1,500 whereas a political party should be prohibited from accepting a total amount in excess of €5,000.

DONATION AMOUNTS

5.33 Each of the political finance acts limit the amount of money which either an individual politician, a political party or a third party may accept from any individual donor. Specifically, both electoral candidates and elected representatives are prohibited from accepting a donation in excess of €2,539.48 directly or indirectly from any one source in a particular year. The existing threshold for permitted donations to political parties is €6,348.69.

5.34 Restrictions on the amount which may be given by way of a political donation should be set at a level which permits those donations which are a legitimate expression of political support to continue to be made while simultaneously preventing those donations capable of giving rise to actual or apparent corruption. One striking feature which emerged from this Tribunal's inquiries was the extent to which relatively small sums of money could give rise to both actual and apparent corruption. In view of this, the Tribunal is concerned that the existing threshold for donations to politicians is too high.

5.35 In this respect, the Tribunal notes that the 2011 Bill proposes reducing the above-mentioned limits to €2,500 in the case of donations to a political party, accounting unit and third party and to €1,000 in the case of donations to an individual politician. The Tribunal fully endorses these proposed reductions.

5.36 However, the Tribunal is also concerned by the fact that there is no limit on the overall amount which an individual can give to a political party and to the electoral candidates and/or elected representatives who are members of that party. Specifically, under the current provisions an individual could give €2,539.48 to each member of a political party as well as €6,348.69 to the party itself. Nor does the 2011 Bill propose introducing such a limit, although, as mentioned, it will, if enacted in its existing form, reduce the individual amounts which can be given to a political party or politician. Nevertheless, the fact remains that the lack of an overall limit on contributions means that an individual could give a significant amount of money to a political party and its individual politicians. This gives rise to evident corruption risks, both actual and apparent.

5.37 Consequently, the Tribunal recommends that an overall limit be placed on the aggregate amount which an individual can give by way of political donation. The relevant amount should strike a balance, on the one hand, between the important, legitimate role played by political finance in democratic systems and the importance of permitting individuals to participate in those systems through financial contributions, and, on the other, the need to combat actual and apparent corruption.

5.38 In this respect, the Tribunal notes that Canadian citizens are prohibited from making political contributions exceeding more than $1,000 in total in any calendar year to the candidates of a political party.

THE REGULATION OF ELECTORAL EXPENDITURE

The existing expenditure restrictions should be:

- **extended to cover all political expenditure**
- **lowered to an amount which constitutes an effective ceiling on political expenditure**
- **extended to cover Seanad electoral candidates and third parties**

5.39 Both the political finance acts limit the amount of expenditure which may be incurred during the electoral period, namely the 50 – 60 day period immediately prior to the election. These limits apply to electoral candidates in Dáil, European, Presidential and local elections and cover expenses incurred during the electoral period or for use at the election during that period. In the case of Dáil elections, expenditure limits vary depending on the number of seats in the constituency in which the candidate is running. They range between €30,150 and €45,200. In the case of local elections, the applicable limits range between €7,500 and €15,000.

5.40 A political party may only incur electoral expenditure if an electoral candidate assigns some or his or her limit to that party. Consequently, there are no separate limits for political parties. Moreover, neither electoral candidates at Seanad elections nor third parties are subject to electoral expenditure limits.

5.41 Expenditure limits play an important role in combating corruption. In particular, they are the natural counterpart to donation restrictions in that they obviate the need for politicians or political parties to have large sums of money to spend thus reducing their need to seek out large donations. Such limits may also pursue objectives other than controlling corruption, including ensuring equality of opportunity in the political process.

5.42 However, if the goal of expenditure limits is to reduce the need for funds, it is doubtful whether the existing expenditure limits are having their desired effect. In particular, those limits may be undermined by electoral expenditure occurring outside the electoral period, as this expenditure is unregulated. Moreover, few candidates reach the existing limits which raises doubt as to whether they are set at an effective level. Specifically, in order to reduce the need for funds, expenditure limits should be set at a level below that of the expenditure which candidates would otherwise incur. However this does not seem to be the case. Furthermore, the limits do not apply to all those involved in elections, namely candidates at Seanad elections and third parties. Finally, the fact that the controls only apply to electoral expenditure rather than, more generally, to political expenditure, means that the limits only affect one source of expenditure and do not affect the drive for funds in other areas. Specifically, both politicians and political parties incur political expenses on an on-going basis and those expenses may drive them into the arms of large contributors in much the same way as the need for electoral funding. Consequently, to be effective expenditure limits should cover all expenditure for political purposes.

5.43 In view of the important role played by expenditure limits in combating corruption, the Tribunal considers that the existing limits should be made more effective. First and foremost, those limits should be extended to cover all political expenditure rather than merely electoral expenditure. While the Tribunal is aware that SIPO has suggested that consideration should be given to imposing accountability in the context of spending limits to a specified period prior to the commencement of that period, the Tribunal considers that this suggestion suffers from two infirmities. First, where expenditure limits are confined to a specified period, there will inevitably be some front loading of expenditure to avoid those restrictions. Secondly, expenditure incurred for political purposes is also incurred for electoral purposes as most political activities are ultimately aimed at improving a politician's or political party's chances in future elections. Consequently, as mentioned, confining expenditure limits to electoral funds fails to help counter the corruption risks raised by expenditure for broader political purposes.

5.44 Limits on expenditure could take the form of a single limit for both electoral and non electoral political purposes or, alternatively, two separate limits. In the event that a separate limit is imposed for electoral expenditure, the Tribunal recommends that it apply for a substantial period prior to the election. Moreover, it should be set at such a limit as to constitute a realistic ceiling on electoral expenditure. Ideally, limits on all types of expenditure, both political and electoral, should be high enough to enable effective political participation but low enough to reduce the incentive to accept corrupt or apparently corrupt funding.

5.45 The Tribunal also considers the fact that the existing expenditure restrictions do not apply to third parties or Seanad elections to be problematic. Specifically, if the aim of expenditure restrictions is to curtail the costs of elections then this aim may be undermined by unlimited third party expenditure. Moreover, the fact that Seanad elections are not covered by expenditure restrictions means that such restrictions are unable to play any role in combating corruption in the context of those elections. While this is significant in and of itself, corruption in the context of Seanad elections may also impact on other areas of life as it is not unusual for members of the Seanad to stand for election to the Dáil or for the Presidency. Consequently, the Tribunal recommends that expenditure restrictions should also apply to third parties and Seanad members.

DISCLOSURE

The rules regulating disclosure of political finance should be amended so as to

- **require political parties, elected representatives and electoral candidates to disclose their annual accounts**

- **lower the level at which donations must be disclosed to a) €55, in the case of a donation received by an electoral candidate or elected representative and b) €175, in the case of a donation received by a political party or a third party**

- **require those making disclosure to provide more detailed information regarding the source and nature of the donations which they have received**

- **ensure that donations are disclosed prior to elections**

5.46 Pursuant to the political finance acts, elected representatives must disclose annually political donations in excess of €634.97 received from an individual donor either as a single sum or in aggregate. For their part, political parties must disclose donations exceeding €5,078.95. The person making the disclosure must state, in respect of each donation received: its value and the name, description (whether an individual or company, trade union, political party etc) and postal address of the person by or on whose behalf the donation was made. Under the Electoral Act, he or she must also disclose the nature of the donation, for example, whether in the form of cash, cheque, use of property or services etc.

5.47 Disclosure is the most fundamental of all the measures aimed at controlling political finance. It is widely regarded as an effective precaution against the improper influence and favouritism which may result from some political donations. Disclosure is also necessary to combat perceptions of corruption linked to political finance even where no actual corruption exists. Secrecy and lack of transparency easily foster an appearance of impropriety and transform innocent transactions into dangerous scandals. As such, the need for comprehensive fully effective disclosure cannot be overemphasised: it is the cornerstone upon which all other attempts to control political finance rest.

> *Disclosure allows the government and the public to keep score on the amounts, sources and destinations of money in politics. Disclosure reports are to politics what profit and loss statements are to business. Without them, governments and citizens risk never knowing the price tag of their democracy or the identity of the major influences behind it,*

> *whether corporate, union, ordinary citizen, special interest groups, drug lords or other criminal elements.*
>
> *USAID (2003)*

5.48 The Tribunal is concerned that the disclosure requirements in the political finance acts suffer from a number of deficiencies which seriously compromise their effectiveness in combating corruption. Specifically: (1) there is no requirement for political parties, elected representatives or electoral candidates to disclose their annual accounts; (2) the current disclosure thresholds are too high; (3) the information provided on donations disclosed is insufficient; and, (4) at times, disclosure is made too late for optimal effectiveness.

Annual Accounts

5.49 The Tribunal views the fact that political parties are not required to disclose and publish their accounts is one of the most serious deficiencies in the existing rules governing political finance. Limiting a political party's disclosure obligation to donations received and electoral expenditure restricts the public's view of that party's finances and makes it difficult for it to place those donations or that expenditure in its general financial context or to correlate that party's sources of income with its expenditure. It also means that the public has no oversight over potentially significant sources of income and expenditure. As observed by SIPO, in its 2008, in respect of the disclosure requirements:

> *However, if the purpose of the Act is to demonstrate transparency in how political parties are funded and in particular how political parties and their candidates fund election campaigns, then this part of the legislation is not achieving that purpose*.

5.50 The Tribunal notes that the 2011 Bill provides that political parties must furnish an audited annual statement of accounts to SIPO. Failure to comply with this obligation will result in the funding made available to political parties by the State under Part 3 of the Electoral Act 1997 being withheld. The Tribunal fully supports the introduction of this provision and notes that it will bring Irish political finance law more fully in line with international best practice.

5.51 However, the Tribunal is of the view that there would also be considerable merit in requiring both electoral candidates and elected representatives to furnish their accounts to SIPO. This would ensure increased transparency over the funding of political activity. Moreover any discrepancies

between stated income and assets and actual income and assets could be used as a basis for investigations.

5.52 The Tribunal notes that the Council of Europe's Recommendation (2003) recommends that electoral candidates be required to make their full accounts publicly available. The International Foundation for Electoral Systems also recommends that electoral candidates be required to disclose their assets and liabilities as well as their income and expenditure.

Disclosure Thresholds

5.53 Under the existing provisions, politicians must disclose political donations in excess of €634.97 and political parties must disclose donations exceeding €5,078.95. Donations below those amounts need not be disclosed. The Electoral Bill proposes reducing these limits to €600 and €1,500 respectively.

5.54 As discussed above, transparency plays a vital role in combating corruption in political finance. In determining the appropriate level for disclosure, therefore, the question is whether that level ensures that all donations capable of affecting or being reasonably perceived to affect the recipient's behaviour are disclosed. The Tribunal is of the view that neither the existing nor the proposed disclosure thresholds will necessarily ensure the disclosure of such donations.

5.55 In this respect, the Tribunal notes that it inquired into several payments which would not fall within these disclosure thresholds. Moreover, it is of the view that almost any donation is capable of affecting the recipient's behavior. The Tribunal notes that this is also the view of the Moriarty Tribunal which has recommended that all donations whether individual or corporate should be disclosed to SIPO. Consequently, from a pure anti-corruption perspective, it might be better to require the disclosure of all donations.

5.56 However, the Tribunal considers that there are two important objections to such a comprehensive disclosure requirement. First, the administrative costs of such disclosure could outweigh its benefits. Secondly, and importantly, the secrecy of the ballot is of considerable significance in a functioning democracy and there are a myriad of reasons why an individual is and should be entitled to keep his or her political views private. Permitting an individual to offer financial support to a political party or politician without requiring that support to be publicly disclosed appears to be an important corollary to this entitlement.

> *Free choice and participating in politics is likely to be inhibited if donors are forced to declare themselves openly, since the disclosure of political donations would effectively compel private donors to declare their political allegiances.*
>
> Van Biezen (2003)

> *(..) the argument can be made …. that an individual's political affiliation is an important aspect of his or her private life and as such should not be the subject of compulsory disclosure merely because he or she has made a contribution to a political party.*
>
> Committee on Standards in Public Life (1998)

5.57 In view of these objections, this Tribunal recommends that the current disclosure thresholds be lowered to €55 in the case of donations to elected representatives/electoral candidates and €175 in the case of political parties.

More detailed information

5.58 Currently, when disclosing donations under the Electoral Act 1997 recipients must provide information regarding: the value of the donation received; the nature of the donation, for example whether in the form of cash, cheque, use of property or services etc; and the name, description (whether an individual, company, trade union, political party etc) and postal address of the person by or on whose behalf the donation was made. Donation statements provided by donors must also disclose whether or not the donations are subject to inclusion in a donation statement to be furnished by any of the persons to whom they were made. Donations statements made pursuant to the LEA must provide much the same information save that they are not required to disclose the nature of the donation.

5.59 The Tribunal is concerned that in its current form, disclosure does not provide sufficient information regarding the source and nature of the donations disclosed and recommends that more extensive information be required by those making disclosure.

5.60 In this respect, the Tribunal fully supports the Moriarty Tribunal's recommendation to the effect that when a donation exceeds a certain threshold, the donor should be obliged to identify any relevant financial, commercial or other interests including Government contracts received within a certain period of the making of the donation, any contracts pending and any involvement in the procurement process, subject only to a limited temporary protection of

confidentiality, which may be required to safeguard the legitimate commercial interests of the donor. This Tribunal recommends adding to this list any commercial planning applications made in the previous year, as well as any involvement in proposed commercial planning applications.

5.61 The Tribunal also recommends requiring recipients to disclose the following information which it considers would be of assistance in distinguishing between contributions which are true political donations and those which are bribes disguised as such, namely: whether the donation was solicited and, where applicable, the name of the person who solicited the donation; whether the recipient of the donation issued a receipt or an acknowledgment to the donor; the date the donation was made and, if different that on which it was received; and whether there is any link between the donor and any other institution or corporation for example by way of an employment relationship, or where the donor is an officeholder or substantial shareholder in a company.

Timing

5.62 The political finance acts generally require donation recipients to disclose those donations on an annual basis. This effectively means that it is not always possible to take these disclosures into account prior to an election. In some instances, information about the sources of monies used to fund a particular election may not be available until several months after that election has been held. This is unsatisfactory. The electorate should be the ultimate arbiter of whether or not the manner in which a political party or individual is financed is suspect on anti-corruption grounds and, in instances where information regarding those financial sources is unavailable until months after an election, they are effectively deprived of that role.

> *Where disclosure requirements are imposed, it is usually important that timely disclosure be required. Unless information about contributions, which may affect the outcome of an election, is made public before the election, any real political accountability is deferred until the next election*.
>
> UN Anti-Corruption Toolkit (2004)

> *Reporting on election activities should more or less follow the electoral cycle. Ideally reports should be available in time to allow a candidate's opponent, the authorities or the public to investigate and publicise any questionable transactions before the elections. Reports that can be delayed long after interest in the election has waned are unlikely to be of much deterrent value*.
>
> Van Biezen (2003)

5.63 The Tribunal recommends therefore that political parties, electoral candidates, and third parties be required to make regular disclosures of donations received in the electoral period. Consideration should be given to increasing the regularity of the disclosure required in light of the proximity of the election.

ENFORCEMENT

Political parties should be required to supply details of their organisational structure including their subsidiary organisations and branches as a condition of registration under the Electoral Act 1992

Restrictions should be placed on the persons entitled to receive donations on behalf of a political party, third party, elected representative or electoral candidate

SIPO should be given increased resources for the purpose of enforcing the political finance acts

The enforcement of the LEA should be entrusted to an external, independent body

5.64 Enforcement of the Electoral Act is currently entrusted to SIPO which is conferred with advisory, supervisory and investigative functions in this respect. The Electoral Act set out SIPO's powers of investigation in a somewhat cursory fashion. Specifically, it provides that SIPO may make such inquiries as it considers appropriate for the purpose of its duties under that Act. In addition, it may require any person to furnish any information, document or thing in the possession or procurement of the person which it requires when carrying out those duties. Enforcement of the LEA is in the hands of the relevant local authorities which carry out similar functions to those carried out by SIPO.

5.65 Both the political finance acts also contain a number of provisions designed to facilitate the task of the enforcement authorities, largely by ensuring transparency regarding persons receiving donations, and/or incurring expenditure. Specifically, political parties must register their "accounting units", a concept which includes a branch or other subsidiary organisation of the party which in any particular year receives a donation valued at in excess of €126.27. Donations made to branches or subsidiary organisations are deemed to be made to the relevant political party and that party is responsible for disclosing them. In

addition, all those in receipt of a political donation must set up a donations account, and all donations must be lodged to that account. With regard to electoral expenditure, each candidate and political party must appoint an election agent/national agent and only those agents or persons duly authorised by them can incur electoral expenditure. Finally, when making disclosure, both individuals and political parties must provide an account transaction statement from the donations account.

5.66 Despite these provisions, the Tribunal is concerned that there are a number of areas where there is a lack of transparency over political finance which adversely affects the monitoring and enforcement of the political finance acts. Specifically, there is insufficient transparency regarding the activities of branches and subsidiary organisations of political parties and over those in receipt of political donations. In addition, there appears to be a number of problems with the institutional arrangements regarding the enforcement of both the political finance acts.

Transparency

5.67 As mentioned, under the Electoral Act, political parties must register their accounting units. However, this requirement is one which is widely disregarded and there are no penalties for failing to register such units. Indeed, it appears that political parties themselves are unaware of the precise number and/or whereabouts of their accounting units, a fact which raises clear questions as to their ability to comply with the donation disclosure requirements.

5.68 Moreover, while the political finance acts restrict those entitled to incur electoral expenditure there are no corresponding provisions applicable to those entitled to accept political donations.

5.69 The Tribunal considers that more transparency is needed over the organisational structure of political parties. This view is shared by SIPO which has highlighted the difficulties which it is experiencing in supervising the provisions of the legislation relating to accounting units, most recently in its Annual Report, 2010.

5.70 The Tribunal notes that the Preliminary Study on the Establishment of an Electoral Commission recommends that it should be a condition of registration of a political party that it adopts a scheme setting out the arrangements for regulating its financial affairs for the purposes of the legislation

and identifying any accounting units within that party that will have separate reporting requirements. The Tribunal fully endorses this recommendation. Moreover, it recommends that political parties be required to update these details on a periodic basis as a condition of continued registration.

5.71 With regard to the acceptance of donations, the Tribunal is of the view that where donations can be accepted by a wide variety of individuals this is likely to make it more difficult to ensure that donations are lodged to the donation accounts as required, or that the source prohibitions and value thresholds are respected. Consequently, it recommends that, political parties, electoral candidates and elected representatives be required to nominate a specific donation agent for the receipt of donations and that the receipt of donations by other persons be prohibited.

Institutional Arrangements

5.72 The effective enforcement of the political finance acts depends on the existence of politically independent institutions with sufficient resources to carry out their investigative functions effectively.

5.73 The Tribunal is concerned that neither SIPO nor local authorities constitute such institutions. Specifically, while SIPO enjoys considerable political independence, it lacks the financial resources necessary to carry out its investigative functions effectively and in particular the ability to access specialist expertise in carrying out financial investigations. While, the Tribunal notes that the 2011 Bill proposes giving SIPO a role in supervising the proposed requirement for political parties to submit their annual accounts, it does not appear to envisage SIPO taking an investigative role in this respect.

5.74 With regard to local authorities, it is doubtful whether they enjoy either the political independence or the financial resources necessary to carry out their work effectively. It is equally doubtful as to whether local authorities have either the capacity or the experience necessary to either detect signs of irregularities or to conduct the in-depth financial investigations necessary when such signs are detected.

5.75 In view of the above, the Tribunal is recommending that SIPO be given increased financial resources and in particular, sufficient resources for the purpose of carrying out financial investigations into possible non-compliance with the electoral acts.

5.76 The Tribunal notes that a number of international instruments recommend that states provide for the independent monitoring of political finance laws by a body capable of carrying out the auditing of accounts. Moreover, the UK Electoral Commission has emphasized the need for a proactive approach to monitoring campaign spending, including "*employing individuals with skills in the key areas of audit, investigation and enforcement.*"

5.77 With regard to the enforcement of the LEA, the Tribunal is of the view that a root and branch reform is necessary and that investigations into possible non compliance with the requirements of the LEA should be entrusted to an independent body. This could involve establishing an independent body for conducting such investigations or, alternatively, entrusting those investigations to SIPO either entirely or on a call-in basis.

5.78 The Tribunal notes that both SIPO and the Group of States against Corruption (GRECO) have also made recommendations to similar effect. According to SIPO:

> *…. where a valid complaint concerning non-compliance with spending limits at local elections is received, the matter should be investigated by an independent body and not by the local authority concerned. That independent body should also have the power to conduct inquiries or investigations in the absence of a complaint and on its own initiative.*
>
> SIPO (2007)

According to GRECO, Ireland should

> [*b]etter harmonise the monitoring and funding at local level, in particular (i) by reinforcing its independence and the control performed, as necessary; and (ii) by considering the advisability of entrusting the Standards in Public Office Commission (…) with an additional oversight role in this field*.
>
> GRECO (2009)

SANCTIONS

Sanctions for breaching the political finance acts should include administrative sanctions

The following acts or omissions should be subject to sanction:

- **Failing to open a donations account**

- **Making a prohibited donation**

- **Deliberately circumventing the requirements set down in the political finance acts.**

5.79 Breach of a number of the requirements contained in the political finance acts is a criminal offence under those acts, most of which are prosecuted summarily and are punishable by a fine not exceeding €1,300 under the Electoral Act or €1,900 under the LEA.

5.80 Effective, persuasive and proportionate sanctions play a key role in the effective enforcement of the political finance acts. Again, however, the Tribunal is proposing a number of measures designed to increase the effectiveness of that role, including introducing administrative sanctions for breaches of those acts as well as a number of new offences.

Administrative Sanctions

5.81 The political finance acts do not provide for administrative sanctions. The Tribunal is concerned that relying exclusively on criminal offences may well ren der the enforcement of those acts less rather than more effective. Specifically, the enforcement authorities may be reluctant to engage the extreme option of the criminal law in instances where an infringement is inadvertent and/or minor. On the other hand, such infringements should be sanctioned. The Tribunal believes that giving the investigative authority an option of imposing an administration sanction could well be useful in such cases. Consequently, it is recommending the introduction of such sanctions.

5.82 In this respect, the Tribunal fully endorses the recommendations made in 2008, in the Preliminary Study on the Establishment of an Electoral Commission in Ireland regarding administrative sanctions, according to which:

> *the body responsible for regulating political and election funding should have a discretionary power to direct the partial or total withholding of public funds to which parties or candidates would otherwise be entitled, where in the opinion of the body the party or candidate has failed or substantially failed to comply with a statutory duty under any enactment, to the extent which the body considers proportionate to the non-compliance which occurred.*

5.83 Moreover, it notes that, in an evaluation report in 2009, GRECO suggested that "*the current system of criminal investigations and enforcement measures could be combined with a more flexible and graduated approach when dealing with less serious violations of the political financing rules*." More generally, according to the Venice Commission in its Guidelines on the Financing of Political Parties (2001):

> *[a]ny irregularity in the financing of an electoral campaign shall entail, for the party or candidate at fault, sanctions proportionate to the severity of the offence that may consist of the loss or the total or partial reimbursement of the public contribution, the payment of a fine or another financial sanction or the annulment of the election.*

5.84 The Tribunal also notes that an inquiry into political funding in the UK conducted by Sir Hayden Phillips concluded that a comprehensive graduated system of fines would be a more effective deterrent to breaches of the political finance requirements then a system of criminal penalties which it considered "all but unusable in any but the most serious cases."

Additional Sanctions

5.85 As mentioned, those in receipt of a political donation must open a political donations account. However, there is no sanction for failing to open such an account. Moreover, while the political finance acts sanction the receipt of donations from prohibited sources or in excess of the permitted amounts, they do not sanction donors who make such donations. Nor do those acts sanction the deliberate circumvention of the requirements governing donations and electoral expenditure.

5.86 The Tribunal considers that each of these types of behaviour should be subject to sanctions. Specifically, there is little point in requiring recipients of political donations to open donations accounts if there are no sanctions for failing to do so. Moreover, the infringement of a number of other similar requirements in the political finances acts is the subject of sanction, and there appears to be little reason to treat the donations account requirement any differently.

5.87 In confining offences to donation recipients, the political finance acts fail to take into account that there are two parties to any transaction involving unauthorised political funding. Moreover, as those offering what is in reality a

bribe will frequently describe it as a political donation, sanctioning the offer of illicit donations should also help combat bribery.

5.88 Finally, the Tribunal is of the view that sanctioning deliberate efforts to circumvent the requirements in the political finance acts is necessary given the ingenuity which may be employed by those prepared to observe the letter of the acts but undermine their spirit. It also notes the Council of Europe suggestion that States adopt measures to prevent established donation ceilings from being circumvented. Moreover, the political finance laws of the UK, Canada and the U.S. each contain anti-circumvention provisions.

LOBBYING

The Tribunal recommends that:

1. Professional lobbyists should be subject to registration requirements

2. Professional lobbyists should be regularly required to disclose at a minimum:
   - the identity of their clients
   - the objects of their lobbying activity
   - details of the public institutions and public officials being lobbied

3. Professional Lobbyists should be required to adhere to a statutory based code of conduct

4. Public officials should be given clear guidance on how they are expected to engage with professional lobbyists with specific reference to lobbyists who are former public officials

5. Senior Officeholders should be required to record and publish details regarding their contacts with professional lobbyists

6.01 Lobbying essentially comprises oral or written communication with a public official for the purpose of influencing legislation, policy or administrative decisions. It may take place either on a personal or professional basis.

6.02 Lobbying plays an important and positive role in governance. Specifically, it may help provide decision makers with valuable insights and data, thus improving government decisions and policy making. It may also strengthen accountability in government and promote public participation in policy making:

> *Lobbyists serve an invaluable function in democratic governance. They provide useful information and expertise to government officials on any given matter. They represent interests that may be adversely and unintentionally impacted by a poorly deliberated public policy. And they translate into understandable terms everything from scientific data to public opinions. Just as importantly, lobbyists then inform their employers and clients of the actions of government officials, helping hold the government accountable and assisting to effectuate compliance with the laws.*
>
> OECD (2009)

6.03 However, lobbying, and in particular paid or professional lobbying, also raises a number of different types of corruption risks. Fundamentally and paradoxically, bribery is a crime which demands a basic form of trust on the part of those engaged in it. First and foremost, the payer must know or have reason to believe that the person offered the bribe will be amenable to that offer, or at the very least will not report it to the relevant authorities. Secondly, the payer must be reasonably sure that that person will not only take the bribe but also confer on the payer the benefit sought by him or her. Thirdly, the recipient of the payment must be reasonably sure that the payer will not inform those authorities of his or her willingness to accept the bribe and/or to barter the use of his or her official power.

6.04 The trust necessary for bribery to occur can be considerably facilitated by the involvement of a third party willing to vouch for the sincerity of both the payer and the recipient of the bribe. Moreover a third party can also act as an informal enforcer of bribery contracts by sanctioning those who fail to fulfill their side of a corrupt bargain by, for example, excluding them from participating in such bargains in the future. As lobbyists tend to have frequent contacts with public officials they are well positioned to fulfill the

role of a trusted third party. They may thus act as a catalyst for corrupt transactions. As importantly, by acting as an intermediary, they may also permit their clients to distance themselves from involvement in a corrupt bargain thus mitigating any associated legal risks. This Tribunal inquired into corrupt transactions which were either facilitated or made possible by the involvement of a lobbyist.

6.05 Bribery is not the only form of corruption risk associated with lobbying. For example, a lobbyist may seek to establish "good relations" with a public official through gifts of minor value, and/or the offer of meals or entertainment. Although, unlike bribes, such benefits are not conferred in exchange for a quid pro quo, they may ultimately have a similar effect to bribes by engendering a sense of obligation or reciprocity on the part of the public official.

6.06 Other corruption risks stem from the fact that, having left public office, public officials are frequently engaged as lobbyists. Consequently, in some instances, a public official's behaviour in office may be influenced by the promise of a lucrative career as a lobbyist on leaving that office. Moreover, former public officials who are engaged as lobbyists may obtain privileged access from their former colleagues and may be privy to inside information which is not available to their competitors. This raises questions regarding both the fairness and the transparency of government decisions.

6.07 More generally lobbying can erode the legitimacy of democratic governance by undermining political equality between citizens.

> *When lobbying becomes an excessively elite profession exclusively serving well-financed special interests, it can become quite damaging to the citizen's perception of political legitimacy.*
>
> OECD (2009)

6.08 It can also give rise to public concern about the role of vested interests in policy making and in particular their ability to contort public policy to suit their own private agendas to the overall detriment of the community at large.

6.09 In view of the positive and negative aspects of lobbying, the Tribunal believes that it is vital to ensure a maximum degree of transparency over the lobbying process and the conduct of lobbyists. This would help inform the public of the identity of those attempting to influence public

decisions as well as assist in holding both public officials and lobbyists accountable for the manner in which they conduct their relationships. Consequently, the Tribunal is making a number of recommendations designed to ensure increased transparency over: the identity of those offering professional lobbying services; the activities carried out by those lobbyists; and the degree of contact between those lobbyists and senior officeholders. The Tribunal is also recommending that public officials be given clear guidance on how to conduct relations with lobbyists in order to safeguard against some of lobbying's more insidious negative aspects as well as the risks of apparent corruption. It is further recommending that public officials keep a record and public details of their contacts with lobbyists.

6.10 The Tribunal is aware that the detailed implementation of its recommendations will require further analysis and consultation with a wide variety of stakeholders. Nevertheless, these recommendations should help identify the needs to be met when regulating lobbyists and the minimum content of those regulations.

REGISTRATION

Professional lobbyists should be subject to registration requirements

6.11 Professional lobbyists are not currently required to register as such. The Tribunal considers this to be unsatisfactory given the corruption risks associated with lobbying and the consequent need to ensure that the public is able to make informed judgments about the extent to which different groups have input into the legislative process. In addition, regulating lobbying is an essential component in following the trail of money in politics.

6.12 One of the first and most fundamental steps in combating those corruption risks and meeting those needs is to impose a registration requirement on professional lobbyists. The Tribunal is consequently recommending the introduction of such a requirement which should, at a minimum, apply to all those who receive compensation for representing the interests of a third party to national and/or local public officials, including consultant lobbyists and in-house lobbyists. In the case of lobbyist firms, the registration requirement should apply not only to the firm itself but to the individuals employed by that firm and who are engaged at least partially in lobbying. When registering, a lobbyist should also be required to identify any positions he or she has previously held in the public sector.

6.13 The requirement to register should be introduced on a legislative basis. Specifically, the Tribunal does not believe that a voluntary registration scheme would be as effective as a legally binding scheme at combating corruption and ensuring transparency over lobbying activities. In particular, a voluntary scheme is unlikely to be as widely applied and evenly balanced as one required by legislation. Moreover, voluntary schemes enable those who wish to hide the nature and extent of their activities to do so. Most importantly, in the last resort, the success or failure of a registration requirement will often depend on its enforcement. Voluntary schemes are usually accompanied by weak enforcement and sanctions. In contrast, a requirement imposed on a legislative basis can be subject to far more rigorous enforcement as well as effective, proportionate and dissuasive sanctions.

DISCLOSURE

Professional lobbyists should regularly be required to disclose, at a minimum:

- **The identity of their clients**
- **The objects of their lobbying activity**
- **details of the public institutions and public officials being lobbied**

6.14 While registration identifies lobbyists themselves, it does not identify either the targets or the beneficiaries of their lobbying activities. However, the Tribunal considers this information to play an equally important role in ensuring the transparency of those activities. Consequently, the Tribunal is recommending that lobbyists be subject to a number of disclosure requirements. The overall purpose of these requirements is to provide the public with sufficient information regarding the role of lobbyists in the decision making process to assess the nature and extent of that role and to re-assure the public that it is in the public interest. They should also enable the public, and in some instances, the enforcement authorities to follow the money trail in politics. However, the Tribunal also recognises that the public's interest in realising these purposes must be balanced against the need to avoid placing excessive demands on lobbyists, to the possible detriment of comprehensive disclosure and effective enforcement.

> *(…) meaningful disclosure should provide pertinent but parsimonious information on key aspects of lobbying activities in order to shed light on how public decisions were influenced by stakeholders or vested interests*.
>
> OECD (2009)

6.15 The Tribunal therefore recommends that disclosure should encompass asking lobbyists to disclose: the identity of their clients; the objective of their lobbying activity: and the public institutions and public officials being lobbied.

6.16 Specifically, information regarding the identity of a lobbyist's clients is an important element in ensuring that the public is aware of who is paying to influence government policies. It is also important to enable public officials to place information communicated by a lobbyist in respect of a given policy in its proper context and to know whether it reflects broad domestic concerns or specific narrow interests. In order to ensure that these objectives are met, lobbyists should be required to disclose not only the identity of the nominal client but also that of any person that directs a client and/or has a direct interest in the outcome of the lobbying activity. In the case of corporations, this should include the name of holding companies or subsidiaries.

6.17 Both the public itself as well as public officials need to be informed of the broad objectives of the lobbying activity in order to put the information received from lobbyists into its appropriate context. Obviously, the level of information which must be disclosed should be sufficient to meet this goal.

6.18 Information regarding the public officials who are the targets of lobbying activity is useful in determining the overall purpose of lobbying activity. In addition, it helps in assessing the impact of lobbying on policy making by identifying the points in the decision-making process where lobbyists have attempted to exert influence. Moreover, it may serve to alert officials to the need to ensure that other interests are also taken into consideration.

6.19 Disclosure should be made on a timely basis, including initial reporting on registering as a lobbyist and regular updates. Information disclosed should be made widely disseminated and be electronically available.

6.20 Clearly measures to require the registration of lobbyists and lobbying activities and the disclosure of information should also be effectively enforced. In particular, the relevant enforcement authorities should have sufficient powers to require the expansion of the information filed by registrants and powers of investigation, including the power to compel the production of information and witnesses. Sanctions should include

administrative sanctions but in any event should reflect the gravity of the offence.

CODES OF CONDUCT

Lobbyists should be required to adhere to a statutory based code of conduct

Public officials should be given clear guidance on how they are expected to engage with lobbyists with specific reference to lobbyists who are former public officials

6.21 Many of those engaged in lobbying are members of organisations which have agreed codes of conduct to which all their members must adhere. The Tribunal considers that such codes play an important role in regulating lobbying. However, it also considers that it would be advantageous to introduce an agreed statutory code of conduct applicable to all registered lobbyists, including those who are not members of such organisations. The aim of the code should be to establish proper norms of behaviour for lobbyists and to set the principles of professional conduct. At the very least it should include a prohibition on attempting to improperly influence a public official; ban gifts (or other compensation) of more than a de minimis amount from a lobbyist to a public official; and require the information conveyed to public officials to be accurate and honest.

6.22 However, measures regulating lobbying must recognise that it takes two to lobby. Consequently such measures cannot focus exclusively on lobbyists to the exclusion of those who are the subject of lobbying activities. Perhaps in recognition of this fact, the existing Code of Conduct for Officeholders contains the following guidance on lobbyists:

> *It is an integral part of a functioning democracy that particular sections of society will endeavour to highlight issues of sectoral importance with office holders. In this respect contact between officeholders and lobbyists is to be expected. However, as guidance, such dealings should be conducted so that they do not give rise to a conflict between a public duty and private interest.*

However, this issue is not addressed in any of the other codes of conduct adopted pursuant to the conflicts of interests acts.

6.23 Consequently, the Tribunal recommends that public officials, including officeholders should be provided with more detailed guidelines for dealing with lobbyists. In particular, these guidelines should give advice on maintaining proper and transparent relationships with lobbyists. In addition, public officials should be required to conduct themselves with impartiality, only share authorised information and avoid conflicts of interests. Public officials should also be expected to keep records of their contacts with lobbyists. Importantly, the guidelines should also contain advice for public officials regarding how to deal with former public officials who are now involved in lobbying.

RECORD KEEPING

Senior Officeholders should be required to record and publish details regarding their contacts with professional lobbyists

6.24 In the interests of transparency and integrity, the Tribunal recommends that information regarding ministerial and other high level official meetings with outside interest groups should be routinely recorded and published. Moreover, Government should try to be more open and transparent about how it formulates policy and the grounds for the policies ultimately adopted.

6.25 The Tribunal notes that the OECD, in its Recommendation on Principles for Transparency and Integrity in Lobbying, recommends that governments consider facilitating public scrutiny by indicating who has sought to influence legislative or policy making processes, for example, by disclosing a "legislative footprint" that indicates the lobbyists consulted in the development of legislative initiatives. The Tribunal considers that such a measure has much to recommend it in terms of promoting transparency and accountability in the relationship between public officials and lobbyists.

BRIBERY, CORRUPTION IN OFFICE, MONEY LAUNDERING AND MISUSE OF CONFIDENTIAL INFORMATION

The Tribunal Recommends:

1. **Amending the Public Bodies Corrupt Practices Act 1889 (the "1889 Act") to cover Oireachtas Members**

2. **Introducing a specific offence of making payments to a third party where the payer ("P") knows or is reckless to the fact that that party intends to use some or all of those payments to pay bribes for the purpose of furthering P's interests**

3. **Introducing a new offence criminalising a commercial entity for failing to take adequate measures to supervise or control individuals carrying on activities on its behalf where that individual commits bribery in the context of those activities and that bribery is to the benefit of the entity**

4. **Extending the existing presumption of corruption contained in Section 3 of the Prevention of Corruption (Amendment) Act 2001 (the "2001 Act"), which arises in respect of political donations, to cover a) donations which a political party should have disclosed under the Electoral Act 1997 but failed to disclose and b) the acceptance of prohibited donations**

5. **Extending the presumption of corruption set out in s. 4 of the 2001 Act to cover consideration and advantages:**
   - **conferred on Officeholders, Oireachtas Members and Local Elected Members or to a third party connected to such a person including a family member or corporate entity**
   - **where the relevant public official has done any act or made any omission in relation to his or her office or position, or any matter arising therefrom, and**
   - **where that act or omission is to the benefit of the person making the payment or on whose behalf the payment is made, and**

The Tribunal Recommends:

- **where the relevant public official was required to disclose the interest under either the Ethics Acts 1995 and 2001 or the Local Government Act 2001, but failed to do so**

6. **New, additional sanctions to apply where a person is convicted of bribery, namely:**
   - **Undertakings convicted of bribery should be banned from all public tenders for a 7 year period on first offence and indefinitively thereafter**

   - **A person convicted of bribery where the purpose of the bribe was to influence a public official in performing his or her public functions in relation to planning or development should be prohibited from applying for planning permission in respect of any land owned by him or her or under his or her control for a 7 year period other than planning permission in respect of changes to his or her own private dwelling**

7. **Introducing a pan-sectoral whistleblower protection act protecting all those reporting suspected offences and/or breaches of regulatory measures from any form of liability, relief and/or penalization arising from that report**

8. **Extending existing whistleblower protection under the Prevention of Corruption (Amendment) Act 2010 to a) protect independent contractors who report suspicions of corruption from penalization and b) remove the existing limit on the amount of compensation which may be awarded to those penalised for whistleblowing**

   and

   under the Criminal Justice Act 2011 to cover those reporting or giving evidence on offences under the Public Bodies Corrupt Practices 1889

The Tribunal Recommends:

9. **Amending the offence of corruption in office contained in s. 8 of the Prevention of Corruption (Amendment) Act 2001 to:**

    - **Cover situations where a public official fails or omits to do an act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person**

    - **Cover any situation where a public official uses confidential information obtained as a result of his or her office for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person**

    - **Define the term "corruptly" so as to cover any acts or omissions on the part of a public official for the purposes of obtaining an unlawful or improper advantage for himself, herself or any other person**

8. **Introducing a new offence for holders of ministerial office of accepting and retaining a gift or other advantage in connection with that office where that advantage is of above a nominal value and is not lawfully due to the officeholder**

9. **Requiring designated persons for the purpose of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ("the CJ(MLTF)A") to apply enhanced due diligence to domestic elected public officials and senior office holders**

10. **Defining the term "politically exposed persons" so as to apply to senior public officeholders for a minimum of ten years after they have ceased to hold office**

11. **Considering the introduction of a cash transaction reporting requirement obliging designated bodies to alert the authorities to cash transactions in excess of a specified sum**

BRIBERY

7.01 Bribery is the quintessential form of political corruption and, traditionally, the criminal law has viewed political bribery and corruption as synonymous. Bribery is universally condemned for several reasons. Specifically, bribery has overwhelmingly negative economic effects. In particular, it may lead to resource misallocation as resources are diverted into those areas where bribes can be easily collected. In addition, it may increase the cost of doing business because of the necessity to factor in bribes. More fundamentally, bribery is inimical to social justice. It undermines the equality of individuals before the law, involves a fundamental betrayal of trust and, at least in democracies, may seriously undermine public faith in democratic government.

7.02 In this respect, the Tribunal views the bribery offences as being part of a triad of provisions aimed at regulating payments to public officials, including elected representations. The other two provisions regulate political donations and conflicts of interest, particularly those in the form of gifts and professional payments. The Tribunal considers that the overall purpose of these provisions must be to ensure that there is a comprehensive scheme for regulating payments to public officials so as to minimise the risks of corrupt payments being made, the abuse of public office and/or the appearance of corruption. However, the specific purpose of the bribery offences is to capture payments made with the intent of securing an improper benefit or advantage for the payer or soliciting or accepting such a payment.

7.03 Bribery is an offence at common law and statute. The main statutory bribery offences are set out in: the Prevention of Corruption Acts 1889 – 2010 (the "PCA"), and in particular in the Public Bodies Corrupt Practices Act 1889 (the "1889 Act") as amended and the Prevention of Corruption Act 1906 as amended (the "1906 Act"); and the Criminal Justice (Theft and Fraud Offences) Act 2001 (the "CJ(TFO)Act 2001"). The Tribunal notes that the statutory bribery offences contained in the Prevention of Corruption Acts have been significantly amended and extended over the last number of years, most recently by the Prevention of Corruption (Amendment) Act 2010 (the "2010 Act"). The Tribunal welcomes these efforts to strengthen the bribery offences.

7.04 While the PCA cover both corruption in the public and in the private sphere, the Tribunal is of the view that public corruption is more reprehensible and poses greater dangers than its private counterpart. In addition, holders of public office have opportunities for corruption which have no equivalent in the private sphere. By and large the bribery offences apply to public and private corruption in the same way. Specifically, while some of the offences are restricted to public officials those offences are not substantially different to the offences contained in the 1906 Act which cover both private and public corruption. The Tribunal does not consider it necessary to change this approach. It considers that the more serious nature of public corruption can best be reflected in shifting the burden of proof in some instances where the defendant is a public official and through the severity of sentencing.

7.05 The main bribery statute is the 1906 Act. That act defines the offence of corruption in terms of the agent principal relationship. This focus suggests that it views the wrong of bribery as being the breach of the duty of loyalty owed by an agent to his principal. The Tribunal considers that this view risks excluding some payments which should otherwise fall within the bribery offences. However, it is not making any recommendations aimed at changing this view as it appears to adequately cover the type of corruption at the heart of this Tribunal's inquiries. Nevertheless, in the context of these recommendations, the Tribunal has endeavoured to avoid using either the term "agent" or the term "principal".

7.06 More generally, the Tribunal considers that the existence of several, partially overlapping, bribery offences is undesirable. Together the common law and above mentioned statutes provide for at least eight bribery offences, four of which criminalise the offering or giving of a bribe ("active bribery") and four of which criminalise its solicitation or acceptance ("passive bribery"). There are also a number of other sectoral bribery offences. There is clearly an urgent need for a consolidation of the law in this area. However, the Tribunal has not considered it necessary to make a recommendation to this effect, given that such work is already underway. Specifically, it is the Tribunal's understanding that current government intends consolidating the statutory bribery offences in the coming year.

7.07 In formulating these recommendations, the Tribunal took into consideration a number of Conventions to which Ireland is a party, namely the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997); the Council of Europe's Criminal Law Convention on Corruption (1998); the United Nations Convention Against

Corruption (2003) ("UNCAC"); the EU's Convention on the Protection of the European Communities Financial Interests (1995) together with its three protocols; and the EU Convention on the Fight Against Corruption involving officials of the European Communities or Officials of the Member States of the European Union (1997). It also considered bribery laws in other jurisdictions, including in particular the UK and the U.S. The Tribunal also benefitted from the extensive work of the UK Law Commission and other bodies in the context of reforming the UK's bribery law. This work culminated in the recent enactment of the UK Bribery Act 2010.

THE PUBLIC BODIES CORRUPT PRACTICES ACT 1889

The 1889 Act should be amended to cover Oireachtas Members

7.08 The 1889 Act criminalises the bribery of certain types of public officials. Specifically, it criminalises the giving, promising, offering, solicitation or receipt of any advantage on account of "an officeholder or his or her special advisor or a director of, or occupier of a position of employment in, any public body as in this Act defined" doing or forbearing to do anything in respect of any matter or transaction whatsoever in which such officeholder or public body is concerned.

7.09 The terms, "officeholder", "special advisor", "director of a position of employment in a public body", and "occupier of a position of employment in a public body" have the meanings assigned to them in the Ethics Acts 1995 and 2001. It is clear from the definitions contained in those acts that Oireachtas members do not fall within the scope of the 1889 act. In contrast, those members do fall within the 1906 Act (and the CJ(TFO)A 2001).

7.10 While the Tribunal recognises that the bribery of Oireachtas Members is adequately criminalised by the 1906 act, there is a difference in the sanctions applicable depending on the act infringed. Specifically, penalties for breaching the later act are largely confined to imprisonment and/or fines. While similar penalties may be imposed for breaching the 1889 Act, it also provides for other sanctions. In particular, where a person is convicted under the 1889 act, the court may adjudge him or her incapable of being elected or appointed to any public office for seven years on a first conviction and permanently thereafter. In addition, it may order that a public official forfeit any public office held by him or her at the time of his or her conviction and/or forfeit any pension rights arising from that office.

7.11 The additional sanctions provided for in the 1889 act are clearly of relevance in all situations where an elected public official is convicted of bribery and are also particularly appropriate in such instances. Consequently, the Tribunal considers that these sanctions should also apply in cases where an Oireachtas Member is convicted of bribery. It therefore recommends that the scope of the 1889 act be extended to cover Oireachtas members.

7.12 The Tribunal notes that UNCAC requires State Parties to criminalise bribery, including the bribery of domestic public officials. It also requires those parties to

> *Consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*
>
> *(a) Holding public office; and*
>
> *(b) Holding office in an enterprise owned in whole or in part by the State*

BRIBERY THROUGH INTERMEDIARIES

A new offence should be introduced criminalising the making of payments by a Payer ("P") to a third party where P knows or is reckless to the fact that the third party intends to use some or all of those payments to pay bribes for the purpose of furthering P's interests

7.13 Under both the 1889 act and the 1906 act, a person may be convicted of bribery either when he or she is directly involved in that bribery or when he or she engages in bribery through an intermediary. In both cases, in order to obtain a conviction, it is necessary to establish that that person had the necessary intention to bribe. Generally, a result is intended if it is either the defendant's purpose to cause it, or the defendant foresees that his act will certainly cause it.

7.14 The Tribunal is concerned that under the existing bribery provisions it may be difficult to convict someone of bribery where that person uses an intermediary, particularly where that person adopts a "head in the sand" approach to the intermediary's activities. Specifically, in order to obtain

such a conviction the prosecution must prove that that person intended the intermediary to make such payments or that he or she foresaw that the intermediary will certainly make them. Merely proving that that person made significant payments to an intermediary which he or she then used for paying bribes, or that the individual failed to make reasonable inquiries in circumstances where such inquiries were clearly warranted is unlikely to be sufficient to establish the requisite intent.

7.15 As previously discussed, intermediaries played a key role in facilitating several of the corrupt transactions inquired into by this tribunal. In a number of those transactions, the person who engaged the intermediary either was, or claimed to be, unaware of the fact that the intermediary paid bribes on his or her behalf.

7.16 The Tribunal is deeply concerned about the role played by intermediaries in corrupt transactions. It is also of the view that an individual should not be able to successfully avoid prosecution for bribery by adopting a head in the sand approach to the activities of intermediaries which he or she has engaged to act on his or her behalf in respect of a particular matter or transaction.

7.17 Consequently, the Tribunal is recommending the introduction of a new offence of bribing through an intermediary. Specifically, if an intermediary commits an offence under the PCA, then the person who has engaged that intermediary ("P") should also be guilty of an offence under those acts once two conditions are fulfilled. First, the intermediary must have committed the act of bribery either with P's consent or in circumstances where P was reckless as to whether or not the intermediary committed that offence. Secondly, that act must either benefit P or be intended to benefit P.

7.18 The Tribunal also considered whether recklessness should be the requisite intention in all cases involving bribery. In this respect, it notes that recklessness is already sufficient intent in several serious offences including in particular money laundering under the CJ(MLTF)A 2010. However, the Tribunal is of the view that the purpose of criminalising the bribery of a public official is to criminalise payments made to or solicited by such an official with the intention of influencing the performance of his or her public functions. It does not consider it necessary to criminalise payments made or solicited where the parties do not intend to exert such an influence but are reckless as to whether or not such an influence results from the payment. This is particularly so as, as discussed further below, the Tribunal is recommending

the introduction of a new offence criminalising payments to senior public officials.

FAILING TO PREVENT BRIBERY

A new offence should be introduced criminalising a commercial entity for failing to take adequate measures to supervise or control individuals carrying on activities on its behalf where that individual commits bribery in the context of those activities and that bribery is to the benefit of the entity

7.19 As previously discussed, the Tribunal is very concerned at the frequency with which commercial entities featured in the corrupt transactions into which it inquired. Specifically, funds were frequently routed through such entities in order to obfuscate the existence of those funds, their source and/or their destination.

7.20 Under both the PCA and the CJ(TFO)A 2001, corporate and unincorporated bodies ("undertakings") may be held criminally liable for bribery. Both acts also provide for a form of derivative managerial liability whereby a company's officer may be convicted of bribery in circumstances where the company itself commits bribery and that bribery is proved to have been committed with the officer's consent or connivance or to be attributable to "any neglect" on his part. Furthermore persons who engage in bribery on behalf an undertaking may themselves be prosecuted for bribery, independently of the culpability of the undertaking itself.

7.21 The Tribunal is concerned that these provisions are not sufficiently comprehensive to effectively criminalise the corrupt conduct of commercial entities. Specifically, while it is clear that corporate bodies may be prosecuted for corruption, the basis for imposing criminal liability on such bodies under Irish law is not clear. For example, it is as of yet undecided whether the identification doctrine, pursuant to which a corporate body may be held liable for crimes committed by its controlling officer(s), applies in criminal cases. If that doctrine is the basis for imposing criminal liability on corporate bodies, it suffers from a number of inadequacies. In particular, identifying the controlling officer responsible for a specific corrupt act may not always be possible.

> *[i]t is a fact that legal persons are involved in corruption offences, especially in business transactions, which practice reveals serious difficulties in prosecuting natural persons acting on behalf of these legal*

> *persons. For example, in view of the largeness of corporations and the complexity of structures of the organisation, it becomes more and more difficult to identify a natural person who may be held responsible (in a criminal sense) for a bribery offence. Legal persons thus usually escape liability due to their collective decision-making process. On the other hand, corrupt practices often continue after the arrest of individual members of management, because the company as such is not deterred by individual sanctions.*
>
> Council of Europe (1998)

7.22 Again, the extent to which a corporate body can be convicted of corruption which is not attributable to an individual officer but to a number of individuals collectively or to a lower level employee does not appear to have been decided in Irish law.

7.23 The provisions imposing derivative managerial liability on company officers for bribery committed by undertakings do not alleviate the problems with imposing liability on corporate bodies. First, for those provisions to apply, it is necessary to establish that the undertaking itself has committed an offence. Secondly, those provisions are themselves confined to company officers. In any event, individual liability is best viewed as a supplement to liability on the part of the undertaking rather than as a substitute for it. Specifically, imposing liability on an undertaking itself is likely to have different deterrent effects from those which arise where liability is restricted to individuals. In particular, a criminal indictment risks the market imposing what is in effect a corporate death penalty. Perhaps even more significantly, the ability to confiscate the proceeds of corruption obtained by an undertaking in the context of criminal confiscation procedures depends on the undertaking itself being convicted of an offence.

7.24 The complementary nature of individual and corporate liability is evidenced by the fact that several of the international anti-corruption conventions to which Ireland is party require State Parties to provide for corporate liability as well as the personal liability of high level persons within the corporation.

7.25 In view of the above, the Tribunal has considered ways of ensuring that undertakings are themselves held liable for corrupt activities carried out for their benefit. One option involves introducing a specific basis for imposing liability on corporations which is broader than the so-called identification doctrine and which ensures that a corporation can be held liable for the

collective actions of a number of individuals, including those of lower level employees and for independent contractors working on its behalf. The Tribunal is of the view that there is an urgent need to clarify the basis for imposing criminal liability on corporations in bribery cases. However, as this need also arises in respect of other types of offences, the Tribunal considers that it would be best to deal with this issue on a pan-sectoral basis. An alternative approach could well lead to a proliferation of statutes each with different basis for imposing corporate liability which would be clearly undesirable. The Tribunal therefore advises that consideration be given to clarifying the basis for imposing criminal liability on corporate entities as a matter of urgency.

7.26 Another option for ensuring that undertakings are held criminally liable for bribery committed on their behalf involves the introduction of a new offence of lack of supervision. Such an offence would make an undertaking criminally liable where the lack of supervision or control by a person who has a leading position in the undertaking has facilitated the commission of the offence and the offence has been committed for the benefit of that undertaking.

7.27 The Tribunal considers that a failure to supervise offence has much to recommend it in that it would prevent corporate entities from avoiding liability for bribery by remaining deliberately ignorant of the activities of their employees or associates. It therefore recommends the introduction of a specific offence criminalising a commercial undertaking for failing to take adequate measures to supervise or control individuals carrying on activities on its behalf where that individual commits bribery in the context of those activities and that bribery is to the benefit of the undertaking.

7.28 The Tribunal notes that both the Second Protocol to the Convention on the Protection of the European Communities Financial Interests and the Council of Europe's Criminal Law Convention against Corruption require State Parties to ensure that legal persons can be held liable for the omission by a person in a leading position to exercise supervision over the acts committed by a person acting under his or her authority where that lack of supervision had made possible the commission of an act of active corruption for the benefit of that legal person. Moreover, the UK Bribery Act 2010 has recently introduced an offence of this nature which is likely to apply to many Irish undertakings because of its extensive extra-territorial scope.

POLITICAL DONATIONS: PRESUMPTION OF CORRUPTION

The existing presumption of corruption contained in Section 3 of the Prevention of Corruption (Amendment) Act 2001 and which arises in respect of political donations should be extended to cover a) donations which a political party should have disclosed under the Electoral Act 1997 but failed to disclose and b) the acceptance of prohibited donations

7.29 According to Section 3 of the Prevention of Corruption Act 2001, where a defendant is being prosecuted for bribery under either the 1889 Act or the 1906 Act, a presumption of corruption arises once the prosecution establishes two things. First, that that defendant failed to disclose a donation which he or she was required to disclose under the political finance acts. Secondly, that the donor had an interest in the defendant doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business. Once a presumption of corruption arises, it is presumed that the donation is a corrupt payment, unless the defendant proves the contrary on the balance of probabilities.

7.30 A presumption of corruption can play an important role in successfully prosecuting corruption offences. Specifically, in the absence of such a presumption it may be very difficult, if not impossible, for the prosecution to establish that the payment in question was made with the corrupt intent of influencing any official matter or transaction, as required by the bribery offences. This is particular so given the fact that both parties to the transaction are equally guilty of an offence, there is usually no identifiable victim and the transaction will almost always be carried out in great secrecy. Moreover, there is unlikely to be any evidence of an express agreement between the parties and, consequently, the intent to influence will have to be inferred from circumstantial evidence.

7.31 Given the importance of a presumption of corruption in facilitating the effective prosecution of corruption cases, the Tribunal is concerned that the scope of the presumption applicable in the case of political donations is too narrow. Specifically, as is clear from the above, for that presumption to apply it is necessary to prove that the defendant personally received a political donation which he or she was required to disclose under the relevant section of the political finance acts but failed to do so. Consequently, the presumption does not apply to undisclosed payments made to political parties. However, political parties can exert considerable influence over their members and in some respects paying a bribe to a political party may be

more effective than paying it to an individual politician. Both this and other Tribunals have inquired into instances of corrupt payments being made to political parties where the payer had an interest in a member of that party, such as, in particular, a Minister doing something or failing to do something in relation to his or her office or position or his or her principal's affairs or business.

7.32 Another problem with the presumption is that it may not apply to a donation from a prohibited source. Specifically, as such a payment should not be accepted it seems at least arguable that even if it is accepted there is no obligation to disclose it as the disclosure obligations only apply to permitted donations.

7.33 In view of the above, the Tribunal is recommending extending the Section 3 presumption in two respects. First, by providing that that presumption also arises where a donation is made to a political party once the following conditions are fulfilled. Specifically, the political party must be required to disclose the donation under the political finance acts but fail to do so. In addition, the donor must have an interest in an elected representative who is an Officeholder and a member of that party doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business.

7.34 Secondly, the presumption should be extended to cover the acceptance of a prohibited donation under the political finance acts and not merely a failure to disclose a permitted donation. In other words, where an elected representative, electoral candidate or a political party accepts a donation which he, she or it is prohibited from accepting under the political finance acts there should be a presumption that the donation constituted a bribe, unless the contrary is proved.

CONSIDERATION AND ADVANTAGES: PRESUMPTION OF CORRUPTION

The presumption of corruption set out in s. 4 of the 2001 Act should be extended to cover consideration and advantages:

a. **Conferred on Officeholders, Oireachtas Members and local Elected Members or to a third party connected to such a person including a family member or corporate entity**

b. where the relevant public official has done any act or made any omission in relation to his or her office or position, or any matter arising therefrom and

c. where that act or omission is to the benefit of the person making the payment or on whose behalf the payment is made and

d. where the relevant public official was required to disclose the interest under either the Ethics Acts 1995 and 2001 or the Local Government Act 2001, but failed to do so

7.35 In addition to the presumption of corruption which applies to political donations, the PCA provide for two rebuttable presumptions applicable to consideration or advantages conferred on specified public officials.

7.36 Specifically, the Prevention of Corruption Act 1916 (the "1916 Act") contains a presumption that any money, gift or other consideration given to or received by an officeholder or special advisor or a director of, or occupier of a position of employment in, a public body by or from a person holding or seeking a contract from a Minister or a public body is given or received as a bribe.

7.37 The presumption of corruption under Section 4 of the 2001 Act arises once a payment is made to a specified public official, including an Officeholder, an Oireachtas Member, or a person performing functions on behalf of the State, and the payer had an interest in that official performing or omitting to perform certain functions. The payment may be in the form of a gift, consideration or an advantage. The functions covered comprise: the grant, refusal, withdrawal or revocation by or under any statute of any licence, permit, certificate, authorisation or similar permission; the making of any decision relating to the acquisition or sale of property; and/or the performance of functions under the Planning and Development Act 2000 – 2011.

7.38 The presumption set out in Section 4 of the 2001 Act applies to a broader range of public officials than that contained in the 1916 Act. Moreover, it applies to a wider range of benefits, including but not limited to contracts. However, it only covers functions falling within the public official's own competencies. This is in contrast to both the presumption which arises under the 1916 act as well as the bribery offences themselves. Specifically,

for the purpose of both that presumption and those offences, while the payment must be intended to influence the recipient, that influence may relate to either the recipient's functions or those of his or her principal or relevant public body.

7.39 Neither of the presumptions covers certain types of benefits including, for example, a decision to grant an area tax designation or the grant, renewal, revocation or withdrawal of licences etc other than by or under statute. Moreover, in both cases the payment must be made to the public official or person carrying out public functions. Neither appears to cover cases where payments are made to an official's spouse, relatives, or even corporate entities under his or her control.

7.40 As mentioned, presumptions of corruption play a particularly important role in bribery prosecutions in facilitating the identification of any nexus between corrupt payments and an official act. In view of the above-mentioned limitations on the scope of the existing presumptions of corruption applicable to gifts and other payments, the Tribunal is recommending that the presumption in Section 4 of the 2001 Act be extended to cover payments made to Officeholders, Oireachtas Members and local councillors or to a third party connected to such a person including a family member or corporate entity where the relevant public official has done any act or made any omission in relation to his or her office or position, or any matter arising there from and where that act or omission is to the benefit of the person making the payment or on whose behalf the payment is made.

7.41 However, the Tribunal is also recommending that this presumption should only arise in relation to payments to public officials, where the payment is one which that public official was required to disclose under the conflicts of interest acts but failed to do so. This then reflects the position under s. 3 of the 2001 Act in respect of political donations. It is based on the premise that where a public official openly and transparently discloses the receipt of a payment as required by law, then the payment is unlikely to be a corrupt one and in fairness to that official, no presumption of corruption should arise in respect of that payment.

SANCTIONS

Undertakings convicted of bribery should be banned from all public tenders for a 7 year period on first offence and indefinitively thereafter

A person convicted of bribery where the purpose of the bribe was to influence a public official in performing his or her public functions in relation to planning or development should be prohibited from applying for planning permission in respect of any land owned by him or her or under his or her control for a 7 year period other than planning permission in respect of his or her own private dwelling

7.42 A person convicted of an offence under the Prevention of Corruption Acts may be sentenced and/or fined. Moreover, as mentioned the 1889 act provides for specific sanctions for public officials convicted of offences under that act. Significantly, in certain instances a person convicted of a corruption offence may also be excluded from certain public procurement contracts under the European Communities (Award of Public Authorities Contracts) Regulations and/or the European Communities (Award of Contracts by Utility Undertakings) Regulations 2007. The offences in question are essentially those provided for under the CJ(TFO)Act 2001. As mentioned, those offences focus on bribery which damages or is likely to damage the European Communities Financial Interests.

7.43 The Tribunal considers that the ability to exclude an undertaking from a public contract is a significant sanction, which, in particular in the case of commercial bribery, may well have a strong deterrent effect. The Tribunal therefore recommends the introduction of such a sanction for bribery offences under the PCA.

7.44 The Tribunal is also recommending the introduction of an equivalent sanction in the case of bribery for the purposes of influencing decisions relating to planning or development. The rationale for this recommendation is similar to the one regarding exclusions from public contracts. Specifically, this Tribunal inquired into a significant number of instances of planning corruption with regard, in particular, to commercial developments. Clearly the expected profit from such development was a potent factor underlying that corruption. As bribery is largely an economic crime, it is to be expected that an increase in the financial risks involved in engaging in corrupt activities will lead to a corresponding reduction in bribery. Implementation of this recommendation will mean that developers who

engage in corrupt activity risk being prevented from developing further properties for a considerable period of time.

WHISTLEBLOWING PROTECTION

A pan sectoral whistleblower protection act should be introduced protecting all those reporting suspected offences and/or breaches of regulatory measures from any form of liability, relief and/or penalisation arising from that report

Pending the introduction of that act, whistleblower protection should be extended

- **under the Prevention of Corruption (Amendment) Act 2010 to:**
  - **Protect independent contractors who report suspicions of corruption from penalisation**
  - **remove the existing limit on the amount of compensation which may be awarded to those penalised for whistleblowing**
- **under the Criminal Justice Act 2011 to cover those reporting or giving evidence on offences under the Public Bodies Corrupt Practices 1889**

7.45 Protection for those who blow the whistle on corrupt transactions is an important element in ensuring their detection and sanctioning. Corruption is frequently an offence committed by wealthy and/or powerful members of the Community and those reporting it may well fear the consequences of doing so for their own careers and employment prospects. Whistleblower protection may help alleviate those fears, thus facilitating the reporting of corruption offences.

7.46 There is no pan-sectoral protection for whistleblowers in Ireland. However, the 2010 Act introduced whistleblower protection for those reporting offences under the prevention of corruption acts. That act protects all person reporting suspected offences under those acts to an “appropriate person” from any liability in damages or any other form of relief, once the report is made in good faith. An “appropriate person” includes a member of the Garda Síochána or an employer, where that suspicion is formed in the course of the person’s employment. The 2010 Act also prohibits an employer from penalising or threatening to penalise an employee for reporting

suspected bribery under the PCA, or from permitting anyone else to do so. Penalising an employee in contravention of this act is an offence. In addition, the employee may be awarded compensation in such amount as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks remuneration.

7.47 The Criminal Justice Act 2011 (the "2011 Act") is also relevant. According to s. 19 of that act, where a person has information which he or she knows or believes might be of material assistance in securing the prosecution or conviction of a "relevant offence" under that act that person must disclose that information to a member of the Garda Síochána, "as soon as practicable". Where an employee discloses such an offence or gives evidence in relation to that disclosure, that act prohibits an employer from penalising or threatening to penalise him or her for doing so. As in the case of the 2010 Act, it is an offence to penalise an employee in contravention of this act and the employee may be awarded such compensation as is just and equitable but not exceeding 104 weeks remuneration. A "relevant offence" includes bribery under the 1906 Act and the CJ(TFO)A 2001, corruption in office under the 2001 Act and certain offences under the CJ(MLTF)A 2010.

7.48 Clearly, the new whistleblower protection provisions included under the 2010 Act and the 2011 Act are a welcome addition to the anti-corruption laws. However, as a general observation, the Tribunal is not convinced that this sectoral approach to whistleblowing protection which has been so favoured by successive governments is the most effective way of providing this protection. In particular, it has lead to a very complex and opaque system for protecting whistleblowers which is likely to deter at least some from reporting corruption offences.

7.49 In so far as the existing legislation is concerned, there are also a number of deficiencies in the scope of whistleblower protection under both the 2010 Act and the 2011 Act. Specifically, both acts confine protection from penalisation to employees. Consequently, independent contractors fall outside the scope of that protection. The Tribunal considers this to be deeply unsatisfactory, in particular because a contractor may be just as vulnerable to penalisation as an employee, particularly when engaged by an undertaking on a long-term basis. Moreover, in some instances, an independent contractor may be more likely to identify corruption than an employee. Specifically, where corruption is pervasive and becomes part of a corporate culture, employees may lose sight of its inherent illegality. In contrast, an

independent contractor who is not tainted by that culture may be quicker to recognise it and report it.

7.50 The fact that compensation under both acts is limited to two years remuneration is also a matter of concern. Specifically, the Tribunal is of the opinion that those who are penalised for reporting possible occurrences of corruption should be given such compensation as is just and equitable, irrespective of whether or not that amount exceeds two years remuneration. Those with the courage and conviction to report corruption offences should not suffer financially for doing so.

7.51 In view of the above, the Tribunal urges the government to re-consider its approach to whistleblower protection and to bring in a general law protecting all whistleblowers at the earliest opportunity. Pending the introduction of such a law, the Tribunal recommends that the whistleblower protection in the 2010 Act and the 2011 Act be extended to cover independent contractors. In addition, those acts should be amended so as to remove the limitation on compensation to two years remuneration. The Tribunal also recommends that the 2011 Act extended to those reporting or giving evidence on offences under the 1889 Act.

CORRUPTION IN OFFICE

The offence of corruption in office contained in s. 8 of the Prevention of Corruption (Amendment) Act 2001 should be amended so as to:

- **Cover any situation where a public official fails or omits to do an act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person**

- **Cover situations where a public official uses any confidential information obtained as a result of his or her office for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person**

- **Define the term "corruptly" so as to cover any acts or omissions on the part of a public official for the purposes of obtaining an unlawful or improper advantage for himself, herself or any other person**

7.52 The offence of corruption in office is committed where a public official does any act in relation to his or her public office for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person. Unlike bribery, the commission of this offence is not dependent on a payment being made to a public official to induce him or her to act corruptly. Instead, it covers situations where the public official acts purely out of his or her own volition. As such, this offence makes an important contribution to the fight against corruption and criminalises behaviour which falls outside the scope of the bribery offences.

7.53 However, the offence also suffers from a number of limitations, which the Tribunal considers restrict its ability to effectively criminalise certain forms of corrupt behaviour on the part of public officials. Specifically, it is not clear from the wording of that section whether it covers situations where a public official fails or neglects to do something in relation to his or her public office.

7.54 Moreover, it does not appear to cover situations where a public official uses confidential information obtained by reason of his or her public office, for his or her own private benefit. Nor is such use necessarily covered by the Official Secrets Act 1963. In particular that Act is concerned with situations where such information is communicated or disclosed to other persons rather than when it is simply used for the public official's own benefit. However, this Tribunal investigated several instances where it was concerned that a public official had used confidential information obtained by that official in his or her official capacity, to his or her own benefit.

7.55 Finally, while the offence only covers situations where a public official does any act in relation to his or her public office for the purpose of "corruptly" obtaining a gift, consideration or advantage, it does not define that term. Moreover, the manner in which that term is defined in s. 1 of the 1906 Act as inserted by the 2010 Act is not particularly useful when applied to this offence. Specifically, that section defines "corruptly" as follows:

> *"corruptly" includes acting with an improper purpose personally or by influencing another person, whether by means of making a false or misleading statement, by means of withholding, concealing, altering or destroying a document or other information, or by any other means.*

As is clear from the above, this definition defines "corruptly" as acting with an improper purpose. However, in the context of the corruption in office offence

the purpose of the term "corruptly" is to distinguish between situations where a public official performs his official functions in the public interest in return for a proper benefit (such as his or her salary) from situations where he or she performs those functions in order to obtain a benefit to which he or she is not legally entitled.

7.56 In view of the above, the Tribunal recommends that Section 8 of the 2001 Act be amended so as to ensure that it covers situations where a public official fails or omits to do any act in relation to his or her office or position for the purpose of obtaining a corrupt advantage. It also recommends that the offence be extended to cover situations where a public official makes unauthorised use of confidential information for his or her own benefit. Finally, the term "corruptly" should be defined so as to cover any acts or omissions on the part of a public official for the purposes of obtaining an unlawful or improper advantage for himself, herself or any other person.

ILLEGAL GIFTS

It should be an offence for a holder of ministerial office to accept and retain a gift or other advantage, of above a nominal value, given to him or her in connection with that office where the gift or advantage is not lawfully due.

7.57 As in the case of political donations, gifts pose an interesting dilemma from the perspective of anti-corruption measures. On the one hand, they are a normal part of social interaction and public officials may be the recipients of entirely legitimate gifts in both their private and public lives. On the other hand, bribes are frequently made under the guise of a gift. Moreover, whether or not that is their purpose, all gifts tend to engender a feeling of reciprocity on the part of the recipient which may also undermine the disinterested performance of his or her public office. Furthermore, even entirely legitimate gifts may easily give rise to an appearance of corruption.

7.58 As discussed above, in certain instances the fact that a public official receives a gift is sufficient to raise a presumption of corruption. Moreover, under the Ethics Acts, an Officeholder is required to surrender to the State a gift received in his or her capacity as an Officeholder where the value of that gift exceeds €650.

7.59 As set out in the part dealing with conflicts of interests, this Tribunal is recommending that a public official should be prohibited from receiving any gift which could be reasonably perceived to be connected with

that office. It is also recommending that public officials be required to disclose other gifts received by them once the value of a particular gift exceeds a specified threshold.

7.60 In view of the risks which gifts pose from an anti-corruption perspective, this Tribunal is recommending, in addition to the above, that it should be an offence for a Minister to retain a gift given in connection with their public office where that gift exceeds €650.

MONEY LAUNDERING

Designated persons should be required to apply enhanced due diligence measures to domestic "politically exposed persons"

The term "politically exposed persons" should be defined so as to apply to senior public officeholders for a minimum of ten years after they have ceased to hold office

7.61 Money laundering is criminalised by the CJ(MLTF)A 2010. That act sets out three money laundering offences which essentially criminalise all acts which either conceal the proceeds of criminal conduct and/or distance those proceeds from their criminal origin. It also contains a number of provisions designed to ensure the prevention and detection of money laundering offences (Anti-money laundering measures, or AML). By and large these provisions impose obligations on those bodies must likely to be used for money laundering purposes ("designated persons"). They require such persons to: identify and monitor their customers ("customer due diligence" or "CDD" measures); have in place procedures to prevent and detect money laundering; report suspicious transaction; keep records; and provide education and training to their staff on money-laundering risks and prevention.

7.62 CDD requirements are one of the main strands of an effective anti-money laundering and counter terrorist financing system. They aim at ensuring that those persons most likely to be used for money laundering activities maintain adequate knowledge of their customers and their customer's financial activities to detect any transactions that may involve money laundering. There are two strands to CDD requirements. First, designated persons must ensure that they adequately identify and verify the identity of all their customers. Secondly, where the designated person has a business relationship with a customer (i.e. an on-going relationship) it must

obtain reasonably warranted information on the purpose and intended nature of that relationship and subject it to on-going monitoring. The objective of this second strand is to ensure that designated persons are in a position to identify activities of customers during the course of the business relationship which are not consistent with the designated person's knowledge of the customer and/or which give rise to a suspicion of money laundering.

7.63 There are various levels of CDD, namely simplified, ordinary and enhanced. Enhanced CDD essentially requires designated persons to subject relationships with certain types of clients to extremely close scrutiny. The CJ(MLTF)A 2010 requires designated persons to apply enhanced due diligence measures to, among others, foreign politically exposed persons (PEPs), their immediate family members and their close associates.

7.64 PEPs are essentially persons in prominent public positions. Such persons are widely considered to pose a particular risk of money laundering because of the possibility that they may be involved in corruption and/or theft of State assets. Specifically, they:

> *Represent a greater money laundering risk because of the possibility that such individuals may abuse their positions and influence to carry out corrupt acts, such as accept and extort bribes and misappropriate state assets, then use domestic and international financial systems to launder the proceeds.*
>
> (World Bank, 2009)

7.65 The Tribunal's own inquiries provide considerable insight into money laundering by PEPs. It therefore fully endorses applying enhanced CDD measures to such persons. However, the Tribunal is of the view that the existing measures suffer from two fundamental defects from an anti-corruption perspective which considerably erode the ability of the CDD measures to combat the type of corruption inquired into by this Tribunal.

7.66 As mentioned, under the CJ(MLTF)A 2010, designated persons are only required to apply enhanced due diligence to PEPs who are resident abroad. Clearly, this limitation very much undermines the usefulness of due diligence for uncovering corruption on the part of domestic PEPs. The Tribunal therefore recommends that the CJ(MLTF)A 2010 be amended so as to extend the requirements to apply enhanced CDD to domestic PEPs.

7.67 In making this recommendation the Tribunal is aware that the existing provisions reflect the requirements of Directive 2005/60/EC, usually referred to as the EU's Third Money Laundering Directive which the CJ(MLFT)A 2010 transposes into Irish law. However, that directive only sets a minimum standard and there is nothing to prevent the State from introducing higher AML standards. Moreover, the Tribunal notes that, the Financial Action Task Force, one of the most prominent international bodies in combating money laundering recommends the imposition of enhanced CDD in the case of domestic PEP's as best practice. Moreover, Article 52 of UNCAC states that each State Party:

> *shall take such measures as may be necessary, in accordance with its domestic law to require financial institutions within its jurisdiction to ..... conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates*.

7.68 Similarly, according to the World Bank Stolen Asset Recovery Initiative ("StAR"):

> *Laws and Regulations should make no distinction between domestic and foreign PEPs. (...) The distinction between foreign and domestic PEPs in existing standards lets prominent domestic public officials, their families and close associates "off-the-hook". There is no justifiable basis for this distinction at this time. All PEPs are exposed to the opportunity to misuse their position for personal gain; therefore, this distinction omits an important risk area.*
>
> *(Greenberg, 2009)*

7.69 The Tribunal is of the view that had designated persons been required to apply enhanced CDD to domestic PEPs during the period at the focus of its inquiries, much of the corruption which occurred during that period might never have happened or at the very least would have been discovered much earlier. Moreover, it considers that requiring designated bodies to apply CDD measures to domestic PEPs is likely to increase the credibility of the government's commitment to combating corruption and is an important component in a Top-Down approach to this issue.

7.70 In the Tribunal's view, a second defect stems from the definition of a "PEP" in the CJ(MLTF)A 2010. That act defines a PEP as "an individual who is, or has at any time in the preceding year, been entrusted with a prominent public function." It therefore applies to both individuals who are current

holders of such a function and those who have held such a function in the previous year.

7.71 The Tribunal considers that designated persons should apply enhanced due diligence to persons formerly entrusted with a prominent public function for a significantly longer period of time than is currently required. Specifically, it is altogether possible that payments resulting from corrupt agreements will only be paid to a public official once he has ceased to be entrusted with those functions in order to reduce the likelihood of those payments being identified. There is no reason to believe that such payments are likely to be confined to the year after this happens. According to the Stolen Asset Recovery Initiative:

> *Evidence suggests that corrupt PEPs do not cease to move illicit funds after leaving office and some may continue to receive payments. Indeed public officials, their families and close associates may wait until after leaving to move the funds. This problem is intensified the shorter the time period the PEP continues to be treated as a PEP.*
>
> *(Greenberg, 2009)*

7.72 The Tribunal considers that a PEP should be subject to enhanced due diligence requirements for a 10 year period after they cease to be entrusted with public functions. While any pre-determined period of time is inevitably arbitrary, the Tribunal believes that the majority of corrupt payments to PEPs are likely to emerge in this time. Moreover, obviously, after the expiry of the ten years, it would still be open to a designated body to continue to apply enhanced CDD to their dealings with that person on a risk assessment basis.

CASH TRANSACTION REPORTING

Consideration should be given to imposing a cash transaction reporting requirement obliging designated bodies to alert the authorities to cash transactions in excess of a specified sum

7.73 The advantage of requiring designated bodies to report all cash transactions exceeding a specified threshold is that it would mean that where a designated bodies CDD measures fail to uncover the true client, that there is still an alert system in place to ensure that significant transactions are subject to enhanced scrutiny.

7.74 The Tribunal notes that Rec. 19(b) of the FATF's Forty Recommendations, which is a key international instrument for combating money laundering, recommends that countries consider:

> *the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information*.

7.75 Moreover in Article 14(2), UNCAC also suggests that States Parties consider imposing cash reporting obligations:

> *States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments*.

7.76 A number of countries have implemented cash transaction reporting requirements, including the U.S. and Australia. Both these countries require financial institutions to record and report to designated authorities all transactions involving currency or bearer instruments in excess of $10,000.

7.77 The Tribunal considers that cash transaction reporting requirements could prove an important tool in combating corruption. The Tribunal inquired into several transactions involving the movement of large sums of money which would have triggered such requirements had they existed at the relevant time. Nevertheless, the Tribunal is aware that such requirements can have significant privacy and resource implications. It is for this reason that it is confining its recommendations to asking the authorities to consider implementing such a system. The ultimate decision as to whether or not to implement such a requirement must evidently rest on a thorough cost-benefit analysis.

ASSET RECOVERY

The Tribunal recommends:

1. **Consideration should be given to introducing a single procedure for conviction based asset recovery measures**

2. **Where a person has been sentenced or otherwise dealt with by a court in respect of one or more corruption offences of which he or she has been convicted on indictment, the court may proceed to determine whether that person has benefitted from those offences**

3. **Where the D.P.P. makes an application to the court to determine whether a convicted person holds funds subject to confiscation, the court should be required to conduct an inquiry for the purposes of making that determination**

4. **Once a court determines that a person has benefitted from a corruption offence, that court should be required to make a confiscation order to the value of that benefit or the person's realisable assets, whichever is the less**

8.01 The seizure and confiscation of funds and/or other assets derived from the proceeds of crime comprises a key element in combating corruption. Specifically, as previously mentioned, corruption is primarily motivated by profit. In the case of bribery, the public official (or third party) profits as a result of the bribe and the briber may profit by being awarded a benefit to which he or she may not be otherwise entitled. For example, the quid pro quo for the payment of the bribe may be the award of a profitable public procurement contract, the rezoning of land, a job or other similar benefit. The fact that the bribe and/or any benefits derived from the payment of the bribe may be confiscated is likely to constitute a deterrent to at least some individuals who would otherwise be prepared to engage in such activity. Moreover, confiscation may also reduce the ability of persons involved in bribery to pay the bribes. Specifically, where the benefits of bribery are confiscated, this clearly prevents those benefits from being used to fund other bribes.

8.02 Generally, conviction based recovery is concerned with the recovery of the benefits derived from a crime after a conviction on indictment has been secured. In contrast, civil recovery allows the restraint and recovery of assets suspected of having criminal origins without the necessity of securing a criminal conviction. In so far as corruption is concerned, non-conviction based recovery has several advantages over recovery which is dependent on the existence of a conviction. In particular, there is no requirement for a conviction, which, as previously discussed, may be difficult to obtain in corruption cases.

8.03 In Ireland, confiscation may be ordered either following a criminal conviction or on a civil basis. The provisions regulating conviction based recovery are contained in the Criminal Justice Act 1994 (the "1994 Act"). Those regulating non-conviction based recovery are set out in the Proceeds of Crime Acts 1996 and 2005. Overall, these provisions are relatively robust. However, the Tribunal is making a small number of recommendations affecting the criminal confiscation provisions which it believes will improve their overall effectiveness as a tool for combating corruption.

THE CRIMINAL JUSTICE ACT 1994

Consideration should be given to introducing a single procedure for conviction based asset recovery measures

8.04 The 1994 Act provides for three distinct confiscation regimes which focus, respectively, on confiscation in respect of: drug trafficking offences; financing terrorism offences; and other offences for which a person has been

convicted on indictment. There are significant differences between the three regimes. Overall, the provisions applicable to drug trafficking offences are considerably more stringent that those which apply to other indictable offences.

8.05 The Tribunal doubts the wisdom or necessity of having three separate procedures for conviction based recovery depending on the classification of the conviction offence. In particular, it considers that the existence of the three procedures makes the law in this area needlessly complex and obtuse. Moreover, the Tribunal does not consider drug trafficking offences to be so different from other types of offences to warrant a separate, more stringent confiscation procedure.

8.06 Overall, the Tribunal believes that there would be considerable merit in combining the three existing procedures in order to provide for one single procedure governing all conviction based recovery and recommends the introduction of such a procedure.

DISCRETION TO INQUIRE

The court of sentencing should be permitted to determine whether or not a person convicted of corruption on indictment has benefitted from an indictable offence where it considers it appropriate to do so

Where the D.P.P. makes an application to the court to determine whether a convicted person holds funds subject to confiscation, the court should be required to conduct an inquiry for the purposes of making that determination

8.07 Under the now existing legislation, where a person is convicted of an indictable offence such as corruption, the court can only inquire into whether or not that person has benefitted from that offence on application by the D.P.P. it is clear from that legislation that the D.P.P has a discretion as to whether or not to make such an application. Moreover, once an application is made, the court has a discretion as to whether or not to conduct the inquiry.

8.08 The Tribunal is concerned that entrusting the power to initiate an inquiry as to whether or not a convicted person has benefitted from a corruption offence exclusively to the D.P.P. results in an over concentration of power in the hands of the D.P.P. Moreover, the Tribunal does not see any rationale for so restricting that power.

8.09 Consequently, the Tribunal recommends that where a person has been convicted of an offence on indictment, the court should have a discretion as to whether to conduct an inquiry into whether or not the convicted person has benefitted from an offence in any case where it considers it appropriate to do so. Moreover, where the D.P.P. applies to the court for a determination as to whether nor not a person has benefitted from an offence, the court should be required to conduct such an inquiry.

8.10 The Tribunal notes that in the case of drug trafficking offences, once a person is convicted on indictment of a drug trafficking offence, the court must then proceed to inquire as to whether that person has benefitted from drug trafficking.

VALUE OF ORDER

Where a person has benefitted from a corruption offence, the court should be required to make a confiscation order to the value of that benefit, subject to certain restrictions

8.11 Currently, if a court determines that a convicted person has benefitted from a corruption offence, than that court has a discretion as to whether or not to make a confiscation order and as to the amount of that order. However, the court may not make a confiscation order where the value of that order is greater than the amount of that person's realisable assets. In addition, in making the order it may take into account any information placed before it showing that a victim of an offence to which the proceedings relate has instituted or intends to institute civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.

8.12 The courts broad discretion in the case of such offences contrasts with the situation applicable in the case of both drug trafficking offences and terrorist financing offences. Specifically, where a court determines that a person convicted of drug trafficking offences has benefited from drug trafficking, it must make a confiscation order to the value of that person's proceeds from drug trafficking once that value does not exceed his or her realisable assets. Similar provisions apply in instances where the court determines that a person convicted of a financing terrorism offence holds funds that are the proceeds of such an offence or which are used or allocated for use in connection with an offence of financing terrorism.

8.13 Again, the Tribunal does not see any justification for treating corruption offences differently from drug trafficking offences in this way. Like drug trafficking offences, offences like bribery, corruption in office and money laundering are primarily motivated by profit. Consequently, confiscating that profit is likely to have the same deterrent effect for those offences as for drug trafficking offences.

8.14 The Tribunal therefore recommends that once a person is convicted of a corruption offence and a court determines that that person has benefitted from that offence, then the court must make a confiscation order in that amount as long as that amount does not exceed the value of that person's realisable assets. In addition, in making the order, the court may take into consideration any information placed before it showing that a victim of an offence to which the proceedings relate has instituted or intends to institute, civil proceedings against the defendant in respect loss, injury or damage suffered in connection with the offence.

OTHER RECOMMENDATIONS

The Tribunal recommends:

1. **Placing increased focus on corruption prevention, including: the provision of advice and training; public awareness raising; researching and reviewing the effectiveness of the anti-corruption measures; and emerging trends in corruption prevention**

2. **Providing for increased transparency over the ownership of corporate vehicles**

3. **Amending the Tribunals of Inquiry Evidence Acts 1921 – 2004 so as to empower a Tribunal of Inquiry to:**
   - **require any person to attend to answer questions at private interview and to provide a written statement setting out those answers**
   - **order the discovery of documents without prior notice**
   - **enter business premises and inspect and seize documents relevant to its inquiries and to obtain a warrant for the purpose of entering other premises for these purposes**

4. **Amending the Tribunals of Inquiry Evidence Acts 1921 – 2004 to stipulate that the terms of reference of a Tribunal of Inquiry should be drafted as precisely as possible**

9.01 While the previous chapters each dealt with specific subject-matters, this chapter contains a number of recommendations covering a number of miscellaneous topics. As in the case of the recommendations contained in those other chapters, the Tribunal is convinced that, if adopted the recommendations in this chapter will make an important contribution to combating corruption.

9.02 The Tribunal is aware that several commentators have called for the establishment of an anti-corruption commission with the specific mandate of monitoring and investigating corruption. The Tribunal itself has given extensive consideration to whether to recommend the establishment of such a commission. Ultimately, however, it has decided not to make a recommendation to this effect.

9.03 The Tribunal is cognisant of the fact that where an anti-corruption commission enjoys sufficient political and financial independence it can make an important contribution to combating and uncovering corruption. It is also aware of several anti-corruption commissions in other jurisdictions, including in particular Hong Kong and Australia, which have made a significant contribution to combating corruption.

9.04 Nevertheless, the Tribunal does not believe that the establishment of an anti-corruption commission is a pre-requisite for combating corruption. Specifically, it is of the view that the tasks which would normally be entrusted to such a commission, namely, prevention, monitoring and investigation, can just as effectively be dispersed among a number of different institutions. In the Tribunal's opinion, while it is crucial that each of these tasks be performed, it is not necessary that they be performed by a single institution.

9.05 The Tribunal notes that its view on this issue is well-supported. Specifically, it is generally agreed that a multiple agency approach to corruption can be as effective as a uni-agency approach and the experiences of countries such as New Zealand and Canada appear to bear this out.

9.06 Obviously, however, an effective multi-agency approach is dependent on the various agencies involved in anti-corruption co-operating with each other and adopting a coordinated approach to combating corruption. The Tribunal urges the existing agencies to ensure the co-operation and co-ordination necessary to make Ireland's fight against corruption fully effective.

PREVENTION

Increased focus should be placed on corruption prevention, including: the provision of advice and training; public awareness raising; researching and reviewing the effectiveness of the anti-corruption measures; and emerging trends in corruption prevention

8.01 Prevention is a vital component in the fight against corruption and a mechanism which places strong emphasis on prevention is likely to have several advantages over one whose main emphasis is on investigating and sanctioning breaches. Moreover, in contrast to enforcement, prevention helps avoid the cynicism and disillusionment which almost inevitably accompanies corruption:

> *In one sense, a prosecution for public corruption is an admission of systemic failure. Large numbers of arrests and prosecutions do nothing to reinforce the public's belief in the fairness and legitimacy of government institutions*
>
> Amy Comstock (2007)

8.02 Key components of preventative action include: providing advice and training to elected representatives; educating the general public regarding the dangers of corruption and the measures being take to combat it; and research.

8.03 To some extent these functions are already carried out by existing anti-corruption institutions. For example, SIPO provides advice regarding the conflicts of interests acts and the political finance acts. Nevertheless, there is currently no institution empowered to educate the public regarding the dangers of corruption, a key element of corruption prevention. Moreover, the Tribunal is not aware of any specific efforts in the public sector as a whole aimed at training public officials on corruption and anti-corruption measures.

8.04 The Tribunal is of the view that far greater emphasis needs to be put on corruption prevention, both by strengthening the existing functions and by providing for the performance of functions which are not currently performed. Amongst the most striking features of the corruption inquired into both by this and other Tribunals of Inquiry were the widespread public knowledge and/or belief in its existence at the time it occurred. That, for the most part, this knowledge or belief did not translate into public disapproval at the ballot box or elsewhere, or indeed any sort of sanction is in our view particularly disquieting. Until we, the electorate, are prepared to take corruption seriously and sanction those elected representatives who use their public office for private gain then all

other measures are likely to be ineffective. If morality and ethics are not a priority for the electorate then they will not be a priority for its representatives. Public education has an important role to play in reminding the public of the dangers of corruption and the importance of combating it.

8.05 Placing more emphasis on corruption prevention does not necessarily require the establishment of a specialised corruption prevention agency. Specifically, there appears to be nothing to prevent these functions from being distributed among existing institutions and indeed this may be the more effective approach.

8.06 The Tribunal therefore recommends that increased focus be placed on corruption prevention, including advice, training, public awareness raising, research and reviewing the effectiveness of the anti-corruption measures and emerging trends in corruption prevention.

8.07 In doing so, the Tribunal notes that UNCAC requires State Parties to ensure the existence of a body or bodies that prevent corruption including by implementing the policies set out in Article 5 of that convention, and increasing and disseminating knowledge about the prevention of corruption.

CORPORATE ENTITIES

There should be increased transparency over the ownership of corporate vehicles

8.08 Corporate vehicles are an essential part of the economy. As well as playing a central role in economic activity, they are also the instruments though which some individuals may chose to manage their wealth and collect funds for charitable activities.

8.09 However, it is also clear from the inquiries conducted by this and other Tribunals of Inquiry that corporate vehicles frequently play a central role in concealing corruption. Such vehicles include, in particular, companies and trusts. From a corruption perspective, the attraction of such vehicles is doubtlessly the fact that they afford a relatively easy method of concealing the identity of the individuals who either own or control them. This in turn enables those individuals to distance themselves from their involvement in corrupt transactions and impedes attempts by both investigators and prosecutors to either identify or prosecute those individuals.

Almost every economic crime involves the misuse of corporate entities – money launderers exploit cash-based businesses and other legal vehicles to disguise the source of their illicit gains, bribe-givers and recipients conduct their illicit transactions through bank accounts under the names of corporations and foundations, and individuals hide or shield their wealth from tax authorities and other creditors through trusts and partnerships, to name but a view examples.

OECD (2001)

8.10 The problems posed by corporate entities arise from the fact that the person with legal title to those entities is not necessarily the person with beneficial ownership, namely the person who ultimately owns or controls that entity. For investigators, therefore, the challenge is to identify the beneficial owner.

8.11 There are various ways of identifying the beneficial owner of a corporate entity in this jurisdiction most of which depend on an application being made for a court order for the disclosure of beneficial interest. These include applications under the Companies Acts 1990 and under the Proceeds of Crime Act 2005. In addition, to these types of orders, directors and secretaries of companies incorporated under the Companies Acts must notify the company of their interests in shares or debentures held in that company or its subsidiary. Moreover, under the Criminal Justice (Money Laundering and Financing Terrorism Act) 2010, designated persons are under relatively extensive obligations to identify the beneficial ownerships of their clients or customers.

8.12 Despite these provisions, the Tribunal is concerned that there is a marked lack of transparency over the beneficial ownership of many types of corporate vehicles operating in this jurisdiction. Moreover, one of the problems with relying on a disclosure order to obtain information regarding beneficial ownership is that they are likely to be sought at precisely the time when the beneficial owner has the most incentive to ensure that he or she distances him or herself from the company as much as possible.

8.13 In the course of its inquiries, the Tribunal encountered significant problems in identifying beneficial owners. The Tribunal notes that the Financial Action Task Force has also expressed concern regarding the lack of transparency concerning beneficial ownership or control of legal persons or entities in this jurisdiction.

8.14 Given the extent to which corrupt activities tend to feature corporate entities and the general lack of transparency over the beneficial ownership of such entities, the Tribunal urges that measures be introduced to address this lack of transparency as a matter of priority. The Tribunal is aware of the immense complexity of the problem of ensuring transparency in this area and that the most effective way of doing so has been the subject of considerable debate at international level. Nevertheless, it does not believe that this complexity should in itself be an excuse for failing to address this pressing problem.

TRIBUNALS OF INQUIRY

A Tribunal of Inquiry should be empowered to:

- **require any person to attend to answer questions at private interview and to provide a written statement setting out the answers to those questions**

- **order the discovery of documents without prior notice**

- **enter business premises and inspect and seize documents relevant to its inquiries and to obtain a warrant for the purposes of entering other premises for these purposes.**

The Tribunals of Inquiry Evidence Acts 1921 – 2004 should be amended so as to stipulate that the terms of reference of a Tribunal of Inquiry should be drafted as precisely as possible

8.15 Throughout the 1990's, Tribunals of Inquiry conferred with the statutory powers set out in the Tribunals of Inquiry (Evidence) Acts 1921 – 2004, were the method of choice for investigating allegations of political corruption. Tribunals conferred with those powers are established to inquire into "*definitive matters of public importance*". As observed by the High Court in Bailey v Flood, the usual impetus for their establishment is "*urgent matters causing grave public disquiet need to be investigated in order to either root out the wrongdoing or to expose the concerns as misplaced*."

8.16 Over the course of its inquiries, this Tribunal gained considerable experience in the strengths and weaknesses of conducting investigations by way of a Tribunal of Inquiry. Based on this experience, the Tribunal is making the following recommendations which are principally designed to improve the efficacy and/or speed of a Tribunal's investigation. The Tribunal is aware that the Moriarty Tribunal has also made a number of recommendations regarding

Tribunals of Inquiry. The Tribunal endorses these recommendations wholeheartedly.

8.17 The powers conferred on Tribunals of Inquiry under the Tribunal of Inquiry Acts are relatively robust and include the power to: compel persons to furnish information; order the discovery or production of documents; require the attendance of witnesses and examine witnesses on oath. Nevertheless, the Tribunal is also recommending that Tribunals be given the power to direct any person to attend for private interview in order to answer questions that it believes to be a relevant to a matter under investigation and to provide a written statement setting out the answers given by that person while being interviewed. The Tribunal believes that such a power would significantly reduce the length of both a Tribunal's private and public inquiries, and consequently, its costs.

8.18 The Tribunal also recommends that the powers conferred by the Tribunals of Inquiry Acts be extended so as to provide for the power to make Orders for Discovery without prior notice and seize documents on foot of a court order. While those acts permit Tribunals to order the production of documents, they do nothing to prevent the risk of documents being destroyed once a Tribunal's interest in them becomes apparent. This Tribunal believes that documents material to its inquiry were put beyond the Tribunal's reach either through concealment or destruction on more than one occasion and that at times this occurred after the relevant parties were put on notice of the Tribunal's intention to make a production order regarding those documents. The Tribunal consequently recommends that those acts be amended so as to enable a Tribunal of Inquiry to enter business premises for the purpose of inspecting and seizing documents relevant to its inquiries. The Tribunal also recommends that a Tribunal of Inquiry be empowered to apply to the District Court, in camera, for a warrant authorising entering to a private dwelling where a Tribunal has reasonable grounds for suspecting that there are any documents in that dwelling which are relevant to its inquiries and required by it for the purposes of its investigation.

8.19 The Tribunal notes that similar powers to some of the ones which it is recommending are already conferred on Commissions of Investigation under the Commissions of Investigation Act 2004. As appears clear from that Act, a Tribunal of Inquiry may be established to inquire into a matter which has already been investigated by a Commission of investigation, consequently, it appears logical that a Tribunal's powers of investigation should be at least as extensive as those of such a Commission.

CHAPTER EIGHTEEN – RECOMMENDATIONS

CONFLICTS OF INTEREST

1.01 The purpose of this section is to give an overview of measures aimed at regulating conflicts of interest both internationally and in the following jurisdictions: Australia, Canada, and the United Kingdom. Rather than giving a comprehensive overview of those measures, it focuses on those which are of most relevance to this Tribunal's recommendations. It should be noted that these are not the only measures which the Tribunal considered for the purpose of its recommendations.

INTERNATIONAL ORGANISATIONS

1.02 The U.N., the OECD, and the Council of Europe have each adopted measures aimed at ensuring the proper management of conflicts of interest on the part of public officials.

THE OECD

1.03 Measures adopted by the OECD include: Recommendation on Principles of Managing Ethics in the Public Service (1998) (the "OECD's 1998 Principles"); Trust in Government Ethics Measures in OECD Countries (2000); The OECD Guidelines for Managing Conflicts of Interest in the Public Service (2003) (the "OECD Guidelines); and Managing Conflicts of Interest in the Public Sector – A Toolkit (2005) (the "OECD Toolkit). Of these, the latter two are of particular importance.

1.04 The OECD Guidelines seek to help member countries to consider existing conflict of interest policy and practice relating to public officials who work in the national public administration at central government level. They also provide general guidance for other branches of government, sub-national level government and state-owned corporations. The Guidelines comprise four sections. The first of these identifies four core principles for managing conflicts of interest, namely: serving the public interest; supporting transparency and scrutiny; promoting individual responsibility and personal example; and engendering an organisational culture which is intolerant of conflicts of interest. These principles include: exercising public functions without regard for personal gain or preferences; disposing of interests giving rise to conflicts of interest; refraining from the exercise of public functions likely to affect private interests; controlling the use of inside information; disclosure; and compliance. The second section focuses on the development of a conflict of interest framework. Pursuant

to the Guidelines, a Conflict of Interest framework should: identify relevant conflict of interest situations; and establish procedures for their identification, management and resolution. The other two sections focus on implementation and enforcement.

1.05 The OECD Toolkit provides a set of practical solutions for developing and implementing ways to manage conflicts of interest in accordance with the OECD Guidelines for Managing Conflict of Interest in the Public Service. It focuses on specific techniques, resources and strategies for identifying, managing and preventing conflict of interest situations more effectively and increasing integrity in official decision-making which might be compromised by conflicts of interest. It contains 15 tools in all. The first three deal with key concepts, including how to define, identify and manage actual, apparent and potential conflicts of interest. Tool 6 is related to those first three in that it sets out a self-test for diagnosing conflicts of interest. Meanwhile, Tool 4 contains a generic check list for identifying "at risk" areas for conflicts of interest for an organisation. In addition, Tool 8 sets out a gifts and gratuities checklist to be used for identifying whether acceptance of a gift could give rise to a conflict. A number of other provisions contain model laws for adaptation by State Parties. In this respect, Tool 5 sets out draft model law/ethics code clauses in respect of key principles for a modern code of ethics or anti-corruption law for the public sector. Tool 7 consists of a suite of generic draft clauses for enforcing the fundamental definition of a conflict of interest. It also sets out a model form contract for the purpose of encouraging compliance with ethical standards by former officials. Tool 9 comprises a model generic law on gifts for officials. Tool 10 and 11 both relate to the registration of assets. The former is a short form for the registration of personal interests and assets while the latter comprises a model law on the registration of interests and assets.

The UN

1.06 The UN has adopted two instruments dealing with conflicts of interest: the UN International Code of Conduct for Public Officials (1996) and the United Nations Convention against Corruption (2003).

1.07 The International Code is recommended to UN Member States as a "*tool to guide their efforts against corruption*" and applies to those holding "public office" as defined by national law. It comprises a basic set of recommendations that national public officers should follow when performing their duties. In this respect, it sets out three general principles regarding the exercise of public office as well as specific provisions dealing with conflicts of interest. The three general principles are that public officers should be: loyal to

the state's institutions; act efficiently, effectively and with integrity in the performance of their duties; and be attentive, fair and impartial in the performance of their functions. The specific provisions cover matters such as conflict of interest; disclosure of assets; acceptance of gifts or other favours; use of confidential information and involvement in political and other activity.

1.08 Chapter 2 of UNCAC focuses on preventive measures against corruption and related standards and procedures. That Chapter recognises that provisions dealing with conflicts of interest on the part of public officials are instrumental to the achievement of transparency in the public sector. The term "public official" is defined to include any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority.

1.09 Chapter 2 addresses conflicts of interest specifically in two Articles: Articles 7 and 8. Pursuant to Article 7(4) State Parties are required, in accordance with the fundamental principles of their domestic law, to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest. For its part, Article 8 is entitled "Codes of Conduct for public officials" and comprises a mixture of mandatory and optional provisions. With regard to the former, each State Party is required to promote integrity, honesty and reliability among its public officials. In pursuing this objective, State Parties must, where appropriate, take account of other relevant initiatives, including the aforementioned 1996 code. In so far as the optional provisions are concerned, Article 8 provides that State Parties must endeavour to apply codes or standards of conduct for the correct, honourable and proper performance of public functions. They must also endeavour to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

1.10 The United Nations has also published a number of documents which provide further clarification on these provisions and recommended best practice. These include, in particular: the UN Guide on Anti-Corruption Policies (2003); the UN (Draft) Manual on Anti-corruption Policy (2001) and the UN Anti-Corruption Tool Kit (2004).

THE COUNCIL OF EUROPE

1.11 The Council of Europe has adopted a number of instruments which impact on conflicts of interest, in particular; Resolution (97) 24 on the twenty guiding principles for the fight against corruption (the "twenty guiding principles"); Recommendation (2000)10 on Codes of Conduct for Public Officials ("Recommendation (2000)10"), which includes a Model Code of Conduct for Public Officials; and the Council of Europe's Parliamentary Assembly Resolution 1214(2000) on the Role of Parliaments in Fighting Corruption ("Resolution 1214"). In addition, the Council of Europe's Congress of Local and Regional Authorities of Europe has adopted Recommendation 60(1999) on Political integrity of local and regional elected representatives, which contains in its appendix the European code of conduct for the political integrity of local and regional elected representatives. The Council of Europe's Steering Committee on Local and Regional Democracy has also published a Model Initiatives Package on Public Ethics at local level (2004)

1.12 The twenty guiding principles contain a number of principles relevant to conflicts of interest. Principle 15 recommends, inter alia, that national authorities encourage the adoption, by elected representatives, of codes of conduct. Other principles stipulate, in particular, that States must take effective measures for the prevention of corruption and to raise public awareness and promote ethical behaviour. Moreover, they must ensure that the organisation, function and decision-making of public administrations takes into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness.

1.13 Recommendation (2000)10's model code has three objectives: to specify the standards of integrity and conduct to be observed by public officials; to help them meet these standards; and to inform the public of the conduct it is entitled to expect of public officials. It contains a series of general principles dealing with, inter alia, conflicts of interests, incompatible outside activities; offers of undue advantage and gifts, misuse of official position, use of official information and public resources for private purposes and post-term employment.

1.14 Resolution 1214 provides, inter alia, that Parliamentarians should declare their own and their families financial interests annually and recognises that the proper declaration of sources of income and of potential conflicts of interest is particularly important.

1.15 Pursuant to the European Code of Conduct, elected representatives must disclose conflicts of interest and abstain from deliberating or voting on matters in respect of which they have such a conflict. They are also prohibited

from exercising their public powers so as to benefit their own or a third party's private interests.

1.16 The model initiatives package is a collection of good practice ideas to be taken into account when states are considering the implementation of policies aimed at giving assurance that appropriate ethical behavior is being followed at local level.

SELECTED JURISDICTIONS

1.17 As mentioned, the Tribunal also considered measures regulating conflicts of interest in a number of selected jurisdictions, namely Australia, Canada, and England.

AUSTRALIA

1.18 The Australian Parliament comprises a Senate and a House of Representatives, both of which are subject to a number of conflict of interest measures contained in standing orders and resolutions. In addition, a code of conduct entitled Standards of Ministerial Ethics (2007), which applies to Ministers, contains a number of conflict of interest measures. There is no code of conduct for senators or members of the House of Representatives.

1.19 Members of the Senate and House of Representatives must each make periodic disclosures of interest. In the case of Senate Members, this obligation arises pursuant to a resolution of the Senate of 17 March 1994, as amended on 21 June 1995, 13 May 1998, 22 November 1999, 15 September 2003 and 10 August 2006. In the case of Members of the House of Representatives, the obligation is set down in a resolution of that House of 9 October 1984, which has been amended by the resolutions of the House of 22 October 1986, 30 November 1988, 9 November 1994, 6 November 2003 and 13 February 2008. Members of the Australian Parliament are not required to make ad hoc disclosures. Ministers must make both periodic and ad hoc disclosures. Certain interests are also subject to further regulation.

Periodic Disclosure

1.20 A Member of either the House of Representatives or the Senate must disclose his or her own registrable interests and those of his or her spouse and dependent children of which he or she is aware (collectively "relevant persons").

1.21 Interests which must be disclosed include, inter alia: equitable and legal shareholdings in public and private companies; family and business trusts

and nominee companies in which a relevant person holds a beneficial interest or is a trustee; real estate, including the family home; liabilities, indicating the nature of the liability and the creditor concerned; the nature of any bonds, debentures and like investments; saving or investment accounts, indicating their nature and the name of the bank or other institutions concerned; any other assets valued at over $7,500 excluding household and personal effects; any other substantial sources of income; and any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

1.22 Each Member must make disclosure to the Registrar of Members' Interests within 28 days of becoming a Member of either the House of Representatives or the Senate. In addition, a member of the House of Representatives must notify the Registrar within 28 days of any alteration to the interests disclosed, while a member of the Senate must disclose this information within 35 days of the alteration occuring. In both cases, the Register of Interests is laid before the relevant House In both cases details of a Members own interests are also made available for public inspection. However, in the case of the Senate, statements of the registrable interests of a senator's spouse or partner or of any dependent children are kept confidential except where the Committee of Senators' Interests considers that a conflict of interest arises, at which time that committee may table a declaration.

1.23 Any Member of either House who fails to provide a required statement of interests or to notify an alteration in those interests or who knowingly provides false or misleading information to the Registrar of Members' Interests is guilty of a serious contempt of the House of Representatives or the Senate, as the case may be, and is dealt with by the House accordingly. The House's power to punish includes reprimand and suspension from the service of the House for a period of time.

Ad Hoc Disclosure

1.24 As mentioned, Australian Parliamentarians are not obliged to make an ad hoc declaration of interests. However they are advised to declare at committee meetings any interests where there may be, or may be perceived to be, a possible conflict of interest.

1.25 Ministers must ensure that they declare any private interests held by them or members of their families which give rise to, or are likely to give rise to, a conflict with their public duties. In particular, Minister must, in relation to the matters under discussion in Cabinet or a committee of the Cabinet, declare any private interests, pecuniary or non-pecuniary, held by them or members of their

immediate family of which they are aware, which give rise to, or are likely to give rise to, a conflict with their public duties.

Further Regulation

1.26 A Member may not vote on a matter in which he or she has a direct pecuniary interest, other than matters of public policy. While the term "pecuniary interest" is not defined it appears to be restricted to a pecuniary interest which is personal to the Member and is not shared with the general public. A member is not permitted to sit on a committee if he or she has a direct pecuniary interest in a matter before that Committee.

1.27 Interests held by Ministers are subject to relatively strict regulation pursuant to the Standards of Ministerial Ethics (2007).

CANADA

1.28 At federal level, Canadian efforts to regulate conflicts of interest are rooted in particular in the Conflict of Interest Act which applies to public officeholders. Members of the Canadian House of Commons are regulated by the Conflict of Interest Code for Members of the House of Commons, while Members of the Senate are regulated by the Conflict of Interest Code for the Senate.

PUBLIC OFFICEHOLDERS

1.29 For the purpose of the Conflict of Interest Act, the term "public officeholder" includes: Ministers, members of ministerial staff, ministerial advisors, Governor in Council appointees serving on Crown corporations, agencies, boards and commissions; and some ministerial appointees. That act provides for the identification of conflicts of interest through disclosure as well as a number of other measures designed to further regulate such conflicts.

Disclosure

1.30 A "reporting public office holder" must provide a confidential report to the Conflicts of Interest and Ethics Commissioner setting out details of various interests specified in the Conflict of Interest Act.[1] A reporting public office holder must also make a number of other disclosures relating to; certain assets, liabilities, outside activities, gifts and offers of outside employment as well as the acceptance of such offers. In addition, a public office holder is required to recuse

[1] Conflict of Interest Act, s. 22(1)

him or herself in situations where he or she has a conflict of interest and must then disclose the reason for his or her recusal.

1.31 The term "reporting public office holder" refers to, inter alia: a public office holder who is a minister of the Crown, minister of state or parliamentary secretary; a ministerial advisor or staff member; as well as certain Governor in Council or ministerial appointees.[2]

Confidential Report

1.32 All reporting public office holders must provide a confidential report setting out certain interests specified in the Conflict of Interest Act.[3] A minister of the Crown, minister of state or parliamentary secretary must also make reasonable efforts to include in that report information relating to interests held by his or her family members.[4]

1.33 The confidential report must contain a description of:[5] all the reporting public officeholder's assets and an estimate of their value; all his or her direct and contingent liabilities, including the amount of each liability; all income received by the reporting public office holder during the 12 months before the day of appointment and all income he or she is entitled to receive in the 12 months after the day of appointment; any employments or occupations in which the reporting public officeholder was engaged in the two-year period prior to the day of appointment; a description of his or her involvement in philanthropic, charitable or non-commercial activities in the two year period before the day of appointment; and all of the reporting public officeholder's activities as trustee, executor or liquidator of a succession or holder of a power of attorney in the two year period prior to the day of appointment. It must also contain any information that the Commissioner considers necessary to ensure that the reporting public officeholder is in compliance with the Conflict of Interest Act.

1.34 In addition, the reporting public officeholder must include in the report a description of all benefits that he or she, any member of his or her family or any partnership or private corporation in which he or she or a member of his or her family has an interest is entitled to receive during the 12 months after the day of appointment, as a result of a contract with a public sector entity and the report must include a description of the subject-matter and nature of the contract.[6]

[2] Conflict of Interest Act, s. 2(1)
[3] Conflict of Interest Act, s. 22(1)
[4] Conflict of Interest Act, s. 22(3)
[5] Conflict of Interest Act, s. 22(2)
[6] Conflict of Interest Act, s. 22(4)

1.35 A reporting public office holder must submit his or her confidential report to the Commission within 60 days of being appointed as a public office holder.[7] If there is any material change in any matter covered in the report, the reporting office holder must report that change within 30 days.[8]

Public Declarations

1.36 A reporting public office holder must publicly declare certain types of interests within 120 days after the day he or she is appointed as public officeholder, namely; certain assets, liabilities and outside activities.

1.37 A reporting public officeholder must make a public declaration of all his or her assets save those that are either controlled assets or exempt assets.[9] Controlled assets are essentially assets whose value could be directly or indirectly affected by government decisions or policy. Generally, reporting public officeholders must divest such assets. Exempt assets are assets and interests in assets for the private use of public officeholders and the members of their family and assets that are not of a commercial character. Although a reporting public officeholder need not declare controlled or exempt assets he or she must disclose those assets to the Conflict of Interest and Ethics Commissioner.

1.38 Where a reporting public officeholder is a director or officer in a Crown corporation or in an organization of a philanthropic, charitable or non-commercial character, he or she must publicly declare that fact.[10] However, a public officeholder may only hold such a position if the Conflict of Interest and Ethics Commissioner is of the opinion that it is not incompatible with his or her public duties as a public office holder.[11]

1.39 A reporting public office holder must also make public disclosure of gifts valued at more than $200 received from someone other than a relative or friend, within 30 days of accepting the gift or advantage.[12] Similar rules apply to the acceptance of travel save that there is no minimum value threshold.

1.40 A minister of the Crown, minister of state or parliamentary secretary must make a public declaration with respect to all his or her liabilities of $10,000 or more that provides sufficient detail to identify the source and nature of the liability, but not the amount.[13] The declaration must be made within 120 days of the person's appointment.

[7] Conflict of Interest Act, s. 22(1)
[8] Conflict of Interest Act, s. 22(5)
[9] Conflict of Interest Act, s. 25(2)
[10] Conflict of Interest Act, s 25(4)
[11] See Conflict of Interest Act, s. 15(2) and (3)
[12] Conflict of Interest Act, s. 25(4)
[13] Conflict of Interest Act, s. 25(3)

1.41 In addition to the above disclosures, public officeholders must also provide the Commissioner with a summary statement setting out, inter alia, information regarding the reporting public office holder's controlled assets and each matter in respect of which the Commissioner has order a reporting public office holder to recuse him or herself.[14]

Regulation

1.42 The Conflict of Interest Act also contains a number of provisions designed to regulate conflicts of interest. Specifically, public officeholders are prohibited from using insider information for improper purposes or from using their official position to seek to influence a decision of another person for such purposes. In addition, both a public officeholder and his or her family members are prohibited from accepting any gift or other advantage that might reasonably be seen to have been given to influence the officeholder in the exercise of his or her official duties. Moreover, a minister of the Crown, minister of state, or parliamentary secretary may not knowingly be party to a contract with a public sector entity under which he or she receives a benefit. Similarly, such persons are prohibited from having interests in a partnership or private company that is party with a public sector entity under which the partnership or corporation receives a benefit. A public officeholder is also prohibited from entering into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent, in the exercise of his or her official powers, duties and functions. However, this prohibition does not apply to the appointment of ministerial staff or advisors. Moreover, public officeholders who are responsible for a particular public entity may not permit that entity to enter in a contract or employment relationship with such persons.

1.43 The Conflict of Interest Act contains a number of rules regulating post-employment on the part of former public office holders including a prohibition on taking improper advantage of a previously held public office as well as disclosure requirements.

1.44 Infringements of the Conflict of Interest Act are investigated by the Conflict of Interest and Ethics Commissioner appointed under the Parliament of Canada Act. The Commissioner has extensive powers of investigation including the power to compel the attendance of witness and the production of documents and other things. On conclusion of an investigation, the Commissioner must provide the Prime Minister with a report setting out the facts in question as well as the Commissioner's analysis and conclusions. A failure to comply with the various reporting requirements may also result in an administrative monetary penalty.

[14] Conflict of Interest Act, s. 26

SENATORS

1.45 As mentioned, conflicts of interest on the part of Senators are by and large regulated by the Conflict of Interest Code for Senators. That code provides for both periodic and ad hoc declarations of interest as well as containing a number of provisions designed to further regulate conflicts of interest.

Periodic Disclosure

1.46 Each Senator must file a confidential statement disclosing information including the following:[15] any corporations, income trusts and trade unions in which the Senator is a director or office and any partnerships in which the Senator is a partner; any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions; the nature but not the amount of any source of income over $2,000 that the Senator has received in the preceding 12 months and is likely to receive during the next 12 months; the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that: (a) the Senator has directly, or through a subcontract; (b) the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries; and (c) a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries; information regarding the nature but not the value of any assets and liabilities over $10,000 and any additional information that the Senator believes to be relevant to the conflicts of interests code.

1.47 Senators are not obliged to disclose; properties used by the Senator or family members as residences; mortgages or hypothecs on such residences; household goods; personal effects; deposits with a financial institution; guaranteed investment certificates; financial instruments issued by any Canadian government or agency; and obligations incurred for living expenses that will be discharged in the ordinary course of the Senator's affairs.

1.48 A Senator must file the confidential statement within 120 days of being summoned to the Senate and thereafter annually.[16] In addition, a Senator must report in writing any material change to the information relating to the confidential disclosure statement to the Senate Ethics Officer within 60 days after the change.[17]

[15] Conflict of Interest Code For Senators, s. 27(1) and s. 28
[16] Conflict of Interest Code for Senators, s. 27(1) and (3)
[17] Conflict of Interest Code for Senators, s. 28(4)

1.49 The Senate Ethics Officer prepares a public disclosure summary based on each Senator's confidential disclosure statement which that officer submits to the Senate for review.[18] Much of the above information is included in that statement.[19] However, a Senator's income, assets and liabilities are only disclosed in so far as the Senate Ethics Officer has determined that it could relate to that Senator's parliamentary duties and functions or could otherwise be relevant. Moreover, the value of contracts or other business arrangements with the Government of Canada or a federal agency or body is also excluded from the public disclosure statement.

1.50 As well as containing details from a Senator's confidential disclosure statement, the public disclosure summary also lists any ad hoc declarations of interest made by a Senator, any disclosure statements filed in relation to gifts and sponsored travel and any statements of material change relating to the contents of the summary.

Ad Hoc Disclosure

1.51 The Conflict of Interest Code for Senators provides for three forms of ad hoc disclosure relating to: 1) private interests; 2) gifts; and 3) other benefits.

1.52 A Senator must declare any private interest held by the Senator or a family member where that interest might be affected in any circumstances involving the Senator's parliamentary duties and functions.[20] The term "private interests" includes: assets; liabilities, the acquisition of a financial interest; income from a contract, a business or a profession; employment income; a directorship or holding an office in a corporation, association, trade-union or not-for-profit organization; a partnership.[21]

1.53 As mentioned above, the declaration is published and filed with the Senator's public disclosure summary. Where a Senator makes a declaration of private interests, he or she may not participate in debate or any other deliberations with respect to that matter.[22] In addition, where the declaration regards a matter which is before a committee, the Senator must withdraw from the committee for the duration of the proceedings.[23] Where a Senator makes an ad hoc disclosure in relation to a matter, he or she may not vote on that matter.[24]

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[18] Conflict of Interest Code for Senators, s. 30
[19] Conflict of Interest Code for Senators, s. 31(1)
[20] Conflicts of Interest Code for Senators, s. 12(6); see also s. 12(1)
[21] Conflicts of Interest Code for Senators, s. 16; see s. 11(1); According to s. 11(2), the term does not include matters of general application or affecting the Senator as one of a broad class of the public.
[22] Conflicts of Interest Code for Senators, s. 13(1)
[23] Conflicts of Interest Code for Senators, s. 13(2) and (3)
[24] Conflicts of Interest Code for Senators, s. 14

1.54 A Senator must also disclose gifts or other benefits. Specifically, while a senator and a family member may accept a gift of other benefit received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Senator's position, he or she must file a disclosure statement with the Senate Ethics Officer where the gift exceeds $500 in value.[25] That statement must disclose the nature and value of the gift or other benefits, their source and the circumstances under which they were given. It must be filed within 30 days of receipt of the gift or benefit. A Senator must similarly disclose sponsored travel that arises from or relates to the Senator's position if the costs exceed $500 and are not paid either personally by the Senator or by other specified bodies.[26] That statement must disclose: the name of the person or organization paying for the trip; the destination or destinations; its purpose and length of the trip; whether or not any guest was also sponsored; and the general nature of the benefits received.[27]

Further Regulation

1.55 The Conflict of Interest Code for Senators also contains a number of other provisions which further regulate conflicts of interest. Specifically, a Senator, when performing parliamentary duties and functions, must not act or attempt to act in any way to further his or her private interests or those of a family member, or to improperly further another person's or entity's private interests.[28] In addition, a Senator must not use his position as Senator to influence a decision of another person so as to further those private interests.[29] Moreover, a Senator may not use confidential information or convey that information to other persons for such purposes.[30]

1.56 The term "furthering private interests" is defined to mean any actions taken by a Senator for the purpose of achieving, directly or indirectly any of the following: an increase in, or the preservation of, the value of the person's or entity's assets; the elimination, or reduction in the amount, of the person's or entity's liabilities; the acquisition of a financial interest by the person or entity; any increase in the person's or entity's income from a contract, a business or a profession; an increase in the person's income from employment; the person becoming a director or officer in a corporation, association, trade union or not-for-profit organization; or the person becoming a partner in a partnership. However, a Senator is not considered to further his own or another's private

[25] Conflict of Interests Code for Senators, s. 17(2) and (3)
[26] Conflict of Interests Code for Senators, s. 18(1)
[27] Conflict of Interests Code for Senators, s. 18(2)
[28] Conflict of Interests Code for Senators, s. 8
[29] Conflict of Interests Code for Senators, s. 9
[30] Conflict of Interests Code for Senators, ss. 10

interests if the matter in question is of general application or affects the Senator or the other person or entity as one of a broad class of the public.[31]

1.57 Gifts and other benefits are also subject to further regulation. Specifically, a Senator and/or his or her family members is prohibited from accepting, directly or indirectly, any gift or other benefit, that could reasonably be considered to relate to the Senator's position, except compensation authorized by law.[32] Gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Senator's position are excepted from this prohibition, but as mentioned above, must be disclosed.[33]

1.58 Furthermore, a Senator must obtain the written permission of the Senate Ethics Officer to be party to a government contract or any federal agency or body under which the Senator receives a benefit.[34] Such permission will only be forthcoming where the contract of other business arrangement is: a) due to special circumstances, in the public interest; or b) unlikely to affect the Senator's obligations under the Code. Similar obligations apply where a Senator has an interest in a partnership or in a private corporation that is a party to such a contract.[35]

1.59 These rules do not apply to a contract or other business arrangement that existed before a Senator's appointment to the Senate, but they do apply to its renewal or extension.[36]

1.60 A Senator is also prohibited from taking any action that has as its purpose the evasion of his or her obligations under the Code.[37]

Enforcement

1.61 The Conflicts of Interest Code is enforced by a Senate Committee designated or established for the purposes of the Code and the Senate Ethics Officer.[38] That Officer is an independent officer and while he or she carries out his or her duties and functions under the general direction of the Committee, he or she is independent in interpreting and applying the Code as it relates to an individual Senator's particular circumstances.[39]

[31] Conflicts of Interest Code for Senators, s. 11
[32] Conflicts of Interest Code for Senators, s. 17(1)
[33] Conflicts of Interest Code for Senators, s. 17(2)
[34] Conflicts of Interest Code for Senators, s. 20
[35] Conflicts of Interest Code for Senators, s. 22
[36] Conflicts of Interest Code for Senators, s. 25
[37] Conflicts of Interest Code for Senators, s. 34
[38] Conflicts of Interest Code for Senators, s. 37 and s. 41
[39] Conflicts of Interest Code for Senators, s. 41

1.62 The Senate Ethics Officer is responsible for carrying out investigations into possible instances of non-compliance with the Code, either at the Committee's request or on receipt of a complaint from a Senator but subject to the Committee's approval.[40] In carrying out an inquiry, the Senate Ethics Officer may send for persons, papers, things and records.[41] Once the inquiry is complete, the Senate Ethics Officer reports confidentially in writing to the Committee.[42] That Committee must then consider the report and, in doing so, may conduct an investigation or, direct that the Senate Ethics Officer's inquiry be continued. Once the Committee has considered the report and finds that the complaint is founded, it must then report to the Senate and may recommend that the Senator be ordered to take specific action or be sanctioned.

THE HOUSE OF COMMONS

1.63 Conflicts of Interests in the Canadian House of Commons are regulated by the Conflict of Interest Code for Members of the House of Commons. Like the Conflicts of Interest Code for Senators, it requires Members to make both periodic and ad hoc disclosures of interest as well as further regulating certain types of conflicts. There are strong similarities between the two codes.

Periodic Disclosure

1.64 Each Member must make an annual confidential disclosure statement setting out his or her private interests and those of his or her family members.[43]

1.65 In that statement, the Member must;[44]

- identify the value of each asset or liability which exceeds $10,000;
- state the amount and indicate the source of any income greater than $1,000 that the Member and his or her family members have received during the preceding 12 months and are entitled to receive during the next 12 months;
- disclose every trust known to the Member from which he or she could, currently or in the future, either directly or indirectly, derive a benefit or income;
- list the directorships or offices in a corporation, trade or professional association or trade union held by the Member or a member of his or her family or partnerships in which such persons or partners

[40] Conflicts of Interest Code for Senators, s. 44
[41] Conflicts of Interest Code for Senators, s. 44(13)
[42] Conflicts of Interest Code for Senators, s. 45
[43] Conflict of Interest Code for Members of the House of Commons, s. 20
[44] Conflict of Interest Code for Members of the House of Commons, s. 22

- state all benefits that the Member and/or his or her family members have received during the previous 12 months or are entitled to receive in the next 12 months as a result of being a party, directly or through a sub-contract, to a contract with the Government of Canada and describe the subject-matter and nature of each such contract or subcontract.
- State all such benefits that any private corporation in which the Member or a member of his or her family has an interest has received in the previous 12 months or is entitled to receive in the next 12 months. The statement must include: information about the corporation's activities and sources of income; the names of any other corporations with which that corporation is affiliated; the names and addresses of all persons who have an interest in the corporation; and the real property or immovables owned by that corporation

1.66 The member must file a periodic disclosure statement within 60 days after being elected to the House of Commons and annually thereafter.[45] A member must file a statement reporting any material change in the information contained in that statement within 60 days of that change.[46]

1.67 After receiving the confidential disclosure statements, the Conflict of Interest and Ethics Commissioner prepares a public disclosure statement which includes much of the information set out in the confidential disclosure statement.[47] Information which is not included in that statement includes; the value of the income, assets and liabilities disclosed in the confidential statement; real property or immovables that the Member uses as a principal residence or uses principally for recreational purposes; personal property or movable property that the Member uses primarily for transportation, household, educational, recreational, social or aesthetic purposes; cash on hand or on deposit with a financial institution that is entitled to accept deposits.

1.68 The public disclosure statement also includes certain ad hoc disclosures made by a Member.[48]

Ad hoc Disclosure

1.69 As in the case of Senators, a Member of the House of Commons who has a private interest that might be affected by the Member's parliamentary duties and functions must disclose that interest at the first opportunity. He or she must also file a notice of that interest with the Commissioner. [49] The term

[45] Conflict of Interest Code for Members of the House of Commons s. 20(1)
[46] Conflict of Interest Code for Members of the House of Commons, s. 21(3)
[47] Conflict of Interest Code for Members of the House of Commons, s. 24
[48] Conflict of Interest Code for Members of the House of Commons, S. 24(1)(d)
[49] Conflict of Interest Code for Members of the House of Commons, s. 12

"private interest" is defined in the same way for the purposes of this Code as it is for the Conflict of Interests Code for Senators.

1.70 Similar provisions apply to the disclosure of gifts, benefits and sponsored travel by Members of the House of Commons as apply for Senators.[50]

Further Regulation

1.71 As well as requiring the disclosure of certain types of interests, the Conflicts of Interest Code for Members of the House of Commons also contains provisions further regulating such interests.

1.72 A Member is generally prohibited from participating in a debate or voting on a question in which he or she has a private interest.[51] Each member, as well as his or her family members, is prohibited from accepting, directly or indirectly, any gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office.[52] This is subject to the exception that a Member or a member of his or her family may accept gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Member's position.

1.73 In addition, Members are prohibited from being knowingly a party to contracts with the Canadian Government or any federal agency or body under which the Member receives a benefit.[53] They are also prohibited from having an interest in a partnership or in a private corporation that is a party to such a contract. These prohibitions do not apply to a contract that existed before the Member's election to the House of Commons but they do apply to its renewal or extension.[54]

1.74 Like Senators, Members must not, when performing their parliamentary functions, act in such a way as to further their own private interests or to improperly further those of another person or entity.[55] They are also prohibited from using their position as a Member to influence a decision of another person so as to further those interests.[56] Similarly, they may not

[50] Conflict of Interest Code for Members of the House of Commons, s. 14
[51] Conflict of Interest Code for Members of the House of Commons, s. 13
[52] Conflict of Interest Code for Members of the House of Commons, s. 14
[53] Conflict of Interest Code for Members of the House of Commons, s. 16 and s. 18
[54] Conflict of Interest Code for Members of the House of Commons, s. 19
[55] Conflict of Interest Code for Members of the House of Commons, s 8
[56] Conflict of Interest Code for Members of the House of Commons, s. 9

themselves use insider information or communicate such information to other persons for such purposes.[57]

1.75 Members are also prohibited from taking any action for the purpose of circumventing their obligations under the Code.[58]

Enforcement

1.76 The Code of Conduct for Members of the House of Commons is enforced by the Conflict of Interest and Ethics Commissioner who is appointed under the Parliament of Canada Act (the Commissioner). The Commissioner has an advisory, educative and investigative function under the Code.

1.77 The Commissioner may give advice to Members on the operation of the Code and is also charged with undertaking educational activities for Members and the general public regarding the Code and the Commissioner's role.[59]

1.78 The Commissioner may commence an inquiry either on foot of a complaint or pursuant to a direction by the House.[60] The inquiry is carried out in private and the Commissioner reports to the Speaker of the House who then presents the report to the House.[61] In the report, if the Commissioner considers that a Member has infringed the Code, he or she may recommend appropriate sanctions.

England

1.79 Ethical conduct in both the Houses of Parliament is governed by resolutions passed by those Houses, codes of conduct and guides to those codes. These codes and guides include: the Code of Conduct for Members of Parliament (2005); the Guide to the Rules relating to the Code of Members (2009)[62]; the Code of Conduct for Members of the House of Lords (2009); the Guide to the Code of Conduct (2011).[63]

1.80 The Code of Conduct for Members of Parliament and the Guide to the Rules relating to the Code of Members (2009) apply to Members of Parliament including Ministers of the Crown who are Members of the House of Commons.

[57] Conflict of Interest Code for Members of the House of Commons, s. 10
[58] Conflict of Interest Code for Members of the House of Commons, s. 25
[59] Conflict of Interest Code for Members of the House of Commons, s. 32
[60] Conflict of Interest Code for Members of the House of Commons, s. 27
[61] Conflict of Interest Code for Members of the House of Commons, s. 28
[62] The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members 2009 (updated May 2010) HC 735,
[63] The Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct (2nd ed., Nov. 2011)

However, those Ministers are also subject to further guidelines and requirements laid down in The Ministerial Code.

1.81 Members of Parliament are required to make both periodic and ad hoc disclosures of interest. Certain activities are also subject to further regulation.

Periodic Disclosure

1.82 Members must disclose their own interests on a periodic basis. In the case of certain interests they must also disclose interests held by a family member.

1.83 Interests subject to periodic disclosure are largely financial, and indeed the purpose of the Register of Interests "*is to give public notification on a continuous basis of those financial interests held by Members which might be thought to influence their parliamentary conduct or actions*."[64]

1.84 There are 12 categories of interests which must be disclosed, namely: (1) directorships; (2) remunerated employment, office, profession, etc; (3) clients; (4) sponsorships; (5) gifts, benefits, and hospitality; (6) overseas visits; (7) overseas benefits and gifts; (8) land and property; (9) shareholdings; (10) controlled transactions (loan and credit arrangements relating to political activities and the provision of security); (11) miscellaneous; (12) family members employed and remunerated through parliamentary allowance.

1.85 **Directorships:** Members must registered remunerated directorships in public and private companies.[65] A Member must also register any unremunerated directorships where the company or companies in question are associated with, or subsidiaries of, a company in which he or she holds a remunerated directorship. The term "remuneration" includes not only salaries and fees, but also the receipt of any taxable expenses, allowances, or benefits, such as the provision of a company car. Members must register the name of the company in which the directorship is held and give a broad indication of its business. They must also declare: the precise amount of each individual payment made in relation to any directorship; the nature of the work carried on in return for that payment; the number of hours worked during the period to which that payment relates; the name and address of the person, organization or company making that payment (except where disclosure of the information would be contrary to any legal or established professional duty of privacy or confidentiality).

[64] The Guide to the Rules relating to the Conduct of Members 2009, p. 10; see also p. 11
[65] The Guide to the Rules relating to the Conduct of Members 2009, p. 14

1.86 **Remunerated employment, office, profession, etc**: Under this category, Members must register the precise amount of each individual payment made, the nature of the work carried on in return for that payment, the number of hours worked during the period to which that payment relates and (except where disclosure of the information would be contrary to any legal or established professional duty of privacy or confidentiality) the name and address of the person, organization, or company making that payment.[66] The duty to disclose is subject to a de minimis requirement. This is set at 0.1% of a Member's salary for individual payments (£66) and 1% of a Member's salary for the cumulative total of payments from the same source in the same year (£666).

1.87 **Shareholdings:** Members must disclose shareholdings held by the Member, either personally, or with or on behalf of the Member's spouse or partner or dependent children, in any public or private company or other body which are: (a) greater than 15 per cent of the issued share capital of the company or body; or (b) 15% or less of the issued share capital, but greater in value than the current parliamentary salary. In each case, the Member must disclose the company's name, indicate briefly the nature of its business and make clear which of the registration criteria applies.[67]

1.88 **Miscellaneous:** Under this category, Members must disclose any interest which does not fall within one of the other disclosure categories but are nevertheless relevant to the Register's purpose.[68]

1.89 Members of Parliament are required to complete a registration form and submit it to the Commissioner within one month of their election to the House (whether at a general election or a by-election). After the initial publication of the Register, each Member must notify changes to their registrable interests within four weeks of each change occurring.

1.90 The Register is published under the authority of the Committee on Standards and Privileges in printed form after the beginning of a new Parliament and approximately annually thereafter. There is also an electronic version of the register which is updated regularly and is available on the House of Commons web-site.[69]

[66] The Guide to the Rules relating to the Conduct of Members 2009, p. 15
[67] The Guide to the Rules relating to the Conduct of Members 2009, p. 22
[68] The Guide to the Rules relating to the Conduct of Members 2009, p. 23; see also p. 12
[69] The Guide to the Rules relating to the Conduct of Members 2009, p. 18

Ad Hoc Disclosure

1.91 Members of the House of Commons must make ad hoc declarations of interest in the course of debate in the House as well as in other contexts.[70] The main purpose of such a declaration is:

> *to ensure that Members of the House and the public are made aware, at the appropriate time when a Member is making a speech in the House or in Committee or participating in any other proceedings of the House, of any past, present or expected future financial interest, direct or indirect, which might reasonably be thought by others to be relevant to those proceedings*.[71]

1.92 The duty to make disclosure arises where a Member has any relevant financial interest in a matter at issue in a debate or proceeding of the House or its Committees or in transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown. A financial interest is relevant if "*if might reasonably be thought by others to influence the speech, representation or communication in question*."[72] As well as current interests, Members are also required to declare both relevant past interests and relevant interests which they may be expecting to have.[73]

1.93 Certain interests are excluded from the ad hoc disclosure requirements. Specifically, Members are not required to declare interests which have already been declared in the Register of Interests.[74] Nor must they declare interests common to all Members. For example, "*in a debate on employment law, Members are not required to declare any interest as employers of staff in relation to those employed wholly in connection with their parliamentary duties*."[75]

FURTHER REGULATION

1.94 Certain interests are subject to further regulation. Generally, according to the Code of Conduct, Member must "base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest."[76]

1.95 That code also regulates paid advocacy and the use of confidential information. Specifically, Members are banned from acting as a paid advocate in

[70] Resolution of the House of 22 May 1974
[71] The Guide to the Rules relating to the Conduct of Members 2009, p. 10
[72] The Guide to the Rules relating to the Conduct of Members 2009, p 29
[73] The Guide to the Rules relating to the Conduct of Members 2009, p. 28
[74] Resolution of the House of 12 June 1975, amended on 19 July 1995 and on 9 February 2009
[75] The Guide to the Rules relating to the Conduct of Members 2009, p. 29
[76] Code of Conduct for Members of the House of Parliament, Para 9

any proceedings of the House.[77] In addition, they must "bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain."[78]

ENFORCEMENT

1.96 The Code of Conduct and associated rules are enforced by the Parliamentary Commissioner for Standards.

1.97 Enforcement is complaint driven and both Members and Members of the public may make a complaint regarding possible non-compliance with the rules. Complaints must be in writing and may not be made anonymously.[79] However they may concern both present and past Members.

1.98 If after enquiry, the Commissioner finds that there has been a breach of the rules of the House, or that the complaint has raised issues of wider importance, he will normally report the facts and his conclusions to the Committee. On specific complaints for which the Commissioner has concluded that there has been a breach of the rules, and the Committee agrees with that conclusion, it may make recommendations to the House on whether further action is required.

HOUSE OF LORDS

1.99 As in the case of Members of Parliament, Members of the House of Lords are required to make both periodic and ad hoc disclosures of interest. Certain activities are also subject to further regulation.

Periodic Disclosure

1.100 Members of the House of Lords must declare their own "relevant interests". In certain instances they must also declare interests held by their spouse and/or dependent children.[80]

1.101 "Relevant Interests" may be financial or non-financial. The overall purpose of the Register of Lords' Interests is

[77] Code of Conduct for Members of Parliament Para 10; see also The Guide to the Rules relating to the Conduct of Members 2009, p. 34
[78] Code of Conduct for Members of Parliament, Para 13
[79] The Guide to the Rules relating to the Conduct of Members 2009, p 40
[80] Code of Conduct for Members of the House of Lords, paragraph 10

> *To assist in openness and accountability by enabling Members to make clear what are the interests that might be thought by a reasonable Member of the public to influence their actions, speeches or votes in Parliament, or actions taken in their capacity as Members of the House of Lords.*[81]

1.102 The registration form specifies 10 categories of registrable interests which Members must disclose. Generally, interests below £500 in value need not be registered unless: a) they fall into a category of non financial interests for which registration is mandatory; or b) they could be thought by a reasonable member of the public to affect the way in which a Member of the House of Lords discharges his or her parliamentary duties.[82]

1.103 The 10 categories of mandatory registrable interests are: (1) directorships; (2) remunerated employment etc; (3) public affairs advice and services to clients; (4) shareholdings; (5) land and property; (6) sponsorship; (7) overseas visits; (8) gifts, benefits and hospitality; (9) miscellaneous financial interests; and (10) non-financial interests. There is a significant overlap between these categories of disclosure and those which apply to Members of the House of Parliament, albeit there are also some differences.

1.104 Members of the House of Lords must complete a registration form and submit it to the Registrar of Lords' Interests within one month of taking their seat. Thereafter, Members must notify any changes to those interests within one month of any such change occurring.[83]

Ad Hoc Disclosure

1.105 Members must also declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion.[84] As is clear from its wording, the duty to make an ad hoc disclosure only arises where a member decides to speak in the House or communicate with a Minister or public servants. It is therefore ultimately subject to the member making such a decision.

1.106 The term "speaking in the House" covers Members' participation in the work of Select Committees. The term "public servants" includes: servants of the Crown, civil servants, employees of government agencies or non-departmental

[81] Guide to the Code of Conduct, p 12
[82] Guide to the Code of Conduct, p 13
[83] Code of Conduct for Members of the House of Lords, para 13; The Guide to the Code of Conduct p 17
[84] Code of Conduct for Members of the House of Parliament, para 10

public bodies, and Members, officers and employees of local authorities or other governmental bodies.[85]

1.107 The test for relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a Member of the House of Lords discharges his or her duties in respect of the particular matter under discussion.[86] Relevant interests include future interests, namely "*interests where a Member's expectation has passed beyond vague hope or aspiration and reached the stage where there is a clear prospect that the interest will shortly arise*."[87]

Further Regulation

1.108 According to their Code of Conduct, Members of the House of Lords must base their actions on consideration of the public interest and resolve any conflict between that interest and their personal interest(s) in favour of the public interest.[88]

1.109 While Members are not required to recuse themselves from proceedings in which they have a conflict of interest, their Code of Conduct advises them to be "*especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared with few others*."[89] Where a Member has an interest which goes to the heart of the subject of an inquiry being conducted by a Select Committee, they must "*consider carefully whether to take part in that inquiry*."[90]

ENFORCEMENT

1.110 The House of Lords Commissioner for Standards is responsible for the independent and impartial investigation of alleged breaches of the House of Lords Code of Conduct, including the conflict of interest provisions. The first Commissioner was appointed in 2010, as part of the wider reforms of governance structures in the House of Lords to ensure they meet public expectations of clarity, transparency and integrity. The Commissioner is an officer of the House of Lords.[91]

[85] The Guide to the Code of Conduct, p 19
[86] Code of Conduct for Members of the House of Lords, paragraph 11
[87] The Guide to the Code of Conduct, p 20
[88] Code of Conduct for Members of the House of Lords, paragraph 7
[89] Code of Conduct for Members of the House of Lords, paragraph 15
[90] The Guide to the Code of Conduct p 20
[91] The Guide to the Rules relating to the Conduct of Members 2009, p 120

1.111 The Commissioner may commence an investigation either on the basis of a complaint or on its own initiative. Complaints must be made within 4 years of the conduct complained or and must be supported by sufficient information to establish a prima facie breach of the Code of Conduct.[92] They must be in writing and the Commissioner does not accept complaints submitted by telephone or email.[93] He or she will only consider either anonymous or confidential complaints where he or she considers there to be good reason to do so.[94]

1.112 The Commissioner may only commence an investigation on his or her own initiative with the agreement of the Sub-Committee on Lords' Conduct.[95]

1.113 When conducting an investigation, the Commissioner must establish the facts of a case and report these, along with his conclusions as to whether or not there has been a breach of the Code to the Sub-Committee on Lords' Conduct.[96] The Committee for Privileges and Conduct and its Sub-Committee on Lords' Conduct have the power to send for persons, papers and records and may exercise this power as necessary in support of any investigation by the Commissioner.

1.114 The Sub-Committee considers the Commissioner's report and must report it without amendment to the Committee for Privileges, with or without comments. If the Commissioner finds that there has been a breach of the Code, the Sub-Committee must recommend any appropriate action that the Member should take to regularize the position and any sanction that the House should apply.[97] This may include suspension from the House for a specified period of time not longer than the remainder of the current parliament.[98]

1.115 The Member, but not the complainant, has a right of appeal from the Commissioner and Sub-Committee, first to the Committee for Privileges and Conduct and then to the House.[99]

[92] Guide to the Code of Conduct, p 23
[93] Guide to the Code of conduct, p 22
[94] Guide to the Code of Conduct, p 22
[95] Guide to the Code of Conduct, p 22
[96] Guide to the Code of Conduct, p 22
[97] Guide to the Code of Conduct, p 25
[98] Guide to the Code of Conduct p 26
[99] Guide to the Code of Conduct, p 24

CHAPTER EIGHTEEN – RECOMMENDATIONS

Political Finance Law

1.01 The purpose of this section is to give an overview of measures aimed at regulating political finance both internationally and in the following jurisdictions: Canada, England and the U.S.A. As in the case of the annex on conflicts of interests, it focuses on those measures which are of most relevance to the Tribunal's recommendations. Again, these are not the only measures considered by the Tribunal for the purpose of its recommendations

INTERNATIONAL ORGANISATIONS

1.02 The UN and the Council of Europe as well as several NGOs have developed either minimum or best practice standards for dealing with political finance.

THE UN

1.03 Article 7 of the United Nations Convention against Corruption ("UNCAC") requires each State Party to:

> *consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties*.

1.04 Although this provision is both optional and vague, further guidance as to what is envisaged by the UN is given in a document published by the International Foundation for Electoral Systems entitled "Political Finance Regulation: the Global Experience" (the "IFES document"). This document seeks to clarify and define the provisions in UNCAC which address transparency in political finance both within the context of that Convention and the emerging set of global standards and best practice in political finance. Its development was supported by the UN. The UN's Guide for Anti-Corruption Policies (2003) and its Anti-Corruption Toolkit (2004) also contain guidance on regulating political finance.

THE COUNCIL OF EUROPE

1.05 The Council of Europe has adopted several measures setting out comprehensive standards for the regulation of political finance. Of these the most extensive are those contained in Recommendation (2003)4 of the Committee of Ministers to Member States on common rules against corruption in the funding of political parties and electoral campaigns. This instrument is:

> *the culmination of extensive exploratory, analytical and political work of different Council of Europe bodies, which has progressively led to the adoption of common standards for the setting up of transparent systems for the funding of political parties in an effort to prevent corruption*.[1]

1.05 Moreover, the Council of Europe's view of best practice in the area of political finance is further clarified by a key document, published by the Council of Europe, entitled "Financing Political Parties and election campaigns – guidelines" (the "Council of Europe Guidelines"). These guidelines are predominantly based on Council of Europe documents and are to be thought of as a compendium of Council of Europe instruments on the financing of political parties and public control of political finance.[2]

1.06 Other relevant measures include: the Council of Europe's Parliamentary Assembly's Recommendation on the Financing of Political Parties (2001); the Congress of Local and Regional Authorities Resolution 105(2000) on the financial transparency of political parties and democratic functioning at regional level; and Recommendation 86(2000) on the financial transparency of political parties and democratic functioning at regional level. The Council of Europe's advisory body on constitutional matters, the European Commission for democracy through law (the "Venice Commission") has also published a number of documents dealing with political finance and in particular: Guidelines and Report on the Financing of Political Parties (2001); and Opinion on the prohibition of financial contributions to political parties from foreign sources (2006).

SELECTED JURISDICTIONS

1.07 As mentioned**,** the Tribunal also considered measures regulating political finance in a number of selected jurisdictions, including Canada, England and the U.S.A..

[1] Ingrid van Biezen, Financing political parties and election campaigns - guidelines (Council of Europe 2003)
[2] Ingrid Van Biezen, note 1, p 7

CANADA

1.08 In Canada, at federal level, campaign finance is regulated by the Canada Elections Act (CEA), as amended. The CEA restricts both the source and amount of "contributions", imposes electoral expenditure limits; requires the disclosure of both contributions and expenditure and provides for public funding.

1.09 This overview focuses on the application of the campaign finance provisions to political parties and candidates in federal elections. A person becomes a candidate from the time he or she accepts a contribution or incurs an electoral campaign expense.[3]

1.10 Both political parties and candidates must appoint an agent and an auditor under the CEA. Specifically, a political party must appoint a chief agent and may also appoint one or more other registered agent(s). A candidate must appoint an official agent and auditor.[4] In both cases, the chief agent or official agent, as the case may be, is responsible for administering the party's or candidate's financial transactions.

Registration

1.11 Political parties may register with Elections Canada. While registration is voluntary, it brings a number of benefits. These include; the right to have the party name printed on the ballot next to the name of their candidates; the reimbursement of up to 50% of election expenses and an entitlement to free and paid broadcasting time.

1.12 Candidates entering the electoral competition must register locally with returning officers. Once registered, they have access to similar benefits as registered parties including the right to accept contributions and to have up to 60% of their election expenses reimbursed.

Contribution restrictions

1.13 The Canada Elections Act (the "CEA"), restricts both the source and amount of both monetary and non monetary contributions. Only a registered agent (or authorised person) may accept a contribution to a registered political party[5] and only an official agent is authorised to accept a contribution to a candidate.[6] An agent must issue a receipt for each contribution of more than $20 that he or she accepts.[7]

[3] Canada Elections Act s. 82
[4] Canada Elections Act, s. 83
[5] Canada Elections Act, s. 416(1)
[6] Canada Elections Act, s. 438(2)
[7] Canada Elections Act, s. 404.4(1)

1.14 Only individuals who are Canadian citizens or permanent residents may make contributions to a candidate or registered party.[8] A contribution made by a trust fund is treated as a contribution from the trustee, who must therefore be a citizen or permanent resident.

1.15 Where a political party or candidate receives an anonymous contribution the relevant agent must forward it to the Chief Electoral Officer.[9] An anonymous contribution is: a) a contribution exceeding $20 for which a registered agent does not have the contributor's name; or b) a contribution exceeding $200 for which the agent does not have the contributor's name or addressor. Cash donations in excess of $20 are also prohibited.[10]

1.16 In general, an individual may contribute $1,200 (adjusted for inflation) in a calendar year to each registered party and the same amount to a candidate or candidates of a registered party.[11] This is an aggregate cap. In other words, an individual may not contribute more than $2,400 to a registered party and its candidates in any given year. An individual may give up to $1,200 per election to a candidate who is not a candidate of a registered party.

1.17 Money used by a candidate which comes from his or her own funds is considered to be a contribution for the purposes of the CEA, although a higher cap applies.[12] Specifically, a candidate may contribute to his or her own campaign as an individual and may also donate extra money as long as the sum donated does not exceed $1,000 (this sum is not adjusted for inflation).[13] In sum, therefore, a candidate may contribute up to $2,200 to his or her own campaign.

1.18 The individual making the contribution is responsible for complying with the controls on contributions. An individual who either fails to take reasonable care not to make a contribution when ineligible to do so, or who knowingly (which includes acting recklessly) makes a contribution when ineligible, has committed an offence.[14] It is also an offence for an individual to wilfully make a contribution larger than permitted.[15]

1.19 Where a political party or candidate receives an ineligible contribution, the party's chief agent or the candidate's official agent, as the case may be,

[8] Canada Elections Act, s. 404(1)
[9] Canada Elections Act, s. 425 and s. 452
[10] Canada Elections Act, s. 405.31
[11] Canada Elections Act, s. 405(1); see generally, Elections Canada, Information Sheet 2, Limits on Contributions by Individuals under the Canada Elections Act (Revised January 1, 2007)
[12] Canada Elections Act, s. 404.2
[13] Canada Elections Act, s. 405(4)
[14] Canada Elections Act, ss 497(1)(i) and 497(3)(f.1)
[15] Canada Elections Act, s. 497(3)(f.13)

must either return it or forward it to the Chief Electoral Officer.[16] It is an offence for the agent to fail to comply with these requirements. It is also an offence for an agent to fail to issue a receipt for a contribution.

1.20 Indirect contributions are prohibited.[17] Specifically, it is an offence for an individual to make a contribution to a registered party or to a candidate from the money, property or services of another person or entity if that other person or entity gave it to the individual to make a political contribution. It is also an offence for a person or entity to conceal the source of a contribution.

1.21 The CEA prohibits circumventing or attempting to circumvent the eligibility requirements for making contributions, the contribution limits for cash donations or the contribution limits established for individuals.[18] Acting in collusion with another person or entity for the purpose of circumventing a limit or prohibition, or concealing the source of a contribution is also prohibited by the CEA.[19]

1.22 These anti-avoidance provisions are aimed at preventing schemes or arrangements that, although not expressly prohibited, are intended to avoid contribution or disclosure rules or will have that effect.

1.23 Specific rules regulate the receipt of gifts during the electoral period. In particular, a candidate is prohibited from accepting any gift or other advantage that might reasonably be seen to have been given to influence him or her in the performance of his or her duties and functions as a member, were the candidate to be elected.[20] However, candidates may accept a gift or other advantage that is given by a relative as a normal expression or courtesy or protocol, subject to disclosure requirements.

Expenditure

1.24 Canada restricts electoral expenditure on the part of political parties and election candidates. The CEA defines an election expense to include any cost incurred, or non-monetary contribution received, by a registered party or a candidate, to the extent that the property or service for which the cost was incurred, or the non-monetary contribution received, is used to directly promote or oppose a registered party, its leader or a candidate during an election period.[21]

[16] Canada Elections Act, s. 405.4
[17] Canada Elections Act, s. 405.3
[18] Canada Elections Act, s. 405.2
[19] Canada Elections Act, s. 405.2 and 405.21(2)
[20] Canada Elections Act, s. 92.2
[21] Canada Elections Act, s. 407(1)

1.25 Only a candidate's official agent is entitled to pay expenses in relation to the candidate's electoral campaign.[22]

1.26 Electoral expenditure limits are based on factors which include the number of electors and the population density of constituencies in which they are running.

1.27 Limits on election spending by registered political parties are determined by multiplying $0.70 (adjusted for inflation) by the number of electors in a particular electoral district.[23]

1.28 Limits on election spending by candidates are also determined on the basis of the numbers of electors in a particular district. The limit is calculated according to a sliding scale and determined by multiplying: $2.07 (adjusted for inflation) by the first 15,000 electors, $1.04 for each of the next 10,000 electors; and $0.52 for each of the remaining electors.[24]

1.29 Where an expense of $50 or more is incurred under the CEA by or on behalf of a registered party or candidate, the person authorised under the act to pay that expense must keep a copy of the invoice to which it relates and proof that it was paid.[25] Where an expense of less than $50 was incurred in this way, the person who made the payment must keep a record of the nature of the expense together with proof that it was paid.[26]

1.30 It is an offence to fail to document payment, exceed election expense limits or for a registered party or candidate to collude with a third party to circumvent election expense limits.[27]

Disclosure

1.31 The CEA imposes extensive financial disclosure requirements on registered parties and election candidates.

Registered Parties

1.32 Within 6 months of the date of its registration, a registered party must file a statement of the party's assets and liabilities and the auditor's report on that statement with Elections Canada.[28]

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[22] Canada Elections Act, s. 438(4)
[23] Canada Elections Act, s. 422
[24] Canada Elections Act, s. 441
[25] Canada Elections Act, s. 410(1)
[26] Canada Elections Act, s. 410(2)
[27] Canada Elections Act, s. 423(1) and s. 443(2)
[28] Canada Elections Act, s. 372; see generally, Elections Canada, Registered Party Handbook (EC 20229 (03/07))

1.33 In addition, within 6 months of the end of its fiscal period, a registered party must file the Registered Party Financial Transactions Return, together with the auditor's report.[29] That information disclosed in that return includes:[30]

- The total contributions received by the registered party and the number of contributors
- the name and address of any contributor who makes an aggregate contribution to the registered party in excess of $200 and the amount and date on which the contribution was received
- any anonymous contributions accepted by the party
- A statement of the registered party's assets and liabilities
- A statement of the registered party's revenue and expenses
- the source of any loan received by the party and the amount of the principal, including the name and address of the lender, the name of the guarantor and any conditions on the loan
- A statement of contributions received by the registered party but returned in whole or in part to the contributors or otherwise dealt with in accordance with the CEA.

1.34 Registered parties that are eligible for quarterly allowances must file a Registered Party Financial Transactions Quarterly Return within 30 days at the end of the fiscal quarter to which it relates.[31] That return must contain the same information regarding contributions as that listed above.

1.35 Within 6 months of election day for a general election, the chief agent of a registered party must send to the Chief Electoral Officer: a Registered Party Return in Respect of General Election Expenses; an auditor's report on the return; and a declaration by the chief agent concerning those election expenses.[32] The election expenses return must set out each of the election expenses incurred by the registered party for the general election.

1.36 A registered party which fails to provide statement of assets and liabilities or related documents maybe deregistered.[33]

1.37 It is an offence of the chief agent of a registered party to fail to provide or to provide an incomplete financial transactions return, quarterly return, election expenses return or related documents.[34]

[29] Canada Elections Act, s. 424(1) and (4)
[30] Canada Elections Act, s. 424(2)
[31] Canada Elections Act, s. 424.1
[32] Canada Elections Act, s. 429
[33] Canada Elections Act s. 386
[34] Canada Elections Act, s. 427, s. 431

Candidates

1.38 Candidates must file a Candidate's Electoral Campaign Return, a Candidate's Statement of Personal Expenses and a Candidate's Statement of gifts or other advantages.[35]

1.39 The Candidate's Electoral Campaign Return must be sent within 4 months of an election day.[36] It includes information on both contributions and expenses.

1.40 In so far as contributions are concerned, it must list all contributions received from individuals including:

- the date each contribution was received
- the individual's name and address
- the amount of all aggregated money and non-monetary contributions over $200
- the amount and number of all monetary and non-monetary contributions of $200 or less
- the amount and approximate number of anonymous monetary and non-monetary contributions of $20 or less
- details of operating loans including the lender's name and address, the date, the interest rate and the principal of the loan
- the names and address of contributors, and the amount of the contribution which were returned to the donor or remitted to the Chief Electoral Officer

1.41 The return must also list all the candidate's electoral campaign expenses by date including: the supplier's name; the cheque and voucher numbers; the amount paid; the non-monetary contribution received or the amount unpaid; a classification of the expense by nature and its commercial value.

1.42 The candidate must submit his or her Candidate's Statement of Personal Expenses to his or her official agent within three months of the election day.[37] This statement must include all personal expenses and expenses of representatives present at polling stations that were paid by the candidate and not reimbursed by the official agent. The agent then files that statement.

[35] See generally Elections Canada, Election Book for Candidates, Their Official Agents and Auditors, (EC 20190 (03/07))
[36] Canada Elections Act, s. 451
[37] Canada Elections Act, s. 456

1.43 If a candidate accepts gifts or other advantages during the period of his candidacy, he or she must provide a statement to the Chief Electoral Officer concerning those gifts or other advantages if their benefit to the candidate exceeds $500.[38] A candidate is not required to report gifts or other advantages given by a relative. The candidate must set out:

- The nature of each gift or other advantage, its commercial value, and cost, if any, to the candidate
- The name and address of the person or entity giving the gift or other advantage
- The circumstances under which the gift or other advantage was given.

1.44 The statement must be provided to the Chief Electoral Officer within 4 months after election day.[39]

1.45 It is an offence for a candidate to fail to provide a statement within the required period, to provide an incomplete statement or to provide a statement which contains false or misleading information.[40]

Public Funding

1.46 There are three forms of public funding in the Canadian political finance regime: tax deductions for contributors; reimbursement of election expenses for candidates and political parties; and political party allowances.

1.47 Those who contribute money to political parties are entitled to tax credits as follows: 75% of the first $400; 50% of the next $350 and 33.33% of the amount over $750

1.48 A candidate who receives 10% of the vote is entitled to be reimbursed 60% of his or her election expenses. A political party which receives 2% of the national popular vote or at least 5% of the votes in the electoral districts in which it endorsed candidates is entitled to be reimbursed 50% of its election expenses.[41]

1.49 Political parties which qualify for reimbursement of election expenses also qualify for a quarterly allowance determined by the number of votes cast for the party in the last general election.[42]

[38] Canada Elections Act, s. 92.2(3) and (4)
[39] Canada Elections Act, s. 92.2(5)
[40] Canada Elections Act, s. 92.6 (in respect of gifts) and s. 436
[41] Canada Elections Act, s. 435
[42] Canada Elections Act, s. 435.01

Monitoring and enforcement

1.50 Enforcement of the campaign finance laws falls to the Chief Electoral Officer, who is appointed by the Cabinet following a resolution of the House of Commons and can only be removed by a joint resolution of the House of Commons and the Senate. The CEO heads Elections Canada, which is an independent non-partisan agency of Parliament and whose tasks include oversight of the campaign finance laws.

1.51 The Chief Electoral Officer appoints the Commissioner of Canada Elections, an independent officer whose role includes ensuring that the Canada Elections Act is complied with and enforced. The Commissioner may commence an investigation pursuant to a complaint.

1.52 During an election period, if there is evidence that a serious breach of the CEA may compromise the fairness of the electoral process, the Commissioner may, taking into account the public interest, apply to a court for an injunction ordering the person in question to comply with the law. The Commissioner may also conclude a compliance agreement with anyone the Commission has reasonable grounds to believe has committed, is about to commit or is likely to commit an offence. This is a voluntary agreement between the Commissioner and the person, in which the person agrees to terms and conditions necessary to ensure compliance with the Act. The Commissioner makes a summary of the compliance agreement public.

1.53 The Commissioner may also ask a court to order the deregistration of a political party. The Commissioner must have reasonable grounds to suspect that the party's fundamental purposes do not include participating in public affairs by endorsing one or more of its members as candidates and supporting their election. In addition, it must give the party a reasonable opportunity to clarify its fundamental purposes before requesting the order.

1.54 If the Commissioner has reasonable grounds to believe that an offence under the CEA has been committed, he or she may refer the matter to the D.P.P. who decides whether to initiate a prosecution

1.55 The CEA provides for a number of strict liability offences which may be prosecuted on a summary basis. Other offences require intent and may be prosecuted either summarily or on indictment.

ENGLAND

2.01 In England, political finance is regulated by four acts of Parliament, namely: the Political Parties, Elections and Referendums Act (2000), as amended (PPERA); the Electoral Administration Act 2006, as amended (EEA); the Political Parties and Elections Act 2009 (PPE) and the Representation of the People Act 1983, as amended (RPA).

2.02 The first three of these apply to, inter alia: political parties; members of registered political parties; and holders of certain elective offices, including members of the House of Commons and members of any Local Authority in the U.K. For its part, the RPA applies to electoral candidates.

2.03 The rules governing political finance can be broken down into four types of measures, namely: donation source restrictions; electoral expenditure restrictions, disclosure requirements and exchequer funding. There are currently no restrictions on the amount which may be given by way of a political donation.

Registration

2.04 A political party must be registered in order to field candidates at elections.[43] As part of the registration process, political parties must send details of the party's structure, including branches. It must also supply details of the party's financial scheme, demonstrating how the party will comply with the legal requirements of party and election finances under the PPERA.[44] This scheme must be approved in writing by the Electoral Commission.

Donation source restrictions

2.05 The PPERA provides for donation source restrictions which apply to donations to political parties as well as to specific individuals, including members of registered political parties, members of the House of Commons and Members of any Local Authority in the UK (collectively, "regulated donees").[45] The RPA contains donation source restrictions applicable to electoral candidates.[46] There are also specific provisions applicable to loans, credit facilities and the provision of security or a guarantee, where any part of the money will be used in connection with the political party's or individual's political activities.[47] These

[43] PPERA, s. 22
[44] PPERA, s. 26
[45] See generally, Electoral Commission, Donations and loans: guidance for regulated donees in Great Britain (Sept. 2006) Revised Version January 2010.
[46] RPA, Schedule 2A
[47] PPERA Schedule 7A

provisions apply to political parties and regulated donees. At present loans to candidates are not regulated.

2.06 For the purposes of the donation source restrictions, the definition of the term "donation" varies, depending on whether it is made to a political party, a regulated donee or an electoral candidate. A donation to a political party comprises any payment of more than £500 which falls within one of a number of categories, including: gifts of money or other property; sponsorship provided to a party; subscription fees; and money spent in paying expenses incurred by the party.[48] In so far as regulated donees are concerned, a donation is any gift of more than £500 offered to them, or where the donation has been accepted retained by them for their use as an MP in connection with their political activities.[49] Finally, a donation to a candidate is any money provide by any person other than the candidate or his election agent for the purpose of meeting election expenses incurred by or on behalf of the candidate.[50]

2.07 Only a "permissible" donor or lender may make a donation or loan to a political party or regulated donee where that donation is in excess of £500.[51] In the case of electoral candidates, the limit is £50.[52] Donations or loans of more than the relevant threshold cannot be accepted if the donor is an impermissible donor or cannot be identified. A permissible donor or lender is one of the following:

- An individual registered in a UK electoral register
- A UK registered company which is incorporated within the European Union and carries on business in the UK
- A Great Britain registered political party
- A UK registered trade union, building society or friendly society
- A UK registered limited liability partnership that carries on business in the UK
- A UK based unincorporated association that carries on business or other activities in the UK[53]

2.08 In certain cases a trust may make a donation, generally, once its beneficiaries are themselves permissible donors.

2.09 Where a donor makes a donation on behalf of him or herself and one (or more) other donors, each individual contribution of more than £500 (or £50 in the case of electoral candidates) is treated as a separate donation from each

[48] PPERA, s. 50 and s. 52
[49] PPERA, Schedule 7 para 1(3)
[50] RPA, Schedule 2A, para 1(3)
[51] PPERA, s. 54
[52] RPA, Schedule 2A, para 4(2) and 6(1)
[53] PPERA, s. 54(2)

person.[54] The principal donor must ensure that the recipient has the relevant information about the donor.[55] A donation may also be made through an agent and the agent must ensure the recipient is given all the relevant information.[56]

2.10 Where a political party or individual receives a donation above £500, the recipient must take all reasonable steps to satisfy themselves that the source of the donation is permissible.[57] If a donation is received from an impermissible source, it must be returned within 30 days[58] or forwarded to the Commission.[59] After this time, it is a criminal offence to retain the donation and, additionally, a sum equivalent to the value of the donation may be forfeited.[60]

2.11 The 30 day period does not apply to loans. Entering a loan with an impermissible lender is a criminal offence and the transaction is void.[61]

2.12 It is an offence to: facilitate the making of donations by impermissible donors; knowingly give false information about donations; withhold information with intent to deceive; or to fail to provide the recipient with required information about the donee.[62] Each of these offences may be prosecuted summarily or on indictment. It is also an offence to evade the restrictions on donations.[63]

2.13 As mentioned, the UK does not currently place limits on the amount of a donation which may be made or received. However, this is the subject of much controversy and a recent report by the Committee on Standards in Public Life.

Electoral expenditure

2.14 Both political parties and electoral candidates are subject to campaign expenditure restrictions. In the case of political parties these restrictions are set out in the PPERA. Those for candidates are set out in the RPA, in the case of candidates contesting elections to the UK Parliament and local government elections in England and Wales. Other enactments impose parallel controls in the case of elections to the: Northern Ireland Assembly; National Assembly for Wales; Scottish Parliament; and European Parliament.

2.15 The PPERA defines "campaign expenditure" as expenditure incurred by a registered political party for electoral purposes, namely: promoting the party or its candidates at a relevant election, or in promoting the standing of the party or

[54] PPERA, s. 54(4); RPA, Schedule 2A, para 6(4)
[55] PPERA, s. 54(5); RPA, Schedule 2A, para 6(5)
[56] PPERA, s. 54(6); RPA, Schedule 2A, para 6(6)
[57] PPERA, s. 56(1); RPA, Schedule 2A, para 7
[58] PPERA, s. 56(2); RPA, Schedule 2A, para 7
[59] PPERA, s. 57(1); RPA, Schedule 2A, para 7
[60] PPERA, s. 56(3); RPA, Schedule 2A, para 7
[61] PPERA, s. 71L
[62] PPERA, s 54(7) and s. 61; Schedule 7A
[63] PPERA, s. 60; RPA, Schedule 7A, para 9

its candidates in connection with future relevant elections.[64] The RPA defines the term as "*any expenses incurred in respect of: a) the acquisition or use of property; or b) the provision by any person of any goods, services or facilities which is or are used for the purposes of the candidate's election after the date when he becomes a candidate at the election*."[65]

2.16 Both acts cover only cover expenditure during a specified "regulated period" leading up to an election. In the case of parliamentary elections, that period is 365 days ending with the day of the election. In the case of candidates, this is split into the "long campaign" and the "short campaign" and different spending limits apply to each period.[66] The "long campaign" covers pre-candidacy expenses and applies where there has not been a general election for 4 years and 7 months. The "short campaign" is the period between the date a person becomes a candidate and the date of the poll.

2.17 All parties contesting the following elections are subject to limits on expenditure: Parliamentary general elections, elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and the European Parliament.[67] There are no separate limits on campaign expenditure incurred during local election campaigns.

2.18 Parties' expenditure limits are determined by the number of constituencies and/or regions that the party is contesting. In the case of a UK Parliamentary Election, the limit is £30,000 per constituency contested or £810,000 in England, £120,000 in Scotland, or £60,000 in Wales, whichever is the greater.[68]

2.19 Individual candidates standing at elections are also subject to expenditure restrictions, with some exceptions. In the case of candidates in UK parliamentary elections, the long and short campaigns have a baseline limit of £25,000 and £7,150 respectively, with a top-up of 5p per elector in a borough/burgh constituency and 7p per elector in a county constituency. In the case of the long campaign, the full amount is only available when the dissolution is in the 60th month of the current Parliament and a percentage of that amount is available from the 56th month.[69]

[64] PPERA, s. 72
[65] RPA, s. 90ZA and Schedule 4A, para1 (13)
[66] RPA, s. 76ZA
[67] PPERA, Schedule 9,
[68] PPERA, Schedule 9, para 3
[69] RPA, s. 76ZA

Disclosure

2.20 Extensive disclosure requirements apply to political parties, regulated donees and electoral candidates.

Political Parties

2.21 Political parties must report all donations and loans which either they or their accounting units have received and which are over the reporting thresholds.[70] They must also disclose their electoral expenditure.[71] An accounting unit is essentially a section of a party whose finances are not managed directly by party headquarters.

2.22 All parties must report: all impermissible donations; all permissible donations or loans over €7,500; all permissible donations and loans that are over, or add up to £1,500 and come from a source that has already been reported in the same calendar years. Different thresholds apply to account units, which must report all permissible donations or loans in excess of £1,500.

2.23 Generally, donations must be disclosed on a quarterly basis, however during a general election parties must report on a weekly basis.[72] Similarly, in each quarter, a party must report details for: new loans entered into by the party in that quarter; loans whose terms have changed in that quarter, including loans that have ended. Again, this period changes to a weekly period in a general election period.[73]

2.24 In respect of each donation which is over the reporting threshold, the information which must be disclosed includes[74]: the amount or nature and value of the donations; whether it was sponsorship or not; the donor's name and address; where the donor is a company, the company's registration number; the date on which the donation was received and the date on which it was accepted. In the case of impermissible donations and unidentifiable donors, slightly different information must be disclosed. In particular, in the case of impermissible donations, the recipient must disclose the date on which the donation was returned and the manner in which it was dealt with (i.e. the person or institution to which it was returned). In the case of a donation from an unidentifiable source, the recipient must disclose details of the manner in which the donation was made and the manner in which it was dealt with.

[70] PPERA, s. 62
[71] PPERA, s. 80
[72] PPERA, ss. 62 and 63
[73] PPERA, s. 71N and 71Q
[74] PPERA, Schedule 6

2.25 In so far as electoral expenditure is concerned, political parties that contested an election must submit an expenditure return to the Electoral Commission detailing the campaign expenditure incurred by the party at that election.[75] The return must itemise each individual item of expenditure, and give a breakdown of total expenditure incurred by reporting category and in each part of the UK. It must include invoices and receipts for any payment over £200 and a declaration from a "responsible person" to say that the return is complete and correct. The time limits for making that return depend on the amount of expenditure incurred.[76] Where that amount is less than £250,000, the political party has 3 months in which to make the return and otherwise it has 6 months. Parties that spent more than £250,000 must submit a statement from an independent auditor with their report.[77]

2.26 National parties are required to produce statements of accounts annually under the PPERA.[78] Information about the local accounting units of national parties is not included in these statements of accounts. However accounting units which have an income and expenditure of more than £25,000 but less than £250,000 must submit a Statement of Accounts to the Commission within three months of the end of the financial year.[79] An accounting unit which has income and expenditure over £250,000 requires an independent audit and has six months from financial year end to submit the Statement of Accounts to the Commission.

2.27 It is an offence to fail to submit a donation or loan report within the required time limit or to submit an incomplete or false report of donations or loans.[80] It is also an offence to knowingly or recklessly make a false electoral expenditure declaration.[81]

Regulated Donees

2.28 Regulated donees who are holders of elective office or members of a political party must disclose any donations of more than £1,500 received from permissible donors and any donations of more than £500 received from impermissible or unidentified donors.[82]

2.29 In so far as loans are concerned, they must identify any new loans which they have entered with authorised participants into with a value of over

[75] PPERA, s. 81 and Schedule 18
[76] PPERA, s. 82
[77] PPERA, s. 81
[78] PPERA, s. 42
[79] PPERA, Schedule 5, para 6
[80] PPERA, ss. 65(3) and (4), ss 71S(4) and (5)
[81] PPERA, s. 82(4)
[82] PPERA, Schedule 7, paras 10 and 11

£1,000 and loans whose terms have changed. In addition they must identify loans they have entered into with a value of over £500 where one or more of the other participants is not an authorised participant.

2.30 Regulated donees must report all the donations and loans they receive that are over the relevant reporting threshold within 30 days of accepting the donation or entering into the loan.[83] Aggregated loans and donations are reported when the aggregation exceeds the reporting threshold.[84] It is an offence to fail to deliver a report to the commission or to deliver a report which does not comply with the disclosure requirements.[85]

Electoral Candidates

2.31 Electoral candidates must submit an election expenses return for both the long and short period of the campaign.[86] This return requires information about the expenses incurred by the candidate as well as of any donation over £50 given to the candidate for his or her election expenses.[87] It must be made within 35 days of declaration of result. Both the candidate and his or her agent must also sign a declaration that the return is complete and accurate to the best of their knowledge and belief.[88]

Exchequer funding

2.32 Eligible political parties may obtain payments of policy development grants.[89] The total grant is £2 million and it is divided between represented registered parties to assist them with the development of policies for the inclusion in a manifesto. To qualify, parties must have at least two sitting members in the U.K. House of Commons who are not disqualified from either voting or sitting in the House.

2.33 Operating funds are also made available to opposition parties in the U.K. House of Commons, called Short money, on the basis of their showing in the last election. Parties receive £14,351 for each seat won along with an addition £28.66 for every 200 votes received. There is a comparable system for the House of Lords, called Cranborne money.

[83] PPERA, Schedule 7, Paras 10(2) and 11(1)
[84] PPERA, Schedule 7, Paras 10(2) and 11(1)
[85] PPERA, Schedule 7, Para 12
[86] RPA, s. 81
[87] RPA, Schedule 2A
[88] RPA, s. 82
[89] PPERA, s. 12

ENFORCMENT

2.34 Political finance measures are monitored and regulated by the Electoral Commission, which is an independent regulator established by the UK parliament.[90] The key elements of the Commission's regulatory work to promote compliance are advice, risk assessment, supervisory work and enforcement case-work including sanctioning.

2.35 The Commission's supervisory powers only apply to those regulated under the PPERA. It may issue a disclosure notice to a supervised organisation or individual requiring it to provide the Commission with specified documentation or information. Where the examination of documents is insufficient for the Commission's regulatory purposes it may seek to inspect documents on premises. If necessary it may apply to a Justice of the Peace to obtain a warrant for this purpose.

2.36 The Commission has extensive investigatory powers and may require documents or information as well as requiring a person to attend an interview.[91] These powers may be used when the Commission has reasonable grounds to consider that there has been a breach of the law on party and election finance. The Commission's powers to request information apply to and may be enforced against both the subject of any investigation and any other person or organisation that holds relevant information.

2.37 Persons who commit an offence under the PPERA or who contravene one of its statutory provisions may be subject to sanctions. Some breaches attract civil and/or criminal sanctions while others may only be dealt with using either civil or criminal enforcement action. The Commission does not have powers to impose criminal sanctions but may refer a breach for criminal investigation or seek prosecution in cases which it judges to have a significant impact on confidence in the transparency and integrity of party and election finance.

USA

3.01 In the U.S.A., at federal level, campaign finance is regulated by the Federal Election Campaign Act 1974 (the "FECA") as amended, and by Title 11 of the Code of Federal Regulations (the "CFR") adopted by the Federal Election Commission (the "FEC"). FECA (1) places limits on the sources and amounts of contributions which may be received by federal candidates and political party committees; (2) imposes restrictions on certain types of expenditure (but not the

[90] See PPERA, Schedule 1
[91] PPERA, s. 146

overall amount of expenditure); (3) requires the disclosure of all receipts and reimbursements intended to influence the outcome of an election.

3.02 This overview focuses on the application of the campaign finance provisions to political parties and candidates for federal office. FECA applies to political party committees which are organisations, officially affiliated with a political party which raise and spend money for political campaigning. To fall within the scope of FECA, a political party committee must spend more than $1,000 per calendar year on contributions and other expenditures or receive more than £1,000 in contributions.[92]

3.03 An individual becomes a candidate for federal office when his or her campaign activity exceeds $5,000 in either contributions or expenditure.[93] Each candidate must designate a principal campaign committee and may designate other authorised committees to receive contributions or make expenditures on his or her behalf.[94]

Registration

3.04 Once a party organisation spends more than $1,000 in contributions and other expenditures or raises more than $1,000 in connection with a federal election, it becomes a political committee.[95] It then has 10 days to file an FEC registration form and a Statement of Organisation.[96] A political party must designate a treasurer on that Statement.[97]

3.05 A candidate must register as a candidate with the FEC within 15 days of receiving contributions or making expenditure of over $5,000.[98] In that same period, he or she must also designate a principal campaign committee.[99] That committee then has 10 days in which to register by filing a Statement of Organisation, including details of its treasurer and custodian of records.

3.06 A candidate may also designate other authorised committees for receiving contributions or making expenditures on his or her behalf by filing a statement with the principal campaign committees.[100] Within 10 days of designating the committee, the candidate must file a registration with the

[92] 11 CFR § 100.5
[93] 11 CFR § 100.3
[94] 11 CFR § 101.1
[95] 11 CFR § 100.5
[96] 11 CFR § 102.1
[97] 11 CFR § 102.2
[98] 11 CFR § 1001.1
[99] 11 CFR § 102.12
[100] 11 CFR § 101.1(b)

candidate's principal campaign committee which in turn files the documents with the stipulated federal and state offices.[101]

Contribution restrictions

3.07 As mentioned, FECA prohibits contributions from certain sources and limits the amount of a contribution which may be accepted from a particular source. A contribution is defined as anything of value given for the purpose of influencing a federal election.[102] The definition includes guarantees or endorsements of bank loans although it does not include loans made in an institution's ordinary course of business. In the case of candidates, the term contribution includes contributions made by a candidate from his or her personal funds.

3.08 Both political party committees and candidates are prohibited from accepting contributions from:

- A person who is not a U.S. citizen or who is not permanently resident in the USA[103]
- The general treasury funds of corporations, labour organisations or national banks[104]
- Federal government contractors[105]
- Cash donations in excess of $100[106]
- Anonymous donations in excess of $50[107]
- A contribution made in the name of another[108]

3.09 Both political party committees and candidates are subject to contribution limits, which are index linked. A national party committee may receive up to $15,000 per calendar year from a multicandidate committee and up to $30,800 per calendar year from non multi-candidate committees and individual contributors.[109] In addition, over a two year calendar cycle, an individual may not contribute more than a total of $117,000 to all political party committees combined ($46,200 to all candidates and $70,800 to all PACs and parties.

[101] 11 CFR § 101.1(b)
[102] 11 CFR § 100.51
[103] 11 CFR § 110.20
[104] 11 CFR § 114.2
[105] 11 CFR § 115.2
[106] 11 CFR § 110.4
[107] 11 CFR § 110.4
[108] 11 CFR § 110.4
[109] 11 CFR §110.2 and §110.1

3.10 Individuals and groups may contribute a maximum of $2,500 per election to a candidate's campaign.[110] Both national party committees and a multicandidate committee may contribute up to $5,000 per election.

3.11 The contribution limits do not apply to contributions made from a candidate's personal funds to his or her election campaign. Previously, where a candidate spent large amounts of his or her own funds on his or her electoral campaign, this resulted in increased contribution limits for that candidate's opponents. However, in *Davis v FEC*[111], the U.S. Supreme Court struck down this provision as being unconstitutional. According to that Court, the burden placed on wealthy candidates by the relevant provisions was not justified by any governmental interest in preventing corruption or the appearance of corruption.

3.12 Both political party committees and individuals are prohibited from knowingly accepting a contribution that violates the prohibitions on contributions.

Expenditure restrictions

3.13 Generally, neither political party committees nor candidates are subject to restrictions are their overall amount of expenditure. In *Buckley v Valeo*,[112] the U.S. Supreme Court declared the electoral expenditure restrictions contained in the FECA 1974 to be unconstitutional because they interfere with free speech and association. According to that court, expenditure limitations limit "the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience." For example, political party committees can incur unlimited amounts of "independent expenditure", which is expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and which is not made in co-ordination with any candidate or his or her campaign or political party.

3.14 Nevertheless, FECA does limit types of permissible "expenditure", defined as purchase or payment to influence a federal election. Specifically, as mentioned, political party committees are limited as to the amounts which they can contribute to electoral candidates and other persons. Moreover, candidates are subject to the same contribution restrictions as other individuals.

[110] 11 CFR §110.1
[111] 554 U.S. 724 (2008)
[112] 424 U.S. 1(1976)

Disclosure

3.01 Disclosure is the mainstay of U.S. campaign finance law. Political party committees must file 1) a monthly schedule; 2) 48 and 24 hour independent expenditure reports. A candidate's principal campaign committee must file quarterly reports on their financial activity. Additional disclosure requirements apply in an electoral year. In certain cases individual donors must also file disclosure reports.

Political Party Committees

3.02 All national party committees that engage in reportable Federal Election Activity must file monthly[113] and must file a year-end report due January 31st of the next year.[114] A committee filing on a monthly schedule files reports covering each month's activity by the 20th of the following month. In even-numbered years (years in which there are regularly scheduled federal elections), party committees that generally file monthly reports file pre-general and post-general election reports in lieu of the reports otherwise due in November and December. The pre-general election report is due 12 days before the general election[115] and the post-general election report is due 30 days after the general election.[116]

3.03 Political committees who make independent expenditures at any time during the calendar year, up to and including the 20th day before an election, are required to disclose this activity within 48 hours each time that the expenditure aggregates $10,000 or more.[117] In addition, during the last 20 days – up to 24 hours – before an election - political committees are required to file 24-hour reports of independent expenditures each time disbursements for independent expenditures aggregate or exceed $1,000.[118] Political committees must report independent expenditures that do not trigger the 48 or 24-hour reporting thresholds on their regularly-scheduled disclosure reports as stated above.

3.04 National party committees are required to provide extremely comprehensive disclosure in their statements/reports including: itemized receipts; itemized disbursements; loans; loans and lines of credit from lending institutions; debts and obligations; independent expenditures; and itemized coordinated party expenditures.[119]

[113] 11 CFR § 104.5(c)(4)
[114] 11 CFR § 104.5(c)(3)(ii)
[115] 11 CFR § 104.5(c)(I)(ii)
[116] 11 CFR §104.5(c)(I)(iii)
[117] 11 CFR §104.4(b)(2)
[118] 11 CFR §104.4(c)
[119] See generally, Federal Election Commission Campaign Guide, Political Party Committees, July 2009

3.05 All reports filed by political committees are available for public inspection and copying both in the FEC's Public Record Office and its website.

Candidates

3.06 A candidate's principal campaign committee (and other authorised committees) must file quarterly reports which are due on April 15, July 15, October 15, and on January 31 of the following year.[120]

3.07 Additional obligations apply in election years, which are years in which regularly scheduled federal elections are held. In election years, as well as quarterly reports, a committee for a House or Senate candidate must file:[121]

- A pre-election report before the election in which the candidate seeks nomination;
- A pre-general election report if the candidate runs in a general election;
- A pre-runoff report when a candidate is involved in a run-off election.

3.08 A pre-election report is due 12 days before the election and covers activity through the 20th day before the election.

3.09 There is no requirement for post-primary reports, but a committee must file a post-general election report if the candidate runs in the general election. A post-general election report covers activity through the 20th day after the election and is due 30 days after the election.

3.10 Campaign committees must file special notices regarding contributions of $1,000 or more received less than 20 days but more than 48 hours before 12.01am of the day of any election in which the candidate is running. This rule applies to all types of contributions to any authorised committee of the candidate.[122] The FEC or the Secretary of State, as the case may be, must receive the notice within 48 hours of the committee's receipt of the contribution.

3.11 Generally, committees may file a paper report or an electronic report, however some committees are obliged to file electronically.[123] Campaign committees of House and Presidential candidates must file all reports and statements electronically if their total contributions or total expenditures exceed, or are expected to exceed, $50,000 in a calendar year. Campaign committees are required to disclose very detailed information regarding receipts and disbursements in reports filed.

[120] 11 CFR § 104.5(1)
[121] 11 CFR § 104.5(2)
[122] 11 CFR § 104.5(f)
[123] 11 CFR § 104.18

3.12 All reports filed by political committees are available for public inspection and copying in the FEC's Public Records Office. They are also available on the Commission's website.

Individuals

3.13 Once an individual spends more than $250 during a calendar year on independent expenditures with respect to a given election, he or she must file a report with the Federal Election Commission or a signed statement containing the same information).[124] Every expenditure thereafter must be reported to the Commission.

3.14 In addition, an individual who makes electioneering communications that aggregate more than $10,000 in the calendar year must file the "24 Hour Notice of Disbursements/Obligations for Electioneering Communications" with the Commission within 24 hours of the disclosure date.[125]

Public funding

3.01 Public funding is available to both political parties and presidential candidates. It is financed exclusively by a voluntary tax check off. By checking a box on their income tax returns, individual tax payers may direct $3 of their tax to the Fund.

3.02 Political parties receive public funding for their national nominating conventions, which are held every 4 years. In 2008 each of the major parties received $16.82 million. Other parties may also be eligible for partial public financing of their nominating conventions, provided that their nominees received at least 5% of the vote in the previous presidential election.

3.03 In so far as presidential candidates are concerned, funds to qualified Presidential candidates are distributed under two programmes:

- primary matching payments under which eligible candidates in the Presidential primaries may receive public funds to match the first $250 of each individual private contribution they raise. Candidates must agree to use public funds only for campaign expenses, and they must comply with spending limits.

- Republican and Democratic candidates who win their parties' nominations for President are each eligible to receive a grant to cover all the expenses of their general election campaigns. In 2008, the grant was $84.1 million.

[124] 11 CFR § 109.10
[125] 11 CFR 104.20(b).

Nominees who accept the funds must agree not to raise private contributions and to limit their campaign expenditure to the amount of public funds they receive. They may use the funds only for campaign expenses.

Monitoring and enforcement

3.04 The FEC is the independent regulatory agency charged with administering and enforcing the federal campaign finance law. It has exclusive jurisdiction over the civil enforcement of the FECA.[126]

3.05 The FEC may commence an enforcement action based on reviews carried out by FEC staff on reports filed by committees. In addition, individuals or groups may file complaints and other government agencies may refer an enforcement matter to the FEC. If 4 of the 6 Commissioners vote reason to believe that a violation of the law has occurred, the Commission may investigate the matter. The investigation is conducted by the FEC's Office of General Counsel.

3.06 If the Commission decides that the investigation confirms that the law has been violated, it tries to resolve the matter by reaching a conciliation agreement with the respondents. The agreement may require them to pay a civil penalty which is proportionate to the gravity of the offence and take other remedial steps. If an agreement cannot be reached, the Commission may file suit against the appropriate persons in a U.S. District Court.

[126] See generally, Federal Election Commission, The FEC and the Federal Campaign Finance Law, www.fec.gov

CHAPTER EIGHTEEN – RECOMMENDATIONS

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Financial Action Task Force, *The Misuse of Corporate Vehicles Including Trust and Company Service Providers,* (October 2006)

OECD, *Behind the Corporate Veil: using corporate entities for illicit purposes,* (OECD, 2001)

Van der Does de Willebois, Emile, Halter, Emily M., Harrison, Robert A., Park, Ji Won, Sharman J.C., *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, (World Bank, 2011)

LIST OF WITNESSES

	Witness	Module(s) / Evidence days	Limited Representation Sought and Granted
1	Ahern Bertie	Quarryvale 1 (474); Quarryvale 2 (756-757,760, 762,804-805,825-826,869-870, 873 and 895-896)	Yes
2	Ahern Dermot	Cherrywood (653)	
3	Ahern John	Carrickmines 1 (411); Quarryvale 2 (811)	Yes
4	Andrews David	Cherrywood (647)	Yes
5	Ardagh Sean	Cherrywood (647); Quarryvale 2 (820)	Yes
6	Barnicle John	Cargobridge (681, 713, 721)	
7	Barrett Carol	Carrickmines 1 (404)	
8	Barrett John	Lawlor compliance (393)	Yes
9	Barrett Sean	Fox & Mahony (427); Cherrywood (650,666)	Yes
10	Barry James	Cherrywood (641)	
11	Barry Mitchel	Quarryvale 2 (778)	
12	Basquille Mary	Quarryvale 2 (865)	Yes
13	Beale Sheena	Quarryvale 2 (868)	Yes
14	Billane Michael	Ballycullen (618); Quarryvale 2 (742)	
15	Black Helen	Dunlop statement (146)	
16	Boland Barry	Quarryvale 1 (499)	
17	Boland Cathal	Cherrywood (670); Balheary (700); Quarryvale 2 (846)	Yes
18	Bolger James	Quarryvale 2 (806)	Yes
19	Bolton Leo	Quarryvale 1 (500)	
20	Brady Gerard	Quarryvale 1 (496-497)	Yes
21	Brady Peter	Quarryvale 2 (791)	
22	Brennan Seamus (deceased 09/07/08)	Quarryvale 1 (478); Ballycullen (620)	Yes
23	Britton Brian	Coolamber (555-557)	Yes
24	Brock Seamus (deceased 17/05/94)	Evidence read into the record: Ballycullen (611); Cherrywood (641); Balheary (698)	
25	Brooks Frank	Ballycullen (618, 619)	Yes
26	Brooks Oliver	Ballycullen (618)	Yes
27	Bruton John	Cherrywood (670); Quarryvale 2 (777)	Yes
28	Burke Christy	Quarryvale 2 (827)	Yes
29	Burke Joe	Quarryvale 1 (499); Quarryvale 2 (800, 854, 858)	Yes
30	Burke Ray	Quarryvale 1 (476); Balheary (699)	Yes
31	Burns Thomas (deceased)	Quarryvale 1 (494)	
32	Burton Joan	Quarryvale 2 (740)	
33	Butler John	Cloghran (901-902)	Yes
34	Butler Larry	Carrickmines 1 (403); Fox & Mahony (427); St Gerards (437); Ballycullen (611); Cherrywood (646)	Yes
35	Byrne Auveen	St Gerards (437)	
36	Byrne Brian Deceased	Cargobridge (676, 677)	
37	Byrne David	Quarryvale 2 (864)	Yes
38	Caffrey Joan	Carrickmines 1 (417)	
39	Cahill Brendan	Quarryvale 2 (732)	
40	Caldwell John	Carrickmines 1 (414-418); Carrickmines 2 (538, 541-546); Coolamber (571-579)	Yes
41	Campion Jude	Carrickmines 2 (527-529, 547)	Yes
42	Carew Dermot	Quarryvale 2 (799)	Yes
43	Carroll Clive	Quarryvale 1 (484)	
44	Carroll Gerry	Carrickmines 1 (374, 917 on commission); Carrickmines 2 (530)	
45	Carroll Patricia	Quarryvale 1 (484)	

	Witness	Module(s) / Evidence days	Limited Representation Sought and Granted
46	Carruth Grainne	Quarryvale 2 (802, 839, 840)	Yes
47	Cass Breda	Ballycullen (612)	
48	Chambers Denis	Quarryvale 1 (505)	Yes
49	Charlton Gerard	Carrickmines 2 (447-451)	Yes
50	Chawke Charlie	Quarryvale 2 (797)	Yes
51	Clarke Joan	Baldoyle (703)	Yes
52	Coffey Betty	Carrickmines 1 (412); Fox & Mahony (428); Cherrywood (658); Balheary (697)	Yes
53	Collins Anthony E	Baldoyle (701)	
54	Collins Gerard	Quarryvale 1 (495)	Yes
55	Collins Michael	Quarryvale 2 (871)	Yes
56	Collins Sinead	Carrickmines 1 (332-333); Fox & Mahony (425); St Gerards (435); Ballycullen (612); Duff (622); Lissenhall (626); Walls Kinsealy (671); Cherrywood (639); Cargobridge (677); Cloghran (691); Balheary (693); Pye (715); Baldoyle (702); Quarryvale 2 (605)	
57	Collins Tim	Quarryvale 1 (485); Duff (624); Lissenhall (631); Walls Kinsealy (635); Quarryvale 2 (837); Cloghran (916 on commission)	Yes
58	Conlon Oliver	Carrickmines 1 (385)	
59	Conroy Richard	Cherrywood (650)	
60	Conway Enda	Carrickmines 1 (336-338, 907)	
61	Coonan Willie	Day 215	Yes
62	Cooling Pat	Cherrywood (712)	Yes
63	Cooper Liam	Quarryvale 2 (858)	Yes
64	Cooper-Flynn Beverley	Quarryvale 1 (512)	Yes
65	Corcoran John	Quarryvale 1 (502); Quarryvale 2 (863)	Yes
66	Corcoran Noel	Carrickmines 2 (526)	
67	Corcoran Noel Michael	Quarryvale 2 (868)	
68	Corrigan Anne	Cloghran (689)	
69	Cosgrave Liam T.	Carrickmines 1 (378-383); Fox & Mahony (429); St Gerards (438); Cherrywood (667); Balheary (698); Ballycullen (619); Baldoyle (709); Quarryvale 2 (820)	Yes
70	Cosgrave Michael J	Fox & Mahony (428, 587-588); St Gerards (437); Ballycullen (614); Cherrywood (652); Cargobridge (673); Cloghran (692); Balheary (700); Baldoyle (710); Quarryvale 2 (819)	
71	Coughlan Liam	Carrickmines 1 (404)	
72	Cousins Patrick J.	Cargobridge (684)	Yes
73	Cowen Brian	Cargobridge (682)	Yes
74	Cowhig Claire	Quarryvale 2 (871-872)	Yes
75	Creaven Liam	Fox & Mahony (428, 588); Cherrywood (646); Cargobridge (683); Cloghran (692); Baldoyle (710); Ballycullen (614); Quarryvale 2 (882)	Yes
76	Cremins Richard	Carrickmines 1 (334-335); St Gerards (435); Cherrywood (638)	
77	Crowley Brian	Quarryvale 2 (753)	Yes
78	Cullagh Sandra	Quarryvale 2 (803)	Yes
79	Curry Patrick	Quarryvale 2 (835)	
80	Curtis Joseph	Carrickmines 2 (547)	
81	Dadley Edward	Quarryvale 1 (466)	Yes
82	Daly James	Cherrywood (640); Quarryvale 2 (780)	Yes

	Witness	**Module(s) / Evidence days**	**Limited Representation Sought and Granted**
83	Darragh Austin	Carrickmines 1 (373)	Yes
84	Deane John	Quarryvale 1 (501-502); Quarryvale 2 (874-883, 887, 889, 890)	Yes
85	Delahunt Brian	Coolamber (565-567)	
86	Delaney Anthony	Cargobridge (683)	
87	Devitt Anne	Fox & Mahony (429); Duff (630); Lissenhall (630); Walls Kinsealy (636); Cherrywood (640); Cargobridge (679); Cloghran (690); Balheary (698)	
88	Dillane Dominic	Quarryvale 2 (837, 838, 857)	Yes
89	Dillon Sean	Cloghran (689)	
90	Dinan Anthony	Sunday Business Post leak (552)	
91	Dobson Harry	Quarryvale 2 (862)	Yes
92	Dockrell William	Cherrywood (649)	
93	Donagh Jim	Quarryvale 1 (500); Quarryvale 2 (851)	Yes
94	Donnelly Joe	Quarryvale 2 (780)	
95	Donovan Roy	Quarryvale 2 (742)	
96	Doody Seamus	Cargobridge (676)	
97	Doran Eugene	Carrickmines 1 (411)	
98	Dowling Joseph	Quarryvale 2 (775)	
99	Doyle Collette	Pye (720)	Yes
100	Druker Irwin	Quarryvale 1 (487)	Yes
101	Drumgoole Dermot	Carrickmines 1 (376-377)	
102	Duff Matthew	Duff (624)	
103	Duffy Declan	Lissenhall (631)	Yes
104	Duggan Noel C.	Quarryvale 2 (812)	
105	Duignan, Eamon	Cloghran (900)	Yes
106	Duke Brendan	228	
107	Dukes Alan	Quarryvale 2 (737)	
108	Dunlop Frank	Statement (145-148); Carrickmines 1 (341-349, 352-358, 363-370) & 2 (535); Fox & Mahony (420-422, 424, 587); St Gerards (433-434); Ballycullen (606-611, 617, 622); Duff (622-623, 630, 634); Lissenhall (625-626, 630); Walls Kinsealy (634, 672); Cherrywood (652-655, 661, 668); Cargobridge (674, 680, 684); Cloghran (686-687, 908); Balheary (695); Baldoyle (704-706, 711); Pye (717); Quarryvale 2 (763-767, 769, 771-773, 779-784, 802-803, 806, 808-811, 813-819, 830-831)	Yes
109	Dunne Ben	Cargobridge	Yes
110	Dunne Patrick (deceased on 22/01/94)	Evidence read into the record: Quarryvale 2 (735)	
111	Dunne Sean	Cherrywood (667)	
112	Dunphy Eamon	Quarryvale 2 (822)	Yes
113	Durkan Eileen	St Gerards (437)	
114	Elliott Mary	Quarryvale 2 (847)	
115	English Barry	Quarryvale 2 (799)	Yes
116	Fahey Frank	Cherrywood (647); Quarryvale 2 (742)	
117	Fahey Jim	Quarryvale 2 (817); Cherrywood (D 817)	Yes
118	Farina Ray	Cloghran (689)	
119	Farrell Pat	Quarryvale 2 (775)	Yes
120	Farrell Peter	Carrickmines 1 (359)	
121	Farrell Willie	Quarryvale 1 (476)	
122	Fay James	Balheary (699)	
123	Feely Frank	Quarryvale 1 (489-490)	

	Witness	**Module(s) / Evidence days**	**Limited Representation Sought and Granted**
124	Finnegan Frank	Carrickmines 1 (374) & 2 (530, 531, 534)	Yes
125	Fitzgerald Eithne	Cherrywood (644); Pye (718); Quarryvale 2 (739)	
126	Fitzgerald John	Quarryvale 2 (807)	
127	Fitzgerald Louis	Quarryvale 2 (806)	Yes
128	Fitzgerald Patrick	Cherrywood (642)	
129	Fitzgerald Stephen	Cargobridge (684)	Yes
130	Flaherty Mary	Cherrywood (641)	
131	Fleming Brian	Quarryvale 2 (815)	Yes
132	Fleming John	Quarryvale 2 (775)	
133	Fleming Leo	Quarryvale 2 (834)	Yes
134	Fleming Sean	Quarryvale 1 (501); Quarryvale 2 (862); Cherrywood (648); Cloghran (691)	Yes
135	Flood Chris	Cherrywood (641)	
136	Flynn Dorothy	Quarryvale 1 (510)	Yes
137	Flynn Padraig	Quarryvale 1 (513-514, 518); Quarryvale 2 (845-846); Cherrywood (648)	Yes
138	Forman Richard	Quarryvale 1 (481); Quarryvale 2 (853)	
139	Fortune Johnny	Quarryvale 2 (815)	Yes
140	Fox Caroline	Ballycullen (618)	
141	Fox Margaret	Ballycullen (618)	
142	Fox Noel	Fox & Mahony (425)	Yes
143	Fox Tony	Carrickmines 1 (383-385); Fox & Mahony (430); St Gerards (435); Ballycullen (615); Lissenhall (632); Cherrywood (668); Cargobridge (676); Cloghran (688); Balheary (698); Baldoyle (709); Pye (718); Quarryvale 2 (835)	Yes
144	Friel Frank	Carrickmines 2 (453, 454, 516, 525)	
145	Gaffney Margaret	Quarryvale 2 (801)	
146	Galbraith David	Coolamber (564)	
147	Gallagher Cyril (deceased on 20/03/2000)	Evidence read into the record: Fox & Mahony (429); Duff (637); Lissenhall (629); Cherrywood (640); Cargobridge (676); Cloghran (692); Balheary (699); Ballycullen (610); Baldoyle (711); Quarryvale 2 (808)	Yes
148	Galvin Sean	Carrickmines 1 (359)	
149	Ganley Declan	Quarryvale 2 (766)	Yes
150	Gannon Gerry	Coolamber (568-569); Cherrywood (650)	Yes
151	Garrett John	Quarryvale 2 (747, 748)	Yes
152	Geraghty James	Cherrywood (640)	Yes
153	Gibson Brother David	Balheary (694)	Yes
154	Gibson Thomas	Carrickmines 1 (411)	
155	Gilbride Sean (Deceased)	Carrickmines 1 (402); Fox & Mahony (430); Ballycullen (619); Lissenhall (627); Walls Kinsealy (672); Cherrywood (641); Cargobridge (675); Cloghran (689); Baldoyle (710); Quarryvale 2 (819, 846)	
156	Gilmartin Thomas	Quarryvale 1 (455-465, 467-476); Quarryvale 2 (726-734, 736-744, 747-749, 751, 758-759, 761, 763-766, 768-770, 773-774, 776, 778, 780)	Yes
157	Gilmore Eamon	Cherrywood (653)	

Witness	Module(s) / Evidence days	Limited Representation Sought and Granted	Witness
158	Gilsen Noel	Lawlor statement (229),Quarryvale 1 (504)	Yes
159	Glennane Dominic	Cherrywood (659, 660, 664, 665)	Yes
160	Goodman Laurence	Coolamber (553-554)	Yes
161	Gordon Larry	Pye (719)	
162	Gore-Grimes John	Baldoyle (702-703)	
163	Gosling Anne	Cherrywood (656)	Yes
164	Grainger William	Quarryvale 2 (772)	
165	Greene Richard	Cherrywood (642); Quarryvale 2 (836)	
166	Greene Sean	Walls Kinsealy (636)	Yes
167	Grimes Thomas	Carrickmines 2 (525)	Yes
168	Gunne Maureen	Quarryvale 2 (796)	
169	Hackett Con	Quarryvale 1 (477)	
170	Hand Annie	Carrickmines 1 (412)	Yes
171	Hand Dolores	Ballycullen (619)	Yes
172	Hand Noel	Ballycullen (619)	Yes
173	Hand Patrick	St Gerards (438)	
174	Hand Thomas Jnr.	Ballycullen (619)	Yes
175	Hand Tom (deceased on 29/06/96)	Evidence read into the record: Ballycullen (619); Balheary (699); Baldoyle (711); Quarryvale 2 (735); Lissenhall (629); Pye (718)	Yes
176	Hanlon Jackie	Carrickmines 1 (401)	
177	Hannigan Ronan	Coolamber (586)	Yes
178	Hannon John	Ballycullen (613); Cherrywood (642)	Yes
179	Hanrahan Finbarr	Quarryvale 1 (497-498); Cherrywood (649); Balheary (700); Quarryvale 2 (821)	
180	Hanrahan Michael	Cherrywood (642)	
181	Harney Mary	Ballycullen (615); Cherrywood (654)	
182	Harrington Stewart	Coolamber (551)	
183	Harvey William	Cherrywood (667)	Yes
184	Haughey Ciaran	Cargobridge (681, 713, 721)	
185	Haughey Sean	Quarryvale 1 (480); Cherrywood (647)	
186	Hayden Niall	Quarryvale 1 (500)	
187	Hayes Brian	Cherrywood (642)	
188	Hayes Richard	Lissenhall (628)	Yes
189	Healy Sean	Carrickmines 1 (385)	
190	Heneghan Brother John	Balheary (694)	Yes
191	Hennessy Marie	Ballycullen (614)	
192	Hickey Brendan	Baldoyle (707-709)	Yes
193	Higgins John	Quarryvale 1 (481-482)	Yes
194	Hill Alex	Carrickmines 2 (525)	
195	Hilliard Colm (deceased on 14/01/02)	Evidence read into the record: Cherrywood (642)	
196	Hogan Christopher	Carrickmines 1 (335-336)	
197	Hogan Edward	Fox & Mahony (423)	
198	Hughes Blair	Quarryvale 2 (839)	Yes
199	Hughes Michael	Lissenhall (628)	Yes
200	Hunt Brian	Quarryvale 2 (860)	
201	Hussey Derry	Ballycullen (620)	Yes
202	James, Brigadier General Raphael	Quarryvale 2 (792)	
203	Jennings Patrick	Quarryvale 2 (827)	Yes
204	Jones Christopher Junior	Ballycullen (621)	Yes
205	Jones Christopher Senior	Ballycullen (620-621)	Yes
206	Jordan Lisa	Quarryvale 2 (860)	Yes
207	Kavanagh Paul	Quarryvale 1 (501)	Yes
208	Kay Edmund	Quarryvale 1 (500); Quarryvale 2 (841-844)	Yes

	Witness	Module(s) / Evidence days	Limited Representation Sought and Granted
209	Kean Gerald	Cloghran (693)	
210	Keane Cait	Fox & Mahony (425)	
211	Keating Michael	Ballycullen (611); Cherrywood (643)	
212	Keating Pat	Quarryvale 2 (859)	
213	Keena Colm	Irish Times leak (679)	
214	Kelleher Billy	Quarryvale 2 (793)	
215	Kelleher Tom	Lissenhall (626)	
216	Kelly Aidan	Pye (723)	Yes
217	Kelly Ambrose	Discovery (226,228); Quarryvale 1 (497); Quarryvale 2 (852, 886, 888)	Yes
218	Kelly Freida	Quarryvale 1 (471)	
219	Kennedy Antoinette	Carrickmines 1 (341); Carrickmines 2 (539)	
220	Kennedy Geraldine	Irish Times leak (679)	
221	Kennedy Jim	Carrickmines 1 (340 - correspondence read into the record in his absence)	
222	Kennedy John Thomas	Quarryvale 2 (802)	Yes
223	Kennedy Kieran	Quarryvale 2 (605)	
224	Kennedy Michael	Fox & Mahony (427, 428); Cargobridge (673); Balheary (699)	
225	Kennedy Michael	Cargobridge (683)	
226	Kenny Niall	Cloghran (693, 903)	Yes
227	Keogh Helen	Cherrywood (647)	
228	Kett Tony (Deceased)	Quarryvale 2 (800)	
229	Kilcoyne Gerard	Carrickmines 1 (371)	Yes
230	Kirwan Jack (Deceased)	Quarryvale 1 (487)	
231	Kitt Tom	Ballycullen (617); Cherrywood (643)	Yes
232	Lafferty Patrick	Pye (723)	Yes
233	Laing Stanley	Ballycullen (612)	
234	Larkin Celia	Quarryvale 2 (755, 867)	Yes
235	Larkin Jack (deceased on 06/05/98)	Evidence read into the record: Fox & Mahony (429); Ballycullen (610-611); Cherrywood (641); Baldoyle (711); Quarryvale 2 (735)	Yes
236	Lawlor Liam (deceased on 22/10/05)	Statement (221-224); Carrickmines 1 / compliance (391-400, 405-411, 413, 419); Carrickmines 2 (533, 535, 546); Quarryvale 1 (508, 509, 512); Coolamber (583-585); Evidence read into the record in: Ballycullen (916); Baldoyle (711); Cherrywood (670); Quarryvale 2 (786, 916)	Yes
237	Lawlor Niall	Quarryvale 2 (916 - read into the record in his absence)	
238	Lawlor Noel	Quarryvale 2 (741)	
239	Layden Joseph	Pye (720)	Yes
240	Leahy Gerard	Quarryvale 2 (812)	
241	Leddy Michael	Carrickmines 2 (529)	
242	Lenihan Brian (deceased on 1/11/95)	Evidence read into the record: Cherrywood (642)	
243	Lenihan Brian Jnr. (deceased)	Cherrywood (648)	
244	Leon Tony	Carrickmines 1 (386)	Yes
245	Leonard Padraig	Quarryvale 1 (471)	Yes
246	Linnane Thomas	Pye (720)	
247	Lohan Larry	Cherrywood (645, 650); Pye (717)	
248	Long John Patrick	Lawlor Statement (228)	
249	Lonergan John	Lawlor statement (231)	
250	Loughrey John	Cargobridge (677, 678)	Yes
251	Lowry Donal	St Gerards (436)	
252	Lucey Aidan	Quarryvale 2 (831-833)	Yes

	Witness	Module(s) / Evidence days	Limited Representation Sought and Granted
253	Lydon Donal	Carrickmines 1 (387-390); Cargobridge (673); Ballycullen (613, 719); Cherrywood (669-670); Balheary (699); Baldoyle (709); Pye (719); Quarryvale 2 (821)	Yes
254	Lynch Donal	Lissenhall (627)	Yes
255	Lynch John	Quarryvale 2 (824)	Yes
256	Lynch Martin	Cherrywood (643)	Yes
257	Lynn Richard	Carrickmines 2 (525); Cherrywood (665-667, 669); Pye (719, 723)	Yes
258	Lyons Edward	Quarryvale 1 (477)	
259	Lyons Sean	Cherrywood (643)	Yes
260	Madden Andrew	Coolamber (565)	
261	Madden Eoghan	Carrickmines 1 (404)	
262	Madigan Patrick	Cherrywood (643)	
263	Magnier Marcus	St Gerards (436)	
264	Maguire Desmond	Quarryvale 2 (796)	Yes
265	Maguire Mary	Fox & Mahony (587)	Yes
266	Maguire Seamus	Quarryvale 1 (495, 499) & 2 (810)	Yes
267	Mahony Denis (Deceased)	Fox & Mahony (424, 426)	Yes
268	Mahony John	Fox & Mahony (423)	Yes
269	Mallon Grainne	Carrickmines 1 (368); Walls Kinsealy (635); Baldoyle (703)	Yes
270	Manahan Tony	Lissenhall (627)	
271	Marren Donal	St Gerards (434); Cherrywood (649); Pye (718)	
272	Martin Micheál	Quarryvale 2 (731)	Yes
273	Martin Richard	Sunday Business Post leak (549)	
274	Matthews Finnian	Quarryvale 2 (736, 738)	
275	Matthews Trevor	Cherrywood (649); Pye (717)	
276	Matthews Vivian	Carrickmines 1 (370)	
277	McAuliffe Eimear	Carrickmines 1 (411)	
278	McCabe Fergal	Cherrywood (650, 651)	
279	McCabe Peter	Coolamber (559)	
280	McCann John	Quarryvale 2 (827)	
281	McCarthy John	Quarryvale 2 (830)	Yes
282	McCulloch Declan	Ballycullen (612)	
283	McDermott Deidre	Ballycullen (616)	
284	McDonald Kenneth	Quarryvale 2 (839)	Yes
285	McDowell David	Quarryvale 2 (859)	
286	McDowell Paul	Cargobridge (673)	Yes
287	McElroy Eamon	Quarryvale 2 (818)	Yes
288	McGennis Marian	Fox & Mahony (429); Ballycullen (614); Cherrywood (643); Quarryvale 2 (830)	
289	McGing Laura	St Gerards (434)	
290	McGlynn Liam	Fox & Mahony (423, 432); Balheary (693)	
291	McGowan Hugh	Quarryvale 2 (836)	Yes
292	McGrath Colm	Carrickmines 1 (401); Fox & Mahony (429); Ballycullen (614); Cherrywood (658); Cargobridge (675); Quarryvale 2 (823-824)	
293	McGrath David	Quarryvale 2 (850-851)	Yes
294	McGrath Deirdre	Quarryvale 2 (857)	Yes
295	McGuinness John	Cargobridge (682)	Yes
296	McGuinness Michael	Cargobridge (713, 721) - evidence read into the record in his absence	
297	McHale Seamus	Carrickmines 1 (359)	Yes
298	McHugh Chris	Quarryvale 2 (794)	Yes
299	McKenna David	Quarryvale 2 (797)	Yes
300	McKenna James	Quarryvale 2 (811)	
301	McKenna Peter	Quarryvale 2 (860)	

	Witness	Module(s) / Evidence days	Limited Representation Sought and Granted
302	McLoone Michael	Quarryvale 1 (485-487, 502-503); Quarryavle 2 (816)	
303	McLoughlin John	Quarryvale 2 (855)	Yes
304	McMahon Larry (deceased on 16/02/06)	Evidence read into the record: Cherrywood (641)	
305	McNamara Edward	Quarryvale 2 (777)	
306	McNamara Jim	Quarryvale 2 (750-753)	Yes
307	McSharry Ray	Quarryvale 1 (471) & 2 (856)	
308	Meehan Brian (Deceased)	Carrickmines 1 (377)	Yes
309	Miley Stephen	Carrickmines 2 (154, 536); Coolamber (570-571)	Yes
310	Minnock Pat	Carrickmines 2 (537)	
311	Mitchell Olivia	Cherrywood (645); Pye (716); Quarryvale 2 (816)	
312	Molloy Nicholas	Quarryvale 1 (500)	
313	Moloney, Kieran	Duff (637)	
314	Monahan Paul	Cherrywood (659, 712)	Yes
315	Monahan Philip (Deceased)	Evidence read into the record: Cherrywood (643)	Yes
316	Montgomery Giles (Deceased)	Carrickmines 1 (359)	
317	Mooney Luke	Coolamber (567-568)	Yes
318	Mooney Patrick	Cargobridge (681)	
319	Mooney Patrick	Carrickmines 2 (541)	Yes
320	Mooney Sean	Coolamber (557, 558, 586)	Yes
321	Moran Colm	Lissenhall (627)	Yes
322	Moran Patrick Joseph	Lissenhall (628)	Yes
323	Morrissey Tom	Cherrywood (639); Quarryvale 2 (744)	
324	Mould Raymond	Quarryvale 1 (479)	
325	Muldoon Mary	Ballycullen (611)	
326	Mullan Brother John Kevin	Balheary (713)	Yes
327	Mulligan Derek	Balheary (696)	
328	Murnaghan Denis	Cloghran (690)	
329	Murphy John	Quarryvale 2 (743)	Yes
330	Murphy John J.	Quarryvale 2 (838)	Yes
331	Murphy Liam	Quarryvale 2 (776)	
332	Murphy Patrick	Cherrywood (669); Quarryvale 2 (733)	Yes
333	Murphy Philip	Quarryvale 2 (749-750, 787-788)	Yes
334	Murphy Ronan	Quarryvale 2 (857)	Yes
335	Murray Noel	Cherrywood (665)	Yes
336	Murray Willie	Carrickmines 1 (375-376); St Gerards (437); Quarryvale 1 (498-499); Cherrywood (651); Pye (717)	
337	Murtagh Rosemary	Quarryvale 2 (753-754)	Yes
338	Niall Herbert	Quarryvale 1 (496)	
339	Nugent Jim	Quarryvale 2 (797)	
340	O'Brien Graham	Quarryvale 2 (795)	Yes
341	O'Byrne Neil	Ballycullen (612)	
342	O'Byrne Neville	Quarryvale 1 (500)	
343	O'Byrnes Stephen	Fox & Mahony (425)	
344	O'Callaghan Denis	Cherrywood (646); Cloghran (691)	
345	O'Callaghan Owen	Quarryvale 1 (504-506, 512); Quarryvale 2 (874-879, 882-885, 887, 889-894, 897-899, 901-909, 911-915)	Yes
346	O'Conaill Colm	Quarryvale 2 (777)	Yes
347	O'Connell Edward	Quarryvale 2 (777)	
348	O'Connell Gus	Quarryvale 2 (824)	
349	O'Connor Charles	Carrickmines 1 (386); Ballycullen (611); Cherrywood (644)	
350	O'Connor Denis	Quarryvale 2 (857)	Yes
351	O'Connor John F	Coolamber (570)	

	Witness	**Module(s) / Evidence days**	**Limited Representation Sought and Granted**
352	O'Connor Padraig	Quarryvale 2 (792-793)	Yes
353	O'Donnell Kevin	Baldoyle (703)	
354	O'Donoghue Brendan	Quarryvale 1 (496)	
355	O'Donovan Michael	Cherrywood (644)	
356	O'Farrell Michael	Quarryvale 2 (847-849)	Yes
357	O'Flanagan Brian	Carrickmines 1 (368)	Yes
358	O'Flynn Michael	Quarryvale 2 (780)	
359	O'Halloran Brian	Carrickmines 1 (360-362)	Yes
360	O'Halloran John	Carrickmines 1 (403-404); Cherrywood (657); Baldoyle (709-710); Fox & Mahony (429); Ballycullen (614); Quarryvale 2 (828)	Yes
361	O'Herlihy Bill	Cherrywood (649)	Yes
362	O'Keeffe Batt	Quarryvale 2 (824)	Yes
363	O'Keeffe Ned	Quarryvale 1 (486)	Yes
364	O'Kelly Barry	Leaks Inquiry (549)	
365	O'Malley Kiaran	Quarryvale 1 (479-480); Balheary (697); Pye (716)	
366	O'Muirgheasa Padraic / *Morrissey Patrick*	Quarryvale 1 (488)	
367	O'Neill Michael	Fox & Mahony (428)	
368	O'Rourke Mary	Quarryvale 1 (472)	Yes
369	O'Siochain Ronan	Carrickmines 2 (452)	Yes
370	O'Sullivan Kevin	Carrickmines 1 (339-340); Cherrywood (651)	
371	Ormonde Ann	Ballycullen (613); Cherrywood (645); Quarryvale 2 (818)	
372	Owen Nora	Fox & Mahony (427); Walls Kinsealy (636); Cherrywood (645)	
373	Pery-Knox-Gore Mark	Quarryvale 1 (496)	
374	Perry Allan	Coolamber (559)	
375	Perry Brian	Coolamber (558, 559)	
376	Pitcher Barry	Quarryvale 2 (851)	Yes
377	Prendergast John	Quarryvale 1 (489)	
378	Pugh Paul	Cargobridge (678)	
379	Quinn Catherine (Deaceased)	Cherrywood (644)	
380	Quinn Michael	Quarryvale 2 (732)	
381	Quinn Ruairi	Quarryvale 2 (740)	Yes
382	Rabbitt Cormac	Carrickmines 1 (413)	
383	Rabbitte Pat	Ballycullen (616); Cherrywood (645); Cloghran (687); Quarryvale 2 (823)	
384	Redmond George	Carrickmines 2 (537, 538); Quarryvale 1 (507, 509, 510, 512); Pye (718)	
385	Redmond Shane	Lissenhall (632)	Yes
386	Reilly Paddy	Quarryvale 2 (799-800)	Yes
387	Reilly Philip	Cherrywood (656, 657)	Yes
388	Reynolds Albert	Quarryvale 1 (478); Lissenhall (633)	Yes
389	Rice Gerry	Quarryvale 1 (480, 481, 497)	
390	Richardson Des	Cloghran (714, 722); Quarryvale 2 (777, 789-791, 861)	Yes
391	Ridge Therese	Fox & Mahony (429); Cherryood (645); Balheary (700); Baldoyle (711); Quarryvale 2 (835)	Yes
392	Rogals Andrew	Quarryvale 2 (818)	Yes
393	Ronayne David	Quarryvale 2 (777)	
394	Ross Seamus	Lawlor compliance (413)	
395	Rowe Tim	Duff (624); Lissenhall (632); Walls Kinsealy (671); Cloghran (690)	Yes
396	Russell Patrick	Lissenhall (629)	

	Witness	**Module(s) / Evidence days**	**Limited Representation Sought and Granted**
397	Russell Philip	Carrickmines 2 (452)	
398	Ryan Eoin	Quarryvale 2 (741)	
399	Ryan Ned	Ballycullen (613); Cherrywood (646); Balheary (699)	
400	Ryan Sean	Lissenhall (629); Balheary (700)	
401	Sands Gerald	Carrickmines 2 (525)	
402	Scallon Colm	Quarryvale 1 (477)	Yes
403	Seddon Anthony	Lawlor compliance (406-407)	Yes
404	Sheedy Frank	Carrickmines 2 (517)	Yes
405	Sheeran Paul	Quarryvale 1 (482-484); Quarryvale 2 (785)	
406	Sherwin Jim	St Gerards (436)	
407	Sherwin Sean	Quarryvale 1 (477-478)	Yes
408	Shubotham David	Baldoyle (708-709)	Yes
409	Smith Al	Fox & Mahony (429); Cargobridge (685); Pye (718); Quarryvale 2 (807)	
410	Smith Michael	Quarryvale 2 (807)	
411	Smith Michael (An Taisce)	Cherrywood (666)	Yes
412	Smith Thomas Kevin	Coolamber (580)	
413	Smyth Elizabeth	Quarryvale 2 (860)	Yes
414	Smyth Noel	Coolamber (580-582); Cargobridge (682, 685, 721); Quarryvale 2 (785)	Yes
415	Sreenan Hugh	Quarryvale 1 (493)	
416	Stanley Sam	Carrickmines 2 (440-445)	Yes
417	Sweeney Edward	Cherrywood (661, 663)	Yes
418	Synnott James	Coolamber (560)	
419	Taylor Mervyn	Cherrywood (640)	
420	Terry Sheila	Fox & Mahony (425); Ballycullen (611); Cherrywood (646); Cargobridge (685)	
421	Tiernan Joe	Coolamber (560-564); Balheary (696-697)	
422	Tipping Don	Ballycullen (619)	
423	Toomey Brendan	Cargobridge (678, 681)	Yes
424	Tracey Robert	Carrickmines 2 (445-447)	
425	Treacy Frank	Coolamber (565)	
426	Treacy Noel	Leaks Inquiry (685)	
427	Troy Thomas	Quarryvale 1 (482)	
	Tucker Barry	Quarryvale 2 (836)	
	Tyndall Colm	Cherrywood (646); Quarryvale 2 (855)	Yes
428	Wall Michael	Quarryvale 2 (754, 865-866)	Yes
429	Walls Paul	Walls Kinsealy (672)	Yes
430	Walsh Joe	Quarryvale 2 (808)	Yes
431	Ward Brendan	Quarryvale 2 (803)	
432	Welch Niall	Quarryvale 2 (775)	
433	Whelan Michael	Lawlor compliance (393)	Yes
434	White Anne Marie	Duff (623)	Yes
435	White Robert	Duff (637)	Yes
436	Williams Tom	Cloghran (692, 910)	Yes
437	Wright G V	Fox & Mahony (430-432); Ballycullen (613); Duff (624); Walls Kinsealy (636); Cherrywood (646); Cargobridge (685); Cloghran (688); Balheary (698); Quarryvale 2 (833)	Yes

APPENDIX 1

MR TOM GILMARTIN'S PRIOR STATEMENTS

TRIBUNAL OF INQUIRY INTO PLANNING MATTERS
0 1 JUN 2001
RECEIVED

STATEMENT OF THOMAS P. GILMARTIN
17th May 2001

1. I am making this Statement for the assistance of the Tribunal based on my best recollection of events some of which happened some fifteen years ago. While I am not entirely certain about some of the dates referred to in this Statement, I believe the facts contained in the Statement are correct.

2. My initial interest in becoming involved in property development in Dublin arose in late 1986 when, following a visit to Dublin, I decided to assemble a site at Bachelor's Walk for the purpose of carrying out a retail development.

3. I commenced assembling the site in late 1986 and through 1987. I also entered into negotiations with a number of potential investors including a London - based property development company, Arlington Securities plc. ("Arlington"). Arlington agreed to take 80% of the project and agreed to retain me to "project manage" the development. I retained a 20% interest in the project. In late 1987 I entered into a consultancy agreement with Arlington.

4. While I was engaged in assembling the site at Bachelor's Walk I had considerable contact with Dublin Corporation which owned much of the land in the area. I and representatives of Arlington had many meetings with Dublin Corporation during this period. The officials in Dublin Corporation were very supportive of the development plans for Bachelor's Walk and provided much encouragement to us. One concern I had was that only part of the site at Bachelor's Walk had received a favourable tax designation and I was concerned that either all or none of the site should be so designated. I was told by the Corporation officials that this was an issue I would have to discuss with the then Minister for the Environment, Padraig Flynn. T.D.

5. Following correspondence which I wrote to Mr. Flynn, the Minister for the Environment, in October 1987, a meeting was arranged with him for 4 November 1987. I was accompanied to that meeting by Richard Forman, my

property adviser who was then of Wilson & Partners. The main focus of the meeting was to persuade the Minister to extend the tax designation status to cover the entire of the site at Bachelor's Walk. An alternative (but not the preferred alternative) was to have the tax designation removed from the site altogether. While Mr. Flynn was generally supportive of our development plans he was non-committal as to whether he would extend the tax designation status to the whole of the site or withdraw it from that part of the site to which it already applied. Mr. Flynn did, however, leave the door open for further discussions. In subsequent correspondence from the Minister to Arlington in February 1988 it was confirmed that the whole of the site would be designated and that the deadline for qualifying expenditure to avail of the tax designated status was to be extended. A Ministerial Order was subsequently made to give effect to the Minister's decision.

6. During the course of my discussions with Dublin Corporation officials and, in particular, Sean Haughey, who was then, I think, the Assistant City Manager, Mick McLoone, the then Chief Valuer for Dublin Corporation and Paddy Morrissey, the then Deputy City Manager asked whether I would be interested in doing anything to get development off the ground in any of the four western towns identified in a plan produced by Myles Wright for the Minister for Local Government in December 1966. That plan set out as a guiding principle for the development of the western part of the city of Dublin, the creation of four new towns in an area running from Blanchardstown to Tallaght. However, none of those developments had taken place. I was told by the Corporation officials that there was considerable political pressure being applied to get the development of the new town centres, referred to in the Myles Wright plan, underway, and that this was the reason why they had approached me. I said I would have a look at it. I then went to view Neilstown, one of the areas concerned. However, for various reasons, I felt that development of that site would be very difficult. While examining maps of the area in the offices of Dublin County Council it struck me that there was an area of land which would make an ideal site for a shopping centre / town centre which was adjacent to where what is now the new M50 ring road was to be built. This is the area which I described as "West Park" and which subsequently became known as "Quarryvale". I will henceforth refer to the area as Quarryvale for ease of

reference. I decided immediately to investigate ownership of the lands in that area with a view to a possible shopping centre / town centre development. This was in early 1988.

7. My first contact with Liam Lawlor T.D. occurred in the following circumstances. My bank account was in the Blanchardstown branch of Bank of Ireland where Paul Sheeran, a friend of mine, was the Manager. I was in the Bank one Tuesday afternoon in early May 1988 when I asked Mr. Sheeran if he knew anyone from the Lucan / Palmerstown area who might know who owned the lands along the Galway road. Mr. Sheeran then introduced me to Brendan Fassnidge who had come into the Bank as we were speaking. Mr. Fassnidge said that while he did not know who owned the lands he did know someone who might know who the owners were. He left the bank for a short while and when he returned he asked me whether I would be available for a meeting with an unnamed third party that evening. A meeting took place that evening in the Deadman's Inn Public House in Palmerstown. Mr. Sheeran accompanied me to the meeting. Mr. Fassnidge introduced us to Mr. Lawlor whom he described as a "Government Official". After some small talk I broached the issue of land ownership in the Quarryvale area. However, Mr. Lawlor did not show much interest in my query and said he was more interested in the development at Bachelor's Walk. He stated that he had been appointed by the Government to "*take care*" of the Bachelor's Walk development and to make sure that it got off the ground. He asked me if I would introduce him to the directors of Arlington. I informed him that I had arranged to attend a meeting of the Board of Arlington the following Thursday in London and that I would ask the Board whether they were interested in meeting with Mr. Lawlor. At the end of our conversation, Mr. Lawlor agreed that he would try to help me to identify the owners of the lands at Quarryvale.

8. I attended the meeting of the Board of Arlington the following Thursday in London. During the course of that meeting Mr. Lawlor arrived at Arlington's premises unannounced and uninvited. Given that Mr. Lawlor had introduced himself as the person appointed by the Government to look after the Bachelor's Walk development it was felt that it was better to invite Mr. Lawlor to come into the meeting so as not to offend him or the Government. Mr.

Lawlor then joined the meeting and commenced by stating that he was an official of the Government instructed to "*take care of*" the Bachelor's Walk development as it was located on "*his patch*". He insisted that his involvement could make the difference between the development getting off the ground or not. He proposed that he be given on behalf of the Government a 20% stake in the project. I objected to this and he reiterated that if he was involved it could make the difference between the development succeeding or not and that his involvement could take years off the whole process. The meeting then broke down into a series of private conversations after which I and Ted Dadley, a member of Arlington's management, left the meeting to go for a cup of tea in a nearby hotel. We were subsequently joined by Mr. Lawlor who informed us that Arlington had appointed him as a consultant for the Bachelor's Walk project in return for a payment of IR£3,500 per month. Mr. Lawlor also said that Raymond Mould, then Chief Executive Officer of Arlington, had told him that I would have to give Mr. Lawlor half of my 20% stake in the project. I informed Mr. Lawlor that this was completely unacceptable and the matter was left there. I later ascertained from Mr. Dadley that Mr. Lawlor had originally sought IR£100,000 as the price for his involvement and that when this was rejected a compromise involving the payment of IR£3,500 per month was agreed. While I objected to Mr. Lawlor having a role in the project, Arlington felt that it would be worthwhile involving him in light of his contention that his involvement could make the difference between the project succeeding or not and I was prepared to go along with this. I was asked by Arlington and agreed to pay Mr. Lawlor the IR£3,500 per month out of my bank account since I was acting as project manager for Arlington in respect of the development. Arlington agreed to reimburse me for that expenditure in the same way that I was to be reimbursed for other expenditure which I was incurring on the project. To the best of my recollection commencing in June 1988 I paid Mr. Lawlor a total of IR£35,500 over a ten month period. The payments were as follows:

Cheques drawn on BOI account at Blanchardstown (Account No. 7380792)

(1) Cheque No. 000026 dated 28 June, 1988 for IR£3,500.00

(2) Cheque No. 000027 dated 15 July, 1988 for IR£3,500.00

(3) Cheque No. 000036 dated 6 September, 1988 for IR£7,500.00

(4) Cheque No. 000040 dated 5 October, 1988 for IR£3,500.00

(5) Cheque No. 000042 dated 14 October, 1988 for IR£7,000.00

(6) Cheque No. 000014 dated 14 January, 1989 for IR£7,000.00

9. The total of the above cheques is IR£32,000. However, I have a recollection of making a further payment of IR£3,500 to Mr. Lawlor at Heathrow Airport when Mr. Lawlor was in the company of Ned O'Keeffe T.D. on route to Baghdad. Mr. Lawlor had telephoned me with a request that I meet him at a hotel near the airport. At that meeting I recall handing over a cheque or a draft for IR£3,500 to Mr Lawlor. Unfortunately, I have been unable to locate evidence of that payment although I have a recollection of paying it. All of the above payments were reimbursed to me by Arlington when I sold my 20% stake in the project to Arlington.

10. A week or so after Mr. Lawlor's attendance at the meeting of the Board of Arlington in London in mid-1988, I was introduced by Mr. Lawlor to George Redmond at the offices of Dublin County Council in O'Connell Street. Mr. Lawlor brought me to Mr. Redmond's office where Mr. Redmond produced a coloured map which contained the names of the land owners for each plot of land in the Quarryvale area. Unfortunately, I do not have that map in my possession. I recall furnishing it to AIB, I think, in 1991. At one point during the meeting with Mr. Lawlor and Mr. Redmond, Mr. Redmond got up from his desk and walked to another table in his room where he picked up a telephone as if to make a call. He turned his back on Mr. Lawlor and myself. At that stage Mr. Lawlor told me that I was going to need both his help and that of Mr. Redmond, whom he referred to as "George", and that if I wanted their assistance I would have to pay them IR£100,000. I assumed this meant IR£100,000 each although I did not seek clarification on the point. I had no intention of making such a payment and I said something non-committal before leaving Mr. Redmond's office. On the way to his car Mr. Lawlor again

stated that "George" would have to be taken care of. I understood this to mean that Mr. Lawlor was linking the map that Mr. Redmond had made available to me with the request for payment to Mr. Lawlor and Mr. Redmond. I was not prepared to make such payments. While I had several more meetings with Mr. Redmond he never directly asked me for money. However, the subject did come up in subsequent meetings which I had with Mr. Lawlor.

11. I used the information on the map which Mr. Redmond had provided to me to assemble lands in the Quarryvale area. I negotiated the purchase of approximately 28 acres from Grove Developments for IR£1.24 million. I also purchased approximately 32 acres from Des Bruton for IR£1.52 million. These two blocks of land together with a further four acres which I purchased, made up the prime site fronting the Lucan By-Pass. Subsequently, I purchased other parcels of lands of various sizes which made up the entire Quarryvale site.

12. Mr. Lawlor did provide some assistance to me in assembling the Quarryvale site. For example, he introduced me to Mr. Redmond. He also prepared a draft of a fax which he suggested I should send to Mr. Flynn, then Minister for the Environment, to inform him about the plans which I had for Quarryvale. I cannot recall whether that fax was sent. Around the same time, Mr. Lawlor asked me for a 20% stake in the Quarryvale project in return for his help. While I appreciated that he was providing some assistance I considered his demand to be grossly exorbitant. I dismissed his request for a percentage stake in the development out of hand and Mr. Lawlor never raised the issue again.

13. On 3 November, 1988 Mr. Lawlor sent by fax a newspaper extract referring to the purchase by O'Callaghan Properties Limited of the interest of another company Merrygrove Limited, in property located between Lucan and Clondalkin, being the site at Neilstown. The article referred to the plans of

O'Callaghan Properties to develop a major shopping centre and leisure complex on the site.

14. Following another meeting which I had with Mr. Redmond in late October / early November 1988, Mr. Redmond confirmed to me that approximately 12.04 acres of land owned by Dublin County Council and approximately 68.82 acres of land owned by Dublin Corporation at Quarryvale were available for sale. These blocks of land were important for the Quarryvale development. Following further correspondence I entered into negotiations with Mr. McLoone, Chief Valuer, for the purchase of both sites. Those negotiations took a number of months to progress as would have been normal.

15. Mr. Lawlor turned up at a meeting with my professional team of advisers at the Trusthouse Forte Hotel at Dublin Airport in November 1988. He had not been invited to the meeting. Shortly after his arrival, Mr. Lawlor stated that if I wished to get anywhere with the Quarryvale project I would have to deal with Owen O'Callaghan. I was aware that Mr. O'Callaghan was a property developer from Cork who had good political connections. Mr. Lawlor referred to Mr. O'Callaghan's deal with Albert Gubay in relation to the Neilstown site, in which O'Callaghan Properties had purchased from Mr. Gubay an option to purchase the Neilstown site from Dublin Corporation for IR£500,000. Mr. Lawlor pointed out that the value of the Neilstown site was that it was zoned for a town centre while the site at Quarryvale was zoned for industrial use. Mr. Lawlor emphasised that Dublin County Council (of which Mr. Lawlor was a member) would not zone both Neilstown and Quarryvale for town centres because of their close proximity to each other. He said that the zoning would have to be shifted from Neilstown to Quarryvale and that whoever was in possession of the zoning was in a much stronger position. The strong impression I got from what Mr. Lawlor was saying was that I had no option but to deal with Mr. O'Callaghan. Mr. Lawlor put me in contact with Mr. O'Callaghan by giving me his home telephone number and asked me to

contact him. My recollection is that Mr. Lawlor set up a meeting with Mr. O'Callaghan which took place, I believe, on 7 December, 1988.

16. I met with Mr. O'Callaghan in the Royal Dublin Hotel. Mr. Lawlor had arranged the meeting. At the meeting Mr. O'Callaghan informed me that he intended building on the Neilstown site and he produced a drawing. He indicated that his plans including the construction of a shopping centre of approximately 300,000 square feet on the Neilstown site and that he was only prepared to sell his interest for IR£7 million. He also informed me that he had purchased Mr. Gubay's interest in the site for IR£500,000. It was eventually agreed that I would pay Mr. O'Callaghan the sum of IR£3.5 million in return for which I would acquire Merrygrove Estates Limited, the company which owned the option over the Neilstown site. We shook hands on the agreement which involved the payment of IR£3.5 million in the following tranches.

(17) IR£800,000 up front representing the IR£500,000, which Mr. O'Callaghan claimed he was paying to Mr. Gubay, together with a deposit of IR£300,000 on the Neilstown site which I was informed Mr. Gubay had paid to secure his option.

(18) The sum of IR£1.35 million was to be paid to Mr. O'Callaghan one year from the signature of the agreement.

(19) A further sum of IR£1.35 million was to be paid on planning permission and rezoning being obtained for the Quarryvale site.

17. Mr. O'Callaghan's solicitor, John Deane, prepared a draft agreement which was sent to my solicitors, Seamus Maguire & Co. As I was very heavily involved in a development in the United Kingdom at the time, I did not have an opportunity of reviewing the agreement in detail before it was executed on the 31 January, 1989. I, subsequently realised that the agreement did not contain one of the terms which I believed I had agreed with Mr. O'Callaghan, namely, that the final payment of IR£1.35 million would be paid subject to planning permission and rezoning being obtained in respect of the Quarryvale site.

Furthermore, the agreement was contradictory in certain respects and I am at a loss to understand how this occurred. Subsequent correspondence from Mr. O'Callaghan in December 1988 did not refer to the agreement which I reached with him on 7 December, 1988. Mr. O'Callaghan expressed a desire to become involved in the Quarryvale project and suggested that he and I should set up a joint venture to undertake this. He stated in a letter of 8 December, 1988 that he:

> *".....could have a very major beneficial role in the project in assisting in having the planning application granted in a relatively short programme ...".*

I saw this as confirmation of what Mr. Lawlor had informed me and of what I understood about Mr. O'Callaghan's good political contacts. In my response to Mr. O'Callaghan, by letter of 20 December, 1988, I explicitly ruled out any joint venture agreement with Mr. O'Callaghan. I did, however, leave open the possibility of a project consultancy role for Mr. O'Callaghan as I did not wish to completely alienate him.

18. In or around Christmas 1988 Mr. Lawlor provided me with the names and telephone numbers of councillors whom he suggested I should meet in order to get their support for the Quarryvale development. The names which Mr. Lawlor gave me and which I wrote down at the time included Marian McGennis (FF), and Finbarr Hanrahan (FF). Mr. Lawlor also gave me the name of Colm McGrath (FF) and I subsequently had a considerable amount of contact with Mr. McGrath as he represented the area in which the development was to be carried out. Mr. McGrath often mentioned that he was in need of money although he never asked me directly for money. I got the impression, however, that Mr. McGrath expected me to give him some money in return for his support for the development. However, I did not do so and notwithstanding this Mr. McGrath did verbally express support for the development.

19. I arranged a meeting with one of the councillors whose name had been given to me by Mr. Lawlor, Finbarr Hanrahan, to seek his support for the development. That meeting took place on 28 December, 1988 at Buswell's Hotel in Dublin. When I arrived I noticed Mr. Lawlor in the company of Mr. O'Callaghan, Mr. Deane and Ambrose Kelly, an architect. When I arrived into the bar Mr. Lawlor got up and moved away. Mr. O'Callaghan greeted me and gave a nod in the direction of Mr. Hanrahan who by that stage was sitting alone. I introduced myself to Mr. Hanrahan and we went through the brochure which I had produced for the Quarryvale development. I made it clear to Mr. Hanrahan that I was seeking his support for the rezoning of the Quarryvale site. He made it clear to me that if he was to support the rezoning of the site he would require IR£100,000 with IR£50,000 of that amount up front. I had no intention of making any such payment to Mr. Hanrahan and I got up and left. On my way out of the bar Mr. O'Callaghan said to me "*Did he tap you ?*". This strongly suggested to me that both Mr. Lawlor and Mr. O'Callaghan must have been aware that Mr. Hanrahan would be seeking money from me to support the rezoning of Quarryvale.

20. In the meantime my negotiations with Mr. McLoone, the Chief Valuer, for the purchase of the Dublin Corporation land and the Dublin County Council lands were progressing. I was informed by Mr. McLoone on 19 December, 1988 that he was recommending a sale of the 68.62 acres owned by Dublin Corporation for IR£2,744,800. On 20 December, 1988 I was informed that he was recommending a sale to me of the 12.04 acres of lands zoned by Dublin County Council for IR£481,600. This was the subject of correspondence between Mr. McLoone and myself in December 1988 and January 1989.

21. In late January 1989 I was approached by Mr. Lawlor who informed me that his "*boss*" wanted to see me. I understood this to be a reference to the then Taoiseach, Charles J. Haughey. A meeting was set up and I met with Mr. Lawlor at Buswell's Hotel at 4.30pm on Wednesday 1 February, 1989 in advance of a meeting with Mr. Haughey later that day. Mr. Lawlor told me that

the purpose of the meeting was to inform Mr. Haughey and the Cabinet about my development plans. Mr. Lawlor brought me across to Leinster House and brought me by lift up to the fourth or fifth floor. I was then led into a room in which there were a number of Ministers present. To the best of my recollection the Ministers present when I arrived were Gerry Collins, Brian Lenihan, Seamus Brennan, Albert Reynolds, Bertie Ahern and Padraig Flynn. Ray Burke (to whom I was briefly introduced at the lift coming up to the meeting) entered after me as did Mary O'Rourke who passed through the room. I was introduced to Mr. Haughey by Mr. Flynn. I had a brief conversation with Mr. Haughey in which Mr. Haughey encouraged me to *"keep up the good work"*. As I was leaving Mr. Haughey said that he hoped that *"Liam"* was *"taking good care of me"*. I was then led out of the room. Mr. Lawlor was waiting outside the room talking to someone else. As I came out of the meeting Mr. Lawlor moved as if to come in my direction but then moved back against the wall as I was approached from my right hand side by another man whom I did not recognise. The man came up to me and referred to my involvement in the development plans for Quarryvale and Bachelor's Walk and stated that a lot of money was going to be made out of those developments. He suggested that I make a payment of IR£5 million and gave me a piece of paper which he told me contained a bank account number in the Isle of Man to which he asked me to pay the IR£5 million. I could not believe what I was hearing and I did not respond to the man until the piece of paper was put into my hand. Bearing in mind that I had just left a meeting with Mr. Haughey and Ministers of the Government and that Mr. Lawlor was waiting outside the room and witnessed this encounter, I assumed that this approach must in some way have been connected with Mr. Lawlor and with Mr. Haughey. I rejected the man's approach forcefully and in colourful terms and I got the impression that the man was quite taken aback by my response. What I said was that *"You make the f... Mafia look like monks"*. As I walked away he tapped me on the arm and said to me *"you could end up in the Liffey for that statement"*. I responded with an expletive. I then walked towards the lift and left. Mr Lawlor walked away in front of me. As I approached the lift along a gangway another man came up to me and introduced himself as Sean Walsh T.D. He asked me what Mr. Lawlor was up to and told me to be wary of Mr. Lawlor as he was probably double-crossing me. I had no idea

what Mr. Walsh meant nor where he was coming from and I did not pass on any information to him. Mr. Walsh's parting words to me were *"watch yourself, watch Lawlor"*. I then went down in the lift and left Leinster House. Mr. Lawlor had by that stage left and when I subsequently asked him about the identity of the man who had spoken to me as I had come out of the meeting with Mr. Haughey, Mr. Lawlor said that he did not remember me meeting any man.

22. A number of days later I informed a family acquaintance, Senator Willie Farrell, of what had happened following my meeting with Mr. Haughey. Mr. Farrell suggested that I should meet with a former neighbour of his in Sligo who was then a Dublin Councillor, John Gilbride. A few days later I was introduced by Mr. Farrell to Mr. Gilbride. I again recounted what happened following my meeting with Mr. Haughey. Mr. Gilbride told me not to worry about Mr. Lawlor and that Mr. Lawlor was *"all right if you stayed on the right side of him"*. I subsequently discovered that Mr. Gilbride was closely aligned to Mr. Lawlor and indeed to Mr. O'Callaghan.

23. On 2 February, 1989 I received a letter from Mr. McLoone confirming that the contract for the purchase of 68.62 acres from Dublin Corporation had been referred to his principals for approval. I was reasonably optimistic therefore, about my prospects for the Quarryvale development, notwithstanding the extraordinary incidents referred to above. However, a further incident occurred in February 1989 which caused me considerable concern. I had a meeting arranged with Mr. Redmond and Dublin County Council Road Engineers with my team of professional advisors. The meeting was scheduled for 10am in the morning. My team assembled at the Gresham Hotel at 9am in advance of the meeting. I rang Mr. Redmond to inform him that we were about to leave to come across for the meeting. However, Mr. Redmond denied we had any arrangement for a meeting and terminated the call abruptly. I ascertained with members of my professional team that they had independently verified that the meeting had been arranged for that day with Mr. Redmond. I telephoned Mr. Redmond's office again and I was informed

by his secretary that the Road Engineers had been waiting for us at Mr. Redmond's office but had left when we had not turned up for the meeting. Needless to say, I and my team were extremely annoyed at this. We went across to Mr. Redmond's office and I and John McCammon of Taggarts, Architects, rebuked Mr. Redmond for misrepresenting that a meeting had not been arranged. Mr. Redmond ordered us out of his office. I took the matter up with Sean Haughey, who was then Assistant City Manager. He rearranged the meeting with the Dublin County Council Road Engineers for 2pm that afternoon. As we were being led to the meeting room by Mr. Haughey, I witnessed Mr. Haughey going into Mr. Redmond's office during which a heated exchange took place. My recollection is that Mr. Haughey said to Mr. Redmond *"George, what the hell is going on?"* and that Mr. Redmond replied *"Ask your brother"*. Mr. Haughey then replied *"I am not my brother's keeper"* and *"George, your tricks are going to stop"*, or words to that effect. The meeting then took place with the Road Engineers which focused on the technical feasibility of the plans drawn up for a road network to service the Quarryvale development. However, there was a bad atmosphere at the meeting due to the events of earlier that day. I felt that Mr. Redmond was going to do his utmost to impede or prevent the development going ahead.

24. Sean Haughey asked to meet me on the following day, 3 February, 1989. I met with Mr. Haughey that day and he expressed concern to me about the events of the previous day and in particular about the actions of Mr. Redmond. He then brought me to meet the City Manger, Frank Feeley and the Deputy City Manager in charge of planning, Paddy Morrissey. There was another person present whose identity I cannot recall. I explained to those present what had happened and I referred to the previous request by Mr. Lawlor in the presence of Mr. Redmond that I pay each of them IR£100,000. I expressed my belief that Mr. Redmond's subsequent actions were taken to sabotage my development plans because I had refused to pay the money to him. I was subsequently informed that Mr. Feeley had reported my complaints to Superintendent Hugh Sreenan of the Garda Fraud Squad and that an investigation was initiated in March 1989.

25. Superintendent Sreenan did telephone me to arrange an interview sometime in March 1989. When he telephoned me we had a lengthy discussion during which I again recounted the actions of Mr. Redmond and my belief that Mr. Redmond's actions were modified by my refusal to pay him the IR£100,000 which Mr. Lawlor had suggested should be paid. Superintendent Sreenan indicated that he would contact me again but did not suggest that I make a formal statement at the time. Subsequently, a person who represented himself as a member of An Garda Siochana and identifying himself as Garda Burns, telephoned me and referred to the allegations which I had made to Superintendent Sreenan. I do not recall exactly what he said although my recollection is that he had enough knowledge of what I had said to Superintendent Sreenan to lead me to believe that he was working as part of Superintendent Sreenan's team. He adopted a very confrontational tone with me and stated that many people were making allegations about decent people and that I would be far better served by packing up and going back to England. I was extremely demoralised by this approach and when Superintendent Sreenan called me some time later to request that I provide a formal statement I told him that I would prefer not to do so. I believe that this was in March / April 1989. Nonetheless I still believed that I could make the development succeed as I felt I had sufficient support among County Councillors. I was confident that the development was a very good development and that I had acquired most of the land required for it. I felt that the best approach I could take was to create as few waves as possible and to try and get the development done with as little fuss as possible.

26. I had another meeting with Mr. Flynn, then Minister for the Environment, in early 1989. I believe the meeting took place in the afternoon of Friday 3 February, 1989. I had outlined the difficulties which I had encountered with the Quarryvale development. I referred to the demands for money which I had received and to the trouble which Mr. Redmond had been causing. I outlined that I felt that both Mr. Lawlor and Mr. Redmond were behind a campaign to frustrate the Quarryvale development. Mr. Flynn had very little to say other

than that I should make a *"substantial donation"* as it might help to curb the activities of Mr. Redmond and others. While I felt that Mr. Flynn was talking about a contribution to Fianna Fail I did not know what he meant by "substantial" as he did not specify a figure. Mr. Flynn also stated that he was aware that a report had been made to the Gardai about the matters of which I had informed him and that the matter should be left to them. After the meeting I gave some consideration to Mr. Flynn's request that I should make a donation. At the time, however, I did not feel that I should do so, although my view was to change.

27. In the meantime correspondence in relation to the acquisition of the 68.62 acres of land from Dublin Corporation and the 12.04 acres of land from Dublin Corporation was on-going and Mr. Forman, my property advisor, wrote a letter to Mr. McLoone on 6 March, 1989 confirming my agreement to purchase the lands on the terms set out in the letter. Following that letter I had a meeting with Paddy Morrissey and Sean Haughey on 15 March, 1989. At that meeting, however, I was informed that a second application had been made from another party to purchase both tracts of land (which became known as the "Irishtown" and the "Wood Farm" lands). I subsequently ascertained that that application came from Green Property plc. At the meeting Mr. Morrissey expressed the view that the offer which I had made for the lands (which equated to approximately IR£40,000 per acre) might not represent good value for the relevant Local Authorities. It was also pointed out to me at the meeting that my proposal to obtain planning permission for a retail development on the Quarryvale site would contravene the zoning divisions in the County Development Plan and this would be a problem. However, I informed the meeting I was prepared to take my chances with the planning application but that I was not prepared to pay any more than I had offered for the lands. We also discussed the agreement which I had reached with Mr. O'Callaghan and the terms of Mr. Forman's letter of 6 March, 1989. No conclusions were reached at the meeting.

28. At around the time I was attempting to conclude the purchase of the Irishtown lands another incident involving Mr. Lawlor occurred. In March or April 1989 I received a call from my bank manager, Mr. Sheeran who informed me that Mr. Lawlor had arrived at the branch in Blanchardstown and informed Mr. Sheeran that I had authorised a payment to him of IR£10,000 from my bank account there. While Mr. Lawlor was aware that on occasions in the past I had authorised Mr. Sheeran to pay monies out of my account without having to sign a cheque or withdrawal slip in respect of those monies, Mr. Lawlor was equally aware that I had not authorised any such payment to him. When I was contacted by Mr. Sheeran I informed him that I had not authorised that payment and Mr. Sheeran declined to make the payment in response to Mr. Lawlor's request. After this incident I decided that if Arlington wished to make any further monthly payments to Mr. Lawlor it could do so itself and that I would not make the payments for it.

29. Following my meeting with Mr. Morrissey and Mr. Haughey on 15 March, 1989, Dublin Corporation and Dublin County Council put the sale of the Irishtown and Wood Farm lands out to tender. Needless to say, I was very annoyed at this as my involvement in the project had only come about because I had been approached by the local authority officials in the first place and I felt that I had reached an agreement for the purchase of those lands already. However, following the advertisement of the Notice to Tender I increased the offer which I made for the lands to a total of IR£5,100,000. This valued the Irishtown lands at approximately IR£70,000 per acre. Clearly, having to come up with an increased amount of money significantly increased financial pressure on me.

30. Although I had submitted an increased and I believe inflated tender price to acquire the Irishtown lands in order to complete my acquisition of lands for the Quarryvale development, I was still concerned that Mr. Redmond or Mr. Lawlor, or both of them, would take some further action to prevent my tender being accepted. I decided that I would try to arrange another meeting with Mr.

Flynn to see whether anything could be done about Mr. Redmond and Mr. Lawlor. A meeting with Mr. Flynn was arranged through his private secretary, Gerry Rice. The meeting took place in early June 1989. I believe it was Friday 2 June, 1989 at 7pm in the evening at Mr. Flynn's office in the Customs House. I informed Mr. Flynn that I had decided to make a donation to the Fianna Fail party of IR£50,000. I wrote a cheque for IR£50,000 drawn on my bank account in Bank of Ireland Blanchardstown there and then. I did not complete the payee of the cheque and when I asked Mr. Flynn to whom I should make the cheque payable he told me to *"just leave it there"* gesturing towards his desk. It was left to Mr. Flynn to complete the payee. At the time I asked Mr. Flynn this question he was on his feet packing his briefcase.

31. I was subsequently informed by Mr. McLoone in a telephone conversation in June 1985 that Mr. Redmond was responsible for what had happened (i.e. that the lands had been put out to tender), that *"there was a game going on"* and that I was being *"shafted"*. It was suggested that if I knew someone in Government I could trust I should contact them. I subsequently decided to contact Bertie Ahern T.D., who was then a Minister in the Government, as I had previously spoken with him on a number of occasions and found him approachable and very supportive of the development plans for Bachelor's Walk. I had met Mr. Ahern on two prior occasions. To the best of my recollection the first meeting took place in autumn 1987 in Mr. Ahern's office in the Department of Labour Building in Mespil Road. At this meeting we discussed the plans for the Bachelor's Walk development. Mr. Ahern was affable and approachable and he was very supportive of my plans. The next meeting I had with Mr. Ahern was in October 1988. To the best of my recollection that meeting took place on Monday 10 October, 1988 in Mr. Ahern's constituency office located above Fagan's Public House in Drumcondra. I do not recall anything of significance from that meeting other than the fact that I informed Mr. Ahern of the plans for Quarryvale as well as updating him on the progress of the Bachelor's Walk development. Mr. Ahern was again supportive about both of those developments. Following my conversation with Mr. McLoone I telephoned Mr. Ahern and informed him about the difficulties which I was experiencing in relation to the purchase of

the Irishtown and Wood Farm lands. He told me that he would see what he could do. I was contacted a few days later by Joe Burke who arranged to meet me at my office at 25 St. Stephen's Green in the middle of June 1989. He told me that he had been instructed by Mr. Ahern to look into my complaints and I told him about the problems that I was encountering. A few days later the final approval was given for the sale of the Irishtown and Wood Farm lands. Mr. Burke informed me of this news in a subsequent telephone conversation and also told me that I would have no further problems. Mr. Burke met me in my office afterwards and suggested I should meet with Mr. Ahern later that evening. However, Mr. Burke was unsuccessful in locating Mr. Ahern. On 20 June, 1989 I telephoned Mr. Ahern to thank him for his intervention. During the course of that conversation he asked me whether I had given a donation to the Fianna Fail party. I informed him that I had given IR£50,000 to Mr. Flynn and Mr. Ahern made no further reference to the matter.

32. In August 1989 I appointed Touche Ross in London as financial advisors in respect of the Quarryvale project. In the winter of 1989 / 1990 I approached a number of banks in order to seek finance to fund the development of Quarryvale. Various brochures were prepared for this purpose.

33. I entered into discussions with Allied Irish Banks ("AIB") for funding for the Quarryvale development. AIB agreed to lend me IR£8 million repayable over six months. A loan agreement was finalised on 19 February, 1990. I had required a three year loan period but this was not acceptable to AIB. I dealt primarily with Eddie Kay, AIB's Corporate Finance Manager and his assistant, Jim Donagh. I am producing to the Tribunal a copy of the loan agreement of 19 February, 1990. The purpose of the loan agreement was to part finance the purchase of certain lands including approximately 70 acres from Dublin Corporation. The total monies drawn down under the loan agreement were IR£7,949,000. The loan agreement provided for a repayment in full by 31

August, 1990 or such later date as might be agreed between my development company, Barkhill Limited and AIB.

34. Later, I became suspicious that there was some collusion between Mr. O'Callaghan and AIB. The option agreement dated 31 January, 1989, which I had entered into with Mr. O'Callaghan's company, was referred to in the recitals to the loan agreement. I do not know why that was so. I was also surprised to see Mr. O'Callaghan in the offices of AIB's solicitors when I attended there to finalise the terms of the loan agreement and to execute the agreement. This was only one of a number of occasions on which I came across Mr. O'Callaghan or his solicitor or both in AIB's premises when I called there for various meetings with AIB's representatives.

35. As my negotiations with possible sources of finance were not successful, and as Dublin County Council was much slower than expected in considering shifting the zoning for a town centre from Neilstown to Westpark/Quarryvale, AIB Bank appeared to get increasingly concerned as the six-month loan period ran its course.. Accordingly, I received a letter dated 26 June, 1990 from Eddie Kay stating that the bank would be unwilling to permit the loan facility to outstand after 31 August, 1990, unless a definite agreement was entered into between Barkhill and a suitable development partner. Mr. Kay put the alternatives to that as being the refinancing of the Barkhill debt or the orderly disposal of the site on a phased basis. I interpreted Mr. Kay's letter as putting pressure on me to enter into some agreement with Owen O'Callaghan as I interpreted the phrase used in the letter, "major property developer", as referring to him.

36. Following on from the 26 June, 1990, letter, I recall that both Mr. Donagh and Mr. Kay travelled over to England to meet me at Trusthouse Forte Hotel at Heathrow Airport. My recollection is that this meeting took place some time towards the end of June, perhaps on 27 June, 1990. Mr. Donagh forcefully reminded me that the money I had received from AIB was only temporary and indicated that AIB were very doubtful as to whether or not I was going to get the Quarryvale project off the ground. Mr. Donagh expressed scepticism

about the Quarryvale site being rezoned. My reply to Mr. Donagh was that I had arranged for a PR firm run by Eileen Gleeson, to take a poll of the councillors and that showed that a sizeable majority of them were in favour of the rezoning. I attach a copy of a list of County Councillors, dated June 1990, with "Yes" and "No" written in against names on the list, indicating those for and against my development proposals. By my reckoning, this informal poll of Councillors showed 32 for my development, 19 against and 29 "Don't Know's". Mr. Donagh, however, remained sceptical and the meeting ended inconclusively.

37. I decided with my team of advisers that we would make a presentation to any interested parties, be they Government, local authority, social or residential groups or to the media. This presentation took place in the Berkeley Court Hotel in Ballsbridge, as best I can recollect on 5 July, 1990. There was a brochure available to attendees at the presentation. During the course of the presentation, I was asked questions and in response to one of those, I explained that I believed the Neilstown site was not viable for a shopping centre development, because all that could be built there were "sheds in a field". This remark appeared to irritate Mr. O' Callaghan, who was present. Jim Donagh of AIB, who was in the company of Mr. O'Callaghan at the presentation, also rebuked me for my remarks, commenting that it was easy for me to make comments "with other people's money". This presentation did not have the desired effect of giving momentum to the Quarryvale project.

38. Subsequent to that presentation, my then solicitor, Seamus Maguire, received a letter from Owen O'Callaghan's solicitor, John Deane, dated 16 July, 1990 which referred to the application for planning permission made by Mr. O' Callaghan. Mr. Deane also demanded payment of the outstanding balance due in respect of my purchase of the option on the Neilstown lands.

39. At the same time, I felt under pressure from AIB to make some agreement with Mr. O'Callaghan whereby he would agree to shelve his plans for Neilstown in consideration of me giving him some share in the development of Quarryvale. At that stage I was vehemently opposed to any such proposal.

40. The pressure on me from AIB increased on the expiry of the loan period on 31 August, 1990, by which date the loan agreement required me to repay in full the borrowings of £8m. plus interest then accrued. Because I had not been able to refinance the borrowings, and because Dublin County Council had not even put the rezoning of the site on their agenda to be voted on, I was placed in a very difficult financial position. This led me to make determined efforts to attract in new investors. On one occasion, which I recall was around the end of September 1990, perhaps 21 September, 1990, I and my property adviser Richard Forman met with some potential investors. I recall that, when we were having lunch in a hotel near the site, Liam Lawlor arrived uninvited and unexpectedly. He then joined our table and proceeded to make a series of comments which appeared to be intended to deter the investors from making any investment in Quarryvale and which succeeded in discomfiting the investors. Unsurprisingly, this effort to obtain investment proved unsuccessful.

41. At around this time, my contract with Des Bruton lapsed because, due to my financial circumstances at the time, I was unable to make a payment of £1,020,000 which was due to him under the contract. These lands were crucial to the Quarryvale project and I had no choice but to re-negotiate the contract with Mr. Bruton. Mr. Bruton sought an increased price of £70,000 per acre (the price I had agreed to pay Dublin Corporation) which in the circumstances I had to agree to pay. This increased price cost me £800,000.

42. In the course of 1990, I suffered a number of additional setbacks to my proposals for Westpark/Quarryvale. One was the decision by Dublin Corporation to withdraw the option previously offered to me, to make available

for development 180 acres of Corporation land which was also in the Quarryvale area. I was told by the local authority's chief valuer, Mick McLoone, that the IDA wanted the land and the Corporation felt obliged to yield to the IDA's wishes. Around the same time, the Eastern Health Board withdrew from negotiations to sell me an adjoining 70 acre site which again cut down on the area available for development in line with the ambitious plans I had revealed at my 5 July, 1990, presentation.

43. All along, I was pressing Dublin County Council to consider shifting the zoning for a town centre from Neilstown to Quarryvale, but the issue was not even finding its way onto the agenda for Council meetings, notwithstanding the support I had previously been promised by various Government ministers and by the senior Corporation officials who had first asked me to get involved in this project. As a result, I came under ever-increasing pressure from AIB to enter into some form of arrangement with Mr. O' Callaghan. I believe that AIB were convinced that Mr. O' Callaghan was in a better position than I was to obtain the necessary re-zoning and planning permissions and that he had the political contacts to get the project off the ground. Ultimately, I began to give some credence to this suggestion myself.

44. It was in these circumstances that I entered into Heads of Agreement with AIB dated 14 December, 1990. This document made detailed provision for the future development of Quarryvale and Mr. O' Callaghan's participation in that development. Clause 8 of the Heads of Agreement provided that the board of directors of Barkhill would comprise myself, Owen O'Callaghan and two representatives of AIB, and AIB would also have the right to appoint a third director at any time during the currency of its loan facility. Subject to the conditions set out in the document, AIB agreed to continue financial support to Barkhill.

45. To the best of my recollection, Mr. O'Callaghan never signed up to these terms because I understand he was dissatisfied with the 25% share which the Heads of Agreement provided that he be given. As far as I was concerned, there were a number of aspects of the Heads of Agreement with which I was unhappy. However, I felt I did not have much choice but to sign it at the time, though I never intended to enter into a binding legal agreement on the basis of those terms.

46. I also recall that late in 1990, just prior to Christmas, I was sitting in the Arlington office at 25 St. Stephen's Green, when Colm Scallon called into my office. Mr. Scallon was an acquaintance of mine. In the course of our conversation, I told Mr. Scallon about all of the difficulties which I had experienced in relation to the Quarryvale development. Having listened to me, Mr. Scallon asked me whether he could make a telephone call, whereafter he asked me to accompany him to meet with someone. We walked to an office in Mount Street where I was introduced to Sean Sherwin, whom I understand was the then General Secretary of Fianna Fail. Mr. Scallon asked me to repeat in the presence of Sean Sherwin what I had said to him earlier, and I did so. In particular, I recounted my complaints against Mr. Redmond and Mr. Lawlor, because I thought it was in dealing with these individuals that Mr. Sherwin might be able to enlist some political support which would arrest the activities of both of them. However, Mr. Sherwin did not express any surprise at what I told him, but merely asked whether I would give a donation to the Party as he thought that would probably help to smooth things out. I told him that I had already given a donation approximately 18 months previously. He asked how much and I told him that I had handed a cheque for £50,000 to Padraig Flynn. At that stage, he went back into his office for a couple of minutes and he re-emerged to tell me that no such donation had been received by the party. Mr. Sherwin said that he would have to talk to "the powers that be".

47. At this time, I was convinced that as soon as the rezoning motion was considered by Dublin County Council, and a vote to zone the Quarryvale site was taken, I would be very much strengthened, in terms of the enhancement of the value of the site and in terms of increased confidence that the development would ultimately succeed. However, I was coming under increasing pressure at that time, much of which was coming from AIB.

48. In February, 1991, I received another letter (dated 7 February, 1991) from Eddie Kay of AIB, in which he referred to the expiry of the Barkhill loan facility at the end of August 1990, and he referred also to the Heads of Terms dated 14 December, 1990, signed by, AIB and Barkhill Limited and also, it was suggested, by O' Callaghan Properties. As I have said, I do not believe that O' Callaghan Properties ever signed these Heads of Terms. Mr. Kay's letter went on to refer to the rezoning motion coming before Dublin County Council on 8 February, 1991, but that AIB's information was that the presentation of the motion was to be postponed until the 15 February, 1991 meeting. This was what subsequently transpired. This postponement further increased the pressure on me.

49. This pressure further increased by reason of difficulties which I experienced with the Inland Revenue in the United Kingdom in 1991, which led to the raising of a very substantial tax assessment for which there was no proper basis as far as I was concerned. My dealings with the Revenue, which were of course confidential, were given extensive coverage in the media both here and in the United Kingdom, which adversely affected my personal and professional standing. I still do not know how details of my confidential tax affairs were released to the media.

50. The pressure being exerted on me steadily increased up to 15 February, 1991. I recall that AIB sent to me by fax, revised Heads of Agreement and informed me that if I did not sign them, that they would put in a Receiver. I

also recall getting a telephone call from Councillor Colm McGrath around this time. Mr. McGrath suggested that he was being prevented from putting a motion to rezone Quarryvale before the Council by AIB and Mr. O' Callaghan. At the time, I found this suggestion difficult to understand. Later that same evening, I recall receiving a further telephone call from Eddie Kay of AIB. In the course of this conversation, Mr. Kay again expressed concerns about the prospects for the Quarryvale development and emphasised how important AIB believed it to be to accommodate the requirements of Mr. O' Callaghan. Mr. Kay also referred to monies allegedly owed by me to Mr. O' Callaghan. I expressed the view that this was not a matter for the Bank and that the monies referred to were not, in fact, due at that time. This conversation, in which Mr. Donogh also participated, was, as far as I was concerned, very unpleasant.

51. Shortly after my conversation with Mr. Donagh, I received a telephone call from Councillor John Gilbride, telling me that I had to come to an agreement with the bank and Mr. O'Callaghan or I would risk postponing the presentation of the rezoning motion until December 1991. Again, I made it clear that I did not understand why my dealings with AIB and Mr. O'Callaghan could have anything to do with the business of the Council. Following on from that, I received a fax from AIB signed by Mr. Donagh, sometime around 7/8pm on the evening of 15 February, 1991. The fax contained a demand for the repayment of the AIB loan, plus interest. Unfortunately, I cannot locate a copy of that faxed letter and I assume that it must have been mislaid or destroyed, with some of my other papers. While I believed that, if a Receiver was appointed, the bank and I would recover all of our money, the motion to rezone the site would obviously further enhance its value. In the circumstances, I concluded that the better course was to sign the revised Heads of Terms the bank had faxed to me. Again, I am not able to locate a copy of these 15 February, 1991, Heads of Terms, which I recall provided for Mr. O'Callaghan and AIB to acquire a substantial shareholding in Barkhill Limited, but more exact details of which I cannot recall.

52. I also recall receiving a telephone call from Councillor Colm McGrath on 16 February, 1991, and he informed me that the Council had agreed to put the rezoning motion on the Agenda late the previous night. On the same day, 16 February, 1991, I received a call from Mr. Kay who also informed me that the motion had been accepted and Mr. Kay invited me to come to Dublin for a meeting, in order to sort out the Heads of Terms. In the course of this conversation with Mr. Kay, I informed him that, as far as I was concerned, I had been coerced into signing the Heads of Agreement and that the terms of that agreement were not binding on me in the circumstances.

53. During the period between February and May of 1991, I was subjected to even more severe pressure from the Bank to come to some arrangement with Mr. O'Callaghan. At this stage, I had become convinced that there was some form of common interest as between Mr. O'Callaghan and the Bank and that the Bank was determined on bringing him into the Quarryvale project.

54. After a meeting with Mr. Kay at the Bankcentre in late April 1991, to which Mr. O' Callaghan had also turned up, Mr. O'Callaghan asked me to accompany him to the Dáil to meet some very important people whom he indicated were Senior Politicians. As I knew that Mr. O'Callaghan had very good political connections, and that the purpose of the meeting was to do with the Quarryvale project, I agreed to go. We went to Buswells Hotel, where Mr. O' Callaghan met with Mr. Lawlor. I remained at the door of the hotel while Mr. O'Callaghan spoke to Mr. Lawlor. I recall that Mr. Lawlor then got up, walked towards me, greeted me and then passed out through the doorway. Mr. Lawlor walked away at speed, in through the gate of Dáil Eireann with both myself and Mr. O'Callaghan following. We went through the Dáil building and out the back door through to the other side, eventually arriving at an office in Mount Street. We followed Mr. Lawlor up the stairs and into a room where we found Mr. Frank Dunlop sitting at a table. At this stage, I realised that we must be in Mr. Dunlop's office in Mount Street. Greetings were exchanged between Mr. O'Callaghan, Mr. Lawlor and Mr. Dunlop, and some conversation

passed between them which was conducted out of my earshot. I believe I was in the office for about 30 minutes, during which time the others came in and out of a back room. Eventually, I decided I had had enough of whatever game was being played. I left the office and walked out onto the street whereupon Mr. O'Callaghan followed me and asked me what was the matter. I replied that "this is a f..... set up" and I told him I wanted nothing to do with Mr. Dunlop nor did I want him involved in any way in my business. At the time, I harboured a dim view of Mr. Dunlop and I had heard him mentioned as a "bagman" for politicians on the take. I also suspected that he had had a role in circulating information to the tax authorities in the UK which had led to the exorbitant tax assessments which had been sent to me and in generating publicity in relation to the subsequent difficulties I had had with the Revenue.

55. Mr. O'Callaghan said to me at that time "f... you! You will never build a f... foot on that site." This hardened my resolve against involving Mr. O'Callaghan in my development in any way, notwithstanding the immense pressure to which the Bank was subjecting me, to agree to Mr. O'Callaghan's involvement. The pressure was increased as 16 May, 1991 approached and the rezoning motion was scheduled to come before the County Council for a vote to re-zone Quarryvale for town centre development and to so include it in the draft Development Plan.

56. I should say that it was around this time that I yielded to the pressure to bring in Mr O'Callaghan on my development. My recollection is that I signed further Heads of Agreement with Mr O'Callaghan's company, Riga Limited and with AIB, before the rezoning motion went before the County Council on 16 May, 1991. This document (which was, I believe, prepared by AIB), stated that Mr. O'Callaghan's company, Riga Limited, had a 33 1/3% stake in Barkhill and that I have remaining 66 2/3% stake. I did not and do not agree that that represented the true position at that time, because I had not accepted the validity of the 15 February, 1991, Heads of Terms, because of the circumstances in which that document had been signed by me. In any case, the new Heads of Agreement proposed that, in consideration of Riga lending £1m to Barkhill, and in consideration of Riga guaranteeing Barkhill in the

further sum of £1m, Riga would get a 44 4/9% share of Barkhill, AIB would get a 22 2/9% share of Barkhill and I would have the remaining 33 1/3% share. These terms are contained in a Heads of Agreement dated 31 May, 1991 but my recollection is that I had agreed to the terms earlier in May and signed a document containing those terms at that time. This agreement contained detailed provisions concerning the financing of Barkhill and the future conduct of its affairs. It was difficult for me to accept these terms. However, by this time, I am reached the bitter conclusion that Mr. O' Callaghan had, through his political connections, the power of veto over the Westpark/Quarryvale project and that I had no alternative but to seek to obtain his co-operation.

57. I travelled over to Dublin on 14 May, 1991, in advance of the rezoning motion, coming before the Council on 16 May, 1991. My understanding of the County Council's procedure was that the Motion was presented for consideration in February, 1991, to effectively transfer the designation for a town/shopping centre from Neilstown to Westpark/Quarryvale and that needed to be approved by the County Council at the May meeting held three months later.

58. On the morning of 16 May, 1991, I met with Mr O'Callaghan at the Royal Dublin Hotel, where he had retained a large upstairs room. In the course of the day, a procession of Councillors came in and out of the room to consult with Mr O'Callaghan and his associates. Throughout the day, Mr Lawlor was also present and I recall that John Gilbride, Frank Dunlop and Mr Deane worked in close consultation with Mr O'Callaghan.

59. The scheduled meeting of Dublin County Council proceeded on the evening of 16 May, 1991. The Motion relating to the lands at Quarryvale, was proposed by Councillor Colm McGrath and seconded by Councillor Tom Hand, and in essence proposed the rezoning of Quarryvale for a major town centre, business and industrial park. The County Manager stated his objection to the rezoning of Quarryvale on the ground that to do so would

create a major change in the new town strategy and would disrupt the form, balance and nature of the entire area. He also noted that the Dublin Planning Officer was strongly of the view that the town centre designation should remain on the original designated site i.e. Neilstown, and that it would be illogical and contrary to proper planning to locate two major town centres so close to each other.

60. Following on from the Manager's report, Messrs. McGrath, Hand and Hanrahan submitted an amending motion curtailing the area to be developed at Quarryvale and providing that it not exceed the total area for commercial development which would be appropriate to the Lucan/Clondalkin town centre site designated by the 1983 development plan (to which I have been referring as the Neilstown site).

61. Eventually, the rezoning motion was passed, together with the limitation on the amount of land to be developed. While I was happy that the motion had gone through, I was unhappy that the site to be developed, had been restricted to 500,000 square feet. Nevertheless, I recall meeting with Councillors that evening, who called into Mr O'Callaghan's suite at the Royal Dublin Hotel, and both Mr O'Callaghan and I thanked them for getting the motion through. Subsequently, I attended a function which was organised by Mr O'Callaghan to celebrate the passing of the rezoning motion

62. Since I had signed the Heads of Agreement in May 1991, I had avoided signing any formal agreement to give effect to those Heads. While AIB and Mr O'Callaghan were anxious to bind me to a deal which would mean handing over majority control of Barkhill to a combination of AIB and Mr O'Callaghan's company, Riga Limited, I was doing everything in my power to try to find an alternative investor. Eddie Kay of AIB sent a letter to me, complaining of my failure to sign a Shareholders Agreement and giving me an ultimatum expiring on the 13 September, 1991.

63. So it was in early September, 1991, that I was effectively summoned to attend a meeting at Bankcentre to negotiate the formal agreement giving effect to the Heads of Agreement signed in May 1991.

64. When I went to AIB that afternoon, I met with Eddie Kay and he showed me into a room where we were joined by a man who was introduced as Dave McGrath and who described himself as an "AIB troubleshooter". I had a very contentious discussion with Mr. McGrath, with him insisting that I was obliged to enter into an agreement with Barkhill whereas I was insisting that the various heads of agreement signed by me previously were unenforceable due to the circumstances in which I had signed them and the lack of independent legal advice.

65. AIB expressed discomfort with the fact that I did not have legal representation and Mr McGrath and Mr Kay then attempted to make contact with Seamus Maguire, who had previously handled the conveyancing of the properties at both Bachelor's Walk and Quarryvale. I well knew that Seamus Maguire's practice did not involve much of commercial law but at the same time, it appeared better to have the assistance of a solicitor rather than to negotiate by myself.

66. It was not until 7:00 p.m. that Mr Maguire was located and he agreed to come in to meet with me at William Fry's offices (the solicitors acting for AIB) at approximately 8:00 p.m. that evening. After Mr Maguire arrived, he participated in the negotiations which eventually resulted in a copper fastening of the May 1991 Heads of Agreement, requiring Mr O'Callaghan's company, Riga Limited, to provide a loan to Barkhill in the amount of £1 million and to provide a guarantee for £1 million plus interest to AIB in respect of all borrowings of Barkhill from AIB. I was eventually persuaded by Mr Maguire that in the best interests of my family, and having regard to the pressure being

exerted by the UK tax authorities on my other business and financial interests, I should sign up to this agreement and the agreement was executed late that night of 13 September, 1991.

67. The minutes of a meeting of the Board of Directors of Barkhill Limited indicate that the meeting was held at 11:10 p.m. on the night of 13 September, 1991. At that meeting, it was agreed that my wife and I would retain 40% of the shares in Barkhill, Mr. O'Callaghan's company, Riga Limited, was to be issued with 40% of the shares and AIB Capital Markets Plc, was to be issued with the balance of 20% of the shares. That was an increase of 6 2/3% in my shareholding from that disclosed in the May 1991 Heads of Agreement, and a consequent reduction in the shareholdings allocated to AIB and to Mr. O'Callaghan's company.

68. I returned to the bank the following day, 14 September, 1991, at the request of Mr. Kay, to tie up some loose ends. I saw Mr. Lawlor's car parked in the car park at AIB Headquarters, as was Mr. Dunlop's car. While I did not meet Mr. Lawlor at the Bank, I did see him leaving the Bank. I believed that Mr. Lawlor had been meeting at the Bank with Messrs. Dunlop, Kay, McGrath, Deane and O'Callaghan. After Mr. Lawlor left, Eddie Kay met me in the foyer of the building and asked me to join Frank Dunlop, John Deane, Owen O'Callaghan, Dave McGrath and himself for a drink at the nearby Horse Show House public house. I declined that invitation but did agree to visit the Dáil in the company of Mr. O' Callaghan. I recall that Mr. Dunlop led us into the Dáil where we met Liam Lawlor and we went to his office. Mr. O'Callaghan then left the office and as I did not know the reasons for my presence there I became somewhat edgy. I asked Mr. Dunlop why I was there but he would not give me a straight answer. I distrusted Mr. Dunlop and I got fed up and I left the office. In the corridor I met with Mr. O'Callaghan who was there talking to Albert Reynolds. When I passed Mr. O'Callaghan, he asked me to wait for a little while but I declined and made my way out of the building. Mr. O'Callaghan followed me out and we had a sharp exchange of words. I put it

to Mr. O'Callaghan that he was trying to use me as "a Patsy". Mr. O'Callaghan responded by saying that I would never put "a f..... foot on that site and neither will any f..... unionist. That is the best site in Europe"

69. The agreement which I was forced to conclude with Riga Limited on 13 September, 1991, included the following terms:

- It was noted that my wife and I had advanced to Barkhill sums of money totalling £5.25m, but those loans were subordinated to loans given by AIB to Barkhill.

- Riga was to pay to my wife and I, the sum of £100,000 on 16 September, 1991. When I received that money, it went to pay professional costs incurred over the previous period.

- There was also provision for Riga to make further repayments of the monies owed to us, on a phased basis, but that was conditional on procuring institutional support, and on my wife and I transferring all our shareholding in Barkhill to Riga for a nominal consideration.

- The Share Subscription Agreement to which my wife and I were parties, and which was executed on 13 September, 1991, with Riga, AIB Capital Markets, Barkhill and Mr. O'Callaghan, in essence set out the basis on which Riga was to get a 40% of the shares of Barkhill, and AIB Capital Markets was to get 20% of Barkhill's shares. At Clause 5.1, it was provided that so long as AIB Capital Markets was a shareholder in Barkhill, Riga and Mr. O'Callaghan and anyone associated with them, was precluded from undertaking any development of property in the region of the Quarryvale site.

- Clause 5.5 obliged Riga Limited to provide a loan to Barkhill in the amount of £1m and it was further expressly provided at clause 5.6 that the loans made by my wife and I to the company, and the Riga loan were to be subordinated to the loans made by AIB.

- Clause 5.7 provided that Riga Limited was also to provide a guarantee of repayment of the AIB loans up to a maximum amount of £1m, together with interest.

- Clause 5.8 expressly provided that Riga Limited and Mr. O'Callaghan would procure that Merrygrove Estates Limited would not take any action without the prior consent of the Board of Barkhill, and the purpose of this was to effectively prevent any development proceeding at the Neilstown site, unless it had Barkhill approval.

- Clause 6.2 appointed Riga as a Project Manager for Barkhill, subject to the control and direction of the Board of Barkhill. It was expressly provided that Riga would not be entitled to charge any project management fees in respect of that appointment.

- Clause 6.5(d) provided that the quorum necessary for the transaction of Board business would be two directors, one of whom would have to be the nominee of AIB Capital Markets. This clause was significant in the light of the dissatisfaction which I later expressed in relation to the conduct of business at board meetings.

70. While I have outlined some of the principal terms of the agreement of 13 September, 1991, a separate agreement was entered into between my wife and I on the one hand, and Riga Limited on the other hand. My agreement with Riga Limited expressly provided that my wife and I had advanced to Barkhill, £5.25m, which amount was subordinated to the AIB loans to Barkhill. In accordance with the terms of that agreement, I was to receive £100,000 on or before 16 September, 1991, and subject to obtaining institutional support to secure repayment, Mr. O'Callaghan was then to buy out my shareholding for £5.15m. It was expressly provided at clause 4 that that agreement was subject to the approval of AIB Capital Markets under the terms of the Share Subscription Agreement entered into on the same date.

71. From this point on, I felt myself excluded from the management and control of Barkhill because Mr. O'Callaghan and AIB had a majority on the Board of Directors and could push through any decisions that they wanted, notwithstanding any objections which I might raise to them. As a practical matter, I was spending most of my time at my residence in Luton, I had little or no money and I was preoccupied with fighting the demands of the UK Inland Revenue authorities. My then solicitor, Mr. Seamus Maguire acted as secretary to the company but in essence, Mr. O'Callaghan controlled the company's affairs in his role as Managing Director.

72. Riga Limited had been appointed the Project Manager for Barkhill and this led to Mr. O'Callaghan bringing in his own advisory team including Ambrose Kelly as architects and McCarthy & Company as civil engineers. While I accepted this as an inevitable consequence of the agreement I had signed, I was dismayed by the continuing refusal of Mr. O'Callaghan and AIB to sanction the payment of costs due to my team of professional advisers who were discharged once Mr. O'Callaghan came onto the board of Barkhill. Some of my previous advisers were forced to threaten proceedings in an effort to get their bills paid and in this regard, for example, on the 15 of November, 1991 White McMillan & Wheeler Solicitors wrote on behalf of W.D.R. & R.T. Taggart, to Barkhill seeking payment of their fees in the amount of Stg£221,119.93. There was no doubt whatsoever that these monies were due and owing to W.D.R. & R.T. Taggart and that they should have been paid, but AIB and Mr. O'Callaghan refused to authorise the discharge of those fees.

73. I became aware that substantial amounts of money were being paid out of the Barkhill account to various people, including Frank Dunlop, Ambrose Kelly and a company called Shefran Limited. I recall querying such payments from time to time, particularly those payments going to Mr. Dunlop and Shefran Limited. I never got a satisfactory answer as to what services Shefran Limited was providing to Barkhill and I was also sceptical about any monies being paid out to Mr. Dunlop.

74. I persistently raised the issue with AIB, in particular, Mr. McGrath and Mr. Kay, as I was concerned by what I saw appearing in draft accounts which I

received for the year ended 30 April, 1992. Queries were raised by Barkhill's auditors, Messrs. Deloitte & Touche, in relation to the accounts and I pursued these queries with AIB. The queries were, I believe, drawn up by Deloitte & Touche and contained in a document which is headed "*unresolved audit matters*".

75. Eventually, I received a letter from Eddie Kay dated 10 June 1992 under cover of which I recall Mr. Kay provided me with a copy of an invoice for £30,000 drawn in the name of Shefran Limited. Unfortunately, I did not retain a copy of that invoice. I do however have a copy of an invoice received from Frank Dunlop & Associates dated 1 October, 1992, which was for £21,063.36, in respect of which VAT was not charged. This was another curious aspect of the bills sent by Mr. Dunlop. However, I never received a satisfactory answer from Mr. McGrath or Mr. Kay or indeed Michael O'Farrell, who then replaced Mr. Kay, as to why Barkhill was paying such large amounts of monies to Mr. Dunlop and to Shefran Limited. Of course, I am now aware that Shefran was a company owned by Mr. Dunlop.

76. At this time, I was having major difficulties with the UK Revenue which ultimately culminated in my being made bankrupt. In the circumstances, it was very difficult for me to attend to the business of Barkhill to any extent or to follow up the concerns that I had regarding the payments to Mr. Dunlop and Shefran. I did however continue to raise such issues at board meetings of Barkhill from time to time, particularly in the context of the contrast between the approach of the company to such payments and its failure to discharge its lawful debts to the professional advisers which had been engaged by the company before I had been forced to relinquish control.

77. At other board meetings which I attended during 1992, I expressed concern about the delay in getting the Quarryvale project off the ground. My concern was grounded on the fact that Tallaght had obtained a special tax designation and I was concerned that if the Blanchardstown site also received tax designation, all available investment would flock to both of those sites.

78. I recall Mr. O'Callaghan being adamant that Blanchardstown would never get tax designation and during the course of one board meeting which Mr. O'Callaghan and I attended, I recall him leaving the room and being absent for approximately half an hour. When Mr. O'Callaghan returned, he announced to the board meeting that Blanchardstown was definitely not getting tax designation and he had that direct from "the horse's mouth". I asked him who he meant by the horse's mouth and he said he had been given an assurance by Bertie Ahern, the then Minister for Finance. I recall that those present at that meeting included Michael O'Farrell, Mary Basquille, John Deane, Barry Pitcher and Seamus Maguire, although I cannot recall the exact date of the meeting.

79. It was characteristic of Mr. O'Callaghan that he would take every opportunity to remind me how significant were his political connections. It was by this time very clear to me that he had far greater political influence and support than I had initially understood and that I had been wholly naïve in believing that I could somehow counter that influence. Mr. O' Callaghan had, I believe, considerable influence both at Local Government and Central Government levels and was able to, and did in fact, use that influence to stymie my plans for the development of Westpark/Quarryvale and obtain the benefits of the development for himself. I now believe that, with the assistance of Mr. Dunlop, Mr. O' Callaghan was effectively able to control the manner in which Dublin County Council dealt with this development.

80. Typical of Mr. O'Callaghan's style was that he told me in the course of 1992, that Liam Lawlor had been given £50,000 by Frank Dunlop and that Mr. Lawlor was extremely annoyed because he had claimed that he had been promised £100,000 but he had not received it. Mr. O'Callaghan told me that he was in a back office when Mr. Lawlor came to collect the cash from Mr. Dunlop and that, when a row developed between Mr. Lawlor and Mr. Dunlop, he remained in the back office listening to it. Mr. O'Callaghan found it very humorous indeed that Mr. Dunlop later rounded on him for not coming to his assistance in warding off an angry Mr. Lawlor.

81. I also recall Mr. O'Callaghan telling me, again I believe that it was some time in 1992, that he had given £50,000 to Bertie Ahern in 1989 and that he had given him a further £30,000 some time later, when Mr. Ahern had apparently been instrumental in blocking Green Property Plc getting special tax designation for Blanchardstown. I inferred from what Mr. O'Callaghan told me that, on the basis that he was paying monies to Bertie Ahern, he had been able to call on the support of Mr. Ahern in his efforts to frustrate my project for Westpark/Quarryvale, even though I thought at one stage that Mr. Ahern was supportive of the project.

82. I never paid Colm McGrath any money, but I do recall at some time in 1992, when I was travelling in a taxi to Dublin Airport with Mr O'Callaghan, he told me that he was meeting with Mr. McGrath, and that Mr. McGrath was always after money. Mr. O'Callaghan then put his hand into his pocket and he pulled out what looked to me like a cheque or a banker's draft. While I did not see the sum of money written on the cheque or draft, Mr. O'Callaghan told me that he had already given Mr. McGrath £20,000 and he indicated to me that the cheque or draft represented a further £10,000.

83. Throughout 1992, nothing much happened insofar as I could see, in relation to pushing ahead with the planning and rezoning of West Park/Quarryvale, even though large amounts of fees were being paid out to Mr. Dunlop and others.

84. During the early part of 1993, there was a media campaign which focused on capping the size of the Westpark/Quarryvale Development. The apparent basis for the campaign was that if the development were to go ahead in the form it was conceived, it would suck the business out of country towns up to 50 miles away. While I cannot say for certain who was behind the campaign, I believe that it was orchestrated by Mr. O'Callaghan with the assistance of Mr. Dunlop. I suspect that the purpose behind the campaign was to maintain a low value on my shareholding in Barkhill, so that Mr. O'Callaghan would be able to buy me out at an undervalue. Eventually the matter came before a special meeting of Dublin County Council held on the 19 October, 1993. In those minutes, the report of the County Manager recommended the retention

of the re-zoning of Quarryvale, but with a retail shopping element restricted to 250,000 sq. ft. and that report was subsequently adopted by the Council. This was a very disappointing outcome as far as I was concerned.

85. I expressed opposition to the capping of the site area and I expressed this opposition at board meetings which I attended at AIB Bankcentre throughout 1993. However, my efforts to persuade the Council not to adopt the capping proposal were frustrated, and the vote to cap the Quarryvale site went ahead and the development was capped at 250,000 sq. ft.

86. Ultimately, my investment was tied up with Barkhill and Mr. O'Callaghan and AIB refused to unlock my investment until pressure was brought to bear on them by a solicitor whom I engaged in 1996, Noel Smyth of Noel Smyth & Partners. At that time, there was a proposal that a major investor, the Duke of Westminster, would get involved in the Quarryvale development. The involvement of that investor, coupled with pressure brought to bear by Mr. Smyth on my behalf, resulted in my recovering the value of my investment in Barkhill, in return for the sale of my shareholding in that company.

Dated the 25th day of May, 2001

Signed T.P. Gilmartin
Thomas P. Gilmartin

Certified as a true copy of the original

Signed: A + L Goodbody
Date: 31ST May 2001 39

4008

A&L GOODBODY
SOLICITORS

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email: law@algoodbody.ie Website: http://www.algoodbody.ie

Our Ref.	Your Ref.	Date
JNK/CEG GIL017 0001	PTB/34	27th March, 2000

Thomas Gilmartin
Re: Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs,

We refer to our telephone conversation of even date which your Mr Patrick Hanratty S.C.

1. We confirm that we have spoken on the telephone to our client this morning and he has told us that he cannot locate the small blue notebook in which he believes he recorded an account number given to him by Mr Liam Lawlor T.D. While we have asked our client to continue searching for this information, he was not hopeful that he would find it.

   Our client has informed us that the assortment of documentation through which he has been searching, has mainly to do with the Grosvenor House deal and for this reason, he did not think he would find the notebook amongst those documents. Our instructions are that our client's son destroyed much of the documentation which was in our client's possession, and which related to his business dealings in Ireland over the past 10/15 years.

2. 192 [redacted] C

3. 193 [redacted] C

194 [redacted] C

M F Bolton W A Beaumont J Bourke S P Bolton H H Moore S C Brooker R B Bulley M J Butterfield H O'Donohoe I V O'Connor
H N Healy M A Glennon P M Lane D J Sankey S W Haughey P P Dobbyn C M Preston P J Carroll J N Dudley J H Herlihy J D Moore
M F O'Donovan C J Hill J A O'Farrell E M FitzGerald S M Inkin R M Cotter J O Connor J B Moore L Oldin I Comyn
V J Power J A Kennedy S M Dwyer B McDermott S. Duffy G.J Hunter M M Abdelnoury E M Brady P V Maher S D Brandon I Scrivener
J Bourke M.P McKenna R A Feeney

Associates P D Mitchell P M Thomas E Moloney Crowley S.E.C. Cox D H Spence C.M Hickey J B Roche J. McCarthy
R Mitchell A V Lonergan D Cash P P Allen E A Roberts D B Jamieson L O'Donovan M.M. Lyons C O'Toole
J S Gallagher N O'Sullivan M J Wood P.M. Kenny I N Kelly G.P Breen A.C. Burke D Whyte J Cryan
S.E.C. Carroll N Gleeson J.F Mulvihill C.C Lynch J.P Hyde S.M McElhinny D.R Conklin D.E Where C.M. Deasy D.A Keogh
J Yeo S.J Bridgeman F O'Sullivan

Consultants J.R Osborne Professional L.C.W Wylie A.P Bowen S.M Downey O Bell

DUBLIN LONDON BOSTON NEW YORK BRUSSELS
Associated Office: Belfast

195 [redacted] C

196 [redacted] C

197 [redacted] C

198 [redacted] C

199 [redacted] C

200 [redacted] C

201 [redacted] C

202 [redacted] C

203 [redacted] C

204 [redacted] C

Yours faithfully,

A + L Goodbody

Tribunal of Inquiry,
The State Apartments,
Upper Castle Yard,
Dublin Castle,
Dublin 2.

FAX: 633 9890

N:\LITIGATE\WP\JNK\KLT2709.03S

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
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A&L Goodbody

our ref | MCCUNK 01174089 your ref | PTB/34 Date | 2 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn. Susan Gilvarry, Solicitor to the Tribunal

BY POST AND BY FAX: 633 9690

PLANNING AND PAYMENTS TRIBUNAL OF INQUIRY
04 FEB 2004
RECEIVED

Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to your letter dated 19 January, 2004.

We have taken our client's instructions regarding queries raised by you in relation to an entry in our client's note book on 4 February, 1989 in which reference was made to bank account [redacted] Adopting the numbering used by you in your letter, we respond as follows:-

1. Mr. Gilmartin instructs us that he was the holder of the above account.

2. Not applicable.

3. We are instructed that the account was set up by our client for the purposes of a business venture which was to involve the Gilmartin Settlement Trust and trading in property bonds. The account was set up for the purposes of receiving funds as part of that business venture. We are further instructed that our client was later advised by Cameron Markby Hewitt Solicitors in London not to proceed with the business venture as they believed that it might not be bona fide. No funds were ever transferred into this account.

Yours faithfully,

A&L Goodbody

M-626382-1

Dublin London Boston New York Brussels

M.G. Dickson H.M. Healy M. Dubbyn M.R. O'Connell E.G. Cranitch V.L. Power E.M. Brady M. Sheridan D. Glynn J.H. Kelly D. Widger D.L. Broder
S.C. Hamilton M.A. Greene C.M. Preston C.E. Gill I.R. Moore L.A. Kennedy P.K. Mahon E. Mackell J.B. Bodkin N. O'Sullivan C. Hickey A. McCarthy
R.M. Buckley A.M. Law A.J. Carroll E.A. O'Farrell J. Allen S.M. Doggett S. O'Riordan K.R. Allen C. Rogers M.L. Ward N. Murphy J.F. Whelan
M.T. Beresford D.E. Earley E.M. FitzGerald J. Allen B. McDermott N.P. McInerney A.V. Finnegan C. O'Donovan A.C. Burke S. O Cróinín
D.W. O'Connor A.W. Heughey J.M. Hickman B.M. Cotter P.O. White C. Duffy K.A. Feeney E.A. Roberts G. O'Toole I. Given B.J. McGrath

Consultants: J.A. Osborne F.J. O'Riordan Professor J.C.W. Wylie A.P. Browne

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A&L Goodbody

our ref | MKQUNK 01174989 your ref | PTB/34 date | 2 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn. Susan Gilvarry, Solicitor to the Tribunal
BY POST & BY FAX: 6339689

PLANNING AND PAYMENTS TRIBUNAL OF INQUIRY
04 FEB 2004
RECEIVED

Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to your letter dated 29 January, 2004 which raises queries in relation to certain matters contained in our client's statement of 17 May, 2001.

Firstly, in relation to the queries concerning payments made by our client to Liam Lawlor, we respond on foot of our client's instructions as follows:

1. The payments were made to Mr. Lawlor at various meetings that took place in Dublin. Our client is unable to be more specific than this.

2. The funds emanated from Mr. Gilmartin's Bank of Ireland account in Blanchardstown, account no. [redacted]

3. The monies were paid from Mr. Gilmartin's own funds and he was later reimbursed for these payments by Arlington Securities plc.

In relation to the queries raised by you concerning the payment made to Padraig Flynn we respond on foot of our client's instructions as follows.

1. The donation of IR£50,000 to the Fianna Fail Party was paid from Mr. Gilmartin's Bank of Ireland, Blanchardstown account no. [redacted] This was paid from his own funds.

2. Our client was not reimbursed by any third party in respect of this payment.

Yours faithfully,

628406_1

Dublin London Boston New York Brussels

M.G. Dickson H.K. Healy M.L. Dobbyn M.J. O'Gorman I.G. Gresham V.J. Power E.M. Brady M. Sherlock D. Glynn J.N. Kelly D. Widger D.R. Barry
S.C. Hamilton M.A. Greene C.M. Preston C.E. Gill J.E. Moore L.A. Kennedy P.M. Maher E. MacNeill B. Roche N. O'Sullivan C. Hickey A. McCarthy
R.E. Buckley J.M. Lacy R.J. Carroll I.A. O'Farrell I. Cohen S.M. Doggett S. O'Riordan K.E. Allen J.B. Rooney M.J. Ward N. Murphy J.F. Winters
M.T. Beresford D.J. Spring J.N. Dudley E.M. FitzGerald I. Conlon B. McDermott M.B. McKenna A.V. Finnegan C. Boyd A.C. Burke S. Ó Cróinín
T.V. O'Connor S.W. Haughey J.H. Hickey B.M. Collier F.R. White C. Duffy K.A. Feeney E.A. Roberts E. O'Toole J. Given B.J. McGrath

Consultants J.R. Osborne R.J. O'Riordan Professor J.C.W. Wylie A.F. Browne

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: law@algoodbody.ie website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref | MKGUNK 01174089 your ref | PTB/34 date | 2 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry, Solicitor to the Tribunal

BY POST & BY FAX:. 6339890



Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to your letter dated 15 January, 2004.

We have taken our client's instructions in relation to the queries raised by you and we respond as follows:

1. As far as our client is aware there was only one cheque book operating from his Bank of Ireland account in Blanchardstown, account no [redacted]

2. Mr. Gilmartin does not believe that Mr. Sheeran ever signed cheques drawing funds from this account. Mr. Gilmartin had an arrangement with Paul Sheeran whereby Mr. Sheeran would pay out money on behalf of Mr. Gilmartin and he would later deduct this amount from Mr. Gilmartin's account. Before paying out any such monies, Mr. Sheeran would first telephone Mr. Gilmartin to seek his authorisation for the payment.

   Mr. Gilmartin recalls providing Mr. Sheeran with a written authority in relation to this arrangement, but he does not have a copy of that authority.

Yours faithfully,

A&L Goodbody

M-628374-1

Dublin London Boston New York Brussels

M.G. Dickson N.N. Healy R.B. Dobbyn M.B. O'Donovan E.G. Corcoran V.J. Power E.M. Brady M. Shubotb D. Glynn J.R. Kelly D. Widger D.R. Baxter
R.C. Hamilton M.A. Greene C.M. Preston C.E. Gill L.R. Moore L.A. Kennedy R.V. Maher B. MacNeill J.B. Rocks N. O'Sullivan C. Hickey A. McCarthy
A.B. Beckley R.M. Law N.J. Carroll L.A. O'Farrell J. Gilden S.M. Doggett S. O'Riordan K.P. Allen C. Rogers M.J. Wood N. Murphy J.F. Whelan
M.J. Beresford D.J. Bentley J.M. Dudley E.M. MacDermott B. Cowen B. McDermott M.P. McKenna A.V. Finnegan C. O'Donovan A.C. Burke S. O Céidigh
T.V. O'Connor E.M. Houghey J.H. Mckeon P.M. Cotter P.D. White C. Duffy K.A. Feeney E.A. Roberts G. O'Toole J. Givin B.J. McGrath

Consultants J.A. Osborne R.J. O'Riordan Professor E.C.M. Wylie A.R. Browne

11/02/04 20:46 6492649
11. FEB. 2004 19:39 A & L GOODBODY (FAXROOM) NO. 3432 P. 2/2

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: law@algoodbody.ie website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref | MKOUNK 01174889 your ref | PTB/34 date | 11 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attention: Susan Gilvarry, Solicitor to the Tribunal

BY FAX: 8339890

PLANNING AND PAYMENTS TRIBUNAL OF INQUIRY
12 FEB 2004
RECEIVED

Mr Tom Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs,

We refer to your letter dated 4 February, 2004 together with the attached document reference no. TQ11.15-54,55 and 56.

We are instructed by our client that he is almost certain that Kieran O'Malley was the author of the letter dated 11 July, 1989 attached to your correspondence. In line with what is stated in that correspondence, our client believes that the report was prepared by Nat Lichfield.

Yours faithfully,

M-639976-1

Dublin London Boston New York Brussels

11/02/04 14:36 6492649 A & L GOODBODY (FAXROOM) NO. 3049 P. 2/2
11. FEB. 2004 13:30

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: law@algoodbody.ie website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref | MKO/NK 01174889 your ref | PTB/34 date | 11 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attention: Susan Gilvarry, Solicitor to the Tribunal

BY FAX: 6339690

PLANNING AND PAYMENTS TRIBUNAL OF INQUIRY 11 FEB 2004 RECEIVED

Mr Tom Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs,

We refer to your letter dated 4 February, 2004 in relation to the above matter.

We have now taken our clients instructions in relation to the cheque stub dated 10 June 1989 which was attached to your letter.

We are instructed by our client that this is the payment referred to in our letter of 28 January, 2004 to Willie Farrell who was then fundraising on behalf of the Sligo Hospice.

Yours faithfully,

A&L Goodbody

M-659973-1

Dublin London Boston New York Brussels

20/02/04 20:45 6492649
20 FEB. 2004 19:41 A & L GOODBODY (FAXROOM) NO. 4489 P. 2/3

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel +353 1 649 2000 Fax +353 1 649 2649 email: law@algoodbody.ie website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref | MGOUNK 01174389 your ref | PTB/34 date | 20 February 2004

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: John Gallagher SC

BY FAX: 6329890



Mr Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs,

Our client has instructed us to write to you, concerning a meeting which he attended in Clondalkin in the Autumn of 1997

You will recall that during one of the earlier interviews by Counsel for the Tribunal with our client, he recollected being taken by Owen O'Callaghan to a public house in Clondalkin which he was told by Mr O'Callaghan, was for the purpose of attending a resident meeting in connection with the proposed Quarryvale development.

When our client arrived at the public house in Clondalkin, we are instructed that he was approached by two men wearing dark clothing and dark sunglasses and a third man who identified himself as a Sinn Fein Councillor for the area. We are further instructed that Mr O'Callaghan stopped away from the group at that point.

At the time, our client instructs us that he did not know the identity of this person. Our client has since seen a photograph of the person, who described himself as the Sinn Fein Councillor, a copy of which we now attach. You will note that the photograph is of Christy Burke, a Sinn Fein representative.

Yours faithfully,

A&L Goodbody

M-643410-1

20/02/04 20:45 6492649
20. FEB. 2004 19:41 A & L GOODBODY (FAXROOM) NO. 4489 P. 3/3



20/02/04 20:44 6492549
20. FEB. 2004 19:36 A & L GOODBODY (FAXROOM) NO. 5236 P. 2/3

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: info@algoodbody.ie website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref | MKCUNK 01174989 your ref | PTB/34 date | 20 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry, Solicitor to the Tribunal

BY FAX: 6395890



Mr Tom Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs,

We refer to your letter dated 4 February, 2004.

We have now taken our clients instructions in relation to the queries raised by you and we respond as follows:-

1. Our client had a hope/expectation in 1989/1990 that the Westpark lands would be rezoned and that they would receive a planning status similar to the Custom House Docks area.

2. We are instructed by our client that he had this hope/expectation as he was told by various people including Padraig Flynn, Brian Lenihan and Bertie Ahern, that this would be the case.

3. We are instructed by our client that while he expressed a desire to various people at various times, that the lands would be re-zoned and would obtain planning permission, he made no formal application in this regard.

4. We are instructed by our client that he was promised by various members of the government, including Bertie Ahern, Padraig Flynn, Ray McSharry and Brian Lenihan that if he was able to bring investment into the area, that all planning and zoning road blocks would be removed.

5. We are instructed by our client that he accepts that he stated at a meeting with Brian McDonald and Orla Lenihan of Touche Ross, that he had to go to the County Council for planning permission before the government would designate his land. We are further instructed by our client that he had been told this by various members of the government including Padraig Flynn and Bertie Ahern. Our client informs us that he had been continuously told by members of the then government that as there was already one site

Tribunal Ref : GILMARTIN THOMAS WF/RED **Page No: 399**

Tribunal Ref : RED. TGS 3 Page No: 411

zoned for a town centre, that no further lands would be designated until planning permission had been obtained and the bricks were about to be laid.

Yours faithfully,

A&L Goodbody

M-099067-1

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: law@algoodbody.ie website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref | MKCUNK 01174989 your ref | PTB/34 date | 5 March 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry
BY HAND

PLANNING AND PAYMENTS TRIBUNAL OFFICE
08 MAR 2004
RECEIVED

Mr Thomas.P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to two letters received from you both dated 27 February, 2004, raising additional queries in relation to our letter to the Tribunal of 20 February, 2004.

In relation to the additional queries raised by you, we are instructed by our client to respond as follows:-

1. As stated in our letter of 20 February, 2004, our client was assured that if he was able to secure investment for the Bachelor's Walk area, that all "roadblocks" would be removed.

2. We are instructed by our client that he was given these assurances by Bertie Ahern when he met with him at the Department of Labour in the Autumn of 1987, by Padraig Flynn on numerous occasions when he met with him at his offices at the Customs House and at Leinster House, by Ray McSharry when he met with him in December, 1987 at his office in the Department of Finance and by Brian Lenihan on several occasions. We are instructed by our client that while he did not have any formal meeting with Brian Lenihan he did have chance meetings with him on several occasions, usually in the Shelbourne Hotel, and that these assurances were given by Mr Lenihan during those informal meetings.

3. In relation to the rezoning of the Quarryvale lands, we are instructed by our client that he was given the hope/expectation regarding the planning status of the Quarryvale lands during the various meetings that he had with Mr Flynn, Mr Lenihan and Mr Ahern as mentioned at number 2 above.

Yours faithfully,

A&L Goodbody

M-659281-1

Dublin London Boston New York Brussels

M.G. Dickson N.M. Healy P.R. Dobbyn M.I. O'Gorman J.G. Gannon V.J. Power T.M. Brady M. Sherlock D. Glynn J.N. Kelly D. Widger D.R. Baxter
S.G. Hamilton M.A. Greene C.M. Preston C.E. Gill I.B. Moore L.A. Kennedy R.W. Maher E. MacNeill J.B. Roche N. O'Sullivan C. Hickey A. McCarthy
K.B. Beckey P.M. Lee N. Carroll J.A. O'Farrell J. Olden S.M. Doggett S. O'Riordan K.H. Allen C. Rogers M.J. Wood N. Murphy J.R. Whelan
M.T. Beresford D.J. Seeley J.H. Dooley F.M. FitzGerald J. Conran S. McDermott M.P. McKenna A.M. Finnegan C. O'Donovan A.C. Burke S. Ó Cróinín
T.V. O'Connor S.W. Haughey J.H. Hickson B.M. Carter P.D. White C. Duffy K.A. Feeney E.A. Roberts G. O'Toole J. Given B.A. McGrath

Consultants I.R. Osborne N.J. O'Riordan Professor J.C.W. Wylie A.E. Bremner

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: law@algoodbody.ie website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref | MKG/JNK 01174959 your ref | PTB/34 date | 5 March 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry
BY HAND



Tom Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to your letter dated 26 February 2004 and to the attached memorandum prepared by "JK", dated 15 December, 1987.

In relation to the queries raised by you in relation to that memorandum, we are instructed by our client as follows:-

1. Our client did not personally attend the meeting which was due to take place on Friday 18 December, 1987.

2. We are instructed by our client that he believes that the meeting between representatives of the Department of Finance and the Revenue Commissioners scheduled for Friday, 18 December 1987 was an internal meeting and that he has no information in relation to the matters discussed at the meeting or the conclusions or decisions made at that meeting.

Yours faithfully,

A&L Goodbody

M-659274-1

Dublin London Boston New York Brussels

M.G. Dobson N.M. Healy R.B. Dobbyn M.J. O'Gorman J.G. Quinlan V.L. Power E.M. Brady M. Sherlock D. Glynn J.N. Kelly D. Widger D.R. Baxter
S.C. Hamilton M.A. Greene C.M. Preston C.B. Gill I.B. Moore L.A. Kennedy P.N. Maher E. MacNeill J.B. Roche M. O'Sullivan C. Hickey A. McCarthy
R.B. Bradley R.M. Lee R.I. Carroll J.A. O'Farrell J. Oldan S.M. Doggett K.B. Allen C. Rogers C. O'Donovan M.J. Ward N. Murphy J.F. Whelan
M.F. Beresford D.J. Seeley J.N. Dudley E.M.A. MacDonald J. Colman B. McDermott M.P. McKenna A.M. Finnegan M.J. Burke A.C. Burke S. Ó Cuinn
N.V. O'Connor E.W. Heughey J.H. Hickson B.M.L. Collier P.D. White C. Duffy K.A. Feeney E.A. Roberts G. O'Toole J. Shaw B.J. McGrath

Consultants J.A. Osborne R.J. O'Riordan Professor I.C.W. Wylie A.R. Browne

A&L Goodbody

PLANNING AND TRIBUNAL OFFICE
10 MAR 2004
RECEIVED

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

EVIDENCE OF THOMAS P GILMARTIN

10 March, 2004

I remember that Joe Burke came to meet me at my Arlington office located on St Stephen's Green, some time in September, 1990. I recall that Mr Burke admired a model of the Quarryvale Development which was on display in my office. At that time, Arlington had all but decided to withdraw from any involvement in the Quarryvale project. On that account, I wanted to remove the model from the office in Dublin and bring it back to England with me.

During the course of some chitchat with Mr Burke, he mentioned half a million pounds. Before I could respond to him, my telephone rang. It was Barry Boland, Arlington's representative in Dublin, who was telephoning to ask me to turn off the lights in the office, when I left.

Picking up again on my conversation with Mr Burke, I said to him that I was not concerned about recovering the half a million pounds which was approximately the amount which I had submitted with my tender for the Dublin Corporation lands. I had thought that Mr Burke was referring to that transaction, when he had made a reference to half a million pounds earlier. I told him that even if my tender was refused, I was confident that I would recover that half a million.

I remember that Mr Burke followed up by saying he was not talking about the Dublin Corporation transaction, but asked me would I not be prepared to pay half a million pounds because I knew that Bertie Ahern was looking after me.

Naturally, I was taken aback by that statement and I thought that if the demand was being made on behalf of Bertie Ahern, I should hear it from him first hand. I told Mr Burke that I would consider the request. Mr Burke then asked me whether or not I could meet with Bertie Ahern. I said that I could not on this occasion because I had to go back to England that evening, and in fact, I was about to leave for the airport. Mr Burke offered to take me to the airport, and on the way, he said he would take me to meet Mr Ahern.

A&L Goodbody

We then made arrangements to leave the office and Mr Burke gave me assistance to take from the office, the model of the Quarryvale Development which I was bringing back to England.

Mr Burke then drove to the Deadman's Inn Public House and he went inside. I was concerned that I would miss my plane back to Luton. I recall that Mr Burke was in the pub for about 20 minutes. When he came out, he told me that Mr Ahern was not inside but he thought he might be in another pub.

I recall Mr Burke then driving me to another pub located in the vicinity of Beaumont Hospital. Again, I remember Mr Burke going inside and being in the pub for about 10 minutes, while I waited outside in his car. When Mr Burke, came out, he told me that Mr Ahern would be there shortly. However, I was very anxious at that stage that I would miss my flight back to Luton.

I told Mr Burke that I had a commitment to attend a meeting the following morning which I could not miss and I had to insist that he drive me immediately to the airport. Mr Burke tried to persuade me to wait for Mr Ahern's arrival but when I refused to do so, Mr Burke got very upset. During the drive to the airport, I recall Mr Burke not saying very much and that a sort of unhappy silence was maintained. Before I left his car, I said to Mr Burke in rather bitter terms, that "this is a great little country isn't it".

SIGNED: _____
Thomas P Gilmartin

DATED: 10 March 2004

19/03/04 13:35 6492649 NO. 1980 P. 2/2

19 MAR. 2004 12:32 A & L GOODBODY (FAXROOM)

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: ... website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref MKCUNN 01174049 your ref PTB/34 date 19 March 2004

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Oliverry, Solicitor to the Tribunal

BY FAX: [redacted]

Mr Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs,

We are instructed by our client that he gave the map of the Quarryvale lands which he received from George Redmond to Dave McGrath of AIB at a meeting which took place on or about 15 or 16 September 1991.

We are instructed by our client that the meeting which took place on or about 15 or 16 September 1991 was a meeting that was arranged to sign the Shareholders Agreement between Tom Gilmartin, AIB Bank plc and Owen O'Callaghan. We are instructed by our client that the meeting commenced at the AIB Bank Centre in Ballsbridge and later moved to the offices of William Fry Solicitors.

Yours faithfully,

A & L Goodbody

M-659169-1

Dublin London Boston New York Brussels

A&L Goodbody

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

EVIDENCE OF THOMAS P GILMARTIN

24 March, 2004

A&L G

This statement is made by me at the request of the Tribunal following evidence given by me to the Tribunal on Tuesday, 16 March 2004 in relation to discussions I had with Mary Harney at a house warming party in Dalkey.

I met Mary Harney at a house warming party in Dalkey in December 1988. I began to talk to Ms Harney about my business dealings in Dublin. I knew that Ms Harney was opposed to my scheme (either Bachelor's Walk or Quarryvale I cannot quite recollect which one) and I questioned her as to what her objections to the scheme were. During that conversation, I also informed her of some of the problems that I had encountered whilst doing business in Dublin up to that point in time. These included the activities of Liam Lawlor. Ms Harney did not respond when I spoke to her about these problems.

In my evidence to the Tribunal, I told the Tribunal that I had told Ms Harney about my visit to the Dáil. However, having reflected on the matter, I now believe that I did not tell Ms Harney about my meeting with the then Taoiseach and the Ministers in Dáil Eireann as this discussion with Mary Harney was prior to that meeting. At the time that I gave that evidence to the Tribunal, I may have been confused with another house warming party which also took place in Dalkey a year later and I mistakenly assumed that it was at this party that I had met Ms Harney, although I now believe that Ms. Harney was not present at this second house warming.

Therefore, Mary Harney was not one of the people that I told about a meeting with the then Taoiseach and the Ministers in the Dáil and about the demand made for IR£5,000,000.00.

SIGNED: T P Gilmartin

Thomas P Gilmartin

DATED: 24/3/04

31/03/04 12:06 353 1 6613279+++17 NO. 2956 P. 2/2
31. MAR. 2004 11:59 A & L GOODBODY (2ND FLOOR)

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: ...@algoodbody.ie website: www.algoodbody.ie dx 29 Dublin

A&L Goodbody

our ref | MKGUNK 01174969 your ref | PTD/34 date | 31 March 2004

PLANNING AND PAYMENTS TRIBUNAL OF INQUIRY
Received
by Post
31 MAR 2004
RECEIVED

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry, Solicitor to the Tribunal
BY FAX: 639 9890

Mr Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs,

We refer to the evidence given by our client to the Tribunal on 23 March 2004 during which he stated that he may have some additional cheque books which were not discovered to the Tribunal. Our client believed that those cheque books may have been located in his house in Sligo which he hasn't visited for some time.

Having investigated the matter further, our client found that the cheque stubs that he had in mind were in fact in his brief case which he had in Dublin. Having gone through the cheque stubs, our client can now confirm that these cheque stubs relate to Bank of Ireland accounts that our client had in the Bank of Ireland Luton branch and are not relevant to the Tribunal's inquiries. We are instructed that these cheque stubs also relate to AIB accounts of our client and his wife which are currently in use and are also not relevant to the Tribunal's inquiries.

Our client also arranged for a search to be carried out in his house in Sligo and he can now confirm to the Tribunal that the only cheque book found in the house in Sligo was a cheque book belonging to his wife, and is not relevant to the Tribunal's inquiries.

Yours faithfully,

A&L Goodbody

M-675600-1

Dublin London Boston New York Brussels

PLANNING AND PAYMENTS TRIBUNAL OFFICE
31 MAY 2004
RECEIVED

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

EVIDENCE OF THOMAS P GILMARTIN

26 May, 2004

This statement is made supplemental to and for the purposes of clarification of certain matters addressed in my statement to the Tribunal dated 10 March, 2004.

At the time that I made that statement to the Tribunal I was in the middle of cross examination. Having reflected on that statement, I see there are a number of inaccuracies which I now wish to correct as follows:

(a) The reference to "Quarryvale" at line 4 of paragraph 1 should read "Bachelors Walk".

(b) In paragraph 6 it is stated that I was bringing the model of the Quarryvale Development back to England. In fact, the model was brought to a storage unit in Arlington's office located on St Stephen's Green.

(c) The reference to the "Deadman's Inn Public House" in the first line of paragraph 7 should read "Fagan's Public House".

(d) In paragraphs 8 & 9 I refer to Mr Burke's "car". However, I recall that Mr Burke was driving a "pick-up truck" at that time.

I also wish to clarify the comments made by me about my conversation with Joe Burke as follows:

As set out in my statement, during the course of some chit-chat with Joe Burke, Mr Burke mentioned a figure of £500,000 to me. This figure was mentioned on several occasions by Mr Burke during that conversation and I initially believed that the reference to £500,000 was to the deposit which I had paid for the tender of the Dublin Corporation lands. As the conversation developed, I became aware that Mr Burke seemed, in a roundabout fashion, to be asking for £500,000. I did not let on to Mr Burke that I had formed that impression and the chit-chat continued.

Mr Burke, later in that conversation, clarified that he was not talking about the Dublin Corporation transaction. He said Quarryvale was going to be a big scheme and mentioned "big bucks" and said that surely Bertie's help was worth something. I said to him "well I would pay £500,000 to get out of here if I got my money back" (I was

referring to the money that I had spent on assembling the Quarryvale site).

Mr. Burke then said "would you?" and I replied "would I what". Mr. Burke then asked "would you pay?", and I understood this to mean would I pay £500,000. Mr. Burke then said "you know you can trust Bertie" and "you know that Bertie is looking after you".

Mr. Burke than asked if I would meet Bertie Ahern and said that we could meet him on the way to the airport. Therefore, while Mr Burke did not specifically ask me to pay £500,000, this is what I understood to be the gist of the conversation.

I believed that the money was being sought on behalf of Bertie Ahern. However, I wanted to confirm whether it was actually Mr Ahern or Mr Burke himself who was seeking the £500,000 and therefore, I agreed to go with Mr Burke when he offered to take me to see Mr Ahern on the way to the airport.

Signed: T.P. Gilmartin
Thomas P Gilmartin

Dated: 26 May 2004

22. DEC. 2004 18:04 A & L GOODBODY (FAXROOM) NO. 0782 P. 2/2

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A&L Goodbody

our ref | MKC/JNK 01174969 your ref | 1.PTB/34 date | 22 December 2004

By Fax: 893 9890

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2

TRIBUNAL OF INQUIRY PLANNING MATTERS & PAYMENTS RECEIVED 23 DEC 2004

Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments
Irish Times Report of 3 December 2004

Dear Sirs

Further to our letter to you of 9 December, we have since had the opportunity of taking instructions from our client.

1. Our client instructs us that in response to a question, he confirmed to Mr Cullen that he would be back before the Tribunal to give evidence, but he did not state that he would be back in February, contrary to what is quoted in your letter of 6 December 2004.

2. Our client recently spent a week in Hospital and he is currently taking medication, following on from the serious heart surgery which he had to undergo. Our client has been told that he will be contacted early in the New Year to set up an appointment for him to see his cardiologist, Dr Conor O'Shea. We have already asked Dr O'Shea to provide a written opinion on Mr Gilmartin's state of health, after he has had an opportunity to examine our client.

3. In your letter of 8 December 2004, you have referred to information alleged to have been provided by our client to a journalist, and that has been quoted as if it were a fact. Our client categorically denies stating to the journalist, Mr Cullen, that he was in possession of any new information in relation to the attendance of the Taoiseach at a meeting in Dáil Éireann in 1989. Our client instructs us that there is no question whatsoever of him communicating any new evidence coming to his attention, to a journalist rather than to the Tribunal.

Yours faithfully

A&L Goodbody

M-875011-1

Dublin London Boston New York

S E Hamilton S W Murphy M F O'Donnell J B Moore S M Dunphy S O'Riordan K R Allen C O'Donovan J Govan D H Baxter
R K Buckley R M Dunphy C L Gill J Gilson B McDermott A V Finnegan G O'Toole D Wedger A McCarthy
M T Bernstein C M Pierson J A O'Farrell J Conran C Duffy E A Roberts J N Kelly C Hickey J F Wheelan
M A Brewer P J Carroll B M FitzGerald R D White D Solan K A Feeney H O'Sullivan N Haughey D R Conlon
P M Lee J N Dooley B M Cearr V J Power E M Brady M Sandwick D Glynn S O Cuiv S O Cuiv I M Somerville
D J Seeley T N Hutton J G Gannon L A Kennedy P V Maher E P London J R Roche B J McGrath M C Barr
F Mitchell C Rogers A L Bacon

Consultants: J A L Osborne M J O'Riordan L V O'Connor Professor J C W Wylie A J Browne

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A&L Goodbody

our ref | MKC/JNK 01174989 your ref | date | 28 October 2005

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2

Attention: Susan Gilvarry, Solicitor to the Tribunal

Thomas P. Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs

We refer to your letter dated 15 February 2005 requesting information in relation to the details surrounding the IR£50,000 payment made by Mr. Gilmartin to Mr. Flynn in or around June 1989.

Adopting the numbering used by you in your letter, we are instructed by our client to respond as follows:

1. Assuming you are referring to the audited accounts of Barkhill Limited, we are instructed by our client that Deloitte & Touche were the company's auditors during the period 1989/1990. We attach an authority from our client authorising the Tribunal to take up the audited accounts of Barkhill Limited from Deloitte & Touche. We are instructed by our client that to the best of his knowledge, that company's accounts were not audited until in or about 1992.

2. We are instructed by our client that while he does not recall giving specific instructions to Deloitte & Touche in respect of the treatment of the IR£50,000 political donation to Fianna Fáil, he presumes that this was treated as an expense. We are instructed that again while Mr. Gilmartin has no specific recollection in relation to the treatment of this particular expense, he believes that it would have been included in a list of expenses incurred by him which he would have given to Deloitte & Touche.

3. We are instructed by our client that he is unaware of how the IR£50,000 was dealt with for tax purposes.

4. We attach a copy of our client's consent authorising the UK Revenue Authorities to provide

the Tribunal with details of all tax returns filed by Mr. Gilmartin from 1 January 1988 to the end of the financial year 1993.

A&LG

Yours faithfully

A & L Goodbody

M-1220108-1

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A&L Goodbody

our ref MKC/JNK 01174989 your ref PTD/34 date 28 October 2005



The Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry
Solicitor to the Tribunal

Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs

We refer to your letters dated 27 September, 2004 and 17 November, 2004.

We are instructed by our client that there is absolutely no truth in the allegation made by Mr. Flynn that Mr. Gilmartin was told by Mr. Pat Hanratty, then Senior Counsel to the Tribunal, that if he was to say that the cheque in the amount of IR£50,000 was given to Mr. Flynn for his personal election campaign that it would be/might be interpreted as a bribe.

We are instructed by our client that Mr. Hanratty did question Mr. Gilmartin in relation to the payment of IR£50,000, but that he never advised Mr. Gilmartin to say anything in relation to that payment one way or the other.

Yours faithfully
A&L Goodbody

M-1220024-1

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A&L Goodbody

our ref | MKC/JNK 01174989 your ref | PTB/34 date | 28 October 2005

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry, Solicitor to the Tribunal

Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs,

We refer to your letter dated 3 June 2004 and to the attached letter dated 12 February 1990 from John Higgins, addressed to Mr Tom Gilmartin care of JG O'Connor Solicitors.

We are instructed by our client that he has no knowledge whatsoever of the letter of 12 February 1990. We are instructed by our client that he believes that he never gave instructions to JG O'Connor Solicitors regarding these lands or any other matter.

We are also instructed by our client that he believes that JG O'Connor Solicitors acted on behalf of Ove Arup & Partners.

Yours faithfully,

A & L Goodbody

M-1220097-1

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A&L Goodbody

our ref | ADW/MKC/JNK 01174989 your ref | PTB/34 date | 28 October 2005

The Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2

Attn: Susan Gilvarry
Solicitor to the Tribunal

Thomas P Gilmartin
Tribunal of Inquiry in Certain Planning Matters and Payments

Dear Sirs

We refer to your letter dated 15 February 2005 enclosing a copy list of county councillors.

We are instructed by our client that the list of county councillors enclosed with your letter of 15 February 2005 is the list referred to at paragraph 36 of our client's statement, dated 17 May 2001.

Yours faithfully

A&L Goodbody

M-1219835-1

EVIDENCE OF THOMAS P. GILMARTIN IN RELATION TO THE PLANNING STATUS AND THE PROPOSED DESIGNATION OF THE LANDS AT WESTPARK, COUNTY DUBLIN AS REQUESTED BY THE TRIBUNAL IN ITS LETTER DATED 28 SEPTEMBER, 2004

The lands at Westpark which I had identified as a proposed site for a shopping centre/retail park, consisted of approximately 180 acres of land. Most of this land (approximately 120 acres) was zoned for industrial use and the remaining 60 acres (approximately) was zoned for residential use. As part of the overall development at Westpark, it was intended that approximately 120 acres would be rezoned for retail shopping and the remaining 60 acres would be rezoned for retail warehousing.

I was advised by my planning consultant Kieran O'Malley that the following methods could be used to bring about that rezoning.

1. That the land could be designated as an enterprise zone similar to the Custom House Docks area. While this would have proved extremely useful to the project, it became clear at an early stage that this redesignation was unlikely to happen as there would be too much controversy associated with such a status being given to lands which were to be developed by a private developer. If such status was granted to lands owned by a private developer it was thought that there would be a flood of similar requests from other private developers.

2. The second option was to bring a motion for material contravention of the Dublin Development Plan.

3. The third option was to await the review of the Dublin Development Plan which I was told would result in a rezoning of the land. This third option was recommended as a preferred option by a number of people including Bertie Ahern, Padraig Flynn, Brian Lenihan and my planning consultant.

I was also told by Mr. Ahern, Mr. Flynn and Mr. Lenihan that all three town centres (i.e. Tallaght, Blanchardstown and Westpark) would be designated for tax purposes. While I was not looking for this tax status for Westpark, it would have been a bonus.

I was continually told by Mr. Flynn, Mr. Lenihan and Mr. Ahern and various Dublin County Councillors that a review of the Dublin Development Plan in respect of Westpark was imminent throughout 1988 and 1989. While the Dublin Development Plan was reviewed in respect of the other areas in Dublin, including Tallaght and North Dublin, the rezoning of the lands in respect of West Dublin, was not forthcoming.

I had four meetings with Bertie Ahern, two in the Department of Labour in the autumn of 1987 and late 1988 and two in Fagan's Public House on 10 October, 1988 and on 28 September, 1989. The rezoning of the Westpark lands was not discussed at the first meeting. To the best of recollection it was discussed at all of the other meetings. I also discussed this matter with Padraig Flynn on the numerous occasions when I met with him at his offices at the Customs House and at Leinster House and with Ray McSharry when I met with him in December, 1987 at his offices in the Department of Finance and when I met with him at his clinic in Sligo. I also discussed these issues with Brian Lenihan during chance meetings that I had with him on several occasions usually in the Shelbourne Hotel in Dublin.

Signed: T P Gilmartin

Date: 25 · 10 · 05

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A&L Goodbody

our ref | MKC/JNK 01174989 your ref | PTB/34 date | 28 October 2005

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2

Attention: Susan Gilvarry, Solicitor to the Tribunal

Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs

We refer to your letter dated 16 May 2005, a copy of which was attached to your letter of 29 July 2005. Your letter of 16 May 2005 was only received as an attachment to the letter of 29 July 2005 and was not previously received by this office.

In relation to the query raised by you in your letter of 16 May 2005, we are instructed by our client that he was told by Owen O'Callaghan himself that he (Mr. O'Callaghan) had provided monies to some senior politicians.

Yours faithfully

A&L Goodbody

M-1220147-1

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A&L Goodbody

our ref MKC/JNK 01174989 your ref PTB/4 date 28 October 2005

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2



Attention: Susan Gilvarry, Solicitor to the Tribunal

Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs

We refer to your letter dated 29 July 2005.

Your letter of 29 July states that our client previously informed the Tribunal that in or around 1991 and 1992 IR£15,000 or IR£20,000 was given by Owen O'Callaghan to the then Minister for Industry & Commerce. You have now asked our client to identify this particular Minister and to provide any further details that our clients may have in respect of this payment.

We are instructed by our client that he was informed by Mr. O'Callaghan in or around 1991/1992 that he had already given a five figure sum to Michéal Martin. Our client is unaware as to whether there is any basis for the statement made by Mr. O'Callaghan. We are instructed by our client that he did not know who Mr. Martin was at that time but that he had assumed that he was a member of Government.

We are instructed by our client that he is unaware of when this payment was made or the circumstances in which it came to be made.

Yours faithfully
A&L Goodbody

M-1220161-1

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our ref | MKC/JNK 01174989 your ref | PTB/4 date | 28 October 2005

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2

Attention: Susan Gilvarry, Solicitor to the Tribunal

Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters & Payments

Dear Sirs

Our client has now reviewed most of the brief received from the Tribunal in relation to the Quarryvale II module. We are instructed by our client that he recalls a letter dated 15 February 1991 which was faxed by the AIB Bank to Mr. Gilmartin at approximately 7/8pm in the evening. In that letter our client recalls that it stated that Bank was calling in its loan after Mr. Gilmartin had refused to sign the Heads of Agreement for the Shareholders Agreement.

This letter does not appear to be included in the brief received from the Tribunal. Our client did have a copy of this letter but we are instructed that it is no longer in his possession and that he has no knowledge of its whereabouts. Can you please confirm whether or not this letter was provided by the AIB Bank as part of its discovery

We await hearing from you.

Yours faithfully

A&L Goodbody

M-1221668-1

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A&L Goodbody

our ref | MKC/JNK 01174989 your ref | PTB/3415 date | 28 October 2005

Tribunal of Inquiry into Certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry, Solicitor to the Tribunal

Thomas P Gilmartin/Vera Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to your letters dated 1 June 2004 in which you requested narrative statements from both Mr & Mrs Gilmartin. As stated in our letter to you of 8 June 2004, Mr Gilmartin is responding on his own behalf and on behalf of Mrs Gilmartin.

Adopting the numbering/lettering used by you in your letters of 1 June 2004, we are instructed by our client to respond as follows:-

A. Our client understands that Mr Noel Gilsen is a friend of Liam Lawlor. However, we are instructed by our client that neither he nor Mrs Gilmartin has or had any involvement whatsoever with Mr Gilsen. We are instructed that neither our client nor Mrs Gilmartin either know, or have ever met, Mr Gilsen.

B. We are instructed by our client that he did not sign the cheque dated 7 September 1988 in the amount of IR£7,700, a copy of which was attached to your letter of 1 June. Our client has reflected carefully on the matter, and instructs us that he believes that the circumstances in which this cheque came to be written are as follows:-

- On 6 September 1988, Mr Gilmartin was due to meet Mr Lawlor in London to pay him consultancy fees on behalf of Arlington. Mr Gilmartin wrote out a cheque for the amount of IR£7,500 (we are instructed that this was an error on Mr Gilmartin's part as the cheque should have been in the amount of IR£7,000) but was unable to meet Mr Lawlor on that date.

  Mr Gilmartin believes that on the following day Mr Lawlor went into the Bank of Ireland branch in Blanchardstown and requested the manager, Mr Paul Sheeran, to provide him with a cheque to cover the consultancy fees. We are instructed that Mr Lawlor also

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claimed that expenses were due to him. As per Mr Gilmartin's arrangement with the Bank of Ireland, Mr Sheeran phoned Mr Gilmartin to obtain authority to write the cheque.

Mr Gilmartin believes that the cheque attached to your letter was signed by Paul Sheeran on his behalf and that this was in keeping with an authorisation given by our client to Mr Sheeran.

We are instructed that Mr Lawlor requested Mr Sheeran to leave the payee blank and that this is what Mr Sheeran did. We are further instructed that the cheque attached to your letter dated 7 September 1988, in the amount of IR£7,700, is the cheque that was signed by Mr Sheeran on that date. We are instructed that the figure of IR£7,700 includes two months consultancy fees paid on behalf of Arlington, plus IR£700 in respect of expenses.

C. We are instructed by our client that he has no information in relation to the circumstances in which Mr Gilsen came to endorse this cheque.

1. In your second letter of 1 June 2004 you indicated that the name on the cheque was that of Vera Gilmartin. As the payee was left blank on the cheque when it was issued by Mr Sheeran to Mr Lawlor, our client instructs us that neither he nor Mrs Gilmartin have any information on the identity of the payee. Notwithstanding the foregoing, we are instructed by our client that from reviewing a copy of the cheque, he does not believe that the name on the cheque is that of Vera Gilmartin. Our client believes that the payee on the cheque may in fact be "N Gilsen".

2. We are instructed by our client that neither he nor his wife have any knowledge whatsoever of the circumstances in which Mr Gilsen came to endorse the cheque.

3. We are instructed by our client that neither he nor his wife have any involvement and/or relationship whatsoever with Mr Gilsen.

Yours faithfully,

A&L Goodbody

M-1220083-1

Dublin London Boston New York

S.C. Hamilton S.W. Keughery M.F. O'Connell J.B. Moran S.M. Doggett S. O'Riordan K.P. Allen G. O'Toole D. Walker A. McCarthy
R.B. Barkley P.R. Dobbyn C.L. Gill J. Gilon B. McDermott M.P. McKenna A.V. Finnegan C. Duffy N. O'Sullivan C. Hickey E.B. Whelan
R.T. Beresford C.M. Preston J.A. O'Farrell J. Conan K.A. Feeney E.A. Roberts N. Murphy P.P. Conlon
M.G. Greene P.J. Carroll E.M. Brookfield P.D. Watts D. Slattery M. Sherlock D. Dunne M.J. Ward S.O. Cronin F.F. Somerville

30. NOV. 2005 9:43 A & L GOODBODY (FAXROOM) NO. 0137 P. 2/2

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A&L Goodbody

our ref | ADW/MKC/JNK 01174980 your ref | PTB/34 date | 29 November 2005

By fax: 633 9890



The Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2

Atttn: Susan Gilvarry
Solicitor to the Tribunal

Thomas P. Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs

We refer to your letter dated 22 November 2005, together with the attached copy statement of Mr. Eddie Kay of Allied Irish Bank.

We are instructed by our client that he never requested that Mr. Flynn, the then Minister for the Environment, make any such confirmation to Allied Irish Bank as referred to in paragraph 5 on the second page of Mr. Kay's statement.

Yours faithfully

A&L Goodbody

M-1275285-1

Dublin London Boston New York

S.C. Hamilton S.W. Haughey M.F. O'Gorman T.B. Moore
R.B. Buckley P.H. Dobbyn C.E. Gil J. Olden
M.I. Beresford C.M. Preston J.A. O'Farrell J. Comyn
M.A. Greene P.J. Carroll E.M. FitzGerald P.O. White
P.M. Law J.N. Dudley B.M. Cotter V.J. Power

S.M. Dongell S. O'Riordan K.P. Allen G. O'Toole D. Widger A. McCarthy
B. McDermott M.P. McKenna A.V. Ranagan J.N. Kelly C. Hickey J.F. Wisdom
C. Duffy K.A. Feeney E.A. Roberts N. O'Sullivan N. Murphy D.R. Conlon
D. Salan M. Sherlock D. Glynn M.J. Ward S. O Cionne J.B. Somerville
F.M. Brady E.P. Conlon J.B. Roche A.C. Burke B.J. McGrath M.F. Barr

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A&L Goodbody

our ref | MKC/JNK 01174989 your ref | date | 11 May 2006

A& LG

By Post and By Fax 633 9890

The Tribunal of Inquiry into Certain
Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2



Thomas P. Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments
Quarryvale II Module

Dear Sirs

We refer to your letter dated 8 May 2006 which was received by us on 9 May 2006.

You have stated in your letter that you have received an inquiry from a witness regarding claims made by our client that he tapes certain meetings. You have not identified in your letter who this witness is and therefore our client is not aware exactly what meetings you are referring to.

However, we are instructed by our client that he did tape certain meetings from time to time. We are also instructed by our client that he no longer has these tapes as they were destroyed by his son in a fire.

Yours faithfully

A&L Goodbody

M-1573140-1

Dublin London Boston New York

S.C. Hamilton	C.M. Preston	J.A. O'Farrell	J.Comyn	C. Duffy	K.A. Feeney	E.A. Roberts	N. O'Sullivan	N. Murphy	D.R. Conlon	A.M.Curran
M.A. Greene	J.H. Hickson	J.G. Brennan	L.A. Kennedy	P.V. Maher	E. MacNeill	C. Rogers	J. Given	S.O'Cleirin	J.B. Somerville	
R.B. Buckley	P.J. Carroll	E.M. Fitzgerald	P.D. White	D. Solan	M.Sherlock	D. Glynn	M.J. Ward	B.J. McGrath	M.F. Barr	
M.T. Beresford	I.N. Dudley	B.M. Cotter	V.J. Power	E.M. Brady	E.P. Conlon	J.B. Roche	A.C. Burke	D.R. Baxter	A.J.Quinn	
P.M. Law	M.F. O'Gorman	I.B. Moore	S.M. Doggett	S. O'Riordan	K.P. Allen	G. O'Toole	D. Widger	A.McCarthy	M.L. Stack	
S.W. Haughey	C.E. Gill	J. Olden	B.McDermott	M.P.McKenna	A.V. Fanagan	J.N. Kelly	C. Hickey	J.F. Whelan	B.Walsh	

Consultants: J.R. Osborne F.J. O'Riordan T.V. O'Connor Professor J.C.W. Wylie A.F. Browne P.J.F. Taylor

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A&L Goodbody

our ref | MKC/JNK 01174989 your ref | date | 2 June 2006



The Tribunal of Inquiry into certain Planning Matters & Payments
Upper Castle Yard
Dublin Castle
Dublin 2

Thomas P Gilmartin
Quarryvale II Module

Dear Sirs

We refer to your letter dated 16 May 2006 and to our letter to you dated 30 May 2006.

Adopting the numbering used by you in your letter of 16 May we are instructed by our client to respond as follows:

1. Our client did record part of a meeting he had with a Sinn Fein Councillor in a public house in Clondalkin. This taped meeting is referred to in the transcript of the discussion that Mr Gilmartin had with Noel Smyth a copy of which the Tribunal has.

2. We are instructed by our client that he believes that the fire in which the tapes were destroyed took place in November 1996.

Yours faithfully

A&L Goodbody

M-1583116-1

Dublin London Boston New York

S.C. Hamilton C.M. Preston J.A. O'Farrell J. Coman C. Duffy K.A. Feeney E.A. Roberts N. O'Sullivan N. Murphy D.R. Conlon A.M. Curran
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M.T. Beresford J.N. Dudley B.M. Cotter V.J. Power E.M. Brady E.P. Conlon J.B. Roche A.C. Burke B.J. McGrath M.F. Barr
M.A. Greene J.H. Hickson J.G. Grennan L.A. Kennedy P.V. Maher E. MacNeill C. Rogers J. Given D.R. Baxter A.J. Quinn
P.M. Law M.F. O'Gorman I.B. Moore S.M. Doggett S. O'Riordan K.P. Allen G. O'Toole D. Widger A. McCarthy M.L. Stack
S.W. Haughey C.E. Gill J. Olden B. McDermott M.P. McKenna A.V. Fanagan J.N. Kelly C. Hickey J.F. Whelan B. Walsh

Consultants: J.R. Osborne F.J. O'Riordan T.V. O'Connor Professor J.C.W. Wylie A.F. Browne P.J.F. Taylor

TRIBUNAL OF INQUIRY

into certain

PLANNING MATTERS

and

PAYMENTS

TRANSCRIPT OF TAPES PLAYED AT STATE APARTMENTS, DUBLIN CASTLE ON TUESDAY, 10TH MAY 2005.

I hereby certify the following to be a true and accurate transcript of my shorthand notes of the above named proceedings.

Rebecca A McCoy

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Email ..... info@pcr.ie
Website ..... www.pcr.ie

Tape No. 1

This is a statement of Thomas Gilmartin, No. 22 Whitehill Avenue, Luton, Bedfordshire, LU13 SP.

This statement is taken by Noel Smyth at 20 Upper Grosvenor Street, London SW1, on Wednesday the 20th of May, 1998. Time 12:00.

Background.

Prior to coming to Ireland to carry out proposed development work I was a successful property entrepreneur and engineer in England.

I had accumulated over a number of years several millions of pounds to various projects and I had worked with some of the largest companies in the UK. These included Arlington Securities plc, British Aerospace, Ford Group, to name but a few, Vauxhall Chrysler etc..

In 1985 I decided to --

A. -- enter into -- that the new motorway was going to go through there, just along a walk down to where -- oh, yeah Gland Lough actually was the bridge, they started to build a

bridge. They had -- there was some cranes down and a fucking bingo. So I worked out the route of the road from the bridge, from where they started to build the bridge, because at that time they were just beginning to build the bridge. I think this was 1986 now they were beginning to build -- you know the bridge at Palmerstown? So I came back and now I wanted to find out who owned the land on either side, and I couldn't get -- the only thing I knew was cottages. So there was a wee cottage and there was a gypsy going along the road. So I done a deal with him for one of the first cottages right on the corner of Fonthill Road for 50,000 pounds. He thought fucking Santa Claus had arrived.

Q. Uh-huh.

A. But I thought I'd get the other one, you see.

Q. Uh-huh.

A. The other cottage as well. So that was -- anyway, that was me first beginning. I went down to Paul Sheeran in Blanchardstown in to the bank and I had a chat with Paul Sheeran, because he was the only one I could trust.

Q. But you knew him beforehand?

A. Oh, yeah, I knew Paul for years. He was a friend of mine for years.

Q. Okay.

A. He was a bank manager in Luton. He opened up for the Bank of Ireland in Lucan. And Tom Tom Mulcahy.

Q. Uh-huh.

A. Now, because I was mates with them over here.

Q. Uh-huh.

A. Now head of the bank for AIB. They came over from Athlone, both of them. And Tom Mulcahy was setting up the Allied Irish Finance.

Q. Uh-huh.

A. He was originally with the Bank of Ireland and he switched to AIB and he came over here to develop the AIB Finance. Now, while I mention the name, and I don't mean to be name dropping, and I never had any much dealings with him other than used to have friendly meetings and out to dinner with him and the wife June, and his brother in law I'm very friendly with, Chris Lambert, he is back now from Galway. So anyway, to make a long story short, I said to Paul Sheeran, I went down to the Bank of Ireland. Now, I didn't tell them the location, I just said I was in a certain location, I didn't say it was in the Bank of Ireland or didn't mention Paul Sheeran's name.

Q. Uh-huh.

A. I said to Paul about this site and I said it's the fucking best in Ireland, I said, if I can put it together. And he says after Arlington I'd fucking believe anything, he said. After the Bachelor's Walk, you know.

Q. Uh-huh.

A. So he started saying to me that never mind him, he says, do you know any fucker I could trust, I says, that knows who owns the land there. And he didn't. So I was in his office, you know. So he was called out, to go out to the counter. So he went out and he came back and he says there's a fucking man out here and he says and if anybody knows, and he owes me a favour, knows. There is a man outside he says that knows every inch of that place. So he says will I say it to him. I says can you trust him. He said well to tell you the truth I don't think so -- no, sorry -- to tell you the truth, I don't know but he owes me he said. So I said who is he. He said Fassnidge, Brendan Fassnidge is his name. So he takes me out and he introduced me to Fassnidge. And he said to me, he said to Fassnidge that I wanted to buy a piece of land up on the Galway Road there right beside them. And he was in car dealing.

Q. Yeah, I remember.

A. And there was a bit of a story about his going bust [redacted] And there was all sorts of weird and wonderful things.

Q. Yeah.

A. Eventually came to light. Paul did tell me that, you know, there was a bit of an under current there, you know, and all that. And he said I helped him out, you know, he got into difficulty and I've helped him out he says and he put him

under strict confidence, you know, etc.. But anyways he went out into the car and he picked up a mobile phone and he rung somebody on the phone and he came back in and he said to me will you be in the Deadman's Inn he said at seven o'clock this evening, I want you to meet somebody, he said a man that knows every inch of the thing, this was Fassnidge now.

Q. Yeah.

A. So I went to the Deadman's Inn and Paul Sheeran came with me and Fassnidge was there. So this big fella walks in all blustered and what have ya. Fassnidge introduced me to him. He introduced himself as Liam Lawlor. And there started my fucking nightmare. Anyways, I didn't know him from Adam. He seemed a good enough kind of a fella, you know, happy go lucky kind of fella. I told him what I wanted, that I wanted looking to find to buy a piece of land, I didn't tell him for what but in that area and asked him who owned the plots. So he takes me in and arranged to meet me the next morning -- no, no, before that all happened. Not the next morning at all. That was on a Tuesday. On the Wednesday -- I had to go back to England. And I had a meeting with Arlington, a board meeting with Arlington, on the Thursday. Now, I don't know during the course of the meeting -- Lawlor wanted me to meet him in the Council offices the following day and I couldn't meet him because I told him I had to go back to England. And he wasn't interested in what

I was talking about at all. He wanted to know what I was doing on Bachelor's Walk, that he heard about all this thing and all the rest of it, and that he was speaking on behalf of the Government, particularly Charlie Haughey. And that it was vitally important that I introduce him to Arlington. So I said I've a meeting with him on Thursday I said and I'll ask them. I said I can't just, you know, introduce you. I'll ask him. He said I'm a TD and I'm involved in the whole development of the West side. Batchelor's Walk is part of the West side he says and I have to be involved because I've been appointed by the Government. And he was so delighted to meet me etc. etc.. He wasn't a bit concerned about that at all. Anyways, I went to the Arlington -- I came back, went to the Arlington board meeting, was sitting in the meeting. The next thing the phone rings. Raymond Mould secretary's -- Raymond Mould was there, Humphrey Price, all the top brass, Ted Dadley, a fella called Andrew Parker and one of -- their top project engineer. We were around the table, we were going into Bachelor's Walk. So Raymond Mould came up red in the face and he said there's a fella downstairs called Liam Lawlor who said that you invited him to this meeting. And I said what? He says well he's downstairs, he said, he said who is he. Oh, I said he's a TD, he's an MP as you would call him, a member of Parliament. But he said did you invite him. I said I didn't invite him to the meeting. I said I spoke to

him last Tuesday and I told him that I would mention when I met you today that he wanted an instruction. Well he said whether you invited him or not he's here. So they told him to come on up. So the bastard walks into the meeting, you know, no bye or leave, no apology, nothing. And he was here, on behalf of the Government, particularly on behalf of Charlie Haughey. He had to be taken on board in this deal because it would make the difference in it getting off the ground or not. That's his opening statement, as God is my judge. So I said to him -- I said what's all this about. Well he said, you know, he said I'm looking after this project, I've been appointed by the Government to look after this project and I have to be taken on board. So Raymond Mould says to him, you know, well what does that entail and what's this all about. He asked me what. I couldn't fucking -- if the ground opened and swallowed me, you know. But anyways, the brave Lawlor announced that he wanted a stake in it. He wanted a 20% stake. And that was for the Government. And before Raymond Mould said a word I said it's not fucking on. They're getting no stake in it. I said it's not on. And Lawlor said it might be the difference between it getting off the ground and it not he said. So the meeting went into a sort of disarray. There was nothing further discussed. Raymond Mould, Humphrey Price and co. went out to the room. I was so fucking embarrassed that I felt sick in me stomach. That was

honest to God, now, that is a fact.

Q. I accept that fully.

A. What?

Q. I accept that fully.

A. So they went out of the room. They were out for a good while and they came back in and they said they had to discuss all this. In the meantime Dadley was in, well Dadley was a kind of a hale fella, well met anyway, you know, he ha ha ha. He couldn't keep his concentration [redacted] -- you lost him, but he was a very nice fella. Anyways, the meeting sort of broke up and I left the meeting. Dadley arranged to meet me in the hotel down from -- just down there off Brewers Green. We went to the hotel. Dadley told Lawlor where he was going, where he was building. Lawlor came into the hotel. So I said to Lawlor what the fuck is going on, what's this about. So he said oh, well that's the way it is, I have to be taken on board. Now, I had left and Lawlor was still sitting down as I left because the meeting sort of broke up and there was people talking in corners and outside doors and I thought to myself Jesus Christ. So myself and Dadley went off down to this hotel. Lawlor eventually came in and he said that they had agreed to take him on. But I said but I hadn't. So if I have anything to do with it, I says, I'm going to have a fucking say in it. So anyways, Dadley says, you know, to me,

I suppose himself and Raymond Mould is looking at it in the way that it's better to be safe than sorry because we were in for a lot of money as it is, we already had paid out I think by that time about 7 million, or more. So I asked Lawlor then what agreement did Raymond Mould come to with him. So he said he agreed to take him on as a consultant and he was going to pay him 3,500 a month. I said over my fucking dead body.

Q. What did Lawlor say?

A. He said well it's fuck all to do with you he says. It's the difference he said between getting it off the ground he said because I can assure you, you won't fucking get it off the ground if I don't. So he said I'm not happy with it he says, I'm not happy with the arrangement he said. And what's more, he said Raymond Mould said that I had to give him half of mine, that I had to give half of my shareholding, my 20%.

Q. To Lawlor?

A. To Lawlor. That Raymond Mould had said it. And I sais and turned to Dadley and I said Raymond Mould if he has said that, I says, you can tell him from me that I'll give it to any charity, I'll give it to any nominated thing but fucking Lawlor will never get it.

Q. Did Lawlor at that stage indicate who he was looking for the 50% shareholding for?

A. He claimed the Government. He was speaking on

behalf of the Government. And at that time he was like that with Charlie.

Q. Yeah.

A. And Flynn and co..

Q. Okay. Go ahead.

A. Anyways, it went along and so -- Arlington wouldn't pay him direct. So because they were paying me any expenses incurred on the thing was paid through me. They decided to pay Lawlor through me. So it was me that was paying him.

Q. So did you object to that?

A. I did, I objected to it eventually. I paid him ten payments for ten months.

Q. Uh-huh.

A. Of 3,500 a month, 35,000 pounds in total, which Arlington refunded me.

Q. And who were the cheques payable to, Tom?

A. They were blank. I mean, the figure was on it but the name was left blank.

Q. And at whose request was it blank?

A. Lawlor's.

Q. When he came to collect the first cheque did he give you any instructions as to how the cheque was to be paid?

A. Oh, no. On one occasion he went into the Bank of Ireland at one occasion and instructed Paul Sheeran. He knew I was friendly with Paul Sheeran. And instructed Paul

Sheeran to pay him a load of money on my instructions. That he had the go ahead from me.

Q. And how much money was involved?

A. Oh, I forget now, 10,000 quid or something he was looking for and that I had ...

Q. You had authorised it?

A. I had authorised it and he was in to collect it.

Q. But you hadn't authorised it, I take it?

A. No, no. Paul Sheeran rang me of course straight away here in England and I said you tell that cunt to fuck off now, I says, you're giving him nothing. So to make a long story short -- sorry, now, I'm boring you ...

Q. No, no, this is crucial.

A. Your valuable time.

Q. Tom, just to be clear. The whole purpose of this Tribunal effectively is to be able to say that it has investigated all of the information and all of the sources from all of the leads. And the more detailed information you can give them, the more credible the actual inquiry becomes from their point of view. And the Judge is only interested in one thing, and that is he is in charge of making sure he gets to the bottom of all of these unsavoury matters. And I have total confidence that if you give the information in the detail that we'll give it back to them. It means that your exposure, therefore, is going to be limited because they're

just going to be able to present the piece and say look that was said, that was done, if you want to challenge it now challenge it but the detail is such and you have corroborating evidence from Paul Sheeran.

A. If Arlington talk they'll agree. If Arlington will tell the same story as me if they do talk, you know, but I am persona non grata because of all of this with them as well.

Q. But Arlington are a different company now; aren't they?

A. They're Pillar Properties, yeah. The people, the personnel are Pillar Properties.

Q. That's right, yeah. I know some of those people. Anyway, we'll deal with it.

A. They are very good people.

Q. I know some of those people. I've dealt with them both in terms of -- because I bought over the old Burrwood House in Bachelor's Walk where all of the losses where and I bought that on its own by Dunloe. And I'm dealing with Arlington as part of British Aerospace in terms of the Cherrywood site on behalf of Dunloe.

A. Yeah.

Q. And I'm dealing with Pillar Properties, who are interested in another part of the commercial site at Cherrywood. So I know some of these people.

A. Anyway, Raymond Mould, he's excellent on the

commercial side.

Q. Sorry. I beg your pardon. Anyway, go ahead.

A. Anyway, where was I now?

Q. We had got to the stage where he had gone into the bank on one occasion and looked for 10,000. You had paid him 35,000 over ten months by ten payments and at his request the cheque payee was left blank.

A. Yeah. Now, in the meantime -- there was a lot of things that were running parallel with that. In the meantime I was assembling the site. In the meantime I met him in the County Hall in O'Connell Street.

Q. You met Lawlor?

A. It was in O'Connell Street anyway. Lawlor, yeah. And he introduced me to a George Redmond who told me that Redmond would have a say in anything I was doing.

Q. Uh-huh.

A. They produced a map to me with various colours on it of all of the ownerships of the land in Quarryvale in that total site.

Q. Right.

A. Every ownership. There was a price tag put on it but I can't remember exactly but I think it was 100,000 pounds, but I wouldn't pay it anyway.

Q. Who was looking for the 100,000 pounds?

A. I don't know who was looking for it. Lawlor. At

every drop of the hat there was something, there was a tag on everything. And by this time I was latching on to the fact that there was some form of a game going on. But anyway. I found out in the meantime that there was a fella called Sharp, I think a Paul Sharp, had a company Grove Developments that was already involved in 28 acres of the site and there was two houses being built on it. So I approached him. And at the time I approached him he had access off the Galway Road into the site but it was denied him and it was withdrawn and he was suing the authorities because the two houses he had built were two detached houses and had a price tag, at that time, in the 50,000 or 60,000.

Q. Uh-huh.

A. Whereas, with the access to the Galway Road. But if he had of come in from Fonthill through the Quarryvale estate. Of course he couldn't give the fuckers away. So the two houses were built and he couldn't get access so he couldn't sell the two houses. Right? And he was into the bank, I think it was Hill Samuel Bank, for some money. Again, somebody volunteered that information to me, I wasn't looking for it but it was volunteered. And I was told that Sharp would do a deal. So I offered him 40,000 an acre -- no, sorry, I offered him 30,000 an acre.

Q. Uh-huh.

A. For it, but he had done development work and he had

built the two houses as separate. So eventually I gave him something around 40,000. The whole site was 1 million. So I bought the site off him for cash. So that was the first site. I already had the wee cottage. So the next site to it was this one Bruton's. And so I went in and walked in to Bruton to see if he would sell it. At this time Gunne was following me around as well, Fintan Gunne, and you know, so ...

Q. Which Bruton are we talking about here?

A. Des Bruton, he was a first cousin or relation of John Bruton. So Bruton wouldn't deal at all. It was the home place etc. etc.

Q. Uh-huh.

A. But he had just sold some of the land here and Roderick Downer of Jackson Stops was his agent or his advisor.

Q. Uh-huh.

A. Right. So Bruton told me that. So I got on to Roderick Downer. And between hopping and trotting Roderick says because of the housing estate at the back etc. etc. he might be persuaded to sell, although it was the home place and so on and so forth, you know. And somewhere along the line I was out there and by a stroke of luck I went into the old Luttrellstown, you know where the Luttrellstown House is.

Q. Yeah.

A. Well I happened to go in there. And I was having a drink with Maguire and Paul Sheeran. And there was some

bloke who came over, and to this day I don't know -- well I took no notice of who he was. I wasn't introduced to him anyway but he was chatting away. And Paul Sheeran says to him hey, don't you know that Des Bruton up there and he said yeah. He said was he selling land or is he. Oh, he said he has his eye on a stud but he can't get hold of it. So Paul said to him what stud is that and he said I think it's called Convey Stud. So Paul said to him who owns that and he said oh, it was, you know Goffs, the Horsing Association.

Q. Yeah?

A. Bloodstock.

Q. Bloodstock?

A. The Bloodstock Association. Soy done nothing but out the door, up to the Bloodstock Association, walked in and I said you have a stud farm down there that you're not using very much and would you sell it. So they said well we have nothing in mind. I said well I'm over from England I says and I heard it was for sale. I said will you sell it. And they said well, they didn't know but they weren't sure. And I didn't really get very far. But I knew Pat Harrington.

Q. Uh-huh. Stewart's brother?

A. Yeah. Stewart's brother. So I rang Pat. I didn't know much about him but I knew he was a nice enough bloke and I knew he was in the business, as far as I discovered he was with Dunnes. So I said to Pat there's a

stud farm out there and I want you to go out and buy it for me and telling him what it was.

Q. Uh-huh.

A. So he said what are you prepared to go on it. Well I said there's 200 acres and there's a house on it I said. In my opinion I says 3 or 400,000 I said would be it, 300 you know or 350 would be it. But I said if you have to go the half a million, do it. So he fucking bought it there that day.

Q. For half a million?

A. 470.

Q. Okay?

A. 470,000. So I went straight back into Bruton late in the evening.

Q. Uh-huh.

A. And he was always very mannerly. I could knock on the door, and he was always very -- he'd never tell you fuck off or get annoyed or anything like that, he was always gentlemanly, you know, so much so that I used to feel embarrassed even driving in his drive.

Q. Uh-huh.

A. And I started chatting to him and all of that. And I said are you sure now that you won't sell because I'm prepared to do a deal with you. And again I got Pat Harrington. So the next time Pat was with me. So we bought

the thing -- no, in the course of the conversation I mentioned to him that I'd just farm that I had just bought but I wasn't that keen on it. I had one before that down in Maynooth.

Q. Uh-huh.

A. And I wasn't that keen on it. So he said what one is that. And I said Convey Stud. And I seen his face drop all of a sudden, you know. I was watching and watching. It registered.

Q. Uh-huh

A. And I said I got you. So I said to him I'll tell you what I'll do with you, I won't mess you about. So he wouldn't do the deal without Roderick Downer. So I got Roderick Downer and we started hopping and trotting. I gave him 1.5 million for the 32 acres subject to planning or two year or subject to planning, whichever was the soonest. Right? And I gave him the stud then in part payment. So no -- I gave him 1,000 pounds deposit just in good faith just in the contract. And what was that Pelor or Pelar, or whatever.

Q. Pelo. Peter Shannon in Bachelor's Walk.

A. That's right, well it's Ormond Quay. So they drew up the contract on that and so that was that. I paid him 1,000 pounds. I gave him Convey Stud at cost at the end of the two years and it was deducted from the 1.5 million.

Q. Right.

A. So basically I owed him a million pound for the rest of the site.

Q. Very good.

A. So that was that site.

Q. Turning over the tape. Would you just go back to the point where we were talking about -- where you stopped the payments to Lawlor, before we get on to the meeting that you were talking about. So you had stopped the payments to Lawlor by the time you had done the deal for ...

A. Well there was various things going on and all the rest of it and various things happening. The various demands being made on me.

Q. Yeah.

A. And I was being blackmailed from a number of sources.

Q. Uh-huh.

A. And I decided I wasn't having any more of it. I was ...

Q. You'd stopped the payments. Go ahead.

A. Yeah. Well there was a number of other things going on parallel with that, you know, between Ambrose Kelly and various other people. So I decided I was having nothing more to do with any -- with Lawlor or anything like that.

Q. Uh-huh.

A. And I just stopped the payments. Arlington said

that they were a bit upset about it because they said, you know, it could leave them in jeopardy, as it were. And I said well you pay him. So they wouldn't direct. I says you pay him, I'm not, he's getting no more money from me or through me, whether you like it or you don't. I'm out I said and I said I don't care if he hands your 20% back.

Q. Uh-huh.

A. So anyway.

Q. When you were talking to Arlington. When you were talking at that stage was it to Raymond Mould or to someone else in Arlington?

A. Ted Dadley.

Q. Test Dadley, okay.

A. Mostly Ted Dadley because by this time he was Managing Director of a retail development. But I made no bones about it at the meetings either where Raymond Mould and them were present. Right? But by this time they were in difficulty anyway because there were -- there was various things. Flynn and Bertie Ahern arrived over demanding -- over in London -- I hope I'm not interrupting.

Q. No, no, no, no.

A. They arrived over in London in Park Lane looking for money.

Q. Who arrived over?

A. Flynn and Bertie Ahern. And on the grounds that

they were fundraising for Fianna Fail.

Q. Right.

A. And they were demanding money off Arlington and they invited Ted Dadley and Raymond Mould and her to -- here somewhere, the Inn in the Park or somewhere. And they got the wrong end of the stick Arlington, or they pretended they got the wrong end of the stick. Dadley got up on the stage and made some statements there was people there about how they were so happy to be involved in Dublin etc. etc. and the fine job the Government were doing and all the rest of it but they didn't volunteer any money. And Flynn was put out about that. Now, Flynn arranged to meet me later that evening and I turned up for a meeting that was arranged. And I can't for the life of me remember the name of the rooms but I went in there. Flynn was definitely there because I had seen him but I had to wait for over an hour and a half and I eventually met him at ten o'clock at which he suggested having something to eat. And Flynn talked to me. He was kind of -- seemed to be put out about something. And he talked in sort of reels, he didn't, there was nothing specific, you know, nothing specific at all. But he kept -- and then I began to get the message, you know, that there was money involved, that they wanted money and if these were to get off the ground etc. etc.. It was important that certain things were taken care of, so I didn't bite at all. So I walked out of that

meeting. I walked out of that. I did have a meal with him. And I left the thing and I began to realise the extent of what was going on.

Q. So stopping here. Did that meeting with Flynn take place before or after the famous meeting in the Dail where the, --

A. Oh, it was after.

Q. Okay. So can we go back to the meeting that took place in the Dail.

A. Oh, yes there was so many things running in parallel, this is not for the tape, I'm just saying it to you. That over a period from 1985 to '91. Now, you just imagine the run of things that went on in that space of time.

Q. Yeah.

A. So try and sit here and put it into a brief ....

Q. I know, it's very difficult.

A. It's very difficult.

Q. What I'm trying to do is to get a picture so that we can at least put the leads in place. And it is then up to the Tribunal to pick up on those leads insofar as what they are looking for is the macro picture with the leads going in directions and then they can interview other people once they have the information that we can give them.

A. Yes. Well ...

Q. Can we go back to the meeting in the Dail first

because I ....

A. Yeah. I was taken into the Dail and I was introduced and there was a number of Ministers around the table.

Q. Well who took you in, first?

A. It was Liam Lawlor.

Q. Right.

A. That there was people wanting to meet me. Right?

Q. So you had paid him at this stage?

A. I had met various people separately. I had met Flynn on a number of occasions.

Q. Yeah?

A. Discussing the project and all of the rest of it.

Q. Uh-huh.

A. I was stone walled at a lot of the meetings because I wasn't approaching the right subject.

Q. Uh-huh. When you were taken into the Dail at this stage were you still paying Lawlor or had you stopped paying him at this stage?

A. No, I was still paying him at this stage. This was within that ten month period.

Q. Okay. Sorry. Go ahead.

A. I was introduced. There was nothing much in that meeting. Charlie came in eventually and I was introduced to each one, chatting to them.

Q. Who was at the meeting?

A. Reynolds, he was the Minister for Industry or something, I don't know what he was, something else. I think McSharry was still Minister of Finance or he was just about to go to Europe as Commissioner in Europe, but he wasn't there., Lenihan, Flynn, and I'm sure Brennan.

Q. Seamus Brennan?

A. Yeah. And Burke appeared at the meeting and stood at the end of the table, he appeared there.

Q. This is Ray Burke now?

A. Ray Burke. And he seemed sort of disinterested in the whole proceedings. So anyways, there was four or five of them there. But when I left the meeting I was approached by a bloke on the way out, I don't know who he is, to this day I don't know who he is, approached me on the way out and said to me that I was in to make an awful lot of money on these projects that I was involved in. And it was suggested to me that a deposit be made in the Isle of Man, in an account in the Isle of Man.

Q. Uh-huh.

A. Lawlor was in the background.

Q. Uh-huh. Did Lawlor hear that conversation?

A. He knew it was going on I would say so because he conveniently went, supposedly, out of ear shot. He sort of -- it was the way it was done. And Lawlor was beside me,

then Lawlor was turned and another fella appeared and Lawlor moved over a bit.

Q. But who was this person, was he a Government person or is he ...

A. I haven't got a clue. I did try to find out but I didn't succeed.

Q. When you were --

A. I was even given an account number, which I wrote down and I had somewhere and I've been trying to find it.

Q. But you don't know where it is. Do you know the bank even?

A. No. It was an account number, it was a number, just a number.

Q. But you must have been given the name of a bank?

A. Like, it was the Isle of Man.

Q. Isle of Man Bank, no?

A. No. Anyway.

Q. All right. Sure we'll ...

A. I left there and I came out with Lawlor and I didn't speak another word, hardly a word to him. But he was haring along and I was coming behind him anyway, if you know what I mean, he was going like a train way in front of me.

Q. What was said at that meeting?

A. Then I was approached by a wee fat fella, who I discovered afterwards as a bloke called Walsh.

Q. Right.

A. And he said to me, he came out of an office and he beckoned me.

Q. This is in the Dail now?

A. This was in the Dail. And he beckoned me. So he asked me what was Lawlor up to.

Q. Uh-huh.

A. I said what do you mean what's he up to? Well he said ah well, you don't want to trust him, he said, he'll take you to the cleaners. You know, you want to be careful, take my advice, he says talk to me, he said.

Q. And was Walsh a TD himself or was he a ...

A. Sean Walsh. I think he was a Councillor or a former TD, I don't know.

Q. He was some part of the officialdom?

A. He died anyway. I know he died of a heart attack sometime later. And I don't want to talk ill of the dead, if you know what I mean. But anyways, he started advising me against Lawlor and wanted to know who I met in the Dail and what was said etc. etc.

Q. And where was Lawlor when all of this conversation took place?

A. He had gone on in front. Right? So I stopped, I went into the office. It was a little cubby hole kind of office, you know. I came out of the office and this fella

seen me to the lift, as far as the lift. And his last words going into the lift were now remember what I'm telling you, remember what I'm telling you, come and see me. I never seen him again because I walked away and I said fuck the whole lot of you.

Q. Can we just go back for a second. The famous meeting where all of the Ministers were present. I mean, what was discussed at that meeting?

A. Nothing much at all now. There was nothing specific.

Q. No money was mentioned?

A. No. Other than when I came out of the meeting I was approached by this man.

Q. By this man?

A. By this man from the Isle of Man.

Q. The famous claim, or the famous request or demand to pay the 5 million. Where did that come from?

A. I don't know, it was supposed to be on behalf of the Government.

Q. But who made that demand?

A. I don't know. I don't know who he was. And --

Q. But --

A. Lawlor didn't introduce him and neither did anybody else but he was outside of the door of the meeting where I came out of.

Q. And what did he say to you, that he wanted you to pay 5 million into an account?

A. Cash. Yeah. That I was in to make a hell of a lot of money, you know, and etc.. But in the mean time I had numerous Councillors demanding 100,000 each as well.

Q. And can you name those?

A. Oh, I can, yeah, I can name them all right.

Q. Go ahead. Who are they?

A. Well Hanratty was one, a fella called Finbarr Hanratty, he was out in Lucan, he was a Councillor in the Lucan area, Fianna Fail Councillor. There was a fella called McGrath there as well, Colm McGrath, he was looking for money all of the time, he was a councillor for the actual Clondalkin area. He used to run a thing called or a company called Clondalkin distributors. And he was always strapped for money. He was always looking for -- I never gave him any.

Q. Uh-huh.

A. There was Pat Dunne. Now, that man is dead so I'll leave him alone.

Q. Pat Dunne?

A. I don't like talking about the dead at all.

Q. Which Pat Dunne is he now?

A. He lives down in Balbriggan. I was getting buggered up to then on every corner with George Redmond, at

meeting and various other things. And one of the things was when I bid on the land, the Corporation lands, Redmond tried to block it.

Q. Was he involved in the Corporation still at that stage?

A. He was the County Councillor, the County Manager. So he went in. He used to go in and accuse Paddy Morrissey of wrongdoing and of doing cosy deals with me.

Q. Uh-huh.

A. Simply because I wouldn't pay him anything. He used to fuck up me meetings with the Councillors as well, not the Councillors but with the ....

Q. Executives?

A. The roads people and all of that. Like, it's a whole long story.

Q. It's all right. We have all day.

A. Well if you have the patience.

Q. I've got the patience.

A. We had arranged a meeting because we were sorting out the roads and the access to the site and all the rest of it and I had some agreement from Flynn.

Q. Uh-huh.

A. Because I was told I had to have some form of approval from Flynn if I was going to gain access off any of the new roads.

Q. Was Flynn's role at this stage in the environment?

A. He was the Minister for the Environment. While I had to agree it with the roads engineers but I had to discuss it with Flynn.

Q. Uh-huh.

A. Right? And we were talking at that time of putting a bridge on with an access to the motorway, to the new motorway, but we discovered it was too near the roundabout.

Q. Uh-huh.

A. So consequently we couldn't put another access between that and the proposed new Naas Road, which was further up past the Irishtown Road, if you know what I mean.

Q. Yeah.

A. Which was back here somewhere.

Q. Yeah, I know what you mean.

A. Right. Because there had to be a mile or something between the two.

Q. Yeah.

A. And we were proposing to come into the site off here coming from the south.

Q. Yeah.

A. And bring a bridge from the north side across.

Q. Which would be a fly over back from here.

A. But we were too close to this roundabout.

Q. Yeah. So you needed to be further away again?

A. So we needed to be further away. So we decided we'd come in on this roundabout and use it to come in to the site here. That's where that -- we had a show here.

Q. You needed to get that agreed with the roads department before you went to get detailed planning?

A. That's right. The other thing was that coming in from the south here, there was the slip road onto the Galway road. Now, we could come round in here. But one I suggest that had instead of coming off the main motorway we could come off the Galway Road slip road by widening it and putting another lane on it with -- you know the way they put the split sign off.

Q. Yep.

A. The one to the left is Westpark Shopping Centre and that's what I decided to do. And I showed it to Flynn. And Flynn took the drawing.

Q. Uh-huh.

A. And showed it to the roads engineer. So there was technically no objection. Technically.

Q. Yeah.

A. They didn't know whether environment or whether there would be any roads objections but technically it was okay. It was okay.

Q. And Westpark was what you were involved in?

A. So Flynn gave the nod that it was technically okay.

This was coming in. Westpark was the name of the development, because it was on the western parkway so it was the sort of name that I picked, you know. So anyways, we arranged then a meeting with all the roads engineers and it was stated that we had to arrange a meeting with the County Manager himself, George Redmond. So we organised a meeting with George Redmond. So I was bringing over top engineers. There was Ove Arup's men in Dublin, John Higgins and the man that died, Morgan Hussey. Morgan Hussey, yeah. He was a very nice fella as well. And then I had Malcom Noyce and others from here. Then I had the architects from here and I had other experts.

Q. Right.

A. I had environmental people.

Q. And who were you using as architects at that stage?

A. It was Taggart.

Q. Taggarts. From the North?

A. From the North. Well they came with Marks and Spencers, you see. Now, when they seen the site, and when Marks seen the site they wanted it. You see, although they never committed themselves in writing until the planning was there. They would only commit themselves when we had the planning. Anyway, but I knew there was no better site in Ireland, apart from the City Centre, that they would have one there. Anyway, so that's why Taggarts were on it, there was

no reason other than that. And Taggarts came to me because they done some work on Clandeboy and they were already doing Sprucefield work for Marks and Spencer, Lough Derry at the Foy and they wanted me to do that one. But that was my fucking mistake, wasn't it. But anyway. Actually the DOE in the North were underwriting me if I was to do that, the Foy one.

Q. The Foy one which the Americans eventually did?

A. Yeah, they were underwriting me, guaranteeing that I wouldn't make a loss, the DOE.

Q. I knew that deal was around. Very good.

A. So I went down to see it. Why I didn't do that deal was I was followed by three IRA men all day.

Q. Right.

A. They were there for a whole day. We measured the site and all. There was an old derelict house and these three guys appeared in that derelict house and they followed us everywhere we went, all day long. John McCannon of Taggarts kept saying to me, he's a Protestant but he's sort of a semi-republican Protestant

Q. Wolfe Tone?

A. No, I wouldn't say that strong but he's more -

[redacted]

But he's a great character. Anyway, he told me to ignore them, take no notice, you know. But in the evening we were

walking up along the back of the site and he turned to me and he said head for the car he said now. Don't run, he said, don't -- just turn he says now walk. Ask no questions, just walk to the car.

Q. Uh-huh

A. And he walked away in front of me and I followed him back down but the three guys were following. He got to the car and he said now let's get the fuck out of here fast. So I said what was wrong. He said ah he said I see things you wouldn't see but he said it was time to get out of there. So I said were we in danger and he said too fucking right you were he said. So I said fuck that I'm having nothing to do with that site life is too short for that.

Q. Absolutely.

A. So I never went back. And he had arranged for me to meet John Hume as well, but I didn't. I met him in Dublin later but I never went back.

Q. John Hume actually swung the deal eventually with the DOE for that crowd out of Boston, but that's another story. Sorry. Go on back to our friends in ...

A. Yeah. Well that was handed to me on a plate. That's a fact now.

Q. So we met back in Dublin?

A. Oh, yes. Now, we arranged to meet George Redmond and his roads engineers.

Q. What time are we in now? What year, what process, what month?

A. This would have been 1986-ish, late '86 coming into '87 I suppose. I have got these dates in my diary.

Q. Uh-huh.

A. So we arrived in Dublin on the Thursday morning of the meeting. The meeting was to be at ten o'clock in the Council offices in O'Connell Street. So we all met at the Ove Arup, the architects, myself, Richard Foreman, again the agents was with me and Roy Harris was over this time, the fella I told you about and he was over. There was a whole group of us and some other experts and I had some environmental people. And so it was a board room at the Council offices was made available. So the roads engineers, one of the planners called, what's this his name was, Christ, I can't think of all of their names now.

Q. Was he the City Planner or the County Planner?

A. He was a County Planner on the West side. It'll come to me in a second. He was representing the planners anyway. They were all there. We arranged for the meeting for ten o'clock. So at ten minutes to ten we were in the Shelbourne Hotel. Is it -- not the Shelbourne, the one across the road, the Gresham. So we had a cup of tea and all of that there about half nine. We arrived in at eight something and we had the tea and some sandwiches and what have

you, there was a whole crowd of us. So I decided anyway I'd ring over to the Council offices coming up at ten to ten, just to make sure everybody was in place and all of that. So I rung over to speak to George Redmond. So George comes on the phone and he asks me what meeting. I said the meeting was arranged with you, I said, for today. I said we arrived for the ten o'clock meeting. He said I know nothing about a meeting, there's no meeting here. I said but all of these people are over from England and here, I says, altogether. He said there is no fucking meeting, I know nothing about a meeting. I said but I arranged it with you, I arranged the whole thing with you. Oh, you arranged nothing with me he said. I said what?! He said there's no meeting here, there is nobody here. And I felt sick as a fucking parrot. I thought was I going doolally or what the fuck is wrong. So I went back and they said to me what's wrong, you look as if you've seen a ghost. Well I said I've just rung Redmond just to say we were all here and we were arriving across in a minute and Redmond tells me there's no meeting, he knows nothing about it. So McCannon pipes up and says what the fuck is he talking about, sure I was talking to John -- to some clarification I wanted yesterday with the roads engineer and he says we agreed we were meeting today. He said they wanted a sketch from me. No, they rung him actually and before he came to bring a sketch. Some other specific detail

they wanted on the drawing that we had given. And he said sure they rung me, they're all ready for the meeting. I said Redmond tells me there's no meeting and he knows nothing about it. So then John Higgins of Ove Arup, I don't know if you know John, he's a civil engineer in Ove Arup's in Dublin.

Q. Yeah.

A. He's the head guy there since Morgan Hussey died.

Q. Uh-huh.

A. Morgan was there as well. John Higgins was there and they piped up and they said sure we arranged it with the engineers, we were talking yesterday as well and we were all meeting today at ten o'clock. So I said fuck Redmond. So I rung back again and Redmond said there was no fucking meeting, there was no one there for the meeting, he didn't know what the fuck I was talking about. Right. So we sat down anyway and we decided well fuck it, it was a wasted journey. So we decided we would go out and walk the site etc. etc. and had another round of tea and that before we went. And at about quarter past or twenty past ten the fucking penny dropped with me. There was something amiss here, something radically amiss. So I went back to the phone, I picked up the phone and rung the secretary, you know, George Redmond's secretary. Instead of asking for George, this time I said to her is all the people in place for a meeting today, you know, I said we're a bit late at the moment to her like that. Oh, she

says, they've been waiting here for you for the last half hour and they're just leaving. They've been waiting here and decided you're not coming. I says what?! So slammed down the phone and I shouted to the boys follow me quick quick. We got to the thing and the planner man was Willie Murray. The only one left was there, the roads engineers had already gone and the only one left was Willie Murray. And he was in with George Redmond. So I walked in to Redmond's office and I asked him what the fuck was going on, what's the game. What's your fucking game I said to him. And Murray was there. I says you told me there was no fucking meeting and them all waiting in that office all morning. You told me you knew nothing and there was no meeting. Twice. I said what's your fucking game. And he said oh, I don't know he said and he threw the hands up and he started I'm busy, I'm busy, I've something going on here and Willie Murray was in the office with him. Anyway, I decided that I had enough of this. By this time between the demands for money, the blackmailing and being fucked up and thwarted everywhere I decided I was going to do something about it. So I rang Sean Haughey. I rung McCloone first and McCloone didn't really want to know because his job was at stake etc. etc. and these fuckers, you know.

Q. Understandable.

A. A wife and family etc. etc.

Q. Yeah.

A. But he did agree that something should be done because bastards like Redmond is getting away with murder. So he said why don't you talk to Haughey. So I got on to Sean Haughey and he said what's going on. I told him what happened and all the rest of it.

Q. This is this Sean Haughey now in Dublin Corporation?

A. Yeah, he was Charlie's brother Sean. And I said I don't know what's going on I says but there's something radically wrong. And by this time Arlington was getting buggered up at every corner as well, every site they would go for and all that would multiply by ten in price etc.. There was all sorts of cowboys appearing buying sites and holding them to ransom, you know, or getting options on sites. Anyway, to make the long story short, but in the meantime of course I had O'Callaghan, which is another story but O'Callaghan as well. Sean Haughey came in and he says to rearrange the meeting for 2:30 or 2:30 in the afternoon since you have all the people there and their day would probably be wasted on the journey anyway so rearrange it. So I rearranged it. Redmond reluctantly rearranged the meeting and Sean Haughey arrived for the meeting and he came in and they were all assembled, the roads engineers and they were upset, they were up all tight with us.

Tape No. 2.

Interview with Tom Gilmartin at 20 Upper Grosvenor Street, London, on Wednesday. Go to the Britainia for lunch where we continue the interview in relation to the involvement of Barkhill, who is the company set up to purchase the property in relation to this matter.

Testing 1, 2, 3, 4, 5, 6, 7.

Q. Okay. So the file had then been sent to the Fraud Squad. But were you interviewed then by the Fraud Squad?

A. No, I didn't. Well they tried to get hold of me but I was told -- I was phoned and told not to burn my bridges.

Q. Who told you to do that?

A. Well a number of people. Fintan Gunne was one of them.

Q. You know he has died since?

A. Yeah.

(phone rings)

A. I do.

Q. Okay. So we're back on again in relation to ...

A. So many characters and so many things running parallel with those.

Q. That's fine. We'll keep them going. We had got to the stage where we were talking about Barkhill. Barkhill was the company that had bought ...

A. We formed Barkhill when we borrowed the money from the bank.

Q. Yeah.

A. And so all the properties was put into Barkhill and all the contracts.

Q. Right.

A. And options that were in place, were in place, which was most of the site.

Q. So where does Frank Dunlop come into the picture then, or when does he come into the picture?

A. No, Frank Dunlop came in with O'Callaghan.

Q. Right.

A. Frank Dunlop, like Ambrose Kelly, was chasing me.

Q. Yeah. Okay. Go ahead, Tom.

A. Frank Dunlop wrote me letters as Murray Consultants to take him on board, which I didn't. I didn't have a need for him. And he appeared on the scene with O'Callaghan Properties. O'Callaghan -- a fella called Albert Gubay bought the Neilstown site. I should have bought it, I should have done a deal on it but I didn't. So ...

Q. This was Albert Gubay, this was the site that had the zoning on it?

A. That had the zoning for the town centre, the Neilstown site. But I didn't think anybody in their sane senses would buy it but I didn't figure on the ransom element of it, if you know what I mean.

Q. Right.

A. So Albert Gubay bought the site. McCloone did tell me that he had done a deal or was doing a never never deal with Gubay. And my comment to him was how is it you never offered me any deals like that, I used to pay up front. But anyway, next thing I discover was it was announced to me by Liam Lawlor and others that Owen O'Callaghan had moved in on the site and had done a deal. So -- that I was going nowhere. So eventually I contacted -- I arranged a meeting with Owen O'Callaghan. Now, the first meeting I had with Owen O'Callaghan was in the Buswells Hotel. And at that same evening, on that very same evening Hanrahan was at the meeting.

Q. Who is Hanrahan now?

A. He was the Councillor from Lucan that demanded the 100,000 pounds.

Q. Hanrahan. You said Hanratty earlier on but you mean Hanrahan?

A. Oh, no, I beg your pardon. Hanrahan was his name.

Finbarr Hanrahan and he was a Councillor for Lucan.

Q. Yeah.

A. And he happened to be in Buswells, Owen O'Callaghan and there was others. There was numerous politicians there.

Q. Uh-huh.

A. Owen O'Callaghan suggested to me he would do a deal. That I would be going nowhere but I was going to do a deal with him first.

Q. Uh-huh.

A. And the first thing he wanted was a 50% stake in my deal.

Q. For how much?

A. For nothing. For him to throw off the other site because he had done a deal with Albert Gubay. He had bought it for half a million. Gubay's rights to it he said he had paid half a million for it. So I said to him so if you are a developer I know you'll never build on it because I said number one there is a drainage problem and number two you can't get into it and you have to build a fly over. And to get a shopping centre in there I said it's going to cost you more to build the fly over than the shopping center. So he said that doesn't matter, you are going nowhere while I'm there.

Q. Because he had the zoning?

A. Yeah. Well I knew this by then, you know. So I

decided to do a deal with him. So I met him again in the Airport Hotel, in a room in the Airport Hotel. So I negotiated a deal with him for 3.5 million pounds because he claimed he was all ready to start building. And he had everything in place and he had slotted in for his work programme etc. etc.. So there was 3.5 million pounds. He wanted 800,000 up front. The 800,000 was the 300 deposit that was paid for the land by Gubay, the 500,000 that he paid to Gubay, that reimbursed.

Q. Uh-huh.

A. And then a year later I paid him 1,150,000 pounds.

Q. Yes.

A. And the following -- subject to planning.

Q. Yeah.

A. I paid him the final payment.

Q. That was the deal?

A. That was the deal. That was the deal I agreed on. So he went off and his solicitor, and through his solicitor, John Deane drew up the contract. And I paid him the 800,000. Right? It was a year later before I completed the -- almost a year before I completed the Corporation deal and that, buying the Corporation land.

Q. This was the 70 acres that had been tendered for?

A. Yeah. And by this time, it was exactly a year later when I borrowed the money from Allied Irish Bank and

formed the company and put the or transferred the property. The company was formed before that and I put the properties into the company. So I paid him the second 1.5 million the year later. I completed all the deals on the land. And then I drew up the whole programme and the complete design for the building, the complete, survey of the site done, all the roads, drainage and everything else sorted out. And I was going for planning but it was suggested -- it was suggested to me instead of going for a material contravention that there was a review of the Dublin Plan and that I should wait for the review of the Dublin Plan and have that site adapted. Anyway, I borrowed the money but it was only short term. I mean, it was only twelve months and under twelve months, the money from AIB, because I had numerous institutions who had taken it over and according to the promises that I was given previously by the Government. This I'm talking about now runs parallel with some of the stuff I've already talked about. Right, some of the Lawlor stuff. I was absolutely guaranteed that the site would be designated, this was all verbal mind you now from Flynn and various politicians, including Lenihan etc.. And when everything was in place and ready the whole lot of them done a complete about turn.

Q. That complete about turn coincide ...

A. Coincided with my refusal to pay any money to anybody.

Q. Okay. You were saying that they ...

A. It coincided also with me stopping Lawlor. And it coincided, presumably, with George Redmond and with the files going to the Police.

Q. All right.

A. Incidentally, one incident that happened. There was a meeting arranged by Sean Haughey before it went to the Police with the then City Manager, who was Feely.

Q. Frank Feely?

A. Frank Feely. And that meeting took place in the top of Lord Edward Street. What's that building across there?

Q. Exchange Buildings?

A. No, no, the big one.

Q. The big one in the Lord Mayor's Mansion?

A. No, you know where the Exchange Building was? McCloone and them were in there. Well across the road there is a water fountain and statues.

Q. Beside Dublin Castle?

A. Dublin Castle. That's where the meeting took place. In there somewhere. In there somewhere. You know where that?

Q. I do, yeah. That used to be the Lord Mayor's Mansion.

A. Was it?

Q. Called that. But anyway, go on.

A. Well in there the meeting took place. And McCloone was at that meeting, Haughey, Paddy ...

Q. Morrissey?

A. Morrissey. And they seemed to express shock at what was going on etc.. And it was Feely I think that told Sean Haughey, irrespective of what the outcome was, that it had to go, something to be done with it. Sean Haughey is alleged to have discussed it with Flynn.

Q. Yeah.

A. Whether he has or not I don't know. Then it went to the Fraud Squad. Because --

Q. But Frank Feely was pushing it to the Fraud Squad?

A. He was. Yes. I don't know Frank Feely. I don't know anything about the man. No. Well, I mean, he was an honest man. That was the one and only time I ever met him.

Q. Right.

A. Paddy Morrissey was, to me, an honest man but he was frightened of his own shadow and Redmond knew that, Redmond used to play on him. Every time Redmond wanted to get his way he would accuse Paddy of something and Paddy would run for cover. Because Redmond was the type. Between him, Lawlor and Dunne and co. and our honourable retired friend, Burke, amongst others, that they were great men at pointing fingers if things weren't going their way.

Q. Uh-huh.

A. Anyway, but it was then and there my problem really started. And then I was held to ransom all of the way between O'Callaghan ... O'Callaghan then had the IDA, through the help of Albert Reynolds, jumped in on the site across because I had included the site, which I was given the option from the Dublin Corporation, to include in the overall development across from Fonthill Road.

Q. Right.

A. There was an 80 acre site across there that I was to include. The other deal was I had an option on the St. Patrick's trust land as well.

Q. Which is Edmundsbury?

A. Edmundsbury. I paid 150,000 for that.

Q. Who did you pay that to?

A. St. Patrick's trust.

Q. St. Patrick's trust?

A. Ah no, drawn up by -- I didn't have the best end of the deal, I didn't do that deal right because I said I'd have a five year option on that but I didn't. And I paid for the option but they wanted me included to get it included in the overall development because at that time there was nothing happening in Ireland or Dublin and this was the biggest thing that would ...

Q. Hit the scene?

A. That would probably ever hit the scene. The whole overall project was to so enticing that numerous funds and institutions wanted a hand in it.

Q. Yeah. Makes sense.

A. But I was held to ransom then all the way.

Q. Well let's just talk about --

A. Lawlor, O'Callaghan, Frank Dunlop. The help of the IDA was enlisted to block me and they jumped in on the site across the way.

Q. Lets go back --

A. He claimed to Paddy Morrissey that he was doing cosy deals with me and he had to back off and handed over the site to the IDA. Who when, as soon as I was out of the way, when I was forced into doing the deal, they ditched.

Q. So the IDA didn't end up with the land at the end of it?

A. No, no, they ditched it. They were only in there to block me and once I was out of the way. Then O'Callaghan was operating out of the bank centre branch. He was convincing the bank that I would never get the zoning or the planning. They used their good offices with the Councillors, including John Gilbride, Pat Dunne, Lawlor, Hanrahan, etc.. O'Callaghan had them all enlisted with the help of Frank Dunlop.

Q. And did you actually pay any money, directly or

Indirectly, to Dunlop?

A. No.

Q. No. Did you ever authorise --

A. I wouldn't talk to him. I would have nothing to do with him.

Q. Okay. Did you ever authorise Barkhill, which was your company?

A. No.

Q. So how come on the invoices, some of them that you see from --

A. Well I wasn't in control then. But I wasn't in control then. The bank took control.

Q. Okay.

A. The bank put the demand on me when I refused to hand over to O'Callaghan the 50% stake because I had already had paid O'Callaghan 2,250,000 pound and I honoured my deal. But unfortunately in my contract I left it to Maguire, Seamus Maguire, to complete the contract. And he omitted -- we omitted that -- John Deane drew up the contract but omitted. He drew up the contract as a totally one-sided, including the final payment being subject to planning. And when the zoning came up for this site to go in for the zoning. On the night that the motion was to be presented.

Q. Yeah.

A. I have got these dates because I've also got the

motion that went in.

Q. Yeah.

A. On the night that the motion was to be presented O'Callaghan was blackmailing me from the bank centre branch, with the help of the bank, to hand over before he would allow Neilstown site to be dezoned or mine to go in for zoning. Right? Number one, he wanted the shares in the company. Number two, he wanted the full payment which I refused to pay because I had done a deal and I shook hands on a deal subject to the final payment. I paid him 2 million pounds, the type of money that he never parted with on a deal in his life. He never paid for anything actually because he had too many politicians giving it to him. So between him and the bank. So then when I refused the bank sent me a demand for my money.

Q. Uh-huh.

A. To pay up the 8 million. Now, I had no zoning, I had no planning, I had paid over the top for the site. I was out -- I personally was out 7.5 million pounds.

Q. Who in the bank in AIB at that stage were you dealing with?

A. I was dealing with a fella called Eddie Kay but he had nothing to do with this.

Q. Right.

A. In my opinion Eddie Kay was as honourable a man as I had ever met. But the fellas behind the scenes. There was

another fella called Jim Donoagh who was an understudy of Eddie Kay's was doing a lot of the talking. Now, by this time I actually owed the money back to the bank. So they were quite within their right to demand it but they had no right whatsoever for Owen O'Callaghan to be sitting in their office and blackmailing me at the same time. And that's what I took exception to.

Q. But let's go back. I mean, we're not at the point yet. But I want to get to the point that the bank effectively were now beginning to take a more proactive role in relation to the property?

A. Yeah.

Q. Either to protect their own interest, or for whatever reason we can ...

A. Well they were protecting -- it was O'Callaghan's interest they were more interested in than their own.

Q. Okay. We will keep that apart for the moment.

A. Eddie Kay didn't agree with what was going on.

Q. But who was directing Eddie Kay?

A. That's the guy I'm trying to remember the name of. Well obviously Dave Maguire was.

Q. Was his superior?

A. Yeah.

Q. Where was Chambers in this or was he in it at all?

A. Donal Chambers was the man I was looking for. He

was always with O'Callaghan in his side office. Every time I went to a meeting which was nothing whatsoever got to do with O'Callaghan. But somehow or other O'Callaghan always happened to be in an office next door when I had a meeting with the bank and Donal Chambers was always, always around, somewhere. And this Farrell was brought in from Cork, Michael Farrell. He was brought in and replaced Eddie Kay. Eddie Kay was moved sideways. He was moved out into the bank centre branch as manager and this Farrell who was in Cork ...

Q. Okay. So the bank, at this point of the story we now have, have basically put a demand on you for the return of the 8 million. You are not disputing their right to the return of the money. But the bank then decide that they will leave the 8 million in Barkhill, on what condition? What conditions did they impose on you?

A. That I hand over 40% of the company to Owen O'Callaghan.

Q. Yeah.

A. Well O'Callaghan wanted 50% but they watered it down to 40% but he already had 2 million of my cash, my money.

Q. So did you have 60% of the company then?

A. No, I didn't -- I wouldn't agree to it.

Q. Right. So what happened then?

A. They wrote me a letter demanding their money back. No, they sent me an agreement to sign and I refused to sign

it.

Q. What did that agreement effectively say, Tom?

A. The agreement said -- the agreement was that I -- it was between Riga Limited, O'Callaghan's company, and the bank and me. Where hand over 40% to Riga, 20% to the bank and I have got these letters and the dates of them as well and they will coincide with the dates of the night of the motion. And I refused to sign them. So the bank then sent me a letter demanding the money. This was at eleven o'clock at night. So I told them -- they said then they demanded their money. So I told them then -- by this time then, you see, there had been various institutions that I had -- sorry, this doesn't sound so coordinated but there was so many things went on. The bank then -- when I refused to sign then they sent me a letter demanding their money back and the following day they withdrew it.

Q. They withdrew the letter?

A. And insisted that I come over to a meeting.

Q. Lets just break and have lunch.

(broke for lunch)

A. Well I was just saying then that at the time that I made the complaint and went to the Fraud Squad and all the rest. Flynn had Phil Monaghan show him around the site. I

had a phone call from Phil Monaghan then one day. I had never spoken to the man, I didn't even know him. I heard of him, I heard of Monarch Properties but I didn't even know who the personnel were. I had this phone call one day at home so they said it was Phil Monaghan when I answered the phone. This was in Luton so I think Flynn gave him my number. His opening statement to me was "that site you got, you know, you'll have trouble with that site, you'll never build on it". And I said "why do you say that" and he said "because I got my foot on you" so I said "who are you". So he said he was Phil Monaghan of Monarch Properties and I wasn't going to come in and take the bread out of people's mouths, that he had his foot on me. I said "you have your foot on me". I said "the only fucking time you'll have your foot on me is when you visit my gave" and I put the phone down. So that was my first and last conversation with him, with Phil Monaghan. Funny enough, O'Callaghan made the same statement to me about two days later. That I would never build a foot on it.

Q. Okay. We are now back to the stage where, can you remember the payments that were made from Barkhill to people like Frank Dunlop? Did you authorise those or what were they for?

A. No.

Q. How much were they for do you think?

A. Pardon?

Q. How much did they amount to?

A. I reckon --

Q. Yeah. How much did they amount to?

A. There was various amounts of 30 and 40,000 pounds. There was payments due to various people.

Q. Uh-huh.

A. Architects and engineers and all the rest of it and Ambrose Kelly and Co.. This was after, of course, the agreement was forced on me by AIB.

Q. Uh-huh.

A. That agreement was signed at about three o'clock in the morning because I categorically refused but they actually had Neville Byrne of William Fry issue me with a letter.

Q. Yeah.

A. Saying that they were going to bankrupt us or put in the receiver and guarantee I would never collect a penny of my F***ing money.

Q. Yeah.

A. This was Dave Maguire, this statement to be exact. You will never get one penny of your fucking money back and I'll ensure you won't or you sign this agreement. Well Maguire is a witness to that statement. So I categorically refused. Then somebody suggested that I take this Murphy on board, a solicitor, that I needed a solicitor. He was recommended to me by some bloke who had no connection at all.

So I think it was Hargan & Co. or Horgan & Co. in Cork and he was supposed to be ...

Q. MJ Horgan, yeah.

A. Was that the one?

Q. Yeah.

A. It was a fella called John Murphy. So he came up to meet me and I met him in the Berkley Court and I had dinner with him. And he told me that he had a word with John Deane before he came to see me, that's O'Callaghan's solicitor. And that John Deane said that he would be wasting his F***ing time having anything to do with me, I was a man of straw. Between hopping and trotting on that day anyway, that was at lunchtime of the day, I had a meeting later with the AIB and Murphy never turned up at the meeting.

Q. Oh, right.

A. Well he didn't turn up. Eddie Kay or someone asked where he was or why and I said well he was told I was a man of straw and O'Callaghan and John Deane were sitting.

Q. Did you ever meet Murphy then?

A. What?

Q. Did you meet Murphy?

A. I met Murphy, yeah. He came to meet me.

Q. At dinner?

A. For dinner, yeah. And we had dinner in the Berkley Court.

Q. And did he agree to act for you?

A. He didn't quite agree to act but I assumed he did.

Q. Yeah.

A. The indications were that that's what he was there for.

Q. And you were asking him to come to a meeting with you?

A. Yeah. That I had a meeting that afternoon but he never showed up to the meeting.

Q. All right. So therefore you assumed that he had been warned off or something?

A. Well he told me that he was told by John Deane that I was a man of straw. So anyway we waited in the meeting and he didn't turn up. So John Deane proposedly made a phone call and came back and said that Murphy was on his way back to Cork.

Q. Right.

A. And that he wasn't coming. You know, as if I was stupid or something. And I said yeah, you told him I was a man of straw.

Q. Uh-huh.

A. So Deane, of course, denied that he said it and Eddie Kay said what is that? I said well Murphy said that Deane went to see him and he must have heard or Murphy must have made some inquiry as to who he was acting for and John

Deane told him I was a man of straw. Oh, I never said a thing like that, Dean said. So I looked at him and I said to him the only fucking straw around this table is on your head.

Q. Yeah. Because you were referring to his ...

A. Wig! I said that's coming. That's coming loud I says from someone who has had 2.5 million of my money as a result of blackmail.

Q. Yeah.

A. So far and is now --

(TAPE ENDS)

Testing. 1, 2, 3, 4, 5, 6, 7. Continuation.

Q. We had got to the stage where McGrath was basically -- where you had said to John Deane that he had got 2.5 million pounds of your money at that stage. Go back to that.

A. Yeah. And I told him with the help of the bank he was blackmailing me for the company and he had no F***ing right to be there in the first place. It was nothing to do with him. So McGrath piped up and says you owe them money and I'm going to see they get it. And he said you're going to sign this F***ing agreement or you'll never collect a penny. He says I'm here to sort it out. It's my head or your's he says and it's not going to be mine.

Q. What --

A. So I said to him well what has -- why are you so concerned about O'Callaghan, O'Callaghan Properties. What has this got to do with O'Callaghan, why is it is O'Callaghan here, why is John Deane here, this is my company? So you have a right to put in a receiver if you want to put in a receiver but you have no fucking right to have them at the table and you have no right to hand over my company to them. So whatever he said, some crude comment to me, I said to him for two tens I'd put you through that fucking window. I said ten years ago I said you'd be through it by now. So then he said to me you don't threaten me etc. etc.. I says you don't make comments like that to me again.

Q. Go back to --

A. He called me -- he called me something that was totally uncalled for and I --

Q. You reacted, obviously?

A. And I said to him ten years ago you would have been through the fucking window by now.

Q. 'Em. Back to just the Barkhill. Once they had got into Barkhill, you had 50%, the bank had 10%, is that right, the bank had 10%?

A. No, I had 40%. They reduced me to a minority. The bank had 20%, O'Callaghan had 40% and I had 40%.

Q. Okay. Now, what was the make-up of the board of

Barkhill at that stage?

A. The make-up of the board was there a fella from Capital Markets, AIB Capital Markets.

Q. Who was that? I have the record in the office. It's not relevant if you can't remember. And who else was on the board?

A. Owen O'Callaghan.

Q. Yeah?

A. Maguire as secretary, to replace my wife.

Q. Yeah?

A. Well an affidavit, not an affidavit, a power of attorney was signed. And O'Callaghan, he was the secretary, Maguire. O'Callaghan was appointed -- I was supposed to be the Chairman but I wasn't. Because of -- so all control was taken out of my hands.

Q. Okay. So now when --

A. I was presented at twelve o'clock at night or something with this letter from your man ...

Q. O'Beirne?

A. O'Beirne of ...

Q. William Fry.

A. William fry.

Q. Just retrace your steps to me for a moment --

A. And the letter stated to me of course that the receiver was appointed there and then. This was ten o'clock

at night, or I sign. So I said I'm signing this under duress.

Q. Go back to the point where we're now in a situation whereby you are no longer in control of the company, O'Callaghan, somebody from AIB and yourself were on board and payments are now being made to Frank Dunlop.

A. I had an agreement from the bank that all commitments from me to various people like Ove Arup, Taggarts and Co., the architects, O'Malley and people that was owed money, that they would be paid. That was welshed on and it took writs later on, years later, from these various companies to recover the money. I was in the terrible position that I had to sign an affidavit against myself for to get them paid. But apart from all of that, in the meantime everybody connected with me was ousted from the company, everybody connected with the deal, Ove Arups, everybody was sidelined and all these, Ambrose Kelly was brought in, McCarthy was brought in as engineers.

Q. Let's just talk about the control. Because, I mean, what the Tribunal are going to be interested in is the payments that would have been made to Frank Dunlop. They seem to have been substantial after that day.

A. I started getting notes from the bank. There was various board meetings called and rarely was there money discussed at them. And usually when it was discussed the

bank was always saying they were paid -- they were not going to pay anything. But in the meantime when I'd be back in Luton I would get these list things from the bank listing the number of people they had paid, signed by Owen O'Callaghan and looking for my signature on the grounds that if I was ever to get me money back, that I had to sign these to give the authority. So I signed them and I used to send them back until I began to realise that there was a load of money going to Frank Dunlop. So I said what's the money to Frank Dunlop for? Oh, it was for work done, PR work. And there was this Shefran. I asked who Shefran Limited was and nobody would answer me. So then I asked were these payments, were these spurious payments to politicians and I didn't get an answer so the next ones I refused to sign. So I wouldn't sign them. So they said they didn't need my signature because whatever needs to be done, they were doing it and they didn't need me. And when I'd go to a board meeting I'd be told a pack of lies so I decided not to go to board meetings either, it was a waste of time, a waste of my money.

Q. Who was signing those cheques that you believed were going to --

A. They were signed by the bank. They were paid by the bank, seemingly, on Owen O'Callaghan's instructions but signed by their representative. The first ones were signed by me because I assumed they were paid legitimate payments

until I seen this figure mounting up to hundreds of thousands.

Q. Do you -- or is it your view, and I think it can't be any stronger than this at this stage, Tom, because it's up to somebody else to find out this. Do you think the bank were aware of who that money was going to?

A. Of course they were, they wouldn't pay a penny to anybody without their sanctioning it. And it was Michael O'Farrell and whoever was above him was sanctioning the money.

Q. And who would sanction it above O'Farrell?

A. Because every time I was there. I was owed 25,000 and I was desperate at the time because of the tax hitting me for 10 million I didn't owe them.

Q. The tax now in the UK?

A. In the UK tax, yeah.

Q. But who would have given O'Farrell his instructions?

A. Well it was Donal Chambers.

Q. And you think that Chambers was effectively the promoter of O'Callaghan who basically ... I am kind of like trying to identify who --

A. I am qualifying the statement -- I am qualifying it insofar as I suspect.

Q. Yeah?

A. Rather than know exactly that Donal Chambers was the king pin.

Q. Yeah.

A. There was others.

Q. Yeah.

A. McGrath was like that with O'Callaghan, Dave McGrath. The night of the zoning meeting when McGrath, O'Callaghan agreed -- it was a Council meeting and O'Callaghan was in at the meeting and that night they were given the zoning from the site.

Q. [redacted] C

21

[redacted]

A. I know one bloke was given a show jumper horse for his daughter from O'Callaghan.

Q. [redacted] C

22

A. I'm positive he didn't.

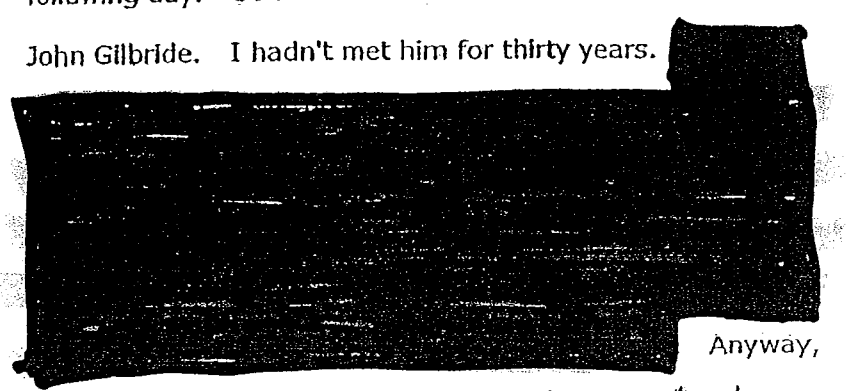
Q. Okay. Let's move on to payments to other people because --

A. As a matter of fact it was one of the things O'Callaghan said.

Q. To who?

A. When he wanted to sicken me he used to say things. When he would tell me I would never put a foot or get a foot of planning on the place. He took Sean -- I went to Willie Farrell, who was a Senator. He was from Sligo. I knew him, I grew up with him, you know, and I told him what was going on and all the rest. And so he suggested to me, he didn't

have much say there. He was a Senator, so he didn't really know much. So he suggested that John Gilbride was a Councillor. Now, John Gilbride -- Eugene Gilbride was our TD at home for -- when I was a kid and I grew up with John Gilbride so that I brought in John Gilbride. That I should go to John Gilbride. And he arranged to meet me the following day. So he took me out and he introduced me to John Gilbride. I hadn't met him for thirty years.



Anyway, Gilbride said that he would see. I told him about Lawlor. He kept insisting Lawlor was all right, to get on the right side of him. And I said no, he's a gangster. To me he's a gangster, along with quite a few others. Gangsters. Gilbride came in and he was supposed to be on my side.

Q. Yeah.

A. And it looked as if he was. And he enlisted the help of McGrath and Marian McGuinness.

Q. In AIB?

A. No, Marian McGuinness. These were Councillors.

Q. Oh, Councillors. I'm sorry. Yes.

A. And numerous others. They were all supposed to be

on my side. Right? And as far as Gilbride was concerned, he was looking after my interests and to prevent Lawlor and co. from the carry on that was going on but the next thing I discovered some time later was that O'Callaghan had bought Gilbride and promised him, I think it was 100,000 pounds, and eventually Gilbride, he's teaching in Balbriggan College, gave up his job for a year, took a sabbatical, or whatever you call it.

Q. Yeah.

A. And went on board with O'Callaghan, for to campaign for getting the zoning through with Owen O'Callaghan. As far as I'm aware, I know he got quite a substantial sum of money, mostly paid out of Barkhill, out of my money, quite frankly.

Q. But who would have authorised that payment?

A. The bank and O'Callaghan.

Q. You would certainly not have contributed to that?

A. No. I wouldn't sign it. I refused to sign them. After that, after the first two on the list and when I began to see this Frank Dunlop's name cropping up I started querying. After that I wasn't asked for my signature because the one they did send to me I sent it back, I wouldn't sign it. I said I wouldn't have anything to do with it. I'm telling you an honest to God fact. I accused the bank at the next board meeting that they were a shower of gangsters.

Q. Yeah.

A. And the bank told me the only person you are doing is yourself.

Q. And who would have been at that meeting in the bank?

A. They wouldn't give me a cent. Not a cent. The money I was owed they wouldn't give it to me and despite the fact I couldn't even come over to the board meetings because between the tax man and all I was totally screwed. At weekends I didn't have a tenner to buy the grub for the family and me a millionaire. That's what Dublin done to me.

Q. Come back to me for a second --

A. But I'm a stubborn bastard, aren't I?

Q. Oh, yeah. There's no doubt about that, Tom. What I want to try and identify is that at some time in the preparation of the proceedings there was a payment requested by another person.

A. Yeah, I was told -- oh, this was before all -- before I realised what the whole set up. I was told I had to contribute. There was an election coming up and there was one election and Charlie had barely won it or something. It was a hung parliament. And he lost his majority and there was elections. So I was approached to pay a donation. I don't know was it by Flynn, I think it was Flynn actually that suggested that I give a donation to the party. So I thought well if it's a political donation, it's neither here nor there, you know. And I made the statement that, you know,

the donation to the party but I said I'd give a donation to either party because I'm not affiliated to either, it didn't matter to me. But I must say that none of the Fine Gael, although they were in the frame, because Gilbride, what I didn't know was, was the coordinator. So when it was I scratch your back and you scratch mine between the Fine Gael Councillors and him and other Councillors had this arrangement where the Fine Gael fellas done, certain ones of them, not all of them, done exactly what certain Fianna Fail blokes wanted. But they got a cut out of the cake, as I understand the situation. So they had an arrangement with, a cross party arrangement but I don't know who the personal area are. The ones I know weren't part of it was Eithne Fitzgerald and Mitchell, a fella called Jim Mitchell, Tom Boland. It's easier for me to name who I know weren't part of the thing. Eithne Fitzgerald opposed me, she opposed the whole deal on the grounds that Neilstown was nearer to the people in Clondalkin and it was more a Clondalkin site and she done it on principle and I respected her for that. So she was opposed to it. But one thing she wasn't was corrupt. And Jim Mitchell, he was another one. He definitely wasn't. Tom Boland, as far as I was concerned, was an honourable man. But as for the rest that I knew involved, every one of them wanted 100,000 pounds. 7 million pound it would have taken.

Q. To do it?

A. To buy the Councillors. That wasn't talking about the main politicians.

Q. Go back to where you were talking about your donation with Fianna Fail and Padraig Flynn.

A. Oh, yeah. So I talked it over with one or two people I knew, you know, what would be an appropriate. So they said it was up to me, you know, it was quite a big deal and all the rest of it and that they wouldn't sort of be looking for peanuts. So I then in the end decided to give 50,000 donation. So I gave Fianna Fail a donation of 50,000 pound. So I paid the cheque. I was told to leave, again, the cheque blank. In other words, no name on it.

Q. No payee.

A. No payee. So I wrote out the 50,000 pounds and I signed the cheque and I gave it to Flynn, Padraig Flynn. Now, some time later I was taken up to ... there was a fella got to hear that knew me, he was a fella called Scallan and he came in to see me one day and he knew that there was some shenanigan going on and all the rest of it and that I was up against a blank wall. And he came in to see me. So he took me up through the Dail premises, out the other side into Merrion Square is it?

Q. Yeah.

A. And into an office and into this little poky office and he introduced me to a fella called Sean Sherwin. And he

told me that Sherwin was the main organiser of the Dublin Fianna Fail party. He also was involved in the collection in the, you know, in the funds and the arranging of funds and one thing and another. So eventually after sitting there for about three quarters of an hour Sherwin came on the scene. So your man kept insisting on me to tell him what was going on, Sherwin. So I told what I knew. But he wasn't seemingly interested at all. The only thing he was interested in was that he had a sister in law running for one of the parties in the area and whether I'd give her a big donation. Right? And that he'd see what he could do in sorting all of this out for me but I would have to give a donation to his sister in law. I think, I'm certain it was his sister in law and she was running not for Fianna Fail for one of the other parties, either Independent or Labour or one of those parties in that area, in the Clondalkin area. He then arranged to meet me in a hotel, up in the new hotel, the one up at the top of Stephen's Green there, the Westbury, no, the Conrad. So he met me in the Conrad Hotel. Who was with me now. Oh, yeah. Sherwin, Sherwin came along and he had a Northern Ireland fella with him. I don't know who the Northern Ireland fella was, some bloke. And introduced me to this American who had a load of funds. And that the American wanted to get involved in the deal and he had these millions and millions of pounds. So he introduced me to this fella

who turned out to be a fella called McMullen. And he was involved in all of these bonds and deals and what have you. But it turned out that the man was a fraudster. He was a conmerchant. Up front free conmerchant. You paid him 50,000 pounds up front and he was going to arrange all these funds etc. etc.. So he was a fraudster. So there you are.

Q. Just go back. In terms of the actual payment that you made to Flynn. When you got your cheque back was it actually made payable to Fianna Fail or Flynn or ...

A. Well the bank kept the cheque. At this time they didn't send back the cheques. The bank kept all the old cheques.

Q. Was that cheque written on Barkhill or was it written on the Bank of Ireland or who was it with now?

A. It was Bank of Ireland, Blanchardstown. When I spoke to Sherwin, which was a lot later after I paid that, Sherwin said to me that Flynn never gave the donation in to Fianna Fail, that he kept it for himself. That it went into Flynn's account. I asked him how did he know that. I said how do you know. Because he asked me for some donation and I said to him I've already paid a donation.

Q. Yeah.

A. So he says what did you pay and I said I paid 50,000 pounds donation to the party. So he said but we never got that money. He said who did you give it to. I said I gave

it to Flynn. He said well Flynn kept it and we never got it.

Q. He could have actually paid it in to the party, I mean, we just don't know.

A. Oh, I don't know. The bank stub -- the bank kept the stubs but I never bothered enquiring from the bank as to who. Although I did hear a name it was paid to but for the life of me I can't remember. Paul Sheeran told me, he was the Bank Manager at the time.

Q. And he actually saw the actual ...

A. Yeah.

Q. So maybe Paul Sheeran would have the information.

A. No, Paul wouldn't remember. The bank would have it though.

Q. I know that the authorities for the bank, I must actually get copies of what information the bank released to the Tribunal so they can give it back to you. Maybe it might jog some of your memory. Okay. Is there any other payments that you think may be of interest or other leads that the Tribunal should be pursuing?

A. Well, you see, a lot of what I have is hearsay. A lot of what I know to be fact would be hearsay to a Tribunal, if you know what I mean.

Q. With this exception. A Tribunal is different to every other inquiry mechanism that you would normally have because there isn't the same degree of privilege available to

people. Once you get into the Tribunal, you are nearly forced to ...

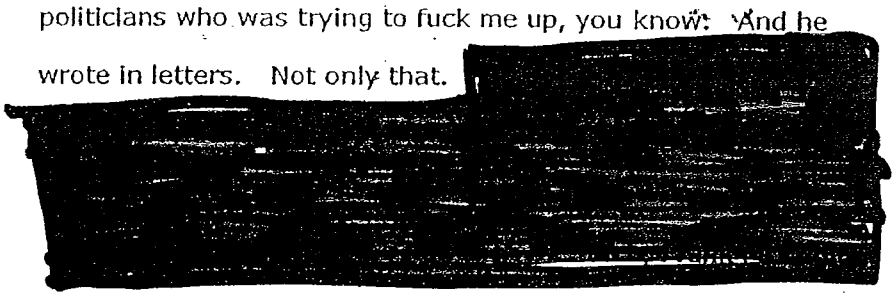
A. Take Bertie Ahern, for instance. I trusted Bertie Ahern because when I did the land deal, now, I tendered for that, an open tender.

Q. This is the 70 acres now?

A. The 70 acres. An open tender and I paid way over the top. I bought all the land around it for 40,000 and I paid 70,000 odd an acre for that land from Dublin Corporation.

Q. From Dublin Corporation?

A. From Dublin Corporation, yeah. in a tender. For the simple reason is that John Corcoran of Green Property started mouthing and he was being aided and abetted by certain politicians who was trying to fuck me up, you know. And he wrote in letters. Not only that.



And this phillistine that arrived over from England to destroy Dublin etc. etc. was all the comments. But it was all engineered. It was all engineered for to force the bank into putting the screws on me. To encourage the bank. It was all orchestrated by Ambrose Kelly and O'Callaghan.

Q. What wrong doing, if any, can you accuse Bertie Ahern of insofar as all he did was probably do the

representation for Green Property?

A. The only favour I had done, Bertie Ahern done it for me. And that was when George Redmond and Lawlor and co. had tried to block me completing the land. I had paid the deposit, my tender had been accepted and the contract was going through and the meeting to ratify the deal took place. Lawlor and others, I think Dunne was involved, I think Ray Burke was even involved, done everything in their power to block me getting the land from the Corporation. So in the first meeting they started accusing Paddy Morrissey of doing cosy deals, despite the fact this was a tender, an open tender. So they had adjourned the meeting because Paddy Morrissey and co. didn't know whether he could go through legally and complete the deal despite the fact that they had accepted the deposit. Somebody -- again, I was told that I wasn't going to get the 70 acres despite the fact that I had the highest tender etc. etc. and that there was somebody in blocking it or stirring up shit. I rang up McCloone and I asked McCloone what the hell was going on. He didn't know. He said that Redmond and Lawlor and co. were at it, stirring up shit. As far as he was concerned the deal was done, I had tendered, I had won the tender, I had paid my deposit, the deposit was accepted and they had no option but to complete it. But that there was certain accusations being made etc. etc. and they were holding up on it. And he said to me who

do you know, what politician do you know that you can trust. And I said well there's nobody really, I know nobody. He said well is there anyone left he said. I said well Bertie Ahern. I met Bertie Ahern on two occasions but he's the only one. He was the Minister for Labour. So I rang Bertie Ahern and I told him what was going on because I had discussed the whole deal with him prior to that. And he was in favour of the deal because of the amount of employment it was, between that and Arlington he wanted these deals to go down, according to him anyway. So he was all in favour. He thought it was the best thing ever to happen to Dublin, that it was a unique proposal. And on his -- as far as he was concerned that something like this would be like the rising ship, it would bring everything up with it, you know. Anyway, he sent in a guy called Joe Burke, who was a Dublin City Councillor, into Dublin Corporation when the next meeting came up the following week, to monitor what was going on and whatever was said or what, the deal went through.

Q. So what you are saying is that, I mean, as a result of the direct intervention of Bertie Ahern or his representatives?

A. Yeah, the deal went through.

Tape No. 3.

Testing, testing 1, 2, 3.

This is a continuation of the tape we just finished, where we were talking about the position whereby Bertie Ahern had sent Joe Burke in to observe the Council meeting and as a result of which the transaction, the acquisition of the 70 acres of land from Dublin Corporation went through. In the meantime, Tom has confirmed that Bertie Ahern had then taken over as Minister for Finance. Go ahead, Tom.

A. Well after that Joe Burke came to see me in my office because I was in No. 20, where Arlington's office, I think it was 25, next door to Lisney's in Stephen's Green.

Q. Right.

A. 25 Stephen's Green. So Burke came in to see me. And he had no real appointment or that but he came and he stayed and he was talking. And he was talking round in reels and he was giving me the impression that a favour was due etc. but he had no real purpose in the meeting. Now, I deliberately didn't bite because I was prompted on many occasions to ask well what's it going to cost me. What's this going to cost me. But I didn't. I decided not to. So consequently I believe he came to let me know there was a

cost attached to it but I didn't give him the opportunity and ...

Q. You were never specifically asked?

A. He never specifically asked for anything, neither did I take the bait. Now, in the meantime Bertie Ahern I think had came -- he became Minister of Finance and there was a guaranteed zoning of Tallaght, Clondalkin. Not necessarily our site but Clondalkin.

Q. Yeah?

A. Neilstown or whichever, whichever would do the building. Anyway, all the three were to get designation status. Now, Tallaght had got it because by this time -- because I was thwarted all along the way. Nearly ten years went by and the interest rate was rolling up on the money.

Q. Yeah.

A. The -- Owen O'Callaghan. I came up with a fund, people who were interested. So I asked the bank that if I took them out would they go. And they said they were always interested in the money but they didn't see how I could or would take them out. So I said to them not to be too sure of that. The next thing I had a phone call from O'Callaghan wanting to know who this was.

Q. Yeah.

A. So I sent a letter to O'Callaghan asking him if he was paid out.

Q. Yeah.

A. Now, what that amount of money would be, so I got back some figures anyway, some millions of pounds figures from him and I got it from the bank. Now, this was based on the thing having zoning and that it was guaranteed. By this time it had the zoning and it was guaranteed more or less the planning but with the designation. The funding was no problem at all. Right? And I could bring in the funds. The next thing I discover was that Owen O'Callaghan had paid Bertie Ahern to block the designation on Blanchardstown and on this one. On a zoned site.

Q. But why would he do that?

A. What?

Q. Why would he do that?

A. Well, you see, the site stood up on its own. If the site needed, what I always said was if it needed designation to make it work it was a poor site.

Q. Yeah.

A. It didn't need designation.

Q. Yeah.

A. Right?

Q. Uh-huh.

A. But if it got the designation O'Callaghan was out.

Q. Right.

A. I challenged the bank, I challenged the bank that

they'd have to go.

Q. Yeah. So how did you know --

A. The bank, on the grounds, you see, that the deal they forced me into was illegal and that they'd no right whatsoever to give my company away.

Q. But going back --

A. And I challenged them on that.

Q. Just in terms of how, how do you know that Bertie Ahern got a brass farthing from O'Callaghan. Was there any record of that?

A. Well I had a meeting then with the bank and I was discussing the possibility of taking them out and raising the funds to take them out.

Q. Yeah.

A. Which they were very sceptical of because they said I was bankrupt.

Q. Yeah.

A. Which was all engineered probably anyway.

Q. Uh-huh.

A. And I said it had nothing to do with that.

Q. Yeah.

A. It had to do with the company, nothing to do with me personally but that the site itself stood up and with the designation it was 100% certain. The next time -- the minute I said that O'Callaghan left the meeting.

Q. Yeah.

A. Right? And he didn't come back for about the best part of an hour or so. And he then came back and he said there'll be no designation on the site. And I said there fucking will be. I said it's guaranteed designation. I said it will get that or everybody in Dublin has to go back on their word. He said there will be no designation on the site. You check it up. And when I check it had the pronouncement had been made or was going to be made the following day that there was no further designation. And who was at that -- O'Callaghan openly stated that Bertie Ahern was ensuring that neither Green nor that site would get designation.

Q. But, I mean, was that a political decision? Are you saying that he was paid for doing that?

A. Oh, no, he was paid for doing that. Because he would have been out. I have no proof of that.

Q. No, no, no --

A. All I know is what I heard.

Q. But did O'Callaghan ever say he gave Bertie any money?

A. He did. He said Bertie was taken care of.

Q. And he didn't say an amount or ...

A. He used to openly bag about it. O'Callaghan used to openly brag about it. And he never said you would never

get a fucking foot of planning on that. You will never get it. And I said well if you get a foot on it I'll get a foot on it. He said -- he says you're talking a different ball game he said. You see a lot of it I can't -- I know what happened but I can't prove it.

Q. No, no, no, that's not your job to prove anything. Your job, as I see it, is insofar as I'm able --

A. Albert Reynolds got involved through the Minister of Industry and whatever.

Q. Commerce.

A. Industry and Commerce.

Q. When was this now?

A. They left the IDA. Dan, Flinter and McGowan. I know it took place. I know it happened.

Q. Is this in relation to ...

A. The site across the road. Just to block me and they did. Because Paddy Morrissey -- the IDA went into Paddy Morrissey and said that I was not going to fucking build a stone on that site.

Q. But what role did Albert Reynolds have in that?

A. Albert was the coordinator for ... Owen O'Callaghan went to Albert when he wanted any strings pulled. So O'Callaghan and -- like, for instance, Albert spend the night of the 11th of March, 1994, in O'Callaghan's house.

Q. Uh-huh.

A. To make his financial collection of, there were three or four other notorieties there to pay him his money. And he flew from O'Callaghan's house in the morning to catch the plane to go to the St. Patrick's do in America on the 12th of March.

Q. And why is the 11th of March a significant date?

A. Because I know Albert Reynolds was in O'Callaghan's house that night. I also know the previous year when Albert was making his collections.

Q. Who was he making his collections from and for what purpose? I mean, what is your suspicion?

A. What?

Q. What is your suspicion?

A. Now, you are in Dublin the same as I was.

Q. Absolutely.

A. You know more about Dublin than I ever will learn.

Q. Yeah. But, I mean --

A. You know more about Dublin --

Q. This is not my evidence.

A. Yeah but --

Q. What we are not trying to do here, as I keep saying to you. All we're trying to do and what we basically told the Tribunal we would do, is we would give them sign posts and it's up to them to follow the trail. We will give them whatever we can do to help. And I'm saying that, you know,

if they have a name or a specific amount or a detail, they then have powers to go looking at that, in much more scrutiny than you'll actually believe.

A. Well what I know is that the best part a million pound went out of my account.

Q. Yeah.

A. Without my authority.

Q. Uh-huh.

A. Paid out by O'Callaghan and the bank.

Q. Uh-huh.

A. The bank would not pay one cent. The bank agreed first before O'Callaghan would pay anything. Right? And it was sanctioned by, what's this him name was, they brought him in, he was only a paper, he was a rubber stamp anyway, for the Capital Markets to sign with O'Callaghan when they wanted to pay it. A million pounds went out of my account when I didn't have a fucking tener to buy me dinner.

Q. Okay. But who sanctioned that, in your view?

A. What?

Q. Who sanctioned that? We know O'Callaghan --

A. Oh, it was sanctioned by the senior management at the bank.

Q. We've already said who the senior management are. On the basis of ....

A. Eddie Kay asked questions and he was moved out of

the way. He did not like what was going on so he was moved sideways.

Q. And the ultimate person, as far as you're concerned, who was pushing O'Callaghan was our friend, Mr. Chambers?

A. Donal Chambers was a great friend of O'Callaghan's, that's for certain. And O'Callaghan happened -- was around outside the door. Every time there was a board meeting or anything, Donal Chambers would be outside the door and talking to O'Callaghan. O'Callaghan had another stunt. Just before there was a break up, you know, for tea or something and you'd go to the toilet he'd be out in front of you and he'd be in the broom cupboard in the toilet. He done that. I caught him out, deliberately caught him out. He'd be in the broom cupboard because if I was talking to Maguire, or whatever, and it took me a while to latch on to this. We used to meet down -- I used to have meetings down with Taggarts and all of that down in Jury's and we might be sitting in the foyer.

Q. Yeah.

A. Discussing everything. And we'd go to the toilet and I latched on to this as well. So they had a man planted and he was always sitting with his back to us somewhere close by. And we began to notice this fella. And I didn't put two and two together for, oh, a long time, until I was being set up one night. But anyway, I began to realise John Deane or O'Callaghan would be somewhere, if not John Deane, one of

their cohorts or Ambrose Kelly. And you went from the Foyer and you had to go up a sort of a ramp to the toilets. But there would be somebody sitting behind the bush.

Q. Yeah, yeah, yeah.

A. You know the little trees. And as soon as we would start walking up there someone would go scuttling into the toilet. Now, for a long time I took no notice of this until we noticed this guy tailing us all of the time. And if we sat here he'd be sitting there, you know. And do you know who he was?

Q. No.

A. The fella that Ambrose Kelly and O'Callaghan used to bring the Minister down [redacted]

Q. Which fella?

A. Do you remember the Gas Board, the fella made the suggestion to the Gas Board to remember his company.

Q. Ah, the fella down in Cork?

A. The Fine Gael Minister. Well it was Owen O'Callaghan that grassed on him. It was Owen O'Callaghan. He was appointed by Charlie Haughey as a Director of the Gas Board.

Q. Who was?

A. Owen O'Callaghan.

Q. Oh, Owen O'Callaghan.

A. Yeah. And he brought down that Minister because.

Q. Covney?

A. Hugh Covney. He died there recently. [redacted] [redacted] And then the Lowry affair started. Nothing to do with Ben Dunne at this time. This was Lowry got involved and Ambrose Kelly and O'Callaghan started writing letters and they had this defraud accountant, what's this his name was.

Q. The guy who was involved. I know the guy you mean, yeah.

A. Writing the letters. They were dictating the letters and he was writing them. So he was totally discredited, if you remember.

Q. That's right, yeah.

A. And when O'Leary came into it with CIE, when Lowry attacked O'Leary CIE.

Q. Go back one step for a second. As far as the main plank we're trying to achieve at the moment, you see, what I need to know now --

A. The guy that was tailing us was that accountant. Yeah.

Q. That was the Fianna Fail?

A. I forget the name now. It was O'Callaghan and Ambrose Kelly. Another maggot.

Q. What we need to do, I mean, whatever papers you have

at the moment are fine. What we need to do is that we need to get your diary or diaries, whatever you've got. I need you to get them.

A. I'm -- not everything I have in detail.

Q. I wouldn't worry about it.

A. When I knew this was going on I taped conversations where I was being blackmailed. I had these life threats you see.

Q. Yeah.

A. Like, I was threatened. You didn't hear the tip of the iceberg of the story yet. And I decided I was going to protect myself and have the -- tape the conversations.

Q. Yeah.

A. Including one where O'Callaghan invited me one day from a board meeting that I had to go out to Clondalkin because there was people out there would like to see me. And when I went out it was a Sinn Fein Councillor and others was there. And this fella came in and he sat down and he announced, I have his name incidentally at home, I've got a list anyway, and he sat down. We met in a pub in Clondalkin. O'Callaghan paid the taxi all the way out. Introduced me to this fella, for him to announce to me that they had a file on me. So I said who has. We have. I said who are you. All you need to know is I'm a Sinn Fein Councillor. And I said I don't give a fuck who you are. I said what's that got

to do with me. So he said oh, you operated in Northern Ireland, he says, and the boys has got a file on you. But I says what is this supposed to mean, what does it mean I said you've got a file on me. I said King Farouk, I said the Special Branch in England has a file on me but what's that got to do with me, what's the relevance. And he said to me you remember it. But I said what's -- what have I to remember? What's it in aid of I said, what's the bottom line here. And O'Callaghan said you better listen to him, to me. Owen O'Callaghan said to me.

Q. You better listen?

A. I said is this a threat. So O'Callaghan said you better listen now he said. I said listen to what. I said is it a threat, are you making a threat to me. He says well you take what you like. Well I said wait till I tell you a wee story now. I said if you are who you say you are I said which I fucking doubt, because I says in my old man's day I said the likes of you would be terminated. That's number one I says. And people don't go round mouthing or threatening other people, I said. I said not that the genuine product, meaning the IRA, of course. Not the genuine product. But I said if you're one of the scum then I said fair enough. So he said to me do you know where you are fucking talking he said to me, you know, and he was real fucking threatening. Do you know where you're fucking talking. I don't give a

monkey's fuck where I'm talking I said. If you're making a threat to me I said you fucking carry it out but don't talk. So he said -- I said to him I have three of your boys call on me in Luton once and they demanded money. They demanded it, I said, or they called. I told him I wouldn't pay it. They told me I was an Irish businessman and I was going to pay up. And I said I told them I would not pay a penny to buy a bullet to kill anybody. I said if the Irish Government or the Irish were at war with England I'd subscribe to that. But they're not I said. As a matter of fact, I said, they're more allies of the English in the whole fucking set up. So why should I bother I said. And why should I bother. So I said -- I told them they would never get a penny. And I said I put them out of the house and they told me at the door that they would be back the following Thursday and I better have the money and I said my answer to them was you better make a good job of me but you'll never collect one fucking penny. Now, I said if you're making the same threat you carry it out now I said or go and fuck yourself and I walked out the door. That was Owen O'Callaghan. So Owen came back. Owen went to the phone and I assumed for a taxi. I walked out and I stayed out and I sat on the wall outside. So Owen came out and he said you want to be very fucking careful. You don't know where you are. I said what's your fucking purpose, Owen. What's the object of bringing me down from a board meeting to

Clondalkin to meet a scum bag like that. I said what's your item, what's your purpose? So I said you're just a fucking scoundrel. So he said if you're not careful you'll fucking walk back. Well I said fuck off, I said, I'll find me way back.

Q. What about? Do you have any of the conversations that you taped, any tapes at all now?

A. What?

Q. Any of the tapes of the conversations.

A. I had threats to the house, you see.

Q. Yeah.

A. And me eldest fella knew about it. Well he knew I was being threatened. I was being threatened at the time by Lawlor and Charlie sent me a threat or it is alleged now. It is alleged.

Q. Yeah.

A. That I would end up one day in the F***ing Liffey and if I didn't shut my mouth, at the time of the Fraud Squad.

Q. But you don't have any copies of those recording left; do you?

A. No. Well I can't find them. He said he burned them.

Q. Do you think he did?

A. Well he said that you don't want to get involved. You don't want to get involved. He wanted to burn the whole

lot, all that paper and everything. He did burn a lot of it. He did.

Q. Is there any way --

A. I was over in Dublin and so he discussed it with Vera as well, with my wife, you know. And of course he was saying that you don't want to, under her circumstances, and this distress to the family and what have you. One of the reasons I wanted to get out of Dublin was I wanted to settle. In truth I should have taken the bastards to the cleaners. Everything that's going on now, you know, the exposes and all of that, I believe I would have fucking won it.

Q. Oh, yeah. I don't think there's any doubt at the time that, you know, when you were pursuing that angle?

A. Hanrahan is it, Hanratty.

Q. Yeah. Hanratty?

A. Hanrahan is the other fella, the councillor. He was trying to tell me that my case was that strong that they would have to open it again.

Q. Yeah. Well, I mean, I wouldn't go against a view --

A. I said that I signed the form for litigation.

Q. Well I think the answer is that if the revelations come out of this planning Tribunal, it could well be something that you would have to re look at. But I think that for now --

A. He said that they will prove fraud against O'Callaghan and the bank. He said that they will prove it. But I don't know whether he's just saying it to get me talking.

Q. I don't think so. I mean, I think -- again, as far as I'm concerned, I mean, they have got a job to do. They are charged, you know, under a piece of legislation, they have to do the job. And I mean, the Judge who is looking after it is taking it very seriously. I mean, very, very seriously. You can be assured of one thing, there is no question but that they, like most Tribunals, anybody who knows anything about a Tribunal will tell you one thing, the Tribunal usually gets to the bottom of it because they have powers way in excess of anything that you would normally find in court. In court, Tom, you have procedures, you have the rules of the superior court which kind of like set the ground rules as to what you can introduce, the manner you can introduce it, and how the case and how effectively the game is to be played. In a Tribunal, in effect, the Sole Member of the Tribunal makes up the rules as he goes along, albeit within the actual Terms of Reference that he has got. But within that he has got nearly unlimited power. And from that point of view, as I said, to be fair to them, if people shut up and keep their mouth shut and don't give them the ammunition that they need to pursue it, their difficulty is and then that is part of the problem

about, I suppose, their frustration.

A. I know I was a fool, I should never have got involved. But it is just a moral sin, I will not take corruption. If a fella does me a favour I'll pay him for it.

Q. That's --

A. After the event.

Q. Yes. Well if somebody performs a service that they are entitled to be remunerated for --

A. I will not buy favours.

Q. I think we'll -- I am going to finish it there. But I do need to get ...

A. I will definitely go through the whole pile of shit I have at home. I have proof anyway the bank's blackmailing on the night of the zoning and I have got the letters sent to me and the withdrawal letters. It was to force me in to handing over ....

Q. I will -- that probably out of all of this will I make a statement and I'll give it back to you. Because we're going to end up in a situation whereby we are going to get probably a voluntary Order from the Tribunal to make discovery of all the documents within your power, procurement or possession. I don't know if there is any documents you can get, where we can list them out ....

A. No.

Q. Swear an affidavit and hand it back to them. Out

of that they can then basically follow through.

A. The one thing I can't understand as well in the Touche Ross accounts. Like, Touche Ross, I appointed Touche Ross. O'Callaghan took them over and he had a guy in there. I forget now his name. The names will come back to me. John Piddock was my man in there but this was under another bloke. And eventually this Leo Flemming was doing the accounts. But on the accounts it said 3 million, that I was owed 3 million pounds. But O'Callaghan had 2 million, two and a quarter million. Right. The stud farm I paid cash for was half a million.

Q. Yeah.

A. Over half a million, with the legal fees and all. The deposit on the Corporation land was over half a million, 510,000. That's another million. That's three and a quarter million.

Q. Yeah.

A. Sharp's land I paid cash. One and a quarter million plus the VAT. Right?

Q. Yeah.

A. One and a quarter. So there was 125 on top of that. So there was 1.4 million roughly.

Q. Which is 4.6 million at this stage.

A. I paid one and a half million for the complete designs, surveys, drainage, the presentation, everything like

that. On top of that I paid 150,000 to St. Patrick's trust. I paid 300,000 for the Maguire land -- O'Dwyer land.

Q. Which is the O'Dwyer land now?

A. It was a chunk of land that was owned by the pub.

Q. Oh, yeah, yeah.

A. They were O'Dwyers. I paid cash for that. I paid it for the cottages. I bought two or three cottages. I paid 85,000 for one, all cash. I paid out in total, without the interest roll up, over 6 million pounds.

Q. Yeah.

A. And yet on the account it had showed only three. I came and I queried that with Touche Ross but it still appeared on the accounts.

Q. I remember we were querying it at the time of the settlement as well.

A. The rest of the land was paid for by the bank.

Q. Out of bank loans.

A. There was 5 million to the Corporation. There was three and a half million and they ran out of dates and we had to pay a lot more money. We had to pay another three quarters of a million to Bruton. And that was the bank's fault. Their negligence done that. They started playing games while they were, at the same time, paying out a million to corrupt Councillors.

Q. Okay. Well we'll leave it there. But what I want

to do is that, would you just literally, all of the papers that you have. What I propose to do with them is, no matter what it is, even if it's only a match box cover with a number on it, put it in a case, everything. What I'll do is that I'll separate it by date, I'll copy it and I'll give you back a copy, I'll keep a copy and I'll send a copy of it to the Tribunal.

A. What do you think of that story?

Q. Well I think that, because I have had to -- if you remember the time that we were down in the bank and the bank were threatening to sue me personally because I relayed some of the things that you had said to me and then Curran was doing his stunt. I can turn this thing off now.

(turns tape off)

Q. Just before we finish off. Just going back to the very beginning again, Tom. When Pat Hanratty came to see you initially, did you give him any papers?

A. I gave him -- I let him look at one or two.

Q. Did he take anything away with him?

A. No. No.

Q. He took nothing?

A. No, no. He made notes.

Q. Right.

A. He made notes of -- Gallagher did.

Q. But John Gallagher was with him, was he?

A. Yeah. They made notes of some of these figures here. They compared them because they had these.

Q. Can you remember when that meeting took place or would you have a date for it?

A. I don't know offhand. It was in March anyway. March-ish. March or April.

Q. So this was within the last, what, six to eight weeks?

A. Ah, no, it would be longer than that.

Q. Would it be before Christmas?

A. I have lost track of time, you know. No, no, since Christmas.

Q. Do you remember there was a scenario, I'm just trying to put it into context in terms of time. There was a scenario where I wrote to Hanratty and I basically said that if there was going to be any meetings, that it was your wish, at least at that stage, that somebody from my office, specifically if possible myself, be in attendance?

A. I think it was before that. The significance of them didn't mean anything to me. I felt I was outside of the jurisdiction and my comment was at the time originally when they contacted me was as far as I was concerned they were only there to do a white wash. They were political appointees.

Q. But when they came did they come with the Judge or did the Judge come separately?

A. Oh, when they came over, they came with the Judge.

Q. Right. And they came to your home?

A. No, no, I met them at the airport.

Q. At Heathrow?

A. At Heathrow airport, at the hotel. The basis that they insisted on was only to introduce me to the Judge and.

Q. Yeah.

A. And to assure me that he wasn't a white wash man.

Q. No. Well he's definitely not that.

A. That was the only reason. He did not discuss or go into anything on that, he got up and walked out.

Q. Uh-huh.

A. But they had certain information at the time.

Q. And what information did they have? Was there anything that they said that was new to you or was it all ...

A. No, I knew about the things they said. Number one, they had the files from the Fraud Squad, previously, they knew about that. They didn't show it to me but they said they had it. And number two, they were aware of donations I made to the party or to somebody.

Q. That was the 50,000 we were talking about?

A. That was the 50,000. I told them I gave 50,000 to Flynn as a donation to the party. And they wanted to know

why etc.. So I said I was more or less asked for it. And so that did I not consider it a corruption payment. I said no because I said why should I go to the Fraud Squad long before that, because I was being blackmailed but I considered that a donation to this party in light of the whole development.

Q. How long did the meeting take?

A. A couple of hours, I would say. An hour, over an hour anyway, an hour and a half or so.

Q. And they would have taken notes at that meeting. I'm only concerned insofar as if you had any papers that you've already given them, then we can't put them into discovery. If they haven't had any papers then all the papers that you have, we now must put into discovery?

A. No, I didn't give them any papers.

Q. Okay. Well then we have to put all the papers we can find ...

A. The one or two figures they had, and I just showed it to them.

Q. Okay. That's fine.

A. They took a note of the dates on one or two of them but this is only -- this is not the tip of the iceberg, you know that. They knew nothing.

Q. What I'm saying to you is that what I need effectively is for you to put all of the papers, good, bad and

Indifferent, into -- just into a case, literally.

A. Yeah.

Q. I'll send somebody over, take them back, photocopy them, catalogue them, put them into date order. And then I'm going to sit down with you again when we've done up the statement to basically say now, are you happy that that's what it says and then give it to them.

A. I don't know what I got because Liam destroyed a lot of stuff on me.

Q. I know. But whatever you have got left ...

A. I have enough to sink them anyway. That's a certainty.

Q. Well whatever you have left. We have to put it together and will you just check with Liam. I know you said that Liam said that he had destroyed the tapes. Will you actually get him to confirm that he didn't hide them away somewhere. Because they would be invaluable now.

A. Oh, yeah. I started -- when I began to get threats and that, that's when I started taping. I had a little recorder about that size and I had one of the briefcases with the little vent hole in it and I had it set up in that.

Q. Well, I mean, they -- how many tapes did you have do you know?

A. I had about six.

Q. Well if there's any --

A. Six of these little cassettes. Mind you, they are seven hour tapes.

Q. Okay. Well I think it is imperative at this stage that you check with Liam that, you know, that he just didn't put them away somewhere. That he didn't just destroy them. If he has destroyed them, fine.

A. If Thomas had anything to do with it they would be all gone, the whole lot, all this would be gone as well.

Q. Well okay. I'm going to start with this lot, start copying this lot and I will send it back to you.

A. There's a lot more that runs parallel with that, while all that was going on. And with my diary, I will put dates to a lot of it.

Q. Okay. Well what I am going to do is the original statement. When you are doing up your thing will you give me your diaries so I can pick out dates as well?

A. There was another false thing there, Furlong, Furlong Limited. I was telling you about the office, the other office block in Milton Keynes I had and I had a million and a half pounds -- well I had 5 million pounds in it. Let me see, three plus one, four and a half million.

Q. And what was that for?

A. It was for an office block I built. I paid for in cash and all that but a lot of it was lost.

Q. Ah yes, I remember you saying that before.

A. But one thing I totally forgot in all that scenario was I had a tenant for it and I had it sold on to an institution. Right? I said I lost all that. I lost the profit. I didn't lose the actual cost. I had it sold on to an institution and I had Legal & General, the insurance company, one of their offices was put into it. Right?

Q. Yeah.

A. The AIB came along, out of the blue, and they wanted it for their card company in England. They had a plastic card set up in England. So because it was the AIB I decided I would go along with them. So we had them in at 16 pound at first. And they hooked and they thwarted about and they farted about and farted about and investigations and layouts and freeholds and, you know, the whole thing. And they kept it going and going and going and going and going and going until ...

Q. Yeah.

A. Anyway, at the very last minute after they put the screws on me and I handed over to O'Callaghan they pulled out. But I never thought of the significance of that. The next thing was the crash came over here and I couldn't let the place at the same money and I lost out one and a half million pounds. I began to realise that had I -- the extra one and a half million pound O'Callaghan would have been out of my hair because I would have paid him off.

Q. He would have been gone?

A. He was gone and the bank couldn't do a fucking thing about it.

Q. Jesus, painful, Tom.

A. So I lost that one and a half million. That was my, nest egg here. Because I'm not a money man, you know.

Q. Yeah, yeah, yeah.

A. I used to build fantastically good canopy equipment and all that. It wasn't the money I was making out of it but I used to get a great kick out of doing it. But there was one and a half million pound. That's what Vera always said to me, you should have stuck to Milton Keynes, you should have stuck to here.

Q. You got some hiding when you came to Ireland.

A. There was some of the companies, some of the big boys, John Whitblack and people like that would pay me a million pound just so set up a deal for them and I wouldn't bother.

Q. Back to where we need to be. Two things we need. One --

A. It's all fucked up anyway.

Q. It is. Yeah. But I mean also let's keep going where we're going at the moment. Two things I need. One is, whatever papers you can find. They may be the most insignificant as far as you're concerned. Still, I need to

get them.

A. I hope he hasn't burned them but there is a whole room full. It's a daunting task because there's a lot of other stuff in with it, you know, liquor deals I did. Milton Keynes, Northern Ireland, you know it, you know.

Q. Yeah. But, I mean, anything. I don't have a difficulty of actually going through all of those papers. If you want me to come up, I'll do it.

A. Ah no, no. I'll get it out for you. It was when I was so tied between Vera and one thing and another but Thomas is free now for the next few months. So he'll be able to do a lot of the work and help with Vera.

Q. Right. And then you can pull it out.

A. And I'll pull it or I'll spend my time on it and pull it all out and sort it out.

Q. And just, as I said, put it in a case. I'll copy it. I'll tabulate it ...

A. Well if I thought I would get the fucking bank then I would go for it, I would.

Q. But you're not doing yourself any harm, believe you and me. That if they reopen the case on the basis that they showed the bank did not --

A. Not that it's the money I'm after. But it's my family who were fucking put through it by gangsters.

Q. Well, I mean, if for no other reason than the

justification of showing up the corruption that went on. That's what the Tribunal is all about.

A. But you must know more about that than I do. I'm not pointing the finger at you. Between you and I, you're a man of the world, you're a businessman and you're in Dublin.

Q. Yeah.

A. It's the most fucking corrupt place on earth. [redacted]. I know he is a client of your's. Now you don't comment.

Q. I can't.

A. You don't comment at all but I used to meet Lawlor and O'Keeffe and them and they used to insist on me meeting them. They were on their way to Baghdad and some of the fucking things they were discussing, the rip off that was going on. Openly! The Green Core episode.

Q. [redacted]

23 [redacted] K

A. [redacted]

Q. [redacted]

A. [redacted]

23 [redacted] K

Q. [redacted]

A. [redacted]

[redacted]

Q. [redacted]

[redacted]

A. [redacted]

[redacted]

Q. [redacted]

[redacted]

A. [redacted]

Q. [redacted]

CONCLUSION OF TAPE.

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PAT HANRATTY AND THOMAS GILMARTIN ON THE MORNING OF THURSDAY 5TH FEBRUARY 1998

[redacted]

Mr. Gilmartin said that he did not want to become involved in the Planning Tribunal. He said that his wife suffers from [redacted] and he has a family to rear. He has already been threatened on a number of occasions.

He says there are a number of honest people in Dublin to whom we can talk but they may be reluctant to talk because they are fearful for their positions in their employment. One is **Mick McCloone**, the Borough Valuer. Mr. Gilmartin says that Mick McCloone has an enormous amount of damning information about corruption in the planning process but he may be reluctant to become involved as well.

Mr. Gilmartin says that the amount of money changing hands in bribes in the planning process in Dublin can be counted in millions if not tens of millions. Most of the money in question is held in offshore accounts.

In relation to his own situation, his experience in Dublin was horrendous. He was involved in two projects - one involving Bachelor's Walk and the other on the west side

of Dublin in Clondalkin. In relation to the proposed development on the west side of Dublin, he had bought the land and he found himself in a situation where he was being put under pressure from all kinds of *"spin doctors"* who were trying to shaft him. He says that O'Callaghan of Cork was involved in the shafting operation. He says that the shafting did not take place in the form of a refusal of planning. He said that he would be unable to deal with any planning issue. It was more a question of undermining his project, presumably for the benefit or in the interest of others.

There was a development group in Dublin Corporation (most of whom were straight). They included **Bill Lacey, Paddy Morrissey, Sean Haughey** and **Mick McCloone** and some others.

[redacted]

[redacted] They were of the view that Burke would have to resign to stop the investigation of planning matters. The parties involved consisted of a consortium, [redacted]

[redacted]

The offices in which the meetings took place were the offices of **Seamus Maguire**, Solicitor, in Blanchardstown. Maguire wanted no part of it. Mr. Gilmartin believes that if Mr. Maguire was subpoenaed, he would not lie because of his concerns *viz. a viz.* the Law Society.

Mr. Gilmartin spoke of a deal between **Mr. Brady of Brady Garages** and George Redmond and Liam Lawlor, T.D. Brady wanted access to the new motorway which went behind his premises in Blanchardstown. The deal was that he would pay £40,000 **to Liam Lawlor and George Redmond.**

Later, Liam Lawlor bought a second Mercedes motor car from Brady. The car previously belonged to a Mr. Keating of Kepak. Brady sold the car to Lawlor for £40,000 including servicing, cleaning and delivery. He sent a young fellow with the car to deliver it to Lawlor and to collect the cheque for £40,000. Lawlor gave him a cheque for £20,000 and said that everything was okay. The young fellow came back to Brady and told him that Lawlor says that the price was £20,000. Brady went spare. He telephoned Liam Lawlor and Lawlor told him that he (Brady) owed Lawlor £40,000 in respect of the motorway deal. Brady said that he had paid the £40,000 to George Redmond. Lawlor said that he had got nothing and Brady told him to "*fuck off*" because he had paid the £40,000 that was agreed. Apparently, Lawlor then got on to George Redmond and he also told Lawlor to "*fuck off*". Lawlor said he was holding on to the car and not paying any more and that this was part of his consideration for the motorway deal.

Mr. Gilmartin alleged that Albert Reynolds was using Ray Burke in relation to IDA matters. He said that after Ansbacher Bank pulled back, Ansbacher was kept on by a number of people as a front to maintain the respectability of the name. This involved a fellow called Moloney, Charlie Haughey and, to a considerable lesser extent, Phil Manahan.

Ph memo of

Mr. Gilmartin alleged that the **Cork County Manager** is in the pocket of **O'Callaghan.** The appointment of Fitzgerald was engineered. It should have been Brady. The County Manager had the casting vote.

Mr. Brennan alleged that people who were *"up to their eyes"* in it were Padraig Flynn, Albert Reynolds, Ray Burke and Seamus Brennan.

He said that on a particular date in 1994, the 11th March, 1994, Albert Reynolds was in a particular private house in Cork to collect his views before flying off to America. He went to this house and got his *"bag"* and then left in the Government helicopter. The house belonged to O'Callaghan. Noel C. Duggan was also involved. Gilmartin says that these people were blatant in relation to the influence they had and tended to talk about it.

There was also a huge collection in Millstreet where, again, Reynolds flew down in the Government helicopter and received a huge collection of donations.

The people who Mr. Gilmartin believes to be honest in the Local Authority are Al Smith, Mick McCloone, Paddy Morrissey and Sean Haughey. Apparently, Sean Haughey told Redmond in Gilmartin's presence that he would have him out of his job if he played anymore of his dirty tricks. Redmond made an application for a one year extension to his contract and Haughey blocked this.

One of the councillors who should be looked is John Gilbride. He was an organiser for Ray Burke.

Another councillor to look at is Hanrahan and another one is McGrath. The latter was described by Gilmartin as a person who had his hand out all the time, individually and collectively.

He asked me had I ever spoken to Maeve Sheehan of the Sunday Times. He said that he made an off-the-record statement to her a number of years ago.

Mr. Gilmartin says that Frank Dunlop is a major bag-man for cash payments to Fianna Fail. He had a major input in relation to Council decisions and rezoning decisions. He also played a major "*bag-man*" role in relation to the International Financial Services Centre. He said that there were major dirty deals involved in that venture and that at one stage, a lot of the big players fell out and it nearly got to the stage where the "*cat got out*

of the bag". However, eventually in their own interests, they all compromised their disagreement.

[redacted]

Mr. Gilmartin referred to an incident where the Corporation wanted to buy a certain property in Dublin. George Reynolds engineered that this property should not be bought by the Corporation. Subsequently, it was bought by a private developer and sold to the Corporation at a huge profit. Mick McCloone knows all about this. We should ask him about it.

Ph memo of telephone conversation Gilmartin. doc

- When the money was paid out of Barkhill to F. Dunlop and Shefran it was at a time when Barkhill was virtually dormant. It was waiting on the review of the development plan which was supposed to have occurred in 1988 but did not occur until 1993. Barkhill was not trading at all and was not in fact involved in PR or marketing. At the time of these pay-outs there was no zoning and no planning permission. There was nothing to market or to do PR about. AIB must have known this.

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PAT HANRATTY AND THOMAS GILMARTIN ON THE AFTERNOON OF FRIDAY 20TH FEBRUARY 1998

1. [redacted] C

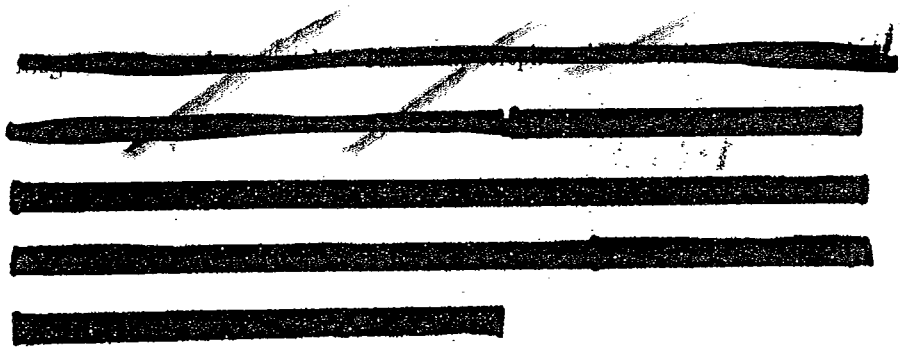
2 [redacted] C

3 [redacted] C

4 [redacted] C

4 [redacted]

5 [redacted]



5

J

6 Going back to the conversation on the telephone with Mr. Gilmartin, he said that basically he had been shafted by O'Callaghan. In the first instance, he had to pay O'Callaghan £2m. to go away. However, O'Callaghan came back, the second time with the support of a number of politicians. Mr. Gilmartin pointed out that he had put together one of the best developments the country had ever seen and that O'Callaghan and others were keen to get in on the act. The second time that O'Callaghan came back, he had the dirty tricks brigade of the Government who started a dis-information campaign against him orchestrated by Frank Dunlop.

7 The dis-information campaign extended to the Inland Revenue in England who, as a result, pursued him and petitioned him in bankruptcy successfully for £10m. He had subsequently had this set aside but at great difficulty and at substantial cost. This placed him in the position were Allied Irish Banks in Ireland forced him out and forced him to sell-out to O'Callaghan which was the object of the exercise of O'Callaghan and the dirty tricks politicians.

8 O'Callaghan then got money (£300,000) paid to Frank Dunlop (who was the *"bag man")* and he paid off the Councillors including Hanrahan, Lawlor and

others. There had been meetings between Lawlor, O'Callaghan and Dunlop in Dail Eireann and elsewhere. The reason that he was forced out was that he would not pay-off the corrupt politicians. Subsequent to his departure, O'Callaghan paid-off the corrupt politicians and ultimately got rezoning for the development.

9 Gilmartin had to engage Noel Smyth to extricate his money. Smyth threatened proceedings all around the place including Allied Irish Banks and in particular threatened that he would subpoena Albert Reynolds to give evidence if Gilmartin did not get his money back. It was for this reason that he got his money back. He had to pay Smyth £750,000 to get his £7m. back.

10 

11 Mr. Gilmartin said that there were occasions where he had to meet delegations from the Irish Government on their way to negotiate beef contracts in Iraq. He actually was called to meet these politicians in the airport where they were sitting around the table waiting to receive payment from Mr. Gilmartin.

12 In relation to the Bachelor's Walk site, the deal was that 20% of this multi-million Pound development would be set aside for the politicians. They designated a part of the quays as a tax-free area to *"show calm"* to Arlington

Investments Limited (and, presumably, Gilmartin) to show that they could deliver. Ambrose Kelly was in on the act with O'Callaghan. Mr. Gilmartin said that Liam Lawlor was only a small fry compared to some of the real players.

13 During the course of the telephone conversation, Mr. Gilmartin mentioned a company known as Sefran Limited. This was a company through which monies were paid either to or by O'Callaghan. He also mentioned a company called Barkhill Limited. This was Mr. Gilmartin's own company which was taken over by O'Callaghan. Mr. Gilmartin indicated that it would be worthwhile looking at these companies.

6 [redacted] B

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN JOHN GALLAGHER AND THOMAS GILMARTIN ON FRIDAY 20TH FEBRUARY 1998

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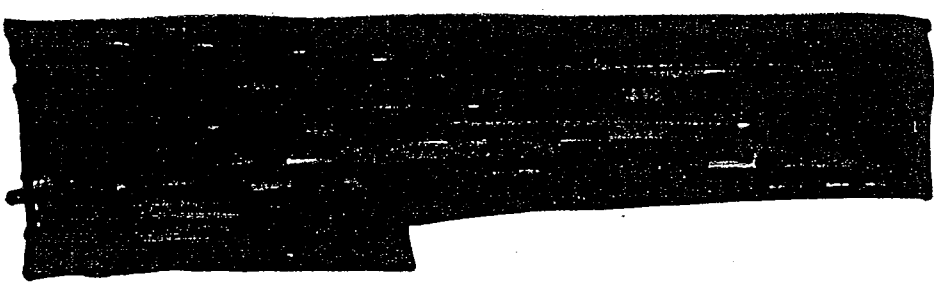
1. On Friday 20th February, 1998, I spoke with Tom Gilmartin on the telephone. He suggested that we should make enquiries with Deloitte & Touche and should serve Orders of Production and Discovery in relation to Barkhill Limited. This was a company set up by him in relation to the Quarryvale site which was taken over and which he still believes is trading. He says that Frank Dunlop and Ambrose Kelly were paid out of this account and that Dunlop got between £300,000 - £500,000 to pay politicians. He was under pressure from AIB at one stage and Michael O'Farrell of AIB was brought in to deal with the problem that Gilmartin posed for the Bank. He had previously dealt with Eddie Kaye who was a very decent man who was sidelined and is now retired and living some place in the south Dublin area. He is a great yachting and sailing enthusiast. Another AIB Executive dealing with the matter was Dave McGrath.

2. Gilmartin recalled that he had been at a private dinner in Finnstown House on one occasion when Liam Lawlor arrived unannounced and started to bad-mouth the site in question – described it as being in bandit country.

3. Gilmartin says that he would draw the line at stealing and corruption as he believed in an after life and believed that you could not bring money in a shroud.

4. He believed that Frank McDonnell of the *Irish Times* had been paid to write articles which were derogatory of the proposed development at Quarryvale.

5. He said that he had been forced to sign documents by the Bank and had been held captive until 12 o'clock midnight on the night that the Quarryvale zoning went through.

6. 

7. He said that Arlington Securities plc owned the Bachelor's Walk site and did so through a number of companies including a company called Desk Top Securities Limited. He said that after the Bachelor's Walk deal went sour, he was paid £1.25m. for his share in the Bachelor's Walk properties and that he had been very fairly and very decently treated by Arlington Securities. British Aerospace later took over Arlington Securities plc and Ray Mould (?-spelling) later established Pillar Properties which own a shopping centre in Clandeboy and in Derry.

8. Gilmartin says that he met Flynn and Ahern in the Park Lane Hotel. They said that they were collecting for Fianna Fail. The directors of Arlington thought

that the request was for a contribution towards the party funds but he implied that it was otherwise.

9. Gilmartin said that he gave £50,000 to Padraig Flynn as a contribution towards the Fianna Fail Party. This was about 1988 when there was a *"hung Parliament"*. He says that Fianna Fail never got this amount and that Flynn kept it for himself. He says that Flynn told him to leave the name on the cheque blank and he handed a blank cheque to Flynn. He was later approached by Sean Sherwin on behalf of Fianna Fail who was seeking a contribution. He told Sherwin that he had already contributed substantially towards Fianna Fail by paying £50,000 to the Party and Sherwin told him that Padraig Flynn had put it in his pocket.

10. He said that the cheque was drawn on Bank of Ireland in the Blanchardstown Branch in Tom Gilmartin's own name. He had the account in the Blanchardstown Branch using his Luton address.

11. He also said that Liam Lawlor was paid £3,500 per month out of this account also. These payments continued – that Lawlor was paid a total of £35,000 - so the contributions continued for approximately ten months.

12. Lawlor attended a meeting with Arlington and arrived unannounced and unexpectedly to the meeting. He said that he had been sent by the Government and wanted 20% of the action.

13. At that meeting were Ray Mould, Humphrey Price – who was the Financial Director of Arlington – Ted Dadley and Gilmartin. Gilmartin says that he left that meeting because he was so ashamed of the demands that were being made.

14. He said that the cheques for £3,500 which came out of his account and which were paid by him on the instructions of Arlington were made payable to cash except on one occasion when the name was left blank and he does not know what name was inserted as payee.

15. He said he was introduced by Senator Willie Farrell to John Gilbride, a Dublin County Councillor. Gilbride was a native of County Sligo and Gilmartin knew Gilbride when he was a young man. He was a reformed alcoholic and was a son of the late Eugene Gilbride, a Fianna Fail T.D.

16. Gilmartin explained to Gilbride the problems he was having in relation to the Arlington situation and the site on the Galway Road. He said that Gilbride always defended Lawlor and Burke and Gilmartin then realised that Owen O'Callaghan and Ambrose Kelly were directing operations. He said that O'Callaghan was very big in Fianna Fail and was able to deliver the Cork Fianna Fail vote to Charlie Haughey in internal party situations.

17. He said that O'Callaghan and Frank Dunlop, the Fianna Fail Public Relations man, were very close. County Councillors started backing off the Quarryvale project Gilmartin was being held to ransom. He was under pressure from the

Bank and from the Revenue Commissioners. He said that Gilbride was being paid by O'Callaghan and Gilbride was under instructions from Charlie Haughey and Ray Burke. Gilmartin says that Gilbride got £100,000 approximately.

7 [redacted] B

MEMORANDUM

26th February, 1998

RE: Planning Tribunal of Inquiry

1. Following the departure of the Sole Member, Mr. G. who was wary at first, got down to discussing his experiences with the various relevances in which he was involved. He repeated virtually everything he had said in the course of his earlier conversations with Pat Hanratty.

2. He informed us that Leo Fleming of Deloitte & Touche was the accountant dealing with the Barkhill Limited accounts.

3. He talked of his concern at the number of payments that were made out of the accounts of that company to Chefron and to Frank Dunlop and furnished to us a photocopy of an invoice No. 740 of the 1st October, 1992 from Frank Dunlop to Barkhill and a copy of Schedule 5 of the Public Relations/Marketing Costs of Barkhill Limited to the 30th April, 1992.

4. He does not know what the payments to Chefron were for.

8 5. [redacted] A

[redacted]

[redacted]

[redacted]

9 A

6. He also furnished a location map showing the location of the Quarryvale development and adjoining developments and suggested that we should talk with Michael McClune who has a significant amount of information available to him.

7. He recounted an occasion when he was asked by an Eoin O'Callaghan to Clondalkin. He felt that he was going to inspect a site or meet somebody of some significance. O'Callaghan took him to a pub where they sat for some time. They were then approached by a man wearing dark glasses who threatened Mr. G. and said that they had a file on him in relation to his activities in the North.

8. Mr. G. explained that this meeting was intended to frighten him and to ensure that he would not continue with any development in the Clondalkin area.

9. He explained how he had come to acquire the sites in the Bachelor's Walk area and the pressure that was put upon him by politicians. He repeated the stories about Liam Lalor, O'Hanrahan and named Cathal McGrath and Sean Gilmore as two other councillors who had looked for £100,000. He said that Marian McGuinness was a very close associate of Liam Lalor's [redacted] He said that Gilmore had taken a sabbatical for one year and had been paid £100,000 presumably by O'Callaghan or one of O'Callaghan's companies.

10. He said that he had been present in the forecourt of Brady's garage when Brady learned that Lalor had only paid half the price of the £40,000 car and was also present – but not known to Brady – when Brady decided that he would re-possess the car and employed two young men to do this. The AIB Corporate Banking reference was 5519/32 and the lady dealing with the matter there was a Mary Basquille. He said that Michael O'Farrell was transferred, from AIB in Cork to manage the section to which he was dealing and Des McGrath of AIB was also the *"hard man"* who forced him to deal with O'Callaghan and to give a share in Barkhill to AIB.

11. Mr. G. readily acknowledged that AIB was entitled to take action to recover the money it was owed in respect of the Quarryvale site but he said that they had no entitlement to require him to give a substantial part of his company to AIB and to Eoin O'Callaghan. He says that O'Callaghan has never paid any money in respect of the Gubay site at Irishtown Road/Fonthill Road and that he (O'Callaghan) acquired the Quarryvale site in circumstances where Mr. G. had paid him close on £2m. and owed O'Callaghan approximately £1m. arising from O'Callaghan's decision not to develop the Clondalkin/Neilstown Shopping Centre which, according to Mr. G., would never be viable in any event because of the inadequate road access in the area. He confirmed that he had paid £50,000 to Padraig Flynn in the Park Lane Hotel or in a hotel in Park Lane in or about the time of the *"hung Parliament"* In 1987 or 1988 approximately. This was drawn on his own account in Blanchardstown and the name of the payee was left blank on the cheque. This was at a time when he was endeavouring to have the development at Bachelor's Walk and Quarryvale get off the ground. He said that the designation of an area extending westwards along the quay to Jervis Street (Capel Street?) was done in order to show him what could be done by the politicians who had requested a 20% share in the company.

12. Mr. G. stressed that his wife is seriously ill and is pleading with him not to become involved. He also stressed that his family is very strongly against his becoming involved in any way.

TELEPHONE ATTENDANCE

Between Patrick Hanratty and Thomas Gilmartin

10 [redacted] C

TO: Patrick Hanratty

DATE: 17TH April, 1998

11 [redacted] C

I subsequently received a telephone call from Thomas Gilmartin himself and he also made the point that it was as a result of his delay and not that of Noel Smyth and Partners that we did not yet have his statement.

He said he was coming over next Thursday. [redacted] C

12 [redacted]

He suggested that we should have a close look at Rega. Mr. Gilmartin said that he had a huge volume of documents but that his son burned a large volume of them about a year ago.

Mr. Gilmartin said that Colin McGrath a Councillor from Clondalkin got £30,000 from Callaghan. Gilbride was a gofer for Burke and apologist for Lawlor.

13 [redacted] B

[redacted]

Mr. Gilmartin made the point that the bank pulled the plug on him at the time of the re-zoning motion. He raised the question "why would a bank pull the plug the day before a re-zoning proposal which would hugely enhance its value"?

It would be worthwhile talking to Eddie Keyes. He is a Protestant and he is straight and was not treated terribly well.

We should also have a look at Ambrose Kelly and An Bord Pleanála. There is an issue relating to Pat Dunne but he said he did not wish to speak ill of the dead [redacted]

Raymond Mold is with Pillar Properties Plc. Humphrey Price is the Pillar Properties Finance Director. Mr. McCloone has a lot of information. It was Fassnidge who introduced me to Lawlor. He made an arrangement for me to meet him in the Dead Man's Inn. Lawlor asked for £5m. He first asked for a stake in the Batchelor's Walk Project and I told him that this was not a runner. It was then that he asked for a stake of £5m and I said that it still was not a runner.

Padraig Flynn and Bertie Ahern invited Arlington to a hotel (in London?). This was a "fund raising event for Fianna Fáil". Demands were made for money off Arlington Securities Ltd.. I met Padraig Flynn later that day for a meal. He talked around in reels. I pretended not to know what he was on about. After that evening Flynn and me were cool.

In the cheques which were given to Liam Lawlor the Payee was left blank and he filled in the Payee himself.

Berkhill was set up by Oliver Freeney.

Pat Hanratty
20th April, 1998

14 [redacted] B

ATTENDANCE

16TH June, 1998

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PAT HANRATTY, S, C. AND THOMAS GILMARTIN ON 16TH JUNE 1998

1. I received a telephone call today from Tom Gilmartin at 1.10 p.m. It lasted approximately one hour and fifty minutes.

2. Mr. Gilmartin said that he had recently been speaking to his solicitor, Noel Smyth, and that he was concerned about something he said to him. Apparently, Mr. Smyth told him that he had received a visit from Liam Lawlor on the basis that Mr. Lawlor asked for a meeting to discuss a proposed land purchase. According to Mr. Smyth, this turned out to be a pretext and what Mr. Lawlor really wanted to discuss was *"other clients of his office"*. Mr. Smyth said that Mr. Lawlor was talking about Tom Gilmartin and appeared to want to get Mr. Gilmartin "*on side*".

3. Mr. Gilmartin enquired from me whether we had been engaged in any activity recently concerning Mr. Lawlor [redacted] C

26 [redacted] Mr. Gilmartin said that that was what he thought and that his real concern was in relation to Mr. Smyth and why Mr. Smyth would introduce the subject of Mr. Lawlor at this stage.

4. Mr. Gilmartin said that Mr. Smyth acted for Phil Monaghan and that he and Mr. Lawlor would be no strangers. He appeared to be concerned that Noel Smyth might be in some kind of a conflict of interests situation. [redacted]

27 [redacted] C

28 [redacted] C

5. Mr. Gilmartin mentioned that the statement that had been sent in was sent in without his having had an opportunity to proof read it. [redacted] C

29 [redacted] He said that he had not and that he was not reassured by this. [redacted]

6. Mr. Gilmartin said that the reason he was telephoning was that he was concerned and that he wanted to talk to somebody. [redacted] C

30 [redacted]

31 [redacted] A

7. Mr. Gilmartin then went on to recount some of the matters about which we had previously spoken. He said that in the early stages he was given a Government document that outlined three options. They were:-

(i) Designate the area;
(ii) Apply for a material contravention; and
(iii) Wait for a review of the Dublin Plan.

Mr. Gilmartin said that Mr. O'Callaghan paid politicians to stall the review of the Dublin Plan because they knew he was on borrowed money from AIB. Mr. Gilmartin said that he would not, under any circumstances, bring in Ambrose Kelly. He said that O'Callaghan was trying through Fintan Gunne to get on board. He said that Frank Dunlop set up office in Dail Eireann beside Liam

Lawlor. They brought in Marian McGuinness who was operating out of Lawlor's office. Marian McGuinness was one of Gilbride's stars.

8. Liam Lawlor and Batt O'Keeffe were involved in the Baghdad affair. There was huge money involved.

9. Fintan Gunne told Mr. Gilmartin that he would never get planning in Dublin unless he got Ambrose Kelly on board. Fintan Gunne lined up Ambrose Kelly, Ollie Freaney and another man called O'Hara from Bruce Shaw & Partners. Mr. Gilmartin did not wish to use any of these people because he did not want too many people in Dublin knowing his business. Somebody put about a rumour that he was dealing with a bunch of loyalists. This was presumably due to his Lisburn development.

10. It was Ambrose Kelly who brought Callaghan into the picture. Mr. Gilmartin had been told that Ambrose Kelly had An Bord Pleanala sewn up. This was around 1986/1987. He had a man in there. He could not remember his name. He did not think it was Liam Tobin although he had heard the name Tobin. He had also heard the name Phibbs but it was not him either.

11. There is a planning issue in Ballsbridge at this moment. A friend of his had to pay substantial money to a planner to obtain planning permission. It related to a bed and breakfast development. It was his whole livelihood. There were also three or four others who paid up (presumably in relation to different developments). Mr. Gilmartin was unwilling to provide the name of the individual who had to pay this money. He said that he would be betraying a close friendship if he did that.

12. 32 [redacted] C He said that it would frighten the life out of his friend if he told him to do that.

13. 33 [redacted] C

[redacted] Mr. Gilmartin suggested that we look at a recent expansion development at [redacted]

34 14. [redacted] C

35 [redacted] A

[redacted] He has not been able to come over to Ireland recently because of his wife's deteriorating health. [redacted] A

36 [redacted]

37 [redacted] B

Memorandum of meeting with Thomas Gilmartin at the Strathmore Hotel, Luton on Wednesday the 30th of September 1998

Present. John Gallagher SC, Patrick Hanratty SC, Desmond O'Neill BL

Mr. Gilmartin said that he was concerned at the kind of questions we had put to mr. Sherran. He said that Mr. Sheeran was questioned about signing cheques.

38 [redacted] C

[redacted] Mr. Gilmartin said that Seamus Maguire had telephoned him and said that there was pandemonium in Dublin.

39 [redacted] K

40 [redacted] C

He then went on to discuss a number of matters. From this point the note is expressed in the first person singular.

The date of my abortive meeting with George Redmond was the day that I made my complaint to Sean Haughey. It was the 23rd of February 1989. A Mr. Vaughan was at the meeting. He may now be deceased.

John Higgins of Ove Arrup was at the George Redmond meeting. So was Morgan ??? (now deceased). We also had a Mr. McCammin. John Higgins can confirm that this meeting was arranged.

41 [redacted] B

We should talk to **Martin McLoone** about his meeting with TG on the 23rd of February 1989. This was the day TG went and made his complaint to Sean Haughey and the day before the meeting with Frank Feeley.

In January 1989 I had a meeting with the Bank of Nova Scotia. I met **Brian Perry**. He said that the previous day he was at a meeting with a bank called Ansbacker which was attended by a man called **Maloney** and **Phil Monahan**.

Perry said to me that O'Callaghan has done it again and that you are in for a rough ride.

The shopping centre cost was #8 million to buy the land and #70 million to build. When it was built a pension fund would buy it for #200 million. Scottish Widows and LET were interested. Pension funds were queing up for it. They would finance the building of it and then buy it when it was built. It would cost me nothing.

I won two design awards for the brochure for Quarryvale.

I paid **St Patrick's Trust** #150,000 for an option on the lands on either side of Hermitage golf club. The idea was to build a 700,000 sq. ft. shopping centre the proceeds from which would then fund the next phase of the development which was the leisure centre. This was to be on the Dublin side of Hermitage golf club. This consisted of a full facility leisure centre including olympic pool, tennis, restaurants etc.

The shopping centre would yield in excess of #100 million in profit. The first thing you do is to talk to the retailers. **Roy Harris** of Shearer Harris was the best retailing agent in England. **Taggarts** from Marks & Spencer were on board. The breakdown of the centre was

350,000 sq. ft. Superstores

250,000 sq. ft. Unit shops

42 [redacted] B

150,000-200,000 sq. ft. malls

The malls would generate advertising income. All the big units were sold. The big operators would buy their own units. The 350,000 sq. ft. of Superstores would be sold for about #35 million. They would cost about #10 million to build so there was about #25 million profit. The unit shops would be let (by the pension fund) at rents ranging from #100 per sq. ft. to #40 per sq. ft. It averaged down to about #60-70 per sq. ft. In our calculations we were using #40 per sq. ft. and that would calculate out at an income of #10 million. These figures were very conservative and in fact the actual income worked out at #16 million. We would sell at 6%.

The brochure got the design award for 2 years running.

Donal Cullen of the IDA attacked me that night (the night of the launch ?) So did **Frank McDonald.**

I started this in 1983. In 85/86 I presented my plan to the Government and they begged me to put it together.

I had meetings with Joe Hayes of the Independent.

I met **O'Hanrahan** in Buswells hotel one day in January 1989 at 4.30 pm. I met **Seamus Brennan** the following day.

On Wednesday the 29th January 1989 I met **O'Hanrahan**. **O'Callaghan** was standing at the bar with **Ambrose Kelly**. I was told I had to meet councillors and this was arranged.

I met **Gannon** (Labour) at 2.30 pm at the Council offices. I was given a phone number to ring **Fleming**. I met **Marian McGennis** at 3.30 and **O'Hanrahan** at 4.30. I was told the councillors who would be doing the voting and that I would have to see them. **Hanrahan** said that **Flynn** had fuck all to do with it, it was down to the Councillors. I met Flynn that day in the Custom House in the evening; maybe 7.00 pm.

[redacted] B

43

I had several meetings with **Flynn** in the Custom House.

I had a planning consultant calleld **Kieran O'Malley**. He knows what went on. (He may have been at some of the meetings with Flynn???)

The people who assembled for the meeting with **George Redmond** in his offices in O'Connell St. were

John McCammin, Taggarts (Marks & Spencers architects)

Malcolm Noyce + 2 English Ove Arrup people

John Higgins

Kieran O'Malley, Planning Consultant.

Richard Foreman, Connell Wilson, now Lambert Smith, Hampton.

Ian Bond, Bruce Shaw & Partners.

McLoone warned me that Neilstown had the zoning.

It was intimated to me by **Liam Lawlor** that **McGennis** had to be looked after

I had offices in 25 St. Stephen's Green. **McGennis** came to these offices and I showed her the plans.

A statutory instrument was handed to me by **P. Flynn**. This was at a meeting in the Dail. **Seamus Brennan** and **Brian Lenihan** were at the meeting. It was an options document. [redacted] A

44 [redacted]

If I got in soon enough for outline permission then I would have got in. But there was a problem in relation to outline.

45 [redacted] B

The Indication was that one of the steps referred to in the document could be taken to get the project off the ground [redacted] A

46 [redacted] There were 3 options.

[redacted]

Flynn said to me the other night that Kavanagh was out to discredit me. Dunlop was on to a number of papers recently

Kavanagh might be the man who asked for the #5 million after the Dail meeting.

47 [redacted] The man who asked me for the #5 million A had roughly the same build as Pat Hanratty.

I have been threatened. One caller told me to remember Veronica Guerin. Another told me my daughter's address in Cork

48 [redacted] J, K

I have a friend in Cork who told me of a high powered meeting which took place in Cork last week attended by a TD whose name I will give you later if necessary. Bertie Ahern, who was in Cork to select a candidate for the bye election, was at the meeting. It was a high powered meeting and they were discussing me.

IBI Kevin Doyle was in Bank of Ireland, Isle of man. He was promoted to Jersey.

I met a Mr. James Palmer at 178-202 Great Portland St. I think it was in January 1989 and that it was on a Monday. There was not a proper stick of furniture in the place. He said that it was a fantastic scheme but that I did not seem very co-operative. He said that I did not have the right people on board. He advised me to take on certain people. He said that Mr. Haughey was not very happy with

49 [redacted] B

me. He said that I should make an appointment to meet a man whose name he was giving me. He said he would be in touch with me. Two days later I got a phone call to tell me to telephone a man called **Dr. P. McCarthy** at 00 01 460000. I was told that he was in Balgriffin Dublin 17 on the Malahide side of a cemetry. Near Campion's pub.

I rang **Dr. McCarthy** and I arranged to go out to meet him. The inference was that I was to take him on but I already had Ove Arrup. The inference was that he had **Charlie's** ear. Success or failure depended on whether I took him on. Palmer also said that I had to take on **Ambrose Kelly**.

Dr. McCarthy was an enlightened intelligent man. He made no demands [redacted]. He said that it was a great scheme. I left him as I found him. I never went back to him.

Fintan Gunne insisted that I took on **Ollie Freaney**. Ollie had Charlie's ear. Every time I made an appointment to see **Fintan Gunne**, **Ambrose Kelly** and **O'M (? O'Callaghan)** were standing in the hall. **Ambrose Kelly** followed me around Dublin. I took exception to Ambrose Kelly. He is not even an architect. Every hotel I booked into he appeared. I was told by **Gunne** I had to have him on board. As it happened, **Ollie Freaney** set up Barkhill. **Gunne** double dealt me on Van Hool land. The deal was #600,000 but wound up at 1.3 million because Gunne was taking commission of the vendor as well. That finished me with Gunne.

Harrington was a witness to some of this. **Gunne** told me I had burned my bridges. He talked about having **Charlie's** ear. **Callaghan** was operating out of Kelly's office.

Mulryan of Ballymore homes got zoning on St. Pat's. There is a bit of a story behind that.

50 [redacted] B

51 [redacted] J.K

On the 16th of May 1989 I got a message to ring Padraig Flynn to arrange a meeting for 4.15 pm on that date. The number I was given was 0001 789911 extension 464. He wanted to discuss the degree of support for the project and possible methods of applying for planning and timing and tax incentives. I have a diary entry about this.

There was a meeting in the Department of Industry and Commerce in Kildare St. Seamus Brennan and Padraig Flynn were there as well as a civil servant called Farrelly. Farrelly was also at another meeting I attended with Derek Brady of the County Council. Farrelly started to appear after I made the complaint. He was a small dour fellow.[1]

52 [redacted] C

1. 53 [redacted] C

2. 54 [redacted] C

John Gallagher, S.C.

55 [redacted] B

56 [redacted] A

McMullen-con man

McEnroe-Tom Forde. Fish for oil

Forde introduced me to Gabriel McEnroe.

Michael ? Traffic

767033 Reid McHugh

Tom Boland-nice little man.

Neilstown had 119 acres. Blanchardstown 180, Tallaght 180, I had 119.

The first poll taken of the Councillors was 11 to 1 in favour.

The last meeting I had with Flynn was on the 10th May (1989). The other one may have been pencilled in in the wrong place.

57 [redacted] K

He left us to Luton railway station. After John and Desmond had got out of the car he turned to me in the back of the car and said "don't forget that matter we talked about." I asked him which matter and he said "immunity." I said that we did not think that he needed immunity but that if he wanted it we would get it.

Patrick Hanratty

58 [redacted] B

Memorandum of meeting with Thomas Gilmartin at the Strathmore Hotel, Luton on Friday the 2nd of October 1998

Present: John Gallagher SC, Patrick Hanratty SC

Mr. Gilmartin agreed on the telephone with Patrick Hanratty SC on the 1st of October to meet again at the Strathmore Hotel, Luton at 10.30 am on the 2nd of October 1998. Mr. Gilmartin said that he could only stay for an hour as he had a number of pressing commitments at home.

He arrived at the meeting at 11.15 pm.

59 [redacted] K

60 [redacted] C

61 [redacted] A

At some stage during the course of the meeting TG suggested that we should speak to John Pillock of Deloitte & Touche, that he may know something.

He also mentioned his exit contract with Arlington. It was under this contract that he was paid his 1.25 million. He thinks that the #35,000 he paid to Liam Lawlor was separately itemised in this agreement.

Patrick Hanratty

Telephone attendance on Thomas Gilmartin on Monday the 5th of October 1998

Telephone conversation between Thomas Gilmartin and Patrick Hanratty

62 [redacted] A.C

TG stated that he had been speaking this morning with Paul Sheeran and that he seemed to recall that the names filled in by Liam Lawlor on the cheques on which the payees were left blank were the name of an offshore company which he had."

63 [redacted] A.C

64 [redacted] A,C

[redacted] He suggested that I ask Raymond Mould about the meeting(s) in Industry and Commerce with Seamus Brennan.

TG said that he had heard that Liam Lawlor had seen the statement given to the Tribunal by TG's Solicitor and that it was "a load of bollocks". TG said that he was making inquiries to see if it is true that LL had seen his statement.

TG said that he had asked on several occasions who Shefran was and was not given an answer. He said that **Seamus Maguire** had witnessed him asking for this information and the fact that it had not been given. So had **Paul Sheeran** who had sat in at a meeting with him at one stage.

After he refused to sign these "chits" any more **Barry Pritchard** was substituted as a signatory. The shareholders agreement required that there be two signatures.

TG said that he believed that Eddie Kaye had been approached in connection with the Tribunal.

He mentioned the night that Dave McGrath flew over to London with Eddie Kaye to see him in a bid to stop him scuttling the zoning motion. The motion was for

voting that day and O'Callaghan had painted himself into a capping corner. TG did not want capping and felt that it was not within the power of the local authority. They had already sanctioned the development without capping so their options were to zone or not to zone but not to zone with capping. O'Callaghan had tried to denigrate TG's plan by saying it was too big and would destroy the rest of Dublin. Eithne Fitzgerald, the chairman of the Council said "then you wont mind capping, will you" and O'Callaghan had to agree.

TG had someone in the Council ready to move an adjournment. McGrath who came over to London to bully me organised that TG could not get telephone access to the chamber. He had O'Callaghan on one phone extension, John Deane on another and Sean Gilbride on another. TG was blocked from communicating with his contact in the chamber (whose name he may give later- he does not wish to get too many people involved). Consequently the motion was passed. The reason McGrath came to London was to try to stop me having the motion put back. I had told Eddie Kaye that this was my intention.

It was said afterwards that I was pleased with the result of the motion. On the contrary I was very disappointed.

A few days after this incident Eddie Kaye expressed amazement at what was going on. It was then that he was shifted sideways. Eddie Kaye was also there the night I said to the bank that while they were entitled to liquidate my company or to appoint a receiver, they had no right to give it to O'Callaghan.

65 [redacted] A, C

Patrick Hanratty.

Memorandum of telephone conversation between Thomas Gilmartin and Patrick Hanratty on Tuesday the 6th of October 1998

66 [redacted] A.C

67 [redacted] K

68 [redacted] K

69 [redacted] K

70 [redacted] C

TG said that Kavanagh is about to "do a runner" and leave the country. He has told people that he is going into organic farming but he has not told them that it

will be in Spain. TG again mentioned bags of money between Washington and Dublin. He said that we should check out the "money laundry". He made reference to the Bank of Ireland in New England and New York. He also referred again to Bank of Ireland in Jersey and the name which he had previously given us. He was not prepared to say any more at this stage.

MEMORANDUM

(Wednesday)
13th October, 1998

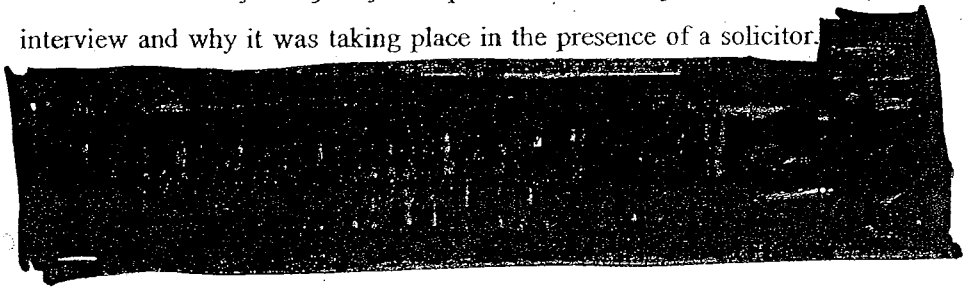
Planning Tribunal of Inquiry into Certain Planning Matters and Payments
Re: Thomas Gilmartin

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1. Thomas Gilmartin telephoned at approximately 5.00 p.m. He said that he might be in a position to furnish to the Tribunal tapes of the interview between Jodi Corcoran and Frank Dunlop from which quotations appeared in last Sunday's Independent.

2. He said that well over £1m. had been paid through Frank Dunlop to politicians. He said that the work in relation to the promotion and letting of a shopping centre is not done by public relations people because agents such as Hamilton Osborne King do the work. In his experience, PR people were not ..... to accept close to the launch of a particular project. In his case, the Eileen Gleeson company did a survey of councillors and showed a ratio of 7:1 in favour of the scheme.

3. The interview between Corcoran and Dunlop took place in the presence of Dunlop's solicitor and was recorded. At one stage, Dunlop turned off his recording and said that he and O'Callaghan were scared that Gilmartin would sue them – this may be by way of explanation as to why he was recording the interview and why it was taking place in the presence of a solicitor.



for which he worked [redacted] A

F1 [redacted]

4. Gilmartin said that there is another story about to break in relation to AIB and Charlie Haughey and that affidavits have been sworn. There is a concern in Independent Newspapers about the story and it appears that they have withheld publication for the moment because of our pending legal advice. He said that his information was that either Councillor Hanrahan, Colm McGrath or John Gilbride are close to cracking. He says that Gilbride is seriously rattled but not yet broken. He says that Gilbride was a gofer for Ray Burke as Liam Lalor was a gofer for Charlie Haughey.

5. Arising from the interview given by Frank Dunlop to the newspapers, Eoin O'Callaghan is up in arms with him and O'Callaghan and Dean have been trying to get Dunlop to shut his mouth.

6. [redacted] K

F2 [redacted]

7. He said that Charlie Bird had telephoned him on numerous occasions during the past week or so and after been refused an interview on a number of occasions said today " *I won't be fuckin' bothering you anymore*". Bird then went on to say that Padraig Flynn had been questioned in Brussels today about the alleged payment of £50,000.

8. Gilmartin then turned to talk about the photocopies of documents in the possession of the Tribunal. [redacted] C

F3 [redacted]

9. He said that there was a list of payments to Frank Dunlop on one letter. Then, there was a letter from Eddie Kaye of the 3rd February, 1991 showing three payments one to Vera Gilmartin and two to Frank Dunlop.

10. He said that he would not pay or give any payment to Chefron and demanded a list of payments that had been made by or on behalf of Barkhill to Dunlop/Chefron. Following this, he got a long list from AIB and on the same day, I received another fax from David McGrath demanding a meeting. McGrath flew over with Eddie Kaye and around this time, Gilmartin threatened that he would *"blow the whole thing out of the water"*.

11. Because Eddie Kaye faxed the information to Gilmartin, he was moved out immediately and was replaced by Michael O'Farrell from Cork.

12. At the next meeting of AIB, he called Frank Dunlop a *"scumbag"* and accused O'Callaghan and his solicitor, John Deane, of embezzling his (Gilmartin's) monies. He told us he called O'Callaghan a *"low down gangster"* and referred to Deane as a crooked solicitor to which O'Callaghan and Deane replied *"that's libellous"* and Gilmartin retorted *"then sue me"*.

13. Michael O'Farrell said that there was no need for this carry on.

14. Barry Pritchard was a subsequent co-signatory on the cheques/bank documents after Gilmartin refused to pay.

15. O'Farrell said *"what's going to be done"* and Gilmartin replied to O'Farrell *"You're running this company – you decide what's to be done"*.

16. Gilmartin says that Eddie Kaye/AIB had a right to call in cash that was owed to the Bank but had no right to take over the company.

17. He said that Paul Sheeran was present on his behalf at one or two of the meetings with AIB. At that time, Gilmartin was having terrible trouble with the Revenue in the UK and Barkhill and/or AIB paid his fare over to enable him to attend meetings.

18. On the night of the Council meeting at which a decision was to be taken in relation to rezoning, Gilmartin had someone in the Council Chamber who was

prepared to seek an adjournment of the meeting. He declines to name this person but says that every attempt to contact that person by telephone was thwarted because Gilmore, John Deane or O'Callaghan manned the telephone extensions and whenever he got through, they said that the person he was looking for was not there. It may be that this was the meeting that took place on the 16th May, 1991.

19. I asked Tom about the proposed sale of lands to him by Dublin Corporation and Dublin County Council. He said he did not know what the procedure was in relation to sale and in relation to the obtaining of necessary statutory consents. He assumed that as the Government had paid for the lands that the would have had some interest or involvement in the giving of approval for the sale. They had sold 120 acres across the road. He had agreed to buy 80 acres at Irishtown and Quarryvale for the site. He agreed to £510,000 approximately for 70 acres to the Corporation and had agreed to purchase 12 acres from the County Council at the same price i.e. £70,000 per acre. This had been agreed with Michael McCloone. The 12 acres was a slip or sliver between the 70 acres and the new motorway. He had obtained an option on the 12 acres.

20. He went on to refer to three documents which he believed the Tribunal has seen (has a copy of). They are as follows:-

(i) Letter of the 3rd February, 1991 from AIB Corporate Bank bearing reference 5576/52 re Barkhill Limited.

This document which was unsigned, showed the following payments:-

(a) £21,633 approximately to Frank Dunlop;
(b) £9,760 approximately to Frank Dunlop;
(c) £4,773.04 to A.V. Gilmartin.

These figures were payments in respect of telephone and tax bills payable by Gilmartin.

The document was unsigned.

Gilmartin refused to sign the letter and said that he asked Eddie Kaye how much Dunlop and Chefron were being paid.

(ii) Letter from AIB plc which was undated, addressed to Gilmartin and showed the following payments – amounts are approximate:-

(a) Auveen Byrne - £4,235;
(b) A. Kelly (an architect) – £19,764;
(c) F. Dunlop - £13,530;
(d) F. Dunlop - £6,314.76;
(e) RIGA - £10,253.27.

Gilmartin believes that the latter sum was paid by Eoin O'Callaghan to Colm McGrath at Dublin Airport and that this sum was later reimbursed to RIGA through the Barkhill account.

Gilmartin says that O'Callaghan and John Deane met Colm McGrath at Dublin Airport. He knows this because he had attended a meeting in AIB at which Deane and O'Callaghan were present. Gilmartin was waiting for a taxi to the airport. O'Callaghan and Deane had earlier ordered a taxi and outside the Bankcentre, they offered Gilmartin a lift to the airport. Gilmartin accepted the offer and in the course of the journey, O'Callaghan said that he had to meet McGrath at the airport and said *"I've already paid him and he is looking for more"*. O'Callaghan insisted that Gilmartin should not be seen at the airport by McGrath. Gilmartin went to the Ryanair desk.

O'Callaghan later said that McGrath had seen him (Gilmartin) to which Gilmartin replied *"So what?"*.

O'Callaghan said it was important that McGrath should not see Gilmartin at the airport.

(iii) The next payment on that document was £11,490 to Frank Dunlop.

(iv) There was a payment to Deloitte & Touche in the sum of £6,050 that was paid by Eddie Kaye who had been queried by Eddie Gilmartin in relation to the payments of Dunlop.

(v) On the 10th June, 1992 Gilmartin questioned who Chefron Limited is. After he asked that question, no one told him about Chefron or asked him to sign any cheques or authorised payments to Chefron.

He identified the 3rd February, 1993 as the day he *"blew up"*. I asked for a list of what Chefron/Frank Dunlop were being paid. There is an AIB Bank reference 5412/91.

This information was faxed and on that day, Eddie Kaye wrote to him. May Baskill, an assistant to Michael Farrell, also contacted him and demanded that he attend a meeting with McGrath. He has a copy of that letter.

Gilmartin says that AIB wheeled in McGrath anytime they wanted to put the hammer on him (Gilmartin).

McGrath had a problem with the funding of Clondalkin Distributors. He had a cheque for £10,000 approximately from RIGA Limited and RIGA was reimbursed the £10,000 by Barkhill.

74 [redacted] B

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PATRICK HANRATTY, S.C. AND TOM GILMARTIN ON THURSDAY 22ND OCTOBER, 1998

75 [redacted] C,A

76 [redacted] C,A

I asked Mr. Gilmartin about the political donation of £50,000 which he gave to Padraig Flynn for Fianna Fail and, in particular, who he had discussed his proposed donation with prior to making it. He said that Councillors McGrath and Gilbride had suggested to him that he should make a donation without saying how much. However, they did say that it should be substantial. Mr. Gilmartin said that he first went to Willie Farrell to tell him about the difficulties he was having. He was introduced to Councillor Gilbride and was shown around the Dail and Seanad. Padraig Flynn was making a speech at the time. Subsequently, he was introduced briefly to Padraig Flynn. When he was telling Willie Farrell outside the Seanad of the fact that he was being held to ransom, etc., Willie Farrell told him to keep his voice down.

When Mr. Gilmartin was introduced to Councillor Gilbride, the latter would hear no criticism of Liam Lalor. Councillors Gilbride and McGrath suggested that Mr. Gilmartin should make a donation to the Party. Padraig Flynn also suggested a donation. So did Bertie Ahern.

Mr. Gilmartin then told me about three Shefran payments that were made in or about May of 1992. It was either in late May or early June 1992. One of them was to Albert Reynolds for either £40,000 or £50,000. One was to Bertie Ahern for £30,000 and the other was either £15,000 or £20,000 and was to whoever was the Minister for Industry and Commerce in 1991/1992.

The payment to Bertie Ahern was connected with blocking the tax designation to

Green Property company. At the time, Albert Reynolds was the Taoiseach and Bertie Ahern was the Minister for Finance and Labour. The payment to Albert Reynolds was connected with preventing Mr. Gilmartin from getting the land across the way. The Corporation owned around 400 acres where St. Lomans was situated. The Corporation were going to sell this land and they had given Tom Gilmartin permission to include it in his brochure and in his maps. It was where he intended to put the conference centre and hotel. Tom Gilmartin wanted to buy 200 acres and the Corporation intended to give him an option to purchase it if the development was going ahead.

Tom Gilmartin said that notwithstanding all of the demands that were made upon him, he refused to pay anything other than the donation to the Party.

The dirty tricks started when he stopped the Lawor payments.

Mr. Gilmartin made a presentation in relation to his development in the Berkeley Court Hotel. This involved demonstration by reference to plans and maps around the walls. He also had a model of the development and a video. It was mostly councillors and others who attended at this presentation. O'Callaghan was there with Jim Donagh of AIB. On the way out, O'Callaghan attacked Tom Gilmartin about some remark he had made during the presentation about sheds in a field.

Padraig Flynn was the only one from the Government who had turned up. He turned up at 12 o'clock at night when most people had gone and there were only two or three left. He had to do the presentation again and show the video to Padraig Flynn.

Around that time, it was official policy that there was a ban on the IDA buying any more land. In fact, they had so much land that they were under instructions to sell some of the land which they held. Albert Reynolds and O'Callaghan blocked Tom Gilmartin getting the land by sending the IDA in to acquire the land. The IDA went to the Corporation and openly stated to McCloone and Derek Brady that they were under instructions to stop Tom Gilmartin acquiring this land. This was Donal Cullen and Dan Flinter and ultimately Ciaran McGowan. They said that it was Government land and had to be handed over to the IDA.

The Bank took over the development with O'Callaghan in September 1991.

Bertie Ahern's payment was connected with stopping the Green Property company from getting tax designation.

Originally, Tallaght, Clondalkin and Blanchardstown, the three western towns, were virtually guaranteed designation. There was no development in these areas and it was clear that an incentive was essential to encourage development in these areas. The Government had given more or less a guarantee that designation would be forthcoming for developments in these areas.

Most of the money that was paid out was for councillors. It was paid out between the 30th September, 1991 and June 1992. All of it was O'Callaghan's payments to councillors and the objective was to stall the review of the Development Plan.

Mr. Gilmartin referred to the three options referred to in the Statutory Instrument document which he has given us. One of the options was to get an enterprise zone status which would by-pass planning altogether. Another option was to go for rezoning. This was the option which Tom Gilmartin chose. At the time, there were only twelve dissenters out of the whole 78 councillors. Since he was bringing the money in and was going to create 30,000 jobs, he had the wholehearted support of the councillors. It was only when he stopped the payments to Lalor that the thing started to fall apart and O'Callaghan was brought in. It was Lalor that brought in O'Callaghan in the first place. O'Callaghan was doing something in Leixlip at the time. Gubay had the Neilstown site and decided to get rid of it. This site was completely incapable of being developed. It would require a massive fly-over 20/30 feet in height and was totally non-viable.

The suggestion by O'Callaghan about building a stadium is nonsense. O'Callaghan does not have the slightest intention of building any stadium and never did. He raises the prospect of building a stadium when he is looking for something such as recently when he was looking for the area limit of the development to be increased to 700,000 square feet, the original size which Tom Gilmartin had envisaged in the first place.

When O'Callaghan came in, he brought in Ambrose Kelly and Frank Dunlop.

By 1990, Tom Gilmartin had to borrow money from the Bank. This was his biggest mistake. O'Callaghan was actually there on the day he got the money apart from the fact that he was subsequently there on a regular basis anytime that Mr. Gilmartin was having a meeting with the Bank.

On the night of the motion to propose the rezoning of Quarryvale in 1992, Eddie Kaye and D. F. McGrath were in the Bank with O'Callaghan. Councillor McGrath was proposing the motion. On that night, the Bank and O'Callaghan were blackmailing Tom Gilmartin until 11 o'clock that night. He had Gilbride and McGrath ringing him that night saying that if he did not sign over to O'Callaghan, the motion would not go in unless they got the go ahead from O'Callaghan. Tom Gilmartin signed the document and faxed it back to the Bank. Tom Gilmartin said that Eddie Kaye would verify this.

The people who were in the Bank with O'Callaghan on that night were:-

Jim Donagh,
Dave McGrath,
Donal Chambers,
Eddie Kaye.

Tom Gilmartin says that he has letters that were faxed to and from the Bank that night. Shortly after this, Jim Donagh left and went to NIB. Eddie Kaye was moved sideways.

Tom Gilmartin mentioned to the Bank that he was negotiating with the Revenue in England for a claim they had for £7,000 in relation to his development in Northern Ireland. He mentioned this to Mary Basquelle of the Bank. She was Michael O'Farrell's assistant.

A week after he mentioned this to the Bank, he was raided by the English Revenue at his home in Luton. Tom Gilmartin believes that the Bank told O'Callaghan and that he got Albert Reynolds to set matters in motion with the English Revenue.

Tom Gilmartin mentioned that he had a letter of the 10th June, 1992 from Eddie Kaye looking for sanction of a payment to Shefran.

The payment to Councillor McGrath of £10,000 by O'Callaghan was at Dublin Airport on the 9th February, 1993. This was the day of a Board meeting of Barkhill Limited in Dublin. The Bank had to send Tom Gilmartin his airfare because he had no money because of the affair with the Revenue. He had hardly any money to buy food the previous Christmas. He had received a letter from D. F. McGrath, having indicated to McGrath that he was unhappy with and wanted to discuss the payments to Shefran and Dunlop which he was being asked to sanction.

The meeting took place in Dublin on the 9th February, 1993. At that meeting, Tom Gilmartin called O'Callaghan and his solicitor, Deane, a pair of gangsters. He challenged the payments to Shefran and Dunlop and said these monies were for corrupt payments to politicians. He actually stated this to the Bank. O'Callaghan objected that it was not £500,000. Tom Gilmartin then added it up and found that it was more than £350,000. Tom Gilmartin says that the Bank knew exactly what these payments were for and what was going on. He said that they would not pay out £10 without knowing what it was for. He thinks that Seamus Maguire may have taken a note of this meeting.

Mr. Gilmartin contrasted the Bank's eagerness to make these payments to Shefran and Dunlop for no apparent services with their absolute refusal to make payments to people who genuinely had provided services i.e. Taggarts, Richard Foreman, and Ove Arup. The Bank were disgraceful in the manner in which they treated these people and ultimately, these people had to take proceedings to recover their money. Tom Gilmartin found himself in the position of having to swear affidavits against himself to enable these people to get paid. He has the sworn Affidavits from these proceedings.

In the early 1990s, Frank Dunlop was the Fianna Fail Press Secretary.

Tom Gilmartin says that there was over £1m. paid out in gangster money. He said that Shefran existed before 1991 but that it had its name changed in September 1991. He said that Dunlop had got some payments from Riga.

77 [redacted] C

Patrick Hanratty

[redacted] B

78 [redacted] C

79 [redacted] C

[redacted]

[redacted]

80 [redacted] C

MEMORANDUM

(Typed on 3RD November, 1998)

MEMORANDUM OF A TELEPHONE CONVERSATION BETWEEN PATRICK HANRATTY, S.C. AND THOMAS GILMARTIN ON FRIDAY 30TH OCTOBER, 1998

I received a telephone call this morning from Thomas Gilmartin. The call lasted approximately two hours. Mr. Gilmartin informed me that Frank Dunlop and Matt Cooper were seen together in a hotel in Dublin last Friday. He believes that this was connected with the article written by Matt Cooper in last Sunday's Sunday Tribune. Mr. Gilmartin said that on the previous Saturday he received a telephone call in which he was informed of what would be in the story. The story was modified somewhat from what he was told.

He says that Bertie Ahern is panicking and that he has all sorts of people working desperately for him. We discussed two letters from Allied Irish Banks to him – one dated 10th June, 1992 and the other dated 2nd February, 1993. [redacted] C

81 [redacted]

We discussed the letter of the 10th June, 1992. There is a reference in that letter to Mr. Gilmartin having agreed to a £30,000 payment payable to Shefran Limited. Mr. Gilmartin said that he had not agreed to this payment. In fact, he had a running battle with Allied Irish Banks for six months about these payments. He refused to go to meetings because he was being told a pack of lies as to what these payments were for by the Bank. This running battle culminated in a meeting that was held on the 9th February, 1993. The letter of the 2nd February, 1993 was in connection with this meeting. This meeting was totally negative [redacted] A

82 [redacted]

Mr. Gilmartin said that the £30,000 referred to in the letter of the 10th June, 1992 was for Bertie Ahern. He was told at the time by Eoin O'Callaghan that he (O'Callaghan) would see to it that Green Property Company would not get tax designation. He said that he had taken care of Bertie Ahern.

Mr. Gilmartin said that, as far as he knew, no money ever went into Shefran. This company was always in the red.

At some stage, monies were reimbursed to RIGA.

In relation to the letter of the 2nd February, 1993, Mr. Gilmartin said that the meeting that he had on the 9th February, 1993 was not, as stated in the letter of the 2nd February, 1993, about facilities. It had nothing to do with facilities. The lunch that was arranged prior to the meeting was unusual. At that time, there was £25,000 owned to him by Barkhill for fees and various items which they would not pay him. Mr. Gilmartin tried to get the Bank to pay but they refused to pay. He says that Eddie Kaye will confirm this.

Mr. Gilmartin said that it was the beginning of 1992 when he started *"kicking"*. Dunlop then started appearing.

Most of the money that was paid out for politicians was paid out between December 1991 and July 1992.

Mr. Gilmartin said Liam Lalor moved into Frank Dunlop's office when he wanted to work outside the Dail. So did Marion McGuinness.

Green Property Company was creating a fuss about councillors from Blanchardstown supporting Quarryvale. This gave a problem to Marion McGuinness. Consequently, when Charlie Haughey appointed O'Callaghan as a director of the Gas Board, he promised her that he would make it up to her by allowing her to announce the provision of a gas supply to Blanchardstown and the provision of such gas to subscribers at reasonable rates. He did in fact arrange this and she made the announcement.

Mr. Gilmartin told me that it was possible that the name of the civil servant to which he referred in our previous conversation, who was at the meeting in the Department of Industry and Commerce, was Farrelly although he said that he may have been mistaken and that it might have been Farrell. He thought his first name was Jim or Jimmy. [redacted] A 83 [redacted] Padraig Flynn knew him. Mr. Gilmartin believed he was a civil servant from the Department of the Environment. Mr. Gilmartin's recollection was that after he made his complaint, Mr. Farrelly began to appear at meetings in the Corporation.

Mr. Gilmartin said that any meeting in which Brennan was involved seemed to be in the Department of Industry and Commerce. He thinks Mr. Brennan was involved in transport at the time. He was more involved in Arlington.

We went on to discuss the question of Bachelor's Walk. Mr. Gilmartin said that when he started this development, there was no tax designation on Bachelor's Walk. He set about assembling the properties. He first bought Nos. 9-15 from Hill Samuel. He then bought Nos. 1-4 from Healy Homes who went bust. He subsequently bought Nos. 5 & 6. By the time Arlington became involved, he had bought Nos. 1-6 and 9-15. Nos. 9-15 cost £600,000. Nos. 5 & 6 cost £240,000. One of the buildings he had bought was Carrolls Furniture Store.

Designation was announced all along the quays down as far as Smithfield.

There were a number of people interested in a proposed development but Mr. Gilmartin decided to talk to Ted Dadley who had told him about Clandeboy in Northern Ireland.

Ted Dadley brought Richard Mould over. They came over on a Thursday. They stood on O'Connell Street and could not believe their eyes. They reckoned there were 100,000 people walking up and down the street every day and here were these wrecks of buildings along the length of Bachelor's Walk.

Mr. Gilmartin discussed Bachelor's Walk with people in Dublin Corporation because they had a number of freeholds in Bachelor's Walk. He was dealing with Paddy Morrissey, Hegarty, Sean Haughey, Mick McCloone and Bill Lacey. Bill Lacey was brought in by somebody. After the designation was announced, Dublin Corporation set up a committee or a development unit which was headed by Bill Lacey.

Mr. Gilmartin says that he was offered the sun, moon and stars by Dublin Corporation if he would develop this site. They were very keen for somebody to do something about Bachelor's Walk.

Mr. Gilmartin says that Padraig Flynn had a special interest in it.

Unfortunately, when they announced the designation, they did so from Bachelor's Walk to the Lotts which was halfway between Bachelor's Walk and Abbey Street.This was no good to Thomas Gilmartin because his idea was to develop over as far as Abbey Street. You could not have a shopping centre half of which was designated and half of which was not. It was not feasible. Either you removed the designation altogether or designated the lot. He told this to the Corporation and Flynn increased the designation up to Abbey Street. Consequently, the entirety of the site for the proposed development had full designation before Arlington came in.

Mr. Gilmartin said that they almost had the Bachelor's Walk assembled for somewhere in the range of £7m. - £10m.

Unfortunately, however, things started to go off the rails when Mr. Gilmartin stopped the payments to Lalor. Arlington immediately started running into trouble. George Redmond blocked the sale of the freeholds. Properties which the Corporation had talked of selling to them for £200,000 suddenly went up to £5m. overnight. Lalor and Redmond then went around advising people not to sell cheap with the result that the owners of other properties which needed to be acquired started looking for ridiculous sums of money. It got to a stage where Arlington were up to £20m. to assemble a site and they still were not halfway there. This all happened after Lalor and Redmond had demanded £100,000 and had been refused.

Lalor also then started going into the Corporation and making allegations. He poisoned the water. Mr. Gilmartin strongly believed that Charlie Haughey was involved as well. He says that it is important that we talk to Bill Lacey and Martin McCloone. Mr. Gilmartin says that McCloone warned him several times that he was going to get done. Ciaran O'Malley was warning him as well. Mr. Gilmartin says that Lalor and Redmond were working hand in hand.

Ray Burke and Charlie Haughey had a ring going and Bertie Ahern was in the middle of it. There used to be meetings in a pub on the northside. It was near Griffith Avenue between the Airport and Fairview or Drumcondra.

Ray Burke, Bertie Ahern and other *"gophers"* including Gilbride were among the coterie.

Mr. Gilmartin says that we should look at Mulryan and Gannon. He said that Mulryan got zoning on the St. Patrick's Trust land at Quarryvale.

84 [redacted] A

Patrick Hanratty, S.C.

85 [redacted] A

MEMORANDUM

9th November, 1998

Telephone conversation between Thomas Gilmartin and John Gallagher, S.C. on 6th November, 1998

1. Thomas Gilmartin telephoned and began the conversation by enquiring whether the Tribunal was going to get anywhere and whether the recent comments at the Public Hearing by Counsel would mean that the Tribunal would not be able to proceed. He said that if the Tribunal did not proceed and carry out its investigations fully, it would mean that the *Mafia* would be taking over.

2. He wondered why the Press gave such emphasis to the other side.

3. He said that Albert Reynolds has now joined the fray and is linked up with Padraig Flynn and Ray McSharry – who are now described as *"the has beings"*. He said that Albert Reynolds is desperate to find out how much Gilmartin knows. He said that Albert Reynolds is very very concerned and they believe that Bertie Ahern is going to dump everything on them.

4. They are scared.

5. Albert Reynolds thinks that Bertie Ahern is trying to shovel everything in their direction and is scared that somebody may get immunity.

6. He said that there was concern about an article in last week's paper about the attempts to move the Department of Agriculture to Cork. He said that Albert Reynolds was involved in trying to force the Department to Cork and in doing so, was acting on behalf of Eoghan O'Callaghan. The intention was that O'Callaghan's property in Cork would be leased by the State to accommodate

the Department of Agriculture staff. However, departmental staff refused to move and threatened to sue.

7. Albert Reynolds had a hand in the *"missing documents"* i.e. the documents that had been taken from the Department of the Environment (as reported to us by the then junior Minister). He said that the documents were taken from the Minister for the Environment and were considered at a meeting in the Mont Clare Hotel. He said Albert Reynolds to this and he thinks he was present at that meeting but is not sure. He said there were also reports about money that went missing in transit from the U.S. to the Fianna Fail Party in Ireland. He said that Albert Reynolds has good reason to be scared.

8. He said that there are a lot of spin doctors operating in relation to all matters affecting the Tribunal and that Brian Cowan has got special authority from the Taoiseach to set up whatever structure is necessary to keep the Tribunal from Bertie Ahern.

9. [redacted] K

86

10. [redacted] K

87

11. [redacted] K

88

89 12. [redacted] J, K

90 13. [redacted] J, K

91 14. [redacted] J, K

92 [redacted] A

93 15. [redacted] K

94 16. [redacted] K

95 17. [redacted] K

18. [redacted]

96 [redacted] K

19. [redacted] K+D.

97

20. [redacted] K

98

21. [redacted]

99 22. [redacted] K

23. [redacted] K

100

24. Gilmartin says that he did release a few things to the media to counter Frank Dunlop and his spins and pointed out that he got Dunlop to admit that he had received payments of approximately £.45m. although he (Gilmartin) knows that there is more than £1m. about it.

25. In relation to the missing files above referred to, Gilmartin said that this occurred under the Albert Reynolds Government when he was in coalition with Labour and he believed Emmet Stagg was the Junior Minister.

26. He said that a designated area at the top of Dame Street in the Temple Bar/Christchurch area had been designated and that properties had been bought in that area between the time the files were shown and the designation announced. This was a quick purchase in respect of properties which did not have a great deal of value prior to designation but he said the same thing occurred in relation to a designation in Kilkenny and an extension to a designated area in Limerick.

27. He said there had been huge pressure on the Department of Agriculture to move to Cork to create a value in the development in Cork on the CIE lands. He said in order to get the project off the ground, O'Callaghan needed a tenant. They needed to get a covenant to create 6% of the value.

28. Gilmartin says that he know that part of the Chefran money went to Albert Reynolds, part to Bertie Ahern and a smaller sum to one other person whose names he does not know at the present but he does not think it was Ray Burke.

29. He does not think the cash went into the Chefran accounts although the payments may appear to have been made from Barkhill to Chefran.

30. He said that Albert Reynolds in trying to find out how much Gilmartin knows has approached a number of people and that Ray McSharry also is scared because he furnished a draft of a letter which he wanted Gilmartin to sign which indicated that Gilmartin did not know and did not have any connection with McSharry. However, in the period 1990-1991, Gilmartin's sister had contacted McSharry in Brussels to complain about the obstruction that Gilmartin was experiencing in Dublin.

31. He says that at the end of 1992/1993, a sum of £40,000 was paid to [redacted] and £30,000 was paid to Bertie Ahern whom he believed were

Prime Minister and Minister for Finance respectively. No money went into Chefran. The money was paid direct. Chefran was being used as a money laundering operation.

32. He said that Brian Cowan had been instructed to hire whatever assistance he required to deflect the heat from Bertie Ahern to the has beens – Albert Reynolds, Charlie Haughey and Padraig Flynn whom he described as *"practically gone"*. He said that Flynn will not be re-appointed to Europe. Albert Reynolds fees certain of this although he believes that Padraig Flynn does not yet know. Gilmartin says that Flynn was not the worst of them and that he does not like double-crossing but that Flynn had closed ranks with Fianna Fail when Gilmartin was in trouble.

33. Gilmartin says that O'Callaghan is scared and is getting totally rattled. He said that O'Callaghan has about ten solicitors trying to undo what Frank Dunlop has said.

34. Gilmartin drew attention to an article entitled *"Lunch with Frank Dunlop"* and said that Dunlop has been told to keep his mouth shut.

35. Dunlop said that solicitors are around him like flies around a pot. Gilmartin describes Dunlop as a low life scumbag.

36. He says that there is a story simmering about a major plc which is associated with the missing documents i.e. documents that are missing from the Department of the Environment. He says that he is aware that a few TDs on the Government side want the truth told.

37. Gilmartin says that Dunlop is alleged to have gone to John Bruton complaining about the amount of money being demanded by Fianna Gael Councillors to support the Quarryvale project and that Bruton is alleged to have replied *"that's politics"*.

38. Gilmartin says that in Athlone O'Callaghan sent his cohorts to Mary O'Rourke who threatened to call the Gardai. This approach to Mary O'Rourke appears to have arisen in relation to O'Callaghan's attempts to have an area in Athlone designated. This question of designation – according to our enquiries in the Department of Finance – had been deferred because of a row between imposing Fianna Fail groups in Athlone but the Minister for the Environment made the necessary order – on foot of an instruction by telephone from Albert Reynolds – the day before that Government fell. He said that O'Callaghan had taken over the property and that in Limerick the designated area development also got into financial difficulty.

39. Gilmartin returned to the fact that Charlie Bird had been on today as had a woman from RTE who wanted to tape an interview with him and who asked him to go on the Pat Kenny programme.

40. [redacted] K

101

41. [redacted] K

102

103 42. [redacted] A

John Gallagher, S.C.

104 [redacted] B

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Friday the 27th November 1998

Mr. Gilmartin telephone me to-day. He said that Paul Sheeran was appointed to the Board of Barkhill Ltd. It was sometime prior to the meeting of February 1993. He was at the meeting of Februaty 1993 and was witness to my calling Owen O'Callaghan a gangster. Maguire took minutes at these meetings. Mr. Gilmartin says that we can get these from him. I asked him to send me a letter of authority.

London & Edinburgh trust may have been the body to whom a presentation was being made when Lawlor showed up at Finnstown House.

Mr.Gilmartin spoke to Mr. McCammin. They discussed the occasion when Liam Lawlor walked in and demanded money. [redacted] A A
105 Mr. McNeill of Taggarts was there.

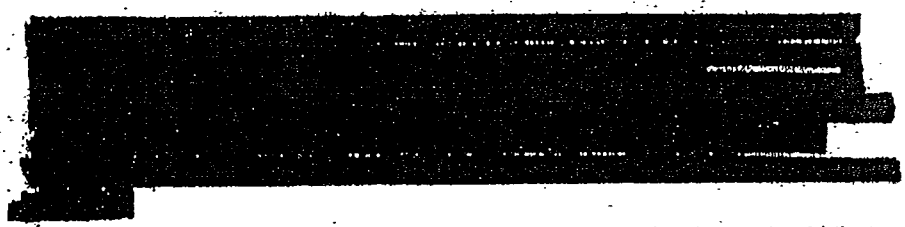
Mr. Gilmartin then referred to a meeting in the Horse Show House pub in Ballsbridge which was attended by representatives of AIB and Liam Lawlor. This was before the bank put the screws on Mr Gilmartin. He said that Frank Dunlop was present at at least two meetings in the bank. Liam Lawlor used to drive Owen O'Callaghan around. He used to pick Mr Gilmartin up occasionally as well. On one occasion he picked up Mr Gilmartin and brought him into the Dail where there was a meeting involving Owen O'Callaghan, Marian McGennis, Frank Dunlop and John Deane. Mr Gilmartin was left sitting in Liam Lawlor's office.

The meeting in the Horse Show House was on the 14th of February 1991,

Mr Gilmartin said that Jody Corcoran telephoned on Saturday and asked him about the Owen O'Callaghan/Barkhill discovery documents which had recently been circulated by the Tribunal. He asked Mr Gilmartin if he had received such a letter. Mr Gilmartin said that he told him nothing and that he asked Jody Corcoran how he got this information. Jody Corcoran told him that Owen O'Callaghan had discussed the matter with Bertie Ahern. He had to tell him because the Taoiseach was due to open Quarryvale on the 24th of November 1998 [redacted] A
106 [redacted] This opening was postponed and Jody Corcoran indicated that there was no way that the Taoiseach was ever going to open this shopping centre.

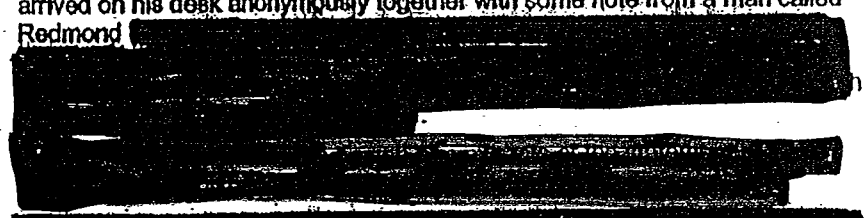
Bertie Ahern (or the Taoiseach's office) gave this information to Des Richardson. Jody Corcoran was at the Fianna Fail Ard Fheis on Friday the 20th of November where he met Des Richardson. Mr. Richardson gave him the information about the Owen O'Callaghan/Barkhill discovery circular letter.

107 [redacted] A

108  A

Mr Gilmartin said that Jody Corcoran called him back on Monday and said that he was concerned that he had been set up. His fear was that he was being used as a vehicle to leak information concerning the Tribunal by parties who wished to undermine the Tribunal.

Mr Gilmartin said that Jody Corcoran told him that James Gogarty's affidavit had arrived on his desk anonymously together with some note from a man called Redmond

109  A

110  K

111  K

112  C

Mr Gilmartin made reference to a tax adviser called Cochran of Noel Cochran & Partners. He was often with Liam Lawlor and Phil Monaghan.

AIB approached Stewart Harrington of Harrington Bannon to do a valuation of the lands after the loan was up. Instead of keeping this confidential, Harrington told a number of people at a meeting at Monaghan's office attended by a number of people including Noel Cochran.

Pat Gleeson of IBI recommended Mr. Cochran to THOMAS GILMARTIN. Consequently Mr Gilmartin met Cochran in Bank of Ireland in London. He subsequently met him in Camden Markby's office.

One day he said to Mr Gilmartin that his name had come up. He Mr Gilmartin was he having any trouble with AIB. He said that Stewart Harrington was appointed to do a valuation for AIB and that he had come to a meeting at which he (Cochran) was present in Monaghan's office. He told the whole thing to the meeting and suggested that Mr Gilmartin was in trouble.

It was after this that Monaghan took Padraig Flynn around the site in a helicopter. This was at a point in time after Mr Gilmartin had made his complaints.

Mr Gilmartin said that he had found out that Bertie Ahern had personally briefed Ken Whelan before his "self styled whistle blower" article.

Barry Pritchard was the AIB nominee on the board of Barkhill Ltd. He was a signatory on the cheques which were paid out to this company Mr Gilmartin said that he had reason to believe that Barry Pritchard had some connection with Shefran ltd.

Mr Gilmartin said that Frank Connolly had told him that Ted Harding had told him that he (Harding) had obtained the information about Mr Gilmartin's financial difficulties which he published from Frank Dunlop. This information was circulated to the Irish and British dailies and even to the local Luton newspaper.

Mr Gilmartin said that Eddie Kaye would be a witness to the fact of the occurrence of the meeting in the Horse Show House and to the fact that Liam Lawlor was there. Eddie Kaye was invited but did not attend himself. THOMAS GILMARTIN said that he himself looked in and saw them. He did not attend the meeting himself. He did not see Lawlor when he looked in. He saw McGrath and Owen O'Callaghan talking. Dunlop and Deane were a few feet away.

There was another lunch attended by McGrath, Dunlop, Owen O'Callaghan and Deane in Jurys. Eddie Kaye would know about this as well.

Patrick Hanratty

113 [redacted] C

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Monday the 30th of November 1998

Mr. Gilmartin telephone me again to-day. He said that Michael Bailey had told Jody Corcoran that he had evidence that the bank took him (Thomas Gilmartin) to the cleaners and that he was set up. He said that the bank were up to their eyes in it.

Mr. Gilmartin said that he had discovered that Liam Lawlor had attended a meeting in Allied Irish Banks with Owen O'Callaghan. Mr. Gilmartin said that he himself was not there. The discussion was about zoning. The conclusion was that Mr. Gilmartin would not get zoning. Eddie Kaye was at the meeting and would be in a position to verify that it occurred and what was discussed. It was attended by McGrath, Frank Dunlop, John Deane, Liam Lawlor and Owen O'Callaghan.

Mr. Gilmartin said that he had also discovered that there was a phone call from the bank to a senior politician in connection with Quarryvale. This was before the meeting with Liam Lawlor. Mr. Gilmartin was not told the name of the senior politician but he thinks it was Albert Reynolds.

Mr. Gilmartin stated that Liam Lawlor has been to Australia in the recent past. He says that he was sent out to a conference there by Bertie Ahern. The theme of the conference was "Ethics in politics". Mr Gilmartin thinks that it is sick that this country should be represented at such a conference by the likes of Liam Lawlor. He says that it is incredible that Bertie Ahern sent Liam Lawlor to such a conference.

Mr. Gilmartin said that on several occasions when he had meetings in AIB Liam Lawlor was parked outside. He used to drive Owen O'Callaghan around. He dropped Thomas Gilmartin to the airport on a few occasions.

The Sunday Times and two other english newspapers were on to him last week. They were asking about Arlington and looking for Raymond Mould. Ursula Halligan of the Sunday Times phoned to say she was coming to see him. Mr. Gilmartin told her not to come because he had nothing to say to the press. She came anyway and he sent her away. He subsequently received a bouquet of flowers from her.

Maeve Sheehan has also been on enquiring about Arlington.

Mr. Gilmartin said that Therese Ridge was supposed to have been in Owen O'Callaghan's camp. Jody Corcoran asked Mr. Gilmartin about her. Mr. Gilmartin said that Owen O'Callaghan campaigned for her senate campaign in Cork.

The meeting in the Horse Show House was on the 14th of February 1991, the day after the shareholders agreeement was signed. Liam Lawlor was also in a meeting in the bank prior to February 1991.

On the night that the agreement was signed there was liason between the bank, the Council chamber and Mr. Gilmartin. Again, he says, that Eddie Kaye will confirm this.

Liam Lawlor wanted a 20% stake in Quarryvale.

Paul Sheeran was at a meeting in the Dead Man's inn when Mr. Gilmartin first met Mr. Lawlor.

Paul Sheeran went to some bank meetings in place of Mr. Gilmartin as an observer. McGrath was unhappy with this.

Paul Sheeran was talking to Barry Pritchard the other day. Paul's daughter runs a jewellers shop in Nutgrove. Paul Sheeran wanted to buy it out. Pritchard is in AIB Capital markets.

Mr. Gilmartin raised the question as to why Owen O'Callaghan and John Deane were present on the night of the long knives. What business did they have there. ?. He said that the night the motion went in was the night that they were blackmailing him. This was different than the night that it was passed. The motion was not allowed in and was held back until Mr. Gilmartin signed over. Colm McGrath was proposing the motion. A number of Councillors telephoned Mr. Gilmartin including McGrath and Gilbride. Cllr. McGrath told Mr. Gilmartin on the telephone that he had to reach agreement with Owen O'Callaghan before he would put the motion in. Gilbride said that without Owen O'Callaghan he was going nowhere. He said that if the motion did not go in it would not go in this year.

Patrick Hanratty

1114 [redacted] C

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Tuesday the 1st of December 1998

Mr. Gilmartin telephoned me to say that he had just had Jody Corcoran on the telephone. Mr. Corcoran was looking for some information but Mr. Gilmartin did not give him any. Mr. Corcoran was on holidays to-day but he went into the office at lunchtime to receive some affidavits by FAX which someone was sending him. They were about the Tribunal. He is on holidays for the next two weeks. He is not going to publish the affidavits because, he says, "they are out to get the Tribunal."

Patrick Hanratty

115 [redacted] C

115

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Tuesday the 8th of December 1998

Mr. Gilmartin telephoned me this morning.

[redacted]

Mr. Corcoran told mr. Gilmartin that the lawyers for the Independent had advised them against publication of some of the material which they had. They were concerned about the leaking of information and the publication of such information by the Independent.

Mr. Gilmartin said that Jody Corcoran also told him that somebody from Ambrose Kelly's office had the inside track on everything to do with Quarryvale. This person was still working in that office. Mr. Gilmartin had no idea who it was other than to say that it was a man. [redacted] A

116 [redacted]

Ursula Halligan had been on to Tom Gilmartin on Sunday night. He told her nothing.

Jody Corcoran was asking about Arlington. He told him nothing also. He was trying to track down Raymond Mould. Mr. Gilmartin says that he did not disclose his whereabouts.

Patrick Hanratty

117 [redacted] A

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Monday the 14th of December 1998

118 [redacted] A

The third anonymous call was a death threat. JC had telephoned TG to ask him about the threats which he, TG, had received and whether he knew who was behind them. I asked TG if this might have been a ruse by a journalist to get information. TG did not think so. He said that JC was concerned and his wife was very concerned. It was the third one they were concerned about.

JC told TG on Saturday that McDowell and Allen were in with the Tribunal during the week. JC had been told that it was suggested to the Sole Member that he could not go to every county in Ireland in his enquiries. The Sole Member said that he would carry on until his dying day.

He was told that McDowell and Allen said that they would go to the High Court and to the Supreme Court if necessary to stop it.

TG said that Albert Reynolds was panicking because Bertie Ahern was trying to shovel it all towards the has beens. AR thinks that he will be dumped on.

JC has a source close to BA. He believes that BA read the Tribunal's letter (O'Callaghan discovery letter). JC does not know for certain if BA read TG's statement to the Tribunal. The source read it but if BA read it he did not see him do so.

119 [redacted] A

Patrick Hanratty

120 [redacted] C

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Friday the 18th of December 1998

Mr. Gilmartin telephoned me at 12.10 pm.

He said that he had decided to end his involvement with the Tribunal. He had given the matter a lot of thought in the last two days and he had a family meeting yesterday. It was their view that he was making a spectacle of himself and that it would achieve nothing. They did not think that the Tribunal would achieve anything or change anything. His friends were saying the same thing to him. He referred to the fact that Charles Haughey had this week escaped a tax assessment for £2,000,000 on a technicality. He said that he had no confidence in the Irish legal system. He said that it was a bananna republic.

121 [redacted] C

122 [redacted] C

He said that he would keep an open mind but that he did not think that he would change his mind. [redacted] C

123 [redacted]

Mr. Gilmartin informed me that he had received a telephone call this morning from Jody Corcoran. He had told Mr. Corcoran of his decision. I told him that publication of this decision would be unhelpful to the Tribunal and I asked him not to speak to any more journalists. He said that he would not.

124 [redacted] C

Patrick Hanratty

125 [redacted] C

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PATRICK HANRATTY, S.C. AND TOM GILMARTIN ON TUESDAY 26TH JANUARY, 1999

I telephoned Tom Gilmartin this afternoon in connection with the letters which I had previously asked him to send us. I told him that we urgently required him to inform the Tribunal by letter that Noel Smyth & Partners were no longer acting as his solicitors. He had previously informed me that this was the case. I also told him that we were anxious to obtain his documents from Noel Smyth & Partners.

126

[redacted]

C

127

K

Mr. Gilmartin said that he would probably be able to pinpoint it. He thinks it was around the time when Frank Connolly wrote some article about there being blood on the floor of City Hall.

Mr. Gilmartin said that he had been going through a lot of his documents over the weekend and that he came across another document dated the 5th May, 1992 indicating a £25,000 payment to Shefran. [redacted] A,C

128 [redacted] He had also come across a set of accounts prepared by Deloitte & Touche which were heavily qualified by Deloitte & Touche on the basis that there was no supporting material for a number of transaction. There was another separate payment of £30,000 to Dunlop.

Mr. Gilmartin made reference to the current controversy over how many meetings the Taoiseach had with him. Mr. Gilmartin said that he had witnesses to these meetings. One of them was attended by Mr. Ted Dadley and another was attended by Mr. Richard Foreman. In the case of the other two meetings, they were recorded meetings. By recorded meetings he meant that they had been arranged well in advance through a secretary of the Department and, therefore, there would be a record of them.

Mr. Gilmartin went on then to refer to the Corporation land which he bought in Quarryvale. He said that initially the Green Property company would not bid on this land. Then they wrote a letter to the Corporation saying it was worth £12m. if it had planning permission. They put in a conditional bid for about £2.5m. The condition was that it would be given planning permission for retail. This was not possible because Neilstown already had planning permission for retail. Mr. Gilmartin said, that consequently, the Green Property condition could never be complied with and the bid was null and void.

Mr. Gilmartin also put in a bid for this land in the sum of £5.1m. which was over twice the Green Property bid. At the time this bid was being submitted, there was no reason in the world why it should not have been accepted. The Corporation definitely wanted to sell the land. The tender had to go before the Corporation for approval. Mr. Gilmartin's bid won the tender and there was no reason at all why he should not be successful and the sale should not be ratified. However, when it went before the Corporation, George Redmond and Liam Lalor tried to block Corporation approval.

In those days, the tactics they used was that George Redmond would accuse Paddy Morrissey of having a back-hand deal with the developer. Mr. Gilmartin is not sure if this happened in this case. However, he is sure that Redmond and Lalor went to considerable lengths to block approval of his tender. He said that we should talk to McCloone about it. It occurs to me that we should also talk to Mr. Morrissey. Mr. Gilmartin says that Mr. McCloone and Mr. Morrissey are both honest.

Mr. Gilmartin went on to say that George Redmond's *modus operandi* was that if the Corporation decided to buy land, he would go down to the Corporation meeting and *"kick up shit"* at the meeting. He would say that the Corporation were building up a land bank of unnecessary proportions and public expense and that it was unnecessary and come with all kinds of reasons why it should not go through. He might also get Paddy Morrissey to back off by accusing him of something or putting pressure on him in some way.

George Redmond would then notify his friends in Green Property or somewhere else that the Corporation was interested. They would then go and buy the land at the price that the Corporation was contemplating or even lower.

The question of purchase by the Corporation would then come up again at a later stage and the Corporation would buy the land from George Redmond's friend for a profit of £1m. or more to them.

If Paddy Morrissey was not playing ball, he might accuse Paddy Morrissey of doing cosy deals to make Paddy Morrissey back off. Paddy Morrissey was afraid of George Redmond.

In the case of the Corporation Quarryvale lands, Mr. Gilmartin said that he went to Bertie Ahern to complain about what was going on. He said that the first time he spoke to Mr. Ahern about this, Mr. Ahern suggested that he make a donation to the Fianna Fail Party. In any event, Mr. Ahern said that he would send in someone to sort out the problem. He sent in Joe Burke who was from Donegal but who was on the Corporation. Joe Burke came to see Mr. Gilmartin and asked him what was going on. Mr. Gilmartin told him that Redmond and Lalor were pulling a stroke. Mr. Gilmartin

told Mr. Burke that he was fed up with the corruption that was going on and might do something about it. Mr. Gilmartin said that he believed that Bertie Ahern sent Burke in as a damage limitation exercise for Fianna Fail and for the purpose of protecting the Party. In any event, Mr. Burke went in and did something. Mr. Gilmartin says that the Corporation has details of the Burke intervention. Mr. Gilmartin did not know precisely what Bertie Ahern did. However, at the second meeting a week later, the tender was approved.

About a week after that, Burke arrived to Gilmartin's office. He himmed and hawed and while he did not overtly refer to money, Mr. Gilmartin got the distinct impression that he was looking for a donation of money. Mr. Gilmartin said that he did not "*take the bait*" and then Mr. Burke said that Bertie Ahern would like to meet him. Mr. Gilmartin said that he was going out to Dublin Airport to catch a flight to England. Mr. Burke said that he would give him a lift and that they could call to see Bertie on the way out to the airport. Mr. Burke gave Mr. Gilmartin a lift in a truck and they stopped at a pub in Drumcondra. Mr. Burke asked Mr. Gilmartin to wait in the truck and went into the pub. He was in there for about twenty minutes. He came out after twenty minutes and said that Bertie was not in there. He then drove to another pub somewhere off Griffith Avenue or somewhere like that which he said was Bertie Ahern's own local. He again asked Mr. Gilmartin to wait in the truck and went into the pub. After a few minutes, he came out and said that Bertie was not there yet. Mr. Gilmartin said that he had to go and Mr. Burke drove him to the airport.

129 [redacted] C

130 [redacted] B

Tribunal Ref : GILMARTIN THOMAS WF/RED Page No: 340

Tribunal Ref : RED. TGS 3 Page No: 352



Dear Judge,

I received a phone call from Mark Paley reporter on Saturday 21st Nov 1998 who stated Bertie Ahern had pulled out of opening Quarryvale Shopping Centre due to the fact that O'Callaghan & the A.B. had got letters for discovery from the Blood Tribunal. I have since learned that a Mr. Neither T.D. revealed this information to Deputy Des Richardson at the F.F. Ard Fheis on Friday 20th November 1998.

Yours faithfully,

22 Whitehill Avenue
Luton
Beds
LU1 3SP

15/2/99

Re: Tribunal of Inquiry correspondence of 17th November, 1998

Dear Judge,

I received a phone call from newspaper reporter on Saturday 21st Nov, 1998 who stated Bertie Ahern had pulled out of opening Quarryvale Shopping Centre due to the fact that O' Callaghan & the AB had got letters for discovery from the Flood Tribunal. I have since learned that a Mr. Neither T.D. revealed this information to Deputy Des Richardson at the FF Ard Fhéis on Friday 20th November, 1998.

Yours faithfully

MEMORANDUM

22nd February, 1999

Memorandum of telephone conversation between Patrick Hanratty, S.C. and Thomas Gilmartin on Monday, 15th February, 1999.

131 [redacted] C

Mr. Gilmartin said that he believed that all of the payments were made after September, 1991. The shareholders' agreement was signed on the 15th September, 1991. Shefran did not exist until September, 1991 [redacted] A

132 [redacted]

Mr. Gilmartin said that the payments are described in some document as coming from the RIGA subordinated loan for £1m. The RIGA loan of £1m. was not made until September, 1991 after the shareholders' agreement was executed. On the date the shareholders' agreement was executed, there was a facility letter from the bank increasing the facility for Barkhill Limited.

Mr. Gilmartin then turned to the meeting of Barkhill Limited at the Allied Irish Banks' premises in Ballsbridge which took place on the 9th February, 1993. He said that he refused to go to this meeting until he got a list of the payments to Shefran Limited. The day after he got the letter about the meeting, he spoke to Eddie Kaye and said that he would not go until he had a list setting out what these payments were. Eddie Kaye then faxed him a list of the payments. That's where this list came from. Eddie Kaye was then suddenly moved. Mr. Gilmartin believes that Mr. Kaye was moved as a result of sending him this list. Mr. Gilmartin says that he felt embarrassed because he felt that he had cost Mr. Kaye his job.

The meeting took place on the 9th February and Mr. Gilmartin believes that Mr. Kaye was not at this meeting.

The night of the zoning meeting of Dublin County Council when the area capping was put on the development was the 17th December, 1992. Mr. Gilmartin said that the capping was a farce and there was never any serious intention that the development would be limited to this size. This was the night that Eddie Kaye and D. F. McGrath came over to London.

Mr. Gilmartin then referred to a meeting on the 14th February, 1991 in the bank. This was the meeting after which some of the participants went to the *Horseshow House* for a drink. Eddie Kaye did not go and Tom Gilmartin did not go. After the meeting in the pub, Mr. O'Callaghan said to Mr. Gilmartin that he wanted to see him. Mr. O'Callaghan said that Mr. O'Callaghan was wanted in the Dail. Mr. O'Callaghan brought Mr. Gilmartin to Liam Lawlor's office on the fourth floor in the Dail. Marian McGennis and Liam Lawlor were there. Eoin O'Callaghan and Frank Dunlop were in and out all of the time. Frank Dunlop and Eoin O'Callaghan were talking outside intermittently. After a period, Tom Gilmartin walked out of Liam Lawlor's office. He said to O'Callaghan that this was some kind of a set-up. O'Callaghan said to him that neither he (Gilmartin) or any Unionist will ever put a foot on that site. Mr. Gilmartin said that he walked down the corridor. In an alcove, he saw O'Callaghan and Albert Reynolds talking. Liam Lawlor followed him down the corridor and pulled up at the alcove and joined Eoin O'Callaghan and Albert Reynolds. Mr. Gilmartin walked out.

Before they had gone to the Dail, they went to Frank Dunlop's office in Mount Street. They were there for a while and there was somebody else in an office adjoining Dunlop's office. Mr. Gilmartin believes that it was Ambrose Kelly. Frank Dunlop was coming in and out like a jack rabbit. They were talking amongst each other. Mr. Gilmartin said that he got *"pissed off"*.

Going back to the Dail meeting, Mr. Gilmartin said that Mr. O'Callaghan disappeared after the Unionist remark. Mr. Gilmartin said that he does not really know what this meeting was all about.

There was another bank meeting that evening. Mr. Gilmartin was brought back to Ballsbridge in Frank Dunlop's Volvo. He was talking about John Corcoran. Mr. Gilmartin says that at the meeting, he accused the bank of being involved in a set-up. He had the feeling that there was somebody else in the next door office to the office in which the bank meeting was held - perhaps Donal Chambers or somebody else senior in the bank.

Mr. Gilmartin said that he had a running battle with the bank from the minute he borrowed the money. He said that they put the interest up to 30% - 40% at one stage.

On the 13th September, 1991, Mr. Gilmartin said that he *"kicked up shit"*. This was the time when he was being pressurised into signing the shareholders' agreement. Mr. Gilmartin refused to sign the agreement unless O'Callaghan put back in £1m. of the £2.5m. which he had been paid in respect of Neilstown. [redacted] A
133
Mr. Gilmartin said that he would not sign the agreement unless he did.

The first Barkhill loan was for £8m. The second Barkhill loan was an extended loan for rezoning, etc. That was to be taken out when the zoning went through.

The first Tom Gilmartin heard of Shefran was around Christmas 1991.

134 [redacted] B

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Monday the 1st June 1999

I telephoned Mr. Gilmartin this afternoon, returning his call of the week before last [redacted] A

135

TG said that **Ted Dadley** had recently indicated that he did not want to be involved with the Tribunal. Up to a week ago he was fully supportive and intending to support TG. However, in the last few days something had happened. TG believed that TD had been "got at." There was some talk of a development in Ireland, possibly involving Noel Smyth. TG also understood that **Raymond Mould** had changed his mind about co-operating with the Tribunal. TG was trying to find out what was going on. He said that he had also recently got the impression that **Richard Foreman** had become less than enthusiastic. **Lambert Smith Hampton** in Dublin had been given some lettings in Liffey Valley

[redacted]

136 [redacted] C

[redacted]

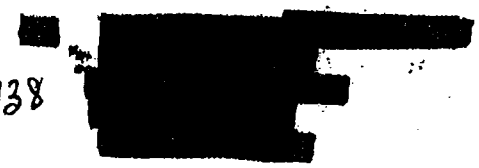
I asked TG if his domestic circumstances had changed and he said that they had not. I said that we still wished to meet him to discuss a number of matters particularly to fill gaps in the chronology. He said that he was no good on dates. I pointed out that he could assist us with the detail of events and the sequence of events which would assist us in identifying dates.

137 [redacted] A, C

Tribunal Ref : GILMARTIN THOMAS WF/RED **Page No: 345**

Tribunal Ref : RED. TGS 3 Page No: 357

Patrick Hanratty



138 A

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Wednesday the 3rd June 1999

I telephoned TG to-day. I asked him when did he think that OOC first discussed Quarryvale with AIB [redacted] 139 A, C

TG said that he did not know although he had always suspected that OOC had been talking to the bank at an early stage. However, he had no evidence of this. At one stage, possibly December 1988 OOC said that AIB was the biggest property investor in Ireland and that they were well aware of the value of the site. OOC would have know from an early stage that, sooner or later, TG would require bank facilities for the development. He would also have known because TG told him that Bank of Ireland was not a runner. TG said that he was very open with OOC and, in hindsight, told him far too much.

TG said that he thinks that **Donal Chambers** was the strategist in AIB in relation to Quarryvale. TG never actually met Chambers although he believed that he was heavily involved with OOC.

TG then referred to the meeting in Dail Eireann to which he was brought by **Liam Lawlor**. He was adamant that this took place on the 1st of February 1989. There is a record of it in Tom Gilmartin's 1989 diary.

He arranged to meet **Liam Lawlor in Buswells hotel** at 4.30 pm. Lawlor was late. When he arrived Lawlor brought him over to the Dail and signed him in. They met Ray Burke standing at an elevator. Lawlor introduced TG to RB. RB said nothing. They went up in the elevator and down a corridoor. They went into a big board room. Present in the room were **Seamus Brennan, Padraig Flynn, Brian Lenihan, Albert Reynolds and Bertie Ahern. Ray Burke** was standing at the top of the table. **Bertie Ahern** was at the top left hand side of the table as you look up the room. It was all men at the table. At one stage **Mary O'Rourke** came in and went out again. Charlie Haughey came in. He was introduced to TG and said that he knew him. TG asked how he knew him and CJH said that he knew his people in Lislargy. CJH said that he believed that TG was bringing a good investment to Dublin. He complimented TG. He then turned to the others and said "is he allright" or words to that effect. He then left. None of the other ministers except Brian Lenihan spoke to him. BL exchanged pleasantries.

TG can describe in detail where everybody in the room was sitting.

After the meeting a number of other things happened which are described in previous memos. However, at one stage he saw **Albert Reynolds** talking in an alcove to OOC. TG had decided to leave and saw this on his way out. OOC called him back and asked him where he was going. TG said that he was fed up

with him and his gangster friends. OOC said that neither he nor any unionist would put a foot on Quarryvale. This was the second time that OOC had said this to him. He said that TG said something about OOC using his friend Albert Reynolds. OOC said that AR would not be supporting TG anyway.

One of the Revenue Inspectors who raided TG's house after the tip off from Ireland was a man called **Lyons**. Some days after the raid Mr. Lyons knocked on TG's door. TG thought it was another raid. Lyons said that he was calling in a private capacity. TG invited him in. Mr. Lyons said that he regretted being part of what happened the other day and he apologised for it. Lyons told him that the raid was as a result of a tip off to the English Revenue from a high Government source in Ireland. [redacted] A, C

140 [redacted]

Lyons said that he was fed up doing other people's dirty work. He left the revenue shortly thereafter and TG does not know where he can be found. The number of the Revenue office in Bristol is 0454 611068. They may know where he is.

Susan Ryan is trying to get Machins, Solicitors to look at TG's revenue file under the Freedom of Information Act. I said that I would telephone SR to get her to expedite this. He mentioned that SR had spoken to Richard Foreman. He did not think that she had received any documents from him.

TG referred to a letter which he had not previously sent to us. It was a letter written by OOC to him in 1989 asking for a 50% stake in Quarryvale in return for the Nellstown site. TG refused this request. He will FAX this letter over to me.

He also has no objection to our obtaining a copy of his 1989 diary from Susan Ryan. He has destroyed his 1988, 1990 and 1991 diaries.

Patrick Hanratty

Patrick Hanratty

141 [redacted] A, C

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Thursday the 4th June 1999

I had two long telephone conversations to-day with TG.

TG said that he had sent the letter he referred to yesterday to **Susan Ryan** and had not kept a copy. [redacted] C

1/42

He mentioned the difficulty which he had had in relation to the purchase of the corporation lands at Irishtown and the attempts by LL and GR to block him.

TG referred to the statement by **Bertie Ahern** to the Dail in January of this year. He said that BA had misled the Dail on 6 occasions during that speech. One of the things he said was that **Joe Burke** had met TG in relation to Batchelors Walk. TG said that JB had nothing to do with Batchelors walk. His involvement related to Quarryvale and the Corporation lands which TG was trying to purchase.

He said that there were two meetings of the planning committee within a week or so of each other for the purpose of ratifying the sale to him. It was not ratified at the first meeting. After that meeting he received a call from **McCloone** to tell him that he would have to do something because there were people trying to block him. This led TG to call Bertie Ahern. BA said that he would get **Joe Burke** to do something. JB called to TG. JB was a member of the committee. The proposal was approved at the second meeting of the Corporation. I said to TG that my recollection of the documentation was that there was no indication of any difficulty or delay in getting this approval.

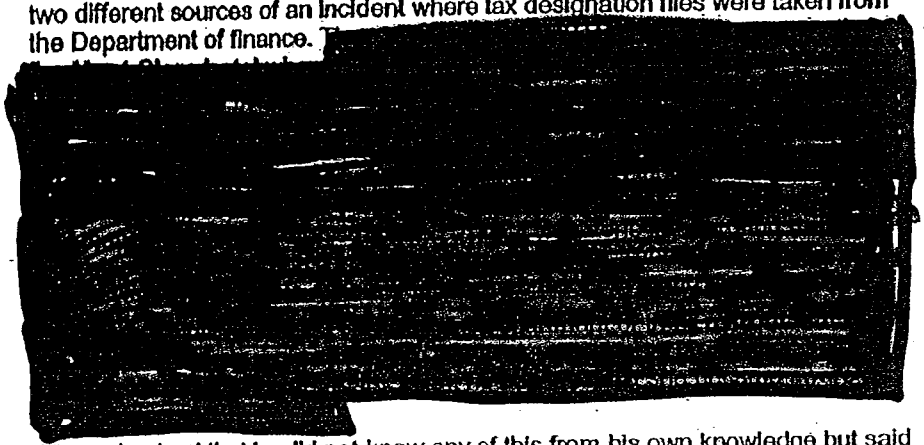
After the first telephone call I checked the minutes of the metting of the planning committee for May 1989. The closing date for tenders was the 19th of May 1989. The next meeting of the planning committee was the 26th of May at which the TG tender was approved. There does not appear to have been a meeting between the 19th and 26th of May at which the tender was not approved. I put this to TG during our second telephone conversation and he said that maybe it was not an official meeting but that there was definitely something going on which led McCloone to telephone him to warn him and which, in turn, led him to contact Bertie Ahern. He said that he had also been warned by two County Councillors, Paddy Hickey and James Murphy. He was introduced to these in Buswells hotel by Sean Gilbride. He was also warned at some stage by Tom Boland who was chairman of the county council in 1988/89. TG said that he had a number of meetings with him (but not, I gather, necessarily in May 1989).

TG mentioned the purchase of the **Bruton** lands. This site was a crucial part of the whole Quarryvale site. The original deal was a part exchange of **the Convey stud** and a part payment of cash, mostly payable in August 1990. As this deadline approached the bank were putting heavy pressure on TG to hand over control to OOC. They kept sending him heads of terms. TG was emphasisng the

absolute necessity to close this deal on time at all costs because the site was so important. They did not come up with the cash and, eventually it was necessary to re-negotiate and pay nearly an extra million. At that stage TG did not care because he had already been "screwed." Under the original facility letter TG said that the bank had a charge over the contract of sale on the Bruton land and also over the Convey stud.

TG says that the bank themselves approached Bruton to see if they could buy the lands behind TG's back. However, Bruton refused to deal with anybody but TG. **Roderick Downer** of Jackson Stops & McCabe acted for **Desmond Bruton.** The deal was supposed to close in August 1990. It did not in fact close until September 1991. It cost 2.3 million instead of 1.5

TG referred to the question of tax designation. He said that he had heard from two different sources of an incident where tax designation files were taken from the Department of finance.



TG emphasised that he did not know any of this from his own knowledge but said that he had heard it from two sources. He said that these were independent sources. I asked TG if he was prepared to divulge the identity of these sources and he was not. I then asked him to inquire from these sources if they would speak to us on a confidential basis. He said that he would do this. I asked him if one of these sources was a labour politician. He immediately assumed that I was referring to **Emmet Stagg's** public statement on the matter and he confirmed that Emmet Stagg was not one of the persons from whom he had received the information . All he would say was that one of his sources was a "person in the media" and the other was not.

TG said that **John Deane** had two offices in Cork, one in Lavitt's Quay and the other in South Mall. In the basement of one of these offices there was a microfilm relating to OOC containing names amounts and dates. It was an "insurance" file. I asked him how he knew this and he declined to say. However later he mentioned that there was somebody in that organisation talking to **Frank Connolly.** He also mentioned that there was a former employee of Ambrose **Kelly** who was also talking. He used to be a trustee. (?)

Tribunal Ref : GILMARTIN THOMAS WF/RED **Page No: 350**

Tribunal Ref : RED. TGS 3 Page No: 362

Patrick Hanratty

143 [redacted] A, C

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Wednesday the 26th June 1999

TG telephoned this afternoon. He said that Paul Sheeran had recently reminded him of a meeting which he attended at which TG and Joe Burke were present. TG had forgotten about this meeting. It was the third meeting which TG had with Burke. It took place in Stephen's Green in June 1989. Sometime in July Paul Sheeran wrote a letter to JB saying he was pleased to meet him. They are both from Donegal. PS is to let TG have a copy of the letter and TG will send it to me.

144 [redacted] J

145 [redacted] C

Patrick Hanratty

Patrick Hanratty

146 [redacted] A.C

MEMORANDUM

1st July, 1999

1. On Monday, 27th June, 1999, I received a telephone call from Tom Gilmartin who informed me that CAB were actively investigating matters arising from the information they obtained from George Redmond and had interviewed Brendan Fastnidge and a businessman. He said that Fastnidge was trying to get a newspaper to buy his story but was not telling the full story to CAB.

2. He said that he had had various journalists on to him during the week, who were looking for information in relation to a story Frank Connolly was alleged to have. He said that the *Sunday Business Post, The Independent* and *Magill* had all been in contact with him and at first, he was told that Gerry Brady had made an admission to CAB which confirmed the story about the car to Lawlor but subsequently they said that that story was untrue i.e. about Brady and that it was Fastnidge who had spoken to the newspapers.

3. Gilmartin said that he had received a writ from Ambrose Kelly arising out of what Gilmartin was alleged to have said about Tim Collins and his relationship with Ambrose Kelly. This was in the context of the rezoning of lands in South County Dublin. He said that Tim Collins was Bertie's mate and that although the *Sunday Independent* and *The Sunday Business Post* had published the stories, neither newspaper had been sued.

4. He said that it was a coincidence that on the same dates that he received a statement of claim from Ambrose Kelly, he received proceedings from Dublin

Corporation seeking £400,000 which the Corporation claimed were due to the Corporation from Gilmartin.

5. He said that John J. Coffey & Company were acting for Ambrose Kelly and that the number of the proceedings is 99 No. 3698P. He said that James Salafia, S.C. and Martin Hayden, B.L. have signed the pleadings in which Kelly seeks damages for defamation and malicious falsehood.

6. He said that Dadley & Company are now back on board. He said that they had been dealing with Ciaran Murray in connection with a project in the Ballymun area and that they had tried to set Dadley up and advised him to stay out of the Tribunal. He said that Dadley is now prepared to come on board and to talk to Gilmartin's solicitor. His (Gilmartin) understanding was that a land and/or deal was offered to Pillar and Arlington as part of a major development in Dublin although Ciaran Murray's company/project did not own the lands in question.

7. He went on to refer to the man he describes as *"the Cuckoo"* and said that there was £1m. missing from Barkhill.

8. He said that Liam Lawlor is top of the CAB list and that the challenge to the Tribunal by Lawlor is because Lawlor does not know what the Tribunal has found out and what information the Tribunal may have obtained from George Redmond. The challenge is in order to find out what information we have other than the information from Gilmartin. He said that their biggest worry was about what had been uncovered and said that there was still £50,000 that had to be found.

JOHN GALLAGHER, S.C.

147 [redacted] B

MEMORANDUM

12th July, 1999

Re: Meeting with Thomas Gilmartin on Thursday 8th July, 1999
Venue: Thistle Hotel, Luton

PRESENT: Susan Ryan, Terry Leggett of Eugene F. Collins, Solicitors, Thomas Gilmartin and Patrick Hanratty, S.C.

The meeting lasted from 1 p.m. until 5.30 p.m. The meeting was arranged at my request to enable me to obtain further information from Mr. Gilmartin in relation to particular events and to, as far as possible, identify dates and to clarify the sequence of certain events in the absence of a specific date.

Mr. Gilmartin informed me that the Arlington meeting at which Mr. Lawlor arrived, ,took place in May, 1988. It was shortly after his meeting with Mr. Pastnidge and Mr. Lawlor in Dublin which was in May, 1988.

Mr. Gilmartin said that he believed that he met Mr. Owen O'Callaghan for the first time on the 7th December, 1988. He believed that he may have seen him on a few occasions previously in Allied Irish Banks. These would have been meetings which he attended in connection with Arlington business.

148 [redacted] B

Mr. Gilmartin then mentioned a meeting which took place in the Trusthouse Forte *Hotel in Dublin Airport. He believed that this meeting took place in November, 1998.* The purpose of the meeting was to discuss the project with Taggarts. Present at the meeting were Tom Gilmartin, John McCammin, a Mr. McNeill (architect) and a Mr. Ian Bond. The meeting was *"gate crashed"* by Mr. Liam Lawlor. Mr. Gilmartin believes that Mr. Lawlor may have known that he was coming to Dublin. He telephoned Thomas (Mr. Gilmartin's son) and he was told that Mr. Gilmartin was at this meeting.

Mr. Lawlor arrived and attended the meeting as if he was invited. He said that Mr. Gilmartin would have to deal with Owen O'Callaghan because the Neilstown site had the zoning. This was the first time that Tom Gilmartin had heard about Owen O'Callaghan. Mr. Gilmartin said that he immediately realised the significance of this and the error that he had made in not getting some kind of an agreement in relation to the Neilstown site. Mr. Gilmartin said that he had previously been shown the Neilstown site by Mr. McCloone and Mr. Morrissey. Originally, they brought him out to see the Tallaght site. However, they told him that there was some deal with Phil Monaghan although Mr. Monaghan appeared to be slow in putting together a development. Mr. Gilmartin therefore said that he was not interested in a site in which somebody else had a deal.

Then, Mr. McCloone and Mr. Morrissey showed him the Clondalkin site. Mr. McCloone and Mr. Morrissey then showed him around the Neilstown site which was of interest to him. Richard Foreman was with him. He remembers it well because when they were in some distance into the site, Mr. McCloone ran back to change the location of his car. When Mr. Gilmartin asked him why he had done this, Mr. McCloone said that it would be unsafe to leave your car unattended in a place where it could not be seen. Mr. Gilmartin thought that it was ironic that the Council officials were trying to interest them in a site which was situated in a location where it was unsafe to leave your car. The site was about 120 acres and it took them most of the day to look at it. This was the Neilstown site. The portion that O'Callaghan ultimately from Gubay only consisted of 33 acres.

Mr. Gilmartin said that he would have walked the site in August/September, 1987. Mr. Gubay did not have a contract at this time. When he did enter into a contract with the Corporation, he paid a deposit of £300,000 but the contract into which he entered was a very loose contract and enabled Mr. Gubay to get out on a number of possible grounds. Mr. Gilmartin did not regard this as a binding contract.

Mr. Gilmartin said that he found out after the Trusthouse Forte meeting that Owen O'Callaghan became involved in Clondalkin about a week before that meeting. That would have made it some time in November, 1988. Mr. Gilmartin heard that Mr. O'Callaghan flew over to the Isle of Man some time in later November, 1988 or early December, 1988 to see Mr. Gubay, who lived in the Isle of Man. The deal which Mr. O'Callaghan did with Mr. Gubay was to repay him his deposit of £300,000 together with a *"profit"* of £500,000.

Merrygrove Estates Limited, the company which Mr. Gubay used for this contract, was incorporated in March, 1988. Mr. O'Callaghan appears to have taken over the contract by taking over this company.

We then turned to discuss the dates of Mr. Gilmartin's meetings with Bertie Ahern. I drew his attention to the fact that we had two dates, 10th October, 1988 and the 13th October, 1988 which had been extrapolated from Mr. Ahern's Dail statement on the 27th January, 1999. In that statement, Mr. Ahern said that he met Mr. Gilmartin on the 10th October, 1988 in his office over Fagan's pub in Drumcondra and that Tim Collins was present. Mr. Ahern said that the Arlington name was recorded in his diary.

Mr. Gilmartin says that he never met Bertie Ahern within three days of each other. It seems that Mr. Bertie Ahern's date of the 13th October, 1988 is incorrect. In fact, it seems that he may have the wrong year because Tom Gilmartin says that his first meeting with Bertie Ahern was not long before the stock market crash on Black Monday in November, 1987. Consequently, it could have been that his first meeting with Bertie Ahern was on the 13th October, 1987. This first meeting, according to Mr. Gilmartin, took place in Mr. Bertie Ahern's office in Mespil Road in Dublin (this is the old Department of Labour building which used to be the venue for unfair dismissals claims).

150 [redacted] B 3

Mr. Gilmartin says that he remembers the event well. He arrived in this big, open, cold lobby of a very dreary building. He had a conversation with the porter who was a former member of the Garda Siochana. He went up to Bertie Ahern's office which he said was very stark and had a desk and not much else in it.

Mr. Gilmartin's next meeting with Bertie Ahern was on the 10th October, 1988 in Fagan's pub as stated by Bertie Ahern. However, Tom Gilmartin is sceptical of the claim that the person present was Tim Collins. The man who was present had a ruddy complexion and bushy hair. Mr. Gilmartin believes that it was some union man and not Tim Collins who was present. The next meeting he had with Bertie Ahern was on the 28th September, 1989. This was a busy day for Mr. Gilmartin. At 9 a.m that morning, he had a meeting in Dublin with Raymond Mould, Ted Dadley, Andrew McFarland and Barry Boland. This meeting took place at 25, St. Stephen's Green at 9 a.m. Mr. Mould and Mr. Dadley had sore heads because they were out late the previous evening. After their meeting in St. Stephen's Green, they walked down Kildare Street to the Department of Industry and Commerce. There, they met Padraig Flynn, Seamus Brennan, Jim Farrelly and some other person. The discussion at that meeting related to CIE.

At 3 p.m. that day, Mr. Raymond Mould and Mr. McFarland went back to London. Mr. Mould purchased a mirror in James Adams of St. Stephen's Green before he returned to London. Having purchased the mirror, he came to the offices in St. Stephen's Green and then departed.

Mr. Gilmartin recalls that he was supposed to meet Brian Lenihan that day but is not absolutely clear whether he did or not. [redacted]

151 [redacted] A

152 [redacted] B

After the departure of Raymond Mould and Mr. McFarland, Mr. Gilmartin and Mr. Dadley travelled out to meet Bertie Ahern in his office over Fagan's pub in Drumcondra. There was only the three of them there on that occasion.

Mr. Gilmartin then discussed his meetings with the bank in relation to Quarryvale. He says that literally every time he had a meeting in the bank relating to Quarryvale, Owen O'Callaghan and John Deane were present in the building. They had open-plan offices and frequently Mr. O'Callaghan and Mr. Deane would be in an adjoining *"partitioned"* office. Frequently, Mr. Jim Donagh would go out from his meeting with Mr. Gilmartin to have a discussion with Messrs. O'Callaghan and Deane.

Mr. Gilmartin said that he believes that his meeting with Brian Perry of the Bank of Nova Scotia in Dublin was on the 18th January, 1989. Prior to that, he had had a meeting with personnel from the Bank of Nova Scotia in London. He spoke to executors of the bank including one from Canada. They were interested in his proposal and arranged a meeting with Mr. Perry.

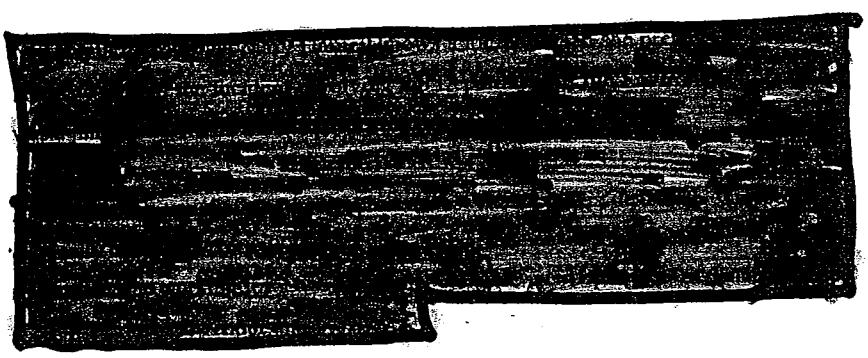
When Mr. Gilmartin attended for this meeting for Mr. Perry, probably on the 18th January, 1989, Mr. Perry came to meet them in the lobby. They did not go to his office. Mr. Perry told them of his meeting the previous day with Ansbacher attended by Mr. Moloney and Phil Monaghan. Mr. Gilmartin showed his brochure to Mr. Perry and Mr. Perry laughed. Mr. Perry said that he would never complete this development and that Owen O'Callaghan had done it again and that Tom Gilmartin was in for a rough ride.

I asked Mr. Gilmartin what he thought Mr. Perry meant when he said that Owen O'Callaghan had done it again. Mr. Gilmartin said that Mr. O'Callaghan had done the same thing before to somebody else in Limerick. He said that the longstanding owners of lands in Limerick could not get planning permission for retail from Limerick Corporation. They were in some financial difficulty and Owen O'Callaghan sent in the bank to put the squeeze on the owners. The bank was Allied Irish Banks. The owner in question found that he had a *"cuckoo in the nest"*. O'Callaghan ended up running the whole deal and the owner turned into a minor partner.

Mr. Gilmartin said that the same thing happened to [redacted] in Kilkenny. Mr. Gilmartin said that Owen O'Callaghan was around there before Carney knew he was in trouble with the bank. The bank was Allied Irish Banks and David McGrath was involved. Mr. Gilmartin said that the same thing also happened in relation to the Golden Island development in Athlone.

Mr. Gilmartin said that there were two incidents when tax designation files went missing. One was where files went missing from the Department of the Environment. These files were brought to the Mont Clare Hotel.

He said that the Department of Finance files which went missing were brought to the Westbury Hotel. Bertie Ahern was at both meetings.



When I mentioned that Celtic Nominees was one of the companies (with Buckfast Limited) granting the option to O'Callaghan on the Neilstown lands in January, 1989, Tom Gilmartin said that he *"smelt a rat"* and said that he feels that he was screwed here again. He seemed to be implying some kind of a connection between this and O'Callaghan.

We then discussed the date of the abortive meeting in George Redmond's offices in O'Connell Street which Mr. Gilmartin had previously told us was on the 23rd February, 1989. There was some suggestion that it may have been on the 2nd February, 1989. Susan Ryan agreed that somebody must know the actual date of this meeting. It was attended by John O'Higgins of Ove Arup in Dublin and also representatives from Taggarts. It was also attended by Richard Foreman and John

McCammin. Richard Foreman arranged for Ian Fowler and Malcolm MacNoyce to *go to this meeting. Some of these people are bound to have a note of when the meeting was scheduled for.*

Mr. Gilmartin says that after Mr. Redmond's antics, Mr. Sean Haughey rescheduled the abortive morning meeting for 2 p.m. When they went in at 2 p.m., Sean Haughey asked George Redmond *"What the fuck is going on."*. George Redmond said *"Ask your brother."* Sean Haughey said *"I am not my brother's keeper."*. Mr. Gilmartin said that the meeting which he had with Sean Haughey (which he believes was on the 23rd February, 1989 when he made his complaints to Mr. Haughey, were in Exchange Buildings in Dublin. Apparently, this was a County Council office at the time.

I then asked Mr. Gilmartin if he could assist me with the date of the meeting in George Redmond's offices in O'Connell Street when, he says, Mr. Lawlor asked Mr. Gilmartin to pay £100,000 each to Mr. Lawlor and to Mr. Redmond. Mr. Gilmartin says that it was in May/June 1988. In the course of that meeting, Liam Lawlor said that it would cost Mr. Gilmartin £100,000 for each of them. At that meeting, George Redmond produced a coloured drawings which indicated the ownership of all the lands in Quarryvale. The bank got this drawing and gave it to O'Callaghan. At the time when Liam Lawlor asked for £100,000 for himself and George Redmond, George Redmond was at the other end of the room with a phone to his ear. Tom Gilmartin thinks that he was talking to nobody but pretending to be pre-occupied on the phone.

I asked Mr. Gilmartin about the date of the meeting in May, 1989 when he gave a cheque for £50,000 to Padraig Flynn. Mr. Gilmartin reiterated that this was intended for Fianna Fail and not for Padraig Flynn personally. Mr. Gilmartin said that he thought that the meeting at which the cheque was given was the 10th May, 1989. This meeting was at 7 p.m. He said that the date of the meeting was the date he wrote on the cheque. [Unfortunately, the date is illegible on the microfiche printout of the cheque which we have. Perhaps AIP might be in a position to furnish a better copy.]

Mr. Gilmartin said that the reason that he decided to make his donation to Fianna Fail through Padraig Flynn was that he knew that Padraig Flynn and Bertie Ahern were the

fundraisers for Fianna Fail. He cannot actually remember whether he knew that *Padraig Flynn was a treasurer at the time* but he certainly does remember that he was collecting money on behalf of the Party. Mr. Flynn was also the one that he was *"panned off with"* and, at that time, he was the person in Fianna Fail with whom he had most dealings. Consequently, Mr. Gilmartin decided to make his Fianna Fail donation through Mr. Flynn.

We then turned to discuss the date of Mr. Gilmartin's meetings with Mr. Joe Burke. Mr. Gilmartin says that he had previously overlooked the fact that he had had a third meeting with Mr. Burke. There were three meetings in total. The first meeting came about after Mr. Gilmartin had been told by Paddy Morrissey and Martin McCloone that George Redmond and Liam Lawlor were doing everything in their power to block his purchase. Mr. Gilmartin already knew that George Redmond had tipped off Green Properties and that it was as a result of this that the matter was put out to tender. Martin McCloone asked Mr. Gilmartin did he know anybody and strongly suggested that if he did, he'd better do something or his tender might be defeated. Tom Gilmartin said that Paddy Morrissey was sick and tired of Lawlor and Redmond's antics.

Mr. Gilmartin pointed out that the Corporation had previously agreed £30,000 per acre but they put it up to £40,000 per acre when they heard that he (Gilmartin) had paid Bruton £40,000 per acre. Mr. Gilmartin says that they nearly snapped his hand off.

Mr. Gilmartin believes that it was probably between the Planning and Development Committee meeting on the 26th May (which decided to recommend his tender) and the Council meeting on the 12th June, 1989 (at which the tender was agreed) that Redmond and Lawlor attempted to interfere. When Mr. Gilmartin was tipped off by McCloone and Morrissey, he telephoned Bertie Ahern who said that he would send somebody down to see him. He sent down Joe Burke. This was Mr. Gilmartin's first meeting with Joe Burke. The second meeting with Joe Burke was the occasion when Mr. Burke drove Mr. Gilmartin to the airport in a pick-up truck, stopping at two publichouses on the way looking for Bertie Ahern. This was after the Gilmartin tender had been approved on the 12th June, 1989. The third meeting with Mr. Burke which

was also attended by Mr. Paul Sheerin, occurred later in June, 1989. Mr. Gilmartin said that all three meetings with Mr. Burke occurred within the space of one month.

Mr. Gilmartin said that Paddy Morrissey was saying to him that somebody had to do something about George Redmond.

I then asked Mr. Gilmartin to explain the circumstances surrounding the agreement of the 31st January, 1989 whereby he agreed to buy over the Neilstown contract for £3.5m. from Owen O'Callaghan. Mr. Gilmartin explained that the £800,000 which he then paid to O'Callaghan (£300,000 which O'Callaghan had paid to Gubay together with the additional £500,000 *"profit"*) was paid out of his own funds. He did have a £1m. loan with Bank of Ireland at that time but it did not come out of this money.

Mr. Gilmartin said that the actual deal which was agreed was that he would pay £800,000 on signing, £1.3m. one year later and £1.3m. upon the receipt of planning permission.

The contract, which was drawn up by John Deane, did not accurately reflect what was agreed and, through the negligence of Seamus Maguire, the contract which Mr. Gilmartin actually signed, provided that £1.35m. should be paid in October, 1989 and a further £1.35m. on the 31st January, 1990. This was absolutely not what was agreed but it did put Tom Gilmartin in a very invidious position. The total of all these sums is £3.5m. which is the original £3m. which Gubay had agreed with the Corporation and the £500,000 *"profit"*.

Mr. Gilmartin then discussed the events of 1990. He said that after he obtained the facility from Allied Irish Banks in February, 1990, they had him *"over a barrel"*. He would have had no difficulty whatsoever in paying off this loan once the zoning came through because once he obtained zoning, the cash would start to flow from institutional investors. However, Mr. Gilmartin believes that O'Callaghan and the bank orchestrated a situation whereby the zoning motions in respect of Quarryvale were stalled throughout 1990. In this way, Mr. Gilmartin would be unable to obtain finance, would default of his obligations under the terms of his loan with AIB thereby giving them leverage to force Mr. Gilmartin to hand over equity to O'Callaghan. This

is what in fact happened. Mr. Gilmartin says that O'Callaghan successfully orchestrated the stalling of the zoning of Quarryvale in 1990.

It should be noted that the facility given to Mr. Gilmartin in February, 1990 made no requirement for the payment of the £1.35m. then due to Mr. O'Callaghan. This was not an oversight by the bank because there is a reference to the option agreement in the facility letter. This is a very surprising omission given that failure to pay this particular sum by Mr. Gilmartin could result in his losing control over having the zoning switched from Neilstown to Quarryvale. This could be a significant detriment to the bank's security, the principal item of which was security over the Quarryvale lands themselves, the value of which depended hugely on whether they were rezoned or not. The facility letter refers specifically to the various items for which the finance is being provided and there is no reference in it at all to the £1.35m. which was due to O'Callaghan. The only possible explanation for this is that they had some kind of *"comfort"* or arrangement with O'Callaghan which satisfied them that *"in appropriate circumstances, the zoning would be switched"*. Mr. Gilmartin said that the bank started putting pressure on him in June, 1990 saying that he was going to have to repay the loan by August, 1990 as originally arranged. They knew full well that he did not have the where-with-all to do this without zoning. The first zoning relating to Quarryvale was due to have been on the 9th February, 1991 but was adjourned to the 15th February, 1991. Prior to that, the bank had been putting severe pressure on Tom Gilmartin to bring in a partner who was experienced in development in Ireland (obviously O'Callaghan). They prepared heads of agreement which were dated 14th December, 1990. Susan Ryan showed me a copy of this document which bore on it the imprint of a date of the 13th February, 1990. I suspect this is a fax record of the date the document was sent by fax to Tom Gilmartin.

The Council meeting at which the proposal to rezone Quarryvale was to be first put was dated 15th February, 1990. Prior to that, Mr. Gilmartin had received a threatening letter from the bank dated the 7th February, 1991. He received an even more threatening letter, he believes dated 13th February, 1991 although this letter was subsequently withdrawn.

158 [redacted] C

159 [redacted] A

160 [redacted] B

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The evening of the 15th February, 1991 was the night of the three way link-up between O'Callaghan, the councillors and Tom Gilmartin. It was the *"night of the long knives"*. Mr. Gilmartin says that Owen O'Callaghan was orchestrating the councillors in Dublin County Council to put pressure on Mr. Gilmartin to sign the heads of agreement. Mr. O'Callaghan was in the Bankcentre in Ballsbridge with a number of bank personnel. Mr. Gilmartin was in Luton. Mr. Gilmartin believes that the Council meeting started at around 7 p.m. During the course of this evening, Mr. Gilmartin received telephone calls from Councillors Colm McGrath and Gilbride, both of whom told him that he would have to reach agreement with O'Callaghan and the bank before they would propose the motion. Mr. Gilmartin considers that this was an outrageous attempt by both of them to force his hand to sign an agreement involving a transfer of equity to O'Callaghan. He said that this was a direct result of O'Callaghan having both of these councillors *"vote in his pocket"*.

Mr. Gilmartin says that the motion was supposed to have been put in early. Councillors Gilbride and McGrath were threatening him by saying that if he did not act quickly, the motion would not be reached. Mr. McGrath said that he would not put the motion until Mr. Gilmartin signed the agreement. Mr. McGrath telephoned him and said to Mr. Gilmartin *"What the fuck am I supposed to do."*. Mr. Gilmartin asked them what was the problem. Mr. Gilbride asked had he sorted out the problem with O'Callaghan and the bank. He said that they were blocking it. Mr. Gilmartin says that he told Mr. McGrath that he was a public official and what had either O'Callaghan or the bank got to do with zoning on this site. Mr. McGrath said that he could not put in the motion until he (Mr. Gilmartin) sorted them out. He got a similar line from Councillor Gibride. Mr. Gilmartin says that the bank were on to him that evening putting pressure on him; [redacted] A

161

162 [redacted] C

Mr. Gilmartin said that as a result of all of this pressure, he decided to sign the agreement and he did so and sent the same by fax to Allied Irish Banks, i.e. the signed agreement dated the 14th December, 1990 has a fax date of the 13th January, 1991 and was actually signed by Tom Gilmartin on the 15th January, 1991 under pressure. The

163 [redacted] B

following day, Mr. Gilmartin informed the bank that he was repudiating that agreement, that he had no legal advice.

164 [redacted] C

[redacted] We briefly discussed the further agreement which Mr. Gilmartin signed on the 31st May, 1991 in which 44.49% of Barkhill Limited was transferred to O'Callaghan and in which Allied Irish Banks themselves took 22.25% equity in the company. Mr. Gilmartin pointed out that this agreement was not in fact signed until September. It was signed by Seamus Maguire under his power of attorney for Vera, Mr. Gilmartin's wife. Mr. Gilmartin did not get the power of attorney until September, 1991. He thinks that the agreement may have been back-dated to the 31st May, 1991 but he is not sure if this is so and if it is so, he is not sure why. We will have to discuss this again.

PATRICK HANRATTY, S.C.

165 [redacted] B

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PATRICK HANRATTY, S.C. AND TOM GILMARTIN ON THURSDAY THE 25TH NOVEMBER, 1999

From: Patrick Hanratty SC

166 [redacted] A

Date: 26th November 1999

Tom Gilmartin telephoned this morning, following on from our telephone conversations earlier this week and last week. [redacted]

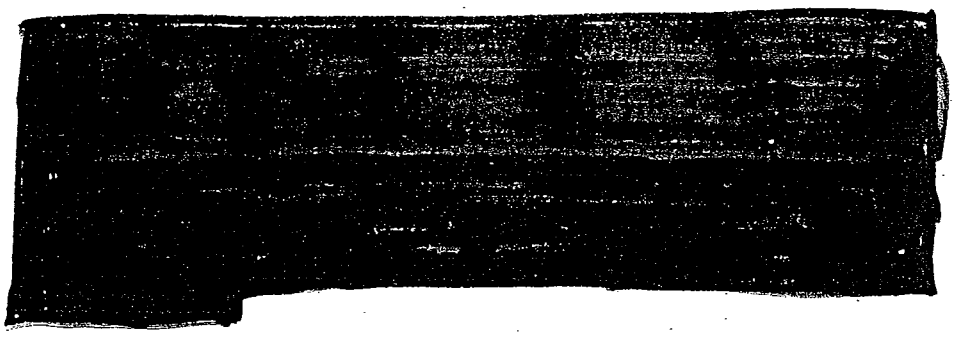
167 [redacted] J, K

168 [redacted] C

169 [redacted] C

TG then referred to the £150,000 paid by OO'C to Albert Reynolds in Cork in 1994. This was a few days before St. Patrick's day. TG said that this was not, as alleged by AR the result of a fund raising dinner. There was a dinner but it was in OO'C's house

and it was not a fund raising dinner. AR stayed in OO'C's house that night. At 3 am in an upstairs bedroom OO'C handed AR £150,000 in cash. TG said that this was a payment for tax designation in Athlone. TG said that Bertie Ahern got a cut out of this money. AR was picked up by helicopter the following day. I asked TG if his informant would be prepared to talk to the Tribunal. TG said that people were wary of the Tribunal and he was not prepared to disclose his name to me. He told me previously that his informant does not want to get involved.



TG then referred to the appointment of ? Fitzgerald as manager of one of the Dublin Local Authorities. OO'C had the casting vote ? of two already fixed. He had CJH in his pocket. He said that Hugh Coveny's demise was brought about indirectly by OO'C. He said that OO'C had more power than people realised. The original plan for the Cork tunnel was altered and re-routed so that it came out on land owned by OO'C. CJH was behind this change. He says that we can easily verify this. OO'C had complete control of Cork. The other developers there did not get a look in.

TG said that the £80k paid to Shefran was paid by OO'C personally and that he subsequently got reimbursed by Barkhill. He said that Eddie Kay told him that AIB enquired from Government sources whether TG would get zoning for Quarryvale. They were told that TG would never get zoning. This was in 1990.

He also referred to the delays in the development plan. He says that these were orchestrated by OO'C with the collusion of Councillors to whom he paid money including Colm McGrath. OO'C wanted to get into QV at all costs. He knew that if TG got zoning the value of the land would rise and TG would then have no difficulty in raising further finance and OO'C would have missed it. However if he could delay the zoning until after the default date on the loan he would be in business with the help of the bank.

TG said that George Redmond received substantial payments from John Corcoran of Green Property Company in 1990/91 in connection with the Blanchardstown site. In return GR procured an alteration of the line of the Navan Road to make it run close to the Blanchardstown site and secondly provided a "hammerhead" spur with a roundabout to give access from the Navan Road to the site. This spur was not paid for by Green. From the Brady's garage roundabout the road was bent south and the spur was taken south to the Blanchardstown site on the Blanchardstown side of Mulhuddart. GR also tipped off Corcoran that TG was buying the Irishtown site.

I asked TG about the fact that it appeared that OO'C had applied for and obtained planning permission on the Neilstown site. TG said that he got this with "line" drawings. I asked him would he not have had to submit full drawings. TG said that he thinks that we will find that this was an outline permission. OO'C never had the slightest intention of building a shopping centre there. Nobody in their right mind would do so. It is, he says, obvious to any developer that it would not be a feasible prospect because of the cost of providing road access.

TG said that there was a Councillor who we should look at called [redacted] He works [redacted] and is in the pocket of Ambrose Kelly.

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PATRICK HANRATTY, S.C. AND TOM GILMARTIN ON THURSDAY THE 25TH NOVEMBER, 1999

STRICTLY PRIVATE AND CONFIDENTIAL

From: Patrick Hanratty SC

170 [redacted] A

Date: 29th November 1999

[redacted]

171 [redacted] K.

172 [redacted] K.

173 [redacted] C

[redacted]

174 [redacted] C

Going back to my discussion with TG, he said that he had received information to the effect that the Shefran payments were in fact

175 [redacted] B

reimbursements to O'C from the Barkhill account for payments to senior politicians which OO'C had already made. OO'C had paid around £150,000 to senior politicians in 1989 and, in total, had paid £250,000 to senior politicians in connection with Quarryvale. In 1989 £50,000 was paid to Ray McSharry and £50,000 to Bertie Ahern. Bertie Ahern also got another £30,000 subsequently.

I asked where he got this information and whether the person providing it would be prepared to speak to the Tribunal. He said that the information came to him indirectly through an intermediary and that the person providing the information was afraid to come forward. However, he said that he would make efforts to have this person persuaded to come forward. I asked him whether and why he considered this person to be a reliable source and he said that he was 90% certain that he was reliable. I asked whether his knowledge of the source, such as it was, was sufficient to enable him to make this judgement he said that the source had previously been a partner with OO'C in a development in Cork.

I asked him whether the information about the 1989 payments came from Frank Connolly (the O'Brien matter) and he said that his was a different source to Connolly's. I asked him how he knew this and he said that he was certain that his source would never talk to a journalist "in a million years". I did, however, get the impression that TG is aware of at least the broad outline of FC's story.

TG said that his source was the source of the information that OO'C keeps a shotgun in the boot of his car. It was the same source that provided the information that [redacted]

TG then said that in the 80s and 90s the fashionable place for "hot" money was Macau (sic) in the Dutch Antilles. The Cayman Islands became unfashionable because the American Government giving the FBI powers, in certain circumstances, to get access to Cayman accounts. This was related to drug trafficking. Lichtenstein fell out of favour because there was a strong republican movement and because it was thought that this might undermine the power of the prince and thus render the banking system more "open". He

himself was told this by Deloitte & Touche and was given documents in the late 80s setting out an elaborate tax scheme involving the Dutch Antilles. He said that a lot of Irish "hot" money went there around that time and that if the Moriarty Tribunal were not looking there for some at least of the Ansbacker money they were looking in the wrong place.

TG mentioned the time he was told by a Mr. Palmer in January 89 when he told him that Mr.Haughey thought he should bring the right people on board. He suggested Dr. McCarthy and Ambrose Kelly. He went to see [redacted]

TG also mentioned his meeting in the Bank of Nova Scotia in Dublin with Brian Perry. He says that he was accompanied to this meeting by either Brian Laxton or Roy Harris of Lambert Smith Hampton and not Richard Foreman as he originally thought.

177 [redacted] K. C

178.

Patrick Hanratty

30th November 1999

179 [redacted] B 3

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PATRICK HANRATTY, S.C. AND TOM GILMARTIN ON THURSDAY THE 1ST DECEMBER, 1999

From: Patrick Hanratty SC

180 [redacted] C

Date: 3rd December 1999

Tom Gilmartin telephoned this morning. He referred to the meeting at Finnstown House to which Liam Lawlor turned up. This meeting was in June 1991. The meeting was with two investors who were interested in investing in QV. One of them flew in from Heathrow and another from Luton. The one coming from Luton travelled with Richard Foreman of Lambert Smith Hampton who also attended the meeting. TG had them collected by limousine (Neville Breen 480678). They were brought to meet with TG in the Shelbourne hotel where they were shown the brochure and plans. They then all travelled together in the limousine to walk the site. When they had done so TG thought that they were quite impressed. As it was coming up to lunchtime Richard Foreman asked TG if there was anywhere decent in the locality to have lunch. They did not want to go into town for lunch because they decided to walk the site again after lunch.

TG suggested Finnstown House which he had heard about. They went to Finnstown House and had a couple of pre lunch drinks. At about 12.30 TG decided to telephone Allied Irish Banks to re-schedule a meeting which he had previously arranged with Michael O'Farrell of AIB at 2.00 pm. He wanted either to put the meeting back to 3.30 or postpone it until another day. He rang from a public telephone in Finnstown House and spoke to Mary Basquille. He mentioned that he was meeting prospective investors and that they were about to have lunch and that he would be unable to make the meeting at 2.00 pm. She asked if they were going somewhere nice for lunch and he told her that they were in Finnstown House. MB agreed to put the meeting back until 3.30.

After the call TG re-joined the party and they went into the restaurant. They were given a table for four and they all ordered one course. Just after their lunch was served, at around 12.50 Liam Lawlor came in. He was sweating. Without being invited to join them he pulled over a chair from another table and sat down. He arrived within about twenty minutes of the telephone call to the bank. He had not previously been told of the meeting. He could not have been because it was only by chance that they went to Finnstown House and it was not pre-booked.

When he sat down he said that he was a representative of the Government and he was delighted to see that they were interested in this area because this was "mad dog" country, real "bandit" territory. TG took this to be an allusion to South Armagh. TG said this was an obvious attempt by LL to scare off the investors. During the lunch, to the dismay of TG and Richard Foreman LL, made several references to the problems of the area and of the difficulties which they had in getting people to invest in the area. After the lunch, LL left abruptly. Out of the earshot of the investors Richard Foreman said to TG "somebody should do something about that fucker." He does not normally use that kind of language. He was livid with rage at what had happened. The investors said that they did not require to re-visit the site and asked to be driven to the airport.

TG thinks that Mary Basquille told Michael O'Farrell what she had been told by him on the telephone. TG believes that MO'F telephoned Owen O'Callaghan and that he telephoned LL.

TG said that LL had received £50,000 from OO'C in connection with Quarryvale. There was a meeting in the offices of Frank Dunlop in Mount Street towards the end of 1991 when Lawlor demanded £100,000 from Dunlop. There was a big row. OO'C was in the next room when it was going on. Dunlop gave him a payment which brought the total he received from OO'C to £60,000. Colm McGrath complained about LL getting more than him eventhough he was the one who proposed the motions.

Patrick Hanratty

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PATRICK HANRATTY, S.C. AND TOM GILMARTIN ON WEDNESDAY THE 8TH DECEMBER, 1999

From: Patrick Hanratty SC

181 [redacted] C

Date: 9th December 1999

Tom Gilmartin telephoned yesterday afternoon.

He said that Tom Boland and others said that the re-zoning of the Quarryvale site was never in doubt. Owen O'Callaghan was always confident that he would get it through."

182 [redacted] A, C

[redacted] He said that he was certain that O'C had no concern.

183 [redacted] A, C

I asked him about the capping motion, also in December 1992. The reason is that what happened during the meeting of the 17th of December 1992 was that a motion was brought (probably at the behest of Green Property Company) to reverse the resolution of the 16th of May 1991 to re-zone Quarryvale from industrial to retail. The December motion to reverse the May 91 decision was defeated. However, after this had been achieved a separate motion to cap the size of the retail area at 250,000 was proposed by Anne Devitt and Colm McGrath (both believed to have been working with or for OO'C-McGrath is known to have received £30,000 in cash from OO'C). The question is why did O'C cap his own development when he did not appear to need to.

TG said that he did it with a view to ultimately buying out TG's remaining share. The capping obviously kept the value down and it made no sense for him at that stage to unnecessarily increase the value of the company if he intended ultimately to buy the

remaining equity. He knew that the capping was illegal and that he could, in any event have it removed in due course when it suited his purpose. It is TG's belief that the bank were privy to the capping and the reason for it. TG says that O'C has in fact already had the capping removed.

TG also said that there was an objection to the Quarryvale planning application both at planning stage and at an Board Pleanala stage. He says that if we look closely at this we will find that the objection is traceable back to O'Callaghan himself and Ambrose Kelly. I asked why he would object to his own development TG said that the reason was explained to him but he cannot recall the detail of it. However he is absolutely clear that the objection came from OO'C.

I asked TG again about what he had told me about the payment of a total of £50,000 to Liam Lawlor and the row which happened in Frank Dunlop's office. I pointed out that LL lost his seat in the June 1991 election and queried whether any payment would have been made to him after that. TG said that it certainly would. LL was a man of considerable influence and who had to be kept onside. TG said that it was OO'C that told him about the Dunlop office incident.

184 [redacted] A.C

[redacted]. TG said that he believed that the bigger payments were made by O'C. What FD did was to provide invoices to O'C which enabled him to get refunded from Barkhill. FD did distribute a lot of smaller payments, maybe up to £5,000 but the bigger payments came from O'C/Riga.

MEMORANDUM OF TELEPHONE CONVERSATION BETWEEN PATRICK HANRATTY, S.C. AND TOM GILMARTIN ON FRIDAY THE 14TH JANUARY, 2000

STRICTLY PRIVATE AND CONFIDENTIAL

From: Patrick Hanratty SC

185 [redacted] C

Date: 17TH JANUARY 2000

Tom Gilmartin telephoned on Friday. He said that he had information about the Golden Island development in Athlone.

The development was being carried out by a man called Diskin who is now dead. He got into trouble with the bank. TG is not sure which bank but he thinks it was AIB. They put pressure on Diskin to enter into partnership in his development with Owen O'Callaghan. There was also a developer called Kieran who had some development in Limerick and he also got into trouble with the bank and in his case also the bank inserted Owen O'Callaghan.

There was a problem getting either planning permission or zoning for the Golden Island development. TG thinks that it was zoning. There were four councillors who were very supportive of the project but 5 very much against including a Senator called Fallon and a Councillor Molloy. Eventually they persuaded Molloy to change his mind and support the project.

There was a meeting in the Prince of Wales hotel in Athlone to see what could be done about the vote. This was attended by Mr. Diskin, Owen O'Callaghan, John Deane, the man called Kieran from Limerick, Frank Dunlop, Ambrose Kelly and Tim Collins.

They decided to send a deputation to Mary O'Rourke. Owen O'Callaghan would not go himself and asked Frank Dunlop if he would go. He said "no fucking way-she knows me and will only fuck me out of it".

The delegation which in fact went to see Mary O'Rourke was Diskin and Tim Collins. They went to see her in her home. She would not entertain them and threatened to call the gardai if they did not leave.

TG then made reference to an incident which took place [redacted]

TG then referred to the week before the Government fell in 1994. This was the occasion when a number of tax designations were given the night before the Government fell over the Harry Whelehan affair. Bertie Ahern admitted that there had been a meeting between himself and Owen O'Callaghan the previous evening or the evening before that. TG said that he had heard that Bertie was now going to change his story and say that he got mixed up and that the person who he met for dinner was [redacted]

18b [redacted] A, C

and he said that he would but that he thought that it was unlikely that his informant would agree to do so.

Patrick Hanratty
17th January 2000

Memorandum

FROM: Patrick Hanratty

187 [redacted] C

Date: 21st February 2000

188 [redacted] C

189 [redacted] K

TG mentioned that at one stage there was a proposal that he move the shopping centre portion of his development to a site across the Fonthill Road owned by the Corporation. The Council had concerns about road access to the original site. Dublin Corporation owned this site. TG said that he would be willing to take this site and "flip" the shopping centre portion over to that site. The Corporation actually decided to go with this and Martin McCloone wrote a letter on the 25th of September 1990 opening negotiations. TG also got permission from the Co. Co. to include this site in his drawings and in his brochure and the brochure shows the shopping centre on this site.

He pointed out that this was at a time when the local authorities and the IDA were under instructions from the Government to reduce their land holdings. However, when it became known that TG was incorporating the DCC site across the Fonthill Road O'Callaghan got Albert Reynolds to send the IDA in to DCC to say that they wanted the site. The IDA went in to Derek Brady and said that they wanted the land. They said that they were going to stop TG. Paddy Morrissey ran for cover and the Corporation withdrew. McCloone rang TG to tell TG what had

happened and TG subsequently received a letter from the Corporation notifying him that they were not proceeding with the sale. This effectively scuttled this proposal and left TG with his original road access problems as well as the embarrassment of his plans not being accurate.

The IDA never actually took the site and after O'Callaghan took control they quietly faded away.

TG says that the reason that O'Callaghan did this was to discredit and undermine him because his plans and brochure incorporated this site.

Derek Brady was the runner up in the contest for Manager of South Dublin County Council (referred to by TG as "Feely's job"). He was regarded as the obvious successor and everybody assumed that he would get the job. However, O'Callaghan told TG a year prior to the appointment that Brady would never get the job. He said that it had to be decided by 5 county managers and that 2 were "onside". In the event Fitzgerald got the job on the casting vote of the Cork County Manager.

TG said that Ciaran O'Malley was with him on one of the occasions when he met Fintan Gunne. It might have been the occasion when FG said that he was going nowhere without Ambrose Kelly. Every time he met Gunne Ambrose Kelly was hanging around. Gunne said that AK had the ear of Charlie Haughey and an Bord Pleanala. TG said that he responded by saying "Is he a boutree (?). This is a West of Ireland expression for a hollow tree with fungi resembling ears. When TG told FG that he would not use AK FG said that he had burned his bridges.

TG referred to the fact that Ambrose Kelly had been paid £300,000 in 1992 eventhoug he had not as much as produced one drawing at that time. He said that we should be looking at what that money was used for.

TG again mentioned [redacted] who had told TG about a client who was "stung" by Liam Lawlor. The client had to borrow money to bribe Lawlor to get a planning permission which was essential for the survival of his business.

Tribunal Ref : GILMARTIN THOMAS WF/RED Page No: 380

Tribunal Ref : RED. TGS 3 Page No: 392

[redacted] On the day that Fassenige introduced TG to LL he brought TG and Paul Sheeran to see the "state of the art" garage which he had built but which the bank had re-possessed. All he had left was a site with planning permission for a filling station which he showed them. However, he did not have access onto the motorway because the Council owned a narrow strip of land between his site and the motorway [redacted]

190 [redacted] K

191 [redacted] C

Memorandum

From: Patrick Hanratty SC

205 [redacted] C

206 [redacted] C

Date: 28th June 2000

Subject: Telephone call from Tom Gilmartin re. Meetings in the recent past between Frank Dunlop and Owen O'Callaghan

Tom Gilmartin telephoned to-day. He said that he had heard on good authority that shortly after Frank Dunlop gave his evidence in public he had a series of meetings with Owen O'Callaghan in a place called the County Club near Dunshaughlin. There were at least three such meetings on different dates but all around the same time. A room was booked for these meetings. TG thinks that they took place in the afternoon.

TG said that he received this information from a friend of his called Mike Keane. It was in the house of Mike Keane in Dalkey that TG met Mary Harney at a party. Mike Keane used to run the Dalkey Island Hotel and other hotels. TG gave him some advice in relation to property investments in England and that is how he knows him.

The County Club was owned by Paddy Peters who died in the relatively recent past. Mike Keane is married to a daughter of the late Mr. Peters.

I asked TG if he knew the dates of these meetings and he said that he did not but that he would try to find out.

TG said that Frank Connolly also had heard, from another source, that these meetings had taken place. His source was a person who saw them in the County Club and recognised them. FC did not publish the story because he was unable to check it.

TG said that he was more convinced than ever that the Shefran monies went to politicians higher up than Councillors.

NOTE: [redacted]

207 [redacted] A

208 [redacted] A

Telephone Attendance

From: John Gallagher

Date: 9th January, 2002

Re: Tom Gilmartin – PTB/34

I received a phonecall from Tom Gilmartin. He commenced by inquiring about the health of a mutual friend whom he had heard was recently in the Mater Hospital. He then went on to say that he was anxious to establish who was present in Frank Dunlop's office at a meeting held there on the 28th April, 1991. I did not have the files readily available to me and asked him to remind me of what happened on that date. He said that he had been called by AIB to attend a meeting in there offices but there was no discussion or no meaningful discussion at that meeting and Owen O'Callaghan appeared. Eddie Kay said there were important people who wanted to meet TG. O'Callaghan had a taxi waiting at the bank. They went to Buswell's Hotel. O'Callaghan got out of the taxi and went in to the Hotel followed by Gilmartin. Liam Lawlor was sitting at a table in Buswell's. He got up and the three walked through the grounds of Dáil Eireann entering by the Kildare Street gate and exiting on the other side. They went to Frank Dunlop's office. Gilmartin was left in a room and O'Callaghan went into another room with Liam Lawlor. There was someone else in the room with whom Lawlor and O'Callaghan had a discussion. Dunlop was in and out of that room and Gilmartin was left sitting on his own. He, Gilmartin, says that he believes that that £40,000 was paid to Liam Lawlor on that day which was a few days before an important vote by DCC. He says that £40,000 had been taken out of his company before he had knowledge of it. He said that was the day that O'Callaghan said to him "you will never build a foot on that site".

Gilmartin initially thought that Ambrose Kelly may have been the unknown person in Frank Dunlop's office but he now thinks it may have been a representative of AIB, either Jim Donagh or —— Ahern (of AIB, College St.).

He inquired if the Tribunal knew the identity of the unknown person and I explained that even if we did know we would not be able to give him that information. He understood our difficulty in this regard but he then went on to talk about Frank Dunlop and said that he had been

warned about Dunlop on a previous occasion and although Dunlop had written personally to Gilmartin he was not anxious to employ him.

He recalled a meeting held at the offices of Irish Life which was attended by himself and Seamus Maguire with a number of representatives of Irish Life including Bill Nowlan. Gilmartin was endeavoring to buy two properties in O'Connell Street including the Rainbow Café. Irish Life were looking for £1m. At that time Garreth Fitzgerald's government were endeavoring to get the Financial Services Centre off the ground and the principal of Taylor Woodrow had done a deal with the Fitzgerald government to start the work.

[redacted] He heard this at the meeting with the Irish Life people and was warned off Dunlop at that meeting. He believes that two senior politicians got £100k and £150k respectively from O'Callaghan but he is unable to prove this.

He informs me that his wife's health has deteriorated and that she is now being cared for in St. John's in Sligo.

He asked when he was likely to be called as a witness and expressed the view whether it was likely that he would not be called before May next when the election is to be held. I told him that it appeared to me that that was a likely scenario.

John Gallagher

MEMORANDUM OF A DISCUSSION BETWEEN PATRICK HANRATTY, S.C. AND TOM GILMARTIN

THURSDAY 26TH SEPTEMBER, 2002

1. Tom Gilmartin rang me in my offices today following publication of the Interim Report of the Tribunal. He told me that he had received two telephone calls from a banker in England. He declined to tell me the identity of the person concerned because this person was extremely anxious not to become involved with the Tribunal although he did want to help Mr. Gilmartin. He said that Mr. Bertie Ahern had in excess of £15m in a bank account in the Bank of Ireland in Jersey. A substantial proportion of this money went through Allied Irish Banks in O'Connell Street. The man that was dealing with it in the Bank of Ireland was a man called Kevin Doyle. Kevin Doyle was sent over to deal with the matter.

2. Owen O'Callaghan made offshore payments to politicians including Bertie Ahern and Albert Reynolds. He made payments into Bertie Ahern's account in Jersey. Bertie Ahern and Albert Reynolds have accounts in Jersey, Liechtenstein and the Dutch Antilles. Bertie Ahern also has deposits in England. On one occasion he brought a briefcase full of cash over with him when he was attending a Manchester United football match. He was met by a courier from the Bank of Ireland to whom he handed the money.

3. Bertie Ahern got in excess of £100,000 from Owen O'Callaghan. Over £1million was stolen from Barkhill and it was from this money that O'Callaghan paid Bertie Ahern and Albert Reynolds.

4. The O'Brien affair was a set up from start to finish. Tom Gilmartin wasn't sure what to think of it at the start but one thing that always puzzled him was the fact that O'Brien said that he made the payment

209 [redacted] B

to Bertie Ahern. This was contrary to what Owen O'Callaghan himself had told Mr. Gilmartin, namely that he (O'Callaghan) had made a payment to Bertie Ahern. He never said anything about Mr. O'Brien or any other person. The O'Brien affair was a set up and an attempt to exonerate Bertie Ahern by diverting attention with a false allegation which O'Brien would subsequently withdraw.

5. After the affair all of O'Brien's debts were cleared by Owen O'Callaghan. He went on a holiday to Lanzarote and got a new car.

6. In 1990 Owen O'Callaghan gave Bertie Ahern a large sum of cash at a football match in Cork. The second lot of money was paid by O'Callagan to Bertie Ahern in 1992 in connection with the blocking of tax designation for the Green Property company. Mr. Gilmartin said something about the "three towns designation" which I could not follow. He said that at the time O'Callaghan was involved in deliberate delays in the review of the Dublin Development Plan particularly in relation to Quarryvale connected with his attempts to rest control/ownership of Quarryvale from Mr. Gilmartin. However Green came up the inside track and got off the ground and were about to get tax designation for Blanchardstown. If they did get off the ground this would have had extremely serious consequences for Quarryvale and would have affected the interest of anchor tenants including and in particular Marks & Spencer. John Corcoran was on the brink of getting tax designation. However it was blocked by Bertie Ahern and Albert Reynolds. Owen O'Callaghan paid Bertie Ahern £30,000 after a Barkhill Board meeting held in Bank of Ireland (Mr. Gilmartin thinks) in 1992. This was the Board meeting at which Mr. O'Callaghan left the room for a period and came back and announced that Blanchardstown was not going to get tax designation.

7. Frank Dunlop is not telling the full story. He is delivering "minnows" to the Tribunal but is withholding information about the bigger players. Over £1m was stolen from Barkhill and this was used to bribe politicians.

210 [redacted] B

8. *Large sums of money were taken from the O'Connell Street account to England. Bertie Ahern held an offshore facility with an Irish bank which* Mr. Gilmartin thinks is Bank of Ireland but says it might be Allied Irish under which he can trade in relation to the English account but in an Irish branch.

9. The man from the Bank of Ireland who gave the information to Mr. Gilmartin was on one of his telephone conversations about to give him an account number when he was interrupted and he suddenly said that he could not talk anymore and he had to go. Mr. Gilmartin thinks that he was making the telephone call from work. [redacted] Mr. Gilmartin heard this story from the banker who made the two telephone calls to him. He mentioned it to Frank Connolly and Frank Connolly already had it.

10. Finally, Mr. Gilmartin drew attention to the fact that when Bertie Ahern sued Mr. O'Brien he did not sue the Sunday Business Post. He says the reason for that was that he did not want to involve a third party in circumstances where Mr. O'Brien was part of the set up.

211 [redacted] B

Telephone Attendance

From: John Gallagher

Date: 3rd October 2002

Telephone call from Pat Hanratty who informed of the following:-

212 1. [redacted] C

213 2. [redacted] C

He also said that Tom Gilmartin had phoned him and told him that Frank Dunlop and Colm Peters had gone on a skiing holiday recently. TG said that Dunlop had attended various meetings in the Country Club Clonee and recently made a deputation of three individuals, including Tim Collins, from Bertie Ahern.

3. T.G. says that F.D. was involved in the Battle of the Boyne Site.

4. John Gilmartin said that he met Mary Harney at a party hosted by Mike Kerrins in Killiney quite a few years ago and that he told Mary Harney at that time what was going on.

5. Gilmartin says that Dunlop goes to Spain to meet people there – that Dunlop is being kept on-side; that he is very rich and would be made richer.

6. Dunlop is alleged to have met a number of people in the Bayview Hotel, ... shortly after his appearance before the Tribunal.

7. Dunlop is very friendly with Colm Peters.

8. Dunlop is alleged to have received monies out of the £6 million Government monies paid after the Battle of the Boyne Site was sold.

214 [redacted] B

Telephone Attendance

From: Susan Gilvarry

To: File

Date: 25th July, 2006

Re: Thomas Gilmartin – PTB/34

Mr. Tom Gilmartin telephoned me on the 25th July, 2006.

Mr. Gilmartin inquired whether he could speak "off the record". I informed Mr. Gilmartin that I was not in a position to have an "off the record" conversation. Mr. Gilmartin confirmed that he had heard today that the Judgment in the O'Callaghan matter had now been deferred until the 10th October, 2006. I told him that this was correct. He said that it was all a game and it was all for the purpose of delay.

He queried as to whether the matter would go to the Supreme Court and I confirmed to him that there was a strong possibility that it would. Mr. Gilmartin indicated that if the matter did go to the Supreme Court he would lodge an objection to the proceedings being heard before [redacted]. He said his name was being dragged through the mud in the High Court proceedings and that he did not have the money to proceed with the matter himself in Court. He said he was being accused of lying and making up stories and this was not the case. Mr. Gilmartin indicated that when he returned to the Tribunal, he would elaborate more on the allegations he has made including the Mary Harney situation. He indicated that previously he had not been used to Courts and consequently had only responded under pressure but that he was telling the truth at all times. He said he understands the position of the Tribunal because we are investigating wrongdoing.

In relation to [redacted], Mr. Gilmartin indicated that he should not hear any case involving Mr. Gilmartin himself as he had acted for Mr. Lawlor in the past and had taken instructions from Mr. Owen O'Callaghan. In addition, in his Judgment in the previous O'Callaghan matter, he had made disparaging remarks about Mr. Gilmartin and had compared him to thugs who had accused Mr. Roy Keane of assault. Mr. Gilmartin went on to say that he expected that the Tribunal would support him in his objection to [redacted]. He indicated that when he was in England he did not want to become involved with the Tribunal because he felt the odds were stacked against him but he felt, in fairness, the Tribunal was doing a good job. He said that he had heard that there had been a resolution in Dáil Eireann that the Tribunal was to be terminated in 2007. He said this was more of the same. Mr. Gilmartin terminated the phone call and thanked me for taking his call.

Susan

Telephone Attendance

From: Susan Gilvarry

To: Chairman

Date: 6th November, 2006

Re: Thomas Gilmartin – PTB/34

I confirm that on 6th November, 2006 Mr. Tom Gilmartin telephoned me.

He said he was very concerned that it would appear that [redacted] will sit on the Supreme Court that will hear the appeal from [redacted] in the High Court. He said his reasons for such a concern were that [redacted] had made very derogatory comments about him and that Mr. Gilmartin had no right to address this. In addition, he said that the Courts are allowing Mr. O'Callaghan to make false and spurious allegations about Mr. Tom Gilmartin and Mr. Gilmartin has no comeback from this. I told Mr. Gilmartin that as yet the Tribunal is not aware as to whether or not [redacted] would sit on the Court that will hear the Appeal. Mr. Gilmartin said that he was aware that the Tribunal were doing their very best in relation to this matter and that he was very happy that they had been successful in the High Court. He said he is very frustrated as Mr. O'Callaghan has been allowed in the High Court to make all of these allegations. I told him that was the nature of Court cases and that the Tribunal was not in a position to do anything to assist him in relation to that. I asked Mr. Gilmartin as to why he had not communicated through his solicitor. He informed that his solicitors had advised to "stay out of it".

He told me that when and if he came back to the Tribunal he would again address the Mary Harney issue and the Lee Tunnel issue. I told Mr. Gilmartin at this stage that anything he would tell me in that regard would constitute a prior statement and would have to be circulated.

Mr. Gilmartin said that he did not mean to put me in any difficult position and he apologised for taking up time. I informed Mr. Gilmartin that there was no apology required but that in light of the first O'Callaghan case that anything he said to me in relation to any matter would constitute a prior statement.

He told me he appreciated this and he thanked me for my time.

Susan

Telephone Attendance

From: DK
To: File
Date: 8th December, 2006
Re: Tom Gilmartin – PTB/34

I telephoned Tom Gilmartin this afternoon in response to his earlier call to Susan. She was unable to take his call as she was attending the public hearings so, in her absence, I returned his call.

His concern was in relation to his barristers. They could not be expected to continue on an ad-hoc basis and there was no certainty as to when the Quarryvale II module would recommence or when it would conclude. The legal challenges against the Tribunal were also adding to the uncertainty. He noted that he was now involved with the Tribunal for 10 years and he did not want to lose his legal team – "the cards are stacked against me".

He was meeting next Thursday with his barristers and he had nothing to say to them about what was happening. They could not be expected to drop their own clients whatever the Tribunal decides. What had happened to him was 20 years ago - he had been involved with the Tribunal for 10.

He said that he was only telephoning the Tribunal out of his major concern - what could he say to his legal team? I explained to him that the matter was listed again in the Supreme Court on Friday 15th December next. The Tribunal, at present, intended to resume its public hearings on the 16th January next subject to anything the Supreme Court may decide.

He had some concerns about the Supreme Court, in particular with [redacted] in the past. He said [redacted] also took instructions from [redacted] and was also a friend of [redacted]. He said the judicial review challenges were only a game to obstruct and delay the Tribunal, in his opinion, and he noted that Hazel Lawlor was contemplating a challenge also. The allegations made by Owen O' Callaghan in the High Court were "baloney".

He said the process was just frustrating for him and his health wasn't great. He apologised twice for bothering the Tribunal on the matter. I said to him that there was no need to apologise and that if his legal representatives required any further clarification, they could correspond with the Tribunal.

DK

Telephone Attendance

From: DK

To: File

Date: 22nd January, 2007

Re: **Thomas Gilmartin – PTB/34**

I received a telephone call this afternoon from Mr. Gilmartin. He was looking for my colleague Susan Gilvarry who was in a meeting and so asked to speak to me.

Essentially, he was responding to some of the matters which had been aired in the Supreme Court that day in the case of O'Callaghan & Ors -v- The Planning Tribunal. It seemed that the matters to which he referred arose out of exchanges between Counsel for the Applicant/Appellants and [redacted] He did not appear to be satisfied with some of these exchanges. However, the fact that he was not a part of the proceedings meant he felt unable to do anything to counter them. Obviously, I could not advise him in this regard and, to that end, suggested he liaise with his own legal advisers.

DK

23 February 1989: T.K made allegations to S.H. in the course of an interview, concerning LL, Cllr. H & G.R.
S.H informed C/M who asked him to arrange interview with T.K.

24 February 1989: C/M interviewed T.K with S.H + H.N.

T.K alleged that L.L said he was commissioned by the Government to look after the 'Arlington' site. He asked for a 5% interest. T.K responded by calling LL a gangster. L.L said men had ended up in the Liffey for less. Shortly after to T.K's surprise, LL walked into a meeting of Arlington in London. T.K had mentioned the meeting in his earlier conversation with L.L. At the London meeting LL again said he was commissioned by the Govt. + asked to be compensated. Arlington, against T.K.'s advice told T.K to pay LL £3,500 p. month. He did so, the cheques not being made payable to LL except in one case, when the cheque was issued by Mr. S, a bank manager friend.

T.K also said that LL had asked for £5 mill to be paid into a bank account in the Isle of Man, in respect of his support for a development which TK proposed at Irishtown, which development would represent a material contravention of the County Plan.

T.K also said LL had bought a Mercedes car from a Mr. B in Lucan, but had left the vendor short by £20,000 saying this was due in respect of services rendered in relation to a permission obtained giving access for a garage to the new road.

TK said LL got a payment in respect of a permission for a 'Mc Donalds' at Palmerstown.

T.K said that S.W. who was innocent of any wrongdoing, gave him the names of 8 members of C.C. who would be involved in any material contravention vote for the Irishtown lands. He (T.K) met four of them. Cllr. H asked for £100,000 in a brown paper bag – notes – no cheques. The other three, whose names he did not recall took a similar line. He did not meet the other four, feeling he might be expected to pay such money to 40 members.

TK said G.R was opposing his development at Irishtown for the wrong reasons. Within one hour of a meeting of Managers with Government Ministers. [We did not confirm whether there had been such a meeting] Mr G.R had told Mr Sha that the Minister had said that Mr K had bought out Mr. OC. [Mr. Sha owns land adjacent to Mr OCs]. Mr K said Mr. R was a friend of Mr Sha.

T.K said a recent announcement by J.C that the Blanchardstown Centre was going ahead was to stymie T.K. He felt G.R advised J.C, who he believed was going to employ G.R when he retired shortly. He also felt G.R had informed PM. to go back on an agreement concerning price for Corp Lands at Irishtown.

T.K. said G.R had received payment in respect of a permission for a Mc Donalds in Palmerstown. In the Mr B case mentioned earlier Mr K said when LL said he was holding back money in respect of the car, Mr B responded that he had already paid

Mr. G.R. He T.K also alleged that concessions were made in relation to roads at Blanchardstown, by G.R, which the Council would not normally make.

The allegations against G.R were not substantiated in any way by reference to source or otherwise [except in the case of the alleged passing of information to Mr Sha., in which case TK mentioned the name of a person phoned by Mr. Sha] although C/M asked TK for sources.

T.K said he met G.R + told him he 'would see him all right' if the permission went through. G.R said there was 'no need for that'. T.K said he wanted to stress that G.R never demanded money and never made any improper suggestion to him. He also said that S.H, P.M whom he had met were absolutely honest as were J.P and C/M whom he had not met but he knew this from all he had heard. He had told this to the Min.

T.K said he had give much if not all of the information given to SH + C/M to the Minister recently

C/M told T.K. they could not tolerate any improper conduct of which they had notice in dealings on property or permissions and advised T.K. that if at any time he felt he was being improperly dealt with, he should come to C/M about it.

On the afternoon of Fri. 24th C/M appraised J.P of the allegations + asked him to examine the files concerned.

F
SH

28 February 1989

DJ.1-57

NOTE OF TELEPHONE CONVERSATION WITH MR. T. P. GILMARTIN ON 20TH MARCH, 1989, AT 11.25 A.M.

Chief Superintendent Sreenan telephoned Mr. Gilmartin at 11.25 a.m. on 20th March, 1989, and referred to the fact that Mr. Gilmartin had not contacted him, as arranged, when in Dublin last week.

MR. GILMARTIN

"I was only there for two days. I ran into problems and went from Meeting to Meeting. I had problems with the land there. I had to be back here for St. Patrick's Day.

On this thing, I'm being told by all and sundry that it is not in my interest to open this can of worms up. I'm thinking of pulling out altogether. The thing I've been talking to you about, it's as far as I'm going to take it. I've made my living over here and kept nice and quiet and I think I'll stay that way. It's a waste of time over there. There are too many involved and too much to get involved in. There are too many dirty tricks .

Yes, I did say that at a Meeting over there on Friday. Officially, I'll probably announce it within the next couple of weeks. It's not my problem to clean it up. You can't do anything except that someone has the will and the power to do something about it. There is neither the will nor the power there. The General thinks he is a fly boy but he is way behind some of these fellows.

(about the effects of withdrawal from West Side Project and the consequences for the unemployed in the area who might have got jobs because of the Project).
Those are forgotten people. I'm not suprised at this now because of what I know. They may be Housebreakers or Criminals but I can excuse them. They are left there as dogs to rot. In fact that is what they have been referred to as by some of the people I've met, dogs. I left Ireland young. Like many others I had a romantic view of Ireland but that is not the case with me now.

The fellows that brought that (reports of Bribery, etc.) to notice have lived and known of fraudulent deals for the last thirty years. They acted because I made a Complaint and at the same time they are telling me - you won't get anywhere because these fellows are well able to cover their tracks. I can be the villain for them and leave myself open to libel actions, but I am not interested and I am not going to be used. I accept that your interest is genuine but I am not going to let myself in for something that is not my responsibility. I know that I could do it (West Side Project) but there are too many hills to climb.

They are not allegations.. They are true but difficult to prove. Yes, I have your Telephone Number and will contact you if I decide to change but you can take it that that's it. There would not be any point in coming over here to me."

DJ.1-56

GARDA SIOCHANA
DESPATCHED
2 0 MAR 1989
CRIME BRANCH

COMMISSIONER

RE:- ALLEGED BRIBERY - CONTACT WITH MR. T. P. GILMARTIN.

I forward for your information a report on the details of a telephone conversation which I had with the above named on this date.

Following on his recent visit to Dublin he has decided against pursuing the allegations made and has indicated that there is no point in having a Meeting with the Garda Siochana. He stated that he plans to pull out of the Project on the West Side of Dublin and may announce this officially in a couple of weeks.

(H. J. SREENAN)
CHIEF SUPERINTENDENT

DJ.1-43

Note of responses made by Mr. T. P. Gilmartin, 20 White Hill Avenue, Luton (Tel. 0582 25846) in course of conversation on telehone with Chief Superintendent Hugh Sreenan on Saturday, 4th March, 1989.

Saturday, 4th March, 1989 - 3.12 p.m.

Chief Superintendent Sreenan telephoned Mr. Gilmartin and explained purpose of his call.

Mr. Gilmartin.

" I don't know if I want to get involved in that. A number of things have gone on. A lot of things have happened. I won't be over there until sometime later on. Obviously I did not want to really get involved in what was going on. As I saw it I could go away without doing anything. I was involved in something and if I failed after going in with my eyes open then that was my fault but if I had to fail because of dubious tricks being pulled, then I felt I should do something about it. I would not really want to get involved in things that have been going on for years.

They are not as naive over there as not to realise at this point in time what is going on. If you go out to the west side of Dublin that is where you will get to know all about it. I don't know that I want to become involved. I do not know that I could help in terms of providing any evidence. I am pretty well tied up all next week here even if you were to come over. I have meetings in London all of Tuesday and Wednesday and other things to attend to.

There are a number of people around Dublin complaining bitterly about things that are going on. Why are they not doing something about it ? No way was I going to walk away and lose myself a substantial sum of money without saying what was going on.

It was because of the current so called boom in Dublin that I got involved. I got in on the Bachelor's Walk project. I formed a joint venture with Arlington Securities in this project. Then came the question of a development on the west side of Dublin and I was asked to have a look at it. I began to run up against problems motivated by greed or worse than that in a contract involving the City and Council. Land disappeared. We had agreed a contract on a substantial chunk of land and it was withdrawn. They would not deal. There were some dirty tricks being pulled. There were people I was not prepared to talk to. People in authority were trying to put the screws on for money.

I have resolved the land problem for the moment. Proving anything would be

over .....

would be .....

very difficult for me except that I lined up meetings and taped what was happening. One guy is more subtle than all the rest - saying one thing to my face and something else behind my back.

There was no point in walking away losing a lot of money due to dirty tricks. I'm not complaining because of opposition, genuine opposition. If I'm in I deal straight and will not bribe or corrupt.

I was involved on the west side of Dublin and in Dublin City. Things are going on absolutely on a very wide scale. I'm an emigrant myself, arrived here in the 1950's and took the opportunities. I'm from Lissadell in north Sligo and I go back there to visit my sister. There are thousands of young people still coming over here and they won't go back because they say there is no hope there. I felt the time was ripe with the so called property boom in Dublin. I risked a hell of a lot of money in Bachelor's Walk. Arlington Secutities only wanted to come in when I had got it going. There is a one hundred and fifty million pound investmant there and when that was under way the other development, in the middle of Clondalkin/Palmerstown, came up. This will lift that area for all time. There is a hell of a risk there but I knew that. I was prepared to ride along with it until they began to take the feet from under me without a chance. I was told 'if this goes you are making a lot and pay up or else we will make it f - ing difficult'. To prove that land disappeared would be difficult but that was what happened to me.

I avoid publicity like the plague and do not want to be involved in anything which would bring me into it.

There is one particular gentleman. One or two others in positions of power told me to keep quiet. I decided that before I would disappear I would do something about it.

The site in Clondalkin was zoned for retail to build someting here. I had a look at it and there were major road problems. I told them it was in the wrong place and could not work. It would be a slum. I thought, if I were to do anything there , where would I do it. I moved to another spot, about 500 yards away and near the west link road, and decided that's where it should be. I set about seeing if I could make it work. I got a terrific response from major international traders. The Clondalkin site had in the meantime been sold to Gubay and he would not go in on it either. O'Callaghan from Cork was then trying to do one in Lucan but he ran up against my problems His architect and agent persuaded him to gat involved in Clondalkin and then he heard of my one. I was told by the Ministers that the Goverment would want my scheme. The other one was zoned for retail. It was suggested that

over

It was suggested that .....
I and O'Callaghan should get together. We met and he agreed that his was a mistake. He had paid a deposit and there was no way that he could make it work and he did not know what to do. We agreed to work together and if mine was a success I would see he would be reimbursed and and if mine failed he could go ahead with his own then. A meeting was called and there was an announcement to the Managers that O'Callaghan and I were getting together so the conflict was gone. The development to go ahead was to be mine. One of the Managers came out - he had taken mine all along as a joke and he realised now it was a goer. He rang some people with vested interests and informed them of the possibility of making money. They, in turn, started pulling strokes. It was delicate because of the deal with O'Callaghan. The land was not worth more than ten grand an acre but I paid over forty grand an acre. There was a great risk to me but because I already owned some of the land the worst I felt I could do was to get my money back. This Manager started putting out rumours that I was doing a cosy deal and the Corporation were forced to withdraw land. I was not aware at the time why this was happening. Completely apart from that fellows were trying to hold me to ransom. I lost the land vital to the whole thing. I had land which I had bought from Brutcn, Sharpe and others but I could not get in or out of there.

This was going to be a major retail, such as D I Y warehousing, with a major business park and a liesure development. It would create 10,000 jobs. It would cover 180 acres. Nothing like it has been seen before in Ireland. It would solve the problems of the area for ever. It rattled me that this should happen. I was told long before the Corporation pulled out that it was going to happen. O'Callaghan was told by some of the boys that the Manager had 'phoned people. He is the Co. Council Manager. He has been involved in lots of things.

I had no problem at all of that kind in Bachelor's Walk. The only one thing was a press report which put up the price of some of the properties which we had not finalised at the time. Arlington Securities are not street wise as far as deals in Dublin are concerned. I was dealing with Paddy Morrissey, Sean Haughey and others and they have assisted and so have the Ministers, who were anxious to get investment in. Many others, Abbey and so on, were pulling out at the time I decided to go in.

I must say that in one way I'm happy with your call. I took a risk and was not sure about what I was doing but it reassures me that the people I decided to trust are genuine and are anxious to have things done right. I was beginning to wonder where it might end.

That gentleman is at this for years but it will be very difficult to pin

DJ.1-46

know it and say .....

nothing. He is retiring in June. He is one of the king-pins but the circle extends to a lot of elected members. I called one gentleman a gangster and said that the mafia paled by comparison with them. He told me that was dangerous talk and that a person could find himself in the Liffey for saying something like that. I took that to be a threat.

I will be in Dublin probably on Tuesday week. There are people whom I would like to see - the people I have already talked to there - and I would like to think this whole thing over, but I will contact you. If it came to a Court case it would be difficult to prove and I don't know that I want to get involved. There are things going on over there in the news at the moment about a certain representative but I bet they will all come out whiter than white. I can tell you that they are not even the tip of the iceberg as far as that person is concerned.

I'm in a delicate situation. From one point of view it could be seen to be in my interest to expose all and to be only an act on my part to get what I am looking for. From the other point of view the thing is only beginning and if I go ahead it can only get worse. I am not concerned with genuine objections to my plans. I know, for instance, that the Planning Manager, Mr. Prendergast, is entirely opposed to my development but I also know that this is a genuine belief on his part as it is contrary to the overall plan already adopted for the area and it is up to me to prove that my proposals have merit if I am to succeed.

I believe in the country and would like to do what I can. I'm in the business of trying to make money but apart from that I would like to do something to help stem the flow of young people. I visited my sister in the village of Dromahair the week before last and heard that three hundred young people have left the area. Soon all that will be left will be old people and children. To have this continue will only ruin the country.

I have you telephone No. and I will contact you the week after next."

Certified to be an accurate account of telephone conversation with Mr. Gilmartin on 4th March, 1989.

J. J. Sheehan Chief Superintendent.

(J. J. Sheehan)

Original in Safe

23 February 1989 T.K made allegations to S.H. in the course of an interview, concerning LL, AllcH & G.R.

S.H informed C/M, who asked him to arrange interview with T.K.

24 February 1989 C/M interviewed T.K with S.H & H.N.

T.K alleged that L.L said he was commissioned by the Government to look after the 'Arlington' site. He asked for a 5% interest. TK responded by calling L.L a gangster. L.L said men had ended up in the liffey for less. Shortly after the T.K's surprise, L.L walked into a meeting of Arlington in London. T.K had mentioned the meeting in his earlier conversation with L.L. At the London meeting LL again said he was commissioned by the Govt. & asked to be compensated. Arlington, against T.K's advice told T.K to pay LL £3500 per month. He did so, the cheques not being made payable to LL except in one case, when the cheque was issued by M/R S, a bank manager friend.

T.K also said that LL had asked for £5 mill to be paid into a bank account in the Isle of Man, in respect of his support for a development which T.K proposed at Drishaun, which development would represent a material contravention of the County Plan

T.K also said LL had bought a Mercedes car from a M/s B: Lucan, but had left the vendor short by £20,000, saying this was due in respect of services rendered in relation to a permission obtained giving access for a garage to the new road.

T.K said LL got a payment in respect of a permission for a 'McDonalds' at Palmerstown

T.K said that S.W, who was innocent of any wrongdoing, gave him the names of 8 members of C.C. who would be involved in any material contravention vote for the Drishaun lands. He (T.K) met

[redacted] [redacted]

four of them. Cllr H asked for £100,000 in a brown paper bag - notes - no cheques. The other three, whose names he did not recall took a similar line. He did not meet the other four, feeling he might be expected to pay such money to 40 members.

T.K said G.R was opposing the development at Irishtown for the wrong reasons. Within one hour of a meeting of Managers with Government Ministers [We did not confirm whether there had been such a meeting] Mr G.R. had told Mr Shea that the Minute had said that Mr K had bought out Mr O.C. [Mr Shea owns land adjacent to Mr O.C.]. Mr K said Mr R was a friend of Mr Shea.

T.K said a recent announcement by J.C that the Blanchardstown Centre was going ahead was to stymie T.K. He felt G.R advised J. C, who he believed was going to employ G.R when he retired shortly. He also felt G.R had influenced PM. to go back on an agreement concerning price for Coey lands at Irishtown.

[redacted] on the Mr B case mentioned earlier. Mr K said when LL said he was holding back money in respect of the car, Mr B responded that he had already paid Mr G.R. He T.K also alleged that concessions were made in relation to roads at Blanchardstown by G.R, which the Council would not normally make.

The allegations against G.R were not substantiated in any way by reference to source of or otherwise [except in the case of the alleged passing of information to Mr Shea., in which case T.K mentioned the name of a person. Noted by Mr Shea] although C/M asked TK for sources.

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T.K said he met G.R + told him he 'would see him all right if the permission went through. G.R said there was 'no need for that'. T.K said he wanted to state that G.R never demanded money and never made any improper suggestion to him. He also said that S.H, P.M whom he had met were absolutely honest as were J.P + C/M whom he had not met but he knew this from all he had heard. He had told this to the Min.

T.K said he had given much if not all of the information given to SH + C/M to the Minister recently

C/M told TK they could not tolerate any improper conduct of which they had notice in dealings on property or permissions and advised T.K. that if at any time he felt he was being improperly dealt with, he should come to C/M about it

On the afternoon of Fri. 24th C/M appraised J. P of the allegations + asked him to examine the files concerned.

28 February 1989

FINAL DRAFT WITH MY HANDWRITTEN AMENDMENTS. AS SPECIFIED ON 2-10-1998 BY TOM GILMARTIN, IN HOTEL ROOM - PRE. MEETING IN HIS SOLICITORS OFFICE.

TRIBUNAL OF INQUIRY
INTO
CERTAIN PLANNING MATTERS AND PAYMENTS

(Appointed by Instrument of The Minister for the Environment and Local Government dated the 4th day of November 1997 and as amended by Instrument dated the 15th day of July 1998)

AFFIDAVIT OF THOMAS GILMARTIN

I, Thomas Gilmartin aged 18 years and upwards make oath and say as follows:-

1. I am a Property Developer. I make this affidavit from facts within my own knowledge, save where otherwise appears, and where so otherwise appearing I believe the same to be true.

2. I have been involved in the property development business in England and Ireland for many years.

3. In the 1980's, I was employed by Arlington Securities Plc (hereinafter "Arlington") as a consultant in connection with a

proposed development of properties at Bachelors Walk, Dublin. I had a 20% equity stake in the proposal and was also paid a sum annually by Arlington as their consultant.

4. About this time, I was also endeavoring to acquire properties at Quarryvale, St Lomans Hospital and St Edmondsbury in County Dublin for a development which subsequently became known as Quarryvale.

Liam Lawlor

5. I was introduced to Liam Lawlor about this time and in the course of a discussion, I informed him of my involvement with the Bachelors Walk project. Mr Lawlor suggested that I should meet him the following day at the Council Offices to explore in what way he could provide assistance to me, but I was unable to meet him because I had to return to England for a meeting of the Board of Arlington.

6. Mr. Lawlor told me that he was aware of the proposed development at Bachelor's Walk. He said that he was in a position to speak on behalf of the Government and, particularly, the Taoiseach, Mr. Charles Haughey and that he would be very

interested in being introduced to the directors of Arlington. He said that he was involved in the whole development of the West side of Dublin and also Bachelor's Walk. He said that he was very anxious to meet the directors of Arlington. I said that I would discuss the matter with them at my next meeting, which was due to take place that Thursday.

7. I attended the meeting of Arlington in London. The meeting was attended by ~~Ray Mould~~, Ted Dadley, Raymond Mould, Mr Parland Humphrey Price, Andrew ~~Parker,~~ a project engineer, whose name I cannot remember, and myself.

8. During the course of the meeting, Raymond Mould received a telephone call from his secretary, following which he informed the meeting that he had been told by his secretary that a Mr. Liam Lawlor, a member of the Irish Parliament, was downstairs and that he had stated that I had invited him to this meeting.

9. I was totally flabbergasted and profoundly embarrassed by this turn of events. I told the meeting that I certainly had not invited Mr. Lawlor to this meeting and that his statement to the contrary was absolutely false. I explained to the meeting that I had met Mr. Lawlor the previous Tuesday, that I had briefly discussed

my involvement in the Bachelor's Walk development with him, without disclosing any detail in relation to it, and that Mr. Lawlor had informed me that he was a representative of the Irish Government and that he was anxious to have an introduction to the directors of Arlington. I also explained to them that I had informed Mr. Lawlor that I would mention his desire for an introduction to the directors and that it had been my intention to do so at that meeting.

10. It was decided that since he was there, whether he had been invited or not, he should be invited to come upstairs. He came into the meeting. He was totally brazen in his attitude. He made no apology of any kind and he stated that he was there on behalf of the Irish Government, particularly on behalf of Mr. Charles Haughey, the Taoiseach. He stated that he wished to be involved with the development because this would make the difference as to whether it would get off the ground or not. This was his opening statement to the meeting. Mr. ~~Meran~~ David asked him what he meant by becoming involved in the deal and Mr. Lawlor said that he wanted a 20% stake in the development and that this was for the Government.

11. I was deeply embarrassed and disquieted by this turn of events. I said that this was completely out of the question and that there was no possibility of Mr. Lawlor getting any stake whatsoever in the proposed development. Mr. Lawlor said that if he did not get a stake, it would make the difference between the development getting off the ground or not. At that stage, the meeting went into disarray.

12. Raymond Mould, Humphrey Price and perhaps others left the meeting for a few minutes. In the meantime, I remained in the room with the others. After about five minutes, they came back into the room and people broke up into groups. Ted Dadley asked me to come down to a hotel down from the Green. Mr. Dadley told me that he had informed Mr. Lawlor where he was going. I went down to the hotel with Mr. Dadley. The remaining directors and Mr. Lawlor remained behind. After a while in the hotel, Mr. Lawlor arrived and informed Mr. Dadley and myself that Arlington had agreed to take him on. I said that I had not agreed to any such thing. Mr. Lawlor said that we were better to be safe than sorry because there was a lot of money involved and that a sum of about seven million pounds had already been invested.

13. Mr. Lawlor informed me that Raymond Mould had agreed to take him on as a consultant and to pay him £3,500 per month. I was appalled at this and made my views clear to Mr. Lawlor. Mr. Lawlor informed me that it had nothing to do with me. He said that the project would not get off the ground without him. He also said that Mr. Moran had informed him that I would have to give him half of my 20% shareholding as well. I informed Mr. Lawlor that this was completely out of the question and that there was no way I was going to give him anything.

14. I subsequently discovered that Arlington had in fact agreed to pay a "consultancy" fee of £3,500 per month to Mr. Lawlor. They had also decided that this money should be paid through me since all disbursements and expenses in respect of the Bachelor's Walk project were being paid by me through my Bank Account. As a result of this arrangement, I paid the sum of £3,500 per month to Mr. Lawlor on behalf of Arlington Securities plc. ~~Limited~~ for a period of ten months. All of this money was refunded to me by Arlington .

15. The monies were paid by cheque drawn on my account at Bank of Ireland in Blanchardstown. Liam Lawlor would come to the offices in St. Stephen's Green and I would give him the cheque

there. On most occasions, he asked me to leave the payee of the cheque blank and that he would fill this in himself. Mr. Lawlor did not, to the best of my knowledge, provide any form of consultancy services of any kind whatsoever to Arlington and did not provide any for or through me for Arlington or for or on my behalf. After approximately ten months, I decided to stop these payments. I just did not see why we should be paying Mr. Lawlor for nothing. I felt that we were being blackmailed. I stopped the payments. Arlington were unhappy about this because they felt it could place the development in jeopardy. I informed them that if they wished to continue paying Mr. Lawlor, they could pay him directly.

16. On one occasion during this period, Mr. Lawlor arrived into the Bank of Ireland in Blanchardstown and informed the Bank that I had given instructions that he (Mr. Lawlor) be paid £10,000 and he requested the Bank to pay this money out of my account to him. I was phoned by the Bank to verify these instructions and I informed the Bank that I had given no such instructions, that the statement to the contrary by Mr. Lawlor was totally false and that no monies should be paid to him. Consequently, the Bank did not make any payment to Mr. Lawlor.

17. Ultimately Arlington decided to abandon the Batchelor's Walk project and to pull out of Ireland altogether. They thought it was corrupt and were fed up with it. They incurred a substantial loss on the project. They treated me fairly and paid me £1.25 million for my share although I was embarrassed because I felt that they were lumping me in with what they perceived to be "a bunch of Irish Gangsters."

18. Liam Lawlor brought me to the offices of Dublin County Council in O'Connell Street where he introduced me to George Redmond, Assistant City and County Manager. Mr. Lawlor explained to me that Mr. Redmond was a man of great influence and that he would have a say in anything I was doing. They produced a map to me in Mr. Redmond's office which showed the ownership of the lands at Quarryvale. The map was quite detailed and appeared to show the ownership of each of the parts of land in Quarryvale. Both Mr. Lawlor and Mr. Redmond indicated that they could be of assistance to me, but that they would require payment of £100,000. I did not make any payment to either of them.

19. I was obstructed in relation to my proposed development by George Redmond, who on one occasion, aborted a meeting

which had been arranged in his office and which was to be attended by my consultants, many of whom came from England, and council engineers. On that occasion, I complained about his behaviour to Sean Haughey who was a deputy City Manager. Mr Haughey rearranged the meeting for that afternoon. On the following day, I met Mr Haughey and Mr Frank Feely and complained to them in relation to Mr Redmond. I am also satisfied Mr Redmond and Mr Lawlor blocked a deal which I had agreed with the Council to purchase land, notwithstanding that I was the highest bidder.

Padraig Flynn

20. I had met Padraig Flynn, who was Minister for the Environment on many occasions in connection with my project at Quarryvale and how it could be advanced in the context of planning, roads, designation, tax status and so forth. In about June,1989, I decided to give a cheque for £50,000 to the Fianna Fáil party. I asked Mr Flynn how I would describe the party in inserting the name of the payee and he told me to leave that blank. I subsequently learned that the name of the payee was inserted as "CASH" and the sum of £50,000 was debited to my account in Bank of Ireland in Blanchardstown. Some time later, Sean

Sherwin told me that Padraig Flynn never handed over my donation to Fianna Fáil

21. On one occasion, I attended a meeting at Dáil Éireann. This meeting was attended by ~~Ray McSharry,~~ Brian Lenihan, Padraig Flynn and Seamus Brennan. Ray Burke also appeared as did Charlie Haughey. At the meeting the proposed Quarryvale project was discussed. After the meeting and after I left the room, I was approached by a man who told me I ~~could make~~ a ~~very substantial sum of~~ money out of the projects I was involved in and suggested I should ~~make a~~ deposit in an account in the Isle of Man in the sum of £5,000,000. He gave me an account number in the Isle of Man. Liam Lawlor was in the vicinity at that time. ~~although he was not within earshot.~~

22. On another occasion, I was discussing with AIB the implication of designation on the site. Owen O'Callaghan left the meeting for about an hour and came back and said there would be no designation of this site and said that ~~a political friend of his~~ had ~~taken care of the designation.~~

23. I believe that substantial sums of monies were paid as bribes by Owen O'Callaghan to politicians ~~and that these include~~

~~payments~~ through Barkhill Limited, Shefran Limited and Frank Dunlop ~~to such politicians.~~

Councillors

24. I was also asked for £100,000 by a number of Councillors. One of them was Finbarr Hanrahan, a Councillor from Lucan for Fianna Fáil . Another was Colm McGrath. I never gave him any money.

25. There was a Senator from Sligo called Willie Farrell. I knew him because I had grown up with him. I approached him to see if he could assist me about the problems which I was having and he told me that there was not terribly much he could do because he was only a Senator. However, he suggested that I should speak to John Gilbride who was a Councillor.

26. ~~Eugene Gilbride, John Gilbride's father was a T.D. in our area when I was a child~~. I agreed to see him and Willie Farrell arranged to introduce me to John Gilbride the day after I approached him. I explained to Mr. Gilbride the difficulties that I had been having, particularly with Liam Lawlor. I said that in my opinion he was a gangster, along with a few others. Mr. Gilbride said that Mr. Lawlor was alright if you got on the right side of

him. In any event, he agreed to help me. He told me that he had the assistance of Councillors called McGrath, Marian McGinnis and some others.

27. However, subsequently, I discovered that O'Callaghan had promised Gilbride £100,000 and that Gilbride, who was a teacher in Balbriggan College, gave up his job for a year and worked for O'Callaghan in the campaign to get zoning for the Quarryvale development. I believe that the monies paid to Gilbride went through the Bank and O'Callaghan. I did not personally authorise it. It may have been paid by Barkhill Limited through Frank Dunlop.

SWORN this day of 1998 by Thomas Gilmartin at

Before me a Solicitor Empowered to Administer Oaths and I know the Deponent

SOLICITOR EMPOWERED TO ADMINISTER OATHS

TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

(Appointed by Instrument of The Minister for the Environment and Local Government dated the 4th day of November 1997 and as amended by Instrument dated the 15th day of July 1998)

AFFIDAVIT OF THOMAS GILMARTIN

TRIBUNAL OF INQUIRY
INTO
CERTAIN PLANNING MATTERS AND PAYMENTS

(Appointed by Instrument of The Minister for the Environment and Local Government dated the 4th day of November 1997 and as amended by Instrument dated the 15th day of July 1998)

AFFIDAVIT OF THOMAS GILMARTIN

I, Thomas Gilmartin aged 18 years and upwards make oath and say as follows:-

1. I am a Property Developer. I make this affidavit from facts within my own knowledge, save where otherwise appears, and where so otherwise appearing I believe the same to be true.

2. I have been involved in the property development business in England and Ireland for many years.

3. In the 1980's, I was employed by Arlington Securities Plc (hereinafter "Arlington") as a consultant in connection with a

proposed development of properties at Bachelors Walk, Dublin. I had a 20% equity stake in the proposal and was also paid a sum annually by Arlington as their consultant.

4. About this time, I was also endeavoring to acquire properties at Quarryvale, St Lomans Hospital and St Edmondsbury in County Dublin for a development which subsequently became known as Quarryvale.

Liam Lawlor

5. I was introduced to Liam Lawlor about this time and in the course of a discussion, I informed him of my involvement with the Bachelors Walk project. Mr Lawlor suggested that I should meet him the following day at the Council Offices to explore in what way he could provide assistance to me, but I was unable to meet him because I had to return to England for a meeting of the Board of Arlington.

6. Mr. Lawlor told me that he was aware of the proposed development at Bachelor's Walk. He said that he was in a position to speak on behalf of the Government and, particularly, the Taoiseach, Mr. Charles Haughey and that he would be very

interested in being introduced to the directors of Arlington. He said that he was involved in the whole development of the West side of Dublin and also Bachelor's Walk. He said that he was very anxious to meet the directors of Arlington. I said that I would discuss the matter with them at my next meeting, which was due to take place that Thursday.

7. I attended the meeting of Arlington in London. The meeting was attended by Ted Dadley, Raymond Mould, Humphrey Price, Andrew McPartland, a project engineer, whose name I cannot remember and myself.

8. During the course of the meeting, Raymond Mould received a telephone call from his secretary, following which he informed the meeting that he had been told by his secretary that a Mr. Liam Lawlor, a member of the Irish Parliament, was downstairs and that he had stated that I had invited him to this meeting.

9. I was totally flabbergasted and profoundly embarrassed by this turn of events. I told the meeting that I certainly had not invited Mr. Lawlor to this meeting and that his statement to the contrary was absolutely false. I explained to the meeting that I had met Mr. Lawlor the previous Tuesday, that I had briefly discussed

my involvement in the Bachelor's Walk development with him, without disclosing any detail in relation to it, and that Mr. Lawlor had informed me that he was a representative of the Irish Government and that he was anxious to have an introduction to the directors of Arlington. I also explained to them that I had informed Mr. Lawlor that I would mention his desire for an introduction to the directors and that it had been my intention to do so at that meeting.

10. It was decided that since he was there, whether he had been invited or not, he should be invited to come upstairs. He came into the meeting. He was totally brazen in his attitude. He made no apology of any kind and he stated that he was there on behalf of the Irish Government, particularly on behalf of Mr. Charles Haughey, the Taoiseach. He stated that he wished to be involved with the development because this would make the difference as to whether it would get off the ground or not. This was his opening statement to the meeting. Mr. Mould asked him what he meant by becoming involved in the deal and Mr. Lawlor said that he wanted a 20% stake in the development and that this was for the Government.

11. I was deeply embarrassed and disquieted by this turn of events. I said that this was completely out of the question and that there was no possibility of Mr. Lawlor getting any stake whatsoever in the proposed development. Mr. Lawlor said that if he did not get a stake, it would make the difference between the development getting off the ground or not. At that stage, the meeting went into disarray.

12. Raymond Mould, Humphrey Price and perhaps others left the meeting for a few minutes. In the meantime, I remained in the room with the others. After about five minutes, they came back into the room and people broke up into groups. Ted Dadley asked me to come down to a hotel down from the Green. Mr. Dadley told me that he had informed Mr. Lawlor where he was going. I went down to the hotel with Mr. Dadley. The remaining directors and Mr. Lawlor remained behind. After a while in the hotel, Mr. Lawlor arrived and informed Mr. Dadley and myself that Arlington had agreed to take him on. I said that I had not agreed to any such thing. Mr. Lawlor said that we were better to be safe than sorry because there was a lot of money involved and that a sum of about seven million pounds had already been invested.

13. Mr. Lawlor informed me that Raymond Mould had agreed to take him on as a consultant and to pay him £3,500 per month. I was appalled at this and made my views clear to Mr. Lawlor. Mr. Lawlor informed me that it had nothing to do with me. He said that the project would not get off the ground without him. He also said that Mr. Mould had informed him that I would have to give him half of my 20% shareholding as well. I informed Mr. Lawlor that this was completely out of the question and that there was no way I was going to give him anything.

14. I subsequently discovered that Arlington had in fact agreed to pay a consultancy fee of £3,500 per month to Mr. Lawlor. They had also decided that this money should be paid through me since all disbursements and expenses in respect of the Bachelor's Walk project were initially being paid by me through my Bank Account. As a result of this arrangement, I paid the sum of £3,500 per month to Mr. Lawlor on behalf of Arlington Securities plc for a period of approximately ten months. All of this money was refunded to me by Arlington .

15. The monies were paid by cheque drawn on my account at Bank of Ireland in Blanchardstown. Liam Lawlor would come to the offices in St. Stephen's Green and I would give him the cheque

there. On most occasions, he asked me to leave the payee of the cheque blank and that he would fill this in himself. Mr. Lawlor did not, to the best of my knowledge, provide any form of consultancy services of any kind whatsoever to Arlington and did not provide any such services for or through me for Arlington or for or on my behalf. After approximately ten months, I decided to stop these payments. I just did not see why we should be paying Mr. Lawlor for nothing. I felt that we were being blackmailed. I stopped the payments. Arlington were unhappy about this because they felt it could place the development in jeopardy. I informed them that if they wished to continue paying Mr. Lawlor, they could pay him directly.

16. On one occasion during this period, Mr. Lawlor arrived into the Bank of Ireland in Blanchardstown and informed the Bank that I had given instructions that he (Mr. Lawlor) be paid £10,000 and he requested the Bank to pay this money out of my account to him. I was phoned by the Bank to verify these instructions and I informed the Bank that I had given no such instructions, that the statement to the contrary by Mr. Lawlor was totally false and that no monies should be paid to him. Consequently, the Bank did not make any payment to Mr. Lawlor.

17. Ultimately Arlington decided to abandon the Batchelor's Walk project and to pull out of Ireland altogether. They thought it was corrupt and were fed up with it. They incurred a substantial loss on the project. They treated me fairly and paid me £1.25 million for my share although I was embarrassed because I felt that they were lumping me in with what they perceived to be "a bunch of Irish Gangsters."

18. Liam Lawlor brought me to the offices of Dublin County Council in O'Connell Street where he introduced me to George Redmond, Assistant City and County Manager. Mr. Lawlor explained to me that Mr. Redmond was a man of great influence and that he would have a say in anything I was doing. They produced a map to me in Mr. Redmond's office which showed the ownership of the lands at Quarryvale. The map was quite detailed and appeared to show the ownership of each of the parts of land in Quarryvale. Mr. Lawlor said to me in the presence of Mr. Redmond that they could be of assistance to me but that I would have to pay THEM £100,000 ~~to both him and Mr. Redmond~~ I understood this to mean that I would have t o PAY £100,000 to each of them. I said to Mr. Lawlor "you can fuck off" On a previous occasion Mr. Lawloor asked me for a 20% stake in the Quarryvale development. On the same occasion he

said he was speaking on behalf of the Government. He offered to introduce me to Mr. Charles Haughey and other Ministers. I refused to give Mr. Lawlor any stake in the development.

19. I was obstructed in relation to my proposed development by George Redmond, who on one occasion, aborted a meeting which had been arranged in his office and which was to be attended by my consultants, many of whom came from England, and council engineers. On that occasion, I complained about his behaviour to Sean Haughey who was a deputy City Manager. Mr Sean Haughey rearranged the meeting for that afternoon. On the following day, I met Mr. Sean Haughey and Mr Frank Feely and complained to them in relation to Mr Redmond. I am also satisfied Mr Redmond and Mr Lawlor attempted to block a deal which I had agreed with the Council to purchase land, notwithstanding that I was the highest bidder by a substantial margin.

Padraig Flynn

20. I had met Padraig Flynn, who was Minister for the Environment on many occasions in connection with my project at Westpark/Quarryvale and how it could be advanced in the context of planning, roads, designation, tax status and so forth. I had also spoken to many other Ministers including Seamus

Brennan and Bertie Ahern. In the first half of 1989 I was being obstructed in every possible way by some County Councillors (and others) including Liam Lawlor, Finbar Hanrahan and Colm McGrath because I refused to pay them to support the rezoning of Quarryvale. I had a number of meetings with Bertie Ahern and complained to him about the way I was being obstructed. Later Councillor Joe Burke told me that he had been asked by Bertie Ahern to speak to George Redmond and to attend the Corporation meeting where the sale of the land to me was being considered. Later Padraig Flynn (and others) asked me for a donation to the Fianna Fail party and said that this could help to resolve the problems I was having. This was sometime before an election in 1989, probably in late Spring of that year. The impression I got was that if I paid a donation some of these "games" would stop.

21. In about June,1989, I decided to give a cheque for £50,000 to the Fianna Fáil party. I wrote the cheque out in Mr. Flynn's presence and signed it. I asked "who do I make it payable to" and he told me to "leave it" meaning that I should leave it blank. I now know that the name of the payee was inserted by someone as "CASH". The sum of £50,000 was debited to my account in Bank of Ireland in Blanchardstown. Some time later, Colm Scallon took me to meet Sean Sherwin who asked me for

a donation to Fianna Fail. I told him that I had already paid £50000 as a donation to the party. He said "If you did we never got it."

22. On another occasion, I attended a meeting at Dáil Éireann. This meeting was attended by Brian Lenihan, Padraig Flynn, Seamus Brennan and others. Ray Burke also appeared as did Charlie Haughey. At the meeting the proposed Quarryvale project was discussed. After the meeting and after I left the room, I was approached by a man who told me I was going to make a lot of money out of the projects I was involved in and suggested I should deposit £5,000,000in an account in the Isle of Man. He gave me an account number in the Isle of Man. I never paid any money into that account. Liam Lawlor was in the vicinity at that time.

23. On another occasion, I was discussing with AIB the implication of designation of the site. Owen O'Callaghan left the meeting for about an hour and came back and said there would be no designation of this site and said that Bertie Ahern had seen to it that the Green Property site and my site would never receive designation and also that I would never build a square foot on the site.

24. I believe that substantial sums of monies were paid as bribes by Owen O'Callaghan to politicians from the account of Barkhill Limited through Shefran Limited and Frank Dunlop.

Councillors

25. I was also asked for £100,000 by a number of Councillors. One of them was Finbarr Hanrahan, a Councillor from Lucan for Fianna Fáil . Another was Colm McGrath. I never gave ~~him~~ them any money.

26. There was a Senator from Sligo called Willie Farrell. I knew him because I had grown up with him. I approached him to see if he could assist me about the problems which I was having and he told me that there was not terribly much he could do because he was only a Senator. However, he suggested that I should speak to John Gilbride who was a Councillor. I agreed to see him and Willie Farrell arranged to introduce me to John Gilbride the day after I approached him. I explained to Mr. Gilbride the difficulties that I had been having, particularly with Liam Lawlor. I said that in my opinion he was a gangster, along with a few others. Mr. Gilbride said that Mr. Lawlor was allright if you got on the right side of him. In any event, he agreed to help me. He told me that

[redacted]

he had the assistance of Councillors called McGrath, Marian McGinniss and some others.

27. Subsequently, I was informed that Councillor Gilbride, who was a teacher in Balbriggan College, gave up his job for a year and worked for O'Callaghan in the campaign to get zoning for the Quarryvale development.

28. This affidavit is but an outline of the events referred to in respect of which I can give additional and more detailed evidence.

T.P. Gilmartin

SWORN this 2nd day of October 1998 by Thomas Gilmartin at Victoria Street Luton

Before me a Solicitor Empowered to Administer Oaths

M. Pilotta

SOLICITOR EMPOWERED TO ADMINISTER OATHS

TRIBUNAL OF ENQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

(Appointed by Instrument of The Minister for the Environment and Local Government dated the 4th day of November 1997 and as amended by Instrument dated the 15th day of July 1998)

AFFIDAVIT

OF

THOMAS GILMARTIN

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: law@algoodbody.ie website: www.algoodbody.ie dx: 29 Dublin

A&L Goodbody

our ref | MKOANK 01174989 your ref | PTB/34 Date | 2 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn. Susan Gilvarry, Solicitor to the Tribunal

BY POST AND BY FAX: 633 9690



Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to your letter dated 19 January, 2004.

We have taken our client's instructions regarding queries raised by you in relation to an entry in our client's note book on 4 February, 1989 in which reference was made to bank account no. 008826 for B&I Jersey Limited, sort code 404888. Adopting the numbering used by you in your letter, we respond as follows:-

1. Mr. Gilmartin instructs us that he was the holder of the above account.

2. Not applicable.

3. We are instructed that the account was set up by our client for the purposes of a business venture which was to involve the Gilmartin Settlement Trust and trading in property bonds. The account was set up for the purposes of receiving funds as part of that business venture. We are further instructed that our client was later advised by Cameron Markby Hewitt Solicitors in London not to proceed with the business venture as they believed that it might not be bona fide. No funds were ever transferred into this account.

Yours faithfully,

A&L Goodbody

M-626362-1

Dublin London Boston New York Brussels

M.G. Dickson S.C. Hamilton P.M. Buckley M.F. Beresford D.V. O'Connor | H.M. Healy M.A. Greene R.M. Law D.J. Bailey S.W. Haughey | M. Dobbyn C.M. Foulkes R.I. Cassell J.M. Dudley J.H. Hickson | M.R. O'Donnell C.E. Gill E.A. O'Farrell B.M. FitzGerald B.M. Cotter | I.G. Grennan I.B. Moore A. Cahill J. Compa P.D. White | V.L. Power L.A. Kennedy S.M. Doggett B. McDermott C. Duffy | E.M. Brady P.K. Maher S. O'Riordan M.R. McEvoy K.A. Feeney | M. Sherlock E. MacNeill K.R. Allen A.M. Finnegan E.A. Roberts | D. Glynn J.B. Roche C. Rogers C. O'Donovan G. O'Toole | J.N. Kelly N. O'Sullivan M.J. Ward A.C. Byrne J. Given | D. Widger C. Hickey N. Murphy S. Ó Cróinín B.J. McGrath | D.R. Bridel A. McCarthy J.F. Whelan

Consultants: J.R. Osborne N.J. O'Riordan Professor J.C.W. Wylie A.R. Browne

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A&L Goodbody

our ref | MKG/JNK 01174989 your ref| PTB/34 date | 2 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn. Susan Gilvarry, Solicitor to the Tribunal
BY POST & BY FAX: 6339690



Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to your letter dated 23 January, 2004 which raises queries in relation to certain matters contained in our client's statement of 17 May, 2001.

Firstly, in relation to the queries concerning payments made by our client to Liam Lawlor, we respond on foot of our client's instructions as follows:

1. The payments were made to Mr. Lawlor at various meetings that took place in Dublin. Our client is unable to be more specific than this.

2. The funds emanated from Mr. Gilmartin's Bank of Ireland account in Blanchardstown, account no. 73807892.

3. The monies were paid from Mr. Gilmartin's own funds and he was later reimbursed for these payments by Arlington Securities plc.

In relation to the queries raised by you concerning the payment made to Padraig Flynn we respond on foot of our client's instructions as follows.

1. The donation of IR£50,000 to the Fianna Fail Party was paid from Mr. Gilmartin's Bank of Ireland, Blanchardstown account no. 73807892. This was paid from his own funds.

2. Our client was not reimbursed by any third party in respect of this payment.

Yours faithfully,

628408_1

Dublin London Boston New York Brussels

M.G. Dickson | H.M. Healy | M. Dobbyn | M.J. O'Connor | J.G. Grenham | V.J. Power | E.M. Brady | M. Sherlock | D. Glynn | J.M. Kelly | D. Widger | D.R. Kiely
S.C. Hamilton | M.A. Devins | C.M. Preston | C.E. Gill | J.B. Moore | L.A. Kennedy | P.M. Maher | E. Mitchell | J.B. Roche | N. O'Sullivan | C. Hickey | A. McCarthy
R.L. Beckley | N.M. Lyny | R.J. Carroll | J.A. O'Farrell | S. Olden | S.M. Doggett | S. O'Riordan | K.P. Allen | C. Ropell | M.J. Ward | N. Murphy | J.F. Whelan
M.T. Beresford | D.J. Seeley | J.M. Dudley | E.M. FitzGerald | J. Conron | R. McDermott | M.R. McNamara | A.V. Pengree | C. O'Donovan | A.C. Burke | S. Ó Cróinín
T.M. O'Connor | S.M. Haughey | J.M. Hickson | B.M. Cotter | P.B. White | C. Duffy | K.A. Feeley | E.A. Roberts | G. O'Toole | J. Given | R.I. McGrath

Consultants J.R. Osborne | N.J. O'Riordan | Professor J.C.W. Wylie | A.F. Browne

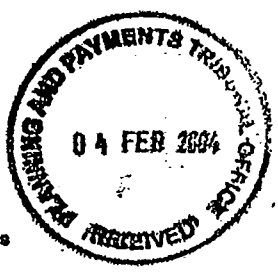
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A&L Goodbody

our ref | MKOUNK 01174989 your ref| PTB/34 date | 2 February 2004

Tribunal of Inquiry into Certain Planning Matters and Payments
Upper Castle Yard
Dublin Castle
Dublin 2
Attn: Susan Gilvarry, Solicitor to the Tribunal

BY POST & BY FAX:. 6339690



Thomas P Gilmartin
Tribunal of Inquiry into Certain Planning Matters and Payments

Dear Sirs,

We refer to your letter dated 15 January, 2004.

We have taken our client's instructions in relation to the queries raised by you and we respond as follows:

1. As far as our client is aware there was only one cheque book operating from his Bank of Ireland account in Blanchardstown, account no. 73807692.

2. Mr. Gilmartin does not believe that Mr. Sheeran ever signed cheques drawing funds from this account. Mr. Gilmartin had an arrangement with Paul Sheeran whereby Mr. Sheeran would pay out money on behalf of Mr. Gilmartin and he would later deduct this amount from Mr. Gilmartin's account. Before paying out any such monies, Mr. Sheeran would first telephone Mr. Gilmartin to seek his authorisation for the payment.

   Mr. Gilmartin recalls providing Mr. Sheeran with a written authority in relation to this arrangement, but he does not have a copy of that authority.

Yours faithfully,

A&L Goodbody

M-698374-1

Dublin London Boston New York Brussels

M.G. Dickson N.N. Healy P.A. Dobbyn M.R. O'Connell E.G. Greenan V.J. Power E.M. Brady M. Sherlock D. Glynn J.N. Kelly D. Widger D.R. Baxter
S.C. Hamilton M.A. Greene C.M. Preston C.J. Gill L.B. Moore L.A. Kennedy P.V. Maher B. MacNeill J.B. Rooks N. O'Sullivan C. Hickey A. McCarthy
R.B. Beckley R.M. Law S.L. Carroll L.A. O'Farrell J. Gillen S.M. Doggett S. O'Riordan K.R. Allen C. Rogers M.J. Ward N. Murphy J.F. Whelan
M.S. Beresford D.J. Hurley J.H. Dunlop E.M. MacGerald E. Cussen B. McDermott M.P. McKenna A.V. Pelagias C. O'Donovan A.C. Burke S. Ó Cróinín
T.V. O'Connor S.W. Heughey J.H. Hickson B.M. Cotter R.S. White C. Duffy K.A. Feeney E.A. Roberts G. O'Toole J. Givin B.J. McGrath

Consultants I.R. Odlum R.J. O'Riordan Professor J.C.W. Wylie A.R. Browne

A. So he started saying to me that never mind him, he says, do you know any fucker I could trust, I says, that knows who owns the land there. And he didn't. So I was in his office, you know. So he was called out, to go out to the counter. So he went out and he came back and he says there's a fucking man out here and he says and if anybody knows, and he owes me a favour, knows. There is a man outside he says that knows every inch of that place. So he says will I say it to him. I says can you trust him. He said well to tell you the truth I don't think so -- no, sorry -- to tell you the truth, I don't know but he owes me he said. So I said who is he. He said Fassnidge, Brendan Fassnidge is his name. So he takes me out and he introduced me to Fassnidge. And he said to me, he said to Fassnidge that I wanted to buy a piece of land up on the Galway Road there right beside them. And he was in car dealing.

Q. Yeah, I remember.

A. And there was a bit of a story about his going bust and then was beating the wife up. And there was all sorts of weird and wonderful things.

Q. Yeah.

A. Eventually came to light. Paul did tell me that, you know, there was a bit of an under current there, you know, and all that. And he said I helped him out, you know, he got into difficulty and I've helped him out he says and he put him

honest to God, now, that is a fact.

Q. I accept that fully.

A. What?

Q. I accept that fully.

A. So they went out of the room. They were out for a good while and they came back in and they said they had to discuss all this. In the meantime Dadley was in, well Dadley was a kind of a hale fella, well met anyway, you know, he ha ha ha. He couldn't keep his concentration if there was a bit of leg around or a skirt Dadley was -- you lost him, but he was a very nice fella. Anyways, the meeting sort of broke up and I left the meeting. Dadley arranged to meet me in the hotel down from -- just down there off Brewers Green. We went to the hotel. Dadley told Lawlor where he was going, where he was building. Lawlor came into the hotel. So I said to Lawlor what the fuck is going on, what's this about. So he said oh, well that's the way it is, I have to be taken on board. Now, I had left and Lawlor was still sitting down as I left because the meeting sort of broke up and there was people talking in corners and outside doors and I thought to myself Jesus Christ. So myself and Dadley went off down to this hotel. Lawlor eventually came in and he said that they had agreed to take him on. But I said but I hadn't. So if I have anything to do with it, I says, I'm going to have a fucking say in it. So anyways, Dadley says, you know, to me,

no reason other than that. And Taggarts came to me because they done some work on Clandeboy and they were already doing Sprucefield work for Marks and Spencer, Lough Derry at the Foy and they wanted me to do that one. But that was my fucking mistake, wasn't it. But anyway. Actually the DOE in the North were underwriting me if I was to do that, the Foy one.

Q. The Foy one which the Americans eventually did?

A. Yeah, they were underwriting me, guaranteeing that I wouldn't make a loss, the DOE.

Q. I knew that deal was around. Very good.

A. So I went down to see it. Why I didn't do that deal was I was followed by three IRA men all day.

Q. Right.

A. They were there for a whole day. We measured the site and all. There was an old derelict house and these three guys appeared in that derelict house and they followed us everywhere we went, all day long. John McCannon of Taggarts kept saying to me, he's a Protestant but he's sort of a semi-republican Protestant

Q. Wolfe Tone?

A. No, I wouldn't say that strong but he's more -- he hates the English with a passion. He does hate the English with a passion and that's a fact, although he's a Protestant. But he's a great character. Anyway, he told me to ignore them, take no notice, you know. But in the evening we were

have much say there. He was a Senator, so he didn't really know much. So he suggested that John Gilbride was a Councillor. Now, John Gilbride -- Eugene Gilbride was our TD at home for -- when I was a kid and I grew up with John Gilbride so that I brought in John Gilbride. That I should go to John Gilbride. And he arranged to meet me the following day. So he took me out and he introduced me to John Gilbride. I hadn't met him for thirty years. So I met this fella. John Gilbride was an ex alcoholic, when he was a young fella he was on the drink and crashed cars and all, he went a little bit haywire, you know. His father was married three times and the family didn't want the wives and all this caper, you know, and he went a little bit wayward. Anyway, Gilbride said that he would see. I told him about Lawlor. He kept insisting Lawlor was all right, to get on the right side of him. And I said no, he's a gangster. To me he's a gangster, along with quite a few others. Gangsters. Gilbride came in and he was supposed to be on my side.

Q. Yeah.

A. And it looked as if he was. And he enlisted the help of McGrath and Marian McGuinness.

Q. In AIB?

A. No, Marian McGuinness. These were Councillors.

Q. Oh, Councillors. I'm sorry. Yes.

A. And numerous others. They were all supposed to be

people. Once you get into the Tribunal, you are nearly forced to ...

A. Take Bertie Ahern, for instance. I trusted Bertie Ahern because when I did the land deal, now, I tendered for that, an open tender.

Q. This is the 70 acres now?

A. The 70 acres. An open tender and I paid way over the top. I bought all the land around it for 40,000 and I paid 70,000 odd an acre for that land from Dublin Corporation.

Q. From Dublin Corporation?

A. From Dublin Corporation, yeah. in a tender. For the simple reason is that John Corcoran of Green Property started mouthing and he was being aided and abetted by certain politicians who was trying to fuck me up, you know. And he wrote in letters. Not only that. Frank Dunlop at the same time had Frank McDonald of the Times on an anti me campaign.

Q. Yeah.

A. And he was the hurler on the ditch, Frank McDonald. And this philistine that arrived over from England to destroy Dublin etc. etc. was all the comments. But it was all engineered. It was all engineered for to force the bank into putting the screws on me. To encourage the bank. It was all orchestrated by Ambrose Kelly and O'Callaghan.

Q. What wrong doing, if any, can you accuse Bertie Ahern of insofar as all he did was probably do the

their cohorts or Ambrose Kelly. And you went from the Foyer and you had to go up a sort of a ramp to the toilets. But there would be somebody sitting behind the bush.

Q. Yeah, yeah, yeah.

A. You know the little trees. And as soon as we would start walking up there someone would go scuttling into the toilet. Now, for a long time I took no notice of this until we noticed this guy tailing us all of the time. And if we sat here he'd be sitting there, you know. And do you know who he was?

Q. No.

A. The fella that Ambrose Kelly and O'Callaghan used to bring the Minister down, you know the fella that topped himself or that drowned.

Q. Which fella?

A. Do you remember the Gas Board, the fella made the suggestion to the Gas Board to remember his company.

Q. Ah, the fella down in Cork?

A. The Fine Gael Minister. Well it was Owen O'Callaghan that grassed on him. It was Owen O'Callaghan. He was appointed by Charlie Haughey as a Director of the Gas Board.

Q. Who was?

A. Owen O'Callaghan.

Q. Oh, Owen O'Callaghan.

A. Yeah. And he brought down that Minister because.

Q. Covney?

A. Hugh Covney. He died there recently. He was drowned tragically. And then the Lowry affair started. Nothing to do with Ben Dunne at this time. This was Lowry got involved and Ambrose Kelly and O'Callaghan started writing letters and they had this defraud accountant, what's this his name was.

Q. The guy who was involved. I know the guy you mean, yeah.

A. Writing the letters. They were dictating the letters and he was writing them. So he was totally discredited, if you remember.

Q. That's right, yeah.

A. And when O'Leary came into it with CIE, when Lowry attacked O'Leary CIE.

Q. Go back one step for a second. As far as the main plank we're trying to achieve at the moment, you see, what I need to know now --

A. The guy that was tailing us was that accountant. Yeah.

Q. That was the Fianna Fail?

A. I forget the name now. It was O'Callaghan and Ambrose Kelly. Another maggot.

Q. What we need to do, I mean, whatever papers you have

justification of showing up the corruption that went on. That's what the Tribunal is all about.

A. But you must know more about that than I do. I'm not pointing the finger at you. Between you and I, you're a man of the world, you're a businessman and you're in Dublin.

Q. Yeah.

A. It's the most fucking corrupt place on earth. Like the Larry Goodman thing. I know he is a client of your's. Now you don't comment.

Q. I can't.

A. You don't comment at all but I used to meet Lawlor and O'Keeffe and them and they used to insist on me meeting them. They were on their way to Baghdad and some of the fucking things they were discussing, the rip off that was going on. Openly! The Green Core episode.

Q. [redacted]

23 [redacted] K

A. [redacted]

Q. [redacted]

A. [redacted]

23 [redacted] K

Q. [redacted]

A. [redacted]

of Dublin in Clondalkin. In relation to the proposed development on the west side of Dublin, he had bought the land and he found himself in a situation where he was being put under pressure from all kinds of "*spin doctors*" who were trying to shaft him. He says that O'Callaghan of Cork was involved in the shafting operation. He says that the shafting did not take place in the form of a refusal of planning. He said that he would be unable to deal with any planning issue. It was more a question of undermining his project, presumably for the benefit or in the interest of others.

There was a development group in Dublin Corporation (most of whom were straight). They included **Bill Lacey, Paddy Morrissey, Sean Haughey** and **Mick McCloone** and some others.

Mr. Gilmartin indicated that we should look into how Mr. Ray Burke resigned his position as Minister for Foreign Affairs. Mr. Gilmartin says that he received a figure believed to be between £0.5m, and £.75m. to resign.

There were a series of meetings in an office in Blanchardstown. Apparently, it arose out of a demand which Burke had made that he would resign if he was paid a particular sum of money to get the individuals concerned off the hook. They were of the view that Burke would have to resign to stop the investigation of planning matters. The parties involved consisted of a consortium, the principal member (and payer) of which was JMSE or Joe Murphy.

of the bag". However, eventually in their own interests, they all compromised their disagreement.

Another individual who is suspect was Willie Murray. Mr. Gilmartin says he was too close to Lawlor.

Mr. Gilmartin referred to an incident where the Corporation wanted to buy a certain property in Dublin. George Reynolds engineered that this property should not be bought by the Corporation. Subsequently, it was bought by a private developer and sold to the Corporation at a huge profit. Mick McCloone knows all about this. We should ask him about it.

Ph memo of telephone conversation Gilmartin. doc

- **When the money was paid out of Barkhill to F. Dunlop and Shefran it was at a time when Barkhill was virtually dormant. It was waiting on the review of the development plan which was supposed to have occurred in 1988 but did not occur until 1993. Barkhill was not trading at all and was not in fact involved in PR or marketing. At the time of these pay-outs there was no zoning and no planning permission. There was nothing to market or to do PR about. AI B must have known this.**

4 [redacted] C

4 We left his office and in the car on the way back to the Tribunal office, we rang Thomas Gilmartin to put to him that Mr. Maguire had absolutely denied any knowledge whatsoever of the matters of which Mr. Gilmartin told us. Mr. Gilmartin said that everything he had said was true. I said that Mr. Maguire had denied he had ever met Mr. Burke. Mr. Gilmartin said that Mr. Burke was not at the meetings. He did however say that he would be surprised if Mr. Maguire never met Mr. Burke. He said that the meetings definitely took place, that they were JMSE led and that they happened in the offices of Seamus Maguire & Company in Blanchardstown. He said that Mr. Maguire may not have been present for all of them or for the duration of them but that he certainly knew that they were going on and what they were about.

5 I asked Mr. Gilmartin why would Seamus Maguire tell him of these events or, for that matter, why he would tell anybody about these events. Mr. Gilmartin said that he was a personal friend of Seamus Maguire. Mr. Gilmartin was alarmed that his name was mentioned in the conversation. I re-assured him that we did not tell Mr. Maguire that Mr. Gilmartin was our informant. We told Mr. Maguire that we had a number of sources of information. Mr. Gilmartin's name came up in the context that Mr. Maguire had commented to me that he had seen me on television and that he had been talking about me recently in the context of his telephone conversation with Mr. Gilmartin during which Mr. Gilmartin had mentioned that I had spoken to him. Mr.

Maguire informed us that Mr. Gilmartin telephoned him twice and on both occasions mentioned the Planning Tribunal. [redacted]

5

J

6 Going back to the conversation on the telephone with Mr. Gilmartin, he said that basically he had been shafted by O'Callaghan. In the first instance, he had to pay O'Callaghan £2m. to go away. However, O'Callaghan came back, the second time with the support of a number of politicians. Mr. Gilmartin pointed out that he had put together one of the best developments the country had ever seen and that O'Callaghan and others were keen to get in on the act. The second time that O'Callaghan came back, he had the dirty tricks brigade of the Government who started a dis-information campaign against him orchestrated by Frank Dunlop.

7 The dis-information campaign extended to the Inland Revenue in England who, as a result, pursued him and petitioned him in bankruptcy successfully for £10m. He had subsequently had this set aside but at great difficulty and at substantial cost. This placed him in the position were Allied Irish Banks in Ireland forced him out and forced him to sell-out to O'Callaghan which was the object of the exercise of O'Callaghan and the dirty tricks politicians.

8 O'Callaghan then got money (£300,000) paid to Frank Dunlop (who was the *"bag man")* and he paid off the Councillors including Hanrahan, Lawlor and

others. There had been meetings between Lawlor, O'Callaghan and Dunlop in Dail Eireann and elsewhere. The reason that he was forced out was that he would not pay-off the corrupt politicians. Subsequent to his departure, O'Callaghan paid-off the corrupt politicians and ultimately got rezoning for the development.

9 Gilmartin had to engage Noel Smyth to extricate his money. Smyth threatened proceedings all around the place including Allied Irish Banks and in particular threatened that he would subpoena Albert Reynolds to give evidence if Gilmartin did not get his money back. It was for this reason that he got his money back. He had to pay Smyth £750,000 to get his £7m. back.

10 Mr. Gilmartin told me that the figure of £700,000 was the figure which was paid to Mr. Burke. He said it was the figure which Maguire told him had been paid. Ironically, it was the same figure as he had to pay Smyth to get his money back.

11 Mr. Gilmartin said that there were occasions where he had to meet delegations from the Irish Government on their way to negotiate beef contracts in Iraq. He actually was called to meet these politicians in the airport where they were sitting around the table waiting to receive payment from Mr. Gilmartin.

12 In relation to the Bachelor's Walk site, the deal was that 20% of this multi-million Pound development would be set aside for the politicians. They designated a part of the quays as a tax-free area to *"show calm"* to Arlington

4. He believed that Frank McDonnell of the *Irish Times* had been paid to write articles which were derogatory of the proposed development at Quarryvale.

5. He said that he had been forced to sign documents by the Bank and had been held captive until 12 o'clock midnight on the night that the Quarryvale zoning went through.

6. He said that the daughter of Eamonn McKeown, top Executive in AIB, had got a showjumper from someone and although he did not expressly say so, he implied that this was some sort of a pay-off by an unnamed benefactor who may be one of the O'Callaghans.

7. He said that Arlington Securities plc owned the Bachelor's Walk site and did so through a number of companies including a company called Desk Top Securities Limited. He said that after the Bachelor's Walk deal went sour, he was paid £1.25m. for his share in the Bachelor's Walk properties and that he had been very fairly and very decently treated by Arlington Securities. British Aerospace later took over Arlington Securities plc and Ray Mould (?-spelling) later established Pillar Properties which own a shopping centre in Clandeboy and in Derry.

8. Gilmartin says that he met Flynn and Ahern in the Park Lane Hotel. They said that they were collecting for Fianna Fail. The directors of Arlington thought

[redacted]

9 A

6. He also furnished a location map showing the location of the Quarryvale development and adjoining developments and suggested that we should talk with Michael McClune who has a significant amount of information available to him.

7. He recounted an occasion when he was asked by an Eoin O'Callaghan to Clondalkin. He felt that he was going to inspect a site or meet somebody of some significance. O'Callaghan took him to a pub where they sat for some time. They were then approached by a man wearing dark glasses who threatened Mr. G. and said that they had a file on him in relation to his activities in the North.

8. Mr. G. explained that this meeting was intended to frighten him and to ensure that he would not continue with any development in the Clondalkin area.

9. He explained how he had come to acquire the sites in the Bachelor's Walk area and the pressure that was put upon him by politicians. He repeated the stories about Liam Lalor, O'Hanrahan and named Cathal McGrath and Sean Gilmore as two other councillors who had looked for £100,000. He said that Marian McGuinness was a very close associate of Liam Lalor's and shared an office (and perhaps more) with Lalor for a period. He said that Gilmore had taken a sabbatical for one year and had been paid £100,000 presumably by O'Callaghan or one of O'Callaghan's companies.

Mr. Gilmartin made the point that the bank pulled the plug on him at the time of the re-zoning motion. He raised the question "why would a bank pull the plug the day before a re-zoning proposal which would hugely enhance its value"?

It would be worthwhile talking to Eddie Keyes. He is a Protestant and he is straight and was not treated terribly well.

We should also have a look at Ambrose Kelly and An Bord Pleanála. There is an issue relating to Pat Dunne but he said he did not wish to speak ill of the dead. He said that Ted Dadley's phone no. is 071-6361673. He is with Wintrush. He is a bit of a womaniser and when the Batchelor's Walk Project was current he tended to talk too much around Dublin night clubs.

Raymond Mold is with Pillar Properties Plc. Humphrey Price is the Pillar Properties Finance Director. Mr. McCloone has a lot of information. It was Fassnidge who introduced me to Lawlor. He made an arrangement for me to meet him in the Dead Man's Inn. Lawlor asked for £5m. He first asked for a stake in the Batchelor's Walk Project and I told him that this was not a runner. It was then that he asked for a stake of £5m and I said that it still was not a runner.

Padraig Flynn and Bertie Ahern invited Arlington to a hotel (in London?). This was a "fund raising event for Fianna Fáil". Demands were made for money off Arlington Securities Ltd.. I met Padraig Flynn later that day for a meal. He talked around in reels. I pretended not to know what he was on about. After that evening Flynn and me were cool.

In the cheques which were given to Liam Lawlor the Payee was left blank and he filled in the Payee himself.

Berkhill was set up by Oliver Freeney.

Pat Hanratty
20th April, 1998

14 [redacted] B

[redacted] Mr. Gilmartin suggested that we look at a recent expansion development at 54, Merrion Road, Dublin.

34 14. [redacted] C

35 [redacted] A

[redacted] He has not been able to come over to Ireland recently because of his wife's deteriorating health. [redacted] A

36 [redacted]

37 [redacted] B

The Indication was that one of the steps referred to in the document could be taken to get the project off the ground [redacted] A

46 [redacted] There were 3 options.

Paul Kavanagh was involved in putting out stories about me recently. He recently retired a wealthy man. Bags of money went missing between Washington and Dublin.

Flynn said to me the other night that **Kavanagh** was out to discredit me. **Dunlop** was on to a number of papers recently

Kavanagh might be the man who asked for the #5 million after the Dail meeting.

47 [redacted] The man who asked me for the #5 million A had roughly the same build as Pat Hanratty.

I have been threatened. One caller told me to remember Veronica Guerin. Another told me my daughter's address in Cork

48 [redacted] J, K

I have a friend in Cork who told me of a high powered meeting which took place in Cork last week attended by a TD whose name I will give you later if necessary. Bertie Ahern, who was in Cork to select a candidate for the bye election, was at the meeting. It was a high powered meeting and they were discussing me.

IBI **Kevin Doyle** was in Bank of Ireland, Isle of man. He was promoted to Jersey.

I met a Mr. **James Palmer** at 178-202 Great Portland St. I think it was in January 1989 and that it was on a Monday. There was not a proper stick of furniture in the place. He said that it was a fantastic scheme but that I did not seem very co-operative. He said that I did not have the right people on board. He advised me to take on certain people. He said that **Mr. Haughey** was not very happy with

49 [redacted] B

me. He said that I should make an appointment to meet a man whose name he was giving me. He said he would be in touch with me. Two days later I got a phone call to tell me to telephone a man called **Dr. P. McCarthy** at 00 01 460000. I was told that he was in Balgriffin Dublin 17 on the Malahide side of a cemetry. Near Camplon's pub.

I rang **Dr. McCarthy** and I arranged to go out to meet him. The inference was that I was to take him on but I already had Ove Arrup. The inference was that he had **Charlie's** ear. Success or failure depended on whether I took him on. Palmer also said that I had to take on **Ambrose Kelly**.

Dr. McCarthy was an enlightened intelligent man. He made no demands. He talked of his wife who he said was an alcoholic. He said that it was a great scheme. I left him as I found him. I never went back to him.

Fintan Gunne insisted that I took on **Ollie Freaney**. Ollie had Charlie's ear. Every time I made an appointment to see **Fintan Gunne**, **Ambrose Kelly** and **O'M (? O'Callaghan)** were standing in the hall. **Ambrose Kelly** followed me around Dublin. I took exception to Ambrose Kelly. He is not even an architect. Every hotel I booked into he appeared. I was told by **Gunne** I had to have him on board. As it happened, **Ollie Freaney** set up Barkhill. **Gunne** double dealt me on Van Hool land. The deal was #600,000 but wound up at 1.3 million because Gunne was taking commission of the vendor as well. That finished me with Gunne.

Harrington was a witness to some of this. **Gunne** told me I had burned my bridges. He talked about having **Charlie's** ear. **Callaghan** was operating out of Kelly's office.

Mulryan of Ballymore homes got zoning on St. Pat's. There is a bit of a story behind that.

50 [redacted] B

MEMORANDUM

(Wednesday)
13th October, 1998

Planning Tribunal of Inquiry into Certain Planning Matters and Payments
Re: Thomas Gilmartin

1. Thomas Gilmartin telephoned at approximately 5.00 p.m. He said that he might be in a position to furnish to the Tribunal tapes of the interview between Jodi Corcoran and Frank Dunlop from which quotations appeared in last Sunday's Independent.

2. He said that well over £1m. had been paid through Frank Dunlop to politicians. He said that the work in relation to the promotion and letting of a shopping centre is not done by public relations people because agents such as Hamilton Osborne King do the work. In his experience, PR people were not ..... to accept close to the launch of a particular project. In his case, the Eileen Gleeson company did a survey of councillors and showed a ratio of 7:1 in favour of the scheme.

3. The interview between Corcoran and Dunlop took place in the presence of Dunlop's solicitor and was recorded. At one stage, Dunlop turned off his recording and said that he and O'Callaghan were scared that Gilmartin would sue them – this may be by way of explanation as to why he was recording the interview and why it was taking place in the presence of a solicitor. He said that a fellow called Ken Whelan of *"Ireland on Sunday"* had been in contact with him and was writing a story about the workings of the Tribunal and was doing so putting a Fianna Fail and Liam Lalor spin on matters. He indicated that he did not know Ken Whelan and he was unsure of the name of the paper

18. [redacted]

96 [redacted] K

19. [redacted] K+D.

97

20. [redacted] K

98

21. Gilmartin says that there was a fear that Liam Lalor was cracking up and that he had been hitting the bottle hard and there were reports that Ray Burke was also hitting the bottle hard.

99 22. [redacted] K

23. [redacted] K

100

24. Gilmartin says that he did release a few things to the media to counter Frank Dunlop and his spins and pointed out that he got Dunlop to admit that he had received payments of approximately £.45m. although he (Gilmartin) knows that there is more than £1m. about it.

25. In relation to the missing files above referred to, Gilmartin said that this occurred under the Albert Reynolds Government when he was in coalition with Labour and he believed Emmet Stagg was the Junior Minister.

26. He said that a designated area at the top of Dame Street in the Temple Bar/Christchurch area had been designated and that properties had been bought in that area between the time the files were shown and the designation announced. This was a quick purchase in respect of properties which did not have a great deal of value prior to designation but he said the same thing occurred in relation to a designation in Kilkenny and an extension to a designated area in Limerick.

27. He said there had been huge pressure on the Department of Agriculture to move to Cork to create a value in the development in Cork on the CIE lands. He said in order to get the project off the ground, O'Callaghan needed a tenant. They needed to get a covenant to create 6% of the value.

28. Gilmartin says that he know that part of the Chefran money went to Albert Reynolds, part to Bertie Ahern and a smaller sum to one other person whose names he does not know at the present but he does not think it was Ray Burke.

29. He does not think the cash went into the Chefran accounts although the payments may appear to have been made from Barkhill to Chefran.

30. He said that Albert Reynolds in trying to find out how much Gilmartin knows has approached a number of people and that Ray McSharry also is scared because he furnished a draft of a letter which he wanted Gilmartin to sign which indicated that Gilmartin did not know and did not have any connection with McSharry. However, in the period 1990-1991, Gilmartin's sister had contacted McSharry in Brussels to complain about the obstruction that Gilmartin was experiencing in Dublin.

31. He says that at the end of 1992/1993, a sum of £40,000 was paid to Albert Reynolds and £30,000 was paid to Bertie Ahern whom he believed were

108 [redacted] A

Mr Gilmartin said that Jody Corcoran called him back on Monday and said that he was concerned that he had been set up. His fear was that he was being used as a vehicle to leak information concerning the Tribunal by parties who wished to undermine the Tribunal.

Mr Gilmartin said that Jody Corcoran told him that James Gogarty's affidavit had arrived on his desk anonymously together with some note from a man called Redmond [redacted] A

109 [redacted] Jody Corcoran said that he felt that he was being used. THOMAS GILMARTIN said that JC had said that he would be prepared to swear on oath that Frank Dunlop had given him stuff.

He said that Frank Dunlop had given him extracts of the statement which Mr Gilmartin had furnished to the Tribunal through Mr Gilmartin's Solicitors.

110 [redacted] K

111 [redacted] K

112 [redacted] C

Mr Gilmartin made reference to a tax adviser called Cochran of Noel Cochran & Partners. He was often with Liam Lawlor and Phil Monaghan.

AIB approached Stewart Harrington of Harrington Bannon to do a valuation of the lands after the loan was up. Instead of keeping this confidential, Harrington told a number of people at a meeting at Monaghan's office attended by a number of people including Noel Cochran.

Pat Gleeson of IBI recommended Mr. Cochran to THOMAS GILMARTIN. Consequently Mr Gilmartin met Cochran in Bank of Ireland in London. He subsequently met him in Camden Markby's office.

One day he said to Mr Gilmartin that his name had come up. He Mr Gilmartin was he having any trouble with AIB. He said that Stewart Harrington was appointed to do a valuation for AIB and that he had come to a meeting at which he (Cochran) was present in Monaghan's office. He told the whole thing to the meeting and suggested that Mr Gilmartin was in trouble.

It was after this that Monaghan took Padraig Flynn around the site in a helicopter. This was at a point in time after Mr Gilmartin had made his complaints.

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Tuesday the 8th of December 1998

Mr. Gilmartin telephoned me this morning.

He had just been speaking to Jody Corcoran on the telephone. Mr. Corcoran told Mr. Gilmartin that he had been offered a job by the Government for £75,000 per annum. It was something to do with the milennium. The offer had been made by Seamus Brennan but Jody Corcoran believed that it had come from Bertie Ahern. Mr. Corcoran declined the offer because he felt that it was some sort of bribe and because he felt it would be short term.

I asked Mr. Gilmartin why the Government would want to benefit Mr. Corcoran. He said that they are afraid of what he knows. (This was Mr. Gilmartin's own opinion).

Mr. Corcoran told mr. Gilmartin that the lawyers for the Independent had advised them against publication of some of the material which they had. They were concerned about the leaking of information and the publication of such information by the Independent.

Mr. Gilmartin said that Jody Corcoran also told him that somebody from Ambrose Kelly's office had the inside track on evertyhing to do with Quarryvale. This person was still working in that office. Mr. Gilmartin had no idea who it was other than to say that it was a man. [redacted] A

116

Ursula Halligan had been on to Tom Gilmartin on Sunday night. He told her nothing.

Jody Corcoran was asking about Arlington. He told him nothing also. He was trying to track down Raymond Mould. Mr. Gilmartin says that he did not disclose his whereabouts.

Patrick Hanratty

117 [redacted] A

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Monday the 14th of December 1998

118 [redacted] A

I spoke to TG this afternoon on the telephone. He had received calls from Jody Corcoran last Saturday and, most recently, last night. JC told TG that he had received three threatening telephone calls last evening. He knew two of them but the third was anonymous. The two which he knew were along the lines that he needn't think that he would fucking work in this town again and that he was doing himself no good or words to that effect. JC did not say who the two he knew were but TG's impression that one of them was Des Richardson. This was only an impression and JC did not mention his name.

The third anonymous call was a death threat. JC had telephoned TG to ask him about the threats which he, TG, had received and whether he knew who was behind them. I asked TG if this might have been a ruse by a journalist to get information. TG did not think so. He said that JC was concerned and his wife was very concerned. It was the third one they were concerned about.

JC told TG on Saturday that McDowell and Allen were in with the Tribunal during the week. JC had been told that it was suggested to the Sole Member that he could not go to every county in Ireland in his enquiries. The Sole Member said that he would carry on until his dying day.

He was told that McDowell and Allen said that they would go to the High Court and to the Supreme Court if necessary to stop it.

TG said that Albert Reynolds was panicking because Bertie Ahern was trying to shovel it all towards the has beens. AR thinks that he will be dumped on.

JC has a source close to BA. He believes that BA read the Tribunal's letter (O'Callaghan discovery letter). JC does not know for certain if BA read TG's statement to the Tribunal. The source read it but if BA read it he did not see him do so.

119 [redacted] A

Patrick Hanratty

120 [redacted] C

Note of telephone conversation between Patrick Hanraty SC and Thomas Gilmartin on Monday the 1st June 1999

I telephoned Mr. Gilmartin this afternoon, returning his call of the week before
135 last [redacted] A

TG said that **Ted Dadley** had recently indicated that he did not want to be involved with the Tribunal. Up to a week ago he was fully supportive and intending to support TG. However, in the last few days something had happened. TG believed that TD had been "got at." There was some talk of a development in Ireland, possibly involving Noel Smyth. TG also understood that **Raymond Mould** had changed his mind about co-operating with the Tribunal. TG was trying to find out what was going on. He said that he had also recently got the impression that **Richard Foreman** had become less than enthusiastic. **Lambert Smith Hampton** in Dublin had been given some lettings in Liffey Valley

TG referred to the "golden handshake". He repeated what he had already told me about the payment of a substantial sum of money to **Ray Burke** by a consortium of developers led by **JMSE** and including **Michael Bailey** to persuade RB to resign his position as Minister for Foreign Affairs and thereby forestall the setting up of a planning Tribunal. He said that this arrangement was agreed in the offices of **Seamus Maguire**. Seamus Maguire was personally present as was a Solicitor called Moran. Tim Collins was also involved. TG emphatically stated that this definitely happened. He said that he had been told this by Seamus Maguire although he was reluctant to get him involved with the Tribunal. Seamus Maguire believed that I had set him up but that John Gallagher was a decent chap.

136 [redacted] C

TG said that it was a pity that I did not call him before **Desmond O'Neill** and I had got into the witness box because, he said, he had a couple of "exocets" which we could have used. I asked him what these were and he said that the proposal to "buy off" Burke by JMSE coming up with a payment came **from Bertie Ahern**. TG said that BA did not put the proposition directly to RB but that it was done through an intermediary. The intermediary was **Dermot Ahern**. TG said that **Mary Harney** knew that RB had been paid off in some way to persuade him to go. I asked him where he had obtained this information and he was not prepared to say but said that it was a different source than **Seamus Maguire**.

I asked TG if his domestic circumstances had changed and he said that they had not. I said that we still wished to meet him to discuss a number of matters particularly to fill gaps in the chronology. He said that he was no good on dates. I pointed out that he could assist us with the detail of events and the sequence of events which would assist us in identifying dates.

137 [redacted] A, C

absolute necessity to close this deal on time at all costs because the site was so important. They did not come up with the cash and, eventually it was necessary to re-negotiate and pay nearly an extra million. At that stage TG did not care because he had already been "screwed." Under the original facility letter TG said that the bank had a charge over the contract of sale on the Bruton land and also over the Convey stud.

TG says that the bank themselves approached Bruton to see if they could buy the lands behind TG's back. However, Bruton refused to deal with anybody but TG. **Roderick Downer** of Jackson Stops & McCabe acted for **Desmond Bruton.** The deal was supposed to close in August 1990. It did not in fact close until September 1991. It cost 2.3 million instead of 1.5

TG referred to the question of tax designation. He said that he had heard from two different sources of an incident where tax designation files were taken from the Department of finance. They were produced by **Bertie Ahern** at a meeting at the **Mont Clare hotel** where information was disclosed as to proposed designation areas. Money changed hands. Time was allowed to enable the purchase of properties in these areas and after which the designations went ahead. Among those present at the meeting were **Ken Rohan, Owen O'Callaghan, John Deane,** a property developer from Dublin called **Kavanagh (Mark Kavanagh ?) and Harry Crosbie.** He said that decisions relating to designation were made at this meeting. A deal was done later around **the Christ Church** area. This was designated shortly afterwards. There was another one on the quays. **Harry Crosbie** assembled bits and pieces in a hurry in 91/92.

TG said that when **Padraig Flynn** left the Department of the **Environment** tax **designation drawings** went missing. He thinks that **Mary Harney** was there at the time as **Junior Minister.** In any event he was told that she became aware of the drawings going missing.

TG emphasised that he did not know any of this from his own knowledge but said that he had heard it from two sources. He said that these were independent sources. I asked TG if he was prepared to divulge the identity of these sources and he was not. I then asked him to inquire from these sources if they would speak to us on a confidential basis. He said that he would do this. I asked him if one of these sources was a labour politician. He immediately assumed that I was referring to **Emmet Stagg's** public statement on the matter and he confirmed that Emmet Stagg was not one of the persons from whom he had received the information . All he would say was that one of his sources was a "person in the media" and the other was not.

TG said that **John Deane** had two offices in Cork, one in Lavitt's Quay and the other in South Mall. In the basement of one of these offices there was a microfilm relating to OOC containing names amounts and dates. It was an "insurance" file. I asked him how he knew this and he declined to say. However later he mentioned that there was somebody in that organisation talking to **Frank Connolly.** He also mentioned that there was a former employee of **Ambrose Kelly** who was also talking. He used to be a trustee. (?)

Mr. Gilmartin said that the same thing happened to Carney Kent in Kilkenny. Mr. Gilmartin said that Owen O'Callaghan was around there before Carney knew he was in trouble with the bank. The bank was Allied Irish Banks and David McGrath was involved. Mr. Gilmartin said that the same thing also happened in relation to the Golden Island development in Athlone.

Mr. Gilmartin said that there were two incidents when tax designation files went missing. One was where files went missing from the Department of the Environment. These files were brought to the Mont Clare Hotel.

He said that the Department of Finance files which went missing were brought to the Westbury Hotel. Bertie Ahern was at both meetings.

Mr. Gilmartin says that Mary Harney knows a lot more than she pretends and that she is fully aware of the incident involving the Department of the Environment files. She was a junior Minister in that Department at the time.

Mr. Gilmartin says that Celtic Nominees was Vanhool. His deal with Vanhool was originally agreed at £600,000 but, with the assistance of Fintan Gunne, who was supposed to be working for Tom Gilmartin, the price went up to £1.3m. Fintan Gunne collected from both vendor and purchaser.

When I mentioned that Celtic Nominees was one of the companies (with Buckfast Limited) granting the option to O'Callaghan on the Neilstown lands in January, 1989, Tom Gilmartin said that he *"smelt a rat"* and said that he feels that he was screwed here again. He seemed to be implying some kind of a connection between this and O'Callaghan.

We then discussed the date of the abortive meeting in George Redmond's offices in O'Connell Street which Mr. Gilmartin had previously told us was on the 23rd February, 1989. There was some suggestion that it may have been on the 2nd February, 1989. Susan Ryan agreed that somebody must know the actual date of this meeting. It was attended by John O'Higgins of Ove Arup in Dublin and also representatives from Taggarts. It was also attended by Richard Foreman and John

154 [redacted] B 6

and it was not a fund raising dinner. AR stayed in OO'C's house that night. At 3 am in an upstairs bedroom OO'C handed AR £150,000 in cash. TG said that this was a payment for tax designation in Athlone. TG said that Bertie Ahern got a cut out of this money. AR was picked up by helicopter the following day. I asked TG if his informant would be prepared to talk to the Tribunal. TG said that people were wary of the Tribunal and he was not prepared to disclose his name to me. He told me previously that his informant does not want to get involved.

AR then went on a fun-raising trip to America. TG says that this was a massive fund raising effort. It was in the context of the euphoria over the Northern Ireland "settlement". AR was giving speeches about what he was doing for Ireland and a huge number of Irish Americans gave money generously.TG says that over $1m was raised on this trip which included Chicago, Boston and New York. However, only £70,000 was handed over to Fianna Fail. The rest was lodged in accounts in the Dutch Antilles and in Lichtenstein.

TG then referred to the appointment of ? Fitzgerald as manager of one of the Dublin Local Authorities. OO'C had the casting vote ? of two already fixed. He had CJH in his pocket. He said that Hugh Coveny's demise was brought about indirectly by OO'C. He said that OO'C had more power than people realised. The original plan for the Cork tunnel was altered and re-routed so that it came out on land owned by OO'C. CJH was behind this change. He says that we can easily verify this. OO'C had complete control of Cork. The other developers there did not get a look in.

TG said that the £80k paid to Shefran was paid by OO'C personally and that he subsequently got reimbursed by Barkhill. He said that Eddie Kay told him that AIB enquired from Government sources whether TG would get zoning for Quarryvale. They were told that TG would never get zoning. This was in 1990.

He also referred to the delays in the development plan. He says that these were orchestrated by OO'C with the collusion of Councillors to whom he paid money including Colm McGrath. OO'C wanted to get into QV at all costs. He knew that if TG got zoning the value of the land would rise and TG would then have no difficulty in raising further finance and OO'C would have missed it. However if he could delay the zoning until after the default date on the loan he would be in business with the help of the bank.

TG said that George Redmond received substantial payments from John Corcoran of Green Property Company in 1990/91 in connection with the Blanchardstown site. In return GR procured an alteration of the line of the Navan Road to make it run close to the Blanchardstown site and secondly provided a "hammerhead" spur with a roundabout to give access from the Navan Road to the site. This spur was not paid for by Green. From the Brady's garage roundabout the road was bent south and the spur was taken south to the Blanchardstown site on the Blanchardstown side of Mulhuddart. GR also tipped off Corcoran that TG was buying the Irishtown site.

I asked TG about the fact that it appeared that OO'C had applied for and obtained planning permission on the Neilstown site. TG said that he got this with "line" drawings. I asked him would he not have had to submit full drawings. TG said that he thinks that we will find that this was an outline permission. OO'C never had the slightest intention of building a shopping centre there. Nobody in their right mind would do so. It is, he says, obvious to any developer that it would not be a feasible prospect because of the cost of providing road access.

TG said that there was a Councillor who we should look at called Ed McDonald. He works in PB Gunnes and is in the pocket of Ambrose Kelly.

reimbursements to O'C from the Barkhill account for payments to senior politicians which OO'C had already made. OO'C had paid around £150,000 to senior politicians in 1989 and, in total, had paid £250,000 to senior politicians in connection with Quarryvale. In 1989 £50,000 was paid to Ray McSharry and £50,000 to Bertie Ahern. Bertie Ahern also got another £30,000 subsequently.

I asked where he got this information and whether the person providing it would be prepared to speak to the Tribunal. He said that the information came to him indirectly through an intermediary and that the person providing the information was afraid to come forward. However, he said that he would make efforts to have this person persuaded to come forward. I asked him whether and why he considered this person to be a reliable source and he said that he was 90% certain that he was reliable. I asked whether his knowledge of the source, such as it was, was sufficient to enable him to make this judgement he said that the source had previously been a partner with OO'C in a development in Cork.

I asked him whether the information about the 1989 payments came from Frank Connolly (the O'Brien matter) and he said that his was a different source to Connolly's. I asked him how he knew this and he said that he was certain that his source would never talk to a journalist "in a million years". I did, however, get the impression that TG is aware of at least the broad outline of FC's story.

TG said that his source was the source of the information that OO'C keeps a shotgun in the boot of his car. It was the same source that provided the information that Albert Reynolds got £40,000 from OO'C. (This is separate to the allegation that AR was given £150,000 in cash in OO'C's house in Cork in March 1994).

TG then said that in the 80s and 90s the fashionable place for "hot" money was Macau (sic) in the Dutch Antilles. The Cayman Islands became unfashionable because the American Government giving the FBI powers, in certain circumstances, to get access to Cayman accounts. This was related to drug trafficking. Lichtenstein fell out of favour because there was a strong republican movement and because it was thought that this might undermine the power of the prince and thus render the banking system more "open". He

himself was told this by Deloitte & Touche and was given documents in the late 80s setting out an elaborate tax scheme involving the Dutch Antilles. He said that a lot of Irish "hot" money went there around that time and that if the Moriarty Tribunal were not looking there for some at least of the Ansbacker money they were looking in the wrong place.

TG mentioned the time he was told by a Mr. Palmer in January 89 when he told him that Mr.Haughey thought he should bring the right people on board. He suggested Dr. McCarthy and Ambrose Kelly. He went to see Dr. McCarthy; the directions he got were that he lived in Balgriffin Dublin 17, on the Malahide side of Campion's pub. Dr. McCarthy seemed embarrassed. He did not in any way solicit the work or make any pitch. He spent most of the time talking about his wife whom, he said, suffered from alcoholism.

TG also mentioned his meeting in the Bank of Nova Scotia in Dublin with Brian Perry. He says that he was accompanied to this meeting by either Brian Laxton or Roy Harris of Lambert Smith Hampton and not Richard Foreman as he originally thought.

177 [redacted] K. C

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Patrick Hanratty
30th November 1999

179 [redacted] B 3

TG then made reference to an incident which took place involving Emmet Stagg. Shortly after he was reported in the media about his misgivings about the granting of tax designations Bertie Ahern sent a delegation to him comprising of Noel Dempsey and a Minister called Smith (Michael ?). They produced photographs of him in the Phoenix park with rent boys. They also mentioned a case where ES was supposed to have made an indecent approach to a young teenager and where, it is said there was a huge row with the boy's parents. They threatened to sue but ultimately did nothing because of fear of publicity. TG says that Dempsey and Smith told ES that if he did not "keep his fucking mouth shut" they would release this material to the media.

TG then referred to the week before the Government fell in 1994. This was the occasion when a number of tax designations were given the night before the Government fell over the Harry Whelehan affair. Bertie Ahern admitted that there had been a meeting between himself and Owen O'Callaghan the previous evening or the evening before that. TG said that he had heard that Bertie was now going to change his story and say that he got mixed up and that the person who he met for dinner was the Dublin hotelier, Noel O'Callaghan.

184 [redacted] A,C

and he said that he would but that he thought that it was unlikely that his informant would agree to do so.

Patrick Hanratty
17th January 2000

happened and TG subsequently received a letter from the Corporation notifying him that they were not proceeding with the sale. This effectively scuttled this proposal and left TG with his original road access problems as well as the embarrassment of his plans not being accurate.

The IDA never actually took the site and after O'Callaghan took control they quietly faded away.

TG says that the reason that O'Callaghan did this was to discredit and undermine him because his plans and brochure incorporated this site.

Derek Brady was the runner up in the contest for Manager of South Dublin County Council (referred to by TG as "Feely's job"). He was regarded as the obvious successor and everybody assumed that he would get the job. However, O'Callaghan told TG a year prior to the appointment that Brady would never get the job. He said that it had to be decided by 5 county managers and that 2 were "onside". In the event Fitzgerald got the job on the casting vote of the Cork County Manager.

TG said that Ciaran O'Malley was with him on one of the occasions when he met Fintan Gunne. It might have been the occasion when FG said that he was going nowhere without Ambrose Kelly. Every time he met Gunne Ambrose Kelly was hanging around. Gunne said that AK had the ear of Charlie Haughey and an Bord Pleanala. TG said that he responded by saying "is he a boutree (?). This is a West of Ireland expression for a hollow tree with fungi resembling ears. When TG told FG that he would not use AK FG said that he had burned his bridges.

TG referred to the fact that Ambrose Kelly had been paid £300,000 in 1992 eventhoug he had not as much as produced one drawing at that time. He said that we should be looking at what that money was used for.

TG again mentioned John McDonald, the Lucan auctioneer who had told TG about a client who was "stung" by Liam Lawlor. The client had to borrow money to bribe Lawlor to get a planning permission which was essential for the survival of his business.

TG said that Brendan Fassnige definitely paid £10,000 each to George Redmond and Liam Lawlor. On the day that Fassenige introduced TG to LL he brought TG and Paul Sheeran to see the "state of the art" garage which he had built but which the bank had re-possessed. All he had left was a site with planning permission for a filling station which he showed them. However, he did not have access onto the motorway because the Council owned a narrow strip of land between his site and the motorway. He went to Liam Lawlor and LL asked him for £10,000 for him and £10,000 for George Redmond. He paid the money and got his access. He complained to TG that he had to give half of the proceeds of his site to LL and GR. Apparently he got £40,000 for his site.

The money to pay GR and LL was obtained from Bank of Ireland, Blanchardstown. It was obtained on an undertaking from Seamus Maguire who acted for Fassenige at that time. It was drawn down in the form of two bank drafts signed by Paul Sheeran. TG believes that the drafts were given to Seamus Maguire.

190 [redacted] K

191 [redacted] C

warned about Dunlop on a previous occasion and although Dunlop had written personally to Gilmartin he was not anxious to employ him.

He recalled a meeting held at the offices of Irish Life which was attended by himself and Seamus Maguire with a number of representatives of Irish Life including Bill Nowlan. Gilmartin was endeavoring to buy two properties in O'Connell Street including the Rainbow Café. Irish Life were looking for £1m. At that time Garreth Fitzgerald's government were endeavoring to get the Financial Services Centre off the ground and the principal of Taylor Woodrow had done a deal with the Fitzgerald government to start the work. However they got shafted because Charlie Haughey, Dermot Desmond, Padraig Kavanagh and Frank Dunlop arrived with loads of money. He heard this at the meeting with the Irish Life people and was warned off Dunlop at that meeting. He believes that two senior politicians got £100k and £150k respectively from O'Callaghan but he is unable to prove this.

He informs me that his wife's health has deteriorated and that she is now being cared for in St. John's in Sligo.

He asked when he was likely to be called as a witness and expressed the view whether it was likely that he would not be called before May next when the election is to be held. I told him that it appeared to me that that was a likely scenario.

John Gallagher

8. Large sums of money were taken from the O'Connell Street account to England. Bertie Ahern held an offshore facility with an Irish bank which Mr. Gilmartin thinks is Bank of Ireland but says it might be Allied Irish under which he can trade in relation to the English account but in an Irish branch.

9. The man from the Bank of Ireland who gave the information to Mr. Gilmartin was on one of his telephone conversations about to give him an account number when he was interrupted and he suddenly said that he could not talk anymore and he had to go. Mr. Gilmartin thinks that he was making the telephone call from work. Mr. Gilmartin told me the story about the temporary chauffeur who drove Celia Larkin to a bank in O'Connell Street and withdrew a substantial sum in cash which was put in the boot of the car. Mr. Gilmartin heard this story from the banker who made the two telephone calls to him. He mentioned it to Frank Connolly and Frank Connolly already had it.

10. Finally, Mr. Gilmartin drew attention to the fact that when Bertie Ahern sued Mr. O'Brien he did not sue the Sunday Business Post. He says the reason for that was that he did not want to involve a third party in circumstances where Mr. O'Brien was part of the set up.

211 [redacted] B

Telephone Attendance

From: **Susan Gilvarry**

To: **File**

Date: **25th July, 2006**

Re: **Thomas Gilmartin – PTB/34**

Mr. Tom Gilmartin telephoned me on the 25th July, 2006.

Mr. Gilmartin inquired whether he could speak "off the record". I informed Mr. Gilmartin that I was not in a position to have an "off the record" conversation. Mr. Gilmartin confirmed that he had heard today that the Judgment in the O'Callaghan matter had now been deferred until the 10th October, 2006. I told him that this was correct. He said that it was all a game and it was all for the purpose of delay.

He queried as to whether the matter would go to the Supreme Court and I confirmed to him that there was a strong possibility that it would. Mr. Gilmartin indicated that if the matter did go to the Supreme Court he would lodge an objection to the proceedings being heard before Mr. Justice Adrian Hardiman, He said his name was being dragged through the mud in the High Court proceedings and that he did not have the money to proceed with the matter himself in Court. He said he was being accused of lying and making up stories and this was not the case. Mr. Gilmartin indicated that when he returned to the Tribunal, he would elaborate more on the allegations he has made including the Mary Harney situation. He indicated that previously he had not been used to Courts and consequently had only responded under pressure but that he was telling the truth at all times. He said he understands the position of the Tribunal because we are investigating wrongdoing.

In relation to Mr. Justice Hardiman, Mr. Gilmartin indicated that he should not hear any case involving Mr. Gilmartin himself as he had acted for Mr. Lawlor in the past and had taken instructions from Mr. Owen O'Callaghan. In addition, in his Judgment in the previous O'Callaghan matter, he had made disparaging remarks about Mr. Gilmartin and had compared him to thugs who had accused Mr. Roy Keane of assault. Mr. Gilmartin went on to say that he expected that the Tribunal would support him in his objection to Mr. Justice Hardiman. He indicated that when he was in England he did not want to become involved with the Tribunal because he felt the odds were stacked against him but he felt, in fairness, the Tribunal was doing a good job. He said that he had heard that there had been a resolution in Dáil Eireann that the Tribunal was to be terminated in 2007. He said this was more of the same. Mr. Gilmartin terminated the phone call and thanked me for taking his call.

Susan

Telephone Attendance

From: **Susan Gilvarry**

To: **Chairman**

Date: **6th November, 2006**

Re: **Thomas Gilmartin – PTB/34**

I confirm that on 6th November, 2006 Mr. Tom Gilmartin telephoned me.

He said he was very concerned that it would appear that Mr. Justice Hardiman will sit on the Supreme Court that will hear the appeal from Mr. Justice Smyth in the High Court. He said his reasons for such a concern were that Mr. Justice Hardiman had made very derogatory comments about him and that Mr. Gilmartin had no right to address this. In addition, he said that the Courts are allowing Mr. O'Callaghan to make false and spurious allegations about Mr. Tom Gilmartin and Mr. Gilmartin has no comeback from this. I told Mr. Gilmartin that as yet the Tribunal is not aware as to whether or not Mr. Justice Hardiman would sit on the Court that will hear the Appeal. Mr. Gilmartin said that he was aware that the Tribunal were doing their very best in relation to this matter and that he was very happy that they had been successful in the High Court. He said he is very frustrated as Mr. O'Callaghan has been allowed in the High Court to make all of these allegations. I told him that was the nature of Court cases and that the Tribunal was not in a position to do anything to assist him in relation to that. I asked Mr. Gilmartin as to why he had not communicated through his solicitor. He informed that his solicitors had advised to "stay out of it".

He told me that when and if he came back to the Tribunal he would again address the Mary Harney issue and the Lee Tunnel issue. I told Mr. Gilmartin at this stage that anything he would tell me in that regard would constitute a prior statement and would have to be circulated.

Mr. Gilmartin said that he did not mean to put me in any difficult position and he apologised for taking up time. I informed Mr. Gilmartin that there was no apology required but that in light of the first O'Callaghan case that anything he said to me in relation to any matter would constitute a prior statement.

He told me he appreciated this and he thanked me for my time.

Susan

He had some concerns about the Supreme Court, in particular with Mr. Justice Hardiman who acted for Liam Lawlor in the past. He said Justice Hardiman also took instructions from Owen O'Callaghan and was also a friend of Michael McDowell. However the others in the Supreme Court were "okay". He said the judicial review challenges were only a game to obstruct and delay the Tribunal, in his opinion, and he noted that Hazel Lawlor was contemplating a challenge also. The allegations made by Owen O' Callaghan in the High Court were "baloney".

He said the process was just frustrating for him and his health wasn't great. He apologised twice for bothering the Tribunal on the matter. I said to him that there was no need to apologise and that if his legal representatives required any further clarification, they could correspond with the Tribunal.

DK

Telephone Attendance

From: DK

To: File

Date: 22nd January, 2007

Re: Thomas Gilmartin – PTB/34

I received a telephone call this afternoon from Mr. Gilmartin. He was looking for my colleague Susan Gilvarry who was in a meeting and so asked to speak to me.

Essentially, he was responding to some of the matters which had been aired in the Supreme Court that day in the case of O'Callaghan & Ors -v- The Planning Tribunal. It seemed that the matters to which he referred arose out of exchanges between Counsel for the Applicant/Appellants and Mr. Justice Hardiman. He did not appear to be satisfied with some of these exchanges. However, the fact that he was not a part of the proceedings meant he felt unable to do anything to counter them. Obviously, I could not advise him in this regard and, to that end, suggested he liaise with his own legal advisers.

DK

[redacted] [redacted]

four of them. Cllr H asked for £100,000 in a brown paper bag - notes - no cheques. The other three, whose names he did not recall took a similar line. He did not meet the other four, feeling he might be expected to pay such money to 40 members.

T.K said G.R was opposing the development at Brushtown for the wrong reasons. Within one hour of a meeting of Planners with Government Ministers [We did not confirm whether there had been such a meeting] Mr G.R. had told Mr Smith that the Minister had said that Mr K had bought out Mr O'C. [Mr Smith owns land adjacent to Mr O'Cs]. Mr K said Mr R was a friend of Mr Smith.

T.K said a recent announcement by J.C that the Blanchardstown Centre was going ahead was to stymie T.K. He felt G.R advised J.C, who he believed was going to employ G.R when he retired shortly. He also felt G.R had influenced P.M. to go back on an agreement concerning price for Carr lands at Irishtown.

T.K said G.R had received payment in respect of a permission for a Mc Donalds in Palmerstown. On the Mr B case mentioned earlier. Mr K said when LL said he was holding back money in respect of the car, Mr B responded that he had already paid Mr G.R. He T.K also alleged that concessions were made in relation to roads at Blanchardstown by G.R, which the Council would not normally make.

The allegations against G.R were not substantiated in any way by reference to source of or otherwise [except in the case of the alleged passing of information to Mr Smith, in which case T.K mentioned the name of a person. Advised by Mr Smith] although C/M asked TK for sources.

APPENDIX 2

MR OWEN O'CALLAGHAN'S PRIOR STATEMENTS

IN THE MATTER OF THE TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

AND IN THE MATTER OF BARKHILL LIMITED

AND IN THE MATTER OF RIGA LIMITED

AND IN THE MATTER OF OWEN O'CALLAGHAN



STATEMENT OF OWEN O'CALLAGHAN
MADE THIS 12TH DAY OF APRIL 2000

I, Owen O'Callaghan, of Glen Farm, Upper Rochestown, Cork make this Statement on my own behalf and on behalf of Barkhill Limited and Riga Limited.

The context in which I make this Statement is a letter received by my Solicitor Richard Martin of Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork from the Tribunal of Inquiry into Certain Planning Matters and Payments dated the 17th of December 1999. The heading of that letter sets out the parameters for the scope of the Statement as being "Barkhill Ltd. Owen O'Callaghan Riga Ltd. - Orders for the discovery and production of documents dated the 12th of February 1999." The Orders referred to are for discovery in respect of the period from the 1st of September 1991 to the 1st of September 1993 and, in the circumstances, I confine my Statement to that period.

In the course of the aforementioned letter of the 17th of December 1999, I have been requested, through my Solicitor, by the Sole Member to provideassistance in the matter and, in particular, if I would deal with a number of specific matters in my Statement.

The first matter, which appears at number 1 of the letter aforesaid, is as follows:

"1. Whether payments or donations of money were made by or on behalf of Barkhill Ltd.,

and/or Riga Ltd., and/or Mr. O'Callaghan to Members of Dublin County Council and/or other public representatives and, if so:-

(i) the identity of the recipient(s) of such payment(s)/donation(s),

(ii) The amount of such payment(s)/donation(s)

(iii) The date of such payment(s)/donation(s)

(iv) The reason for such payment(s)/donation(s)

(v) The identity of the party on whose behalf such payment(s)/donation(s) was/were made

(vi) Whether such payment(s)/donation(s) were made in cash, by cheque, bank draft or otherwise. If by cheque the account(s) on which the cheque(s) were drawn.

(vii) The source of the funds used to make such payments including, if appropriate, the bank account(s) from which they were drawn."

I beg to refer to a schedule to my Statement, marked "Question 1" in which I have set out, in tabular form, each of the matters canvassed at sub-paragraphs (i) to (vii) of question 1.

Question 2 of the letter aforesaid appears as follows:

"2. Whether any benefits, other than the payment or donation of money, including gifts, services, entertainment, facilities or otherwise were provided to any member of Dublin County Council and/or any other public representative(s) and, if so:-

(i) the identity of the recipient(s) of such benefit(s),

(ii) The nature of such benefit(s)

(iii) The date and place of the provision of such benefit(s)

(iv) The reason for the provision of such benefit(s)

(v) The identity of the party on whose behalf such benefit(s) was/were provided

(viii) The source of the funds used to make such payments including, if appropriate, the bank account(s) from which they were drawn."

In or about March or April 1992, Councillor Colm McGrath issued leaflets in the Clondalkin area supporting the Quarryvale Project. The cost of these leaflets (£1,422.67) was discharged by

Frank Dunlop & Associates Limited who were reimbursed by Riga Limited. Riga Limited were ultimately reimbursed by Barkhill Limited.

In December 1992, Christmas hampers were distributed to a number of elected members of Dublin County Council as a gesture of appreciation for the time and effort put into the Quarryvale Project. The cost of these hampers was discharged by Frank Dunlop & Associates Limited and reimbursed by Riga Limited.

The only other issue which could be construed as a benefit having been provided by me or by Barkhill Limited or by Riga Limited to any member of Dublin County Council and/or any other public representatives was the provision of meals at various times to such representatives. These meals were incidental to meetings which were set up at my request and were paid for by Barkhill/Riga or by Frank Dunlop & Associates Limited (who was then reimbursed).

Question 3 of the letter aforesaid was set out as follows:

"3. The payments to Shefran Ltd. including:-

(i) The amount of such payments

(ii) The date of such payments

(iii) Whether any services were provided for such payments and, if so, the details of such services, the identity of the persons who provided them and the dates when they were provided

(iv) The identity of the party on whose behalf such payments were made

(v) Whether such payments were made in case, by cheque, bank draft or otherwise. If by cheque the account(s) on which the cheque(s) were drawn and the manner in which the cheques were negotiated

(ix) The source of the funds used to make such payments including, if appropriate, the bank account(s) from which they were drawn."

I attach a further schedule to this Statement, marked "Question 3" in which I have set out, in tabular form, details of all of the matters canvassed in (i) to (ix) (sic) of question 3.

I am anxious to point out that the matters the subject of this Statement, which I have been

requested to furnish to the Tribunal of Inquiry into Certain Planning Matters and Payments and have agreed to do so, concern events which took place between seven and nine years ago and, accordingly, I must caution that this Statement sets out matters which I believe to be true, from the best of my recollection and honest belief.

I have read over the above Statement and it is correct.

Signed: Owen O Callaghan

Owen O'Callaghan

Witnessed by: Rathduthin, Fermoy, Cork

Dated this 11th day of April 2000.

IN THE MATTER OF THE TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

AND IN THE MATTER OF BARKHILL LIMITED

AND IN THE MATTER OF RIGA LIMITED

AND IN THE MATTER OF OWEN O'CALLAGHAN

STATEMENT OF OWEN O'CALLAGHAN
MADE THIS 3rd DAY OF May 2000

I, Owen O'Callaghan, of Glen Farm, Upper Rochestown, Cork make this Statement on my own behalf and on behalf of Barkhill Limited and Riga Limited. The various Companies referred to in this Statement are as follows:

a. **O'Callaghan Properties Limited.** This Company holds a number of non retail investments but carries out no direct development work itself. However generally all letters written on behalf of any of the various Companies in which I have an involvement are written on O'Callaghan Properties Limited notepaper.

b. **Riga Limited.** Riga Limited is the Company which has carried out all the major retail developments and holds some investment properties.

c. **Merrygrove Estates Limited.** This Company was originally owned by Albert Gubay but was acquired by Riga Limited as part of the transaction relating to the Neilstown Site referred to below. Subsequently when arrangements were made for me to become involved in Barkhill Limited this Company became a subsidiary of Barkhill Limited. Subsequent to the purchase by Riga Limited of Tom Gilmartin's interest in Barkhill in 1996 the Company again reverted to Riga ownership.

d. **Barkhill Limited.** This Company was owned by Tom Gilmartin which became involved in the Quarryvale Site. Riga Limited and AIB later became shareholders in this Company.

Neilstown Site

Riga Limited was involved in various developments in and around Cork City in the early 80's. In the late 80's I sought to expand the Company's interest to Dublin. The first site I looked at was a site at Cooldrinagh, Lucan, Co. Dublin. The site was sufficient to accommodate a shopping scheme but after further investigation it transpired that the site was not correctly zoned for retail. Following various discussions with members of my professional team I discovered for the first time the difficulties which were likely to be encountered in having land re-zoned. My professional team explained to me that in order to have the Cooldrinagh lands re-zoned it would be necessary to canvass local councillors to put through a Section 4 motion effectively forcing the Local Authority officials to grant the Planning Permission. I decided at this stage that I did not wish to be involved and consequently dropped the site. Subsequently Riga became interested in a site at Neilstown. This site was zoned "Town Centre" since 1972 as part of the original three town centres planned on the western side of Dublin. One was Tallaght, the other Blanchardstown and Neilstown was the third.

Merrygrove Estates a Company owned by Albert Gubay had arrangements made with Dublin Corporation to purchase the Neilstown Site. Riga Limited purchased the shareholding in Merrygrove in 1988/early 1989.

As part of ongoing discussions with prospective anchor tenants as to their interest in the Neilstown site I was informed by Quinnsworth that there was a competing site owned by a Tom Gilmartin on the junction of the N4 and M50. On making enquiries I discovered that this site was not zoned for retail and took no further action. This site is known variously as Westpark, Quarryvale, Liffey Valley, Lucan/Clondalkin Town Centre.

In due course a Planning application for Neilstown was prepared and submitted to the Local Authority.

I believe that I was contacted first by Tom Gilmartin in late 1988 to see if I would be interested in selling my interest in the Neilstown site. My initial reaction to this was that I would not be interested and wished to continue my own development. However Tom Gilmartin persisted in his approach and I decided to visit the Gilmartin site. It was apparent that should Tom Gilmartin be successful in re-zoning the site at Quarryvale there would be no contest between the two sites as clearly the Gilmartin site was in a superior location. Any possibility of successful rezoning would have "killed off" any interest from Anchor Tenants in my Neilstown site as they would certainly have waited until the possibility of zoning of the Quarryvale Site was clarified.

Discussions followed with Tom Gilmartin. Frank Connolly in an article in the Sunday Business Post describes correspondence between me and Tom Gilmartin as follows (I do not have copies of this correspondence):

"The letter followed a meeting between Gilmartin and O'Callaghan in December 1988 held to discuss possible co-operation in the scheme for what was then known as the proposed Clondalkin/Lucan satellite town.

In a letter to Gilmartin the following day, December 8, O'Callaghan recorded that among the options discussed was a joint venture 50/50 agreement for the development or a complete buy-out of the project by O'Callaghan.

"1. We believe the most suitable proposition would be a Joint Venture 50/50 agreement.

"2. We also outline our interest in exploring details with you of a buy out of the project subject to your agreement to remain an integral part of the team . . . ."

In his letter, O'Callaghan also pointed to the experienced team of in-house architects, engineers and other project co-ordinating personnel before indicating that he could achieve early planning permissions on the project.

"On reflection, since our meeting, if we can come to a suitable working arrangement, we would suggest we could have a very major beneficial role in the project in assisting in having the planning application granted in a relatively short programme which would be to the advantage of all concerned", O'Callaghan wrote.

Gilmartin subsequently replied and claimed that any joint venture proposal could place the finances he had in place for the ambitious project in jeopardy.

"In looking at what involvement I could envisage you having within my scheme, at this stage I am afraid that I would have to rule out any consideration of either a joint venture agreement or indeed selling out my interest to you," Gilmartin wrote on December 20, 1988.

"You will appreciate in respect of the joint venture proposal that while I have my finances arranged in principal, the details of these arrangements could be placed in danger should an agreement such as you suggest be entered into by me.... On the question of selling my entire interest in the project, I have decided that this proposal is completely out of the question."

The reference to a "beneficial role in the project in assisting in having the planning application granted in a relatively short programme" related to the fact that Tom Gilmartin told me (and I believed at the time) that once the zoned site at Neilstown and the Quarryvale site were under the same ownership the zoning could have been easily transferred from one site to another.

Option Agreement dated 31st January, 1989
O'Callaghan Properties and Thomas Gilmartin
(Being an option for Tom Gilmartin to acquire Riga's interest in the Neilstown Site)
(Copy extract attached in Appendix 1)

Various discussions followed and finally an Option Agreement was entered into by O'Callaghan Properties Limited (on behalf of Riga Limited) with Tom Gilmartin for him to purchase the interest of Riga in the Neilstown site.

When the final terms were agreed, the Option Agreements were duly prepared and sent to Seamus Maguire, Tom Gilmartin's Solicitor. At a meeting in Seamus Maguire's office the documents were finalised.

The terms finally agreed provided for:

(a) payment of £800,000.00 on the signing of the Agreement

(b) the option to be exercised on or before the 31st October, 1989 by payment of £1 35m on the 31st day of October 1989, and handing over a bank guarantee guaranteeing the payment of the sum of £1.35m on the 31st day of January 1990.

(c) Tom Gilmartin to use his best endeavours to obtain the return of the deposit of £300,000 paid by O'Callaghan Properties through Merrygrove to Dublin Corporation.

(d) In the event of Tom Gilmartin not exercising the option in the manner provided in (b) above, then Tom Gilmartin was to procure that the Quarryvale site would be subject to a covenant not to be used for retail purposes for five years from the

date of the Agreement. This was to enable O'Callaghan Properties to build the Neilstown scheme without threat from Quarryvale.

During the final discussions in Seamus Maguire's office, Seamus Maguire advised Tom Gilmartin that the Option Agreement should not be signed by Tom Gilmartin unless it was subject to Tom Gilmartin obtaining Planning Permission for the Quarryvale site. Tom Gilmartin said this was not a term of the Agreement with me and he did not expect me to wait for the money. He was prepared to take the risk.

Seamus Maguire later advised at the same meeting that in his opinion Tom Gilmartin would be unwise to sign any agreement which was not subject to Planning Permission. My Solicitor, John Deane indicated that the obtaining of Planning Permission by Tom Gilmartin for his Quarryvale Site was not a term of the Agreement and Tom Gilmartin agreed with this. Tom Gilmartin subsequently signed the Option Agreement unconditionally and handed over a cheque for £800,000.00.

The second payment (£1.35m) was not made on the due date of the 31st January 1990 but was paid some months later. Thereafter I contacted Tom Gilmartin on a regular basis seeking payment of the remaining £1.35m but same was not forthcoming. During the period of time when I was waiting for the balance of the proceeds of the Neilstown sale, Tom Gilmartin would tell me about the various funding packages that he was trying to put in place to pay the balance of our money. In all cases, these proposed funding arrangements were "definitely going to happen", it was just a matter of days. Every time I tried to help a refinancing project by speaking to those involved at Tom Gilmartin's request, I was accused by Tom Gilmartin of taking over the project.

Despite being given a number of extensions Tom Gilmartin still did not complete the purchase. Following Tom Gilmartin's failure to complete I finally decided that I had no option but to continue with the development at the Neilstown site.

Nonetheless, I was subsequently still prepared to consider allowing Tom Gilmartin to complete the Agreement. I even wrote at Tom Gilmartin's request to Minister Flynn on the 5th February, 1990 (copy of this letter is attached in Appendix 2) confirming this fact and also the fact that Tom Gilmartin had confirmed that he would complete the transaction that week. Tom Gilmartin (I believe) had told the Minister that he had an agreement with me to buy out my interest in the Neilstown Site which was properly zoned for retail. Apparently the Minister asked Tom Gilmartin for some confirmation that such arrangements were in place. Tom Gilmartin asked me to give the necessary confirmation to the Minister which I did.

Despite that fact that Tom Gilmartin was unable to pay the £1.35m to O'Callaghan Properties, he still made preliminary soundings to have the zoning changed from the Neilstown site to the Quarryvale site.

I became aware of this fact and made it clear to Tom Gilmartin that I would not agree to this happening until I was paid and furthermore in the event of any formal efforts being made by Tom Gilmartin to have the Neilstown site zoning transferred to Quarryvale I would object to any such transfer. In fact Sean O'Leary, B.L. was instructed in this matter on the 22nd March 1990 and his advice sought on the issue of transferring the zoning from the Neilstown Site to the Quarryvale Site as I was extremely concerned that Tom Gilmartin might be able to change the zoning from Neilstown to Quarryvale to my detriment. (Copy letter of instruction from Deane & Co., to Sean O'Leary, B.L. is annexed hereto in Appendix 3).

In July 1990, an attempt was made by Tom Gilmartin to revive the transaction and correspondence passed between Deane & Co., and Seamus Maguire. The suggestions made by Tom Gilmartin were not acceptable. (Copy correspondence annexed hereto in Appendix 4).

In October 1990 another attempt was made by Tom Gilmartin to finance and finalise the transaction and again I was prepared to co-operate. This time he was using a Derek Saunders of Parkgrange Investments to put the refinancing package in place. Derek Saunders was in contact with AIB directly and apparently confirmed the transaction could be completed by Friday 19th October 1990. This did not happen. My Solicitor received a list of queries by letter dated the 4th December 1990 from Kieran Murphy & Co., Solicitors, 9 The Crescent, Galway, (copy letter and queries annexed hereto in Appendix 5) but the refinancing package never materialised.

Heads of Terms of 14th December 1990
(These relate to Riga obtaining a 25% interest in Barkhill in lieu of the payment of the sum of £1.35m due to it under the Option Agreement dated 31/1/1989)
(Copy attached in Appendix 6)

In a telephone call from Mr Eddie Kaye of AIB to my Solicitor John Deane the issues between Tom Gilmartin and O'Callaghan Properties were discussed. Eddie Kaye felt that there were three parties with varying interests which needed to be addressed.

a. O'Callaghan Properties were due the balance of its money for the Neilstown site.

b. Tom Gilmartin needed to have control of the Neilstown site in order to pursue a retail zoning for Quarryvale.

c. Allied Irish Banks had lent a considerable amount of money to Tom Gilmartin by way of a short term bridging loan which now looked like being turned into a long term situation.

As far as I am aware AIB were never paid a penny interest on their loans since they were first granted to Tom Gilmartin in about February 1990 until after Tom Gilmartin was bought out of Barkhill Limited in May 1996 by which time the indebtedness of Barkhill to AIB had risen from £7.7m to £24.5m.

In these discussions with Mr Kaye it was agreed that I would take a phone call from Tom Gilmartin.

Tom Gilmartin and I subsequently reached an agreement that Riga would be allocated 25% of the Shares in Barkhill in order for it not to pursue its own site at Neilstown and that in effect Merrygrove Estates would become a subsidiary of Barkhill. This agreement was also based on the fact that AIB indicated to me that it would continue to support Barkhill Limited. At that time as far as I was concerned no further financial investment or commitment would be required from me.

At the time of the Agreement Tom Gilmartin had approximately £4.0m invested in the Quarryvale site and the release of the obligation to pay £1.35m would equate to approximately 25% interest in the Company.

At about this time (December 1990) Tom Gilmartin told AIB Bank and me that one of his re-financing schemes was about to come to fruition and it was guaranteed to be in place by that Christmas. Accordingly he wanted a window of opportunity until the 10th January 1991 to effectively re-finance Barkhill and re-acquire 100% of the shares. In the event he did not produce the re-financing scheme.

Some of the salient points in relation to these Heads of Terms of 14th December 1990 are as follows:

a. Condition 1 relates to a satisfactory agreement reached with O'Callaghan Properties in relation to an outstanding payment of £1.35m, to complete the purchase of the Neilstown Site. This was to ensure that Merrygrove would not develop their Neilstown site in competition with Barkhill's Quarryvale site in return for which O'Callaghan Properties were to receive a 25% equity stake in lieu of the balance of money due to it under the Option Agreement of 31st January 1989.

b. There is no mention in these Heads of Terms that O'Callaghan Properties should invest any further money in Barkhill nor guarantee Barkhill's indebtedness to the Bank.

c. Condition 3 relates to AIB permitting a roll up of interest for a further six months and in the event of the site being re-zoned for retail within the six month period AIB would consider a further extension of time to enable formal Planning Permission to be granted. In the event the zoning did not take place until the final approval of the Development Plan in October 1993.

d. The Bruton land, O'Rahilly land and the Murray lands referred to in Condition No. 5 were contracts entered into by Barkhill for the purchase of these lands forming part of the Quarryvale Site. Facilities were not available from AIB to allow these lands to be purchased so the purpose of this clause was to defer completion of those Contracts until after the AIB's six months extension of time had expired by which time zoning was to be obtained.

e. Condition 8 provides for AIB to have effective control of the Board. This clause was never implemented.

f. Condition 9. The mortgage over 51% of the equity of Barkhill was as far as I am aware never implemented.

g. Condition 11 provided that in the event of AIB being paid their principal and interest in full and O'Callaghan Properties being paid £1.35m on or before the 10th January 1991 the Agreement could be terminated.

Following the signing of these Heads of Terms, Tom Gilmartin expressed to me his dissatisfaction at the Agreement and he wanted to cancel the Agreement. He arranged to meet me in Dublin. Not only did he fail to turn up but also failed to cancel the meeting in Dublin as a result of which I had a totally wasted trip to Dublin. I then wrote about the 24th January, 1991 to Tom Gilmartin agreeing to cancel the agreement and stated that if matters were not resolved on or before the 31st January, 1991. I would proceed with my own site at Neilstown. (Copy of draft letter annexed hereto in Appendix 7).

By the 8th February, 1991 discussions with Tom Gilmartin had again resumed. Tom Gilmartin was in contact with Edmund Mc Mullan of Sentinel Investments B V. Grand Cayman who was putting together another refinancing package. McMullan sent me some background information which included amongst his references the following names:

- Arthur Jordan, Regal Trust Bank London.
- Steve Dacko, Royal Bank of Canada, Ontario, Canada.
- Walter Beatty, Vincent & Beatty, Solicitors, Dublin.
- James Mullaney, Coopers & Lybrand, Dublin.

McMullan wrote some letters to Eddie Kaye of AIB and to me, one of which suggested security for balance due to O'Callaghan Properties (copy of correspondence annexed hereto in Appendix 8). I presume that the Bank did not agree to the proposals and that the discussions then ceased between the parties as I never heard anymore about this particular package.

Heads of Agreement dated the 16th February 1991
(These replaced Heads of Terms dated 14th December 1990)
(Copy attached in Appendix 9)

This Agreement is in substantially similar form to the Agreement of the 14th December 1990 with the exception of Clause 10.

It was clear that Barkhill needed more funds. Both Tom Gilmartin and O'Callaghan Properties were to use their best endeavours to find an Investor to invest £4m for a 33 1/3% equity in the Company. In the event of that happening Tom Gilmartin, O'Callaghan Properties and the Investor were to each hold a 33 1/3% equity in Barkhill.

Following the signing of these Heads of Terms I became actively involved in Quarryvale with Tom Gilmartin. Tom Gilmartin however resented my involvement in Barkhill and began to reduce his active participation in the project. Added to this funds were required to close sales and Tom Gilmartin could not produce the funds.

In fact the following payments were made on behalf of Barkhill or for its benefit following the signing of these Heads of Terms.

28/2/91	Lending & Administration AIB - Tom Gilmartin	£ 26,192.52
5/3/91	Lending & Administration AIB - Tom Gilmartin	£ 10,028.00
29/4/91	Lending & Administration AIB - Tom Gilmartin	£ 55,656.36
27/5/91	Lending & Administration AIB - part payment on purchase of Murray Lands	£ 54,407.50
16/5/91	Shefran Limited - Cheque Number 501613	£ 25,000.00
30/5/91	Shefran Limited - Cheque Number 501660	£ 40,000.00
13/6/91	Shefran Limited - Cheque Number 501690	£ 15,000.00
		£230,284.38

These amounts came from the Riga Current Account. Subsequently an amount of £230,000.00 was transferred from the Riga Loan Account back to the Riga Current Account to cover this expenditure. This was in fact the manner in which part of the Riga sub-ordinated £1m loan was utilised.

Relations with Tom Gilmartin were never easy as Tom Gilmartin always felt that he should be sole developer of the Quarryvale Site and that I should have no interest whatsoever in the site or Barkhill. On a number of occasions I offered to return my shareholding on the basis that whatever money had been put into Barkhill would be repaid and the balance of the consideration on the Neilstown site would also be paid. At various times Tom Gilmartin promised a refunding package but failed to deliver.

During the course of relationship, Tom Gilmartin on many occasions would spend up to 1½ hours on the telephone to me either at the office or at home, discussing matters.

After I first became involved with Tom Gilmartin the question of re-zoning of Quarryvale was discussed. Tom Gilmartin indicated that it was a simple matter to transfer the Town Centre zoning from Neilstown to Quarryvale and that he saw no difficulty whatsoever in achieving this transfer once both sites were under the same ownership. Tom Gilmartin introduced me to Councillors Colm McGrath and Sean Gilbride. Councillors Colm McGrath and Sean Gilbride were ardent supporters of the project well prior to my involvement and appeared to be Tom Gilmartin's main advisors on the political front.

It soon became apparent to me that Tom Gilmartin's ambition of having 1.5m square feet of retail space, (about 5 times the size of Stephen's Green Shopping Centre or about 3 times the size of Tallaght Shopping Centre) 500,000 square feet of retail warehouse space and ultimately to build 1,000 houses down the Liffey Valley on lands which were subsequently to be acquired was an ambition which could never realistically be achieved.

Tom Gilmartin obviously felt that with £4m to invest he should have been very welcome back in Dublin and everyone should support him. Clearly however, any politician would have welcomed with open arms anybody prepared to spend £4m on a development project which would have created substantial employment in Dublin in the middle/late 80's. However a scheme of the size proposed by Tom Gilmartin was of such a size as would cause severe damage to Dublin City and the other potential Town Centres at Tallaght and Blanchardstown.

In or about late February 1991 I met Frank Dunlop for the first time with Tom Gilmartin and Councillor Liam Lawlor. Liam Lawlor met Tom Gilmartin and I in the lobby of Dail Eireann, Tom Gilmartin and I having failed to meet whomever Tom Gilmartin had arranged for us to meet. Liam Lawlor brought us into Frank Dunlop's office and introduced us to Frank Dunlop as a person familiar with political lobbying and someone who would help to guide us through the process.

At that meeting it became obvious to me that Tom Gilmartin totally rejected any involvement by Frank Dunlop. However I realised that Frank Dunlop seemed to know a lot of Councillors in Dublin and having been a Government Press Secretary for successive Governments, was a person who could be very helpful making introductions to Councillors. It should be borne in mind that at this stage Dublin County Council was still in being with 78 members, the largest body outside the Oireachtas.

Subsequently I met Frank Dunlop myself without Tom Gilmartin. During the course of the discussions Frank Dunlop indicated that he would be prepared to undertake the entire political lobbying which would involve three or four days work per week and that in effect he may have to drop some clients if he was to undertake the work. I would have to be prepared to attend in Dublin up to 4 days each week to meet Councillors. Frank Dunlop wanted me to take and staff an office in Dublin but later agreed to provide me with office facilities and allowed me use his office as my Dublin base. Frank Dunlop introduced me to the vast majority of the 78 Councillors on both an individual and collective basis. Some were met on several occasions. I also made representations to over 20 Community Groups and Residents Associations.

In view of Tom Gilmartin's opposition to using Frank Dunlop I agreed with Frank Dunlop that he could invoice using his Company Shefran Limited in order to keep Frank Dunlop's involvement from Tom Gilmartin. However when I sought funds from AIB as Barkhill's Bankers to discharge the invoices or to reimburse Riga, then Frank Dunlop's position had to be disclosed. Some of the Invoices were VAT rated O. I did not complain. However there would not be any loss of revenue as if the Invoices did contain a VAT element, then this would have been recoverable by Barkhill/Riga.

Dublin County Council vote 16th May 1991

During the course of the lobbying of Councillors serious opposition was encountered from Green Properties who threatened that if Quarryvale was zoned for retail they would never build their scheme at Blanchardstown. This immediately meant that the Blanchardstown Councillors, who were terrified that Green Properties would not build the Blanchardstown scheme despite the fact that Green Properties had the land for almost eighteen years, would not support the Quarryvale re-zoning despite the fact that some of

them genuinely believed the project should proceed.

Tom Gilmartin maintained that he could deliver a favourable vote if he was left to carry out the re-zoning process on his own. He always refused to tell me how he could achieve this. Even immediately prior to the first vote on 16th May 1991 he still maintained that if left to him he could ensure the correct result.

The first motion to re-zone the land was held on the 16th May 1991 and was carried by a comfortable majority of 29 votes to 13. In making a speech after the vote Tom Gilmartin begrudgingly acknowledged my involvement in the Company and the efforts I had made on behalf of the Company. Frank Dunlop was also present on the evening of the vote. Tom Gilmartin would have seen that he was involved in lobbying on behalf of the Quarryvale site. In fact Frank Dunlop attended the celebrations after the vote and was present when Tom Gilmartin made his speech. Tom Gilmartin shook hands with Frank Dunlop that evening and thanked him for all his help.

Heads of Terms dated the 31st May 1991
(These replace Heads of Agreement dated the 16th February 1991 and require further financial investment and guarantees by Riga)
(Copy attached in Appendix 10)

During discussions with AIB, AIB made it clear that if they were to continue their support for Barkhill, they would require a very large fee to do so. AIB were increasing their risk substantially and wanted to be properly rewarded for it.

It was pointed out to AIB that it was pointless providing for large fees for AIB for undertaking these facilities when it would only be driving Barkhill further into debt. It was suggested that there was no objection to AIB being rewarded in a profitable deal but only if the deal was profitable. The only way of achieving such a result was to provide that the AIB's fee would be converted into a financial shareholding so their ability to recover their money was directly linked to the profitability and value of Barkhill.

AIB would only agree to proceed if the shareholders were prepared to put in more equity. Riga were not prepared to do so unless its shareholding was increased to reflect the additional financial risk it was undertaking as well as the work it would have to do as project managers without payment.

The salient points in relation to these Heads of terms are as follows:-

a This Agreement recites at Paragraph C that efforts to obtain a new investor have been unsuccessful.

b The Agreement further provides that Barkhill needs additional finance to the extent of £4m plus provision for roll up of interest on the AIB facilities of approximately £10m.

c Condition 2 provides that AIB would provide:

(i) £3m

(ii) Roll up interest until the 31st May 1993 or until such time as the amount of interest so accrued but unpaid reached £2.5m. This would effectively mean that AIB were making cash available to Barkhill of £5.5m if you include the roll up of interest. Thereafter all interest was to be paid on the due date.

The £3m was required to purchase the Bruton lands, the O'Rahilly lands and the County Council lands and costs associated with the land.

d. Riga were to provide a loan of £1m and also provide to the Bank a guarantee for Barkhill's liabilities in the sum of £1m plus interest.

e. The Riga loan and existing Directors loan were to be subordinated to the loans from the Bank.

f. I was to provide a life policy in the sum of £5m and assign this to the Bank.

g. An event of default was to be the non obtaining of Planning Permission for retail shopping of at least 500,000 sq.ft. of nett lettable space by the 31st May 1993. Despite the fact that this Planning Permission was never obtained for this amount of space, the Bank did not call in the Loan.

h. Condition 6 provided for the amendment of the percentage shareholding of the parties. As Tom Gilmartin was making no further cash available his percentage remained at 33 1/3%. Riga who were in effect supplying an additional £1m cash plus a guarantee for £1m plus interest and were undertaking the role of project manager for Barkhill for no fees were to have its shareholding increased to 44 4/9% and AIB who were providing the additional funds were to have a financial shareholding of 22 2/9% redeemable for a sum of £2m.

i. Riga were to undertake the role as Project Managers without payment

j. The Board of Barkhill was to comprise of one representative nominated by each of Tom Gilmartin, Riga and AIB.

k. In the event of surplus land being sold at a price in excess of £175,000.00 per acre provided no event of default has occurred 2/3rd thereof was to be applied to reducing the amounts due to AIB and 1/3rd thereof in repayment of the loans due to Tom Gilmartin.

Following the signing of Heads of Terms dated 31st May 1991 but prior to the execution of the formal Share Subscription Agreement on the 13th September 1991, Tom Gilmartin expressed dissatisfaction to AIB at O'Callaghan Properties having a larger shareholding in Barkhill that he himself held.

Council Elections 27th June 1991

There were Council elections on the 27th June 1991 resulting in many new Councillors being elected to South Dublin County Council, many of the previous Councillors having failed to be re-elected. This consequently involved lobbying the re-elected Councillors and commencing afresh with those that had been newly elected. As the motion to re-zone Quarryvale for retail had been successful, Green Properties got seriously into action with a view to endeavouring to ensure that a rescinding Motion was put in and that the retail zoning proposed would be rescinded. Furthermore on the 30th May 1991 Green Properties issued a statement through their PR Agents that they were suspending all work on the Blanchardstown site from the 30th June 1991 until the Quarryvale retail zoning was rescinded. (Copy annexed in Appendix 11).

Share Subscription Agreement dated 13th September 1991

Following representations which Tom Gilmartin made to AIB concerning the O'Callaghan Properties Shareholding the Shareholding was ultimately agreed to be amended as follows namely 40% Tom Gilmartin, 40% O'Callaghan Properties through Riga and 20% AIB. Two drafts of the Agreement was produced but no Agreement was signed within the time limits envisaged by the Heads of Term of the 31st May 1991. AIB by letter dated the 5th September 1991 wrote to Riga Limited and the other parties to the Heads of Terms as well as to Barkhill Limited indicating that unless the Share Subscription Agreement was completed by the 13th September 1991 the Bank would take such action as was open to it to recover all sums due to it by Barkhill. (Copy letter annexed hereto in Appendix 12).

At the point in time that the Share Subscription Agreement of the 13th September 1991(copy annexed hereto in Appendix 13) was executed

(a) Tom Gilmartin had invested in cash into the Company approximately £4.0m.

(b) Riga had invested £1m in cash and undertaken a guarantee for another £1m plus interest and foregone a payment of £1.35m and a refund of £300,000 (being the deposit it provided to Merrygrove for the Neilstown Site). In fact Riga was subsequently obliged under the terms of a facility granted by AIB to Barkhill on 18th June 1993 to extend the Guarantee to £1.450m.

(c) AIB had provided an additional £3m in cash plus a roll up of interest to the value of £2.5m and were seeking a financial shareholding of 20% redeemable for £2m.

After the Share Subscription Agreement was entered into, AIB advanced further funds to complete the purchase of various pieces of land which were outstanding namely with Dublin Corporation and the main entrance roundabouts from St. Patrick's Land as well as the County Council yard. Following the signing of this agreement, I became a Director of Barkhill and a signatory on the Barkhill bank account for the first time.

Agreement dated 13th September 1991
(Option to acquire Tom Gilmartin's share in Barkhill and for repayment of Tom Gilmartin's investment in Barkhill - in total £5.250m).
(Copy attached in Appendix 14)

Tom Gilmartin at various times suggested that he wanted to be bought out of Quarryvale.

At the time of the signing of the Share Subscription Agreement, O'Callaghan Properties were attempting to reach an accommodation with Green Properties in order the end to feud over the zoning of the Quarryvale site.

O'Callaghan Properties were also making presentations to Green plc shareholders with a view to the merger of the respective Company's interests or a joint venture in respect of the two Shopping Centre sites.

On the same day as the execution of the Share Subscription Agreement, i.e. 13th September 1991 an agreement was entered into by Tom Gilmartin and his wife Vera Gilmartin with Riga whereby Tom Gilmartin received £100,000 on the signing of the agreement which agreement was intended to provide a mechanism to Tom Gilmartin to exit from Barkhill on the terms therein set out. The agreement was based on the premise that Riga would try to get institutional support which would allow for Tom Gilmartin to be bought out.

The Agreement was altered by correspondence between Deane & Co and Seamus Maguire & Co dated 23rd and 24th September,1991 and also by the terms of Supplemental Agreement dated the 27th January 1992. (Copy of correspondence and Supplemental Agreement annexed hereto in Appendix 15).

In the event, such institutional support was not forthcoming.

McEnroe (Abbey Finance) Refinancing Package

In early 1992 Tom Gilmartin informed me that he was in contact with a Mr McEnroe of Abbey Finance who was putting together yet another financing package for him to enable him to repay the AIB Loan and re-acquire control of the Company. Tom Gilmartin sought the assistance of Deloitte & Touche the Company's Auditors in preparing the funding proposal. Apparently Mr McEnroe of Abbey Mortgaging & Finance Limited, based in Britain, was an intermediary arranging funding through a Swiss based Trust and provided detailed information on the structure of the transaction to Deloitte & Touche.

During the period in which Deloitte's were working on the proposal Mr Gilmartin's Solicitor Seamus Maguire and Kieran Mulcahy of Deloitte & Touche were apparently looking for further elaboration and assurances from Thomas Montgomery, Solicitors, acting for Abbey Finance and Trust regarding the availability of the Funds. Subsequently apparently Tom Gilmartin became aware of another party seeking funding though Abbey Finance and Tom Gilmartin was given the name address and telephone number of the Trust in Switzerland. Apparently Tom Gilmartin contacted the Trust and that while they knew of Mr McEnroe they knew nothing about Barkhill and would not be prepared to Fund the proposal. (Copy letter from Deloitte & Touche dated 30th October 1992 is annexed hereto in Appendix 16).

David Tristram's refinancing package

In October 1992 a David Tristram of Organisation Management & Survey Limited, of Cheshire, England, contacted me and my Solicitor John Deane. He had been introduced to the Quarryvale transaction by Tom Gilmartin who was seeking to have another refinancing scheme put in place. Discussions continued with David Tristram from that date until November 1993. The transaction was to involve US Bankers namely Interstate Johnson Lane and their lawyers Dreyer and Traub from New York. David Tristram had a firm of U.K. Lawyers involved on his behalf namely Walker Martineau. Over a period of a year the U.S. Bankers came to Dublin met AIB and had a number of meetings with me. All during that period every effort was made by me to help in putting together the financing package. At one stage I believed the purpose of the refinancing package was to take out my interest in Barkhill and pay off the money that was due to AIB and to me. Subsequently it changed to a refinancing package which would

refinance AIB and involve a buy out proposal for Tom Gilmartin. Either way a large amount of correspondence was entered into during this period but the financing package never materialized. The file will be produced by John Deane as part of his discovery.

Council Vote on 17th December 1992

After eighteen months of continuous discussions and lobbying the matter finally came for a vote at Dublin County Council on 17th December 1992. There was always total opposition to the size and scale of the development proposed by Tom Gilmartin. I agreed that a development of 500,000 sq.ft. approximately would be adequate for the site and was happy to proceed on this basis. This limitation was something that was always rejected by Tom Gilmartin. Tom Gilmartin was adamant that if he was left in charge of zoning, there would not be any cap on retail space. He said that he would ensure that. Bearing in mind that at the time he was resident in the U.K., he was asked over and over again as to how this could be achieved. Tom Gilmartin refused to disclose this information so in effect he was acting in a manner detrimental to the interests of the Company. To this day I have no idea how Tom Gilmartin was going to achieve zoning without any cap. However Tom Gilmartin never lost an opportunity to criticise me for agreeing to a cap. On the day of the vote (17th December 1992) it became clear that a scheme of 500,000 square feet would not be accepted and following a lot of negotiations on the evening of the vote there was a general consensus that a scheme of 100,000 square feet would have been readily acceptable and a scheme of 250,000 square feet of retail space would just about be acceptable. On the evening of the vote on the 17th December 1992 Tom Gilmartin rang the FF Offices in Dublin County Council looking for Councillor McGrath. John Deane answered the phone, but Councillor McGrath was not in the room. Tom Gilmartin did not give his name but John Deane recognised his voice. When Councillor McGrath returned, he informed John Deane that he would not take the call if there were any people in the room as the mere mention of Tom Gilmartin's name would revive fears of 1.5m sq. ft. Shopping Development at a time when achieving 250,000 sq. ft was proving very difficult. Tom Gilmartin rang several times but I believe that on each occasion either Councillor McGrath was not in the room or else he was engaged in serious discussions in the room on the zoning issue. The votes taken on 17th December 1992 were as follows:-

The Chairman, Cllr Eithne Fitzgerald, T.D. decided to deal with the Quarryvale via three votes.

The First Vote was on the motion to put industrial development only on the Quarryvale Site. In effect this was a motion to dezone Quarryvale from Town Centre use to industrial use.

This was defeated by 37 votes to 32, with 9 abstentions.

The Second Vote was on a motion to zone the Quarryvale Site for District Centre use - capped at 100,000 sq. ft. - and for industrial use.

This was defeated by 37 votes to 32, with 9 abstentions.

The Third Vote was on a motion to provide a mixture of retail shopping and industrial uses on the site. The retail shopping was restricted to 250,000 sq.ft.

This motion, which had my support and consent was carried by 39 votes in favour, 28 against and 11 abstentions.

The discrepancy between this vote and the earlier ones is because Eithne Fitzgerald (Labour) and Eamon Gilmore (Democratic Left) voted in favour of the 250,000 sq. ft. Furthermore, Councillors Finbarr Hanrahan and Paddy Madigan, who had voted to prevent retail shopping in Quarryvale on the two previous votes, abstained. Attached in Appendix 17 are lists of the Councillors and the manner in which they voted.

1993 Ratification

Following the successful vote on the 7th December 1992 I was in constant communication with Frank Dunlop and County Councillors and met them on a regular basis to ensure that no attempts were being made by opponents of the re-zoning to put in rescinding motions or otherwise vary the size of the development which was agreed at the December 1992 vote. Over this period of time there were several attempts to galvanise support for a rescinding motion to be lodged. The Development Plan was finally ratified in late 1993.

Political Contributions/Benefits

I have made a number of political contributions during the period the 1st January 1989 to the 31st December 1993. I would like to deal with the contributions of £1,000.00 or more as follows:

1. On the 7th June 1989 I made a payment of £1,000.00 to Michael Martin in response to a request by him for support for a group of students from Colaiste Chriost Ri, Cork to travel as part of their mini Company project in transition year.

2. On the 5th November 1990 I made a contribution to the Fianna Fail Party in the sum of £10,000.00 following a request from the Party.

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3. On the 21st June 1991 I made a contribution of £5,000.00 to Michael Martin as Lord Mayor of Cork as a contribution towards the Atlantic Pond Restoration Fund. The restoration of the Atlantic Pond (an amenity area within Cork City) was the main project undertaken by the Lord Mayor that year.

4. On the 10th October 1991 I made a contribution of £10,000.00 to Councillor Colm McGrath of Dublin County Council. I had been requested by Councillor McGrath for financial support for the June 1991 Local Elections and I agreed to make a contribution to his election campaign. I did not make the payment until October 1991 but did so after being reminded by Councillor McGrath of my promise of support.

5. On the 18th November 1991 I made a contribution of £5,000.00 to Liam Lawlor of Dublin County Council. I had been requested by Councillor Lawlor to support him in the June 1991 Local Elections and I agreed to make a contribution to his election campaign. I did not make the payment until October 1991 but did so after being reminded by him.

6. Between September 1992 and April 1993 I made a number of contributions to Councillor Sean Gilbride totalling £15,500.00. Councillor Gilbride requested the support as he was running for the General Election in November 1992. Councillor Gilbride informed me that he was making a very serious effort to get elected to either the Dail or failing that to the Seanad so much so that he told me he was taking six months unpaid leave from his teaching job to try to accomplish this. It was in these circumstances that he asked me for support. In view of the support which Councillor Gilbride had given to me and prior to that to Tom Gilmartin, I agreed to support him.

7. On the 9th November 1992 I made a contribution to my local Cork T.D. Batt O'Keeffe in the sum of £10,000.00 as a contribution to his election expenses for the General Election of November 1992. This contribution was not solicited by Batt O'Keeffe.

8. On the 11th November 1992 I gave a contribution of £5,000.00 to Senator G.V. Wright as a political contribution towards his expenses in connection with the November 1992 General Election following a request from him for support.

9. On the 9th November 1993 I paid the sum of £20,000.00 to Councillor Colm McGrath. The circumstances of this payment are as follows. Councillor McGrath approached me and requested this payment on the basis that he had

spent a considerable amount of money on the November 1992 elections as a result of which his business was in serious financial difficulty and he needed some financial help. As Councillor McGrath had supported me in my efforts in Liffey Valley and had supported Tom Gilmartin prior to I becoming involved in Quarryvale I felt obliged to offer support as a "thank you" for all the help and assistance which he had given.

10. On the 9th November 1993 I made a payment to Councillor John O'Halloran in the sum of £5,000.00. Councillor O'Halloran approached me for this money. He stated that due to his support for Quarryvale he was asked to leave the Labour Party. In these circumstances he was without a party and without any financial support from the Labour Party. At that time I was fully conscious of not only the assistance which Councillor O'Halloran had given to Quarryvale but also the immense amount of work which he had done (and continues to do) for the local community. In these circumstances I had no difficulty in making a contribution of £5,000.00.

I never instructed or authorized anyone, including Frank Dunlop, to pay monies on my behalf to any politician for his or her vote. Neither did I instruct or authorize anyone, including Frank Dunlop, to make political contributions on my behalf in connection with the elections to Dublin County Council in June 1991 or in connection with the General Election in November 1992.

I can state that at no stage did I feel that the votes of those Councillors which I supported were dependent on receiving a political contribution or any other benefit. In the case of Councillor McGrath and Councillor Gilbride they were ardent supporters of the scheme long before I ever became involved. They were introduced to me by Tom Gilmartin as strong supporters of the Quarryvale project. There was never any doubt in my mind that they fully supported the project.

I recall that in connection with the Quarryvale development a considerable number of leaflets were circulated about the Project. Specifically, in or about March or April 1992, Councillor Colm McGrath issued leaflets in the Clondalkin area supporting the Quarryvale Project. The cost of these leaflets (£1,422.67) was discharged by Frank Dunlop & Associates Limited who were reimbursed by Riga Limited. Riga Limited were ultimately reimbursed by Barkhill Limited.

In December 1992, Christmas hampers were distributed to a number of elected members of Dublin County Council as a gesture of appreciation for the time and effort put into the Quarryvale Project. The cost of these hampers were discharged by Frank Dunlop & Associates Limited and reimbursed by Riga Limited.

The only other issue which could be construed as a benefit having been provided by me or by Barkhill Limited or by Riga Limited to any member of Dublin County Council and/or any other public representatives was the provision of meals at various times to such representatives. These meals were incidental to meetings which were set up at my request and were paid for by Barkhill/Riga or by Frank Dunlop & Associates Limited (who was then reimbursed).

Tom Gilmartin's Financial position

An article in The People (UK Paper) on 12th May 1991 reported that High Court proceedings had been issued against Tom Gilmartin by the Inland Revenue which claims £6.6m in Tax with interest at £12,000.00 per week. This information got into the Irish Newspapers. Tom Gilmartin blamed Frank Dunlop for leaking this information.

Tom Gilmartin did not regularly attend Barkhill meetings. However his Solicitor Seamus Maguire who was also Company Secretary attended the Board Meetings and kept Tom Gilmartin informed. On the 3rd October 1994 Tom Gilmartin nominated his friend Paul Sheeran to attend Barkhill meetings and act on his behalf. (Copy of this nomination attached in Appendix 18).

Agreement December 1995.

In late 1995 Tom Gilmartin again made representations through Seamus Maguire that he would like to be bought out of Quarryvale. His wife was ill and he wanted to get back his money and forget altogether about Quarryvale. A formal letter regarding Tom Gilmartin's intentions to procced with the sale of these shares was made by Seamus Maguire on the 15th November 1995. (Copy annexed in Appendix 19).

A number of discussions took place between Tom Gilmartin and me regarding various proposals which were put, ultimately culminating in an Agreement which was executed just prior to Christmas by Tom Gilmartin. (Copy annexed hereto in Appendix 20). He signed the document in good faith and without prejudice. He indicated at the time of signing the document that it was subject to him obtaining legal advice. A deposit of £20,000 was paid to him.

Subsequent to Christmas, I telephoned Tom Gilmartin and asked him if he had got his legal advice. He said he had done nothing about it and Tom Gilmartin suggested that the papers could be sent to Seamus Maguire.

When Seamus Maguire reviewed the papers and discussed them with Tom Gilmartin, he rang John Deane to state there were two problems:-

a. Tom Gilmartin wanted a bank guarantee for his money and,

b. Tom Gilmartin wanted interest on the outstanding balance.

This was totally at variance with the Agreement I had reached with Tom Gilmartin. In a subsequent telephone conversation between John Deane and Seamus Maguire, it was agreed that Tom Gilmartin and I should talk in order to resolve matters.

Subsequently, Tom Gilmartin spoke to me on the telephone and identified to me that his major problem was returning the sum of £200,000 to regain ownership of his shares in certain events. I agreed to allow a six month period to facilitate Tom Gilmartin in this regard.

Tom Gilmartin, thereafter expressed his total and absolute satisfaction with the deal, his delight at being out of Quarryvale at last and the fact that he could now concentrate on looking after his wife and family. He also asked me to forget about the ill-feeling that had been between us for many years and there was now no obstacle to the transaction being completed.

Subsequently, Tom Gilmartin indicated that he was taking tax advice from Deloitte and Touche. Apparently, around the time of so doing, he met Noel Smyth, Solicitor.

By letter dated the 30th of January 1996, Noel Smyth wrote to state that he was acting on behalf of Tom Gilmartin and could not advise him to complete the agreement. The deposit of £20,000 was returned by way of client account cheque from Noel Smyth.

Tom Gilmartin eventually was bought out of the Company Barkhill Limited on the 31st May 1996 and received £7.75m. The loan from AIB was eventually cleared in 1999 (some nine years after it was advanced). Riga which has been actually involved in Barkhill since the 15th February 1991 has to date not received any profits or dividends from Barkhill. Barkhill still has losses forward on its balance sheet to the 31st March 1999 in the sum of £10.0M.

I am aware that suggestions have been made that it has been alleged by Tom Gilmartin that £1m was given by AIB to me for politicians to secure their votes. This is absolutely untrue and incorrect. It would appear to be based on the fact that AIB did lend (not give) £1m to Riga on security of Riga's assets which sum was to be invested in Barkhill or used for Barkhill's benefit. This money was expended as follows as verified by AIB as follows:-

Utilisation of Riga Sub-ordinated £1m Loan

Tom Gilmartin	26,192.00
Tom Gilmartin	10,028.00
Tom Gilmartin	55,656.00
O'Rahilly Land	660,000.00
S. Maguire - Fees	45,000.00
Murray Land	116,815.00
Shefran Limited - Fees	25,000.00
Shefran Limited - Fees	40,000.00
Shefran Limited - Fees	15,000.00
F. Dunlop	8,228.99
Sundry	20,000.00
F. Dunlop	8,484.00
Ambrose Kelly	26,195.00
	£1,056,598.00
Refunded from Barkhill No. 2 Loan	56,598 00
	£1,000,000 00

Tom Gilmartin may have in effect "withdrawn" this allegation lately. In a newspaper article by Paul Cullen which appeared in the Irish Times on the 30th December 1999, Paul Cullen quotes Tom Gilmartin as saying "One Million Pounds was taken out of my Company's account without my knowledge". This again appears to relate to the Riga £1m sub-ordinated loan. It may well be that this money being a facility granted by AIB to Riga was drawn down on the signatures of the appropriate Riga signatories and without Tom Gilmartin's express knowledge. However as can be seen the funds were used entirely for the benefit of Barkhill. Over £860,000.00 of these funds were used for land purchase for Barkhill and payments made to Tom Gilmartin. It must be borne in mind that even if these funds were paid out without Tom Gilmartin's direct knowledge, they came from Riga not Barkhill so they were not taken from **his** Company's account. Riga would have appeared in Barkhill's Books as being due a reimbursement of these funds.

I am certain that Tom Gilmartin would have been supplied with these details on an ongoing basis as he would have wanted to make sure that Riga had "paid up" its £1.00m. By letter, written about the 2nd February 1993, Mary Basquille of AIB wrote to me confirming that a copy of this list of payments from the Riga sub-ordinated loan had been furnished to Tom Gilmartin as his request.

I am anxious to point out that the matters the subject of this Statement, which I have been requested to furnish to the Tribunal of Inquiry into Certain Planning Matters and Payments and have agreed to do so, concern events which took place up to eleven years ago and, accordingly, I must caution that this Statement sets out matters which I believe

to be true, from the best of my recollection and honest belief.

I have read over the above Statement and it is correct.

Signed: Owen O Callaghan

Owen O'Callaghan

Witnessed by:

Dated this 3rd day of May 2000.

IN THE MATTER OF THE TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

AND IN THE MATTER OF BARKHILL LIMITED

AND IN THE MATTER OF RIGA LIMITED

AND IN THE MATTER OF OWEN O'CALLAGHAN

STATEMENT OF OWEN O'CALLAGHAN

RONAN DALY JERMYN
Solicitors
12 South Mall
CORK

THIS OPTION AGREEMENT made the 31st day of January One Thousand Nine Hundred and eighty nine BETWEEN O'CALLAGHAN (PROPERTIES) LIMITED, having their registered office at 81 South Mall, in the City of Cork, (hereinafter called "the vendor" which expression shall where the context admits or requires, shall include it's successors and assigns of the one part and THOMAS GILMARTIN (hereinafter called "the purchaser which expression where the context so admits or requires shall include his successors and assigns) of the other part.

WHEREAS:

1. By agreement for Sale dated the day of One thousand nine hundred and eighty eight (hereinafter called "the said Agreement for sale") and made between Merrygrove Estates Limited, O'Callaghan Properties Limited, Owen O'Callaghan and Jack O'Callaghan, (a copy of which is annexed hereto), Merrygrove Estates Limited agreed to sell to the Vendor the hereditaments and premises therein more particularly described subject to the conditions therein contained.

2. By Option Deed dated the day of One Thousand Nine hundred and eight eight (hereinafter called "the said Option Deed") and made between Celtic Nominees Limited and Buckfast Limited of the First Part and the Vendor of the Other Part (a copy of which is annexed hereto) the Vendor granted to Celtic Nominees Limited and Buckfast Limited the Option therein contained subject to the covenants and conditions therein specified.

3. For the consideration of Eight Hundred Thousand pounds the Vendor has agreed with the Purchaser for the grant to him of an option to purchase its interest in the said Agreement for Sale and the said Option Deed subject to the terms and conditions herein contained.

NOW THIS AGREEMENT WITHNESSETH that in pursuance of the said Agreement and in consideration of the sum of Eight Hundred Thousand Pounds (IR£800,000.) paid to the Vendor on the execution hereof (the receipt whereof the Vendor doth hereby acknowledge) it is hereby agreed as follows:-

5. In the event of the Purchaser not exercising the option herein granted in the manner herein provided then the Purchaser shall procure that the owners of the land for the proposed West Park Shopping Centre at Palmerstown, County Dublin (hereinafter called "The Gilmartin Lands") enter into a Deed of Covenant prohibiting the use of the Gilmartin Lands for retail purposes which covenant shall be for the benefit of the lands referred to in the said Agreement for Sale. Provided always that that said covenant shall cease in the event of the failure of the Vendor to erect a retail development on the lands referred to in the said Agreement for Sale within a period of five years from the date hereof.

6. The Vendor will use its best endeavours to assist the Purchaser in connection with the obtaining of planning permission for the Gilmartin Lands when called upon by the Purchaser to do so.

IN WITNESS whereof the Vendor has caused its common seal to be hereunto affixed and the Purchaser has set his hand and affixed his seal, the day and year first herein written.

SIGNED for and on behalf of
O' CALLAGHAN (PROPERTIES) LIMITED
by Owen O'Callaghan
in the presence of:

RONAN DALY JERMYN

SOLICITORS

12 SOUTH MALL, CORK. TEL: 021 4802700 FAX: 021 4802790 DX 2002 CORK

Our Ref: Your Ref:

February 10, 2003 RM/BH/17490F1.6

PLANNING AND PAYMENTS TRIBUNAL OFFICE
11 FEB 2003
RECEIVED

Ms. Maire Anne Howard,
Solicitor,
Tribunal of Enquiry Into Certain
Planning Matters & Payments,
State Apartments, Upper Castle Yard,
Dublin Castle,
Dublin 2.

OWEN O'CALLAGHAN
Re: Carrickmines 1 Inquiry

Dear Madam,

We refer to you letters of the 5th and 6th February in this matter.

We respond to your questions as follows:

1. Yes

2. There have been many communications between our client and Mr. Dunlop concerning the work of this Tribunal since the 4th November 1997. Our client and Mr. Dunlop have spoken, primarily on the telephone, on an average of one to two occasions each week (although not every week) for approximately the past four years. Each of the parties, on separate occasions, has initiated the contact. The nature of the discussions that have taken place concern the impact of the Tribunal on their respective personal lives, the likelihood of, and likely dates for, having to give evidence to the Tribunal, the likely duration of the work of the Tribunal and the date or dates upon which the "Quarryvale module" may commence. In addition, our client has spoken with Mr. Dunlop on most Saturday evenings to discuss what may be appearing in the Sunday newspapers.

   Mr. Dunlop repeatedly told our client, since the commencement of his dealings

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Garvan Corkery, Rosemary Horgan, Margaret Ring,

Elaine Sweeney, Finola McCarthy, Adrian Wall, Jennifer Cashman, Deirdre Wilson, Gillian Ahern, Lynn Sheehan, Audrey O'Connor,
Deirdre O'Riordan, Brian O'Halloran, Zelda O'Callaghan, Eoin Tobin, Una Barrett, Consultant John W.T. Deane.

with the Tribunal, that his legal team had advised him not to speak with our client. On a few occasions, primarily in response to various matters which had appeared in the media, our client endeavoured to seek an indication from Mr. Dunlop as to the correctness of those reports and, by inference, the evidence which he proposed to give to the Tribunal in relation to those matters. Mr. Dunlop, on each such occasion, cut our client short and changed the topic.

Mr. Dunlop occasionally sends newspaper cuttings to Mr. O'Callaghan.

There have been a few meetings between our client and Mr. Dunlop at which matters described in the foregoing paragraphs have been discussed. These meetings took place at either the Great Southern Hotel, Dublin Airport or at a restaurant close to Mr. Dunlop's home, both mutually convenient locations. They number approximately four in total.

Both the meetings and the telephone conversations referred to above took place in the absence of any other party.

There has been occasional contact between this office and the offices of LK Shields solicitors acting on behalf of Mr. Dunlop concerning procedural matters such as discovery and the provision of documents of which one party did not have copies, or had only bad copies. Specifically,

- Contact was made by this office in October 1998 with LK Shields solicitors concerning the remit of the Tribunal (the Tribunal has copies of this correspondence).
- Copy correspondence/legal submissions were exchanged between this office and solicitors for Mr. Dunlop concerning the proposed making of discovery orders.
- Copy correspondence was exchanged between this office and solicitors for Mr. Dunlop concerning leaks to the media in or about February 1999.
- A copy of the list (prepared by our client) that was given to the Tribunal by Mr. Dunlop during the course of his evidence in April 2000 was sent to this firm by solicitors for Mr. Dunlop at the request of this office
- Correspondence passed between our client and Mr. Dunlop, and between this office and Mr. Dunlop's solicitor's office, concerning monies paid by Riga Limited to Colm McGrath. This correspondence was copied to the Tribunal on 20th December 2000
- Correspondence passed between this office and solicitors for Mr. Dunlop in 2001 concerning a cheque dated 14th September 1993, Riga Limited to

Frank Dunlop & Associates Limited of which Mr. Dunlop's solicitors had only a bad copy and in respect of which they were seeking a better copy

There has been one meeting between the legal representatives of Mr. Dunlop and those of our client, in Dublin, at or about the first occasion on which discovery orders were proposed. We believe that this may have been in or around April 1999. You will recall that at that time the proposed making of these orders was resisted by our client and by Mr. Dunlop (at single hearings at which both men were legally represented). The meeting took place to discuss the respective positions and attitudes of the parties to the proposed orders having regard to the fact that all such discovery orders were proposed in single, composite, session and on notice to each of the parties.

3. Excluded per letter of the 6th February

4. See 2. above

Yours faithfully,

RONAN DALY JERMYN

RONAN DALY JERMYN

SOLICITORS

12 SOUTH MALL, CORK. TEL: 021 4802700 FAX: 021 4802790 DX 2002 CORK

Our Ref: Your Ref:

February 19, 2003 RM/BH/17490F1.6



Ms. Maire Anne Howard,
Solicitor,
Tribunal of Enquiry Into Certain
Planning Matters & Payments,
State Apartments, Upper Castle Yard,
Dublin Castle,
Dublin 2.

OWEN O'CALLAGHAN
Re: Carrickmines 1 Inquiry

Dear Madam,

Upon reviewing our letter of the 10th February 2003, sent to you in relation to this matter, we wish to draw your attention to one small error which is contained in that letter. There is a reference, in the first part of paragraph no. 2 of that letter, to a period of four years. The reference should, of course, be to a period of five and a half years (i.e. from November 1997 to the present day). Lest there be any misunderstanding, these telephone contacts did not start in November 1997. Our client has been in regular contact with Mr. Dunlop well before that date.

Kindly note the position.

Yours faithfully,

RONAN DALY JERMYN

Francis D. Daly, Nicholas G. Comyn, John L. Jermyn, David B. Browne, Fergus D. Long, John J. Buckley,
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Deirdre O'Riordan, Brian O'Halloran, Zelda O'Callaghan, Eoin Tobin, Una Barrett, Consultant John W.T. Deane.

RONAN DALY JERMYN

SOLICITORS

12 SOUTH MALL, CORK. TEL: 021 4802700 FAX: 021 4802790 DX 2002 CORK

Our Ref: Your Ref:

June 17, 2003 RM/BH/17490F1.6



Ms. Susan Gilvarry,
Solicitor,
Tribunal of Enquiry Into Certain
Planning Matters & Payments,
State Apartments, Upper Castle Yard,
Dublin Castle,
Dublin 2.

OWEN O'CALLAGHAN
Re: Further Narrative Statement

Dear Madam,

We refer to your letter of the 11th February 2003 which was written consequent upon a telephone conversation which we had with Ms. Maire Ann Howard some time previously during the course of which we indicated that our client had prepared a further narrative statement in the matter.

The circumstances in which this statement came to be prepared are as follows:

As you will recall, our client furnished a statement on the 12th April 2000 which covered the period encompassed by the first Order for Discovery (1st September 1991 to 1st September 1993). At that stage, our client had agreed to extend the period of discovery back to the 1st January 1989 and forward to the 31st December 1993. The Tribunal complained that our client had limited his statement to the period covered by the earlier Order for Discovery of the 12th February 1999 and, accordingly, under cover of letter of the 4th May 2000 we submitted a further statement which deals with the entire period in respect of which our client had at that stage agreed to provide discovery.

On reviewing that statement, we were concerned that certain references in the final pages to events after the 31st December 1993 might lead the reader to believe that it was the intention of Mr. O'Callaghan also to deal comprehensively with payments, etc., after that date. For the avoidance of doubt, we wish to point out that this is not the case. It is in these circumstances

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WEBSITE : www.rdj.ie E-MAIL: firstname.surname@rdj.ie

that Mr. O'Callaghan has prepared a further statement which is extended to June 2002. We now attach a copy of that statement with the appendix referred to therein.

Yours faithfully,

RONAN DALY JERMYN

Enclosure.

IN THE MATTER OF THE TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

AND IN THE MATTER OF BARKHILL LIMITED

AND IN THE MATTER OF RIGA LIMITED

AND IN THE MATTER OF OWEN O'CALLAGHAN

SUPPLEMENTAL STATEMENT OF OWEN O'CALLAGHAN

MADE THIS 16th DAY OF May 2003

I, Owen O'Callaghan of Glen Farm, Upper Rochestown, in the County of Cork make this Statement on my own behalf and on behalf of Barkhill Limited, Riga Limited and is supplemental to my Statement made on the 3rd day of May, Two Thousand for the purposes of bringing the history of Quarryvale up to date from 1995 where my last statement finished and listing the contributions/payment which I made to Politicians and Political Parties from 1st January1994 to 6th June 2002.

As detailed in my Statement of the 3rd May 2000, in late 1995 Tom Gilmartin made representations through his Solicitor, Seamus Maguire that he would like to be bought out of Quarryvale. He said at that time that his wife was ill and he wanted to get back his money and forget altogether about Quarryvale.

As I stated previously, a number of discussions took place and an agreement was reached with Tom Gilmartin for the acquisition of his shares, after which Tom Gilmartin expressed his total and absolute satisfaction with the deal, his delight at being out of Quarryvale at last and the fact that he could now concentrate on looking after his wife and family. Tom Gilmartin eventually was bought out of the Company Barkhill Limited on the 31st May 1996 and received £7.75m.

During the course of the negotiations with Tom Gilmartin in connection with his request to be bought out of Barkhill, the Company was in contract negotiations with Grosvenor Estate Holdings for Grosvenor to acquire the Shopping Centre site at Quarryvale. These negotiations had commenced in approximately September 1995 and were ultimately concluded in May 1996. After I had agreed to acquire Tom Gilmartin's shares, I decided to offer to Grosvenor a 40% interest in Barkhill. Grosvenor expressed an interest in acquiring this shareholding as they were interested in having the opportunity of doing further development at Quarryvale in addition to the Shopping Centre. When Tom Gilmartin's shares were acquired Grosvenor then became involved as a 40% shareholder in Barkhill.

The 20% interest of AIB was acquired in January 1998 by Grosvenor and my company with the result that we now hold 50% each of the shareholding in Barkhill Limited. Since 1996 the Liffey Valley Shopping Centre has been constructed and opened. Barkhill has completed a Retail Park known as Retail Park West which is now open for trade. It has also sold sites for a Motor Mall, Hotel and Public House. Barkhill has completed construction of two Office Blocks of c. 60,000 square feet and 40,000 square feet and Barkhill has completed the construction of Retail Park East comprising c. 107,000 square feet. In 2000, Planning Permission for an extension of the Shopping Centre was refused by An Bord Pleanala. This section of Quarryvale is currently under review and it is hoped that in due course revised proposals would be submitted for Planning.

As indicated in my previous Statement the zoning which was achieved for Quarryvale in 1992 was subject to a cap on the amount of retail space in the amount of 250,000 square feet. At the time the cap was imposed I realised that I would have to wait until the next Development Plan before there could be any possible alteration to the size of this cap. In view of the difficulties in achieving a zoning of 250,000 square feet I thought at the time there would be enormous difficulties in having the cap lifted or extended.

With the advent of the three County Council's replacing the old Dublin County Council and the construction of the shopping centre at Blanchardstown, the debate as to whether or not a shopping centre at Quarryvale would prevent the development of a shopping centre at Blanchardstown became irrelevant. Following the division of the old Dublin County Council into three separate Councils, Blanchardstown then became part of a different County so any concerns that a shopping centre at Quarryvale could affect the shopping centre at Blanchardstown ceased to be material. I believe that Blanchardstown Shopping Centre continues to trade very successfully

Gradually over the years I became aware that the feeling amongst the South Dublin County Councillors was that as both Tallaght and Blanchardstown Shopping Centres were double the size of the Shopping Centre at Quarryvale, they saw no good reason why the Shopping Centre at Quarryvale should not be allowed to expand. Likewise it was felt that the cap which was imposed was a compromise on the day and was no longer appropriate.

As I canvassed Councillors for their views on the removal of the cap it became clear to me that there was little or no objection to the removal of the cap. The removal of the cap required a change in the Development Plan which would have required the support of a simple majority of the Councillors. From my discussions with the Councillors, I felt that the removal of the cap would be supported virtually unanimously.

At some time during the course of 2000, DTZ Pieda (in association with Brian Meehan & Associates) were commissioned by Dublin City Council to prepare a retail planning strategy for the Greater Dublin Area. That process involved the holding of public consultation seminars, at which Barkhill were represented, and the delivery of written submissions. The seminars were advertised in the national press and were held, so far as I can recall, on the 15th and 16th May 2001. A consultation report was produced in late May 2001 and written submissions were made to the process on behalf of Barkhill Limited. In addition, I understand that each of the seven constituent county councils submitted a county report to the strategy. A final retail planning strategy for the Greater Dublin Area was published in early 2002.

I refer to the list of political contributions contained in my Statement of the 3rd May 2000. I would like to make two adjustments to this statement.

A. Paragraph 3 - under this heading on page 19 of my Statement I refer to having made a contribution of £5,000 to Michael Martin as Lord Mayor of Cork being a contribution towards the Atlantic Pond Restoration Fund. This was incorrect. This payment of £5,000 was in fact a political contribution to Michael Martin for the June 1991 Local Elections. In fact the contribution to Michael Martin for the Lord Mayor's Atlantic Pond Fund was made on the 9th July 1993 in the sum of £5,000 by O'Callaghan Properties Limited.

B. In or about the month of June 1992 I paid the sum of £10,700 to Councillor Colm McGrath of Dublin County Council. When I made my original statement I did not remember this payment as I personally held no documentation which would have helped me to recollect it. It was only when going over matters in my mind that I began to recall a payment made to Colm McGrath. I checked my records but still could not find any record of the payment. I asked Frank Dunlop if he had any recollection of the events. He told me that he would only deal with the matter through his Solicitor. In this regard I beg to refer to my third Supplemental Affidavit as to documents

I believe that this payment was made in the following circumstances.

Colm McGrath had told me on a few occasions that he was being sued for money and expressed concern that he did not have the funds to meet this litigation. In or about the 21st May 1992 I was in Frank Dunlop's Office when he received a call from Colm McGrath. Colm McGrath informed him that the litigation case was due in Court that day and that he felt Judgment was about to be given against him for the sum of £10,700. He told Frank Dunlop that he had tried to contact me and asked him if he knew where I was. Frank Dunlop told him that he would ring him back. Frank Dunlop then discussed the matter with me and I agreed to pay the amount involved. I asked Frank Dunlop if he would make the payment on my

behalf and that I would reimburse him. Frank Dunlop sent a bank draft in the sum of £10,700 by courier to William Fry & Sons Solicitors to resolve the matter. From a copy of my letter to Frank Dunlop dated the 26th May 1992 it is clear that I asked Frank Dunlop to include this amount in his next Invoice. I do not have any copy of this letter other than the copy sent to my Solicitors by the Solicitors for Frank Dunlop. I believe from correspondence I have received from Frank Dunlop's Solicitor that this amount was included in an Invoice dated the 10th June 1992 from Frank Dunlop & Associates in the sum of £13,530.04. This Invoice was paid on the 28th August 1992.

I have made a number of Political Contributions during the period of the 1st January 1994 to the 6th June 2002 and I would like to deal with Political Contributions of £1,000 or more as follows:

1. On the 14th March 1994 I made a payment of £10,000 to Fianna Fail.

2. On the 13th May 1994 I made a payment of £10,000 to Niall Crowley for the European Election Fund for Brian Crowley.

3. On the 21st June 1994 I made a payment in the sum of £80,000 to Fianna Fail.

In regard to the payments described in at 1, 2 and 3 above the circumstances of these payments was as follows:

In or about the month of September 1993, I received a letter from the Office of the National Treasurers of Fianna Fail requesting a significant financial contribution for the party. The letter made it clear that I would be contacted by a Senior Representative of the National Treasurers Committee.

Subsequently I was contacted by Ray McSharry who asked me to meet him when I was next in Dublin as he wanted to discuss the request for support in more detail. I later met with Ray McSharry in Dublin. I believe that this meeting took place prior to Christmas of 1993. He informed me of the very precarious nature of Fianna Fail's finances and that the party were asking about ten businessmen to make a contribution of £100,000 each to the Party to help make inroads into the Party's serious Bank debt. I indicated I would be prepared to consider favourably such a request but in view of the large amount involved I would like some time to think further about it. After Christmas I contacted Ray McSharry to tell him that I would make the contribution as requested.

In or about the month of March 1994 I attended a fund raising dinner to which approximately twelve people were invited and at which it was indicated that Mr Albert Reynolds (then Taoiseach) would attend. It was expected that each of the invitees would contribute approximately £10,000 to the Party. On the night of the dinner I handed over a cheque in the sum of £10,000 payable to Fianna Fail.

About that time I was also contacted by the late Flor Crowley who had heard of the substantial request made of me by Fianna Fail. He told me that his son Brian was standing for the European Elections and he wanted a contribution towards his election campaign. I indicated to Flor Crowley that I would agree to make a payment of £10,000 to Brian Crowley's election fund on condition that it was cleared with Fianna Fail's Head Office and that I could deduct this amount from the sum of £100,000 being requested of me. Subsequently Flor Crowley contacted me to say that this had been agreed by Head Office and I gave him a cheque in the sum of £10,000.

I believe that some time after the Fundraising Dinner, I was again contacted by Ray McSharry regarding my promised contribution. I gave a firm commitment to forward a cheque and in June 1994 I paid the sum of £80,000 to Fianna Fail being £100,000 requested less the cheque I had already given at the Fundraising dinner of £10,000 and also less the amount of £10,000 given to Brian Crowley's Election Fund. I subsequently received letters from Ray McSharry and Bertie Ahern thanking me for these contributions. Copies of the letter of request and the letters of thanks are attached in Appendix "A".

4. On the 16th May 1995 I paid the sum of £1,000 to the Fianna Fail Forum at the request of the Forum.

5. In or about the month of March 1996 Frank Dunlop & Associates made a contribution on my behalf to John O'Halloran in the sum of £2,500. As far as I can recall, John O'Halloran contacted Frank Dunlop seeking a contribution from Frank Dunlop towards expenses in connection with the 1996 By- Election. Frank Dunlop rang me and asked me if I was prepared to contribute as well. I agreed to contribute the sum of £2,500 and I authorised Frank Dunlop to pay this amount of money on my behalf. I requested him to include it in his next Invoice to me. This amount was included in Frank Dunlop invoice dated the 30th March 1996.

6. In or about the month of July 1996 Frank Dunlop contacted me to say that

he was aware that Councillor Therese Ridge was organising a Fine Gael Fundraising Dinner and he thought that I should support it. I asked Frank Dunlop to contribute on my behalf the sum of £1,000 to this event on the basis that I would reimburse him. This amount was included in Frank Dunlop's Invoice of the 17th July 1996.

7. On the 6th September 1996 I made a contribution of £1,000 to the Fianna Fail Golf Classic at the request of Mr. Pat Farrell of the Fianna Fail Fundraising Committee.

8. On the 18th October 1996 I made a contribution in the sum of £1,000 at the request of Liam Lawlor TD to a Golf Classic organised by him.

9. On the 13th May 1997 I made a contribution in the sum of £10,000 to Fianna Fail following a request from the Party.

10. On the 21st October 1997, at the request of Councillor T Ridge, I paid the sum of £1,000 to a Fine Gael Dinner Fundraiser.

11. On the 30th June 1998, at the request of the Fundraising Committee, I paid the sum of £1,000 to support a Fianna Fail Golf Classic.

12. On the 22nd February 2000, at the request of the Fundraising Committee, I paid the sum of £1,000 to support a Fianna Fail Golf Classic.

In addition to the foregoing Political Contributions, I made the following other payments during the period of the 1st January 1994 to the 6th June 2002.

A. On the 26th September 1994, I paid the sum of £10,000 to Liam Lawlor
B. On the 13th March 1995 I paid the sum of £20,000 to Liam Lawlor

The circumstances under which these payments were made were as follows.

I was approached by Liam Lawlor for a payment for all his help and assistance over the years. He reminded me of all his help and assistance in connection with the Quarryvale and Stadium Projects. It was he who advised that the maximum size of Quarryvale should not exceed 500,000 square feet if it was to have any chance of being rezoned. Liam Lawlor was concerned to ensure that the development should offer employment to people from the local community and wanted me to meet the local community groups to make this commitment to them. He was very familiar with the local community groups and was in a position to advise me as to the appropriate groups to meet.

Liam Lawlor had been instrumental in securing agreement with Green Properties in relation to the retail space cap at Quarrryvale and had arranged for Green Properties to write to the then Chairman of South Dublin County Council confirming in effect that Green Properties would not object to Quarryvale being zoned for retail provided that the retail space was capped at 500,000 square feet .

Liam Lawlor was the person who first suggested the idea of the Stadium. He told me that he had seen it suggested in some document that Clondalkin was one of the possible locations for a National Stadium. Liam Lawlor was very supportive of all the various stages of the efforts to get a stadium built at Neilstown. He was also involved in discussions with Chilton O'Connor who were interested in providing finance for the Stadium Project.

Liam Lawlor wanted to be remunerated for his efforts. I had to accept that he was correct in these comments and that I did not object to the principle of remunerating him for his efforts. After some discussion I agreed to make a payment on account of £10,000 which I paid on the 29th September 1994. At that stage Mr Lawlor made it quite clear that he would only accept this as a payment on account as he believed that he was entitled to substantially a greater sum of money than this. I had a number of discussions with Mr Lawlor on the matter and gave him a sum of £20,000 which I paid on the 30th March 1995. I should point out that Liam Lawlor had lost his Council seat in the 1991 Local Elections over three years prior to these payments being made.

C. On the 6th June 1997 I paid the sum of £10,000 to Citywise. The Chairman of South Dublin County Council Mr Mick Billane requested the above donation towards the provision of a bus to transport children from the Tallaght area to a Dublin City Centre Special School.

Signed:

Witnessed:

Dated: 16th May 2003

to be true, from the best of my recollection and honest belief.

I have read over the above Statement and it is correct.

Signed: Owen O Callaghan

Owen O'Callaghan

Witnessed by:

Dated this 3rd day of May 2000.

PLANNING AND PAYMENTS TRIBUNAL OFFICE
26 NOV 2003
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In the matter of Sean Haughey and Thomas Gilmartin

At some point during the course of 1989, on a specific date that I cannot recall, I met with Sean Haughey, at Mr Haughey's request, at his office in Dublin.

Mr Haughey told me that Thomas Gilmartin had made comments to him as follows:

1. That he (Mr Gilmartin) was having difficulties (involving George Redmond and Liam Lawlor amongst others) concerning his attempts to develop lands at Irishtown/Quarryvale.

2. That Dublin was awash with corruption and that one cannot do anything in Dublin without spending money ie, if one wanted anything done, the Councillors were the people with the power and had to be paid.

I indicated to Mr. Haughey that Mr. Gilmartin had made comments to me similar to those outlined by Mr Haughey, as having been made by Mr. Gilmartin to Mr Haughey, at 2 above. I indicated to Mr. Haughey that I was not in a position to either confirm or contradict the nature of the comments made by Mr. Gilmartin to both Mr. Haughey and I, as outlined at 2 above, as I had no familiarity whatsoever with how such matters operated in Dublin. I indicated to Mr Haughey that my only experience was in Cork and Limerick where the system operated in a different way to that perceived by Mr. Gilmartin as applying to Dublin and where (in Cork and Limerick) the managers words are final.

Signed: _____
Owen O'Callaghan

Dated: 24th November 2003

RONAN DALY JERMYN
SOLICITORS

12 SOUTH MALL, CORK. TEL: 021 4802700 FAX: 021 4802790 DX 2002 CORK

Our Ref: Your Ref:

PLANNING AND PAYMENTS TRIBUNAL
PTB/58
05 FEB 2004
RECEIVED

February 4, 2004 RM/GN/17490F1.6

Personal Private Confidential Addressee Only
Ms. Susan Gilvarry,
Solicitor,
Tribunal of Enquiry Into Certain
Planning Matters & Payments,
State Apartments, Upper Castle Yard,
Dublin Castle,
Dublin 2.

OWEN O'CALLAGHAN
Re: Tax Designated Properties

Dear Madam,

We refer to your letter of the 28th November 2003 and to our telephone conversation in that regard on the 11th December 2003.

You have sought a detailed list of all properties in which our client (as effectively defined in the penultimate paragraph of your letter) has or holds an interest where he has obtained tax designation status.

There are no properties in which our client has or holds an interest where he has obtained tax designation status.

Our client has formerly held an interest in three tax designated properties as set out hereunder. His involvement, if any, in obtaining tax designation is also set out hereunder:

Arthur's Quay, Limerick

Our client's decision to invest in this project was made in December 1986. He had no involvement in the tax designation of the area which was announced in late 1985 and ratified during early 1986.

Francis D. Daly, Nicholas G. Comyn, John L. Jermyn, Rosemary Horgan, Fergus D. Long, John J. Buckley, Thomas J. Fox, John A. Dwyer, Richard L. Martin, James G. O'Sullivan, Patrick M. Ahern, Fergal T. Dennehy, Garvan Corkery, Margaret Ring, Adrian Wall

Elaine Sweeney, Finola McCarthy, Juli Rea, Jennifer Cashman, Deirdre Wilson, Gillian Ahern, Louise Duggan, Lynn Sheehan, Audrey O'Connor, Deirdre O'Riordan, Brian O'Halloran, Zelda O'Callaghan, Paula O'Sullivan, Ronan Geary, Sinead Corcoran, Eoin Tobin, Una Barrett, Marianne Crowley
Consultant John W.T. Deane

Carlow shopping Centre, Carlow

Our client's investment in this project was made in December 1993. He had no involvement in the tax designation of the area which, we believe, occurred during the 1980's.

Golden Island Shopping Centre, Athlone

Our client's investment in this project was made in 1994.

Our client made representations to the then Minister for the Environment, Minister Michael Smith, in 1993, in which a case was put forward for the designation of this area. Designation was announced by the Rainbow coalition (per Deputy Liz McManus) in 1994.

If you require any further information in relation to the foregoing, please do not hesitate to contact us.

Yours faithfully,

RONAN DALY JERMYN

RONAN DALY JERMYN
SOLICITORS

12 SOUTH MALL, CORK. TEL: 021 4802700 FAX: 021 4802790 DX 2002 CORK

Our Ref: Your Ref:

February 27, 2004 RM/RG/PD/17490F1.6



Ms. Susan Gilvarry,
Solicitor,
Tribunal of Enquiry Into Certain
Planning Matters & Payments,
State Apartments,
Upper Castle Yard,
Dublin Castle,
Dublin 2.

OWEN O'CALLAGHAN, BARKHILL LIMITED & RIGA LIMITED

Dear Sirs,

We refer to your letter of the 15th of January 2004 and regret the delay in responding.

Dealing with each of our clients as set out in your request, we respond as follows:

Owen O'Callaghan

Owen O'Callaghan made no political contribution in the period concerned (1st of January 1985 to 1st of January 1989), either directly or through a company, agent, trustee, nominee, corporate structure, trust structure or otherwise.

Barkhill Limited

From the discovery documentation that was submitted covering the period 1st of January 1987 to 31st of December 1988 previously, it is to be noted that the first bank account of the company opened on the 20th of February 1990 and that the company was only incorporated on the 25th of November 1988. In the period mentioned (1st of January 1985 to 1st of January 1989), Owen O'Callaghan was not involved in the company Barkhill Limited and therefore did not make any political contribution through this company in the period in question. Our client is not aware of any political contribution having been made by Barkhill Limited in the period.

Francis D. Daly, Nicholas G. Comyn, John L. Jermyn, Rosemary Horgan, Fergus D. Long, John J. Buckley, Thomas J. Fox, John A. Dwyer, Richard L. Martin, James G. O'Sullivan, Patrick M. Ahern, Fergal T. Dennehy, Garvan Corkery, Margaret Ring, Adrian Wall

Elaine Sweeney, Finola McCarthy, Juli Rea, Jennifer Cashman, Deirdre Wilson, Gillian Ahern, Louise Duggan, Lynn Sheehan, Audrey O'Connor, Deirdre O'Riordan, Brian O'Halloran, Zelda O'Callaghan, Paula O'Sullivan, Ronan Geary, Sinead Corcoran, Eoin Tobin, Una Barrett, Marianne Crowley
Consultant John W.T. Deane

WEBSITE : www.rdj.ie E-MAIL: firstname.surname@rdi.ie

Riga Limited

Political contributions of Riga Limited during the period in question (1st of January 1985 to 1st of January 1989) are as follows:

1. 7th of January 1988 Fianna Fail £100
2. 1st of December 1988 Fianna Fail £100

In addition, on the 29th of February 1988, Riga Limited drew a cheque in favour of Hilser Brothers (jewellers) in the amount of £225. At the time it was the intention that a presentation be made to the Taoiseach at the official laying of the foundation stone of the Merchants Quay Shopping Centre. This presentation was never made as the Taoiseach was unable to attend the function.

We trust that this sets out the position as required. If you have any further queries please don't to contact us.

Yours faithfully,

RONAN DALY JERMYN

PLANNING AND PAYMENTS TRIBUNAL OFFICE
02 MAR 2004
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Statement of Owen O'Callaghan

Dated this first day of March 2004.

During the course of 1987, 1988, and to January 1989, I had no involvement in Quarryvale. In January 1989, I executed an agreement to transfer the Balgaddy site to Tom Gilmartin. In December 1990, my company took a stake in Quarryvale.

During 1989 and 1990, even though I had no involvement in the Quarryvale site, Tom kept me informed as to progress on Quarryvale and in particular the numerous attempts he was making to finance the project and to complete the purchase of the Balgaddy site from my Company. Having regard to the fact that Tom Gilmartin was in default in completing the agreement which we reached in relation to the Balgaddy site, I was obviously interested in his progress in the Quarryvale site as funding for that development was to be used to complete the Balgaddy agreement.

Finbarr Hanrahan came to my office in Cork during the second half of 1989 to seek support as he was standing for the Senate. At his request, I gave him the name of two or three councillors to contact.

An appointment was arranged for Tom Gilmartin to meet Finbarr Hanrahan. I cannot recall whether it was arranged by Tom Gilmartin or me. This meeting took place at Buswells Hotel where I pointed out Finbarr Hanrahan to Tom Gilmartin, Finbarr Hanrahan having arrived before us. I refer to this meeting which is the subject of a separate statement.

With regard to the correspondence from Kieran O'Malley faxed to my office on the 24th March 1990, I believe I told Tom Gilmartin that some politicians were meeting in Cork and Tom Gilmartin asked me to make a presentation to them. Subsequently I must have felt that making such a presentation was not feasible because I don't believe that I actually ever made such a presentation nor do I believe I ever attended at this meeting.

I wrote to Padraig Flynn, then Minister for the Environment on the 5th February 1990. See page 5 of my Statement submitted to the Tribunal on the 3rd May 2000 and to Appendix 2 thereto.

Signed: Owen Callaghan

Dated: 1/3/04

01/03/04 15:53



Statement of Owen O'Callaghan

Dated the first day of March 2004.

As outlined in my statement to the Tribunal of May 2000, when I decided to expand my companies interests to Dublin, I looked at a site at Cooldrinagh in Lucan. I was introduced to the site by my Architect Ambrose Kelly (Ambrose Kelly had acted as my architect on projects in Cork (Paul Street and Merchants Quay since 1983) who in turn introduced me to the Solicitor acting for the Vendor Mr Paul Smithwick.

The site at Cooldrinagh was sufficient to accommodate a shopping Centre but was incorrectly zoned. I was informed that there should be no difficulty in having the site rezoned for retail because the local Lucan Councillors would be supportive. My recollection is that this was said to me by Paul Smithwick. In particular I understood (again, from Paul Smithwick) that Finbarr Hanrahan who was from the Lucan/Clondalkin Ward was fully supportive of the proposed retail project at Cooldrinagh. This was the first time I heard mention of the name of Finbarr Hanrahan but to the best of my recollection I did not meet him at that time. I never proceeded with the Cooldrinagh site

At a local function in Lucan/Clondalkin, probably towards the middle of 1988, I met Finbarr Hanrahan who was one of the Local Councillors. Finbarr Hanrahan told me that as a local Councillor he fully supported my proposed development at Balgaddy. He also informed me that he was originally from the South of Ireland but I cannot remember if it was either West Cork or Kerry.

I believe the next time I met Finbarr Hanrahan was in Cork when he arrived unexpectedly at my office in Cork This would have been in the second half of 1989. He told me that he was canvassing for the Senate elections and at his request, I gave him the name of two or three councillors who he might contact. I said to him that he could use my name as a reference contact.

Sometime in 1989 Tom Gilmartin asked me to introduce him to Finbarr Hanrahan. I don't specifically recall but this request was probably made by Tom Gilmartin on the phone. Tom wanted Finabrr's Hanrahan's support for Quarryvale as he was one of the local Councillors. I am not sure if it was Tom Gilmartin or I made the appointment. The meeting was arranged for Buswells Hotel. I do not recall the date upon which this meeting took place but I am reasonably confident that it was not before the 31st January 1989 as that was the date on which Tom Gilmartin and I signed the option agreement for Balgaddy and, prior to that, our respective sites were rival (See Appendix 1 to the Statement that I submitted to the Tribunal on 3rd May 2000).

I arrived at the Hotel with Tom Gilmartin and John Deane as I believe the three of us had been meeting previously at the office Tom Gilmartin used in St. Stephens Green. I believe that these were the Arlington offices. Other than possibly arranging the meeting, I did not have any discussion with Finbarr Hanrahan in relation to the Quarryvale site either at or prior to the Buswells meeting. Finbarr Hanrahan was

01/03/04 15:53

already there. I pointed him out to Tom Gilmartin and Tom Gilmartin went straight over to him. John Deane and I sat some distance away while Tom Gilmartin and Finbarr Hanrahan spoke to each other. We could not hear what they were saying.

Within fifteen minutes or so Tom Gilmartin walked out of the hotel and John Deane and I followed him out onto Molesworth Street. He seemed quite upset and when I asked him what was wrong he told me that Finbarr Hanrahan has asked him for £100,000. He said to me that here he was trying to bring all the barefoot Irish emigrants back from Luton and this f..... asked for £100,000. He said that he was going into the Dail the following day to tell the Ministers.

I believe the foregoing represents all the contacts I had with Finbarr Hanrahan up to the 31st December 1990. I don't believe that I had any written communications with him.

Signed:

Dated: 1/3/04

RONAN DALY JERMYN
SOLICITORS

12 SOUTH MALL, CORK. TEL: 021 4802700 FAX: 021 4802790 DX 2002 CORK

Our Ref: Your Ref:

March 12, 2004 RM/GN/17490F1.7

Ms. Susan Gilvarry,
Solicitor,
Tribunal of Enquiry Into Certain
Planning Matters & Payments,
State Apartments,
Upper Castle Yard,
Dublin Castle,
Dublin 2.

PLANNING AND PAYMENTS TRIBUNAL OF ENQUIRY
PTB/58
15 MAR 2004
RECEIVED

OWEN O'CALLAGHAN, BARKHILL LIMITED & RIGA LIMITED

Dear Madam,

We refer to the first statement of Owen O'Callaghan submitted to the Tribunal in May 2000.

The third (full) paragraph that appears on page 5 of that statement commences with the line:

> "The second payment (£1.35m.) was not made on the due date of 31st January 1990 but was paid some months later."

It appears to our client, upon review of the statement that the date referred to is clearly incorrect. The date referred to is the date for the final payment of £1.35m. The second payment under the contract was due on the 31st October 1989 and our client wishes to correct his statement in this respect.

Yours faithfully,

RONAN DALY JERMYN

Francis D. Daly, Nicholas G. Comyn, John L. Jermyn, Rosemary Horgan, Fergus D. Long, John J. Buckley, Thomas J. Fox, John A. Dwyer, Richard L. Martin, James G. O'Sullivan, Patrick M. Ahern, Fergal T. Dennehy, Garvan Corkery, Margaret Ring, Adrian Wall

Elaine Sweeney, Finola McCarthy, Juli Rea, Jennifer Cashman, Deirdre Wilson, Gillian Ahern, Louise Duggan, Lynn Sheehan, Audrey O'Connor, Deirdre O'Riordan, Brian O'Halloran, Zelda O'Callaghan, Paula O'Sullivan, Ronan Geary, Sinead Corcoran, Eoin Tobin, Una Barrett, Marianne Crowley
Consultant John W.T. Deane

RONAN DALY JERMYN
SOLICITORS

12 SOUTH MALL, CORK. TEL: 021 4802700 FAX: 021 4802790 DX 2002 CORK

Our Ref: Your Ref:

May 18, 2004 RM/RG/GN/PD/17490F1.8



Ms. Susan Gilvarry,
Solicitor,
Tribunal of Enquiry Into Certain
Planning Matters & Payments,
State Apartments,
Upper Castle Yard,
Dublin Castle,
Dublin 2.

By fax 01 6339890 + post

BARKHILL LIMITED, RIGA LIMITED, OWEN O'CALLAGHAN AND JOHN DEANE

Dear Madam

We refer to the Tribunal proceedings of the 13th May, 2004 and to the ruling made by Mr. Justice Mahon on behalf of the Tribunal that certain allegations made by Mr. Tom Gilmartin and reiterated by Mr Paul Sheeran in his evidence can be addressed by our client, Mr Owen O'Callaghan when he comes to give evidence to the Tribunal in the present module. In particular Mr Justice Mahon ruled that Mr. O'Callaghan can be examined at the appropriate time with regard to the allegation that he, through Mr. Frank Dunlop, "arranged for misinformation to be made available" to the United Kingdom Revenue Commissioners which resulted in the United Kingdom Revenue Commissioners taking proceedings against Mr. Tom Gilmartin for tax evasion, together with the allegation that Mr. O'Callaghan, through his agents or otherwise, embezzled one million euro from the bank account of Mr. Tom Gilmartin some time in the early 1990's.

We confirm it is our clients' intention to put forward his position in relation to both these very serious allegations (which, for the avoidance of doubt, are categorically denied) when the time comes for him to give evidence to the Tribunal in the present module. To assist us in this regard, we now formally request the Tribunal to circulate all information disclosed to it to-date by Mr. Gilmartin regarding his personal tax affairs in the United Kingdom, including but not limited to, all correspondence with the United Kingdom Revenue Commissioners, all demands issued by the United Kingdom Revenue Commissioners, and any submissions or other such documentation made by Mr. Gilmartin in response to same. If such documentation has not been obtained on Discovery we would be grateful if you would confirm that this is indeed the position. In such circumstances we would request that appropriate Orders should now be made against Mr. Gilmartin and all information discovered by Mr Gilmartin on foot of same should be circulated to the appropriate parties expeditiously. It is of course vital that our client has sight

Francis D. Daly, Nicholas G. Comyn, John L. Jermyn, Rosemary Horgan, Fergus D. Long, John J. Buckley, Thomas J. Fox, John A. Dwyer, Richard L. Martin, James G. O'Sullivan, Patrick M. Ahern, Fergal T. Dennehy, Garvan Corkery, Margaret Ring, Adrian Wall

Elaine Sweeney, Finola McCarthy, Juli Rea, Jennifer Cashman, Deirdre Wilson, Gillian Ahern, Louise Duggan, Lynn Sheehan, Audrey O'Connor, Deirdre O'Riordan, Brian O'Halloran, Zelda O'Callaghan, Paula O'Sullivan, Ronan Geary, Sinead Corcoran, Eoin Tobin, Una Barrett, Marianne Crowley
Consultant John W.T. Deane

of such documentation in order to afford him the opportunity to fully vindicate his good name in response to the various allegations made initially by Mr. Gilmartin and now repeated by Mr. Sheeran in the course of his evidence.

We await hearing.

Yours faithfully,

pp RONAN DALY JERMYN

IN THE MATTER OF THE TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

AND IN THE MATTER OF BARKHILL LIMITED

AND IN THE MATTER OF RIGA LIMITED

AND IN THE MATTER OF OWEN O' CALLAGHAN



NARRATIVE STATEMENT OF OWEN O' CALLAGHAN
MADE THIS 4th DAY OF November 2005

STRICTLY PRIVATE AND CONFIDENTIAL

I, Owen O' Callaghan, of Glen Farm, Upper Rochestown, Cork make this Statement on my own behalf and on behalf of Barkhill Limited and Riga Limited.

This Statement is in response to the Tribunal of Inquiry into Certain Planning Matters and Payments (hereinafter referred to as the "Tribunal") request for a further Narrative Statement in relation to the payment by Riga Limited of certain legal expenses incurred by Mr Frank Dunlop in relation to his involvement with the Tribunal.

Around November, 1998 Mr Dunlop found it necessary to engage a firm of solicitors and counsel in relation to the allegations surrounding the Quarryvale project and incurred legal expenses associated with such representation as a direct consequence, as I then understood, of his involvement in Quarryvale.

At this stage, and up to Mr Dunlop's direct evidence in 2000, neither Riga Limited, Barkhill Limited nor myself were aware of Mr Dunlop's so called 'war chest'. Whilst I was aware that he, naturally, had other clients who were developers, I was not aware of any details of this involvement. There was no mention in either the media or by the Tribunal of any investigation into any other development by the Tribunal involving Mr Dunlop other than Quarryvale.

On the basis that (i) the allegations made, it then appeared, by Mr Gilmartin were spurious and of no substance in respect of the alleged payments by Mr Dunlop and ; (ii) I was not aware that any alleged payments had been made to members of Dublin County Council other than those political donations notified by Mr Dunlop to me, it was agreed that we would consider refunding Mr Dunlop in respect of legal costs incurred arising out of the inquiries of the Tribunal. It must be reiterated and stressed that this was in the belief that Mr Dunlop's involvement with the Tribunal flowed only from allegations penned against his professional conduct in relation to the

Quarryvale development. Assurances regarding this were given by Mr Dunlop throughout that period and given the nature of our professional relationship and the fact that neither I, Riga Limited nor Barkhill Limited were involved in any such payments to elected members in return for any planning favours there was no reason for me to doubt that Mr Dunlop was telling the absolute truth.

In April 2000 Mr Dunlop gave evidence at the Tribunal and his revelations came as a total surprise to me. Having thought about these revelations it became apparent to me that Mr Dunlop's involvement in the Tribunal was not one which related solely to his link with the Quarryvale development. I decided to cease any assistance given to Mr Dunlop in his involvement with the Tribunal as it would appear that (i) he was taking monies paid to him or Shefran Limited for professional work done and advices given to me and my connected companies in respect of the Quarryvale development and putting them, or a part of them, into a "war chest" which he in turn utilized for payments to certain elected members; and (ii) he was involved with other developments and developers who in turn were the subject matter of the private investigations of the Tribunal and their fees, or a part of them were also being transferred into this 'war chest' Therefore, his involvement with the Tribunal was not limited solely to the allegations made by Mr Gilmartin and those reported in the media.

The legal fees paid by Riga Limited on production of relevant invoices from Mr Dunlop related, as far as I was concerned and honestly believed, solely to the involvement of Mr Dunlop with the Tribunal to assist them in their private enquiries in relation to false allegations of certain improper payments concerning the Quarryvale development only. In order to expedite the work of the Tribunal and remove any such allegations from the media and general public I believed that by assisting Mr Dunlop in this way it would resolve the matter quickly.

Signed: _____

Owen O' Callaghan

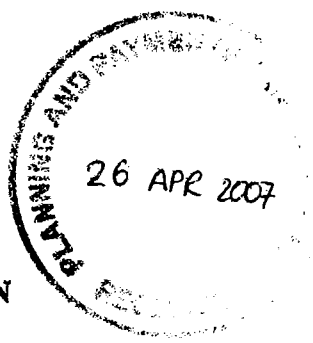
Date: 4th November 2002

IN THE MATTER OF THE TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

AND IN THE MATTER OF BARKHILL LIMITED

AND IN THE MATTER OF RIGA LIMITED

AND IN THE MATTER OF OWEN O' CALLAGHAN



NARRATIVE STATEMENT OF OWEN O' CALLAGHAN
MADE THIS 25 **DAY OF** April **2007**

STRICTLY PRIVATE AND CONFIDENTIAL

I, Owen O' Callaghan, of Glen Farm, Upper Rochestown, Cork make this Statement on my own behalf and on behalf of Barkhill Limited and Riga Limited.

This Statement is in response to a number of requests from the Tribunal of Inquiry into Certain Planning Matters and Payments (hereinafter referred to as the "Tribunal") for a further Narrative Statement in relation to a number of matters as follows:

The demand made by Mr Tom Hand (deceased) of Mr Frank Dunlop for the sum of IR250,000 and what knowledge, if any, I had of that demand.

In early 1992, (the exact date is not clear in my memory but it would have been during the period in which we (Mr Frank Dunlop and myself) were in contact with

and canvassing the relevant Councillors in relation to the proposed rezoning of the site now known as 'Quarryvale'), Mr Dunlop informed me that Mr Tom Hand had requested from him the sum of IR250,000 in consideration for or in respect of his continuing support of the rezoning of Quarryvale. Mr Dunlop did not inform me of the manner in which such payment was to be made merely that the demand had been made. This was the first (and only) instance whereby Mr Dunlop had informed me of any demand or request for money in consideration of the maintenance or provision of support for the project and was a huge surprise to me not only because of the size of the demand but the fact of the demand itself.

I considered how best to approach the matter. Frank Dunlop was anxious that I should confront Mr Hand and indicate to him that I had no intention whatsoever of making any payment to Mr. Hand. I agreed to do this.

I asked Mr Dunlop to set up a meeting whereby I proposed to speak personally with Mr Hand on the matter. Mr Dunlop set up a meeting in his offices and during the course of the meeting he asked Mr Hand to repeat the demand directly to me. Mr Hand stated that he wanted the sum of IR250,000 in return for his continued support for the rezoning of Quarryvale. Even though Mr. Dunlop had already advised me of the fact of the demand, I was nonetheless taken aback by the request. I was angry and I informed Mr Hand that if he were to ever repeat such a demand or indeed if he were to request any monies in respect of his support I would go straight to his party leader (Mr John Bruton). Tom Hand appeared not to care. I told him that I was not concerned whether he supported Quarryvale or not. I then left the meeting.

The issue of the demand made by Mr Hand never arose again and I did not inform the party leader as I was aware that Mr Dunlop would inform the relevant people in the event that Mr Hand appeared not to have taken my comments on board.

Matters concerning Eamon Dunphy and the Neilstown Stadium.

It is correct to say that Eamon Dunphy approached me and worked with me with a view to relocating Wimbledon Football Club to Neilstown. Eamon Dunphy knew Mr.

Sam Hamam, who was then chairman of Wimbledon Football Club and introduced him to me. Eamon Dunphy also introduced me to the Football Association of Ireland.

When the whole Neilstown Stadium Plan was originally conceived, and put together, my company applied for and received planning permission for a 40,000 all seater National Stadium at Neilstown, Clondalkin.

I then approached Mr. Albert Reynolds, the then Taoiseach, for financial support for this stadium with a view to the stadium becoming the National Football Stadium. My request to the then Taoiseach was for £2 million per annum for 20 years as a contribution to the cost of the construction and running of the stadium (total £40 million). The capital cost of building the stadium at that time was £60 million and I was confident that the revenues from the stadium and the government grant would pay for the capital cost and running of the stadium over a 20 year period. Mr. Reynolds said that he felt that the government could support this proposal but felt that it was totally up to the then Minister for Finance, Mr. Bertie Ahern.

Mr. Bill O'Connor (of Chilton O'Connor of Los Angeles), whose company was prepared to provide the funding for the stadium, and myself, met with Mr. Bertie Ahern in November 1994. The meeting lasted approximately 10 minutes and Mr. Ahern abruptly told us that the Government would not support this stadium financially and that he did not envisage a stadium being built as Neilstown.

It was some time later that Eamon Dunphy approached me with a view to bringing Wimbledon to the stadium as mentioned above.

One of the problems in bringing Wimbledon to Dublin was to get permission from the EU because of the Bosman ruling. I arranged through Mr. Brian Crowley MEP to meet with Mr. Padraig Flynn who was then an EU Commissioner in Brussels to discuss this possibility with him and to ask him to speak with his fellow Commissioners. Consequently, Mr. Sam Hamam, his brother, two London based QC's and myself met with Mr. Flynn in Brussels and had a very constructive meeting. Mr. Flynn promised to do what he could with his fellow commissioners and fully supported the idea. Nothing happened.

In any event, the Football Association of Ireland was adamant that Wimbledon would not come to Dublin and take part in the English Premiership based in Dublin.

The English Premiership Chairmen supported the idea of Wimbledon coming to Dublin.

To date we still do not have a national soccer stadium.

Allegation by Frank Dunlop that I had been involved in sending Mr. Gus O'Connell on a "foreign junket" for the purpose of ensuring his absence for a crucial Quarryvale vote.

Gus O'Connell was a Councillor who represented Palmerstown, Co. Dublin. I was aware that he was very concerned that the additional traffic generated by the scheme would cause severe congestion in the Palmerstown area. On the basis of his apprehension that the Quarryvale proposal would cause such traffic difficulties he strenuously objected to the proposal.

I recall that Gus O'Connell was not present for one of the key Quarryvale votes. I am not certain as to whether this was the May 1991 vote or the December 1992 vote. My inclination is that it was the latter vote. Gus O'Connell was at that time an employee of the State Agency FAS. My understanding is that he was part of a FAS group who were on a course or trip to some place in mainland Europe at the time that the vote was taken. I heard this in the Council Chamber on the night of the vote as there was some surprise that he wasn't present given his opposition to the Quarryvale proposal on traffic grounds. I had no involvement whatsoever in "sending" Gus O'Connell on this FAS trip.

Allegation made by Frank Dunlop that a demand of £250,000 had been made by Ambrose Kelly Architect for himself, for Mr. Frank Dunlop and for Mr. Liam Lawlor (deceased).

On a night the date of which I cannot recall, Ambrose Kelly and myself were out for a meal in Dublin at Kites restaurant in Ballsbridge. We were discussing the Balgaddy/Neilstown site. In particular, we were discussing the stadium project for the Balgaddy site. Ambrose Kelly proposed that himself, Frank Dunlop and Liam Lawlor would get involved in the project. I indicated to him that if they were to get involved, they would each have to provide at least £250,000. Ambrose Kelly said to me that neither of the three would have that sort of money and that if they had to put that money into the project, I would have to lend it to them or give it to them. I said that I could not and would not do that.

I did not do it and they did not become involved in the project.

Allegation made by Frank Dunlop that I had told him that I had been asked for the sum of "50 grand" in relation to Cooldrina by a member of Dublin Corporation who Frank Dunlop went on to identify as Mr. Michael Mulcahy.

On the first occasion on which I met Mr. Paul Smithwick, the Solicitor acting for the Vendors of the Cooldrinagh site, Michael Mulcahy was with him. I was introduced to him as, simply, Michael Mulcahy. I did not know who he was and presumed him to be a Solicitor working with Paul Smithwick. I had never met Michael Mulcahy prior to this meeting with Paul Smithwick. There was at that meeting (or subsequently) no mention whatever of a demand for 50 grand and I have no recollection of anyone ever reporting to me that Michael Mulcahy had sought, or was seeking, 50 grand from me.

Fianna Fail Private Dinner March 1994

This dinner was held at the house of T Niall Welch. The purpose for holding the dinner was to raise funds for Fianna Fail. T Niall Welch and I organised this dinner at the request of Fianna Fail and the party secretary, Pat Farrell. I have already provided details to the Tribunal of the contribution which I made to the party at the dinner (see

my statement to the Tribunal of 16 May 2003). So far as I can recall, the following people attended the dinner:

Mitchell Barry
Joe Donnelly
Noel C Duggan
Pat Farrell
Bill Grainger
John McCarthy
Denis Murphy
Owen O'Callaghan
Eddie O'Connell
Albert Reynolds
Des Richardson
Joe Walsh
T Niall Welch

Pursuit of Tom Gilmartin by Inland Revenue in the UK

I gave evidence in relation to this issue on 8 July 2004 (Q 294) during the course of the Quarryvale I hearings (albeit without the memorandum of the conversation between Mr Gilmartin and Tribunal Counsel being drawn to my attention or disclosed to me). I can only repeat, and do so, that I had absolutely no involvement in, or knowledge of, Mr Gilmartin being petitioned for Bankruptcy by the English Revenue authorities. I knew nothing whatever of this issue until it was drawn to my attention by Frank Dunlop following its publication in a British Tabloid in May 1991.

Allegation that I gave Albert Reynolds £150,000 at 3am in an upstairs bedroom of my house

This allegation is utterly false and patently absurd. Albert Reynolds came to Cork, by car, for the fundraising dinner (referred to above) in T Niall Welch's house. He did

not stay in my house. So far as I am aware, he went back to Longford that night by car. I did not give him £150,000 either at 3am or at any other time, either in my house or at any other place.

I never gave Albert Reynolds any money. Albert Reynolds was never in my home.

Men with dark glasses and dark clothing/ meeting with Christy Burke

I once went to Finch's pub in North Clondalkin with Tom Gilmartin. The purpose for our going there was to meet a group of 6 or 7 women representing the Quarryvale Residents. Tom Gilmartin made a fool of himself and they left. These women were very genuine and wanted work for their husbands. I introduced Tom Gilmartin to them. I started to tell them about the proposal but Tom Gilmartin shut me up. He spent about 20 minutes boasting as to what he had achieved in the UK. He said that he would build a massive complex in Quarryvale and bring the barefoot Irish back from London and Luton to Ireland. The women all left, one by one.

The allegation that Tom Gilmartin was approached by two men wearing dark clothing and dark glasses and a third man who identified himself as a Sinn Fein councillor and at which point I stepped away is utter nonsense. It never happened.

The allegations contained in the transcript of the Noel Smyth interviews in this regard comprise utter nonsense and are totally false.

I do not know Christy Burke. I did know John McCann who was a Sinn Fein community activist for North Clondalkin at the time.

Payments to senior politicians in 1989; payments in connection with Quarryvale

My statements of 3 May 2000 and 16 May 2003 detail, fully, all of the payments that I have made to politicians.

Allegations that I am "very big in Fianna Fail" and Gilbride payments

I have been a supporter of Fianna Fail for many years. I am not a member of the party.

I am involved in business as a property developer. Certain political parties espouse and encourage the concept of private enterprise. Others less so. Fianna Fail, in my view, have always been the party most encouraging of, and supportive of, private enterprise. In those circumstances, they are the political party whom I like most to see attaining power and serving in Government. As is detailed in my statements submitted to the Tribunal, I have assisted the party by making financial contributions. I have assisted certain politicians with their election expenses at election time.

I do not know what is meant by Tom Gilmartin when he says that I was available to deliver the Cork Fianna Fail vote to Charlie Haughey in internal party situations. If it means, as I suspect it does, that at times at which Mr. Haughey's leadership was under threat, I was in a position to ensure that Fianna Fail politicians in Cork voted for him, it is rubbish. I met Mr Haughey twice in my life. I have, and have had, no influence whatever with sitting TD's in Cork, whether to "deliver" their votes or otherwise.

I have fully detailed every payment that I have ever made to Sean Gilbride in my statement of 3 May 2000 already made to the Tribunal.

Signed: _____

Owen O'Callaghan

Dated: 25/4/07

Statement of Owen O'Callaghan

Re: £300,000 payment to Frank Dunlop

Following the imposition of the retail cap on Quarryvale in December 1992, I promised Frank Dunlop a success fee if he was successful in getting the cap lifted. I don't recall the time at which I promised Frank Dunlop this success fee but it would have been shortly after the cap was imposed in December 1992.

Frank Dunlop was paid a success fee of £300,000. I am aware that this was paid over to the Revenue Commissioners as Frank Dunlop was having difficulties in that regard at the time.

There is absolutely no truth whatsoever to the totally false suggestion that I paid Frank Dunlop monies either to tell a certain story to the Tribunal or not to talk to the Tribunal at all. That is absolute rubbish.

Signed: Owen O'Callaghan

Owen O'Callaghan

11 TH JULY 2007

Statement of Owen O'Callaghan

Re: Opening of Liffey Valley Shopping Centre

Prior to the proposed date for the opening of the Liffey Valley Shopping Centre, the date of which I am not entirely certain, Frank Dunlop and I discussed the appropriate person to be invited to opening the shopping centre and we agreed that it should be Mr. Bertie Ahern, Taoiseach. We also agreed that the Duke of Westminster, as our partner in the project, would have to be present.

So far as I can recall, the Duke gave me two or three dates upon which he would be available to attend the opening. I passed these on to Frank Dunlop who, I believe, passed them on in turn to the Taoiseach's office. The Taoiseach confirmed his availability for one of those dates. Subsequently, the Duke said that he was not, in fact, available on the date that had been selected by the Taoiseach. The Duke proposed alternative dates but, unfortunately, the Taoiseach was not available on any of those alternative dates. I understand that Frank Dunlop was advised of this by the Taoiseach's office. The matter dragged on for some time but, ultimately, there was no official opening of the shopping centre. The doors simply opened for business. The Taoiseach was not there and the Duke of Westminster was not there. There was no ceremony performed, no other persons were considered for the opening and no formal invitations were issued.

Signed:

Owen O'Callaghan

11TH JULY 2007

IN THE MATTER OF THE TRIBUNAL OF ENQUIRY INTO CERTAIN PLANNING MATTERS AND PAYMENTS

AND

IN THE MATTER OF THE TRIBUNALS OF ENQUIRY (EVIDENCE) ACTS, 1921 – 1998

AND

IN THE MATTER OF OWEN O'CALLAGHAN

STATEMENT OF OWEN O'CALLAGHAN

I make this statement in response to a request made in the course of the evidence of Frank Dunlop to the Tribunal and in the context of a letter written by me to the then Taoiseach Albert Reynolds on 17 November 1992. In that letter I referred to total support provided which exceeds a six figure sum.

I should say, firstly, that the reference to the provision of such support refers to support provided over the years (as is evident from the first paragraph of the letter). It does not mean, as has been suggested by Tribunal Counsel, that the support in excess of six figures is in connection with the 1992 election. In the context of the enormous discovery which I have made to the Tribunal dealing with every single payment made by me, Barkhill Limited, Riga Limited and O'Callaghan Properties Limited for the relevant period, and in the context of what is clearly stated in this letter, such an interpretation is not sustainable.

I should say, secondly, that I inadvertently omitted from my narrative statements, which detail all political contributions since 1989, the payment made to Fianna Fail in November 1992 referred to in this letter. Clearly, the letter itself was provided by me to the Tribunal as was a list of all payments made to politicians between 1989 and 2000 by O'Callaghan Properties Limited (see Book of Discovery 5.4 furnished to the Tribunal). However, I omitted in error to refer to this payment in my narrative statement.

By the time this letter was written, I had made, or committed to, payments to politicians in the sum of £72,200 since 1989. These are outlined in my statements and include the monthly payments to Sean Gilbride of £10,500 which were started in September 1992 and the £5,000 paid to Fianna Fail under cover of the letter to the Taoiseach. In addition, I would have made political contributions, the extent of which I am unsure, in the period since I started business in 1969.

When I stated in my letter to the Taoiseach that I had provided support of in excess of a six figure sum, I did not sit down and calculate exactly how much I had paid. My impression at that time was that payments made by me had been made in or about that order over the years. For the avoidance of doubt, and as I have repeatedly stated, there were no other payments made by me other than those which I have disclosed.

Signed

Dated

22/2/08